

Ashok Kumar Vs. Santosh Sharma

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Court : Delhi

Decided On : Mar-21-1986

Reported in : AIR1987Delhi63; 1986(11)DRJ135; 1986RLR408

Judge : Mahinder Narain, J.

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

Appeal No. : First Appeal No. 118 of 1982

Appellant : Ashok Kumar

Respondent : Santosh Sharma

Advocate for Pet/Ap. : S.K. Tiwari,; Yograj Sharma and; Ramesh Chandra, Advs

Judgement :

Mahinder Narain, J.

(1) This is a husband's appeal against the order of Shri G.S. Dhaka, Additional District Judge, Delhi, dated 23/1/1982 in H. M. A Case No. 470 of 1979.

(2) By the said order the Additional District Judge has dismissed the petition for dissolution of marriage, filed by the husband under Section 13(1)(ia) of the Hindu Marriage Act (hereinafter referred -to as 'the Act')

(3) The facts giving rise to the petition are that the marriage was solemnised between the parties on 26/6/1977 at village Prablad Pur, Delhi in accordance with Hindu rites. The parties lived together for a short while as a husband and wife, at 117, Main Bazar, Nazafgarh Road, New Delhi, in the house where the husband used to reside with his mother and father.

(4) No child was born to the parties.

(5) The husband in his petition averred a large number of acts which according to the husband were cruelty to him. The husband averred inter alia that the wife had failed to discharge matrimonial obligations and that she withdrew herself away from cohabitation with him; that sexual urge of the husband was not permitted to be satisfied with the wife, as she left him and lived mostly with her parents; that the wife constantly urged the husband to separate from his parents; that the wife has asserted that as she had been running nursery classes she earned more than the husband; that the wife compared the status of the husband's parents with the status of her parents; that the wife was non-cooperative with the mother-in-law; that in view of the happening of certain events the husband doubted the chastity of the wife; that the wife used to call the husband impotent; that the brothers and her of the petitioner created an incident on 18/4/1978 which created a difficult situation so much so that a report about the incident of 18/4/1978 had to be lodged with the police on 24/4/1978, as the petitioner had left the house of the husband with her brothers after packing up a suit case on that date.

(6) The averments made in the petition were denied in the written statement filed by the wife. The wife asserted inter alia that the petitioner and his family members are greedy and they had sent the wife away to collect dowry; that the husband used to enjoy the society of drunkards and asked the wife to join him and his friends in drinking; that the respondent used to abuse, insult and intimidate her and her parents; that threatening letters were written to the wife (no such letters were produced or proved). It was said that the husband used to call the parents of the respondent 'wretched persons'; and that 15 tolas of gold and 30 tolas of silver were left behind in the husband's house. In the replication filed reference was made to alleged immoral deeds of the wife and it was contended that the false

assertions which had been made in the written statement are cruelty.

(7) In this petition, I find a peculiar use of the terms 'animus deserendi'. It is made all the more curious because the word 'animus deserendi' have been used in connection with cruelty.

(8) In the case of *Bipin Chandra v. Prabhawati*, : [1956]1SCR838 , the Supreme Court had said that in order to establish desertion two conditions had to be satisfied. (1) Factum of separation; (2) intention to bring cohabitation permanently to a close (Animus Deserendi). The terms animus deserendi is used in the context of desertion only. Yet in this case, the pleadings use it in connection with 'cruelty'. This is an unjustified use of this term. It is likely to lead to confusion, which ought to be avoided.

