

Before J.S. NARANG, J

SHIVANI CHATTOPADHAYA,—Appellant

versus

SIDDHARTH CHATTOPADHYAYA, IPS—Respondents

F.A.O. No. 186/M OF 1998

23rd August, 2001

Hindu Marriage Act, 1955—S.13(1)(i-a)—Divorce-Cruelty—Allegation by wife regarding infidelity on the part of the husband not substantiated by corroborative evidence—Allegations of insinuations & insults inflicted by wife upon husband in public corroborated by evidence—Behaviour of the wife towards husband & his parents not normal & causing mental agony to the husband—such kind of behaviour of the wife culminating into cruelty—Wife living separately with child and making no effort to come to her matrimonial home—High Court also finding no compatibility between the parties for effecting reconciliation—Decree of divorce granted in favour of husband—Wife's appeal dismissed.

Held, that the appellant has made an effort to level allegation of alleged infidelity on the part of the husband by stating that he had an affair with Gunita but apart from the allegation, no substantive, corroborative evidence has been brought on record in this regard. The fact that insulting language was used by appellant *vis-a-vis* parents of Siddharth has gone virtually un rebutted, whereas she was required to use respectful language and reflect courteous behaviour. Such act on the part of the appellant did cause mental agony to the husband.

(Paras 31 & 32)

Further held, that there are certain common rules in this regard where behaviour qua relationship existing in the society have to be adhered to, one such relationship is parents of both the spouses. It is expected that both the spouses must behave in a respectful and cordial manner with the parents of each other. In the case at hand, appellant did not behave in the normal manner. Similar respectful

behaviour between husband and wife is also expected. There are certain normal behaviours which are expected between husband and wife and if any one of them is abnormal to the normal behaviour the wheel of marriage finally gets disturbed. No allegation whatsoever has been found against husband that he ever insulted her in public or behaved in an unbecoming manner, whereas to the contrary such allegations have been levelled against the appellant and that the corroborative evidence has been brought on record. Such kind of behaviour and such kind of situation culminates into cruelty. It is not necessary that cruelty has to be physical only, mental cruelty is far more damaging than physical cruelty.

(Paras 33 & 34)

Further held, that a matrimonial home is not merely made of bricks, mortar and wood, a matrimonial home must be allowed to come into existence in the minds of the spouses. If the mental make up and the frame of mind does not accept the existence of matrimonial home, but by merely going into the house made of inanimate materials would not be the answer. Matrimonial home has not been defined by the framers of law and the judicial pronouncements, the "matrimonial home" is a mental make up acceptable to and acceptable by both spouses and of course tempered with congeniality inwardly and outwardly.

(Para 35)

Further held, that there is no compatibility between the two living souls, making them live together would be asking the two strangers to share a roof. "You can take the horse to the river but you cannot make/force it to drink unless it is thirsty." This thirst is missing from both the spouses.

(Para 36)

RAMAN MAHAJAN, ADVOCATE,—for the *appellant*

AMARJIT SINGH, ADVOCATE,—for the *respondent*

JUDGMENT

J.S. NARANG, J.

(1) Appellant-respondent Smt Shivani Chattopadyaya for short referred to as "Shivani" and respondent-petitioner Shri Siddharth Chattopadhyaya, IPS (for referred to as "Siddharth) got married on 8th February, 1987 as per Hindu rites and ceremonies at Chandigarh in the presence of their respective relatives and other respectables. It shall be apposite to notice here that the parents of Siddharth did not participate in the performance of religious rites and the marriage function on account of death of grandfather of Siddharth and that despite request by Siddharth to postpone the marriage by about six months, marriage was solemnised on 8th February, 1987. Grand-father of Siddharth died on 18th December, 1986. Thus, it was too raw to ask son and his wife (father and mother of Siddharth) to participate in the marriage.

(2) In fact, Siddharth and Shivani had met each other while studying in Panjab University during the academic session 1983-84 and that they were both students of M.A. History. Both developed liking for each other and the friendship turned into love affair. Siddharth is a Bengali Brahman whereas Shivani is a Punjabi Hindu girl. Siddharth got selected in IPS and was undergoing training in National Police Academy, Hyderabad, which commenced on 14th December, 1986. Thus, the marriage took place during his training period and after solemnisation of marriage, they lived together and celebrated their honeymoon at Hyderabad. Shivani was warmly accepted by the family of Siddharth. Siddharth was allocated State of Punjab and upon completion of his training at Hyderabad, was detailed for informative training in State of Punjab with Punjab Police. In this part of the training, he was detailed for short periods in various districts. During this spell, Shivani preferred to stay at her parental house at Chandigarh. She was expecting a child at that time and Siddharth took Leave for ten days when Shivani was admitted to PGI. A baby boy was born on 5th December, 1987 at PGI Chandigarh. Baby boy was named as Siddhanth Chattopadhyaya. Both the families were happy on this occasion and were together in Middle of December, 1987. It was in January, 1988, Siddharth stood posted as A.S.P. Police Station, Rajpura and the small family i.e.

