CASE NO.:
Appeal (civil) 812 of 2004

PETITIONER:
Naveen Kohli

RESPONDENT:
Neelu Kohli

DATE OF JUDGMENT: 21/03/2006

BENCH:
B.N. AGRAWAL,A.K. MATHUR & DALVEER BHANDARI

JUDGMENT:
J U D G M E N T

Dalveer Bhandari, J

This appeal is directed against the judgment of the Allahabad High Court dated 07.07.2003 passed by the Division Bench in First Appeal No.323 of 2003.

The appellant and the respondent are husband and wife. The appellant has filed a petition under the Hindu Marriage Act, 1955 for divorce. The Family Court after comprehensively dealing with the matter ordered cancellation of marriage between the parties under Section 13 of the Hindu Marriage Act which was solemnized on 20.11.1975 and directed the appellant to pay Rs.5 lacs as her livelihood allowance. The appellant deposited the amount as directed.

The respondent aggrieved by the said judgment preferred First Appeal before the Division Bench of the Allahabad High Court. After hearing the parties the appeal was allowed and the decree passed by the Family Court, Kanpur City seeking divorce and annulment of the marriage was dismissed.

The appellant aggrieved by the said judgment of the High Court had preferred special leave petition under Article 136 of the Constitution of India. This Court granted special leave to appeal to the appellant.

Brief facts which are necessary to dispose of this appeal are recapitulated.

The appellant, Naveen Kohli got married to Neelu Kohli on 20.11.1975. Three sons were born out of the wedlock of the parties. The appellant constructed three factories with the intention of providing a separate factory for his three sons. He also constructed bungalow no.7/36 A for their residence. The parties got all their three sons admitted and educated in a public school in Nanital. According to the appellant, the respondent is bad tempered and a woman of rude behaviour. After marriage, she started quarrelling and misbehaving with the appellant and his parents and ultimately, the appellant was compelled to leave the parental residence and started to reside in a rented premises from May 1994. According to the version of the appellant, the respondent in collusion with her parents got sufficient

business and property transferred in her name.

The appellant alleged that in the month of May 1994, when he along with the respondent and their children visited Bombay to attend the golden jubilee marriage anniversary of his father-in-law, he noticed that the respondent was indulging in an indecent manner and found her in a compromising position with one Biswas Rout. Immediately thereafter, the appellant started living separately from the respondent since May 1994. The appellant suffered intense physical and mental torture.

According to the appellant, the respondent had withdrawn Rs.9,50,000/- from the Bank Account of the appellant and deposited the same in her account.

The appellant alleged that the respondent got a false first information report registered against him under Sections 420/467/468 and 471 IPC which was registered as Case No.156 of 1995. According to him, the respondent again got a case under Sections 323/324 I.P.C. registered in the police station Panki, Kanpur City and efforts were made to get the appellant arrested.

The appellant filed a Civil Suit No. 1158/1996 against the respondent. It was also reported that the appellant was manhandled at the behest of the respondent and an FIR No.156 of 1996 was filed by the eldest son at the behest of the respondent against the appellant in police station, Panki complaining that the appellant had physically beaten her son, Nitin Kohli.

The respondent in her statement before the Trial Court had mentioned that she had filed an FIR against the appellant under Section 420/468 IPC at the Police Station, Kotwali and the respondent had gone to the extent of filing a caveat in the High Court in respect of the said criminal case so that the appellant may not obtain an order from the High Court against her filing the said FIR.

In the same statement, the respondent had admitted that she had filed an FIR No.100/96 at the Police Station, Kohna under Section 379/323 IPC against the appellant.

The respondent had also filed a complaint against the appellant and his mother under Sections 498A/323/504/506 IPC at Police Station, Kohna.

The respondent in her statement had admitted that she had opposed the bail of the appellant in the criminal case filed at the Police Station, Kotwali on the basis of legal advice. In that very statement she further admitted that after the police had filed final report in both the criminal cases relating to Police Station, Kotwali and Police Station, Kohna, she had filed protest petition in those cases.

This clearly demonstrates the respondent’s deep and intense feeling of revenge. The respondent in her statement had also admitted that she had filed a complaint in the Women Cell, Delhi in September 1997. According to the appellant, the respondent had filed a complaint no.125 of 1998 against the appellant’s lawyer

and friend alleging criminal intimidation which was found to be false.

