

Calcutta High Court

Tapan Kumar Chakraborty vs Smt. Jyotsna Chakraborty on 9 July, 1996

Equivalent citations: AIR 1997 Cal 134

Author: N N Bhattacharjee

Bench: G R Bhattacharjee, N N Bhattacharjee

ORDER Gitesh Ranjan Bhattacharjee, J.

1. This appeal is directed against the judgment and decree passed by the Additional District Judge, 3rd Court, Murshida-bad in Matrimonial Suit No.67 of 1982 by which the learned trial court dismissed the matrimonial suit which was filed by the appellant husband against the respondent wife praying for a decree of divorce under Section 13(1) (ia) and (ib) of the Hindu Marriage Act, 1955.

2. Admittedly the parties were married according to Hindu rites on the 6th Falgun 1385 B.S. corresponding to Feb. 1979. Admittedly a daughter was born to the parties. The husband prayed for divorce on grounds of cruelty and desertion. The case of the appellant husband is that the respondent wife always used to quarrel with the husband and his parents without any just reason and she also used to insist upon the petitioner to live separately from his family which the petitioner did not agree. It is the contention of the husband that on 12th May, 1980 the wife left the matrimonial home secretly for residing at her father's house and on 13th/14th May, 1980 she along with her brother went to Lalgola P.S. and lodged a false F.I.R. against the husband and his parents and the husband had to surrender and apply for bail and was ultimately released on bail. It may be mentioned here that the matrimonial home of the parties is at Lalgola and the wife's father's house is at Muragachha which is about three hours journey from Lalgola as we get it from evidence. It may also be noted here that at the relevant time the husband was an employee of the J.D.R.O's office at Jangipur. The wife also filed an application under Section 125, Cr.P.C. against the husband for maintenance. The husband's contention is that the wife has deserted him since 12th May, 1980. It is also the contention of the husband that by lodging F.I.R. and thus initiating a criminal case and also by filing a petition under Section 125, Cr.P.C. for maintenance, the wife has committed cruelty for which the husband is entitled to divorce. In the application for divorce the husband has also stated that several times he went to bring back the wife to her matrimonial home but she turned down his request. In paragraph 2 of the application the husband says that in view of the circumstances that the wife has deserted him for about two years and has caused cruelty by instituting two criminal proceedings, he prays for judicial separation. However, in the prayer portion the husband prays for decree of divorce under Section 13(1)(ia) and (ib) of the Hindu Marriage Act. It is also to be mentioned here that in paragraph 2 of the application the husband has stated that the wife arrived at Lalgola about four days before the husband filed the application for divorce and she also threatened the father of the petitioner with the help of a few local people as the petitioner permanently resides at Jangipur where he is an employee in the office of the J.L.R.O. The application for divorce was filed in the Court of the District Judge Beharmpur on 9-9-1992.

3. The suit was contested by the wife by filing a written statement. She denied all the allegations made against her. On the other hand she stated in the written statement that she was tortured in her matrimonial home by her husband, mother-in-law, husband's sister and the climax of such torture

reached sometime in May 1980 when she was made to go without food for days and was assaulted and manhandled on the slightest protest to their acts of violence and insult. It is also alleged in the written statement that her father-in-law left for Puri on 10-5-1980 and on 13-5-1980 the husband, his mother and his sister badly assaulted the wife as she refused to leave the house leaving the baby daughter at their mercy and on the following day, that is, on 14-5-1980 these three persons again assaulted her mercilessly and when she was lying unconscious in the room in which she was confined her elder brother Harihar Mukherjee arrived there and with the help of neighbours and police rescued her and she was brought to her father's house by her brother, but her daughter was not allowed to go with her. According to the cases of the wife the incident was reported at Lalgola P.S. on which a police case was started and on investigation a charge-sheet was submitted. It is also an admitted fact that the wife, while she was staying in her brother's house, filed an application for maintenance against the husband under Section 125, Cr. P.C. In paragraph 11 of the written statement it is stated that subsequently as the husband fell flat on the feet of the respondent wife's brother and mother the wife went to the matrimonial home and withdrew the criminal case as well as the maintenance case. It is also alleged by the wife in the written statement that while she had been to the husband's house the same acts of insult and oppression continued and the husband brought in his house one Tripti Chakraborty, an unmarried girl of Jangipur, who had an immoral intrigue with the husband for which the said Tripti was driven away by the people of her locality and he expressed his determination to marry her. It may be noted here that while the wife was staying in the Matrimonial home at Lalgola she received summons of the divorce suit. It is also alleged by the wife in the written statement that similar ill-treatment, as was done to the wife, was also done to Asoka, the wife of the husband's brother and as a result of such ill-treatment and torture and humiliation Ashoka left for her father's house with her unmarried daughter.

4. At the trial both sides led evidence and the learned trial Court in the impugned judgment rather found that the allegation of desertion and cruelty of the wife was not substantiated. The learned trial Court also observed that the allegation of the wife that the petitioner was involved in an illicit affair with Tripti Chakraborty will not amount to cruelty as nobody knows if the allegation was false or true. It may be mentioned here that it was argued on behalf of the husband that the false allegation of illicit affair with Tripti, itself amounts to cruelty for which alone the husband is entitled to a decree of divorce. That was however turned down by the learned trial Court as noted above. The learned trial Court dismissed the suit and against such dismissal the appellant husband has preferred the present appeal.

5. In going to consider the question whether this Court in this appeal should interfere with the judgment and decree of the learned Court below, we will rather now proceed to look into the evidence adduced by the parties before the trial Court. We have already gone through respective cases of the parties as pleaded in their respective pleadings. Here at the very outset we would like to mention that the learned Advocate for the appellant has rightly criticised that the learned Court below has discussed the case, particularly the evidence adduced by the parties, in a very cryptic way. Indeed we endorse this view of the learned Advocate that the discussion of the evidence and the facts and circumstances of the case by the learned Court below was rather cryptic and there should have been a mere elaborate discussion, particularly by the trial Court, on the different aspects of the matter which the learned trial Court unfortunately did not do. But at the same time we must also

note that failure on the part of the trial court to discuss the matter properly or to scrutinize the evidence more elaborately will not by itself be a ground for reversing the decision of the trial Court and for granting decree in favour of the appellant husband. Rather, we for ourselves will go into the details of the evidence and see whether the appellant husband on the basis of such evidence is really entitled to a decree in this case, whatever may be the shortcomings of the judgment appealed against.

