CASE NO.:
Appeal (civil) 7200-7201 of 2001

PETITIONER:
VIJAY KUMAR RAMACHANDRA BHATE

RESPONDENT:
NEELA VIJAY KUMAR BHATE

DATE OF JUDGMENT: 16/04/2003

BENCH:
DORAISWAMY RAJU & D.M. DHARMADHIKARI

JUDGMENT:
JUDGMENT

2003 (3) SCR 607

The Judgment of the Court was delivered by

D. RAJU, J. The above appeals have been filed by the husband, who lost before both the courts below, challenging the orders granting dissolution of the marriage solemnized between parties on 10th June, 1973 at the instance of the respondent wife and dismissing the petition filed by the appellant seeking for the relief of restitution of conjugal rights and custody of the two daughters. The wife filed M. J. Petition No. 382 of 1983 under Section 13(l)(i-a) of the Hindu Marriage Act, 1955, seeking for dissolution of the marriage and grant of divorce on the ground of cruelty said to have been meted out to the wife. In support of her claim, the wife narrated several instances of harassment and nagging attitude, which caused her mental agony and serious set back in health. These were ultimately considered and viewed by the learned Family Court Judge to be mere normal wear and tear of marital life. But at the same time, the allegations made by the husband, extensively with enumeration of instances and incidents against wife branding her as an unchaste woman, keeping illicit relations - sexually and otherwise with one Ramesh Sawant, the son of a neighbour, though subsequently withdrawn by seeking an amendment of the written statement, weighed with the court to uphold the claim of the wife for divorce. The manner of narration and claims of such allegations in the written statement was also considered to be per se indicative of the fact that he made such allegations against her not only when they were living together but also to her relatives, friends and persons whom he had contacted for reconciliation. The learned trial judge was also of the view that notwithstanding the withdrawal, in a reply filed on 17.1.90 also, those allegations were considered to have been substantially reiterated by the husband. Consequently, the Family Court allowed M.J. Petition No. 382 of 1983 on 7.4.1994. As a sequel to the same, the application in M. J. Petition No. 66 of 1988 filed by the husband for restitution of conjugal rights and custody of the daughters tried simultaneously with the other petition came to be rejected by a separate order on that very date of judgment granting dissolution of marriage between parties.

The appellant filed Family Court Appeal No. 56 of 1994 against the dismissal of M. J. Petition No. 66 of 1988 and Family Court Appeal No. 57 of 1994 against the order granting divorce in M. J. Petition No. 382 of 1983 filed by the wife. The Division Bench of the High Court of Bombay passed a detailed judgment in FCA No. 57 of 1994 affirming the order of the family court granting divorce and rejected the appeal on 4.10.2000. At the same time, by a separate order the other appeal in FCA No. 56 of 1994 was also dismissed, on the same date. Consequently, these appeals came to be filed by the husband.

Though notice was served in the appeals on the respondent, she did not choose to enter appearance in person or through counsel. But she had sent a

reply contesting the claims of the appellant in the appeals filed before this court.

Shri V.N. Ganpule, learned senior counsel for the appellant, strenuously contended that the judgments of the courts below could not be sustained as they have mainly been based upon certain averments made in the written statement filed in M. J. Petition No. 382 of 1983, which were got deleted and withdrawn by seeking for and obtaining orders by way of amendment to the written statement on 16. 9. 1988 itself. All the more so, according to the learned counsel, when the other grievances made in the petition filed to substantiate the claim of cruelty, came to be rejected as matters of normal wear and tear in matrimonial life, not amounting to cruelty so as to justify the grant of divorce on them alone. It is further urged on behalf of the appellant that there is still scope left with parties for reconciliation and if only the decree for divorce is set aside, there is room for restitution of the marital relationship between parties and resumption of the marital home. Our attention has been drawn to certain decisions, in addition to those already noticed by the courts below and the stand taken for the appellant before the courts below, once more reiterated at the hearing of the appeals.

