misused by an erring spouse as a weapon of offence to terrorise, harrass or subjugate the other marital partner and his/her family members. No one can shut his eyes to reality that this ugly trend is fast emerging like a Frankenstein (a monster created by a scientist with aid of modern science) which if not chained and immobilised soon enough, would imperil the very social system, causing in its wake, misery and torture to innumerable lives. It is time for the Legislature to take remedial measures, like a provision for an additional ground of divorce, i.e. "irretrievable break-down of marriage", especially in cases where the spouses have lived apart and have been litigating for more than two years on account of such breakdown. In fact, the Law Commission in its 71st Report, 1978 made a recommendation for the enactment of the above Clause as an additional ground for divorce. In consequence of this recommendation, "The Marriage Laws (Amendment) Bill 1981" was introduced to Lok Sabha, on February 27, 1981. The measure has yet to acquire the status of law. It is for the makers of law to appreciate the expediency of such legislation. These observations shall not, however, be deemed to be an expression of opinion in regard to any aspect of the present case.

(14) In view of what has been discussed above, the impugned First Information Report No. 149, dated May 14, 1985 of Police Station, Civil Lines, Amritsar, registered in consequence of the complaint filed by respondent No. 2, is quashed.

H.S.B.

Before P. C. Jain, CJ and S. S. Kang, J.

HARYANA BRIQUETTES INDUSTRIES,—*Petitioner.*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 3262 *of* 1985

July 8, 1986.

Central Sales Tax Act (LXXIV of 1956)—*Section* 14 (1*a*)—*Coal briquettes manufactured by mixing coal dust, molasses and clay—Whether fall within the definition of 'coal' in Section* 14(1*a*)—*Said*

item—Whether liable to be taxed at a lower rate under the provisions of the Act.

Held, that coal briquettes are manufactured by mixing coal dust with molasses and clay and the said briquettes are used for domestic kitchen consumption. In other words, it can be said that the coal briquettes can be used for some such purpose for which coal is used. The raw material used in manufacturing the briquettes is the residue of small particles of coal which are generally called coal dust. It is correct to some extent that briquettes do not have the same shape or structure as that of coal or coke; but that by itself would not be sufficient to warrant a finding that some such new commodity has come into being which is entirely different and does not fall within the category of coal. The definition of 'coal' in Section 14(1a) of the Central Sales Tax Act, 1956, shows that the said clause mentions coal only and then declares that that word shall include coke in all its forms. That shows that the object of the words which follow coal is to extend its meaning. In this view of the matter there can be no escape from the conclusion that coal briquettes being prepared from coal dust are covered by the definition of coal as given in item (1a) of Section 14 of the Act and as such the said item is liable to be taxed at a lower rate under the provisions of the Act.

(Paras 6, 8 and 13)

Civil Writ Petition under articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to grant the following reliefs to the petitioner in view of the submission made above :—

(i) *a writ in the nature of certiorari be issued quashing the impugned Instructions and Assessment order, Annexures P/1 and P/2;*

(ii) *any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case, be also issued;*

(iii) *services of notice on the respondents prior to the filing of the writ petition, as required under Writ Rules, be kindly dispensed with;*

(iv) *filing of certified copies of Annexures P/1 and P/2 may also be exempted;*

(v) *costs of this writ petition may kindly be awarded to the petitioner;*

It is further prayed that the enhanced demand created by respondent No. 2 and the recovery proceedings thereon, may kindly be stayed till the final decision of this writ petition.

C.M. No. 2615 of 1985.

Application under Rule 32 of the Writ Jurisdiction (Punjab and Haryana) Rules, 1976 read with section 151 C.P.C. praying that the accompanying replication may be allowed to be placed on the record.

R. C. Dogra, Advocate, *for the Petitioner.*

Nemo, *for the Respondent.*

JUDGMENT

Prem Chand Jain, C.J.