6. P.W. 1 Tapan Kumar Chakraborty is the appellant husband. He says that after the marriage the O.P. (wife) came to reside with him at his house at Lalgola and that thereafter his relation with her became strained as she used to insist on her living separate from his parents to which he did not agree. He says that as he did not agree to the proposal of his wife, she used to abuse him all the time and also used to quarrel with him and after persistent quarrel on 12-5-1980 his wife left his house for good and went to reside in the house of her father. He further says that his wife left his house without informing them and without their knowledge. This seems to us rather improbable that the wife will leave the house of the husband without informing and beyond the knowledge of any one, leaving behind her own child there. The husband further says that on 14-5-1980 his wife accompanied by her brother went to Laigola P.S. and lodged false F.I.R. against himself, his parents and his elder sister and elder brother. He says that they had to surrender in Court and take bail from criminal Court. He further says that subsequently the criminal case was compromised on 4-5-1981. The husband has, in the application for divorce, taken the plea that filing of the F.I.R. or for that matter the initiation of the criminal case by the wife constitutes an act of cruelty. It was therefore, incumbent upon the husband to produce before the Court a copy of the F.I.R. lodged by or on behalf of the wife as the best evidence on the point so that the Court could scrutinise the same and find out for itself as to what were the exact allegations made therein and against whom. The fact that the respondent also admits that one F.I.R. was lodged over the incident of assault and torture allegedly committed on her on the 13th/ 14th May, 1980 does not by itself give a clear picture of the criminal proceeding started by or at the instance of the wife. It is said by the husband that the police also submitted charge-sheet and it was a case under Section 307, I.P.C. It is not understood, if really police submitted charge-sheet under Section 307, I.P.C. in that event how the case could be withdrawn by the wife or compromised by the parties. Be that as it may, the husband, as we have seen, in his own evidence has stated that criminal case was compromised. But at the same time the fact remains that we do not know exactly what were the allegations made in the F.I.R. and against whom and what were the sections under which that F.I.R. was recorded and what was the precise charge-sheet, if any, submitted in the matter after investigation. The husband says in his deposition that he has no connection with his Latgola house since 1979 as he has to stay at Jangipur. He further says that since his wife left his house on 12-5-1980 he has no connection or relationship with his wife and his wife never came to reside with him as his wife. He says that he tried to bring his wife back but in vain. He says that as his wife instituted criminal case and maintenance case against him he has been put to indignity and he was mentally and physically harassed. He also says that he knows the allegations made by his wife against him in her written statement and after knowing this he was mentally depressed. In his cross-examination he says that the police submitted charge-sheet in this case filed by his wife at Lalbag court and it was a case under Section 307, I.P.C. He says that his parents, brother and sister did not compromise that case but his wife herself withdrew the case. As we have noticed, in his examination in chief he however, told that this case was compromised but

now in cross-examination he says that it was not compromised but his wife withdrew the case. We do not understand how a police case of under Section 307, I.P.C., if it was really under that section, could be withdrawn by the wife. No paper relating to that case has at all been produced before the Court as a result of which the correct picture about the matter cannot be obtained and the matter rather seems to be nebulous and confusing. The husband in his cross-examination says that after withdrawal of the criminal case the wife came to reside at this father's house at Lalgola with his parents, as he has heard. He admits that he filed the application of divorce in August 1982 and served the summons on the wife at his father's Lalgola house address. In the cause title of the application for divorce it is stated that the O.P. is presently residing at Lalgola Hari-patti. It is therefore evident and rather admitted that at the time when the divorce suit was filed the wife was living in the matrimonial home with the members of the husband's family and summons of the suit was also served on her in that matrimonial home. The husband says in his cross-examination that after his wife left their house without informing any one he searched for her and his father sent a man in search of her at her father's house and it was found that his wife had been staying at her father's house. He however does not know the name of the man who was sent by his father in search of his wife. He says that the man was sent by his father on 13-5-1961. He says that he resides in a mess at Jangipur. He denies the defence suggestion that at Jangipur he resides in the house of Dilip Chakraborty who is his relative. He however admits that Tripti is the sister of Dilip Chakraborty and Tripti is still unmarried. He denies the defence suggestion that he has an illicit connection with this Tripti Chakraborty. He also denies -the defence suggestion of similar torture and ill-treatment to Ashoka Chakraborty. In cross-examination the husband says that his wife is very quarrelsome and she used to quarrel all the times with his parents and always insisted on living with him separate from his parents. He says that his wife also used to suspect his character and also filed false criminal case against him and for these reasons he does not want her to be brought back. He denies the defence suggestion that he used to go to the house of the wife and had marital relationship with her. He also denies the defence suggestion that he filed the divorce case to get rid of the wife so that he could marry Tripti Chakraborty.

7. P.W. 2 Sachindranath Chakraborty is the father of the husband. He denies that the wife was ever tortured or ill-treated at their house. He says that the O.P. (wife) filed a criminal case against his son, daughter and his wife at the Lalbag criminal Court and the O.P. herself came and compromised the case. He says that the allegations in the criminal case were all false. He further says that after the case was compromised he requested the O.P. to reside at their house but in vain and thereafter the O.P. left for her father's house and after the O.P. left for her father's place she came back to their house at Lalgola. This statement of the father-in-law of the wife when read in a composite way rather lends support to the wife's case that after the case was compromised she came to the matrimonial home to stay there and this also is a natural sequence of events. As we have already seen, at the time when the suit was filed the wife was admittedly residing at the matrimonial home. He (P.W. 2) says that the husband never brought any Tripti Chakraborty of Jangipur at their Lalgola house. He also denies any illicit connection between the husband and Tripti Chakraborty. He says that Ashoka, the wife of his other son is in the family way. In his cross-examination he says that he does not go to the appellant petitioner and the appellant petitioner also does not visit their Lalgola house and his wife and other sons and his daughter visit the petitioner's house at Jangipur. The criminal case, he says, was compromised within 4th to 7th May, 1981 and a compromise

