

Vijaykumar Ramchandra Bhate Vs. Neela Vijaykumar Bhate

Vijaykumar Ramchandra Bhate Vs. Neela Vijaykumar Bhate

SooperKanoon Citation : sooperkanoon.com/367995

Court : Mumbai

Decided On : Oct-04-2000

Reported in : II(2001)DMC64

Judge : B.N. Srikrishna and ;Ranjana Desai, JJ.

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

Appeal No. : Family Court Appeal No. 57 of 1994

Appellant : Vijaykumar Ramchandra Bhate

Respondent : Neela Vijaykumar Bhate

Advocate for Def. : M.B. Baadkar and ;Ajitkumar C. Shah, Adv.

Advocate for Pet/Ap. : V.A. Ganga, ;S.D. Balsara, ;H.M. Deshpande, ;U.T. Naik and ;A.K. Sakhilkar, Adv.

Disposition : Appeal dismissed

Judgement :

Ranjana Desai, J.

1. By the impugned judgment and order dated 7th April, 1994, the III Family Court at Bombay has allowed M.J. Petition No. 382 of 1993, filed by the respondent-wife for dissolution of marriage under Section 13 of the [Hindu Marriage Act, 1955](#) and

hence this appeal by the husband Vijaykumar Ramchandra Bhate (the original respondent).

2. Facts which give rise to the present appeal will have to be shortly stated :

The appellant and the respondent were engaged, to be married on or about 21st May, 1973. According to the respondent, after the engagement she visited the appellant at Pune, where he was serving. She learnt that the respondent was friendly with one Sushilabai Atwe. Thereafter the respondent received some anonymous letters asking her not to marry the appellant. However, the respondent and her parents did not believe the letters and the respondent was married to the appellant on 10th June, 1973, at Bombay, according to Hindu vedic rites.

3. After the marriage, for about eight days the couple lived at Dombivli at the appellant's parent's house. Thereafter they went to Pune. The respondent stayed at Pune for about a month. During that period she found that the appellant was friendly with one Sushilabai Atwe. On account of this, the relations between the appellant and the respondent were strained. The respondent informed the appellant's father about it. Thereafter the respondent succeeded in persuading the appellant to leave the job at Pune. The appellant left the job and came to Bombay in July, 1973. The couple was living with the appellant's father at Dombivli. The appellant's relations with his sisters, brothers and other members of his family were not cordial. There used to be frequent quarrels between the appellant and his father.

4. After some days the appellant's parents asked the appellant and the respondent to live separately. Accordingly, they started living at Thane. Thereafter, the respondent went to her father for delivery, The respondent was not well. The appellant was also living there. He used to pick quarrels with the respondent and her parents. The appellant never used to return home in time. After the birth of their daughters, the couple purchased a flat near the respondent's parent's flat. During that period the respondent's parents looked after the children but the appellant never helped the respondent.

5. According to the respondent, the appellant had no friends. She, therefore, introduced him to her neighbour's son one Ramesh Sawant. The appellant was friendly with Ramesh. He and Ramesh used to see movies together. The appellant used to take advantage of the respondent's parents and yet he used to insult them and expect several things from them. He was never bothered about the respondent and her daughters' health. The appellant was a money minded person and this attitude of his caused mental torture to the respondent.

6. The appellant suspected the respondent's character and alleged that she has illicit relations with the said Ramesh. The respondent used to treat the said Ramesh as a brother and hence she was shocked at this allegation. She however, stopped talking to Ramesh. Subsequently, appellant himself insisted that she should talk to Ramesh.

7. According to the respondent, the appellant used to insist on respondent's father consulting him in his financial matters. The appellant's stingy life-style, his nagging nature, and his lack of affection and care, affected the respondent's health. The respondent was advised to go out of Bombay for a change. On 6th April, 1982, she went to her uncle's house for a few days. The appellant followed the respondent though the respondent had told him not to do so.

8. The respondent shifted from there and went to her maternal uncle's place. The appellant followed her there as well. Everywhere he accused the respondent of having illicit relations with Ramesh Sawant. The appellant approached the respondent's relatives, friends and neighbours and made false accusations against the respondent. On some occasions the appellant forced the respondent to accompany him. The respondent apprehended danger to her life and, therefore, her father used to accompany her to the office. Instead of making any real efforts for reconciliation, the appellant was defaming the respondent. The efforts for reconciliation were made by Dr. Pethe and one Baburao Padhya. However, the appellant's adamant approach made reconciliation difficult.