(1) The petitioner, which is a Partnership concern, is registered with the Sales Tax Authority, under the Haryana General Sales Tax Act and Central Sales Tax Act (hereinafter called the 'Act' and the 'Central Act', respectively). The petitioner deals in Briquette Coal Industry and sells the coal briquettes within the State of Haryana. Returns were filed for the year 1983-84 and tax was also paid as had earlier been done at the rate of 4 per cent on briquettes sold within the State of Haryana. It is further averred that the petitioner received a notice from the Assessing Authority, respondent No. 2, requiring the petitioner to produce material in support of the returns filed and for verification of the accounts. It appears that the Assessing Authority was satisfied with the accounts maintained but the Assessing Authority was of the view that in accordance with the instructions issued by respondent No. 1, the coal briquettes may be taxed at the rate of 8 per cent instead of 4 per cent. The explanation given by the petitioner was not accepted and the Assessing Authority imposed tax on coal briquettes at the rate of 8 per cent instead of 4 per cent. Through this petition, the petitioner has challenged the imposition of tax at the rate of 8 per cent and has also called in question the legality of enhanced demand of tax made on the basis of the imposition of tax at the rate of 8 per cent.

(2) On 10th July, 1985, on the basis of the judgment in *M/s. Khanna Coke Industries, Moradabad and another* v. *The Assistant Commissioner (Judicial), Sales Tax, Moradabad and another* (1) the case was admitted and was ordered to be heard at an early date.

(1) 1978 Tax L.R. 2129.

(3) Written statement has been filed on behalf of respondents Nos. 1 and 2, in which some preliminary objections have been taken. On merits, the action is sought to be supported on the plea that the briquettes is not coal and this is not covered by item (ia) of Section 14 of the Central Act, but it is a different commodity made of coal dust, molasses and clay and thus it requires to be treated ae a separate commercial commodity for the purpose of taxation law.

(4) The petition came up for hearing before a learned Single Judge of this Court, before whom the question raised was whether coal briquettes, which is manufactured from the coal-dust mixed with molasses as is the assessee's case, or from coal-dust mixed with molasses and clay as is the case of the department, would fall within the definition of coal as given in Section 14(1)(a) of the Central Act, which includes coke in all its forms, excluding charcoal. Finding that the question posed was of general importance, the matter was referred to be decided by a larger Bench. It is in this manner that we are seized of this case.

(5) Before I deal with the merits of the controversy, it may be observed that no one appeared on behalf of the State and in this situation, we are deciding this case on the basis of the arguments advanced by the learned counsel for the petitioner and without any assistance from the State.

(6) Section 14 (ia) of the Central Sales Tax Act reads as under:—

> "14. It is hereby declared that the following goods are of special importance in inter-State trade or commerce:
>
> xx xx xx xx xx
>
> (ia) Coal including coke in all its forms, but excluding charcoal:"

The short question that needs determination in this case is whether coal briquettes fall within the definition of 'coal' as given in the aforesaid definition. As has come in the earlier part of the judgment, the assessee manufactures coal briquettes which are prepared from coal dust mixed with molasses. However, the department's case is that the coal briquettes are manufactured from coal dust mixed with molasses and clay. In my view, whether the coal

briquettes are manufactured by mixing coal dust with molasses or by mixing coal dust with molasses and clay would make the least difference in determining whether coal briquettes manufactured by the assessee fall within the definition of coal or not. As is evident from the aforesaid definition, the clause mentions coal only and then declares that that word shall include coke in all its forms. That shows that the object of the words which follow coal is to extend its meaning. It was contended before us by Mr. R. C. Dogra, learned counsel, that the coal briquettes manufactured by the company are used as coal, that it is a matter of common knowledge that the coal briquettes manufactured by the assessee are meant for domestic kitchen consumption and that a fair inference can be drawn that the briquettes manufactured by resorting to a mechanical process are used for the same purpose as coal or coke. According to the learned counsel, coal briquettes manufactured by the assessee would certainly fall within the definition of 'coal' and that coal briquettes are covered by the definition as given in item (ia) of section 14 of the Central Act.

