

Calcutta High Court

Sukhdev Kaur (Grewal) vs Ravinder Singh Grewal on 18 July, 1996

Equivalent citations: II (1997) DMC 69

Author: D K Jain

Bench: G R Bhattacharjee, D K Jain

JUDGMENT Gitesh Ranjan Bhattacharjee, J.

1. This is an appeal against the judgment and order dated the 22nd February, 1991 in Matrimonial Suit No. 6/1985 passed by the learned Additional District Judge, 11th Court, Alipore, granting decree of divorce under the Hindu Marriage Act, 1955 in favour of the petitioner- husband and against the wife on the ground of cruelty of the wife. The husband who is respondent herein filed the suit for divorce on the ground of desertion and cruelty. The parties are Sikh by religion and are governed by the Hindu Marriage Act, 1955. They were married according to Sikh rites and ceremonies on or about 23rd January, 1970 at 2/3A, Panditiya Road, Calcutta-29. Their marriage was consummated and two sons were born in that wedlock, - one on 28th May, 1972 and the other on 17th September, 1974. Both the sons however have, by now, crossed their minority and have attained majority. At the time of the marriage the petitioner was in service in the Security Force as an Assistant Company Commander. It was a negotiated marriage.

2. It is the case of the petitioner-husband that after the marriage, the petitioner returned to the place of his posting at Doomdooma (Assam) and the wife refused to accompany him on several pleas and ultimately she went there, but she stayed there only for a period of two months and that as she did not like the service of the petitioner in the Force the petitioner-husband resigned from the Security Force in 1971 and took up civilian life, and came down to Calcutta and started living with his parents at 95A, Bangur Avenue, but as the wife maintained that she disliked living with in-laws and she did not live with the petitioner at his parents place for more than a week at a stretch; the petitioner joined the Western Indian Match Co. Ltd. as Security Officer in August, 1971 and was allotted residential quarters in the factory premises, but the wife had the idea that the job of a Security Officer was a job of Darwan and a sophisticated lady could not live in the Darwan's quarters; that however due to earnest request of the petitioner, the wife lived in the said quarters for a few days on occasions at intervals when she conceived for the first time after more than a year of the marriage; that in 1973 the wife joined B.Ed. Course at Shri Shikshayatan against the wishes of the petitioner and on the plea that the college was near her parents' house she lived mostly with her parents and she neglected her household and partial duties and lived with the petitioner rarely and also almost always, the petitioner had to cook and do domestic chores and she even did not allow the petitioner to spend nights in her parents' house; that as the wife did not like the petitioner's service as a Security Officer he resigned from the job in December, 1973 and rented a separate flat at 112, Bangur Avenue as the wife did not like to live with the in-laws; that the wife lived in the rented flat on rare occasions and by that time she conceived again and later in July, 1974 she left for her parent's place on health ground and during her pregnancy and even after the confinement the wife refused to come and live with the petitioner; that she took up a job of teacher against the wishes of the petitioner and that became an additional plea for her to refuse to come back; that the petitioner had in the meantime started a transport business and his avocation did not leave for him enough time to cook his own food, that the wife always misbehaved with the petitioner and she always used