According to the appellant, the respondent filed a forged complaint under sections 397/398 of the Companies Act before the Company Law Board, New Delhi and in the affidavit of the respondent she stated that the appellant was immoral, alcoholic, and was having affairs with numerous girls since marriage. She also called him a criminal, infidel, forger and her manager to denigrate his position from the proprietor to an employee of her company.

The appellant also mentioned that the respondent filed a false complaint in Case No.1365 0f 1988 using all kinds of abuses against the appellant.

On 8.7.1999, the respondent filed a complaint in the Parliament Street Police Station, New Delhi and made all efforts to ensure the appellant's arrest with the object of sending him to jail. The appellant was called to the police station repeatedly and was interrogated by the police and only after he gave a written reply and the matter on scrutiny was found to be false, the appellant with great difficulty was able to save himself from imprisonment.

On 31.3.1999 the respondent had sent notice for breaking the Nucleus of the HUF, expressly stating that the Family Nucleus had been broken with immediate effect and asking for partition of all the properties and assets of the HUF and stating that her share should be given to her within 15 days. According to the appellant, this act of the respondent clearly broke all relations between the appellant and the respondent on 31.3.1999.

The respondent had filed a complaint against the appellant under Section 24 of the Hindu Marriage Act directing payment of maintenance during the pendency of the case. This was rejected by the Trial Court and she later filed an appeal in the High Court.

The appellant had deposited Rs.5 lacs on Court's directions but that amount was not withdrawn by the respondent. On 22.1.2001 the respondent gave an affidavit before the High Court and got non-bailable warrants issued against the appellant. Consequently, the appellant was harassed by the police and ultimately he got the arrest order stayed by the High Court. The respondent admitted in her statement that she got the advertisement published in the English National Newspaper 'Pioneer'. The advertisement reads as under :

PUBLIC NOTICE
Be it known to all that Mr. Naveen Kohli S/o Mr. Prem Kumar Kohli was working with my Proprietorship firm as Manager. He has abandoned his job since May 1996 and has not resumed duties.

He is no more in the employment of the firm. Any Body dealing with him shall be doing so at his own risk, his

authority to represent the firm has been revoked and none should deliver him orders, cash cheques or drafts payable to the firm.

NEELU KOHLI
Sole Proprietor
M/s NITIN RUBBERS
152-B, Udyog Nagar,
Kanpur

The respondent in her statement before the Court did not deny the contents of the affidavit but merely mentioned that she did not remember whether she called the appellant a criminal, infidel and a forger in the affidavit filed before the Company Law Board.

The respondent did not deny her using choicest abuses against the appellant but merely stated that she did not remember.

The respondent also filed a contempt petition in the Company Law Board against its order of the Company Law Board dated 25.9.2000 in order to try and get the appellant thrown out of the little apartment and urged that the appellant be sent to jail.

Before the Family Court, the respondent stated about solemnization of the marriage with the appellant on 20.11.1975. In her written statement she had denied the fact that she was either a rude or a quarrelsome lady. The respondent also denied that she had mentally, physically and financially harassed and tortured the appellant. She also stated that she never refused cohabitation with the appellant. She also denied indulging in any immoral conduct. She averred in the written statement that the appellant has been immorally living with a lady named 'Shivanagi'.

The appellant and the respondent filed a number of documents in support of their respective cases. On the basis of the pleadings and the documents, the Additional Principal Judge of Family Court framed the following issues :-

"1. Whether the respondent treated the plaintiff with cruelty by registering various criminal cases, getting the news published and initiating civil proceedings?

2. Whether the defendant treated the plaintiff with cruelty by her objectionable behaviour as stated in the plaint?

3. Whether respondent has made false allegation against the plaintiff? If yes, its impact?

Whether in the presence of plaintiff, the defendant displayed her behaviour with Dr. Viswas Rout which comes in the category of immorality as has been stated in para 11 of the plaint? If yes, its impact?

4. Whether the petition is not maintainable

on the basis of preliminary objections 1 to 3 of the written statement?