(9) The assertions made in paragraph 4 of the petition, (as contained in this petition), need to be set out and they are set out here below :-

'4. That the behavior and conduct of the respondent has been cruel towards the petitioner after sometime of the marriage and she has been guilty of gross misconduct by her calculated acts of animus deserendi and cruelty, and no less cruel by her parents, brothers and relations towards the petitioner and his parents briefly detailed below :- Cruelty - By animus deserendi (a) That the respondent remained utterly failure in discharging marital obligation towards the petitioner and she times without number actively withdrew herself away from cohabitation by deserting the petitioner while leaving him lurch. (b) That the respondent always knocked down the sentiments of the petitioner and never responded to his sexual urge, emotions and indulgence and when-so-ever she responded to i. e. on very few occasions and, that too, after torturing him acutely, contemptuously and disgracefully; and thus she deprived him from sexual indulgence leaving few numbered occasions during the span of 10 months married life and thereby turned the married life of the petitioner worse than hell by her undesirable and un tolerable embankments without any reasonable and probable excuse; and during the span of 10 months married life the respondent mostly lived at her parents place at Prahladpur village Delhi against the wish and consent of the petitioner simply to cause mental torture and harrassment to the petitioner. Cruelty - Mental (c) That respondent

immediately after some time of the marriage started coercing the petitioner to live separately from his parents at her parents village Prahladpur Delhi, where she had been running nursery classes before marriage and she had to ego of her having passed dispelling course in respect thereto; and under that ego she several times scolded the petitioner that she had been earning much more than what-ever he is earning presently while ignoring and disregarding womanly modesty, and decency. She never showed any respect and regard to the parents, brothers and sister of the petitioner and much less. to the petitioner; and she used to pounce upon the petitioner disgracefully and contemptuously and, as and when, efforts were made by him to dissuade her from the continuance of her from the continuance of her delinquent acts and conducts; and thus she made the life of the petitioner worse than hell. (d) That respondent has been habitual in disgracing the petitioner and his parents by ironically, sarcastically and satirically comparing the status of her parents with the parents of the petitioner in as much as they were having their houses, animals and agricultural land, at village Prahladpur Delhi and whereas petitioners having none such. She used to curse the petitioner and herself as having been married in the family of wretched and poor persons. (e) That respondent has been non-cooperative in matters of household affairs with her mother-in-law and sister-in-law and always avoided the doing anything by her and wanted that she should be served at the table without doing any thing and when she was asked to do so, she picked up quarrels for no reasons what-so-ever. (f) That the respondent has been coercing the petitioner for living separately from his parents at her own village Prahladpur and on reluctance, in respect thereto, by the petitioner she used to pick up quarrels with him on one pretext or the other. Cruelty - Moral and Mental (g) That in the last week of Dec. 77, the respondent secretly left the matrimonial home after sunset, without telling any one, and remained out for 30 hours and after great search she was found at the house of her distant relations in Najafgarh. On enquiry, she could not assign any reasons for her deserting the matrimonial home in suspicious circumstances, which raised suspicious in the mind of the petitioner with regard to the chastity of the respondent and the same stood confirmed later on in the month of Feb , 78 when she was seen by a friend of the petitioner in the company of an unknown person in the cinema hall in an undesirable manner and style. As on that day, the

respondent with an excuse of visiting her parents place at Prahladpur, Delhi left the matrimonial home and passed the day long in the Cinema Hall On being asked, in respect thereto, the respondent initially denied but later on remarked that heaven had not fallen if she saw matinee show with her friend. (h) That several times, the respondent avoided to indulge sexually by calling the petitioner - an impotent man and tortured bimanually by imputing such similar unhealthy remarks ironically, sarcastically and satirically without any basis what-so-ever.'