Siddharth, Shivani and their son stayed together. It was at the end of January, 1988, they received another good piece of news, fixation of solemnisation of marriage of younger sister of Siddharth and the same was fixed for 4th February, 1988. The marriage was to be solemnised at the parental house of Siddharth at Roorkee. This small family attended the marriage and in the meanwhile Siddharth stood posted at Amritsar. It was in April 1988, Siddharth was again required to report at National Police Academy, Hyderabad, for completion of second phase of training. However, the small family i.e. Shivani and their son joined Siddharth at Hyderabad in January, 1988. On completion of training, Siddharth passed out as an IPS officer on 30th July, 1988. It is, thereafter, a small religious ceremony, relating to a newly born child, was performed on 15th August, 1988 at the parental house of Siddharth at Roorkee. Father of Siddharth retired as Brigadier in the month of September 1988 and permanently got settled along with his wife at Jaipur. Siddharth was again required to undergo part of the training at National Academy of Administration, Mussorie and during this period the small family again stayed together. Training/course was completed in December 1988.

(3) On completion of the aforesaid training Siddharth was posted as ASP Ludhiana. This posting was termed as sensitive in nature as the terrorism had started brewing up and acquired a galloping speed and reached its peak in a short span. Being a young dynamic officer, he was expected to fight terrorism with exemplary courage and risk of every nature. Such act expected and demanded out of Siddharth to remain ready all the 24 hours. As a sequel thereto, he remained away from matrimonial home not only during day time but most of the time during night as well. Struggling between life and death during the performance of his aforesaid duties, he always needed moral support by way of love and affection., which could only be provided by his wife. Perhaps, Shivani was only expecting gubernatorial life but the reality was entirely different. The resultant effect culminated into inflexible temperament of the wife. In fact, she expressed displeasure on account of Siddharth having been selected into IPS. Nature of his duties and the odd hours combined in it, perhaps caused reverses in the relationship between two lovers. She did not understand that duties of Police force are unique in character and responsibility i.e. for earning honours and laurels. This was the only avenue available for such achievements, especially when subjected to challenges inbuilt

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in society. Life has its own demands and requirements which may be met with before one is involved in earning credit for himself and his family. There is always depletion in involvements in personal life with passage of time. It is alleged that at one time Shivani wanted Siddharth to leave the job as the same had created a small gulf in their relationship. Siddharth became totally confused person, because there are very few persons who qualify for such service and are given accelerated promotions to achieve the highest honours and highest levels in service. Such job could not have been kicked out on the asking of the loved one.

(4) According to Siddharth the gulf between the two had started increasing i.e. he became involved in his job and she remaining at home became victim of psyche or psychedelics. The effect of separatist attitude adopted by Shivani was allegedly felt by Siddharth somewhere in September, 1990. It is at this time, his parents had been invited to come down from Jaipur to Ludhiana. Of course, parents look forward for such kind of invitations. They reached and also became aware of the danger to the family life of their son. Father, being from the military service, was aware of the situations which could be created because of the career so adopted. Both the parents decided to perform "Shashti" ceremony (This ceremony is performed for long life and welfare of the children by the parents). The said ceremony was to be solemnised on 25th September, 1990. Shivani was also asked to participate in this ceremony, but allegedly, she refused to participate and that the ceremony was performed in her absence.

(5) It is alleged that in the midst of Durga Pooja which was to end on 29th September, 1990, Shivani behaved in a most unbecoming manner and used derogatory language in honour of parents of Siddharth and in her hysterical moments asked Siddharth to send his parents back to Jaipur. Situation became grave. Parents felt unwelcome and this episode left a very painful imprint not only on the mind of Siddharth but also his parents. The sour taste may not remain for ever but the feeling and memory of which would bring such tastes unknowingly and which ultimately craves out dark shots in healthy minds. Such was the episode. His parents left Ludhiana on 30th September, 1990 without celebrating festival of Diwali with their grand child and with their son and daughter-in-law. It is alleged that no occasion or any situation was brought about or created in

making parents of Siddharth to look back by wiping out the previous episode.

(6) Life has to go on. It was in the month of February, 1991. Siddharth was promoted as SSP, Ferozepur. It was certainly a matter of happiness and pride for Siddharth and for his family but allegedly, no such happiness could be seen in the house. Ferozepur being border area, the duties of Siddharth added additional flavour of risk and danger to his life and resultantly by fighting such situations, avenues to earn honours and laurels also stood increased. The effect was that he had to become more involved with his job and result was that the gulf between husband and wife became bigger and bigger. It is alleged that wife i.e. Shivani became very inquisitive as to why more time than before was being attributed to the job and for her there was no time. It is alleged that sometimes she barged into the office to find out for herself the real facts and on some occasions, the language used in front of the persons, who were present in the office was derogatory, insulting which caused tremendous pain and agony to Siddharth. He felt belittled and lowered down in the eyes of such persons.