9. The appellant wrote number of love letters to the respondent requesting her to join him but his behaviour was not consistent with the tone of the said letters. In the circumstances, the respondent filed the instant petition for divorce on the ground

of cruelty. The respondent prayed for permanent custody of the daughters. We are, however, not concerned with the question of the custody of the daughters as admittedly the daughters are no longer minors.

10. The appellant opposed the petition. He denied that he had any illicit relations with Sushilabai Atwe; that he had any quarrels with the members of his family or with the respondent's parents. Generally, he denied all allegations of cruelty. According to him, the marital life of the couple was happy, he was a caring husband and he used to look after his daughters as well as his wife very well. He contended that without any rhyme or reason the respondent had left the matrimonial home. He had never quarrelled with the respondent's father over his money. He was not responsible for the respondent's illness. In fact, he had taken the respondent to various specialists.

11. After the respondent went to her uncle's place, he had written several letters to her and requested her to come back along with their daughters. The respondent did not allow the daughters to live with him. He was never informed about the whereabouts of the daughters. He had told the respondent's uncle to bring about reconciliation. In the meeting arranged for reconciliation respondent's relatives started quarrelling with him. All efforts at reconciliation were, therefore, frustrated. He denied that he had no friends. He had kept his shares and debentures in the joint names of the respondent and his parents. Even after the respondent left the matrimonial home, he gave her cheque book by which she could withdraw the amount for the expenses of the children. According to the appellant the respondent had extra marital relations with Ramesh Sawant. Several averments about this alleged illicit relationship are found in the written statement dated 22nd August, 1983. It may be stated here that the allegations as regards illicit relations with Ramesh Sawant were subsequently withdrawn by the appellant, in that an application for amendment made by him to delete the said allegations was allowed. We shall advert to it a little later.

12. In support of her case the respondent examined herself and her father Shriram Keshav Natekar. The appellant examined himself. He also examined his mother Snehlata R. Bhate and his sister Aparna Vijay Bhagwat. After appreciating the

evidence on record, the Family Court came to the conclusion that, by making reckless allegations against the character of the respondent, the appellant had committed acts of mental cruelty. The Family Court, therefore, passed a decree of divorce. The Family Court, however, was of the view that the other allegations which according to the respondent constituted cruelty do not amount to cruelty within the meaning of the Hindu Marriage Act, but were in the nature of ordinary wear and tear of married life. Therefore, in this appeal filed by the appellant-husband, basically, there is a challenge to the view taken by the Family Court that allegations made against the character of the respondent amount to cruelty. It is contended that since the allegations were allowed to be withdrawn no decree of divorce can rest on them.

13. It is not necessary to refer to the findings of the Family Court on the question of custody and access to the children and their maintenance as in view of the fact that the daughters have attained majority, the said questions do not survive now. But, for the completion of narration of facts, it may be stated here that the Family Court had granted permanent custody of minor daughter Rashmi to the respondent. The appellant was directed to pay to the respondent maintenance for Rashmi at the rate of Rs. 750/- per month from the date of the order. Since the other daughter Deepa had attained majority there was no question of her custody being granted to either the appellant or the respondent. No maintenance was granted to Deepa as being a major she was not entitled to maintenance under the Hindu Adoptions and Maintenance Act, 1956.

14. We have heard at some length Mr. V.A. Gangal with Mr. S.D. Balsara, learned Counsel for the petitioner and Mr. M.B. Badkar with Mr. Ajitkumar C. Shah learned Counsel for the respondent. With the assistance of the learned Counsel we have gone through the record.

15. On behalf of the appellant written submissions have also been filed in the Court. Mr. Gangal contended that the Trial Court erred in coming to the conclusion that the appellant had committed acts of cruelty. Allegations of cruelty are two fold : firstly, it is alleged that the appellant was money minded; that he did not take care of his children and he was of a quarrelsome and suspicious nature, He did not

attend to his matrimonial duties and made false accusations against the respondent. Secondly, it is alleged that in his written statement the appellant had falsely alleged illicit relationship between the respondent and Ramesh Sawant, which caused mental cruelty to the respondent.