5. Whether plaintiff has kept Smt. Shivanagi with him as his concubine? If yes, its impact?

6. Whether suit of the plaintiff is barred by the provisions of Section 11, C.P.C.?

7. Whether plaintiff is entitled to get the decree of dissolution of marriage against defendant?

8. Whether plaintiff is entitled to get any other relief?"

Issues number 1 & 2 relate to the term 'Cruelty' and Issue no. 3 is regarding impact of false allegations levelled by the respondent against the appellant. All these three issues were decided in favour of the appellant and against the respondent. The learned Trial Court came to a definite conclusion that the respondent had filed a very large number of cases against the appellant and got him harassed and tortured by the police. It also declared him an employee of the factory of which the respondent is a proprietor by getting an advertisement issued in the newspaper. According to findings of the Trial Court, the appellant was mentally, physically and financially harassed and tortured by the respondent.

The Trial Court framed specific issue whether the appellant had kept Smt. Shivangi with him as his concubine. This allegation has been denied by the appellant. The respondent had failed to produce any witness in respect of the aforesaid allegation and was consequently not able to prove the same. The Trial Court stated that both parties have levelled allegations of character assassination against each other but failed to prove them.

The Trial Court stated that many a times efforts have been made for an amicable settlement, but on the basis of allegations which have been levelled by both the parties against each other, there is no cordiality left between the parties and there is no possibility of their living together. According to the Trial court, there was no possibility to reconnect the chain of marital life between the parties. Hence, the Trial Court found that there is no alternative but to dissolve the marriage between the parties. The Trial Court also stated that the respondent had not filed any application for allowing permanent maintenance and Stridhan but, in the interest of justice, the Trial Court directed the appellant to deposit Rs.5,00,000/- toward permanent maintenance of the respondent. The Trial Court also ordered that a decree of dissolution of marriage shall be effective after depositing the payment of Rs.5,00,000/- by the appellant. Admittedly, the appellant had immediately deposited the said amount.

The respondent, aggrieved by the judgment of the Principal Judge, Family Court, Kanpur City, preferred the

first appeal before the High Court, which was disposed of by a Division Bench of the Allahabad High Court.

According to the High Court, the Trial Court had not properly appreciated and evaluated the evidence on record. According to the High Court, the appellant had been living with one Shivangi. As per the High Court, the fact that on Trial Court's directions the appellant deposited the sum of Rs.5,00,000/- within two days after the judgment which demonstrated that the appellant was financially well off. The Division Bench of the High Court held that actions of the appellant amounted to misconduct, un-condonable for the purpose of Section 13(1)(a) of the Hindu Marriage Act. The appeal was allowed and the Trial Court judgment has been set aside. The suit filed by the appellant seeking a decree of divorce was also dismissed.

The appellant preferred a Special Leave Petition before this Court. We have carefully perused the pleadings and documents on record and heard the learned counsel appearing for the parties at length.

Both the parties have levelled allegations against each other for not maintaining the sanctity of marriage and involvement with another person. According to the respondent, the appellant is separately living with another woman, 'Shivanagi'. According to the appellant, the respondent was seen indulging in an indecent manner and was found in compromising position with one Biswas Rout. According to the findings of the Trial Court both the parties failed to prove the allegations against each other. The High Court has of course reached the conclusion that the appellant was living with one 'Shivanagi' for a considerable number of years. The fact of the matter is that both the parties have been living separately for more than 10 years. Number of cases including criminal complaints have been filed by the respondent against the appellant and every effort has been made to harass and torture him and even to put the appellant behind the bars by the respondent. The appellant has also filed cases against the respondent.

We would like to examine the facts of the case in the light of the settled position of law which has been crystallized by a series of judgments.

In the light of facts and circumstances of this case we would also like to examine the concept of Irretrievable Breakdown of Marriage particularly with reference to recently decided cases.

Impact of Physical and Mental Cruelty in Matrimonial Matters.

The petition for divorce was filed primarily on the ground of cruelty. It may be pertinent to note that, prior to the 1976 amendment in the Hindu Marriage Act, 1955 cruelty was not a ground for claiming divorce under the Hindu Marriage Act. It was only a ground for claiming judicial separation under Section 10 of the Act. By 1976 Amendment, the Cruelty was made ground for divorce. The words which have been incorporated are "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". Therefore, it is not necessary for a party claiming divorce to prove that the cruelty treatment is of such a nature as to cause an apprehension \026 reasonable apprehension that it will be harmful or injurious for him or her to live with the other party.