Reply of the wife to para Nos. 4 to 4(h) was as under :-

'4. Para 4 of the application is wrong and denied as alleged. It is submitted that the petitioner along with his parents is greedy and as such they started putting a demand of dowry upon the respondent as well as upon her parents only after 10 or 15 days of the marriage which could not be fulfilled due to the poverty of the parents of the respondent. 4(a) Para No 4A of the application is absolutely wrong and denied and it is submitted that it was the petitioner and his parents who off and on sent the respondent to her parents for the purpose to bring money from her parents which she could not bring due to the reason mentioned in para 4 above. 4(b) Para 4 (b) of the application is wrong and emphatically denied. It is submitted that the petitioner has been having society of drunkards who used to come to his residence and the petitioner along with his parents wanted that the respondent should join them and enjoy with them and in this way the respondent was being tortured by the petitioner and his mother because the respondent did not obey them for the above laid wrong doings. 4(c) Para 4 (c) of the application is wrong and emphatically denied. It is submitted that the respondent always paid due respect to every member of petitioner's family and it was the petitioner and his parents who always abused, insult, intimidate the respondent and her parents without any lawful excuse and to this effect the petitioner and his father wrote letters to the parents of the respondent These letters contain threatenings, and are full of filthy language and abuses. 4(d) Para 4(d) of the application is wrong and denied as alleged. It is submitted that the petitioner and his parents called the respondent and her parents as wretched persons which will be proved by the letters referred to above. 4(e) Para 4(c) of the application is absolutely wrong and denied. It is submitted that the respondent never obeyed the petitioner and his

parents for the above said wrong doings. 4(f) Para 4(f) of the application is absolutely wrong and denied. 4(g) Para 4(g) of the application is wrong and emphatically denied. The allegations made by the petitioner are mischievous and with a view to defame the respondent in the eyes of her relatives and this Hon'ble court. It is further submitted that the respondent has never gone in any cinema hall in her life. 4(h) Para 4(h) of the application is wrong and emphatically denied and it is submitted that it was the petitioner and his parents who tortured the respondent themselves and got tortured by unworthy friends of the petitioner who used to come at the residence off and on.'

(10) The incident of 18/4/1978 was dealt with in paragraph 4(j).of the- petition, which reads as under :- 4(j). That on 18/4/1978, the respondent's father Along with Ram Kishore (brother of the respondent) Rattan Lal and Pat Ram visited the house of the petitioner, where the petitioner was away to his office, to take the respondent with them. The mother-in-law of the respondent who was then alone in the house, requested them to take the respondent when the petitioner would arrive in the evening. The request of the mother was disregarded and Shri Ram Kishore (brother of the respondent) and the father of the respondent threatened the mother of the petitioner while addressing the respondent that he would see who could dare to stop them. The repeated request of the petitioner's mother wa(r) disregarded by the respondent and her parents and, much less, the father and brother of the respondent abused the mother of the petitioner in most filthy language and Ram Kishore pushed her assaulting aside and threatened with a knife. The respondent who had already packed up her suit case in the day with all the ornaments and costly saris left the 'matrimonial home, in front of the house of the road and Ram Kishore brother of the respondent threatened on the road that he would come at 8 O'clock in the next morning and the father of the petitioner should be ready to face the consequences.'

(11) In the written statement, the incident of 18/4/1978 was thus dealt with:-

'4(J). Para No. 4 (j) of the application is wrong and denied and it is submitted that it was the petitioner who took the respondent in three clothes to her parents at village Prahladpur leaving all the ornaments of gold, weighing 15 tolas and 30

to the respondent's father and the costly clothes with his mother. Besides this the other utensils given by the father of the respondent to the petitioner at the time of marriage costing about Rs. 8,000.00 were also left with his mother along with other articles which are still there with the petitioner and his parents'

(12) On pleading of the parties, the following issues were framed:-

1. Is the respondent guilty of cruelty, as alleged? Opp. 2. Relief.

(13) The evidence of the petitioner which has a bearing on cruelty in this case is as follows :-

'INITIALLY, for a few days, the behavior of the respondent was normal but gradually she changed and refused to cooperate with me both with regard to sexual matters as also in other matters. It was with great difficulty that once or twice in a month, she would permit me to have sexual intercourse with her. At times she even used to pull my sex organ. She used to call me impotent. She used to say that I was not able to satisfy her fully. She used to harass me. She used to say that my male organ was of very small size and thus she never felt fully satisfied. As a result of all that behavior of the respondent I started feeling restless and mentally disturbed.'