In Dr. N.G. Dastane v. Mrs. S. Dastane, AIR (1975) SC 1534, this Court observed that normally the burden lies on the petitioner to establish his or her plea that the respondent had meted out cruelty to the petitioner and that the standard of proof required in matrimonial cases under the Act is not to establish the charge of cruelty beyond reasonable doubt but merely one of weighing the various probabilities to find out whether the preponderance is in favour of the existence of the said fact alleged. As to what is the nature of cruelty that is necessary to be substantiated also, it has been pointed out that unlike the requirement under English law which must be of such a character as to cause danger to life, limb or health so as to give rise to a reasonable apprehension of such a danger, the courts under the Act in question has to only see whether the petitioner proved that the respondent has treated the petitioner with such cruelty as to cause a reasonable apprehension in mind that it will be harmful or injurious to live together, keeping into consideration the resultant possibilities of harm or injury to health, reputation,, the working-career or the like .

In V. Bhagat v. D. Bhagat (Mrs.), [1994] 1 SCC 337, it was observed that mental cruelty in Section 13(1) (i-a) 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 and the parties cannot reasonably also be expected to live together or that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It was also considered to be not necessary to prove that the mental cruelty is such as to cause injury to the health of the wronged party. That was a case wherein the husband filed a petition against the wife for divorce on the ground of adultery. In the written statement filed by the wife in the said proceedings, she alleged that the husband was "suffering from mental hallucination', that his was a "morbid mind .... for which he needs expert psychiatric treatment", and that he was "suffering from paranoid disorder" etc., and that during cross-examination several questions were put to him that the petitioner and several members of his family including his grandfather were lunatics and that the streak of insanity was running in the entire family. It is in the said context this Court though held the allegations leveled against the wife were not proved the counter allegations made by the wife against the husband certainly constituted mental cruelty of such a nature that the husband cannot reasonably be asked to live with the wife thereafter. The husband, it was also held, would be justified to say that it is not possible for him to live with the wife. In rejecting the stand of the wife that she wants to live with her husband, this Court observed that she was deliberately feigning a posture, wholly unnatural and beyond comprehension of a reasonable person and held that in such circumstances the obvious

conclusion has to be that she has resolved to live in agony only to make life a miserable hell for the husband, as well.

The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1) (i-a) of the Act. The position of law in this regard has come to be well settled and declared that leveling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible.

The allegations made in this case do not appear to have been the result of any sudden outburst. On the other hand, such injurious reproaches, accusations and taunts as were found to have been made in this case lend credence to the fact that the husband was persisting in them for sufficiently a long time humiliating and wounding the feelings of the wife to such an extent as to make it insufferable for the wife and to live in matrimonial home any longer with the husband. The Division Bench of the High Court, in the course of its judgment in FCA No. 57 of 1994, particularly in paras 31 to 38 adverted to the nature and details of the allegations as culled out from the written statement extensively and meticulously and considered them in the light of the settled principles of law governing the same before affirming the judgment of the trial court which also recorded findings against the respondent after a detailed discussion of the relevant materials on record in paras 26 to 30 of the judgment in M.J. Petition No. 382 of 1983. On going through them we are convinced that the findings of the courts below are well merited and fully justified on the materials available on record and that they are neither shown to suffer any infirmity in law nor substantiated to be based on no evidence or vitiated on account of any perversity of approach to call for a different conclusion in our hands and interfere with the concurrent verdicts recorded by them.

The learned senior counsel for the appellant husband, as indicated supra, also was mainly trying to contend that once those allegations were unconditionally withdrawn by filing an application for amendment on 17.8.1988 which came to be also allowed by the trial court on 16.9.1988 and the amendments actually carried out on 5.10.1988, they could not have provided any basis for consideration in the case any longer to record any findings against the appellant. The plea on behalf of the appellant now made, as had been before the courts below, is that those allegations must be considered to have never been on record and not available for being referred or relied upon for any purpose. This aspect also, in our view, is found to have been considered at length and in its proper perspective by both the courts below before rejecting the claim projected on behalf of the appellant husband. Apart from observing, from the nature of the allegations and details disclosed that those statements were made by the appellant himself and only at his instance and on instructions, the courts below were