The Court had an occasion to examine the 1976 amendment in the case of N.G. Dastane v. S. Dastane [(1975) 2 SCC 326: AIR 1975 SC 1534], The Court noted that "....whether the conduct charges as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent".

We deem it appropriate to examine the concept of 'Cruelty' both in English and Indian Law, in order to evaluate whether the appellant's petition based on the ground of cruelty deserves to be allowed or not.

D. Tolstoy in his celebrate book "The Law and Practice of Divorce and Matrimonial Causes" (Sixth Edition, p. 61) defined cruelty in these words:

"Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such a character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger."

The concept of cruelty in matrimonial matters was aptly discussed in the English case in Bertram v. Bertram [(1944) 59, 60] per Scott, L.J. observed:

"Very slight fresh evidence is needed to show a resumption of the cruelty, for cruelty of character is bound to show itself in conduct and behaviour. Day in and day out, night in and night out."

In Cooper vs. Cooper [(1950) WN 200 (HL)], it was observed as under:

"It is true that the more serious the original offence, the less grave need be the subsequent acts to constitute a revival."

Lord Denning, L.J. in Kaslefsky v. Kaslefsky [(1950) 2 All ER 398, 403] observed as under:

"If the door of cruelty were opened too wide, we should soon find ourselves granting divorce for incompatibility of temperament. This is an easy path to tread, especially in undefended cases. The temptation must be resisted lest we slip into a state of affairs where the institution of marriage itself is imperiled."

"In England, a view was at one time taken that the petitioner in a matrimonial petition must establish his case beyond a reasonable doubt but in Blyth v. Blyth [(1966) 1 All ER 524, 536], the House of Lords held by a majority that so far as the grounds of divorce or the bars to divorce like connivance or condonation are concerned, "the case like any civil case, may be proved by a preponderance of probability".

The High Court of Australia in Wright v. Wright [(1948) 77 CLR 191, 210], has also taken the view that "the civil and not the criminal standard of persuasion applies to matrimonial causes, including issues of adultery". The High Court was therefore in error in holding that the petitioner must establish the charge of cruelty "beyond reasonable doubt". The High Court adds that "This must be in accordance with the law of evidence", but we are not clear as to the implications of this observation."

Lord Pearce observed:

"It is impossible to give a comprehensive definition of cruelty, but when reprehensible conduct or departure from the normal standards of conjugal kindness causes injury to health or an apprehension of it, it is, I think, cruelty if a reasonable person, after taking due account of the temperament and all the other particular circumstances would consider that the conduct complained of is such that this spouse should not be called on to endure it.

* * *

I agree with Lord Merriman whose practice in cases of mental cruelty was always to make up his mind first whether there was injury or apprehended injury to health. In the light of that vital fact the court has then to decide whether the sum total of the reprehensible conduct was cruel. That depends on whether the cumulative conduct was sufficiently weighty to say that from a reasonable person's point of view, after a consideration of any excuse which this respondent might have in the circumstances, the conduct is such that this petitioner ought not to be called on to endure it.

* * *

The particular circumstances of the home, the temperaments and emotions of both the parties and their status and their way of life, their past relationship and almost every circumstance that attends the

act or conduct complained of may all be relevant."

Lord Reid in Gollins v. Gollins [1964 AC 644 : (1963) 2 All ER 966]:

"No one has ever attempted to give a comprehensive definition of cruelty and I do not intend to try to do so. Much must depend on the knowledge and intention of the respondent, on the nature of his (or her) conduct, and on the character and physical or mental weaknesses of the spouses, and probably no general statement is equally applicable in all cases except the requirement that the party seeking relief must show actual or probable injury to life, limb or health.

The principles of law which have been crystallized by a series of judgments of this Court are recapitulated as under :-

In the case of Sirajmohmedkhan Janmohamadkhan vs. Harizunnisa Yasinkhan reported in (1981) 4 SCC 250, this Court stated that the concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. With the advancement of our social conceptions, this feature has obtained legislative recognition, that a second marriage is a sufficient ground for separate residence and maintenance. Moreover, to establish legal cruelty, it is not necessary that physical violence should be used. Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors which lead to mental or legal cruelty.