to say that she was not married to serve the petitioner's parents and she habitually insulted the petitioner as being an army brute; that the wife is a westernised lady with individualistic tastes and she hated living a docile domestic life confined within four walls, cooking food and .... for the family; that after the child birth the respondent persistently refused access to the petitioner and she was living with her parents and refused to live with him on one plea or the other and even refused to allow the petitioner to stay at her parent's place even for a single night; that the wife surreptitiously took up the job of the teacher in Shhri Sikshayatan against the wishes of the petitioner in or about January, 1976; that she lived in her parent's house and the repeated persuasion of the petitioner to bring her back failed; that the wife lived a free life behind the back of the petitioner and she made secret trips to different places including Thailand; that whenever she asked for money the petitioner paid; that she refused conjugal access to the petitioner on most occasions; that at long last when the petitioner held out that he would not live a separate life all through his life and would take away the children, the wife returned to the petitioner in or about December, 1982 and initially she lived with the petitioner's parents and subsequently a flat at 52/4, Bangur Avenue was hired by the petitioner and she lived there with the children till August, 1989, but during this period she always misbehaved with the petitioner and also refused conjugal access to the petitioner; that in the morning of the 20th August, 1983 the wife wanted to go to her parent's place to which the petitioner consented; that the wife did not return and the petitioner went to her parent's place in the next afternoon and quite unexpectedly he was subjected to abuses; that subsequently on or about the 20th August, 1983, the wife filed case No. Cr. 1346 of 1983 under Sections 406/403/420, I.P.C. in the Court of the learned S.D.J.M. at Barrackpore against the petitioner and his mother making wild and false allegations; that the wife examined herself on oath in the said Court on 1st September, 1989 when she repeated her allegations and also examined her brother; that upon the said complaint, the learned Court took cognizance under Section 420, I.P.C. against the petitioner-husband and issued process and also issued search warrants for recovery of goods and on the strength of the search warrants the police searched the petitioner's residence at 52/4, Bangur Avenue on the 2nd September, 1983 and seized and removed 21 items of goods including furniture, sewing machine, ceiling fans, refrigerator etc. and in fact all removable articles were seized and removed; that the police also searched the parent's place of the petitioner at 61, Bangur Avenue on the 2nd September, 1983 and seized and removed 19 items of gold and silver ornaments and cutleries in presence and on the identification of the respondent-wife; that by levelling false allegations and by obtaining search warrants and having the goods seized on false allegations the wife has committed cruelty; that the respondent filed a petition for maintenance under Section 125, Cr. P.C. on false allegations that the petitioner misbehaved with her and assaulted and abused her and also drove her out on the 6th June, 1974 etc.; that the respondent wife out of her free Will during the absence of the petitioner left the petitioner's residence on or about the 20th August, 1983 and has since then abandoned the petitioner and has voluntarily withdrawn from the society of the petitioner and thus deserted him without any reasonable cause and without the consent of the petitioner. The petitioner prayed for decree of divorce and for custody of the two children. It may however be mentioned here that the two children have since attained majority and therefore the question of custody does not now survive and has not been pressed also.

3. In her written statement the respondent-wife has denied all the material allegations of cruelty and desertion. Her case is that the petitioner resigned from the service in Security Force as well as from

the post of Security Officer of the private company, of his own accord and the wife had no role in the matter. It is the contention of the wife in the written statement that in order to have higher education she joined B. Ed. Course at Shri Shikshayatan in 1982 and no question can arise regarding the wish or desire of the petitioner in the matter as the petitioner since June, 1974 cut off all relationship with the respondent wife and the children till December, 1982. She also denies the allegation that she did not discharge her household duties etc. It is stated in the written statement that the petitioner was in the regular habit of intoxication and whenever the wife used to protest, the petitioner used to become furious and even used to torture her and the minor sons and the petitioner created such circumstances which ultimately forced the wife to leave the matrimonial home on account of threat and torture on the part of the petitioner and it was the petitioner who resorted to all sorts of tactics so as to drive away the wife in order to lead a care-free life. It is also the case of the wife that she has been doing the job of teacher in Shri Shikshayatan for having her own livelihood in view of the utter neglect by the petitioner. It is also her case that the statements made in the complaint filed in the Court of the learned S.D.J.M., Barrackpore are correct.

4. The learned Trial Court on consideration of the pleadings and the evidence came to the finding that the ground of desertion was not attracted in the case and even the learned Lawyer for the petitioner also did not press the issue regarding desertion before the learned Trial Court and in the circumstances the learned Court held that there was no desertion by the wife for a continuous period of two years immediately proceeding from 1974 to 1982, covering nearly eight years, the spouses lived separate from one another, but that period cannot be taken into consideration in view of the fact that in 1982 the parties again started living together as husband and wife and continued their cohabitation upto the third week of August, 1983 when they again separated finally. Therefore the period of desertion will have to be computed from August, 1983 for the purpose of consideration whether the wife has deserted the petitioner, if at all, for the requisite period of two years before the suit for the divorce was filed by the husband. It may be mentioned here that the suit for the divorce was filed by the husband. It may be mentioned here that the suit for the divorce was filed on 2.7.1984 when one year of separation was not yet completed, computed from August, 1983. That is why the learned Trial Court held that the ground of desertion was not available to the petitioner-husband for seeking divorce in the suit.

5. The learned Trial Court has however granted the decree of divorce on the ground of cruelty committed by the wife. The learned Trial Court has taken notice of the fact that the appellant-wife filed the criminal case in the Court of the learned S.D.J.M., Barrackpore on 30.8.1983 against the petitioner-husband and his mother Smt. Ishwar Kaur under Sections 406/403/420, IPC alleging that the husband was a desperate type of man and had started leading a vicious life and was a drunkard and also threatened to kill her to about 9 p.m. on 21.8.1983 for which she was compelled to leave the house on the next morning with her two sons and that it was also alleged in the petition of complaint that the husband by making false representation persuaded the wife to make over a sum of Rs. 14,000/- to the landlady from whom the husband took a flat on a monthly rental basis and further induced the wife to make over to him another sum of Rs. 16,000/- which he never intended to return. She made allegations against the petitioner-husband and his mother that they were entrusted with the entire stock of gold and stone set gold ornaments of the wife worth Rs. 50,000/- and they had committed breach of trust in respect of the gold ornaments and the mother