petition was filed in Court and that the terms of the compromise were mentioned in that petition of compromise. No such compromise petition has been put in evidence in this case. He says that towards the beginning of August, 1982 the O.P. visited their Lalgola house and they were all happy and she stayed there for five or seven days. He says that the petitioner filed this divorce case when the O.P. was staying in their house and the O.P. received a summons of the divorce case in their house. He denies the defence suggestion that the O.P. came to their house with him in the month of May 1981 and continuously stayed at their Lalgola house till 11-9-1982. He says that O.P. came to their house in the month of August, 1982 and stayed there for four or five days, and he informed the petitioner about it through his other son. It may be noticed that one thing is certain that the appellant husband was ordinarily staying at Jangipur which was the place of his work and at the time of filing the divorce suit he was fully aware that the wife was living with his parents in the matrimonial home at Lalgola and summons was also served on her at the matrimonial home at Lalgola. If really she had come to the matrimonial homes only in August 1982 and not after the compromise of the criminal case in May 1981 and if really she stayed in the matrimonial home after coming there in August 1982 only for five or seven days, it would not have been possible during these five or seven days to inform the appellant husband at Jangipur by his father that his wife had come to Lalgola and then to get the application for divorce drafted by contacting a lawyer in the District Court at Murshidabad and file the same in the Court there and get the summons served during these five or seven days upon the wife at the matrimonial home at Lalgola, All these series of events starting from communication of the information of the arrival of the wife at the matrimonial home at Lalgola to the husband at Jangipur and culminating into filing of the divorce suit and service of summons upon her at the Lalgola address within 5 or 7 days would be a physical impossibility. Moreover, what could have been the reason for the wife to suddenly come to the matrimonial home in August 1982 after the case was compromised in May 1981? The circumstances are therefore eloquent to support the wife's version that after the compromise of the case she came to stay at the matrimonial home at Lalgola in May 1981 and stayed there up to Sept. 1982 till after the filing of the divorce suit and received the summons at Lalgola in her matrimonial home. In his cross-examination P.W. 2 the father of the husband says that usually the wife did not quarrel with himself, his wife or daughter. The allegation that the wife is a quarrel some woman therefore gets belied rather. In answer to question put by the Court P.W. 2, the father of the husband says that Tripti Chakraborty happens to be their relative and the petitioner resides in a mess at Jangipur. He says that Tripti Chakraborty never came to their house at Lalgola and denies that the petitioner had only illicit connection with her.

8. P.W. 3 Satyendra Nath Das says that his house is very close to the house of P.W.2 intervened by a Rasta. He says that he does not know if on 13-5-1980 the O.P. was assaulted mercilessly and kept confined inside a room and if her elder brother rescued her from the room. He says that he has never seen the O.P. being assaulted, tortured or ill-treated by any inmate of the petitioner's house.

9. On the other hand four witnesses were examined on behalf of the defence. D.W. 1 Jyotsna Chakraborty is the wife herself. She says that after marriage her husband, mother-in-law and husband's sister used to ill-treat her and often she was subjected to physical torture. She says that Ashoka is the wife of his husband's brother and Ashoka (sic) her. She however says that as Ashoka could not stand the ill-treatment and torture, she left for her father's house and after Ashoka left

torture on the O.P. increased. She says that on 10-5-1980 her father-in-law had been to Puri and on 13-5-1980 her husband, mother-in-law and husband's sister mercilessly assaulted her. She says that they tortured her as she refused to leave the house leaving her daughter. On 14-5-1980, she says, she was again mercilessly beaten and she become unconscious and she was kept confined inside a room and her elder brother Harihar Mukherjee rescued her with the help of police and some neighbours. It has been submitted by the learned Advocate for the appellant that if she was really rescued with the help of police then police witness should have been examined on behalf of the defence which the defence did not do. She says that her ornaments and all other wearing apparels were taken away by her husband and she went to the police station with her elder brother Harihar Mukherjee and lodged a complaint there against her husband, mother-in-law and husband's sister and thereafter she was taken to her father's house by her elder brother. She also says that at Krishnanagar Court she filed a maintenance case against her husband as he neglected to maintain her and then three or four months thereafter her husband came to their house and compromised that there would not be any further repetition of the torture and ill-treatment and promising this he took her with him at his Lalgota house and since then she began to live with her husband at their Lalgola house and she stayed there for about one and a half year and during this period she was again tortured and ill-treated at the Lalgola house. She says that her husband and his father and other inmates of the house obtained her signatures on some blank papers under compulsion. It may be mentioned here that this allegation has been denied by the husband and his father. She says that she knows Tripti Chakraborty and her husband had illicit connection with Tripti and the people of Jangipur assaulted her husband for his illicit connection with this Tripti. She further says that Tripti used to come to their Lalgola house and her husband used to express that he was going to marry Tripti and her husband used to present her sarees and other things to Tripti. She says that while she was staying in Lalgola house she received summons of this case on 10-9-1982 and on receiving the summons she came to her father's house and thereafter entered appearance in the suit. The fact that the wife received the summons of the divorce suit on 10-9-1982 at her matrimonial home at Lalgola after the suit was filed in 9th August, 1982 in Beharampur Court mentioning in the plaint that the wife was living at that time in the Lalgola house, falsifies the husband's case that the wife came and stayed in the matrimonial home at Lalgola only for five or seven days in August, 1982. Rather the facts and circumstances, at the cost of repetition, we reiterate strongly support the wife's case that she came back to the matrimonial home at Lalgota some time in May 1981 when the case was compromised and stayed there for about one and a half year till she received the summons of the matrimonial suit. This is also supported by the husband's statement that he heard that after withdrawal of the criminal case his wife came to reside at his father's house at Lalgola with his parents. In her cross-examination she says that on 34-5-1980 when she went to lodge the criminal case against her husband and other inmates of his family, besides her elder brother Harihar. Mukherjee some local people namely, Adhir Dutta, Dilip Sarkar, Jitendra Nath Bhatta-charjee, Mrinal Bose, Sanat Choubey and many others accompanied them. She says that these persons are all neighbours of her husband and all those persons knew of the torture and her confinement inside a room. It has been submitted on behalf of the appellant husband that none of these persons except Dilip Sarkar has been examined on behalf of the wife. The wife says that on 14-5-80 she was kept confined inside a room and at about 4 p.m. they had been to the police station on that day. In cross-examination the wife says that she did not make any allegation of illicit connection of her husband with Tripti. Chakraborty in the previous case and that in the year 1980 she heard about the illicit connection of

her husband with Tripti Chakraborty at her father's house and in the month of April or May 1981 she saw her husband's illicit connection with this Tripti Chakraborty. She says that for the last three years her Ja Ashoka is residing in the house of her father and some time Ashoka writes letter to her and she has not filed those letters as those letters were snatched away by the inmates of her father-in-law's house, but she says that she can file one such letter which is still with her. It is commented by the learned Advocate for the appellant husband that even that one letter also has not been filed in the Court. She denies the suggestion in cross-examination that her husband attempted to bring her back several times but she refused to go with him. She says that she never disclosed the illicit connection of her husband with Tripti Chakraborty to anyone as it was a matter between husband and wife.