16. Mr. Gangal contended that on the aspect of the appellant's making false allegations about the adulterous relationship between the respondent and Ramesh Sawant, except her interested word there is nothing on record. The respondent has not examined a single independent witness in support of her case. The only witness she examined was her father, who was obviously interested in his daughter. Since the Family Court has held that petty quarrels between the appellant and the respondent were in the nature of ordinary wear and tear of the marital life, and did not amount to cruelty, the decree of divorce could not be sustained merely on the ground of cruelty allegedly made out by the averments made by the appellant in his written statement of casting aspersions on the character of the respondent.

17. As regards the allegations made in the written statement, the learned Counsel contended that the Advocate who represented the appellant in the Family Court had written a letter to the respondent that the appellant had unconditionally withdrawn all the allegations against the respondent and that he regretted for having made such allegations in the written statement. It was stated that the allegations were made on the basis of legal advice given to the appellant by his earlier Advocate. Because the respondent was not satisfied with this and she wanted a formal withdrawal of allegations, the appellant took out a chamber summons for amendment of his written statement by deleting all references to the adulterous relationship of the respondent with Ramesh Sawant. The amendment was allowed and the allegations stood withdrawn. Thereafter, the appellant has never repeated any of the said allegations. In fact, when in the Trial Court the Advocate of the respondent tried to raise the said issue, the appellant replied by saying that he wanted to win back the respondent's love and save his family and home from breaking.

18. Mr. Gangal contended that all that the appellant stated was that the respondent was moving around with Ramesh Sawant. There was no allegation that she had adulterous relations with him. According to the learned Counsel, neither the evidence of the respondent, nor the evidence of her father suggests that the reply filed by the appellant dated 17.1.1990, has caused any mental cruelty to the respondent.

19. Mr. Gangal strenuously contended that there is enough material on record to come to the conclusion that it was the respondent who has erred. The respondent had unnecessarily, and without cause, left her matrimonial home. She had no initial intention to break the marriage, but such intention developed subsequently because she wanted to retain the custody of her daughters by hook or crook.

20. The learned Counsel drew our attention to certain observations of this Court made at an interim stage regarding the obstinate and stubborn stand of the respondent. He contended that, in fact, it is the respondent who had cast aspersions on the character of the appellant. She accused him of having relationship with a lady who was much older than him and who had grown up children. These allegations have absolutely no basis and they are also inherently, improbable. The respondent made reckless allegations about appellant's alleged misbehaviour in his office. She could not prove the said allegations by adducing cogent evidence. It was contended that, the decree of divorce would amount to putting a premium on the appellant's objectionable behaviour. Though appellant made sincere efforts at reconciliation, the respondent adopted a very uncompromising attitude. She denied the appellant the love of their daughters. The respondent agreed to have reconciliation talks, but frustrated the efforts by her adamant approach. However, the fact that she had agreed to have reconciliation talks proves that she had condoned the alleged acts of cruelty of the husband. The learned Counsel, therefore, urged that this Court should refuse the decree of divorce to the respondent.

21. On the other hand, learned Counsel for the respondent supported the impugned judgment and order. He contended that allegations of cruelty are borne out by evidence. He submitted that, in the nature of things, in case of a dispute

between husband and wife it is difficult to have any independent witness to depose about cruelty. The acts of cruelty are within the exclusive personal knowledge of the husband and the wife. It is, therefore, necessary to see whose evidence has a ring of truth. The learned Counsel contended that, in the facts of the case, it is the respondent's evidence which should be regarded as cogent and worthy of credence. The allegations made in the written statement casting aspersions on the character of the respondent also make out a strong case of cruelty. It was, therefore, urged that this Court should maintain the decree of divorce.

22. As we have already noted the Trial Court has come to the conclusion that, the appellant had caused some harassment to the respondent. In their day to day life, there were some disturbances and moments causing tension and the respondent might have suffered some agony. However, the said disturbances were of a minor nature and could be categorised as the normal wear and tear of marital life. The said acts cannot be termed as cruelty within the meaning of Section 13(1)(i-a) of the Hindu Marriage Act. The Trial Court has, however, come to the conclusion that the respondent had proved that by making wild and reckless allegations against character, by branding her as an unchaste woman having illicit relations with Ramesh Sawant, the appellant has committed acts of cruelty within the meaning of Section 13(1)(i-a) of the [Hindu Marriage Act, 1955](#).