of the husband had misappropriated the silver wares and they committed offence of cheating punishable under Section 420, I.P.C. and criminal breach of trust punishable under Section 406, I.P.C. and criminal misappropriation punishable under Section 403, I.P.C. The learned Court below however has taken notice of the fact that the wife made initial statement on oath before the learned S.D.J.M., Barrackpore in support of the allegations made in the petition of complaint and on the basis of same the learned S.D.J.M. took cognizance and issued summons against the husband under Section 420, I.P.C. only and also issued two search warrants on the prayer of the wife for search and seizure of articles including ornaments and accordingly the police made search of the residences of the husband as well as of his parents in presence of the wife and seized articles and ornaments. The learned Court below has recorded in the impugned judgment that the allegations of cheating, criminal breach of trust and criminal misappropriation as made by the wife against the mother of her husband in the petition of complaint were not even substantiated prima facie and that is why the learned S.D.J.M. did not issue any summons against the mother of the husband and rather issued summons in the criminal case against the husband alone under Section 420, I.P.C. only and not even under Sections 403 and 406, I.P.C. The learned Court below has felt that since the allegations made against the mother of the husband were not substantiated and that is why process was issued against her in the criminal case, such unsubstantiated allegations which were not proved to be true caused mental cruelty to the petitioner-husband. The learned Court below has also noted that since no summons was issued against the petitioner under Sections 403 and 406, I.P.C. the allegations made against the husband in the petition of complaint were also, proved to be untrue so far as offences under the said two sections are concerned and that must have caused mental agony and anguish to the husband and that would amount to cruelty. The learned Court below has further noted in the impugned judgment that the allegations that the husband is a drunkard and is leading a vicious life have not also been proved before the learned Court below by adducing reasonable, cogent and reliable evidence and therefore such unsubstantiated allegations would also constitute cruelty on the part of the wife. The learned Court below is of the view that the wife failed to prove any of those allegations either before the learned S.D.J.M., Barrackpore or before the learned Trial Court and that such unsubstantiated allegations constitute cruelty on the part of the wife for which the husband is entitled to a decree of divorce. The learned Court below has also taken note of the fact that the husband must have suffered humiliation and mental agony because of the searches made in his house and in the house of his parents at the instance of his wife.

6. There is no doubt - and it can be noted as a general proposition - that unsubstantiated allegations of cheating, criminal breach of trust or criminal misappropriation against husband or against the mother of the husband and filing of criminal case on such unsubstantiated allegations would no doubt constitute cruelty on the part of the wife. There is no gain-saying that filing of a criminal case on unsubstantiated allegations of offences of cheating, criminal breach of trust and criminal misappropriation is sure to cause humiliation and mental agony to the husband.

7. It is of course submitted on behalf of the wife that whatever the wife did, she did it for protecting her ornaments and other articles which were lying in the house of the husband as well as in the house of his parents after she was driven away from the house of her husband in August, 1983 and therefore the filing of the case or the search made pursuant to warrants issued in the criminal case would not constitute cruelty. In this connection it is however to be noted that unless there are

exceptional circumstances of an outrageous nature compelling the wife to take recourse to such a drastic step and the ingredients of the alleged offences are really satisfied, the mere fact that the ornaments and articles of the wife might have been lying in the house of the husband or in the house of his parents would not ipso facto justify the wife in rushing to the Court or filing a criminal case against the husband and his mother alleging cheating, criminal breach of trust and criminal misappropriation and getting search warrants issued in that criminal case against the husband and his parents, without first trying to get her articles and ornaments amicably returned by the husband and his parents. The wife, as we have seen in this case made allegations of offences under Sections 406/403/420, IPC against the mother of the husband also, but the learned S.D.J.M. however did not issue any summons in the criminal case against the mother of the husband which would prima facie indicate that the wife failed to make out a prima facie case before the learned S.D.J.M. against the mother of the husband in respect of the offences alleged against her and that is why the learned S.D.J.M. did not issue any summons in the criminal case against the mother of the husband, although he issued summons against the husband under Section 420, I.P.C. It is also not difficult to appreciate that filing of a criminal case even against the mother of the husband on unsubstantiated allegation that she was also guilty of the offences punishable under Sections 406, 403 and 420, I.P.C. amounts to an act of cruelty on the part of the wife against the husband inasmuch as the husband is sure to suffer mental pain and anguish to find that even his mother was also made an accused in the criminal case on unsubstantiated allegations of offences like criminal breach of trust, criminal misappropriation and cheating. It is true that the criminal case filed against the husband in which the summons has been issued under Section 420, I.P.C. is still pending but that will not be an answer to the situation that the husband's mother was also sought to be implicated in the criminal case by the wife and allegations which were not substantiated. This fact by itself is an act of cruelty on the part of the wife not only against her mother-in-law but also against her husband, because it must be an extremely painful and harassing experience for any spouse that his or her mother was sought to be unduly implicated in a criminal case by the other spouse.

