

Mr. P. Vs. Mrs. P. and Mr. R.

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Court : Mumbai

Decided On : Nov-27-1987

Reported in : (1987)89BOMLR588

Judge : R.L. Aggarwal and S.N. Khatri, JJ.

Appeal No. : L.P. Appeal Nos. 14 and 15 of 1983

Appellant : Mr. P.

Respondent : Mrs. P. and Mr. R.

Disposition : Appeal dismissed

Judgement :

S.N. Khatri, J.

1. This judgment disposes of L.P.A. Nos. 14 and 15 of 1983. Mr. P is the common appellant. Mrs. P who is the first respondent in both appeals is his wife. The husband had filed two petitions against her under the Hindu Marriage Act for dissolution of their marriage on the ground of adultery and cruelty. The first one was filed in January 1973, with one Mr. R as the co-respondent. The second petition was filed in July 1976. Here are two co-respondents, Mr. J., Mr. M. The two petitions were tried separately by two Judges of the Bombay City Civil Court, Shri R.V. Joshi and the late Shri Makhijani, Both came to be dismissed. The

learned single Judge (Mody, J.) has dismissed the two appeals preferred by the petitioner. Now he has preferred these two Letters Patent Appeals before this Court.

2. It is not in dispute that the marriage of the appellant and the first respondent (hereafter generally referred to as 'the respondent') was solemnised according to Hindu rites on February 14, 1943 at Bhavnagar. They are at present about 73 years and 65 years old respectively. Ever since the marriage, they have been residing at Bombay. They have three sons and one daughter. The eldest issue K - a son - is now about 44 years old. The youngest son Y is about 30. The appellant is a double Graduate in Arts and Law and a Sales Tax practitioner by profession. There were no problems till 1964 or so. The appellant's case is that at about that time he noticed coldness and indifference developing in respondent's treatment to him. This conduct aroused his suspicion about her fidelity. In 1969 he arranged a watch on her movements with the help of certain private detectives. Although evidence was adduced in the first petition on as many as five incidents, ultimately the trial Court found that the appellant had succeeded in establishing just one incident of November 30, 1971 (that too, partly). In the other petition the trial Court held that the appellant had met co-respondent J. on four occasions and co-respondent M. on two occasions. It was, however, held in both matters that the facts proved were not sufficient to establish the plea of adultery. So far as the question of cruelty was concerned, the trial Judges held that according to the law then obtaining, it was necessary for the appellant to establish that the conduct of the wife was of such a character as to cause danger to his life, limb or health - - bodily or mental - or to give rise to a reasonable apprehension of such a danger. As this particular ingredient remained unproved, the trial Judges negatived the plea of cruelty as well. Both petitions came to be dismissed and the learned single Judge (Mody, J.) confirmed these decisions in the two First Appeals Judgment of Mody J. is reported in : AIR1983 Bom8 preferred by the appellant.

3. At this stage, it will be of advantage to take note of certain legislative changes brought about in the Hindu Marriage Act by Amending Act of 1976. The trial Court delivered its judgments in the first petition in February 1979 and in the second in 1980. During the pendency of the first petition itself, the Amending Act came into

force with retrospective effect. Before the amendment, cruelty was recognised only as a ground for judicial separation under Section 10(1)(b) and not as a ground for dissolution of marriage. There was a waiting period of 2 years after the decree of judicial separation was passed. Only thereafter could the aggrieved party come to the Court for getting a divorce. The Amending Act recognised cruelty as a ground for divorce.

4. After the advent of the Amending Act, the appellant took out a Chamber Summons in the first petition for amendment of plaint. He sought to rely on the additional ground of 'cruelty' for dissolution of marriage. He also sought to rely on certain activities indulged in by the wife subsequent to the filing of the first petition. The amendment was granted partly and the appellant was allowed to plead facts only prior in time to the filing of the first petition. He was asked to file a separate petition, based on subsequent facts. This order was upheld by the High Court in revision. It was in these circumstances that he filed the second petition in July 1976.

5. Now back to the relevant provisions of law. The provisions in Section 10(1)(b) before the advent of the Amending Act and Section 13(1)(i-a) after its advent, are as follows:

10. (1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition to the District Court praying for a decree for judicial separation on the ground that the other party-

(a) X X X X

(b) has treated the petitioner with such cruelty 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.