10. D. W. 2 Harihar Mukherjee is the brother of the wife. He says that since after the marriage the petitioner used to ill-treat and torture his sister. She further says that about 4 or 5 years back in the month of May he went to the house of the petitioner and found an assembly of a large number of men and that his sister was kept confined in a room and she was unconscious. He says that he went to the Lalgola Police Station and informed the matter there and with the help of some police men of Lalgola P. S. he managed to rescue his sister and thereafter he brought his sister to their house. He also speaks of the filing of the maintenance case by the wife against the husband and says that thereafter one day the petitioner went to their house and promised that in future the torture and ill-treatment would not be repeated and thereafter they sent the respondent with the petitioner. He says that after withdrawal of the criminal case his sister was again tortured by the petitioner and other inmates of his house and at present his sister is staying at his house. He is a dealer in bel metal utensils. In his cross-examination he says that he was informed at about 8 a.m. by a man of Lalgola that his sister had been kept confined after severe torture and on getting this information he came to Lalgola by train. He however cannot say where that person went. He says that the information was conveyed to him by one Sentu Choubey and Adhir Dutta of Lalgola but he did not communicate with them thereafter. He says that he boarded the train for going to Lalgola from Muragachha at 9.15 a.m. and reached Lalgola at about 12.15 p.m. He says that amongst the local people present at the house of the petitioner on that day there were Sentu Choubey, Adhir Dutta and many others whose names he cannot remember. He further says that after rescuing the respondent he came to Lalgola P. S. again and lodged a complaint there and thereafter took his sister to his house. He further says that many people of the locality also accompanied them to the police station and in that connection he names Binoy Sarkar, Atul Shil, Bhupen Singh, Mangal Tewari. It is commented by the learned Advocate for the respondent that none of these persons has been examined in this case. It is suggested on behalf of the husband to this witness in cross-examination, which however he denies, that while his sister was staying at their house the petitioner went there on several occasions to bring her back but they did not allow the petitioner to take his wife.

11. D. W. 3 Dilip Kr. Sarkar is a resident of Lalgola and claims to be a neighbour of the appellant petitioner. He says that the petitioner ill-treats the O. P. He further says that he has seen the petitioner assaulting the O. P. about 4 years back and hearing an alarm some of the people of the neighbourhood assembled near the house of the petitioner and there was a great commotion and they heard that the O. P. was crying for help. He further says that when the door was opened they found that the O. P. was lying in a room in an injured condition with marks of injuries on her body.

He says that when they entered inside the room where the O. P. was lying in injured condition, she disclosed to them that she was being assaulted by her husband, father-in-law, mother-in-law and other relations. In cross-examination he says that P. W. 2 Harihar Babu deals in bell metal utensils at Lalgola and the elder brother of the witness also is a dealer of such utensils at Lalgola and his brother has business acquaintance with Harihar Babu. He says that the incident took place at about 6.30 or 7 p.m. It has been commented by the learned Advocate for the husband that while the wife herself says that she was rescued by her brother and others and then went to the police station at about 4 p.m., this witness D. W. 3 says that incident took place at about 6.30 or 7 p.m. and therefore there is a discrepancy. This witness has however not given the date of the incident. As we have seen, it is the case of the respondent wife that assault and torture took place both on the 13th May and the 14th May. In the circumstances the evidence of D. W. 3 can be reasonably referred to the incident that took place on 13th May and in that view of the matter there is no discrepancy. D. W. 4 Sanatan Das is also a resident of Lalgola and is also a neighbour of the petitioner husband. He says that about four years back there was an incident and he saw that the O. P. was being assaulted by the petitioner and others and petitioner took her outside the house and was assaulting her. He is a rickshaw puller. He says that he came to know Harihar Babu as the latter used to carry utensils and other goods in his rickshaw. He also says in his cross-examination that at the time of incident of assault he found that a large number of people had assembled there. It is however suggested to him in cross-examination that he is not a close neighbour of the petitioner which he however denies. P. W. 5 Majommal Hossain is also a resident of Lalgola and claims to be a close neighbour of the petitioner. He also says that the petitioner and his family members used to assault and ill-treat his wife. He says that about four years back there was an incident and in the late evening on that day he saw that the petitioner assaulted the O. P. and kept her confined in a room and there was a large assembly of neighbours. He says that he went inside the house of the petitioner and saw the incident. He however did not see anything on the roadside. He says that he saw the incident at about 5.30 p.m. or 6 p.m. Having regard to the case of the wife it is also evident that his witness also speaks about the incident that took place on 13th May, 1980. From the evidence led and the same being studied in the back-ground of the case of the respondent wife it appears that the incident spoken of by the witnesses was the incident that took place on 13th May, 1980 and then somebody reported the matter to the brother of the respondent at Muragachha in the next morning and on receipt of that information the brother of the respondent came to the petitioner's house at Lalgola and took the respondent from the house of the petitioner and reported the matter at the Lalgola P. S. and then came back to his own house at Muragachha with his sister, the respondent. It has been criticised by the learned Advocate for the appellant husband that if the respondents brother had reached Lalgola at about 12.30 p.m. on 14th May, 1980 it should not have taken so much of time for him thereafter to go to the P. S. at 4 p.m. with his sister. In our opinion there is nothing unusual in it. Firstly, the deposition about time must be only approximate and secondly having regard to the nature of the incident it cannot be said that there was an unusual delay for them to go to the P. S. at about 4 p.m. after rescuing the respondent from the petitioner's house as stated by the respondent's brother.

12. After discussing all the evidence on record and for reasons which we have already discussed, we are inclined to find that the respondent-wife came to live in the matrimonial home some time in or about May 1981 when the criminal case and the maintenance case were compromised and thereafter

she stayed in the matrimonial home till receipt of the summons of the divorce suit in September 1982. This finding is a rejection of the appellant-husband's ground of desertion by the wife. We also find it difficult to accept the plea of the, husband that the wife was not willing to stay in the matrimonial home. The facts; circumstances and evidence on record also do not inspire us to hold that the wife left the matrimonial home on the 12th May, 1980 without informing any one and beyond the knowledge of the inmates of the husband's house, leaving behind her child there. As regards the plea of the husband that the filing of the criminal case and maintenance case by the wife on false charge constitutes cruelty on the part of the wife, we would however like to note that since admittedly those cases were subsequently compromised and since the respondent also came or was brought back to live in the matrimonial home and in fact lived there for nearly one and a half year after the compromise the husband cannot avail of the plea that filing of these cases constitutes cruelty on the part of the wife, because by making a compromise of these cases cruelty, if any, on the part of the wife had been condoned by the husband and, alternatively because, the compromise indicates that the wife filed those cases possibly on genuine grounds in which case the filing of such cases did not constitute cruelty. From the evidence of the husband's father we have seen that a compromise petition was also filed in the Court containing the terms and conditions of compromise but that compromise petition has not been brought in evidence in the matrimonial suit by the husband which rather raises a presumption that the production of the compromise petition in evidence has been withheld by the husband because its production would have disclosed a state of affairs adverse to the petitioner.