8. In Paragraph 20 of the petition for divorce it has been averred by the petitioner-husband that at long last when the petitioner held out that he would not live a separate life all through and would take away the children the wife returned to the petitioner in or about December, 1982 and initially she lived with the petitioner's parents and subsequently a flat at 52/4, Bangur Avenue was hired by the petitioner and she lived there with the children till August, 1983. There was also other averments in the said Paragraph 20 which paragraph has been dealt with by the wife in Paragraph 22 of her written statement. In the said Paragraph 22 of the written statement, apart from an omnibus denial, the wife does not specifically say anything as to how she came to live with the petitioner-husband in December, 1982. In Paragraph 21 of the petition for divorce the husband specifically says in the morning of the 30th August, 1983 the wife said that she would go to her parent's place and the petitioner-husband consented and stated that she could go after the petitioner went out. This Paragraph 21 of the petition for divorce has been dealt with by the wife in Paragraph 23 of the written statement wherein it is only stated that the alleged statements in Paragraph 21 have not been correctly stated and the petitioner is to be put to strict proof of the same. It is to be noted therefore that the wife does not specifically deny the husband's case as pleaded in Paragraph 21 of the petition for divorce that in the morning of the 20th August, 1983 the wife said that she would go to her parent's place and the petitioner consented and stated that she could go after the petitioner went

out. Then again in Paragraph 22 of the petition for divorce the husband states that the petitioner-husband went out in the morning of the 20th August, 1983 and returned in the evening as usual only to find that the flat was locked and that the wife and the children had left during his absence leaving key to the petitioner's parents. This Paragraph 22 of the petition for divorce has been very cryptically dealt with by the wife in Paragraph 24 of her written statement wherein she has simply stated that the allegations of Paragraph 22 are fully denied as the same are connected and contradicted. In Paragraph 23 of the petition for divorce it is stated by the husband that as the wife did not return, the petitioner-husband went to her parent's place next afternoon (obviously meaning the afternoon of 21st August, 1983) and quite unexpectedly he was subject to abuses and that the parents of the petitioner-husband also visited her and her parents to request her to return but she refused. This Paragraph 23 of the petition for divorce have been dealt with by the wife in Paragraph 25 of her written statement wherein it is simply stated that the allegations in Paragraph 23 are denied and no such incident ever took place and the petitioner is called upon to prove the same. In paragraph 24 of the petition for divorce it is stated by the husband that subsequently on or about 30th August, 1983 the respondent-wife filed a criminal case being Case No. C-1346 of 1983 under Sections 406/403/420, I.P.C. in the Court of the learned S.D.J.M., Barrackpore against the petitioner and his mother making wild and false allegations and in Paragraph 25 of the petition for divorce the husband has also narrated the content of the petition of complaint filed in the Criminal Court by the wife. The said Paragraphs 24 and 25 of the petition for divorce has been dealt with by the wife in Paragraphs 26 and 27 respectively of her written statement wherein it is stated that the statements made in the petition of complaint are correct and that she would rely upon the same.

9. In the petition of complaint filed before the learned S.D.J.M., Barrackpore it is stated by the wife that in early December, 1982 the husband contacted her and induced her to believe that he had realised his mistake and would henceforth behave properly and accordingly on the 17th December, 1982 the wife alongwith her two sons came to live with the husband at 61, Bangur Avenue, Block-B where the parents of the husband were also living. It is stated in the petition of complaint that on the insistence of the husband she then brought her ornaments from the locker and gave the same to the husband and that the husband in turn made over the same to his mother and then in May, 1983 the husband hired a separate house at 52/4, Bangur Avenue and started living there with the wife and the children and she also paid on two occasions Rs. 14,000/- and Rs. 16,000/- respectively from her savings to the husband and subsequently the husband started misbehaving with the wife and on 21st August, 1983 at about 9 p.m. the husband displayed a big knife and threatened to kill her and she managed to save herself and spent the whole night by sitting in the drawing room and was ultimately compelled to leave the house next morning with only wearing apparels, with two sons and took shelter again in the house of her father at Panditiya Road and the matter was reported to the police on 22.8.1983. It is also alleged by the wife in the petition of complaint that both the accused, meaning the husband and his mother, when approached for return of the articles refused to return and lastly denied to have received the same. As we have seen, all these things have not been pleaded in the written statement filed in the matrimonial suit and only it has been asserted in the written statement that the statements made in the petition of complaint are correct and would be relied upon. Now let us see how does she lead evidence in the matrimonial suit in support of the statements made in the petition of complaint.