13.(1) Any marriage solemnized, whether before or after the commencement of this

Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

(i) ...

(i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty;'

The provisions of the newly added Section 13(1)(i-a) along with the implications of the changed phraseology of 'cruelty', came up for interpretation at the hands of a Full Bench of this Court in March 1984 in Keshavrao Londhe v. Nisha Londhe : AIR1984 Bom413 After reviewing the relevant decisions, the Full Bench held that after the advent of the Amending Act, it was not necessary for the petitioner to prove the character of cruelty by the higher standard, namely, that the conduct of the erring spouse constituted danger to the life or limb or health of the petitioner or at least caused reasonable apprehension of such danger. It was held enough to prove that the cruelty is of such type that the petitioner cannot reasonably be expected to live with the respondent or living together of the spouses had become incompatible

Now relying on the test of cruelty as formulated in the aforesaid decision, Shri Shah for the appellant submits that the conduct of the respondent as held proved by the learned single Judge, duly establishes this ground. He presses for divorce on this ground. The concurrent finding of the trial Judges and of the learned single Judge that the case of adultery was not proved, is not challenged by him before us. So also not the adverse findings relating to the unproved items. As against this, Shri Dalvi for the wife challenges the findings relating to the proved items. In the alternative, he contends that even on the basis of these limited items, it cannot be held that the living together of the spouses had become incompatible, according to the Full Bench test.

6. We will, therefore, first examine the correctness of the findings of fact reached by the learned single Judge. There was some debate on the extent of the powers of this Court in a Letters Patent Appeal to examine the correctness of these findings. This question need not detain us for long. The Supreme Court has ruled in Smt. Asha Devi v. Dukhi Sao : [1975]1SCR611 that the power of a Division Bench hearing a Letters Patent Appeal from the judgment of a single Judge in First Appeal is not limited only to the questions of law under Section 100 C.P.C.,

but that it has the same power which the single Judge himself had as a first Appellate Court in respect of both questions of fact and of law. The constraints imposed by Section 100 C.P.C. in the case of a Second Appeal, are not applicable to a Division Bench hearing a Letters Patent Appeal. This is because, a Second Appeal is from the decision of a Subordinate Court, while a single Judge is not subordinate to the High Court. It follows we have all the powers of a single Judge to reach our own findings on questions of fact.

7. We start with the incident of November 30, 1971, This is the only item held by the learned trial Judge (Shri R.V. Joshi) to have been partly proved in the first petition. It was the appellant's case that with the help of the Investigation and Detective Services (India) Private Ltd., he had arranged a watch on the respondent's movements. On November 29, 1971 the appellant left home on the pretext of going to Pune and came to stay in Modern Hindu Hotel situated in Fort. Three operatives of the detective agency - D'Souza, Chitnis and Singbal - shadowed the respondent from her house upto New York Hotel situated at Huges Road. The appellant also accompanied them. The respondent is said to have clandestinely joined R in a family cubicle in the aforesaid restaurant. That was at about 2 p.m. It is alleged that thereafter the operatives managed to effect a sudden entry into the cubicle. They found the respondent with her blouse and brassiers unhooked. Her breasts were bare and R was fondling them in his hands. Confronted by the appellant, R begged to be pardoned and handed over his two visiting cards to the appellant, Apart from himself, the appellant has examined Chitnis and Singbal to prove the aforesaid allegation. The third detective operative D'Souza has died before the trial.

8. In rebuttal, the respondent and R have entered the witness box. They deny the allegations against them in toto. Regarding his visiting cards R has explained that his mother had expired on November 28, 1970 and her first death anniversary rites were performed for 3 or 4 days from November 29, 1971 onwards. According to him, during this period the atmosphere at his Khar residence was gloomy. Therefore, he used to invite his customers at his aunt's residence. R used to note down her address on his visiting cards in his own hand and hand over such cards to them. The suggestion is that the appellant might have managed to secure two

of such cards from his clients.