(7) After giving our thoughtful consideration to the entire matter, we find force in the contention of the learned counsel for the petitioner.

(8) Coal briquettes are manufactured by the assessee by mixing coal dust with molasses and clay. The coal briquettes are used for domestic kitchen consumption. In other words, it can fairly be said that the coal briquettes can be used for some such purposes for which coal is used. The raw material used in manufacturing the briquettes is the residue of small particles of coal which are generally called as coal dust. The coal dust which is used for preparing the briquettes has independently the properties which coke possesses. In order to make the coal dust easily usable, balls which are called coal briquettes are used in the same manner as coal or coke is used. It is correct to some extent that briquettes do not have the same shape or structure as that of coal or coke; but that by itself would not be sufficient to warrant a finding that some such new commodity has come into being which is entirely different and does not fall within the category of coal.

(9) As has been observed earlier, the coal briquettes are used for domestic kitchen consumption in the same manner as coal or coke is used. It is only a form of coal as commercially understood. Coal briquettes are only a product or transformation of remainder of

coal i.e. coal dust. It has always been taken as a domestic fuel. There is no other use of coal briquettes otherwise than as combustible material used as coke. This product is always treated as fuel corresponding to coke. In common parlance coal briquettes are always known as fuel. In this view of the matter, there can hardly be any escape from the conclusion that the coal briquettes being a preparation from coal dust are covered by the definition as given in item (ia) of section 14 of the Central Act. This view of ours finds full support from the judgment in *M/s. Khanna Coke Industries case* (supra), wherein on consideration of exactly a similar point, it has been observed thus:—

> "8. The allegation that coke briquettes are meant for domestic kitchen consumption is not denied in the counter affidavit. The coke therefore manufactured by mechanical pressing is used for the same purpose as coke. The contents of coke briquettes namely moisture, volatile matters, ash and carbon are the same as in any other coke. The mere change in the shape by mechanical pressing does not change the commodity. It remains the same. In Webster's Third New International Dictionary 'Form' has been defined as 'the shape and structure of something as composed. Mere change or shape or structure in the raw material does not result in production of a new commodity. And even if it is so the entry is wide enough to cover in its fold commodities which remain the same despite change in shape. Coke briquettes thus being only a preparation of coke dust are covered by the expression 'coke in all its forms."

(10) At this stage, I may refer to a judgment of the Madras High Court in *Deputy Commissioner of Commercial Taxes, Madras Division* v. *B. R. Kuppuswami Chetty* (2). In that case, the assessee was a firm dealing in leco, firewood and charcoal. There was a dispute as to the classification of leco. According to the assessee, leco being carbonised lignite briquette was coal which is declared as goods of special importance in inter-State trade and commerce under section 14(ia) of the Central Act. If leco is taken as declared goods, then the assessee's sale would be second sales which are not taxable. The Assessing Authority declined to grant this exemption and the Appellate Assistant Commissioner confirmed the assessment. The

(2) (1980) 45 S.T.C. 308.

Tribunal, after going elaborately into the question of manufacture of lignite briquettes and also other aspects of the matter, came to the conclusion that leco was declared goods under section 14(ia) of the Central Act. In fact, the Tribunal held that leco was only lignite which is a variety of coal and which was liable to be taxed only on first sale. The question that arose for consideration was whether leco is coal or charcoal. After making reference to the Act and the definitions in various dictionaries, the learned Judges disposed of the matter thus:

> "Lignite in some context, e.g., in science may be treated as charcoal. But that is not the meaning here. Thus though the dictionary meaning of the word 'lignite' would comprehend its characterisation along with charcoal, still in view of the fact that lignite is only a form of coal, as commercially understood, or even scientifically understood, it is manifest that lignite was not intended to be excluded, Otherwise, the entry would have been worded differently so as to exclude lignite. We may also point out that what we are concerned here is briquette and leco which is now marketed is a kind of lignite goes into the process of making lignite briquette. Therefore, it is only a product or transformation of lignite and, as lignite, it comes within the category of coal, and unless excluded from the said category it has to be classified only as coal.