13. The learned Advocate for the appellant husband argues very forcefully that even apart from the question whether the allegations of cruelty and desertion have been proved and even assuming for the sake of argument that in this case such allegations of cruelty and desertion have not been proved against the respondent wife, yet the fact remains that the parties are living separate since 1980 after a brief conjugal life of a year or so and therefore there is no difficulty in finding that the marriage between the parties has broken down irretrievably and the parties are living separate for the last 16 years. It is submitted on behalf of the appellant that in this back-ground the Court may consider it to be a fit Case for passing a decree of dissolution of the marriage on the ground of irretrievable back-ground of marriage. In this connection the learned Advocate for the appellant-husband refers to a decision of a Division Bench of this court presided over by Samir Kumar Mookherjee, J. in *Sukhomoy Bag v. Mrs. Jaya Bag*, 1996 (1) Cal HN 210. In that case the husband prayed for divorce on the ground of cruelty etc. The trial Court however dismissed the suit against which the husband preferred an appeal before this Court which was disposed of by the Division Bench by the said decision. The Division Bench also could not find that the ground of cruelty as alleged by the husband against the wife had been established. Even then the Division Bench considered the question whether a decree could be passed behind Sections 24 and 27 of the Special Marriage Act. It may be mentioned here that the said case was a case under the Special Marriage Act, 1954. In paragraph 24 of the said decision the Division Bench recognised the position that the Special Marriage Act does not contain any provision that a decree for divorce could be granted by a Court when the marriage had irretrievably broken down. The Division Bench also recorded in paragraph 24 that the relief under S. 27 of the Special Marriage Act, in their view, was not available but from the tenor of the evidence the fact remained that the chance -of restoring marital bond was beyond any possibility. In this connection the Division Bench in paragraph 25 of the decision referred to the decision of the

Supreme Court in *Saroj Rani v. Sudarsan Kumar*, and observed that in the said decision the Apex Court endorsed the view that a marital tie should not remain alive as the Court found that the marriage had broken down whatever might have been the reason as the parties could no longer live together as husband and wife. The Division Bench further observed that persuaded by the aforesaid view the Supreme Court in the said decision passed a decree for divorce.

14. We have gone through the said decision of the Supreme Court in *Saroj Rani v. Sudarsan Kumar* (supra) and we find it difficult to persuade ourselves to read that the Supreme Court in the said decision in *Saroj Rani v. Sudarsan Kumar* endorsed the view that marital tie should not remain alive as the marriage had broken down, even when no legally permissible ground of divorce could be established. In that case the wife, earlier filed a petition for restitution of conjugal rights. There was a consent decree for restitution of conjugal rights and subsequently the husband filed an application for divorce on the ground that there was no resumption of cohabitation between the parties in spite of the decree for restitution of conjugal rights. It was argued before the Supreme Court on behalf of the wife that decree for divorce should not be granted by allowing the husband to take advantage of his own wrong. The Supreme Court however in paragraph 10 of the said decision turned down the contention of the learned Advocate for the appellant wife and observed that the court was unable to accept the contention of the counsel for the wife that the conduct of the husband sought to be urged against him could possibly come within the expression 'his own wrong' in S. 23(1)(a) of the Hindu Marriage Act, 1955. The Supreme Court also turned down a request made before it on behalf of the wife for allowing her to amend the pleading at that stage as that would amount to permitting her to make an inconsistent case regarding conduct of the husband aimed at making him liable for 'taking advantage of his own wrong'. The Supreme Court found that the husband was entitled to decree for divorce and there was nothing to disentitle him under the said S. 23(1)(a) to a decree for divorce to which he was otherwise entitled. It is in that connection the Supreme Court made this added observation in paragraph 10 of the said decision :--

"Furthermore we reach this conclusion without any mental compunction because it is evident that for whatever be the reasons this marriage has broken down and the parties can no longer live together as husband and wife, and if such is the situation it is better to close the chapter."

'This conclusion' referred to above is the conclusion of the Supreme Court that the husband is otherwise entitled to a decree of divorce under the provisions of the Hindu Marriage Act and there was nothing which would disentitle him to such a decree. The Supreme Court reached the said conclusion (after rejecting the wife's prayer to amend the pleading) 'without any mental compunction'. In the quoted observations the Supreme Court explained why the Court had no mental compunction in the matter and the reason for absence of mental compunction was that the marriage which had broken down should better come to an end by closing of the chapter, when a legally permissible ground of divorce was established and no disentitling factor was appearing in the scene. The Supreme Court evidently did not say that the decree of divorce was being granted on the ground of irretrievable break down of marriage. Rather what the Supreme Court said in letter and spirit was that the husband was entitled to a decree for divorce, obviously in accordance with law as it prevailed and the Court had no remorse, no sorrow, no compunction in granting such relief which he was otherwise entitled to, -- and no compunction because a broken down marriage should better

came to an end if and where a legally permissible ground for its dissolution has been established. The Division Bench in the decision of Sukhomoy Bag v. Mrs. Jaya Bag (1996 (1) Cal HN 210) (supra) has also referred to an earlier Division Bench decision of this Court in Amerendra Nath Chatterjee v. Smt. Kalpana Chatterjee, (1986) 2 Cal LJ 109. In the said decision however the Division Bench did not lay down that irretrievable break down of marriage by itself constitutes a ground of divorce where no other ground on which divorce can be granted under the Hindu Marriage Act or the Special Marriage Act, as the case may be, has been proved. On the other hand on the facts of the case it was held that there was no irretrievable break down of marriage in the case under consideration of the Division Bench, particularly when the wife was willing to live with the husband although the husband wanted to avoid the marriage.

15. The Division Bench in Sukhomoy Bagh v. Mrs. Jaya Bagh (1996 (1) Cal HN 210) (supra) also referred to another decision of a Division Bench of this Court in Harendra-nath Burman v. Suprava Burman, . The Division Bench deciding the case of Sukhemoy Bagh v. Mrs. Jaya Bagh (supra) observed in paragraph 26 that in Harendra-nath Burma v. Suprava Burman (supra) the Court granted a decree for the marriage being broken down irretrievably when the marital tie could not be kept alive on account of accusation and counter-accusation and that there the Court was possessed of power to pass a decree for divorce as marriage had broken down irretrievably. Burman v. Suprava Burman (supra) the Division Bench considered the decision of the Supreme Court in Saroj Rani v. Sudarshan, and took note of the fact that the certain observation of the Supreme Court in the said decision (the same observation as has been referred to in the case of Sukhomoy Bagh v. Mrs. Jaya Bagh) has given rise to an erroneous impression that the Supreme Court has ruled irretrievable break down of marriage to be, by itself, a ground for dissolution. In that connection the Division Bench in Harendra-nath v. Supreva made the following observations in paragraphs 3 and 4 :--