9. This explanation has not found favour with the learned trial Judge. He has believed the evidence to the extent that the respondent and R were found together by the appellant and his detectives in the family cubicle. He however did not believe the further part of the story that at that time the respondent's bosom was uncovered or that R was fondling the same. The learned trial Judge found that the truncated fact proved by the appellant, namely that the respondent and R were found together in a family cubicle, did not establish even cruelty, much less adultery. The learned single Judge is clear that the appellant had failed to prove that R had indulged in any licentious behaviour with the respondent. He has however chosen not to record any firm finding even on the fact, whether they had at all met each other in the restaurant. In the opinion of the learned single Judge, this limited fact, even if assumed to have been proved, is not enough to sustain a finding of cruelty. In view of the learned single Judge's omission to record any firm finding, we have scrutinised the material evidence with special caution. Having done so and heard the learned Counsel of both sides, we find that the learned trial Judge was wrong in holding that the respondent and R had at all met in the restaurant.

10. The learned trial Judge has completely disbelieved Singbal and Chitnis on other incidents. He has recorded detailed reasons in this behalf in paragraphs 12 to 14 of his judgment. So far as Singbal is concerned, on his own admission, he was working as an accountant in the Detective Agency. The only occasion when he claims to have operated as a detective, was on November 30, 1971. There is no explanation whatever why this man from the Accounts Branch was assigned the active role of a Detective only on that fateful day. The learned Judge also records that Singbal was 'very uncomfortable in the witness box'. So far as Chitnis is concerned, the learned Judge felt that his evidence required to be treated with 'maximum caution'. In the words of the learned Judge, the witness 'gave his evidence in a very casual and irresponsible manner.' The learned Judge has referred to quite a few other material deficiencies and discrepancies in the evidence of these two witnesses. He has also taken note of the fact - and in our view, rightly - that after all the detective agency were hired by the appellant for

reward and as such they were favourably biased in his favour. Indeed the learned Judge would have had no hesitation in discarding their evidence in toto, only if R had not hazarded to take an unsuccessful plea of alibi. Here it may be recalled that R had claimed that throughout the day on November 30, 1971 till 6 p.m. or so he had been busy at his residence, performing his mother's death anniversary rites.

11. We cannot forget that after all the detective agency were employed by the appellant for substantial reward and they had drawn a blank on a number of previous occasions. Detectives are understandably interested in the success of their investigation. Their clients expect positive results from them. The Court must view their evidence with utmost caution. Please see *A.J. Tulloch v. M.P. Tulloch* : AIR1975 Cal243 and *Sopwith v. Sopwith* (1859) 164 E.R. 1509 . We are clear that after having held that the testimony of the two witnesses was not worthy of credence, the learned trial Judge went wrong in lending credence to them to the limited extent that the respondent and jR had actually met in suspicious circumstances in the family cubicle of the New York Hotel. Indeed when the learned Judge had no hesitation in rejecting their assertion that they had seen the bare breasts of the respondent, being fondled by R, he should also have appreciated that such unscrupulous persons could also lie on other lesser facts. There are other reasons also which demonstrate the gross improbability of the appellant's charge.

12. We have in mind the unnatural conduct of the appellant immediately following the alleged incident. He admits in para 65 of his cross-examination that when he rushed into the cubicle, there had been no scuffle whatever between him and R. He maintained an ideally philosophical stance. So much so, that even the attention of the waiters in the restaurant was not attracted to the incident. The appellant on his own showing did not think it necessary to report the matter to the police. From the New York Hotel he straightway proceeded to the Modern Hindu Hotel where he was staying temporarily. From that Hotel he retired home on the morning of December 2, 1971. He further admits that even after reaching home, he did not remonstrate with the respondent. He stoically ate his meal. Not a word about the incident with the respondent or any other member of the family. Could this have

been the natural conduct of a jealous and suspecting husband that the appellant is, if he had really caught his wife with R taking indecent liberties with her?

13. The topography of the family cubicle as given by the appellant is also revealing. In paragraph 121 of his cross-examination, he states that the cubicle had no fulledged door. It had a spring door with two panels. Each panel was about 3/-4 feet high. There was open space of about one foot between the bottom of the panel and the ground and another open space of about 1/ feet between the panel top and the roof. It appears from his evidence that this cubicle was about 5 feet X 7 feet in area. Singbal P.W. 4 states that inside it were laid a table and 5-6 chairs. Yet the appellant has the cheek to say that the respondent could have indulged in sexual intercourse with R in that tight spot, open to easy public gaze. We cannot persuade ourselves for a moment to hold that there is any truth in his claim. We do not think R was so reckless or unimaginative as to select such a place for having a clandestine meeting with his beloved.