23. At this stage it is necessary to have a look at Clause (i-a) of Section 13(1) of the [Hindu Marriage Act, 1955](#) which specifies cruelty as one of the grounds of divorce. Insofar as relevant, 13 reads as under :

'13. Divorce - (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;
or

(i-b):

(ii)

(iii)'

24. That wild and reckless allegations made against the character of a spouse amount to cruelty within the meaning of Section 13(1)(i-a) of the Hindu Marriage Act, can no longer be debated. The law is well-settled on this aspect. In this connection it is necessary to refer to the judgment of Supreme Court in V. Bhagat v. Mrs. D. Bhagat, : AIR 1994 SC710 . In that case the husband, a practising Advocate in the Supreme Court, had filed divorce petition against his wife on the ground of adultery. In her written statement, the wife had alleged that the petitioner husband was a mental patient; that he was not a normal person; that he required psychological treatment to restore his mental health; that he was suffering from paranoid disorder and mental hallucinations - and that he and all the members of his family were a bunch of lunatics. The learned Counsel for the husband contended that the averments made by the wife in her counter constituted mental cruelty by the wife and that the husband was entitled to a decree of divorce on that ground. The Supreme Court considered the concept of mental cruelty. It observed that the cruelty contemplated by Sub-clause (i-a) of Section 13(1) of the [Hindu Marriage Act, 1955](#) is both physical and mental and it was not possible to define mental cruelty exhaustively.

25. The material observations of the Supreme Court contained in paragraph 17 are as under :

'Mental cruelty in Section 13(1)(ia) 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.'

26. The Supreme Court further went on to observe :

'...The context and the set up in which the word 'cruelty' has been used in the seems to us, that intention is not a necessary element in cruelty. That word 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, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.' (Vide paragraph 19)

27. On the facts of that case the Supreme Court held that assertions made in the counter by the wife cannot but constitute mental cruelty of such a nature that the petitioner, situated as he was, could not reasonably be expected to live with the respondent.

28. A Division Bench of this Court had occasion to deal with the same question in *Rajan Vasant Rewankar v. Shobha Rajan Rewankar* : AIR1995 Bom246 (DB). In that case the wife had resorted to making scandalous allegations against the husband's mother and his two married sisters. She had compared them with prostitutes. She reiterated these allegations in her letter. She did not lead any evidence whatsoever to justify the said allegations. She made wild allegations against the husband. After considering a number of judgments on this point, the Division Bench reiterated that making such allegations without there being any basis for the same amounts to cruelty. In coming to this conclusion that Division Bench relied upon the judgment of the Supreme Court in *Bhagat's case* (supra).

29. Our attention has been drawn to the judgment of the Delhi High Court in *Ashok Sharma v. Santosh Sharma* : AIR1987 Delhi63 , and of this Court in *Smt. Nirmala Manohar Jagesha v. Manohar Shivram Jagesh* : AIR1991 Bom259 , where the same view is expressed.

30. It will, therefore, have to be seen whether to the facts of the present case the ratio of these judgments would be applicable. Since it is contended by the learned Counsel for the appellant that the ratio of the above judgments would not be applicable to the facts of the present case, because the husband had withdrawn

the allegations made in the written statement, it would also be necessary to examine what would be the effect of withdrawal of allegations made in the written statement.

31. The petition was filed on 13th April, 1983. The appellant filed his written statement on 22nd of August, 1983. The written statement is very bulky and contains 46 paragraphs. We have carefully perused this written statement. Indeed very wild allegations have been made in the written statement about the alleged affair of the respondent with Ramesh Sawant. We will in brief refer to the contents of the said written statement, since it is the gravamen of the respondent's case.

32. In paragraph 6 thereof it is stated 'the respondent had made false allegations against the appellant with an ulterior motive of putting a counter attack on the respondent as the appellant had objected to the respondent's undue close friendship with Ramesh Sawant, which at times developed in having sexual relationship between the respondent and the said Sawant'.

33. In paragraph 11 it is stated that the appellant's father had blamed the respondent for having illicit relations with Ramesh Sawant and for depriving the appellant of his conjugal rights. The appellant has quoted one incident which according to him had occurred in or about October, 1973. The appellant has stated that the respondent had received a trunk call from her father calling her to Vile Parle as the said Ramesh Sawant had met with an accident. The respondent was upset and though it was very late at night, she insisted that she should be taken to see Ramesh Sawant in the hospital. There she became emotional and started crying and kept her head on the person of Ramesh Sawant. The appellant had to pull her back. He subsequently realised that there was an affair between the respondent and the said Ramesh Sawant. It is also stated that in the year 1978, the respondent disclosed to the appellant that this was not an accident but Ramesh Sawant had sustained injuries when he had jumped from the rear side of a motor bike to commit suicide as the respondent did not marry him.