(7) In a short span, Siddharth had accomplished so much, that dependency of administration upon him became inevitable. It was in the month of December 1991 that he was posted as SSP Amritsar. Small family shifted to Amritsar, which is again a border area and the activities which required looking after were far more. Therefore, out of 24 hours some more time than before was required to attend to such requisitions. He had experienced change in the temperament of his wife, change in the attitude himself, his parents and the guests as well. It is alleged that after having been posted at Amritsar, he saw another facet of life of Shivani. She requisitioned services of the subordinate staff so as to accompany her to the places where she desired to make purchases. There is nothing wrong in making purchases provided the limit upto which one is in a position to purchase is kept in mind and maintained. It is alleged that she made purchases beyond such limits and at the same time demanded discount, which possibly could not have been given by any manufacturer. After leaving a small amount with the subordinate staff, requisitioned for the purpose, required them to settle the account and further desired that balance over and above the amount given to them is to be arranged by them. It is alleged that one such episode came to the notice of the husband

and when he stood transferred from the said post, a news item appeared in the news paper on 26th March, 1992 that the wife of a SSP of the border range had behaved in an outrageous manner by making huge purchases of blankets and Shawls from M/s Essma Woollen Mills, Amritsar and that the SHO of the area had been required to pay the price. On coming to know of this fact, Siddharth confronted Shivani and she point blank denied and stated that she had not made any such purchases. Was it sufficient? The news media would not leave anything unearthed or unanswered and that this matter was raised in a press conference of Chief Minister Punjab while on his visit to Ludhiana. It is further alleged that as a consequence of this, Siddharth was summoned by Shri K.P.S. Gill the then Director General of Police, Punjab, which was rather embarrassing for him. Explanation was given and it had also been assured that such like incidents would never ever occur in future, Siddharth being a brilliant officer, could not be subjected to any kind of action at that sensitive times, therefore, after hearing the explanation, matter was dropped. However, Siddharth felt mentally disturbed. He took up the matter with his wife and disclosed that such kind of act would completely wreck his professional career. It is alleged that in response thereto, Shivani stated that she would be happy if he is thrown out of his job and that he would be able to find a job which would leave more time with him for his wife. It is alleged that she felt absolutely dissatisfied as to why explanation given to the Director General of Police had been accepted and Siddharth was let off so easily. Siddharth felt that Shivani may be in need of some kind of psychological treatment as no wife would meet out such kind of treatment for the parents of her husband and no wife would like to think interms that her husband should loose the job. She was examined by Dr. Rajiv Gupta, Department of Psychiatry, Dayanand Medical College, Ludhiana in the first week of September 1992 and that he started treating her in respect of the said inflexible temperament.

(8) It was in this very month i.e. September 1992, she made purchases of jewellery worth Rs. 55,000 by leaving a token advance of Rs. 5,000 with the jewellers known under the name and style of M/s Baljeet brothers, Sarafa Bazar, Ludhiana. This fact came to the knowledge of the husband, when he received a telephonic call for clearance of the balance amount. It was a rude shock to the husband and when he asked her to explain, in return, he received shoutings.

Thus, to avoid the situation becoming uglier, matter was dropped and payment in respect of the piece of jewellery was made on December 22, 1992.

(9) It was after a gap of almost about two months of the aforesaid episode, wife levelled false, baseless and scandalous allegations impinging upon the character of the husband. The husband felt miserable and found himself to be a loner. He requested his parents to come to Ludhiana. Parents are after all parents. By forgetting the previous episode, they reached Ludhiana for giving moral support to Siddharth. Festival of Holi also came in between and that number of friends along with their wives called upon at the residence of husband and wife for playing Holi. To the utter surprise of the husband, he heard his wife shouting not only at his parents but upon him as well. She dragged their son and stopped him for playing Holy. The result was disastrous which caused lot of mental agony and humiliation not only to the husband but also his parents. Siddharth could not understand the unbecoming behaviour of Shivani, whenever she would start shouting and levelling scandalous allegations against the husband, everyone stood dumb founded and some persons excused themselves instead of suffering embarrassment. The resultant effect was beyond retrieval of normalcy. It is only 15 days thereafter that wife went on a spree to purchase shawl from one M/s Lilly Fabrics, Ludhiana, and while on enquiring she told her husband that she had just purchased three shawls worth Rs. 5,000. However later on real facts came to the notice of Siddharth when proprietor demanded the outstanding of 28 shawls. She was confronted and ultimately admitted the correct facts and thereafter only five Shawls worth Rs. 28,000 were kept and 23 shawls were returned to the firm. Payment in respect of the aforesaid was made in three instalments. There was some more episodes which occurred whereby the husband had to suffer embarrassment and to save the insulting situations, he walked out of the office or from the meeting with an effort to pacify her.