14. Here incidentally we may refer to the appellant's family background furnished by himself in his cross-examination. The learned single Judge has adversely commented against the learned trial Judge for allowing this evidence to go on record. We think that this evidence is relevant and certainly useful in understanding the appellant's jealous and suspecting nature. He admits that his father had all along had a deranged mind till his death, ever since the appellant was a kid. He further admits that three of his first cousins also do not have normal matrimonial life, in that they have divorced their wives. Indeed two of them have done this twice each. We are mentioning these facts not in order to show that the appellant has some unusual mental streaks. Our endeavour is to point out that the environment in which he has been brought up was definitely uncongenial for any one to develop healthy approach and attitudes to marital life. The learned trial Judge's anguish about the appellant's jealous and hypersensitive nature, is reflected in his very opening words of the judgment:

If proceedings were to be docketed with a caption instead of number, the most fitting caption for these proceedings would have been, 'Much Ado About Nothing'. Unfortunately, instead of being an amusing light hearted comedy of that name, the

present litigation is a sickening wrong-headed tragedy and it leaves one with a profound sense of waste of energy, time and money, particularly money of the parties as well as of the public.

On going through the record, we must say that these observations are entirely justified.

15. The only reason that appears to have tempted the learned trial Judge to partially accept the appellant's case was the failure of R to satisfy him that he was held up at his residence on November 30, 1971 all through the day, for performance of the death anniversary rites. The learned Judge is perhaps a serious student of Astrology. According to him, if R's mother had died on November 28 of 1970, it was impossible that as per Hindu Calender the anniversary would fall in the span of 4-5 days nearabout November 30, 1971. Even if this assumption is right, that would not enhance the credibility of the two Detectives, who have been found to be utterly unreliable. This apart, even the learned Judge's assumption does not appear to be correct. If we are right, in the North - particularly amongst Punjabis and Sindhis - it is the solar calendar that is in vogue and not the Lunar. R is a Sindhi. The Hindu Calendar referred to by the learned Judge is the lunar calendar, that is in vogue in Maharashtra. According to that calendar, there is a difference of a about 10 days every year. This difference is restricted to a day or so only, in the case of solar calendar. It is quite probable that if R's family follows the solar calendar his mother's first death anniversary would have really fallen around November 29, 1971 as claimed by him. We do not digress further.

16. The production of R's visiting cards by the appellant has also been duly explained by the former. We have already referred to his explanation in paragraph 10 supra. It is difficult to see the expediency or propriety of R's voluntarily handing over his visiting cards to the appellant - cards which bore his aunt's Khar address in his own hand. We do not find this explanation improbable. R is a businessman, residing at Khar. The appellant and the respondent resided together at S.V.P. Road, not far away. For an imaginative and energetic person like the appellant, it would not at all be difficult to lay hands on R's cards, through some of his clients.

So much cannot be made of production of the cards by the appellant.

17. A very high degree of probability is required in matrimonial matters to accept evidence on charges like adultery and cruelty. We are constrained to say that the trial Judge went wrong in accepting the worthless evidence of the appellant and his two witnesses even on the limited aspect of the alleged meeting between the respondent and R. We find that the incident of November 30, 1977 remains totally unproved. The first petition thus affords no ground whatever to the appellant.

18. Now we go to the second petition. At the outset we feel compelled to refer to the grossly unsatisfactory state of pleadings of the appellant. In this context the learned single Judge observes in para 4 of his judgment:

The allegations relied on by the petitioner in support of his case are to be gathered from the report of the detective agency rather than the petition which is delightfully and unjustifiably vague, resulting in vague denials in the written statement.

It may be recalled that J and M are the co-respondents in this petition. As regards, the appellant has made the following averments in his petition:

Para 5. The petitioner says that after January 12, 1976 the Respondent, during the absence of the petitioner from the home during day time moved with Co-respondent No. 1 and visited various restaurants and cinemas. The petitioner further says that during this period the Respondent moved out with the Co-respondent No. 1 in taxi and went not only to Cinema Theatres, but also to family rooms of various hotels where physical liberties were taken by the Respondent and Co-respondent No. 1 with one another. (The petitioner says that during this period the Respondent and Co-respondent No. 1 indulged in immodest acts and sex intercourse with one another.