34. In paragraph 15 it is stated that the respondent's claim of her brotherly relations with Ramesh Sawant is an example of her hypocrite behaviour. The respondent had a hidden affair with Ramesh Sawant which she started developing

by bringing him for pictures and outings. It is alleged that respondent used to herself arrange for pictures and used to call Ramesh Sawant. The appellant denied that he was ever late for any programmes arranged by the respondent. According to him all this was created by the respondent to justify her going out with Sawant. When the appellant was admitted in hospital respondent used to come to the hospital in the car driven by Ramesh Sawant. The respondent admitted this fact and had apologised for the same to the appellant.

35. In paragraph 16 it is stated that in or about December, 1980, when the appellant reached home at about 8.30 p.m. and went to the bathroom he found a contraceptive lying there. He asked the respondent as to who had come there. The respondent replied that Ramesh Sawant had visited them. When the appellant showed her the said contraceptive the respondent avoided to give any reply. The appellant then told the respondent to break her relations with Ramesh Sawant and not to allow him to step in their house. Thereafter Ramesh Sawant did not come to their house. It is further alleged that though outwardly the respondent pretended to have stopped talking to Ramesh, secretly she kept contact with him.

36. In paragraph 18 it is alleged that the respondent persuaded the appellant to buy a flat in Sadhana Society to fulfil her hidden desire to come near Ramesh Sawant.

37. In paragraph 22 it is reiterated that the respondent had illicit relations with Ramesh and she only pretended to love the appellant. It is also alleged that the respondent is a debaucheries lady leading immoral life by having illicit relations with Ramesh and, therefore, the appellant would not allow his daughters to get spoilt, by allowing them to be with her. Similar allegations are found in paragraphs 23 and 24.

38. In paragraph 24 Sub-clauses (i) to (x) various incidents are narrated in support of the allegation of illicit relationship between the respondent and Ramesh Sawant. Similar allegations are found in paragraphs 25, 28, 29, 31, 32, 33, 35, 38, 39, 40, 43 and 44. Having gone through these allegations, which are obviously baseless because the appellant chose to withdraw them, and in the light of the ratio of the judgments quoted above, we are of the opinion that the said allegations would

certainly amount to cruelty within the meaning of the [Hindu Marriage Act, 1955](#). They are allegations which would cause mental agony and torture to the wife. They are allegations which would make it impossible for a wife to live with the husband.

39. What is now to be examined is, what is the effect of the unconditional withdrawal of the said allegations by the appellant. Our attention has been drawn to the judgment of the Rajasthan High Court in *Smt. Shanti Devi v. Raghav Prakash*, where the husband had filed petition for divorce on the ground of cruelty. The wife had made allegations in writing that the husband had developed illicit relations with one Mohani Sharma. Issue was framed in that behalf, but on the request of the wife's Counsel the issue was deleted. It appears that, even after the allegations were withdrawn, they were repeated in evidence by the wife. The High Court noted that since after withdrawal of the allegations in writing the wife persisted with them in evidence, they still amounted to cruelty. The High Court confirmed the decree of divorce observing inter alia that this amounted to mental agony and pain resulting in cruelty to the husband.

40. In the present case the appellant had, after amendment of the written statement, preferred application dated 17.1.1990. In this application he had repeated the same allegations. In the face of this application, we find it difficult to accept the argument of Mr. Gangal that the appellant was contrite or remorseful and had genuinely withdrawn the allegations made against the respondent and, hence, he cannot be said to have committed any acts of mental cruelty within the meaning of Section 13(1)(i-a) of the [Hindu Marriage Act, 1955](#). In our opinion, the ratio of the judgment of Rajasthan High Court in *Shanti Devi's* case (*supra*), will be clearly applicable to the facts of the case on hand. We shall now advert to the evidence of the appellant and the contents of application dated 17.1.1990, which are the basis of this conclusion of ours.