"As would be evident from the provisions of Section 34(1) of the Special Marriage Act, corresponding to Section 23(1)(a) of the Hindu Marriage Act, a matrimonial Court has been empowered to decree reliefs under the Act only if the Court is satisfied that 'any of the grounds' as specified in the Act 'exists', 'but not otherwise' and, therefore, no Court can add new grounds for divorce by its judicial fiat. The above observation of the Supreme Court in Saroj Rani (AIR 1984 SC 1520) (supra), having very often been read divorced from the context, has really been misread. That was case where a husband filed a petition for divorce on the ground of irretrievable breakdown but on the precise statutory ground as specified in Section 13(1A)(ii) of the Hindu Marriage Act, namely, non-restitution of conjugal rights between the parties for one year or more in spite of a decree for restitution to that effect and the question which was being considered by the Supreme Court was as to whether a husband, who has taken no steps to comply with a decree for restitution passed against him was disentitled from invoking Section 13(1A)(ii) and to obtain divorce thereunder on the ground that he would thereby be 'taking advantage of his own wrong' within the meaning of Section 23(1)(a). The Supreme Court answered the question in the negative and, while affirming the decree for divorce on the ground specified in Section 13(1A)(ii), the learned Judges have observed further that their Lordships have done so 'without any mental compunction because it is evident that for whatever be the reasons, this marriage has broken down and parties can be longer live together as husband and wife, and if such is the case, it is better to close the Chapter'. It is, therefore, clear that the ground on which the dissolution of the marriage was affirmed by the

Supreme Court in *Saroj Rani* (supra) was a ground specified in Section 13(1A) and not irreparable breakdown of marriage and, therefore, the observation extracted above cannot in any way be treated as any authority for the view that the Supreme Court has ruled that irretrievable breakdown, by itself and without more would be a ground of dissolution of marriage.

"4. That irretrievable breakdown of marriage, by itself, is not a ground for dissolution of marriage, under the Hindu Marriage Act is irresistibly clear from the 71st Report of the Law Commission of India ***** The same is the position under the Special Marriage Act, whereunder also irretrievable breakdown of marriage, by itself, has not yet been made a ground for divorce."

The Division Bench in paragraph 18 of the decision in *Harendranath v. Suprova* (supra) however observed thus :--

"As we cannot but note, scurrilous, vituperative and scandalous allegations have been freely made by both the spouses against each other and since we have found them to have been made by the parties without any justifiable foundation, we would have no hesitation in coming to the conclusion that the marriage has broken down irretrievably and irreparably beyond all prospects of resuscitation or restoration. But as pointed out hereinbefore, however desirable it may be, irretrievable broken down, by itself and without more has not, as yet been made a ground of divorce and the Court must find out one or more of the grounds as specified in Section 27 of the Special Marriage Act, unless the parties choose to proceed for divorce by mutual consent under Section 28 of the Act. Since we have found out such a ground, namely, cruelty by the wife-respondent, we would decree divorce and (borrowing from the Supreme Court decision in *Saroj Rani*, (supra), we would say that we do so without any 'mental compunction', as we have also found the marriage to have been wrecked beyond repair."

So this decision of the Division Bench of this Court in *Harendranath v. Suprova* (supra) brings out in clear terms the import of the relevant observations of the Supreme Court in *Saroj Rani* (supra) and has clearly recorded that irretrievable breakdown of marriage, by itself and without more, cannot be a ground for divorce where no other ground permissible under the concerned Act has been established. For obtaining a decree of divorce, the Division Bench made it clear, any of the grounds mentioned in the concerned Act permitting divorce must be established and no such decree can be granted on the mere ground of irretrievable breakdown of marriage. In *Harendranath v. Suprova* (supra) the Division Bench found that the ground of cruelty had been established and therefore the Division Bench also observed like the observations of the Supreme Court in *Saroj Rani* that since the ground of cruelty had been established they would decree divorce and they would do so without any mental compunction as the marriage had been wrecked beyond repair. Therefore the decision of the latter Division Bench in *Sukhomoy Bagh v. Mrs. Jaya Bagh* (1996 (1) Cal HN 210) rather runs counter to the earlier decision of the Division Bench of this Court in *Harendranath v. Suprova* (supra) and that being so the earlier Division Bench decision in *Harendranath v. Suprova* must prevail and not the latter Division Bench decision in *Sukhomoy Bagh v. Mrs. Jaya Bagh* which is a decision per incuriam as it has been rendered without taking notice of what was really held and decided in the concerned Supreme Court decision in *Saroj Rani v. Sudarsan* (supra) and the two earlier Division Bench Decisions of this Court in *Amerandra-nath v. Kalpana* (1986 (2) Cal LJ 109)

(supra) and Harendranath v. Suprova (supra). In our considered yet humble view the Division Bench in Sukhomoy Bagh v. Mrs. Jaya Bagh did not correctly state the law in projecting that even when no ground of divorce as mentioned in the concerned Act has been established the Court can grant divorce on the mere ground of irretrievable breakdown of marriage.

16. In this connection it is also to be mentioned that the Division Bench in Sukhomoy Bagh v. Mrs. Jaya Bagh (1996 (1) Cal HN 210) has also referred to a decision of the Kerala High Court in Abeebacker v. Mamu, 1971 Ker LT 663 where it was observed thus :--

"Daily trivial differences get dissolved in the course of time and may be treated as the teething troubles of early matrimonial adjustment. While the stream of life, lived in married mutuality, may wash away smaller pebbles, what is to happen if intransigent incompatibility of minds breaks up the flow of the stream ? In such a situation we have a breakdown of the marriage itself and the only course left open is for law to recognise what is a fact and accord a divorce."