> "Reference was made to a decision of this Court in Deputy Commissioner (Sales Tax), Pondicherry *v.* Akbar Alikhan and Abdul Ruheem and Co. In that case exemption was granted under item 18 of the Third Schedule from tax on products such as firewood and charcoal. The question was whether leco could be classified as charcoal so as to be eligible for the exemption. At page 169, the learned Judges point out:

> > "In the instant case, it is common knowledge that leco, which is an expression which is of recent origin, has never been understood as anything otherwise than as domestic fuel. The learned Government Pleader concedes that there is no other user of leco otherwise than as

combustible material used as charcoal. Such is the popular and commercial understanding of the expression. The learned Tribunal rightly relied upon the elucidation of the product as given by the Neyveli Lignite Corporation Ltd., in its letter, dated 12th September, 1969. Therein, the Corporation says that leco is produced from lignite by a process of briquetting and carbonisation, and that leco is a product obtained from lignite after a certain process and after certain substances are extracted from it, such as phenyl, tar and linoleum, etc. Thus, it is clear that even the manufacturer of this new product has understood it and treated it as fuel corresponding to charcoal. In the light of the pronouncement of the Supreme Court under similar circumstances and in view of the factual situation that leco in common parlance is fuel, we are unable to appreciate as to how and in what respect the order of the Tribunal is wrong.

xxx xx xx xx xx

We may also point out that the process which goes to the manufacture or making of lignite briquette is the same as employed for the purpose of obtaining coke and that is how the Central Government had understood lignite briquettes as coming within the scope of the term coke used in the Act."

(11) The aforesaid observations again fully support our view taken on the point debated before us.

(12) Before parting we may advert to the judgment of the Madras High Court in *K. Venkataraman and Company* v. *The State of Tamil Nadu and others* (3) to which reference has been made in the written statement, wherein cinder has not been held to be covered by the definition of section 14(ia) of the Central Act. In our view that judgment is not at all helpful in holding that briquettes prepared from coke or coal do not fall within the definition of coal. The meaning of word 'cinder' as given in the dictionary is—a piece of partly burned coal capable of further burning without flame, or in other words it is a partly burned combustible in which fire is extinct,

(3) (1971) 28 S.T.C. 426.

or which no longer gives off flame. Cinder is thus the residue or ash that is left when coal or coke is burnt and is removed of its combustible matter. It may be that cinder is still capable of preserving heat and emitting glow, but it must be basically different in its properties from coke which is but coal minus the volatile matters. It is correct that under the entry coke is given a very wide meaning but cinder which is the remanent of ashes left after complete burning out of coal or coke cannot be said still to retain its properties as a form of coke. But this is not the position with the briquettes. The dust of coal which is used for preparing the briquettes independently has the properties which coke possesses. In order to make it easily usable, the balls which are called briquettes are prepared by mixing clay and molasses with coal dust and are used in the same manner as coal or coke is used. Hence, as earlier observed, the judgment in *K. Venkataraman's case* (supra) is not at all helpful to the State.

(13) As a result of the aforesaid discussion, we hold that the demand for enhanced payment of tax made on the basis of the imposition of tax at the rate of 8 per cent on coal briquettes is illegal as the coal briquettes fall within the definition of section 14(ia) of the Central Act. Consequently, the writ petition is allowed and the assessment order dated 27th June, 1985, copy Annexures P—2, is quashed. As there is no representation on behalf of the respondents, we make no order as to costs.

H. S. B.

Before S. S. Sodhi, J.

STATE OF PUNJAB AND OTHERS,—*Appellants.*

versus

SURINDER KUMAR,—*Respondent.*

Regular Second Appeal No. 3336 *of* 1985

August 20, 1986.

Police Act (V *of* 1861)—*Section* 7—*Police rules providing for Superintendent of Police as being appointing authority for a police constable—Constable however, dismissed by the Additional Superintendent of Police from service on account of misconduct—Order of*