41. In his evidence, the appellant has stated that 'the strategy mentioned in the written statement is drawn by Counsel and statement of facts are mentioned in the written statement as per my instructions. I had filed an application for amendment of my written statement on 17.8.1988 and I had also filed an affidavit in support of

my application. I never wanted to make any allegations against my wife. The allegations were made as per advice of my lawyer'. We have already reproduced certain portions of the written statement. There are several statements of facts as regards the alleged illicit relationship between respondent and Ramesh Sawant. The extract from his evidence quoted above shows that, admittedly, these statements were made by the appellant himself. Even assuming that the decision to make allegations was taken by his Advocate, the application made by the appellant dated 17.1.1990 indicates that he never really intended to withdraw the allegations.

42. The written statement is dated 22nd August, 1983. The application for amendment of the written statement was filed on 17.8.1988 and the said application was granted on 16.9.1988. Time was extended on 4.10.1988. Amendment was carried out on 5.10.1988. Therefore, even if we take it that, as on 5.10.1988, the allegations stood withdrawn, the said allegations again reappear in the appellant's application dated 17.1.1990. The so-called withdrawal of allegations, therefore, loses its significance and does to appear to have been genuine. Perhaps, it was one more stratagem - whether under advice of the Advocate or otherwise.

43. In this application, no doubt the appellant states that he had filed the written statement at the direction and guidance of his previous Advocate Mr. Morwankar. But what follows this assertion suggests that the allegations are not merely the Advocate's creation. He has stated that there is a letter written to him by the respondent, which states that prior to their marriage Ramesh Sawant had proposed to the respondent. The proposal came directly from Ramesh Sawant and it was not disclosed to anybody. It is further stated in the application that the respondent and Ramesh Sawant were neighbours, who knew each other from childhood. They had grown up together in the same society and, therefore, Ramesh. Sawant's asking the respondent to marry him was not surprising. This development had come out of association and inter-action over years. The application further goes on to say that the respondent had herself referred in the said letter to the incident of finding of contraceptive in the bathroom, after Ramesh Sawant left their flat.

44. It is further stated that after their marriage Ramesh Sawant tried to commit suicide on two occasions and the respondent was very much disturbed over it. The appellant had, therefore, tried to invite some proposals after discussing it with the respondent. He had given advertisements in newspapers, however, Ramesh Sawant refused to consider the said proposals. The appellant has further stated that had tried to settle Ramesh in life but Ramesh was adamant and indifferent, Ramesh's interference in his life was increasing and Ramesh did not want the appellant to settle down in his life. After the incident of finding of the contraceptive in the bathroom, the appellant had told the respondent not to move about with Ramesh Sawant. He had asked her to avoid Ramesh Sawant. He had also told Ramesh Sawant to keep away from the house. However, even after leaving the matrimonial home the respondent continued to move around with Ramesh Sawant in his car. Ramesh Sawant used to meet the respondent at her uncle's place, practically everyday in the evening and he used to stay at that place for hours together. After the respondent left the matrimonial home, in all the vacations in the year 1982-83, Ramesh Sawant took the respondent and the children in his car to Tarapore. The respondent's father used to object to the appellant's meeting the respondent and the children. The appellant, therefore, asked him as to why he was not objecting to Ramesh Sawant's meeting the respondent and the children. His father-in-law answered in front of the respondent that the respondent used to get upset after meeting him, but never used to get upset after meeting Ramesh Sawant. To this no reaction was shown by the respondent.

45. It is further stated in the application that in May, 1983, his father-in-law left his flat in the society and purchased another flat situated near their society. Ramesh Sawant did interior decoration in the said flat and spent huge amount from his pocket for furniture and decoration. The appellant told all these facts to his Advocate Mr. Morwankar and, it is Mr. Morwankar, who made the allegations in the written statement though the appellant had told him to try reconciliation. The appellant has further stated that at that time he was not knowing that mere denial of the averment made by the respondent in her petition was sufficient and allegations and counter allegations should be avoided. He has further stated that he did not know that the law was that, making such allegations amount to cruelty and, therefore, Mr. Morwankar, who knew that the appellant was very keen on

reconciliation, did not advise him properly. It is against this background that the allegations came to be made.

46. This application is filed much later, after the allegations were withdrawn by carrying out an amendment. Though the appellant has tried to put the blame on his Advocate, it is clear that it is he who had given the minor details about the alleged illicit relationship between the respondent and Ramesh Sawant to his Advocate. By this application the appellant has again brought on record all the allegations, which he had made under legal advice and, having come to know the legal position, been told to give up as a stratagem. We are, therefore, unable to hold that the allegations made against the character of respondent had been genuinely given up. In our opinion, they are very much there on record and would certainly inflict such mental pain and suffering on the respondent as would make it impossible for her to live with the appellant. To the facts of this case, the ratio of Bhagat's case (*supra*), is clearly applicable.