We are however of the humble opinion that these observations of the Kerala High Court in Aboobacker v. Mamu do not apply to a case where the marriage is governed either by the provisions of Hindu Marriage Act or the Special Marriage Act because in such case the dissolution of the marriage is governed by the specific statutory provisions of the concerned Act. The said case of Aboobacker v. Mamu was a case of dissolution of marriage under the Mohamadan Law and evidently therefore the same is not applicable to a case of dissolution of marriage either under the Hindu Marriage Act or under the Special Marriage Act. We are therefore unable to agree with the ratio of the decision of the Division Bench of this Court in Sukhomoy Bagh v. Mrs. Jaya Bagh (supra) that a decree of divorce can be or should be granted under the Special Marriage Act, 1954 or for that matter, under the Hindu Marriage Act, 1955 on the ground of irretrievable breakdown of marriage even when no ground of divorce as permissible under the statutory provisions of the relevant Act has been established. On the other hand we are in perfect agreement with earlier Division Bench of this Court in Harendranath v. Suprova (supra) that irretrievable breakdown of marriage, by itself and without more, has not yet been made a ground of divorce and the Court must find one or more of the grounds specified in the Special Marriage Act (or the Hindu Marriage Act, as the case may be) unless the parties choose to proceed by mutual consent under appropriate section of the concerned Act. We are also in agreement with the view of the Division Bench in Harendranath v. Suprova that the Supreme Court decision in Saroj Rani (supra) did not lay down that a decree of divorce can be granted on the ground of irretrievable breakdown of marriage even when no ground, as permissible under the concerned Act, for divorce has been established. We respectfully disagree with the ratio of the latter decision of the Division Bench of this Court in Sukhomoy Bagh v. Mrs. Jaya Bagh (1996 (1) Cal HN 210) (supra) that a marriage being governed by the Special Marriage Act or the Hindu Marriage Act, can be dissolved by a decree of divorce on the ground of irretrievable breakdown of marriage even when no ground on which such decree is permissible under the concerned Act has been established. We are also unable to agree with the view of the Division Bench in Sukhomoy Bagh v. Mrs. Jaya Bagh that the Supreme Court decision in Saroj Rani has any import that a marriage can be dissolved by a decree of divorce either under the Special Marriage Act or the Hindu Marriage Act, as the case may be, on the ground of irretrievable breakdown of marriage even when no ground for divorce as permissible under the concerned Act has been established.

17. Since the latter Division Bench decision in *Sukhomoy Bagh v. Jaya Bagh*, (1996) 1 Cal HN 210 is a decision per incuriam for reasons discussed earlier the same does not operate as precedent in law. We are also of the opinion that the earlier Division Bench decision in *Harendra Nath 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. On this aspect of law *Harendra Nath v. Suprova* (supra) has to be followed as a valid precedent and *Sukhomoy Bagh v. Jaya Bagh* (1996 (1) Cal HN 210) (supra) has to be ignored as being a decision per incuriam.

18. It may be mentioned here that the Supreme Court in paragraph 16 of the decision in *V. Bhagat v. D. Bhagat*, has clearly observed that even where marriage has irretrievably broken down, the Act, even after the 1979 (Amendment) Act, does not permit dissolution of marriage on that ground.

19. The learned Advocate for the appellant-husband has also contended that even if it is held that the grounds of desertion and cruelty as have been pleaded by the husband in the petition of divorce have not been established, yet the husband is entitled in this case to a decree of divorce on the ground of cruelty committed by the wife by making false and baseless allegation of illicit connection of the husband with one unmarried girl, *Tripti Chakraborty* in her written statement and in evidence also. It is also submitted by him that it is now a settled law that a spouse can claim divorce in the very suit itself by reason of the cruelty committed by the other spouse during the pendency of the suit by making false allegations of illicit connection in the written statement or in evidence or cross-examination. This aspect of the argument of the learned Advocate for the appellant-husband, in our opinion, deserves due consideration. The learned Court below brushed aside this aspect of the matter by observing in the impugned judgment that the allegation of the wife that the petitioner was involved in an illicit affair with one *Tripti Chakraborty* at *Jangipur* will not amount to cruelty as nobody knows if the allegation was false or true. In our opinion the learned Court below did not bestow proper attention to this aspect of the matter.

20. In paragraph 12 of the written statement the wife has specifically pleaded that the petitioner-husband had brought in his house one *Tripti Chakraborty*, an unmarried girl of *Jangipur* wherefrom she was driven away by the people of her locality for her immoral intrigue with the petitioner-husband and that the wife was made to serve that girl with her requirements under threat of dire consequences by the petitioner who expressed his determination to marry that girl. The husband of course has denied in his evidence all such allegations including the allegation of illicit relation with *Tripti Chakraborty*. In his cross-examination he has stated that *Tripti Chakraborty* is the sister of *Dilip Chakraborty* who is his relative and she is still unmarried. He has denied the suggestion on behalf of the wife that he has any illicit connection with *Tripti Chakraborty* or that because of any illicit connection, *Tripti Chakraborty* was driven out of *Jangipur*. P.W. 2, the father of the husband categorically says in his evidence that the petitioner-husband never brought any *Tripti Chakraborty* *Jangipur* at their *Lalgola* house and denies that the petitioner has any illicit connection with *Tripti Chakraborty*. The respondent-wife in her evidence has also reiterated that she knows

Tripti Chakraborty and that her husband had illicit connection with Tripti Chakraborty and the people of Jangipur assaulted her husband for his illicit connection with this Tripti Chakraborty. It may however be noticed that in the written statement no such case that her husband was assaulted by the people of Jangipur for his illicit connection with Tripti was pleaded. In her evidence she says that Tripti used to come to their Lagola house and her husband used to express that he was going to marry Tripti and that he also used to present the respondent's sarees and other things to Tripti Chakraborty. In her cross-examination she says that in the year 1980 she heard about the illicit connection of her husband with Tripti while she (the respondent) was in her father's house and that in the month of April or May, 1981 she saw her husband's illicit connection with this Tripti Chakraborty. She however does not say anything as to what were the circumstances or incidents on the basis of which she could come to the conclusion that her husband had illicit connection with Tripti, except that her husband gave her sarees to Tripti or declared that he would marry Tripti. No other witness also has been examined on behalf of the wife to substantiate the allegation that the people of Jangipur had assaulted her husband or had driven away Tripti Chakraborty for their illicit relationship. On the other hand not only the petitioner himself but the petitioner's father has also denied the allegation of illicit relationship between the petitioner and Tripti Chakraborty. It is also difficult to believe that the petitioner would be displaying illicit relationship in the very matrimonial home in presence of the other inmates of the family including his parents. Having regard to the facts and circumstances and the evidence on record it must be held that the wife has failed to prove the allegations of illicit relationship between her husband and Tripti and the allegation must be held to be baseless.