Xxx x x x x x x

'IN all I had sexual intercourse with the respondent for about eight or ten times. It was with great difficulty that the respondent permitted to have sexual intercourse with her even on those occasions'.

xxxxxxx x

'I do not recollect either the date or the month of the year when the respondent pulled my male organ. I did not consult any doctor after that incident regarding any possible injury to my male organ. I did not talk to anybody else with regard to that incident. It is wrong to suggest that respondent never pulled my male organ. I never forcibly had sexual intercourse with the respondent. I do not recollect the date, month or the year when the respondent alleged about the smallness in size

of my male organ.

(14) It is note worthy that at the time of recording of this statement, no objection was taken to this deposition. There was no objection that this instance of cruelty was not pleaded.

(15) In answer to the deposition of the husband regarding non-cooperation in the matter of sexual intercourse, the wife made a statement in court, which is as under :-

'I was married with the petitioner on 26/6/1977. I never refused sexual intercourse to the petitioner. The petitioner used to have sexual intercourse with me 10 to 15 times a month after marriage. I never pulled the penis of the petitioner nor any other private part of the petitioner I also never called him an Impotent. I also never told the petitioner that his penis was short.'

xxxxxxx x

'THE petitioner used to have sexual intercourse with me during night. I also used to enjoy the sexual intercourse with the petitioner. It is wrong to suggest that I used to throw out the penis of the petitioner and used to say that his penis was small and I was not enjoying the sexual intercourse. It is also wrong that I did not allow him to have sexual intercourse with me.'

(16) I find that the depositions which have been made by both-husband and the wife regarding the male anatomy and sexual relations have not been appreciated by the learned District Judge. Perhaps the reason for this could be that there is no adequate medically accurate information available with the courts below on both matters.

(17) Dr. James Leslie McCary, Professor Psychology at the University of Houston and Director of Psychological Services, Almeda Clinic, Houston; and member of various organisations like the American Academy of Psychotherapists, the Society for the Scientific Study of Sex, the American Association of Marriage Counselors and the National Council of Family Relations, has, in his book 'Human Sexuality' has at page 53 given the anatomy of the male genital as follows :-

'THE penis is somewhat triangular (inverted) in shape because the shaft is made up of three cylindrical, spongy bodies composed of erectile tissue; two larger bodies on top, and one smaller body below. The two top bodies are known as 'corpus cavernosum penis', and the single body below is called 'corpus spongiosum' or 'corpus cavernosum urethrae'. The lower body houses the urethra as it runs the length of the penis. These three bodies are encircled, and the lower body separated from the upper two. by Buck's fascia. This is a band or sheet of tissue which is a continuation of the tissue joining the penis to the symphysis (connection juncture) of the pubic bone and the perineum and related muscles. Throughout the penis, but especially at the top, both above and below Buck's fascia, are heavy arteries which feed blood to its spongy erectile tissue. As the spongy structures of the penis fill with blood, it becomes erect. The erection is lost when blood leaves the penis venously faster than it flows in through the arteries. Erection of the penis is controlled by nerves in the spinal cord at the lower end of the central nervous system, and involves the synchronization of several reactions. Friction at the surface of the penis and/or surrounding areas sends impulses to a special area (sacral) of the spinal cord; sexual thoughts, dreams, erotic odors, etc., cause impulses to be sent to the spinal area from the brain; stimulation of the sexual system by sex hormones in the bloodstream; and impulses from full ejaculatory ducts - all of these work separately or together to activate the synchronized reactions. Dilation of the arteries that feed blood to the penis results in engorgement of the spongy tissue (corpora cavernosa). This dilation is followed or accompanied by a simultaneous tonic (contractile) spasm of the muscles at the base of the penis near the anus (bulbocavernosus and ischiocavernosus), the spasm preventing the blood from escaping the spongy tissue through the veins. These reactions are brought into play by inhibition of the vasoconstrictor centers of the sympathetic nervous system (located at lumbar spinal nerves 1-2), and by the excitement of the vasodilator centers of the parasympathetic system (located in sacral spinal nerves portion 1-3). These spinal centres, while primarily operating on a reflex arc system, are in communication with the cortical subcortical, and medulla oblongata portion of the brain. So long as there is proper and sufficient stimulation from the nerve endings of the penis, and proper and sufficient impulses from the brain, a man will maintain his erection. It should be recognized that