In the case of Sbhoba Rani vs. Madhukar Reddi reported in (1988) 1 SCC 105, this Court had an occasion to examine the concept of cruelty. The word 'cruelty' has not been defined in the Hindu Marriage Act. It has been used in Section 13(1)(i)(a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or 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, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, 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 cases 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. The absence of intention should not make any difference

in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.

The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions and their culture and human values to which they attach importance. Each case has to be decided on its own merits.

The Court went on to observe as under :

"It will be necessary to bear in mind that there has been marked changed in the life around us. In 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 stigmatized 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 judges 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.

Lord Denning said in Sheldon v. Sheldon, [1966] 2 All E.R. 257 (CA) 'the categories of cruelty are not closed'. Each case may be different. We deal with the conduct of human beings who are no 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 (sic) realm of cruelty."

In the case of V. Bhagat vs. D. Bhagat reported in (1994) 1 SCC 337, this Court had occasion to examine the concept of 'mental cruelty'. This Court observed as under:

"16. 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. 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. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be decided in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."

The word 'cruelty' has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case. There may be instances of cruelty by unintentional but inexcusable conduct of any party. The cruel treatment may also result from the cultural conflict between the parties. Mental cruelty can be caused by a party when the other spouse levels an allegation that the petitioner is a mental patient, or that he requires expert psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations, and to crown it all, to allege that he and all the members of his family are a bunch of lunatics. The allegation that members of the petitioner's family are lunatics and that a streak of insanity runs though his entire family is also an act of mental cruelty.

This Court in the case of Savitri Pandey vs. Prem Chandra Pandey reported in (2002) 2 SCC 73, stated that mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be

decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other.

In this case, this Court further stated as under:

"9. Following the decision in Bipinchandra case [AIR 1957 SC 176] this Court again reiterated the legal position in Lachman Utamchand Kirpalani v. Meena [AIR 1964 SC 40] by holding that in its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation."

In this case, this Court further stated that cruelty can be said to be an act committed with the intention to cause suffering to the opposite party. This Court in the case of Gananth Pattnaik vs. State of Orissa reported in (2002) 2 SCC 619 observed as under:

"The concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. "Cruelty" for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case."

This Court, in the case of Parveen Mehta vs. Inderjit Mehta reported in (2002) 5 SCC 706, defined cruelty as under:

"Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subject to mental cruelty due to conduct of the other."

In this case the Court also stated that so many years have elapsed since the spouses parted company. In these circumstances it can be reasonably inferred that the marriage between the parties has broken down irretrievably.

In Chetan Dass vs. Kamla Devi reported in (2001) 4 SCC 250 , this Court observed that the matrimonial matters have to be basically decided on its facts. In the words of the Court:

"Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the

interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of "irretrievably broken marriage" as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case."

In Sandhya Rani vs. Kalyanram Narayanan reported in (1994) Supp. 2 SCC 588, this Court reiterated and took the view that since the parties are living separately for the last more than three years, we have no doubt in our mind that the marriage between the parties has irretrievably broken down. There is no chance whatsoever of their coming together. Therefore, the Court granted the decree of divorce.

In the case of Chandrakala Menon vs. Vipin Menon reported in (1993) 2 SCC 6, the parties had been living separately for so many years. This Court came to the conclusion that there is no scope of settlement between them because, according to the observation of this Court, the marriage has irretrievably broken down and there is no chance of their coming together. This Court granted decree of divorce.

In the case of Kanchan Devi vs. Promod Kumar Mittal reported in (1996) 8 SCC 90, the parties were living separately for more than 10 years and the Court came to the conclusion that the marriage between the parties had to be irretrievably broken down and there was no possibility of reconciliation and therefore the Court directed that the marriage between the parties stands dissolved by a decree of divorce.

In Swati Verma vs. Rajan Verma reported in (2004) 1 SCC 123, a large number of criminal cases had been filed by the petitioner against the respondent. This Court observed that the marriage between the parties had broken down irretrievably with a view to restore good relationship and to put a quietus to all litigations between the parties and not to leave any room for future litigation, so that they may live peacefully hereafter, and on the request of the parties, in exercise of the power vested in this Court under Article 142 of the Constitution of India, the Court allowed the application for divorce by mutual consent filed before it under Section 13-B of the Hindu Marriage Act and declared the marriage dissolved and granted decree of divorce by mutual consent.