21. The next question that has to be considered therefore is whether such baseless allegation of illicit connection between the petitioner and Tripti would constitute cruelty on the part of the wife so as to entitle her husband to a decree of divorce on that ground. There is indeed a catena of decisions which would show that baseless allegation of illicit relationship in the written statement and evidence itself may constitute mental cruelty on the basis of which the petitioner would be entitled to a decree of divorce in the very suit itself instead of relegating the petitioner to file a separate suit on that ground. In *Amerandra Nath Sanyal v. Krishna Sanyal*, 1993 (1) Cal HN 213, it has been held by a Division Bench of this Court that it is now well-settled that false allegation against the character of any spouse made by the other spouse constitutes mental cruelty and that such mental cruelty will be a valid ground for passing a decree of divorce under Section 13(1)(ii) of the Hindu Marriage Act and that even post-suit allegations or events may be taken into consideration to shorten litigation and to do complete justice between the parties. In the said case the Division Bench found that respondent-wife made baseless and false allegations against her husband to the effect that he had love affair and illicit connection with another girl and having regard to the facts and circumstances of the case the Division Bench was of the opinion that the petitioner-husband was entitled to a decree of divorce on the ground of cruelty. In *V. Bhagat v. D. Bhagat*, the Supreme Court granted divorce on the basis of allegations made in the written statement as well suggestions given to the petitioner during cross-examination. In *Sanatan-Banerjee v. Sachindra Nath Banerjee*, a Division Bench of this Court granted decree of divorce inter alia on the ground of making false allegation by the wife against husband of illicit sexual relationship made in the written statement and also in deposition. In *Shobha Rani v. Madhukar Reddi*, it has been held that there may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal and 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. It is submitted by the learned Advocate for the appellant-husband that the baseless allegation of illicit relationship as made by the wife against the husband itself constitutes cruelty without any further question as to the impact of such allegation on the husband and the husband on the ground of baseless allegation made by the wife regarding illicit relationship is entitled to a decree of divorce in view of the aforesaid decision of the Supreme Court. In *Annapurna Ganguly v. Dipak Ganguly*, (1991) 95 Cal WN 806 it has been held that a suspicion harboured and expressed by the wife about the character of the husband would undoubtedly amount to cruelty if it is established that the said conduct is likely to harm or injure the health, reputation, working career or the like of the other spouse. It is submitted by the learned Advocate for the respondent-wife that there is no evidence on record about the effect of the wife's allegations upon the husband. On the other hand it is submitted by the learned Advocate for the appellant-petitioner that in view of the Supreme Court decision referred to earlier the question of effect of the baseless allegation on the husband is not so much material now and the fact that baseless allegation about the husband has been made regarding illicit connection with another woman itself constitutes such cruelty as would entitle the husband to a decree of divorce. It is also submitted by the learned Advocate for the petitioner-husband that the petitioner-husband has stated in his deposition categorically that after knowing the allegations made by the wife against him in her written statement he was mentally de-pressed. It is however held in *Annapurna v. Dipak* that the circumstances pleaded as evidence of cruel conduct were not so bad as to imperil the husband's sense of personal safety, mental happiness, job satisfaction and reputation to warrant a decree of divorce. In *Madan Mohan Manna v. Chitra Manna*, it was found that the wife's apprehension that the petitioner had illicit relationship with another woman had some objective basis and that if on that basis she made allegations, then she would not be held guilty of cruelty. It is indeed true that if the allegation about illicit relationship of a spouse with another person, which may or may not be true, is found to be based on some objective factors giving rise to a reasonable suspicion, in that case the conduct of the wife in making such allegation, in the particular facts and circumstances of a given case, may not amount to cruelty. But in our present case no such objective basis has been established by cogent evidence.

22. The amplitude of the term 'mental cruelty' in connection with the Section 13(1)(ia)~HINDU MARRIAGE ACT, 1955~^ 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)~HINDU MARRIAGE ACT, 1955~^ 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 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 passages 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 in V. Bhagat v. D. Bhagat AIR 1994 SC 710 (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 a 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 apurpose. "

The Supreme Court then referred to the decision of Dashtane v. Dastane, where cruelty of the nature described in Section 10(1)(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 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. 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(1)(ia)~HINDU MARRIAGE ACT, 1955~^ 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)~HINDU MARRIAGE ACT, 1955~^ of the Hindu Marriage Act contemplate, and in particular, what is the kind of mental cruelty that is required to be established ? Then 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(1)(ia)~HINDU MARRIAGE ACT, 1955~^ 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 the health of the petitioner. *****."

This decision of the Supreme Court thus makes the law clear now in the back-ground of Section 13(1)(ia)~HINDU MARRIAGE ACT, 1955~^ 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 not 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 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 *Shobha Rani v. Madhu-kar*, (supra) 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. Evidently the baseless allegation of illicit connection of the husband with another woman is bad enough, both legally and otherwise, on the basis of which it can be held that such baseless allegation in the absence of any reasonable basis of suspicion constitutes cruelty against the husband on the part of the wife.

23. Now that we have found that mental cruelty has been established against the wife by reason of her making baseless allegation in the written statement and during evidence that there is illicit connection of the husband with another woman, the question arises as to what relief should be granted to the petitioner for that reason. In this connection we are also to record that there is nothing which would debar the grant of relief in this case under Section 23 of the Hindu Marriage Act. But even then the question remains as to what relief should be granted? Cruelty is a ground under the Hindu Marriage Act, 1955, both for divorce under Section 13(1)(ia)~HINDU MARRIAGE ACT, 1955~^ and for judicial separation under Section 10(1). Section 13 of the Hindu Marriage Act provides that in any proceeding under the said Act on a petition for dissolution of marriage by a decree of divorce, except in certain cases mentioned therein, the Court may if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation. It may be mentioned here that the exceptions mentioned in that section are not attracted in this case and as such in a case like this where mental cruelty has been established the Court can yet consider under Section 13A of the Hindu Marriage Act whether instead of granting divorce on the ground of cruelty a decree for judicial separation should be passed, having regard to the circumstances of the case. Having regard to the fact that the grounds of desertion and cruelty as originally pleaded in the petition filed by the husband could not be established, as discussed in this judgment, and having regard to the fact that earlier the parties could settle their bickerings by effecting a compromise leading to burial of earlier litigations and to the fact that the parties have a daughter of adolescent age we think that it would be just to pass a decree of judicial separation instead of a decree for dissolution of marriage so that the door for reconciliation between the parties in the changed circumstances may remain open for sometime more, as it does not appear to us to be a case of irretrievable breakdown of marriage. Therefore with a hope that the parties may even hereafter effect amicable reconciliation we would grant a decree of judicial separation under Section 10 of the Hindu Marriage Act instead of a decree of dissolution of marriage under Section 13(1)(ia)~HINDU MARRIAGE ACT, 1955~^ of the Hindu Marriage Act. Accordingly we set aside the impugned judgment and order of the learned trial Court and dispose of the suit filed by the petitioner-husband by granting a decree of judicial separation under Section 10(1) of the Hindu Marriage Act instead of a decree of divorce. The appeal stands allowed accordingly but the parties are directed to bear their

own costs both in the appeal as well as in the suit.

N. N. Bhattacharjee, J.

24. I agree.

Appeal allowed.