inappropriate impulses-e.g., such severe stimulation of the penis that excessive pain in the result, or disturbed emotional states such as fear, anger, guilt, anxiety, or shame - can cause an erection to collapse, or can prevent its occurring in the first place.'

(18) The book written by Dr. James Leslie McCary is also mentioned in the Bibliography of Encyclopedia Britannica, Vol 16, Macropaedia, as providing 'general information' 'a book that also serves as an excellent sex manual' (p. 601).

(19) The court below has failed to appreciate the deposition of the husband in the light of physiological aspects of the human sexual response. The physiological aspect has been tersely and shortly stated in the Encyclopedia Britannica, Macropaedia Vol. 16, at page 594, which reads as under:-

'PHYSIOLOGICAL Aspects Sexual response-Sexual response follows a pattern of sequential stages or phases when sexual activity is continued. First, there is the excitement phase marked by increase in pulse and blood pressure, an increase in blood supply to the surface of the body resulting in increased skin temperature, flushing, and swelling of all distensible body part (particularly noticeable in the penis and female breasts), more rapid breathing, the secretion of genital fluids, vaginal expansion, and a general increase in muscle tension. These symptoms of arousal eventually increase to a near maximal physiological level, the plateau phase, which is generally of brief duration. If stimulation is continued, orgasm usually occurs. Orgasm is marked by a feeling of sudden intense pleasure, an abrupt increase in pulse rate and blood pressure, and spasms of the pelvic muscles causing venial contractions in the female and ejaculation by the male. Involuntary vocalization may also occur. Orgasm lasts for a few seconds (normally not over ten), after which the individual enters the resolution phase, the return to a normal or sub-normal physiological state. Up to the resolution phase. males and the females are the same in their response sequence, but, whereas males return to normal even if stimulation continues, continued stimulation can produce additional orgasms in females. In brief, after one orgasm a male becomes unresponsive to sexual stimulation and cannot begin to build up another excitement phase untill some period of time has elapsed, but females are

physically capable of repeated orgasms without the intervening 'rest period' required by males.'

(20) More detailed information will be found in the book 'Understanding Sexuality' by Doctor Derek Llewellyn Jones, published by Oxford University Press. Fullst information is of course provided in the 'Human Sexual Response', by Dr. Masters & Mrs. Johnsoo, who pioneered physical research on this aspect, for the first time in the history of Modern Science and Medicine. Their book based upon 10 years of research, 'Human Sexual Response' was published in 1966 by Little &. Brown Co., Boston, Messachuscts, Usa, and, thereafter by J & A Churchill, London.

(21) If the above information had been available to the Court below it would have been clear that the penis is not composed of muscles. The only muscles that exist in the penis are near its root, where the 'Bucks facial' joints the muscles of the pubic bone (symphysis pubic) ; that erection is not caused by muscles, but by flow of blood in the corpus cavernosum and corpus spongiosum - the erectile tissue. The dilation of the arteries which feed blood to the body of the penis takes place when effective stimulation is received by the nerve endings on the penis, its glans or the body, by physical contact stimulation, or erotic stimuli conveyed by the brain. Both the sources of stimulation physical, or mental being aided and controlled by nerves the splanchnic nerves- located in the sacrum (lower back). Once the arteries dialate, there is increased blood flow, more blood flows in, than flows out, and thus penis thickens and enlarges, or in otherwords, erection takes place.