And that is all what the appellant has stated against J in his petition.

As regards M, the appellant avers the following:

Para 6. The petitioner says that, the Respondent also moved out on January 17, 1976 with the Co-Respondent No. 2 in a car to various places and had sexual

intercourse with one another in a room in a hotel called Moon Light Hotel situate at Dadabhai Nowroji Road in the evening.

Again we repeat that these are all the averments the appellant has made in his petition as against this M.

19. During the pendency of the first petition, the appellant claims to have engaged another detective agency, 'Globe Detective Agency'. One Surandarjit Tucker was the operative in charge. This Agency kept surveillance on the respondent in January 1976 on as many as 26 days from 2nd to 29th. On the appellant's own showing nothing material transpired on dates other than 13th to 17th, 24th and 29th. He claims that the results of the watch were kept in writing. The Agency submitted their report to him on March 2, 1976. They also claim to have taken a number of photographs of the respondent moving with the correspondents. Admittedly the petition was filed by him more than 4 months later to be precise, on July 21, 1976. The appellant had filed a list of documents along with the petition. Thereafter he filed his first affidavit of documents - as many as 18 - on August 21, 1976, and a second one more than a year later, on September 16, 1977. Shri Dalvi has drawn our attention to the fact that there is absolutely no mention of the Detective Agency's report or their photographs in the list accompanying the petition or in the first affidavit. These documents were revealed for the first time in the affidavit of September 1977. As if all this was not enough, it further transpires from the appellant's admissions in his cross-examination that inspection was not given to the respondent or co-respondents of these documents at least till November 21, 1979 the date on which he gave the aforesaid admission. Paras 62 to 66 of his deposition are in point. He has admitted that the report as well as the photographs were available with him at the time the petition was drafted. Yet they were not referred to in the list, as advised by his advocate. Next the appellant admits that inspection was declined to the respondent and co-respondents, although he was alerted by his counsel that they were pressing for it. The appellant left the matter to be dealt with by his advocate as he considered it 'needful and proper'. Here is an appellant who is a Law Graduate and an active Sales Tax Practitioner. It is plain that omission to make material averments in the petition (although all data in the form of the detective's report and photographs

were available) and to disclose these material documents till September 1977, were wilful and deliberate. The object obviously was to spring surprise on the respondent and the co-respondents. Deliberate omission to give inspection of these documents also sprang from the same object. In absence of any pleadings, the trial Court fell into a serious error of admitting on record voluminous evidence. This has obviously resulted in palpable miscarriage of justice not only to the wife, but also the two alleged adulterers. The full impact of the mischief practised by the appellant does not appear to have fully gone home to the trial Judge. To say the least, the trial has been grossly unfair to the respondent, J and M. Even the learned single Judge, after initially observing that the petition averments were 'delightfully and unjustifiably vague", proceeded to construct for the appellant, his case on the basis of 'the petition, the report and the evidence'. Perhaps he took to this course to make his judgment fool-proof against any possible remand.

20. To come to the point, on the state of the pleadings as obtaining in para 5 of the petition, the only course open to the trial Judge was to disallow the entire evidence that was admitted as against J. As against M. only the evidence relating to the incident of January 17, 1976 ought to have been allowed. The trial Court has failed miserably in its primary duty to intervene effectively, in order to keep the trial on the right tracks. In this view of the matter, for all practical purposes the fate of the second petition also stands sealed against the appellant. However, inasmuch as the learned single Judge has recorded some findings of fact adverse to the respondent, and the two co-respondents, we would like to examine them on merits also, ignoring the flaws in the pleadings. The learned single Judge has summarised these findings in para 29 of his judgment as follows. He refers to the wife, J. and M. as 1st, 2nd and 3rd respondent respectively:

(a) that the respondents Nos. 1 and 2 were meeting frequently in a dubious manner and in suspicious circumstances and it is clear that the purpose of meeting was not innocent or what is alleged in the instant petition.