10 In her evidence in the matrimonial suit the wife as D.W. 1, inter alia says that her husband used to drink heavily and also ill-treated and tortured her in drunken state. She also says that she stayed in her father's house since 6.6.1974 for about eight years and that in December, 1982 she got information from one Mr. Dhall, an Advocate that her husband wanted to meet her and she met her husband accordingly and her husband told her that he would not ill-treat her further and requested her to return and that is why she returned to Bangur Avenue house on 17th December, 1982. She says that she filed the criminal case against the husband in Barrackpore Court for saving her valuables from the hands of her husband and also for turning her husband to good path so that they might be happy together and the said case is still pending there. She denies in her examination-in-chief that on 20th August, 1983 she left her husband's house for ever on the plea of illness. She also denies that she made any false statement against her husband in the criminal case in Barrackpore Court. She says that she is willing to go back to her matrimonial home and live with her husband. It seems to be somewhat unusual that when there are so much allegations and counter-allegations between the parties and the wife even filed criminal case against her husband and his mother in Court and also got search warrants issued and articles and ornaments seized at her instance from the houses of her husband and her husband's parents, she could sincerely say that she was still willing to go back to her matrimonial home and to live with her husband. In her examination-in-chief she also produced a photograph saying that the same was the photograph of her husband and another lady whom she did not know. In her evidence before the Matrimonial Court she does not say anything that there was any incident in the night of 21st August, 1983 in which she was threatened by the petitioner-husband to be killed with a knife or that she left the house of the petitioner on the 22nd August, 1983 which were the allegations she made before the Criminal Court. She also does not say anything in her evidence in the matrimonial suit that she approached the petitioner-husband or his parents to take back her ornaments and articles or that they refused to give back her ornaments and articles inspite of approach. D.W. 2 the father of the wife has produced a letter purportingly written on 26.1.1983 by the eldest son of the appellant and the respondent to the son and daughter of the eldest son of D.W.2 wherein it is inter alia stated by the son writing the letter that his father beat them (children) too much and fight with their 'mummy'. The admission of this letter in evidence was objected to but inspite of that the same, it seems, was marked as Extn.-C. It is however to be noted that the content of this letter cannot go in evidence because the son who wrote that letter was not examined as a witness. It is needless to mention that neither the petition of complaint filed before the learned Magistrate or the other petitions that might have been filed there nor the evidence, if any, given in the criminal case can be treated as evidence of the facts stated therein, for the purpose of the matrimonial suit. Since the wife has not adduced any convincing evidence in the matrimonial suit that she left the petitioner's house not on the 20th August, 1983 but on the 22nd August, 1983 and there was any incident in the night of 21st August, 1983 as a result of which she was compelled to leave that house next morning or that she approached the husband or his parents thereafter, seeking return of her ornaments and articles which are the allegations she made in petition filed in the Criminal Court, there is no scope of holding, for the purpose of the matrimonial suit, that the filing of the criminal case against the petitioner and her mother on allegations of cheating, criminal breach of trust and criminal misappropriation has been shown to be based on grounds prima facie justifying approach to the Criminal Court. The mere fact that her averments or articles were lying with her husband or her mother-in-law, without anything more, would not justify her conduct- for the purpose of

considering the question of cruelty in the matrimonial suit-in straightaway running to the Court by filing a criminal case against them. Well, even if it is accepted as a plea of defence for the wife in the matrimonial suit that the Magistrate, on the basis of ex parte evidence adduced by her in the criminal case at the initial stage at least took cognizance of the offence alleged against the husband under Section 420, I.P.C., yet the fact remains that the allegations against the mother of the husband as brought by the wife in respect of offences punishable under Sections 406, 403 and 420, I.P.C. could not be substantiated even prima facie either before the Magistrate or before the Matrimonial Court and consequently, as we have discussed earlier, it must be held that making of such unsubstantiated allegations against the mother of the husband in a bid to unduly implicate her in the criminal case constitutes cruelty on the part of the wife not only against her mother-in-law but also against her husband for which the husband can legitimately claim a decree of divorce. The petitioner has in his evidence denied the allegations made by the appellant-wife that the petitioner is a drunkard and is of vicious nature and conduct. He has also stated that the wife left his house on 20.8.1983. As regards the allegations made by the wife in the criminal case, the husband says that such allegation humiliated him and caused mental torture on him. He denied that he takes drinks. He denies that he used to lead a vicious life and also used to come home in drunken condition or that he made any torture on his wife.