In Prakash Chand Sharma vs. Vimlesh [1995 Supp (4) SCC 642], the wife expressed her will to go and live with the husband notwithstanding the presence of the other woman but the husband was not in a position to agree presumably because he has changed his position by remarriage. Be that as it may, a reconciliation was not possible.

In V. Bhagat v. D. Bhagat (supra), this Court while allowing the marriage to dissolve on ground of mental cruelty and in view of the irretrievable breakdown of marriage and the peculiar circumstances of the case, held that the allegations of adultery against the wife were not proved thereby vindicating her honour and character. This Court while exploring the other alternative observed that the divorce petition has been pending for more than 8 years and a good part of the lives of both the parties has been consumed in this litigation and yet, the end is not in sight and that the allegations made against each other in the petition and the counter by the parties will go to show that living together is out of question and rapprochement is not in the realm of possibility. This Court also observed in the concluding part of the judgment that:

"Before parting with this case, we think it necessary to append a clarification. Merely because there are allegations and counter allegations, a decree of divorce cannot follow. Nor is mere delay in disposal of the divorce proceedings by itself a ground. There must be really some extra- ordinary features to warrant grant of divorce on the basis of pleading (and other admitted material) without a full trial. Irretrievable breakdown of the marriage is not a ground by itself. But while scrutinising the evidence on record to determine whether the ground(s) alleged is/are made out and in determining the relief to be granted, the said circumstance can certainly be borne in mind. The unusual step as the one taken by us herein can be resorted to only to clear up an insoluable mess, when the Court finds it in the interest of both parties."

Again in A. Jaychandra v. Aneel Kumar, (2005) 2 SCC 22, a 3 judge Bench of this Court observed that the expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of his spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and

certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

The expression 'cruelty' 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. Cruelty is a course or 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 in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of 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. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or 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 (See Sobha Rani v. Madhukar Reddi (1988) 1 SCC 105).

To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

The Court dealing with the petition for divorce on

the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court.

In Durga P.Tripathy v. Arundhati Tripathy, (2005) 7 SCC 353, this Court further observed that Marriages are made in heaven. Both parties have crossed the point of no return. A workable solution is certainly not possible. Parties cannot at this stage reconcile themselves and live together forgetting their past as a bad dream. We, therefore, have no other option except to allow the appeal and set aside the judgment of the High Court and affirming the order of the Family Court granting decree for divorce.

In Lalitha v. Manickswamy, I (2001) DMC 679 SC that the had cautioned in that case that unusual step of granting the divorce was being taken only to clear up the insoluble mess when the Court finds it in the interests of both the parties.

Irretrievable Breakdown of Marriage

Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. Because of the change of circumstances and for covering a large number of cases where the marriages are virtually dead and unless this concept is pressed into services, the divorce cannot be granted. Ultimately, it is for the Legislature whether to include irretrievable breakdown of marriage as a ground of divorce or not but in our considered opinion the Legislature must consider irretrievable breakdown of marriage as a ground for grant of divorce under the Hindu Marriage Act, 1955.

The 71st Report of the Law Commission of India

briefly dealt with the concept of Irretrievable breakdown of marriage. This Report was submitted to the Government on 7th April, 1978. We deem it appropriate to recapitulate the recommendation extensively. In this Report, it is mentioned that during last 20 years or so, and now it would around 50 years, a very important question has engaged the attention of lawyers, social scientists and men of affairs, namely, should the grant of divorce be based on the fault of the party, or should it be based on the breakdown of the marriage? The former is known as the matrimonial offence theory or fault theory. The latter has come to be known as the breakdown theory.

In the Report, it is mentioned that the germ of the breakdown theory, so far as Commonwealth countries are concerned, may be found in the legislative and judicial developments during a much earlier period. The (New Zealand) Divorce and Matrimonial Causes Amendment Act, 1920, included for the first time the provision that a separation agreement for three years or more was a ground for making a petition to the court for divorce and the court was given a discretion (without guidelines) whether to grant the divorce or not. The discretion conferred by this statute was exercised in a case in New Zealand reported in 1921. Salmond J., in a passage which has now become classic, enunciated the breakdown principle in these word:

"The Legislature must, I think, be taken to have intended that separation for three years is to be accepted by this court, as prima facie a good ground for divorce. When the matrimonial relation has for that period ceased to exist de facto, it should, unless there are special reasons to the contrary, cease to exist de jure also. In general, it is not in the interests of the parties or in the interest of the public that a man and woman should remain bound together as husband and wife in law when for a lengthy period they have ceased to be such in fact. In the case of such a separation the essential purposes of marriage have been frustrated, and its further continuance is in general not merely useless but mischievous."