(10) It has also been alleged that a senior colleague of the husband Shri Sumedh Singh Saini IPS, who was also known to the family of the wife under took upon himself to work out and bring around reconciliation amongst the husband and wife. Number of meetings took place but without achieving any mentionable success.

However, Mr. Saini also ultimately walked out of the effort to mediate between husband and wife. Shivani was brought under treatment of another Doctor from Mohan Dai Oswal Hospital, Ludhiana. Another strange kind of act was also noticed when on one day, she came out of her bed room and started threatening openly that she would put an end to her life and would set the house ablaze so that the husband and his parents are implicated in a criminal case. However, with the help of the staff and by remaining quiet, husband and his parents were able to pacify her and brought her around to desist from acting in such a manner. Parents of Siddharth felt jittery about the entire episode and decided to leave Ludhiana for Jaipur in the month of September 1993. Siddharth also found himself every jittery that lest anything may happen and that he may be implicated in a criminal case. He took shelter in the Canal Rest House, Ludhiana on September 13, 1993. The purpose was not to see each other to aggravate the happening of an ugly act. On request, Siddharth was transferred to the post of A.I.G. Operations—cum—Internal Vigilance for Ludhiana and Patiala Ranges with Headquarters at Chandigarh. As a result thereof, he was required to vacate official residence of SSP, Ludhiana and that in his place Shri Sumesh Singh Saini, IPS, was posted as SSP, Ludhiana. Shivani, instead of being cooperative became hysterical and refused to vacate official accommodation. Situation had become ugly and that ultimately she vacated official accommodation only with the condition to be accommodated in a official residence at Police Lines, Ludhiana. However, authorities relented on account of meritorious services rendered by Siddharth during extreme days of terrorism and activism. An official accommodation in Police Lines, Ludhiana was made available to Shivani and their son. As on date, she is residing in the said premises. In this frame of mind, resumption of co—habitation or having pleasurable sexual life amongst the two was completely impossible. As per Siddharth apart from mental torture, he also suffered on account of inflexible temporal behaviour and denial of sex by his wife, which culminated into cruelty to him

(11) Siddharth feeling miserable, aggrieved of the situations and the senseless behaviour of his wife in officialdom, upon advice, filed a petition under Section 13(1)(i)(a) of the Hindu Marriage Act, 1955, in the Court of District Judge, Chandigarh, for seeking decree of divorce against Shivani.

(12) Wife i.e. Shivani filed reply to the petition. Plea taken is that the husband has not approached the Court with clean hands and that cock and bull story has been cooked up for maligning the character of the wife. On the other hand, allegation has been levelled that Siddharth developed illicit relations with one Mrs. Gunita Bindra (Tandon) (for short referred to as "Gunita"). It has been averred that she had come across some letters addressed by her to Siddharth and that the language of said letters projected love, romance and vulgarity. Plea for not producing the original letters is that for making Xerox copies of these letters, same were handed over to one of the orderlies and in fact he delivered the original letters to Siddharth but the photo copies have been appended with the written statement (none of these letters has been seen on record with the written statement however, have been marked B & C). Allegation is that when objection was raised by her, she was physically thrashed and Siddharth had openly declared that he is emotionally and physically involved with the lady and would want to marry her. The allegations made against her in the petition have been emphatically denied and instead she has alleged that the child born out of this wedlock was defined as "Khalistani" by the parents of husband. In fact, the parents were interested in marrying of the petitioner in some Bengali family where they could receive handsome dowry.

(13) It has also been alleged that Siddharth and Gunita were going to Shimla on March 2, 1993 and that the vehicle in which they were travelling met with an accident. Gunita was badly hurt and was treated at General Hospital, Sector 16, Chandigarh. It is alleged that the fact of their involvement stand corroborated beyond any doubt. It is also alleged that on April 21, (year is not mentioned), Siddharth and his father gave her a severed beating and in this episode, the shoes were also used. She got herself x-rayed on the next day and left for Chandigarh. When she came back she found that her belongings had been shifted and she was put up in a separate room in the house.

(14) It is also alleged that on account of made up story of her shopping spree which was got published by Sidharth on account of his influence, she was given outrageous beatings and resultantly she bled. It is also alleged that Siddharth of his own told her that he was sorry for the previous misbehaviour and his ruthless and merciless act in beating her and, therefore, he would be sending his parents back

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to Jaipur and would like to live with her peacefully. It is under these circumstances, his parents had gone back to Jaipur.