of the view that the reply filed on 17.1.90 in court to an application filed by the wife seeking permission to engage her lawyer (mistakenly referred to as appellant's application) and their contents substantially reaffirming what has been stated earlier in the written statement but got withdrawn by subsequent amendment rendered even the so called withdrawal to be of no significance or consequence and that it does not appear to have been genuine, too. Cogent and convincing reasons have been assigned by the courts below, in this regard and we are unable to come to a different conclusion on the indisputable factual developments noticed and relied upon by the High Court in paras 40 to 48 of its judgment for rejecting the claim of the appellant in this regard. The slender claim of alleged condonation was also rejected by the High Court, rightly by placing reliance on the repetition of many such allegations in the reply dated 17.1.90. In this connection, it would be of interest also to notice the observations of the learned trial judge in the order passed on 16.9.88 on the application for amendment filed by the appellant for withdrawal of certain allegations from the written statement. The respondent-wife who sent her response to the appeal filed by the appellant, in the form of an affidavit also enclosed to the same, the affidavit in reply dated 17.1.90 filed by the appellant in the trial court and a copy of the order dated 16.9.88 noticed above passed on the applications for amendment of the written statement. At paragraph 17 of the order dated 16.9.88, it is found observed as follows:

"17. It must be made clear that the amendment of the written statement cannot have any reference to anything that had happened prior to the filing of the petition on which the petitioner can place reliance although such matters may have been covered by the statements now deleted. It may be remembered that the petitioner is not withdrawing her allegations. It has also to be remembered that the petitioner has not acted upon unilateral withdrawal of the allegations by the respondent by his letter dated 14.8.86. "

In the light of all these, it is futile to claim on behalf of the appellant that the withdrawal of allegations unilaterally by the appellant, by filing an application for amendment of the written statement wiped out completely all those allegations for all purposes.

That apart, in our view, even the fact that the application for amendment seeking for deletion of the accusations made in the written statement was ordered and amendments carried out subsequently does not absolve the husband in this case, from being held liable for having treated the wife with cruelty by making earlier such injurious reproaches and statements, due to their impact when made and continued to remain on record. To satisfy the requirement of clause (i-a) of Sub-section (1) of Section 13 of the Act, it is not as though the cruel treatment for any particular duration or period has been statutorily stipulated to be necessary. As to what constitute the required mental cruelty for purposes of the said provision, in our view, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct, but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home. If the taunts, complaints and reproaches are of ordinary nature only, the Courts perhaps need consider the further question as to whether their continuance or persistence over a period time render, what normally would, otherwise, not be a so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonable conclude that the maintenance of matrimonial home is not possible any longer. A conscious and deliberate statement leveled with pungency and that too placed on record, through the written statement, cannot so lightly be ignored or brushed aside, to be of no consequence merely because it came to be removed from the record only. The allegations leveled and the incidents enumerated in the case on hand, apart from they being per se cruel in nature, on their own also constitute an admission of the fact that for quite some time past the husband had been persistently indulging in them, unrelented and unmindful of its impact. That the husband

in this case has treated the wife with intense cruelty is a fact, which became a fait accomplished the day they were made in the written statement. They continued on record at any rate till 5.10.1988 and the indelible impact and scar it initially should have created, cannot be said to have got ipso facto dissolved, with the amendments ordered. Therefore, no exception could be taken to the courts below placing reliance on the said conduct of the appellant, in this regard, to record a finding against him.

The submission on behalf of the appellant that once the decree for divorce is set aside, there may be fresh avenues and scope for reconciliation between parties to revert back to matrimonial home, does not appeal to us in any manner, viewed in the context of the attitude of the wife, seriously contesting the claims of the appellant, by filing her reply in this Court, with enclosures thereto, though not appearing either in-person or through counsel. The allegations and counter allegations exchanged are indicative of the strong hatred and rancour between them. Judged in the background of all surrounding circumstances noticed by the courts below and what has been observed by us supra, the claim appears to us to be too desolate, merely born out of despair rather than based upon any real, concrete or genuine purpose or aim. Once the decree for divorce is confirmed, the relief sought for by the husband for restitution has to inevitably fail.

For all the reasons stated above, we see no merit whatsoever in the appeals and consequently they fail and shall stand dismissed. No costs.