11. Having regard to the evidence on record as has been adduced in the matrimonial suit we endorse the view of the learned Trial Court that the allegation that the petitioner-husband is a drunkard and leads a vicious life has not been proved in the matrimonial suit by reducing reasonable, cogent and reliable evidence. It is needless to mention that ordinarily hurling of such baseless allegations regarding the character and conduct of a spouse constitutes cruelty on the part of the other spouse. The fact that the wife also tried to unduly implicate the mother of the husband in the criminal case by making unsubstantiated allegations of offences under Sections 406, 403 and 420, IPC against her also constitutes, as we have already discussed, cruelty on the part of the wife not only against her mother-in-law, but also against her husband. On these grounds of cruelty the husband-in our opinion, can legitimately claim for a decree of divorce and that being so we find no reason to interfere with the decree of divorce granted by the Trial Court.

12. Certain decisions were cited at the Bar which are noted below. In *Kesharao v. Nisha*, it has been held by a Full Bench of the Bombay High Court that the cruelty contemplated under Section 13(l)(ia) of the Hindu Marriage Act neither attracts the old English doctrine of danger nor the statutory limits embodied in old Section 10(l)(b) of the same Act and that the cruelty contemplated is a conduct of such type that the petitioner cannot reasonably be expected to live with the respondent. In *Yashoda Bai v. K.B. Katavakar*, AIR 1982 Karnataka 368, it has been held by a Division Bench of the Karnataka High Court that mere domestic quarrels on account of the presence of the mother-in-law in the family would not constitute mental cruelty and that cruelty must constitute threat of danger to the person or life of the person on whom cruelty is practised and if that element of threat to the life or person is absent, it cannot be the cruelty, much less mental cruelty. We will however see that the said Karnataka decision about the requirement of the element of threat of danger to the person or life of spouse is not the precise law on the point in view of certain decisions of the Supreme Court which we shall mention latter. In *Neelam v. Vinod Kumar*, the Court was of the view that petty instance of things said or done while spouse are going through period of adjustment should not



receive too much importance in accessing the question of cruelty. In *Gurbachan Kaur v. Swaran Singh*, , the Court was of the view that the wife's allegations of adulterous relationship of the husband with his sister-in-law when considered in the context of the circumstances, did not constitute an act of cruelty entitling the husband to a decree of Chakarborty, a Division Bench of this Court hold in the facts and circumstances of that case that the instances referred to by the husband were in the nature of ordinary quarrels between husband and wife and could not be said to be so serious or damaging as to constitute cruelty. In *Krishan Sarbadhikary v. Alok Ranjan Sarbadhikary*, 89 CWN 156, it has been held by a Division Bench of this Court that lodging of complaint of commission of criminal offence against the husband who was a Government Official was very likely to cause an apprehension in the mind of the husband that continued cohabitation with the wife might be harmful and injurious and that the petitioner husband, as such cannot be compelled to ensure the company of the wife who makes false complaints to police matrimonial differences.

13. The amplitude of the term 'mental cruelty' in connection with the Section 13(1)(ia) of the Hindu Marriage Act has been very exhaustively considered in the celebrated decision of the Supreme Court in *V. Bhagat v. D. Bhagat*, . Before 1976 amendment cruelty was not a ground of divorce under the Hindu Marriage Act. It was however at that time only a ground for judicial separation under Section 10 of the Hindu Marriage Act. But there also the ground was not simple cruelty but it was such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party. By the Marriage Laws (Amendment) Act, 1976 cruelty has been made a ground of divorce under Section 13(1)(ia) of the Hindu Marriage Act wherein the language used is that the other party has after the solemnization of the marriage, treated the petitioner with cruelty' and that is also now a ground of judicial separation under Section 10 of the Hindu Marriage Act. The concept that the conduct amounting to mental cruelty must be of such nature as will or is likely to cause injury to life, limb or health of the other spouse is however not the law in India at present as will appear from the said decision of *V. Bhagat v. D. Bhagat*. There is in Paragraph 13/14 the Supreme Court referred to certain English decisions and observed that the reference to 'injury to life, limb or health' in the concerned passage must be understood in the context of the requirements of the divorce law then obtaining in the United Kingdom. In Paragraph 14/15 of the said decision *V. Bhagat v. D. Bhagat* (supra) the Supreme Court took note of the change of law brought about in the Hindu Marriage Act by the Marriage Laws (Amendment) Act, 1976 and observed thus in the context of cruelty :

"It was a ground only for claiming judicial separation under Section 10. By the said Amendment Act, cruelty was made a ground for divorce as well.....evidently in recognition of the changing mores of the society. While doing so, it is significant, the words 'as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party', qualifying the expression 'cruelty' in Section 10(1)(b), were omitted by Parliament. It is, therefore, not necessary for the party claiming divorce to prove that the cruel treatment is of such nature as to cause an apprehension ..... a reasonable apprehension ..... in his/her mind that it will be harmful or injurious for him/her to live with the other party. Now what does this change mean ? Surely the deletion of the said words could not have been without a purpose."