(15) A perusal of the written statement shows that different kind of stories have been set up. It has been categorically denied that father of Siddharth did not join marriage ceremony on account of death of grand—father and this fact stands belied from the fact that grand mother did join marriage ceremony. In fact parents of the husband did not join marriage because they were opposed to the inter-caste marriage. It is also averred that she was never a welcomed person in the family of her husband and in fact she was treated as untouchable being a Punjabi. It is also averred that all these situations have been spelt out in totally upside down manner and in fact Siddharth created and made all out efforts to create such situations that Shivani of her own would agree for consented divorce. She categorically denied such favour. It is also alleged that Gunita had already obtained a consented divorce from her husband.

(16) The averment contained in the written statement filed by the wife have been controverted by way of filing replication. It is categorically denied that Siddharth ever had any kind of relations with Gunita. The story has been set up only to defame Siddharth and a cover up for her own behaviour, for which, she had been subjected to treatment by the Doctors.

(17) Upon the pleadings of the parties, following issues were framed :—

- (1) Whether the marriage between the parties is liable to be dissolved by way of decree of divorce on the ground of cruelty ? OPP.
- (2) Whether the petition is not maintainable ? OPR.
- (3) Relief.

(18) Siddharth examined himself as his own witness as PW1, examined other witnesses namely Varinderpal Singh PW2, Vinod Kumar Sehgal PW3, Agyapal Singh PW4, Dr. Pritpal Singh Gill PW5 who has produced medical record which has been exhibited as PW5/A, Shri Om Parkash Sharma PW7, Rajesh Bhambi PW8 and Shri Sumedh Singh Saini PW8.

(19) On the other hand, Shivani appeared as her own witness as RW1 and examined her father Shri R.N. Dewan as RW2 and her son Siddhant as RW3. Apart from these witnesses, no other witness has been examined by her.

(20) Learned District Judge has given finding on aforesaid issue in favour of petitioner (Siddharth) and against respondent (Shivani) and resultantly granted decree of divorce dissolving the marriage solemnised between the parties.

(21) It is the case of both the parties that actual nuisance commenced in 1992 when the consolidated effect of small small incidents went beyond the limits to be accepted and borne with. According to Siddharth, it is in December 1992 and according to Shivani it is in March 1992 when she had discovered two letters written by Gunita.

(22) Siddharth has produced documentary as well as oral evidence in support of the averments contained in the petition, cumulative effect of the same has been interpreted by learned District Judge by way of granting decree of divorce. Shivani has produced only two witnesses i.e. her father and son born out of this wedlock. The documentary and oral evidence produced by the witness has also been examined by the learned District Judge who has come to a final verdict holding that Shivani is guilty of causing mental as well as physical cruelty to Siddharth.

(23) Judgment and decree passed by learned District Judge has been challenged by way of filing the present appeal by Shivani.

(24) Argument is that the appellant does not accept personality disorder. She had never ever suffered from such disorder and that the whole case has been set up with a view to bring in a situation which is almost covered by judicial pronouncements.

(25) It is also argued that the allegations such as purchasing shawls and jewellery etc. from the shops is nothing but created evidence which could be easily fictitiously corroborated by Siddharth, being an influential Police Officer. It is the admitted case of the husband that he is a brilliant person, thus, for brilliant person to set up stories corroborated with documentary and oral evidence is not at all difficult. The allegation relating to misbehaviour against the parents

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of the husband has not been corroborated by way of cogent piece of evidence as none of the parents of the husband have stepped into witness box for proving those facts. However, to the contrary, father of the appellant has stepped into witness box. He has deposed that he was informed by Mr. S.S. Saini, IPS that relations between Siddharth and Shivani are not cordial and he further told that a girl named Gunita is responsible for this happening. He has also deposed that Mr. Saini had offered to bring around reconciliation between husband and wife and that subsequently, he disclosed that there is no positive response because Siddharth is believed to be seriously involved with that girl. He has also stated that subsequently response of Mr. Saini was very discouraging and he almost refused to give any reply. He has also deposed that Siddharth had gone to the residence of Gunita's father-in-law Mr. G.S. Tandon, who was his batch mate and was working as Engineer-in-Chief, Haryana and his son, husband of Gunita, had been threatened with dire consequences if he did not behave well with Gunita. He has stated that he had called up Mr. Reddy the then SSP, Chandigarh, informing him about the incident and providing necessary security to the son of Mr. Tandon i.e. Gunita's husband. However, he has admitted in his cross-examination that grand father of Siddharth had died and that he denied any knowledge regarding the customs of Bengalis that no ceremony is performed within a period of six months from the date of death of member of any family. Upon perusal of statement made by Shivani in cross-examination, it shows that she has categorically denied that Mr. Saini ever offered to mediate between them and she has further categorically denied that Mr. Saini mediated many times. It shall be apposite to notice some excerpts of the cross-examination of Shivani and examination-in-Chief of Mr. R.N. Dewan, her father, which read as under :—

Shivani.....(Excerpt from the cross-examination)

“..... ..”