(22) Thus, in a normal healthy male. stimulus by physical contact would bring about an erection, which, as stated tersely in Encyclopedia Britanica, lasts till orgasm of the male takes place, which is followed by the "resolution phase". Tbs isolation phase has been found to be of shorter duration in young males than in older males (See : Masters & Johnson - The Human Sexual Response (1866) This book is also mentioned in the Bibliography of Encyclopedia Briranica at p. 601, of the aforesaid volume).

(23) The husband has deposed that the wife pulled his penis. This was possible only if there was absence of erection. This absence of erection could be in a case

of 'primary impotence', where erections cannot take place for some psychological reason or some anatomical reason/physical injury ; or there may be 'secondary impotence' - rapid uncontrollable ejaculation, a very short 'Plateau Phase' bringing the petitioner quickly to orgasm, then into the resolution phase. During the resolution phase, penis will not get engorged with blood, not get firm enough to enable penetration. During this phase the penis, because it is limp, 'flaccid', as medical men say, can be pulled; can be hurt; or damaged. Pulling can cause extreme pain, if carelessly or contemptuously done. Such pulling of a flaccid penis, as stated by Dr. James McCarry, above, is a species 'inappropriate impulse', which, according to him, as stated above, 'result in excessive pain'. In my view, causing this excessive pain is cruelty, just as causing physical pain by physical beating, is cruelty.

(24) There is yet another thing, the deposition of the husband makes it clear that, neither physical proximity - the sight, sound, or smell was bringing about pleasurable sensations in the husband, nor was the brain reacting pleasurably sexually to the wife. This, unfortunately for this couple, happened when the marriage between the parties was only 8 months old. This could happen only when the marriage had utterly broken down. A Full Bench of this Court has said in *Gopal Das v. Ram Kali*, 1971 (1) Delhi 6, that it is not in the interest of the state to maintain, a marriage which has utterly broken down (alp. 12). In my view, in view of the behavior of the parties towards each other, this marriage has utterly broken down. The husband is entitled to a decree of divorce against the wife on the grounds of cruelty.

(25) The wife has admitted having sexual intercourse with the appellant husband. She says it used to take place 10-15 times a month. This statement by itself is vague and uncertain. Why could she not say once in three days Once in two days This kind of statement if motivated to win the case, because I apprehend, she is not telling the truth. It is admitted by both parties, the wife stayed with the parents for a period of 4 months out of 8 till the incident of 18/4/1978.

(26) The husband says that sexual intercourse took place about 9-10 times in all. For a young newly married couple this appeared to be unusual and when I

questioned the husband, when he was present in court before me,. he nervously, his forehead damp with a sheen of sweat, stated that he was on night duty for 15 days in a month, and that he used to ejaculate pre-maturely therefore, sexual intercourse could not take place. As no children have been born to parties, it appears that the husband had been ejaculating even before he was able to effect intromission. I am, for this reason, (no children born to the parties) more inclined to believe the statement of the husband. By his deposition in court - that his wife used to pull his organs call him impotent the husband has candidly deposed about to cruelty on him by the respondent. He has also candidly admitted his sexual inadequacy or weakness. The husband's statement is also more believable for the reason that it is the admitted case of the parties that the husband was on night duties for about 15 days out of the month, which makes it highly improbable that sexual intercourse took place as deposed by the wife.

(27) I apprehend that due to social or other pressure the wife has. deposed incorrectly that sexual intercourse was taking place 10 to 15 times a month. This appears to be inconsistent with her conduct of repeatedly going. back to her parents. She admitted that out of eight months then parties were living together, off and on, for four months she lived with her own parents.

(28) She was apparently getting nothing out of her marriage. She kept on going away from the husband, and was thrust back on her husband. by her parents.