In the Report it is mentioned that restricting the ground of divorce to a particular offence or matrimonial disability, causes injustice in those cases where the situation is such that although none of the parties is at fault, or the fault is of such a nature that the parties to the marriage do not want to divulge it, yet there has arisen a situation in which the marriage cannot be worked. The marriage has all the external appearances of marriage, but none of the reality. As is often put pithily, the marriage is merely a shell out of which the substance is gone. In such circumstances, it is stated, there is hardly any utility in maintaining the marriage as a fagade, when the emotional and other bounds which

are of the essence of marriage have disappeared.

It is also mentioned in the Report that in case the marriage has ceased to exist in substance and in reality, there is no reason for denying divorce, then the parties alone can decide whether their mutual relationship provides the fulfillment which they seek. Divorce should be seen as a solution and an escape route out of a difficult situation. Such divorce is unconcerned with the wrongs of the past, but is concerned with bringing the parties and the children to terms with the new situation and developments by working out the most satisfactory basis upon which they may regulate their relationship in the changed circumstances.

On May 22, 1969, the General Assembly of the Church of Scotland accepted the Report of their Moral and Social Welfare Board, which suggested the substitution of breakdown in place of matrimonial offences. It would be of interest to quote what they said in their basis proposals:

"Matrimonial offences are often the outcome rather than the cause of the deteriorating marriage. An accusatorial principle of divorce tends to encourage matrimonial offences, increase bitterness and widen the rift that is already there. Separation for a continuous period of at least two years consequent upon a decision of at least one of the parties not to live with the other should act as the sole evidence of marriage breakdown."

Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

A law of divorce based mainly on fault is inadequate to deal with a broken marriage. Under the fault theory, guilt has to be proved; divorce courts are presented concrete instances of human behaviour as bring the institution of marriage into disrepute.

We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases do not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist.

Some jurists have also expressed their apprehension for introduction of irretrievable breakdown of marriage as a ground for grant of the decree of divorce. In their opinion, such an amendment in the Act would put human ingenuity at a premium and throw wide open the doors to litigation, and will create more problems then are sought to be solved.

The other majority view, which is shared by most jurists, according to the Law Commission Report, is that human life has a short span and situations causing misery cannot be allowed to continue indefinitely. A halt has to be called at some stage. Law cannot turn a blind eye to such situations, nor can it decline to give adequate response to the necessities arising therefrom.

When we carefully evaluate the judgment of the High Court and scrutinize its findings in the background of the facts and circumstances of this case, then it becomes obvious that the approach adopted by the High Court in deciding this matter is far from satisfactory.

The High Court ought to have considered the repercussions, consequences, impact and ramifications of all the criminal and other proceedings initiated by the parties against each other in proper perspective. For illustration, the High Court has mentioned that so far as the publication of the news item is concerned, the status of husband in a registered company was only that of an employee and if any news item is published, in such a situation, it could not, by any stretch of imagination be taken to have lowered the prestige of the husband. In the next para 69 of the judgment that in one of the news item what has been indicated was that in the company, Nikhil Rubber (P) Ltd., the appellant was only a Director along with Mrs. Neelu Kohli whom held 94.5% share of Rs.100/- each in the company. The news item further indicated that Naveen Kohli was acting against the spirit of the Article of the Association of Nikhil Rubber (P) Ltd., had caused immense loss of business and goodwill. He has stealthily removed produce of the company, besides diverted orders of foreign buyers to his proprietorship firm M/s Navneet Elastomers. He had opened bank account with forged signatures of Mrs. Neelu Kohli and fabricated resolution of the Board of Directors of the company. Statutory authority-Companies Act had refused to register documents filed by Mr. Naveen Kolhi and had issued show cause notice. All business associates were cautioned to avoid dealing with him alone. Neither the company nor Mrs. Neelu Kohli shall be liable for the acts of Mr. Naveen Kohli. Despite the aforementioned finding that the news item was intended to caution business associates to avoid dealing with the

appellant then to come to this finding in the next para that it will by no stretch of imagination result in mental cruelty is wholly untenable.