Mrs. Saini was in fact mediator, whereas Mr. Saini was in favour of the petitioner. Mr. Saini never acted upon to mediate between us. It is wrong to suggest that Mr. Saini has mediated many times.....”

“R.N. Dewan (Excerpt from Examination-in-Chief).

.....

.....During 1993 in one night I received a telephonic message from Mr. Saini who was posted as A.I.G. in those days. He informed me that the relations between the parties are not cordial. He further told me that a girl named Gunita Tandon is responsible for this happening. He further assured me to help me in normalisation of the relations between the parties. As desired by him I met him about 15 days after that telephonic talk. During my talk with Mr. Saini, he revealed that he has already spoken to the petitioner but there is no positive response because the petitioner is believed to be seriously involved with that girl. Thereafter, I along with my wife and my elder daughter Mrs. Abha Singh went to Mr. Saini's residence. However, on that day the response of Mr. Saini was very discouraging and he did not reply well.

XXX XXX XXX XXX XXX XXX”.

(26) It shall be apposite to notice that Shri S.S. Saini also appeared as a witness defined as PW8. He has disclosed that there were certain minor problems which had cropped up between husband and wife. He has also averred that the attitude of the wife was overbearing and he has quoted an incident as well. It is averred that sometimes operational meetings followed by field operational occasions used to last long and it is during these meetings, the respondent used to ring up and used to call him back home. Such kind of telephonic calls caused embarrassment to Siddharth and that on some occasions he left and the meetings remained inconclusive. It has been categorically averred by him that the differences between the couple became serious sometimes in the year 1992 and in the beginning of 1993. He, being well wisher of both, mediated and tried to resolve the differences. On one such occasion father of Siddharth and father of Shivani were also present. Mr. Dewan father of Shivani expressed his helplessness and washed his hands from the affairs saying that Shivani does not listen to him and that the husband should control her as best as he can. She had categorically explained to Mr. Saini that the problem has been created due to the presence of the parents of Siddharth.

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It was on his request, Siddharth sent his parents away from Ludhiana with an effort to pacify his wife. He has also corroborated the fact that when he was transferred to Ludhiana as SSP, he stayed in a rest house and Shivani stayed in official accommodation of the SSP. It has also been averred in cross-examination that Shivani met Mr. Saini 8 to 10 times in connection with their matrimonial problems. The informative evidence given by Mr. Saini corroborates one fact that the differences had arisen between Siddharth and Shivani on account of presence of parents of Siddharth at Ludhiana and that he did make efforts to be a mediator between the two and in fact in this regard meetings also took place. The factum of meetings and mediation has been categorically admitted by the father of the appellant, whereas, she has categorically denied, as has been noticed above in the excerpt from cross-examination of Shivani.

(27) The insinuations and insults inflicted upon Siddharth sometimes in public have also been corroborated by Mr. Saini. Admittedly, Mr. Saini was senior and he had the opportunity and occasions to see and meet husband and wife at various junctures. His statement cannot be ignored. The perusal of cross-examination shows that he has categorically withstood the test while deposing in respect of the approach and behaviour of the appellant towards Siddharth. He has also corroborated the fact that Siddharth was asked to send his parents away from Ludhiana to patch up between themselves. He has also corroborated the fact that appellant did insult the parents of her husband. The said statement has gone unrebutted and that no negative suggestion in this regard has been given.

(28) Appellant has not produced any evidence which could have independently proved vis-a-vis allegation against Siddharth that he was involved in any manner with Gunita. In this regard, allegations have been levelled but there is no cogent evidence to corroborate such incidents. It has been alleged that Siddharth was travelling with Gunita in a car and the said car met with an accident. This fact has not been independently proved by way of any non-demolishable evidence. I find that Gunita had been summoned for obtainment of specimen handwriting and that too for the purpose of comparing it with the documents marked as "B" and "C" which are photostat copies of the alleged letters written by her to Siddharth. It is not understandable as to under what circumstances the specimen

handwriting was taken for the purpose of comparing with a photostat copy which is not admissible into evidence under any provision. However, it has been noticed by learned District Judge that perhaps she has not agreed with the appellant and that is why, she was not examined and a miserable effort was made for taking the plea and establishing a fact that Gunita has disguised her handwriting and that her handwriting should be taken again. The said application has been disallowed. It has been noticed that birthday greetings card stated to have been sent by Gunita, by way of card being addressed to her husband, has been produced and exhibited as Ex. R20. If, at all, it is permissible under law to compare handwriting of a person with a photostat copy, the handwriting borne on the said exhibit could have been got compared but no such efforts seem to have been made. The plea that original letters were torn by Sidharth in front of Shivani does not lead credence to the statement made by Shivani in this regard. However, I have perused these letters, which are marked B and C. The language used is such that it cannot be linked with Gunita Tandon. It is admitted by Shivani that she had met Gunita prior to her marriage and if that be so, she could have been seen by Gunita along with Siddharth, when they were having roaring love affair. No such plea has been taken nor is discernible from evidence.