(29) Whose testimony should be accepted The husband's Who says that the wife used to pull his penis, call it short and petitioner impotent Or the wife's Who lays that she never pulled the penis of her husband. Read as * whole the statement of the wife appears to be tutored one, step by step denying the averment of the husband in the petition, and I prefer to accept the deposition of the husband

(30) In my view in the case of young, newly married couple, who are anxious and willing to explore each other bodies, it is more likely that. there is an attempt at gentle/erotic touching, of each others genitalia. The husband' version appears to be more natural than that of the wife. It appears that as a result of rapid orgasms of the husband, the wife may have on occasions, in frustration, pulled at the genitalia of the husband, and thereby caused him pain and hurt; by none too

gentle tugs. When the wife failed to get the needed responses, she discarded him and went to her parents house.

(31) In my view, with this state of the marital life, which is no material life, it is more likely than not that the wife did pull the penis of her husband after he had discharged prematurely and rapidly and as in the resolution phase, the penis cannot get engorged with blood, she caused him physical pain mentioned by Dr. McCarry, and caused the husband hurt and pain. The physical pain being physical cruelty, and calling the husband impotent being mental cruelty.

(32) It is not even suggested in this case that any type of treatment of the husband for his sexual weakness/inadequacy was ever discussed. It appears to me that the parties did not give any such chance of that to each other.

(33) Another aspect of cruelty has to be adverted to. The wife says that the husband enjoyed the company of drunkards, who used to come to his residence, and that the husband wanted the wife to join them and 'enjoy with them'. This is para 4(b) of the written statement. The wife lays that she was thus being 'tortured by the petitioner'. In the replication, the husband says that these allegations regarding 'drunkard friends' and his wanting the wife to join them are false and by themselves 'legal and mental cruelty' inflicted upon the petitioners by preferring false and frivolous pleas.

(34) As regards the averments made in para 4(b) of the written statement, the petitioner has deposed that 'it is absolutely wrong that I take liquor or drinks with bad characters in my house or force the respondent to have relations with those bad characters. All these allegations are false and baseless. After reading those allegations in the written statement I also suffered mental distress'.

(35) In her examination-in-chief, the assertions which were made in para 4(b) of the written statement were not deposed to at all. In cross examination, in response to a suggestion the respondent stated 'written statement in this case was drafted at my instance and its contents are correct'. Apart from this statement nothing was stated by the respondent in her testimony regarding the allegation in para 4(b) of the written statement that the husband used to keep company of drunkards etc. In

this view of the matter, there is no other conclusion to be drawn about allegation in paragraph 4(b) of the written statement except that these allegations were baseless; that they were false. Whether these allegations were also scandalous and malicious) will depend upon the status of the parties, and their life-style.

(36) The name of the parties suggests that they belong to a brahmin family. The assertions made by the husband in his testimony is that he does not take drinks. Indeed there are a lot of brahmin families, who would consider it to be quite scandalous to drink, and to some it may be the ultimate insult and injure to be falsely accused of being habituated to drinking liquor. It may be quite intolerable when allegations of keeping company of drunkards and drinking with them are coupled with the further allegation that a man belonging to the brahmin family expects his wife to join in a drinking party with his friends.

(37) Para 4(b) of the written statement has been reproduced earlier. Not only the assertion therein is that the petitioner husband wanted the respondent wife to join his friends in drinking, but also that the parents, the mother and father of the husband, also wanted her to join in the drinking party. I am satisfied that such an allegation as has been made in the written statement, if it is untrue and baseless, should be treated as a matter of fact, in the facts and circumstances of this case, to be scandalous and malicious.

(38) The question now arises is this: Whether false, baseless, scandalous, malicious and unproven allegations made in the written statement, cruelty to the other party. The Courts have considered this question before, and have held that the false, baseless and unproved allegations may amount to cruelty when such allegations are made in the written statement. This was so held in *Shakuntala Kumari v Om Prakash Ghai* 1981 (1) D M Cases 25 (Leila Seth, J.), *Lajwanti Chandhok v. O. N. Chandhok*, 1981 (2) Divorce & Matrimonial Cases 97 (M L Jain J) ; *Kiran Kapur v. Surinder Kapur*. 1982 RL R 37 (Charanjit Talwar J) ; and *Shradhanand Sharma v. Kiran Sharma*, (1985) 28 Delhi L T 32 (N. N. Goswamy J). I am satisfied that allegations made in para 4(b) of the written statement that the husband used to keep company of the drunkards, and the husband and parents-in-law of the wife wanted that the wife should join With the alleged drunkards

friends of the husband, and the husband, in drinking and enjoying with them, in the facts and circumstances of this case, would amount to cruelty, and such an allegation made in the written statement would entitle the parties against whom such an allegation is made, to a finding of cruelty in his favor.