The findings of the High Court that the respondent wife's cautioning the entire world not to deal with the appellant (her husband) would not lead to mental cruelty is also wholly unsustainable.

The High Court ought to have examined the facts of the case and its impact. In the instant case, the following cases were filed by the respondent against the appellant.

1. The respondent filed FIR No. 100/96 at Police Station, Kohna under Sections 379/323 IPC
2. The respondent got a case registered under Sections 323/324 registered in the police station Panki, Kanpur City.
3. At the behest of the respondent FIR No.156 of 1996 was also filed in the police station, Panki.
4. The respondent filed FIR under Section 420/468 IPC at the Police Station, Kotwali.
5. The respondent got a case registered under Section under Sections 420/467/468 and 471 IPC.
6. The respondent filed a complaint against the appellant under Sections 498A/323/504/506 IPC at Police Station, Kohna.
7. The respondent had even gone to the extent of opposing the bail application of the appellant in criminal case filed at the police station, Kotwali
8. When police filed final report in two criminal cases at police station, Kotwali and police station, Kohna, the respondent filed protest petition in these cases.
9. The respondent filed complaint no.125 of 1998 in the Women Cell, Delhi in September 1997 against the appellant's lawyer and friend alleging criminal intimidation.
10. The respondent filed a complaint under sections 397/398 before the Company Law Board, New Delhi.
11. The respondent filed a complaint in Case No.1365 0f 1988 against the appellant.
12. Again on 8.7.1999, the respondent filed a complaint in the Parliament Street Police Station, New Delhi and made all efforts to get the appellant arrested.
13. On 31.3.1999, the respondent have sent a notice for breaking the Nucleus of the HUF.
14. The respondent filed a complaint against the appellant under Section 24 of the Hindu Marriage Act.
15. The respondent had withdrawn Rs.9,50,000/- from the bank account of the appellant in a clandestine manner.
16. On 22.1.01 the respondent gave affidavit before the High Court and got non-bailable warrants issued against the appellant.
17. The respondent got an advertisement issued in a national newspaper that the appellant was only her employee. She got another news item issued cautioning the business associates to avoid dealing with the appellant.

The findings of the High Court that these proceedings could not be taken to be such which may warrant annulment of marriage is wholly unsustainable.

Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again.

The High Court ought to have appreciated that there is no acceptable way in which the parties can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist.

Undoubtedly, it is the obligation of the Court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. In the instant case, there has been total disappearance of emotional substratum in the marriage. The course which has been adopted by the High Court would encourage continuous bickering, perpetual bitterness and may lead to immorality.

In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.

The High Court ought to have visualized that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the Trial Court. In our opinion,

wisdom lies in accepting the pragmatic reality of life and take a decision which would ultimately be conducive in the interest of both the parties.

Consequently, we set aside the impugned judgment of the High Court and direct that the marriage between the parties should be dissolved according to the provisions of the Hindu Marriage Act, 1955. In the extra-ordinary facts and circumstances of the case, to resolve the problem in the interest of all concerned, while dissolving the marriage between the parties, we direct the appellant to pay Rs.25,00,000/- (Rupees Twenty five lacs) to the respondent towards permanent maintenance to be paid within eight weeks. This amount would include Rs.5,00,000/- (Rupees five lacs with interest) deposited by the appellant on the direction of the Trial Court. The respondent would be at liberty to withdraw this amount with interest. Therefore, now the appellant would pay only Rs.20,00,000/- (Rupees Twenty lacs) to the respondent within the stipulated period. In case the appellant fails to pay the amount as indicated above within the stipulated period, the direction given by us would be of no avail and the appeal shall stand dismissed. In awarding permanent maintenance we have taken into consideration the financial standing of the appellant.

Before we part with this case, on the consideration of the totality of facts, this Court would like to recommend the Union of India to seriously consider bringing an amendment in the Hindu Marriage Act, 1955 to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce. A copy of this judgment be sent to the Secretary, Ministry of Law & Justice, Department of Legal Affairs, Government of India for taking appropriate steps.

The appeal is accordingly disposed of. In the facts and circumstances of the case we direct the parties to bear their own costs.