(29) Statement made by Shivani that she was maltreated and that she was beaten up by the father of the husband and in fact she was also beaten up by Siddharth has not been corroborated by any piece of evidence. Though father of the appellant has stepped into witness box but nothing has been disclosed by him that appellant had ever told him that she was beaten up by her father-in-law and also by her husband. In a situation where wife is given beating by the husband and by the father-in-law, the first person to be confided in would be her mother and her father. No such suggestion or question has been asked from her father when he stepped into witness box. In fact he has only deposed with regard to alleged affair of Siddharth with Gunita and he has also averred that father of the petitioner did not reconcile with the present marriage. However, it is also admitted that the appellant had gone to the parental home of her husband for attending marriage of his sister and he has further stated that he along with his wife also joining the marriage. Apart from the above, not a word has been said about any beating having been given to

the appellant by the father of her husband or by the son-in-law i.e. Siddharth.

(30) So far as allegation relating to her indulgence in shopping spree is concerned, the same has been established beyond any doubt and in response thereto the only plea has been taken that it is on account of influence of Siddharth, being a senior police officer, the news item was got published in the paper and that the entire evidence has been brought on record for establishing a total white lie in fastening such act upon the appellant. I find that nothing tangible has been suggested in cross-examination for demolishing such evidence. The witnesses have categorically deposed in this regard and one such averment, which has been made by Shri S.S. Saini, IPS stating that the appellant has been extravagant and went on a shopping spree in the markets of Ludhiana, has not been demolished in cross-examination and that neither any negative suggestion in this regard has been given. However, only suggestion has been given that the appellant did not make any purchases in his presence and that no payments was made in his presence. There is no reason to disbelieve the statement of Mr. S.S. Saini especially when he was actively involved to be a mediator for bringing around reconciliation between the parties.

(31) The perusal of evidence and the averments of respective parties, I find that the appellant has made an effort to level allegation of alleged infidelity on the part of the husband by stating that he had an affair with Gunita but part from the allegation, no substantive, corroborative evidence has been brought on record in this regard. The persons who have deposed in this regard is her own father who has only deposed on the basis of the knowledge derived telephonically from Mr. Saini, which has not been admitted by him and that he has categorically denied that he had ever met or known a girl by the name of Gunita and the information is stated to be given by his own daughter but the said daughter has not stepped into witness box to depose as to from where she has acquired this knowledge. The second person is the son of the parties, who admittedly has been brought up all alone by the appellant and has always remained under her influence. It looks that he has deposed in the manner in which he has been tutored, which can be smelt from the cross—examination of the child. Learned District Judge has noted before subjecting the child for

deposing as a witness that he had been asked various questions and that he has been able to answer them with dilligence and intelligence. It has also been observed that he is in a position to understand the implications of giving false evidence. Thus, it has been easy for him to withstand the test of his testimony by way of cross—examination.

(32) Learned counsel for the appellant has not been able to address meaningful arguments. The fact that insulting language was used by appellant vis—à—vis parents of Siddharth has gone virtually un rebutted, whereas she was required to use respectful language and reflect courteous behaviour. Such act on the part of the appellant did cause mental agony to the husband, as a normal son would always pay proper respect to his parents and expects similar behaviour from his wife as well. It shall be apposite to note here that not even single word has been said by anyone that he was in any manner disrespectful or used any abusive or insulting language to the parents of his wife and as such no complaint has been elicited from the evidence, which could be pointed out. Apart from this, the over bearing behaviour of the appellant with her husband again caused mental disturbance to the husband and even when she was asked to correct herself, the reaction was not very congenial or receptive. An effort has been made by Siddharth to find out as to whether the appellant suffers from any personality disorder or not and in this regard the Doctors have deposed that she did suffer from personality disorder. However, this aspect may not be accepted. The personality disorder is very difficult to ascertain. The behaviour of a normal person may also be read as personality disorder. It is the settled principle of science that no two individuals have the same personality. The circumstances, situations and the outwardly influence develops personality of an individual. Thus, no personality can be read in a straight angle or in a rectangle or in a circle. From the evidence, normal behaviour towards the parents of the husband was expected but the definition of normal behaviour would also vary from person to person and personality to personality. Sometimes expectancy is more but the answer is damaging. It may be due to lack of proper exposure and some deficiency found in the parents in bringing up a child.