The Supreme Court then referred to the decision of *Dashtane v. Dashtane*, , where cruelty of nature described in Section 10(l)(b) as it was before the 1976-Amendment was considered and it was observed that the enquiry had to be made whether the conduct charged as cruelty was of such a character as to cause in the mind of the petitioner reasonable apprehension that it would be harmful or injurious for him to live with the respondent. Then the Supreme Court in *V. Bhagat v. D. Bhagat* (supra) clearly observed in Paragraph 14/15 that this requirement' is no longer present in Section 13(l)(ia) of the Hindu Marriage Act. Now, 'this requirement' means the earlier requirement that the cruelty must be of such nature as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for him to live with the respondent. The Supreme Court then in Paragraph 15/16 of the said decision in *V. Bhagat v. D. Bhagat*, proceeded to observe that if so, the question arises what kind of cruel treatment does Clause (ia) of Section 13(1) of the Hindu Marriage Act contemplate, and in particular, what is the kind of mental cruelty that is required to be established ? The Supreme Court in Paragraph 16/17 of the said decision answered the said question very specifically in the following language :

"Mental cruelty in Section 13(l)(ia) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to health of the petitioner \* \* \* \* "

This decision of the Supreme Court thus makes the law clear now in the back- ground of Section 13(l)(ia) of the Hindu Marriage Act that for mental cruelty injury to health or the likelihood of such injury is not a necessary condition and it is enough that the conduct of the offending spouse is such that it inflicts upon the other spouse such mental pain and suffering as would make it possible for that party to live with the other or in other words, the mental cruelty must be of such nature that the parties cannot reasonably be expected to live together. The standard of this requirement to obviously is not as high as was the standard of the requirement that the cruelty must be of such nature as to cause a reasonable apprehension in the mind of the other party that it will be harmful or injurious for him to live with the respondent. Then again we have seen that in the decision of the Supreme Court in *Shova Rani v. Madukar*, , it has been held in the context of mental cruelty that if the conduct complained of itself is bad enough and per se unlawful or illegal, then the impact or the injurious effect on the other spouse need not be enquired into or considered, and in such cases the cruelty will be established if the conduct itself is proved or admitted.

14. In view of the position of law regarding mental cruelty as discussed above it is evident that the learned Court below was justified in decreeing the suit on the ground of mental cruelty in view of the fact that unsubstantiated allegations regarding criminal offence of cheating, criminal breach of trust and criminal misappropriation were made in a criminal Court by the wife against the mother of the husband and also unsubstantiated allegations were made that the husband was a drunkard and was leading a vicious life.

15. It was also argued on behalf of the respondent-husband that even apart from the question of cruelty and even assuming that cruelty had been proved, yet in this case a decree of divorce would have been justified only on the ground that the marriage between the parties had irretrievably broken down. In support of such submission the learned Advocate for the respondent-husband referred to a decision of the Supreme Court in *Saroj Rani v. Sudarshan Kumar*, as well as the decision of the Division Bench of this Court in *Sukhomoy Bagh v. Jaya Bagh*, 1996(1) CHN 210. In a recent decision of a Division Bench of this Court to which one of us (G.R. Bhattacharjee, J.) was a party, namely, in the decision in *F.A. No. 364 of 1988, Tapan Kr. Chakraborty v. Jyotsna Chakraborty*, it has been held after exhaustive discussion in the matter that the Division Bench decision of this Court in *Sukhomoy Bagh v. Jaya Bagh*, 1996(1) CHN 210 is a decision per incuriam and the earlier decision of a Division Bench of this Court in *Harendranath v. Suprova*, , had to be followed as a valid precedent. It has been further held in the said decision of the Division Bench in *Tapan Kr. Chakraborty v. Jyotsna Chakraborty*, *F.A. No. 364 of 1988* that the earlier Division Bench decision in *Harendranath v. Suprova*, , correctly reads the Supreme Court decision in *Saroj Rani v. Sudarshan* and correctly projects the law that irretrievable breakdown of marriage, by itself, does not authorise the Court to pass a decree of divorce under the Hindu Marriage Act or the Special Marriage Act unless one or more of the grounds for divorce as specified in the concerned Act has been established or unless the parties choose to proceed for divorce by mutual consent under the relevant section of the concerned Act. It may also be mentioned here that the Supreme Court in Paragraph 16 of the decision in *V. Bhagat v. D. Bhagat*, , has observed categorically that even where the marriage has irretrievably broken down the Act, even after 1976 (Amendment) Act, does not permit dissolution of marriage on that ground.