(b) that they were seen by the detective in the Shabnam and Paramount Restaurants and the story that they had met at Saree Centres or hospital is not worthy of any credence.

(c) that they were travelling together in taxis and were seen travelling in a taxi at least once. Assertion by both of them to the contrary cannot be believed.

(d) that the visit of the 1st respondent at least to the office of the 3rd respondent on January 17, 1976, is proved and that, visit was for some unexplained purpose which is bound to arouse anybody's suspicion as to the purpose of the visit.

(e) that the 1st respondent carried on with her flirting in spite of two complaints in writing by the petitioner, to which there is no reply nor any explanation as to why replies were not given.

(f) It is clear that the 1st respondent did not care for the feelings of the petitioner and had at no time made any attempt to allay such suspicions; on the contrary, she continued to act in a manner which would fan the fire of suspicion.

21. As done by the trial Court and the learned single Judge, we will first take up the incident of January 17, 1976 involving M.M. is an Income Tax Practitioner. The case as emerging from the Detective Agency report is stated by the learned single Judge in para 8 of his judgment. It is this. On January 17, 1976 at 5.42 p.m. the respondent was seen by Tucker entering the office of M. Here we note that this office visit is admitted by the respondent and M. Their explanation will be dealt with later. The main allegation is that the two came out of the building 10 minutes later and entered the Moon Light Hotel. They went to the third floor in the hotel, and stayed in a family room inside the hotel for about an hour. As singles are not admitted to the family rooms, Tucker picked up a girl of easy virtue from the street and again went back to the hotel. He followed the respondent and M. after they came out from the hotel. This is all the evidence as against M.

22. The trial Court has disbelieved the evidence of Tucker in its entirety, for the reason that without the assistance of the report, he could not recall any facts whatever. Indeed even after seeing the report, he could not recall any facts beyond those actually recorded in the report. As a sample of his absolute incapacity to revive his memory, the learned trial Judge has quoted the following paragraph from his deposition. M. is referred to as co-respondent No. 2 :

Without reference to file, I am unable to say whether I followed the Respondent in the car. Without reference to file I am unable to say whether I went to the Chambers of co-respondent No. 2. Without reference to the file I am unable to state as to how I ascertained that the Chamber in which she went in the Indian Globe Chambers was the Chamber of the co-respondent No. 2. Without reference to the file I am unable to say how long I waited for the respondent to come out from the said Chamber. Without reference to the report, I am unable to say whether I waited outside the Chamber or outside the building- Without reference to the report I am unable to say whether the Respondent came out alone or accompanied by any person. Without reference to the report I am unable to say where the Respondent went after coming out from that Chamber.

(Emphasis supplied) [herein indicated in italics. -Ed.]

The trial Court has further held that 6 photographs at Exhs. E and F alleged to have been taken by Tucker at 5.45 p.m. when the respondent and M. were emerging out of the hotel, are faked ones. According to the learned Judge, taking into consideration the state of meagre sun light that would be available on the eve of the sun-set, the claim of Tucker was false, that he had taken the photographs Exhs. E and F at the aforesaid late hour. These photographs show that they were taken in bright sun-shine. The learned single Judge endorses this view of the learned trial Judge. We see no reason to differ.

23. The learned trial Judge has observed at more than half a dozen of places that he is not at all ready to accept the evidence of Tucker under any circumstances. Why? Because Tucker has indulged in gross and false exaggerations, while deposing to the conduct of J. He goes to the extent of alleging that he had seen J. taking lewd liberties with the respondent, like fondling breasts and kissing. The learned trial Judge's evaluation of Tucker's veracity has been endorsed by the learned single Judge, without any reservation. We are absolutely at one with them. Now if a witness can touch such a low in perjuring himself without any pang of conscience, will it not be imprudent to accept his word even with regard to M, unless independent convincing corroboration is forthcoming? Such corroboration is absolutely lacking here.