(33) However, there are certain common rules in this regard where behaviour *qua* relationship existing in the society have to be adhered to, one such relationship is parents of both the spouses. It

is expected that both the spouses must behave in a respectful and cordial manner with the parents of each other. In the case at hand, appellant did not behave in the normal manner. Similar respectful behaviour between husband and wife is also expected. There are certain normal behaviours which are expected between husband and wife and if any one of them is abnormal to the normal behaviour the wheel of marriage finally gets disturbed. In the case at hand, no allegation whatsoever has been found against husband that he ever insulted her in public or behaved in an manner, whereas to the contrary such allegations have been levelled against the appellant and that the corroborative evidence has been brought on record.

(34) Such kind of behaviour and such kind of situation culminates into cruelty. It is not necessary that cruelty has to be physical only, mental cruelty is far more damaging than physical cruelty. In the developing society and that exposure or individuals to education has made us aware of the surroundings and resultantly far better behaviour are expected amongst each other. In this regard I am guided by the observations made by the Apex Court in *Shobha Rani v. Madhukar Raddi (1)*. Their lordships have made observations while noticing the word "cruelty" and also change in life relating to matrimonial duties and responsibilities in particular. In this regard, it shall be apposite to notice the observations made by their lordships and in this regard some of the paragraphs from the aforesaid judgment are reproduced as under :—

4. Section 13(1)(i-a) uses the words "treated the petitioner with cruelty". The word "cruelty" has not been defined. indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem present difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment in the mind of the spouse.

Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be causes where 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. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

5. It will be necessary to bear in mind that there has been marked change in the life around us. In the matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the Judge and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in *Sheldon v. Sheldon*, (1996) 2. All ER 257(259) "the categories of cruelty are not closed." We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful realm of cruelty.

9. A new dimension has been given to the concept of cruelty. Explanation to Section 498A provides that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute cruelty. Such wilful conduct which is likely to cause grave injury or danger to life, limb or health (whether mental or physical of the woman) would also amount to cruelty. Harassment of the women where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security would also constitute cruelty.”

(35) During the course of hearing of this appeal, I had requested the parties to be present in person along with their child and I had called them in my chamber for effecting reconciliation. I had also requested respective parents of the spouses to come to my chamber for finding out as to whether any reconciliation is possible. Unfortunately, my efforts did not prove fruitful and the matter was set down for deciding the appeal on merits. I find that the gulf which has come to ensue between the parties is not possible to be patched up, the appellant has been living all alone in police residential quarters allotted to her on account of security reasons for the family of the police officer, who was directly and actively involved in fighting out terrorism while being posted as SSP Ludhiana, Ferozepur and Amritsar. She has not made any effort to come to her matrimonial home. No doubt, she did make bald statement that she is ready to go and live with her husband but the statment alone does not open the doors of matrimonial homes, a meaningful effort is required by the wife and similarly the husband has to open the door for this purpose. A matrimonial home is not merely made of bricks, mortar and wood, a matrimonial home must be allowed to come into existence in the minds of the spouses. If the mental make up and the frame of mind does not accept the existence of matrimonial home, but by merely going into the house made of inanimate materials would not be the answer. Matrimonial home has not been defined by the framers of law and the judicial pronouncements, the “matrimonial home” is a mental make up acceptable to and acceptable by both spouses and of course tempered with congeniality inwardly and outwardly.

(36) In the present case, I find that there is no compatibility between the two living souls, making them live together would be asking the two strangers to share a roof. "You can take the horse to the river but you cannot make/force it to drink unless it is thirsty." This thirst is missing from both the spouses.

(37) For the foregoing discussions, I find no merit in the appeal and the same is dismissed. No costs.

R.N.R.

Before N.K. Sodhi & R.C. Kathuria, JJ

RAJ BAHADUR SINGH,—*Petitioner*

Versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 11874 of 1999

The 2nd July, 2001

Constitution of India, 1950—Art.226—Punjab Civil Service (Executive Branch) (Class I) Rules, 1976—Rl.10—Punjab Govt. instructions dated 22nd March, 1957—Circular letters dated 24th June, 1993 and 24th March, 1995—Recruitment to the 9 vacancies of P.C.S. (E.B.) from Register A-II—Commission considering the merits of all the nominated candidates and preparing a merit list on the basis of marks secured by each of them—Commission recommending first nine candidates in the merit list to the Govt. for appointment—Petitioner at Sr. No. 12 of the merit list—Govt. sending another requisition to the Commission for filling up 3 vacancies pertaining to the year 1995 from Register A-II before the declaration of the result of the earlier selection—Claim to appointment against 3 additional/subsequent vacancies on the basis of instructions dated 22nd March, 1957—Plea of applicability of the instructions dated 22nd March, 1957 negatived and claim of the candidates higher in merit than the petitioner already rejected by the High Court and upheld by the Supreme Court—Petitioner lower in merit not entitled to appointment—Rules does not permit the merit to be disturbed—Petitioner approaching