16. The learned Advocate for the respondent husband also referred to a decision of the Supreme Court in *Sneh Probha v. Ravinder Kumar*, , in support of his submission that the Court can grant a decree of divorce on the mere ground of irretrievably broken down of marriage even when no other ground is established. It is true that in the said decision the Supreme Court took notice of the fact and was also satisfied that the marriage between the parties had irretrievably broken down and there was no chance of living together and granted decree of divorce to the parties with immediate effect. But in that decision there is nothing from which it can be said that the Supreme Court as a matter of legal proposition laid down that mere irretrievable break down of marriage will, by itself, constitute a ground for dissolution of the marriage even when no statutory ground is available for the purpose. What happened was that there was appeal upto the Supreme Court by the wife against the judgment and decree of restitution of conjugal rights passed in favour of the husband. The Supreme Court in that appeal made endeavour to see if the differences between the parties could be settled but there was no success. It would however appear that even before the appeal was preferred before the Supreme Court in that matter in 1979 the husband had filed an application for divorce in the District Court as the decree of restitution of conjugal rights had not been executed. Obviously, non-execution of a decree of restitution of conjugal rights is valid ground under Section 13(1)(IA)(ii) of the Hindu Marriage Act for granting divorce. Therefore in the said case the husband was entitled to a decree of divorce in the separate suit filed by him on the ground on non-execution of the decree of restitution of conjugal rights. It is in these circumstances the Supreme Court, obviously in exercise of the Court's extraordinary power and Article 142 of the Constitution to do complete justice in the cause, passed the decree of divorce in the background of the fact that the husband was

entitled to such a decree under Section 13(1A)(ii) on the ground of non-execution of the decree of restitution of conjugal rights and as a matter of fact a suit for such a decree of divorce was pending before the District Court at the instance of the husband. By the said order the Supreme Court directed that the divorce suit filed by the husband which was pending before the District Court would be deemed to have been disposed of in view of the decree of divorce granted by the Supreme Court. There is no doubt that the course adopted by the Supreme Court in the facts and circumstances of the case was rather extraordinary. But the reason why the Supreme Court took recourse to such extraordinary course is, as is evident, that the Supreme Court was satisfied that there was irretrievable break down of the marriage between the parties which factor, it seems, was taken into consideration by the Supreme Court in taking recourse to the extraordinary procedure of granting a decree of divorce for which a suit was pending in the District Court and this was done by the Supreme Court for doing complete justice between the parties in the background of the marriage having been irretrievably broken down. But it is also evident that the Supreme Court in that decision did not lay down any general proposition of law that irretrievable breakdown of marriage will be a ground for divorce even when no statutory ground for divorce is available. In the said decision, it is evident the Supreme Court granted divorce on the ground that the decree for restitution of conjugal rights had remained unexecuted which is a ground for divorce under Section 13 of the Hindu Marriage Act and for which a suit was pending in the District Court. A closer study of the decision of the Supreme Court will bring out the fact that the Court granted the decree of divorce because such a decree was admissible to the husband under law for which he filed a suit on the ground of non-execution of the decree of restitution of conjugal rights, but what prompted the Supreme Court to take recourse to the extraordinary procedure of granting the decree of divorce in the appeal against the decree of restitution of conjugal rights while the suit for divorce was pending in the District Court, was that the marriage had irretrievably broken down. In other words, the irretrievable break down of marriage was not the ground on which divorce was granted, but was the ground for which the Supreme Court took recourse to the extraordinary procedure of granting the decree of divorce in the manner in which it was done. Therefore, it cannot be said that the Supreme Court in the said decision in *Sneh Probha v. Rabindra Kumar*, , laid down any general proposition of law for universal application that whenever there will be an irretrievable break down of marriage the Court will grant decree of divorce even when no statutory ground of divorce under the provisions of the Hindu Marriage Act, 1955 or the Special Marriage Act, 1954, as the case may be, is made out. However, as in the present case we have found that the ground of mental cruelty is available to the husband and has been made out and on that ground the learned Court below was justified in passing the decree of divorce in favour of the husband we will affirm the decree of divorce granted by the Trial Court. The appeal is therefore dismissed without cost and the decree of divorce granted by the learned Trial Court is hereby affirmed.

Devendra Kumar Jain, J.

17. I agree.