24. The respondent and M. do admit that they had met at the latter's office two times in 1975. According to them, the respondent's advocate had asked M. to get unofficial copies of appellant's Income Tax returns. These were presumably required to prove his income in the respondent's application for interim maintenance. M. is himself an Income Tax Practitioner. The explanation is quite reasonable and can be accepted without any hitch. The learned single Judge was perhaps not impressed by it, because according to M. the visits came off in 1975, while according to the appellant it was on January 17, 1976. After all the distance between the close of 1975 and this date is just a fortnight. No importance should have been given to this discrepancy. Thus there was nothing remiss in the respondent's two visits to M. in his office. Tucker's claim that the office visit of January 17, was immediately followed by a visit to Moon Light Hotel, has been rightly rejected by the learned trial Judge, as well as the learned single Judge. As a result we must reverse the learned single Judge's finding at item (d) in para 29 of his judgment, to the extent that the visit was 'for some unexplained purpose, which is bound to arouse anybody's suspicion as to the purpose of the visit.' The purpose was absolutely legitimate.

25. We now proceed to the evidence involving J. The learned single Judge has held that the respondent and J. met each other on the following four occasions under suspecting circumstances:

- (i) At Paramount Restaurant on January 14, 1976.
- (ii) At Shabnam Restaurant on January 15, 1976.
- (iii) At Oriental Restaurant on 16th or 24th of January 1976 and
- (iv) At Sangam Lodge on January 29, 1976.

Although the learned single Judge is conscious all along that Tucker is a thoroughly unreliable witness, he has believed him on the aforesaid four visits. Because, the learned Judge thinks, he receives corroboration from the falsity of the explanation sought to be given by the respondent and, J.

26. The respondent and J. admit that they did meet at Sangam Lodge on January 29, 1976. They deny that the remaining three meetings took place in restaurants as alleged. According to them, those meetings came off in the open at Sangam Kala Saree Centre (in the vicinity of the Shabnam Restaurant), Venilal Saree Shop (in the vicinity of Paramount Restaurant at Choupati), and at Harkisandas Hospital. The gist of their evidence in this regard is that the respondent who is not conversant with English sought the assistance of J. in explaining to her in detail the pleadings of the appellant as well as of herself. It was in this connection that the respondent and J. claim to have met each other at the aforesaid three places. It has come in their evidence that J's wife is the sister of one B.C.J. who is admittedly a close neighbour of the appellant. This BCJ is an Income Tax advocate. His house is just at 3-4 minutes walk from the appellant's. The appellant and the respondent came to be introduced to J. at B.C.J.'s place where, according to them, the couple used to go to play cards.

27. The learned single Judge has disbelieved this explanation given by the duo. According to him, the falsity of the explanation serves as corroboration to Tucker. The learned trial Judge does not find the explanation false. He accepts it and holds that the three meetings took place in the open and not in restaurants.

28. With great respect, we find ourselves unable to agree with the learned single Judge that the aforesaid explanation is false. It has come in the evidence of the appellant himself that the respondent has studied just upto VIth Gujarati standard. She is not at all conversant with English. According to her, her senior counsel and advocate were too fast for her comprehension. So she requested / . to translate the English pleadings for her into Gujarati. We do not find anything inherently improbable in this explanation. We cannot forget that the appellant had been quite unfair to the duo at the trial by first wilfully omitting material facts from the petition, and thereafter delaying discovery and inspection of material documents. We cannot have double standards for the two sides - one extraordinarily lenient for the erring appellant and the other equally strict for others.

29. The learned single Judge wonders why the duo could not have met each other at the residence of the respondent herself or at B.C.J.'s, if the purpose of the

meetings was innocuous. We have only to comprehend the unenviable plight in which the appellant had landed the respondent by his reckless imputations of adultery and lewd behaviour. How could she have dared to call /. to her family house where a sizable number of members - the appellant, grown up children, their spouses and grand children - were living? Had B.C.J. dared help the old woman by allowing her to meet J. at his place, we are sure, the appellant would have arraigned him as the fourth co-respondent. We quite appreciate the odds in the respondent's way to arrange the meetings at her residence or at B.C.J.'s.

30. Here we pause a little to consider the circumstances in which the Sangam Lodge meeting came off. According to the duo, they had planned this meeting on the open ground of Parsi Gymkhana. However, when they reached there, they found it dug up J. proposed to move to the nearby Sangam Lodge and the old woman agreed. Again we do not see any improbability in this explanation. If any thing, we have the admission of the appellant himself that when he confronted the duo at the entrance of the Lodge immediately on their coming out, the respondent told him that she had called J. to translate the pleadings for her in Gujarati. This conduct of the respondent further fortifies her stand.