47. However, on this aspect the respondent has given cogent and consistent evidence. It inspires confidence. We find no substance in the contention that the respondent should have adduced independent evidence. We cannot lose sight of the fact that in such matters it is difficult to get independent witnesses. Besides, the appellant has not been able to make any dent in the testimony of the respondent in cross-examination. We are not impressed by the evidence adduced by the appellant. We have no hesitation, therefore, in coming to the conclusion that the respondent has made out a case of mental cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act, sufficient to warrant dissolution of the marriage by a decree of divorce.

48. We do not find any substance in the contention that, by agreeing to have talks for reconciliation the respondent has condoned the acts of cruelty of the appellant. In *Dastane v. Dastane*, : [1975]3SCR967 , the Supreme Court has explained the concept of condonation. The Supreme Court has observed that even though condonation is not pleaded as a defence by the respondent, it is Court's duty, in view of the provisions of Section 23(1)(b) of the Hindu Marriage Act, to find out whether the cruelty was condoned by the appellant. The casts an obligation on the

Court to consider the question of condonation. However, the Supreme Court has clarified that condoned cruelty can be revived. The material portion of the judgment of the Supreme Court reads as follows :

'But condonation of matrimonial offence is not to be likened to a full Presidential Pardon under Article 71 of the Constitution which, once granted, wipes out the guilt beyond the possibility of revival. Condonation is always subject to the implied condition that the offending spouse will not commit a fresh matrimonial offence, either of the same variety as the one condoned or of any other variety. 'No matrimonial offence is erased by condonation. It is obscured but not obliterated'; See Words and Phrases legally defined (Butterworths), 1969 Ed. Vol. I, P. 305 ('Condonation'). Since the condition of forgiveness is that no further matrimonial offence shall occur, it is not necessary that the fresh offence should be ejusdem generis with the original offence. See Halsbury's Laws of England 3rd Ed., Vol. 12, P. 306. Condoned cruelty can, therefore, be revived, say, by desertion or adultery.'

In the present case, assuming that by agreeing to have talks for conciliation the respondent had condoned the acts of cruelty of the appellant, by repeating allegations in the application dated 17.1.1990 the appellant had revived the cruelty. This argument of the learned Counsel for the appellant must, therefore, fail.

49. Drawing our attention to certain letters written by the respondent to the appellant, it is urged that it was not the intention of the respondent to leave the appellant. It is also urged that filing a petition for divorce was merely a strategy to get the custody of the children. Our attention has been drawn to certain observations of the then Chief Justice Shri Reddy and Justice Pratap made while dealing with the interim custody of the daughters. These observations suggest that the respondent was adamant in her approach. We do not wish to go into this aspect of the matter. The daughters are now majors. There is no question of their custody or maintenance. Assuming that the appellant was adamant at the time when the grant of custody of the children was being considered, that will not be really material at this stage when the entire evidence is before us and the appeal is finally heard. The correspondence which might indicate that the respondent did

not want to leave the appellant permanently has also no meaning now. In the Court, the respondent has, through her Counsel, categorically stated that she wants divorce. In order to see whether parties would turn a new leaf and stay together, this Court made several efforts through the learned Counsel appearing for the appellant as well as the respondent. However, the respondent has no desire to go back to the appellant. For years the appellant and the respondent have lived apart. In our opinion, there is a clear indication of irretrievable breakdown of marriage. We are aware that in Bhagat's case (supra), the Supreme Court has observed that, irretrievable breakdown of marriage is not a ground by itself for divorce. But, the Supreme Court also added a rider that the said circumstance can certainly be borne in mind while scrutinising the evidence on record to determine whether the ground alleged is made out and in determining the relief to be granted. In our opinion, the respondent has clearly made out a case of mental cruelty. Since there is an irretrievable breakdown of marriage, the decree of divorce passed by the Trial Court deserves to be affirmed.

50. In the circumstances, the appeal is dismissed. The judgment and order dated 7th April, 1994 passed by the Family Court No. 3 in M.J. Petition No. 382/83 is confirmed to the extent to which it dissolves the marriage solemnized between the appellant and the respondent on 10th June, 1973 by a decree of divorce.

51. No order as to costs.