

**Manisha Vs. Pramod**

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**Court :** Mumbai

**Decided On :** Sep-27-1989

**Reported in :** I(1990)DMC540

**Judge :** A.A. Cazi, J.

**Acts :** [Hindu Marriage Act, 1955](#) - Sections 13(1)

**Appeal No. :** Second Appeal No. 261 of 1988

**Appellant :** Manisha

**Respondent :** Pramod

**Advocate for Def. :** S.P. Dharmadhikari, Adv.

**Advocate for Pet/Ap. :** S.C. Mehadia and R.S. Agarwal

**Disposition :** Second appeal allowed

**Judgement :**

**A.A. Cazi, J.**

1. This is a Second Appeal filed by the wife who was respondent in the original petition and who had succeeded in that petition but who failed in appeal which the husband had filed against the dismissal of his petition.

2. The parties were married on 16th December 1981 and have been living separate since 21st June 1982. On 10th November 1983 the husband filed the divorce petition being H.M.P. No. 7/83. Originally he prayed for a decree of divorce only on one ground, viz. that the wife had been incurably of an unsound mind or had been suffering continuously or intermittently with mental disorder of such a kind and to such an extent that the petitioner could not reasonably be expected to live with the respondent. (Section 13(1)(iii)). It may be mentioned that even earlier, the husband had filed a petition for divorce, but that was also on the single ground under Section 13(1)(iii). At that time, the petition for divorce was premature, and therefore, was not maintainable. In about February 1986, the husband got his petition amended to add the ground of cruelty. The trial Court held both the grounds as not proved and dismissed the husband's petition for divorce. Against that the husband preferred appeal which was numbered as Civil Appeal No. 71/87 in the Court of the District Judge, Nagpur. The appeal was disposed of by the learned Joint District Judge, Nagpur by judgment and order dated 3-8-1988 by which he allowed the appeal, set aside the judgment and decree of the trial Court and granted divorce. It is against the order dated 3rd August 1988 of the learned Joint District Judge, Nagpur that the present Second Appeal has been filed by the wife.

3. It may be stated at the outset that the ground under Section 13(1)(iii) was not pressed by the husband in the courts below. Therefore, the ground on which decree for divorce was granted was the sole ground of cruelty.

4. I find proper reasons given by the trial Court as to why he has held that the husband has failed to prove the ground of cruelty. It was not a case of the husband that there was physical cruelty inflicted upon him by the wife. According to him it was a case of mental cruelty. He had pointed out in his petition certain aspects of the behaviour of the wife for the purpose of contending that it was a psychological case and that she was not in proper mental condition. It was the same behaviour that was relied upon by him, when he added as the ground of mental cruelty. No further instances were pleaded by him in the petition by way of amendment. The learned Third Joint Civil Judge, Senior Division, Nagpur (trial Court) has discussed the ground of mental cruelty in paragraph 9 onwards of his

judgment. He has pointed out there that for about 3-1/2 years after litigation was commenced, the husband never complained of mental cruelty and brought it by way of amendment only after 3-1/2 years. He has, therefore, observed in para 10 of his judgment that this indicates that the theory of cruelty was an afterthought. Many things have been stated in the evidence which were never stated or referred to in the petition itself. This has also been discussed by the learned Third Joint Civil Judge in his judgment. He finds that the cruelty was not proved at all.

5. It is seen from the judgment of the learned Joint District Judge that he has relied solely upon the letter written by the wife's father to the husband. He finds that the letter contains a number of accusations made against the husband and as these accusations were not proved by the wife, he holds that this was cruelty on the part of the wife. Clearly, the learned Joint District Judge has committed the error in law in relying upon the letter not written by the respondent and for the purpose only of considering the allegations made therein and he has held it against the wife for not having proved these allegations. From this it cannot be said that the petitioner has proved cruelty by the respondent.

6. Under these circumstances the Second Appeal is allowed. The judgment and decree dated 3rd August 1988 passed by the learned Joint District Judge, Nagpur in Civil Appeal No. 71/87 is set aside and the judgment and order dated 30-10-1986 of the learned IIIrd Joint Civil Judge, Senior Division, Nagpur in H.M.P. No. 7/83 is restored. The Respondent shall pay the costs of this appeal to the appellant-wife.

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