31. Considering the circumstances as a whole, we have no doubt whatever about the truth of the claim of the respondent and J. The learned single Judge fell into error in accepting Tucker's evidence even partially. We reject it outright.

32. Before concluding, we advert to the appellant's registered notice issued to the respondent in May 1969. Vague charges of adulterous conduct were levelled in this notice. It appears that the appellant had also sent copies of this letter to her brother and maternal uncle. His case is that these letters remained unreplied. The respondent has given a cogent explanation in this regard. Admittedly this notice was sent to her at Bhavnagar address. She had gone there temporarily on a visit to attend some marriage. While the appellant was alone at Bombay, he issued this notice to her. The respondent says that on her return to Bombay, she asked the appellant about the notice. He told her that he had lost his balance, when he despatched that notice to her. We have already referred to his family background. He is a jealous and hypersensitive husband, whose suspicion about the wife gets

aroused too readily. Against the peculiar backdrop of the instant case, we do not find anything improbable in the wife's explanation.

33. The findings of fact reached by the learned single Judge in para 29 of his judgment are not at all sustainable on the materials available on the record. The meetings with J. on four occasions and with M. on two, were for very legitimate purposes. In a civil trial - more so in matrimonial cases - a party must rely on his own strength and not on the weakness of the opponent.

34. Tucker's evidence ought to have been rejected in its entirety. As the evidence unmistakably shows, it is the wife who has been more sinned against than the husband. If at all any one has been wronged, it is she and not he. It is quite understandable in the social environment of this country why the respondent is averse to the break of the marital tie, having sustained it for nearly half a century.

35. Before we part with this case, one query. Here the appellant himself alleges that the wife was too anxious to keep her objectionable activities concealed from him. They would have never come to his knowledge, had he not taken the initiative of employing detectives to unearth them. If the unearthed facts culminate in a finding of 'adultery', it is clear that the husband will be entitled to get divorce. However, if the uncovered facts fall short of that, can it be held that the wife who had gone all the way to keep the facts concealed from the husband, 'has treated' him with cruelty? To render the husband the object of wife's alleged cruelty, perhaps there has to be some direct area of impact between the wife's objectionable acts and the husband. It may perhaps be argued with some seriousness that in such a situation, the real cause or such a prying husband's resultant misery would be his initiative to uncover facts by engaging detectives and not the wife's 'treating him with cruelty'. Take the example of a virgin, who has had a pre-marital serious love affair with some man other than her husband. She has received a bunch of letters from him. After the marriage, she vows to remain and actually remains chaste to her husband alone. If such a wife were to read these letters in the physical presence of the husband, one can appreciate that she is treating him with cruelty. But if she reads the letters in hiding, taking all precautions to keep them secret from the husband and the husband himself

undertakes to unearth the secret activity of the wife by some ingenious means, it is doubtful whether the wife could be charged with 'treating' him with cruelty. Illustrations can be multiplied. We are not called upon to record a firm opinion on this aspect, inasmuch as the husband before us has failed to establish any acts on the part of the wife, which, even if they had been committed openly to his knowledge, can be deemed to amount to cruelty. We leave this question to be answered in future in a proper case.

36. There is no merit whatever in these appeals. In the apt words of one of the learned trial Judges (Shri Joshi), 'much ado about nothing'. We dismiss them with costs on the appellant throughout. In each appeal separate set of costs to the respondent and the co-respondents concerned.

37. Heard on the quantification of costs. Shri Dalvi for the respondent-wife submits that in each matter she should be awarded a sum of Rs. 3,000/- to cover the costs of the trial Court, the First Appeal before the learned single Judge and the Letters Patent Appeal. Thus he claims total of Rs. 6,000/- for both matters. As against this, the appellant's learned advocate suggests the amount of Rs. 2,250/-. Bearing in mind the fact that the matters have been hotly contested, we feel that the amount of Rs. 3,000/- is fair and reasonable. The appellant has already paid to the respondent Rs. 3,000/- towards costs. After adjusting the same, now the respondent is entitled to the balance of Rs. 3,000/-only.

38. As regards the costs of co-respondents, each of them will get Rs. 1,000/- This will cover the costs of all the three Courts.