(39) False, defamatory, baseless, scandalous and malicious allegations in the written statement can be taken into account for the purpose for granting relief in matrimonial matters is based upon the principle on which subsequent events - like allegations in the written statement - can be taken into account in certain circumstances : when (i) litigation between the parties ought to be shortened; and (ii) to do complete justice between the parties. This was so laid down by the Supreme Court in *Upper Ganges Valley Electricity Supply Co. Ltd. v. U. P. Electricity Board*, : [1973]3SCR107 . This Court (M. L. Jain J, has held in *Pushpa Rani v. Krishan Lal*, 1982 HLR 238. that the allegations in the written statement can form the basis of granting relief in matrimonial matters. M. L. Jain J. in *Pushpa Rani's* case has followed his earlier judgment in *Parihar v. Parihar*, .

(40) I have followed *Pushpa Rani's* case and *Parihar's* case in the judgment given by me in P. A. O. No. 124 of 1984, decided on 14th February, 1986 and I have held that allegations made in the written statement can be taken into account by the court for granting a decree of divorce on the ground of cruelty against the person who makes false and baseless allegations in the written statement.

(41) In the facts and circumstances of this case, keeping in view that the husband in this case belongs to a Brahmin family. I hold that baseless, false and unproved allegations have been made in para 4(b) of the written statement by the wife against the husband, are sufficient in themselves to bring home the charge of the wife having been cruel to the husband, and husband is entitled to a decree of divorce on this ground alone.

(42) The District Judge has disbelieved the allegation that the wife was seen by one Hoshiar Singh in the company of a stranger in a cinema hall for the reason that Hoshiar Singh was not produced by the husband. For the same reason I agree with the District Judge and disbelieve the alleged incident of the wife being seen in a cinema hall, in allegedly 'undesirable manner and style'.

(43) I go further than the District Judge did. Cinema Halls are darkened places, it is difficult for any one to see the other unless they are seated in close proximity with each other. It is doubtful whether in absence of clear evidence of proximate seating, any one could be said to have been seen in an 'undesireabic manner and style' in a cinema hall. Besides a Cinema Hall is a public place, and I do not sec how anyone can be seen to be in an undesirable manner and style in a public place like Cinema Hall, in the dark, keeping in view that the Cinema Halls in India arc usually full and any activity which could be found upon by the society to be of undesirable manner and style would be subject matter of some retaliation by the person sitting in close proximity, if not the Cinema Management. Besides this, the conclusions (of adultery) drawn in cases like Loveden v. Loveden, 161 English Reports 648. cannot be drawn with regard to people who are watching a cinema show. In any case the wife has categorically denied that she ever visited any cinema hall. This allegation in the plaint cannot be taken as proved against the wife.

(44) The last matter which has to be dealt with is the alleged desertion of the respondent wife. It is not disputed by Mr. Ramesh Chandra, appearing on behalf of the respondent wife that the respondent wife has not been to the matrimonial house since 18/4/1978. Thus six years have gone by and the wife has not gone back to the matrimonial home. It is a matter of disputed between the parties as to how the wife left the matrimonial home on 18/4/1978. It is stated by the husband that she was taken away by her brothers who came and abused the mother-in-law, who was in the house at that lime. The wife says that she was left at her parent's house by the husband.

(45) The marriage between the parties took place on 26/6/1977 and the wife his not been in the matrimonial home since 18/4/1978. It it only if the wife had left the matrimonial home on or after 27/6/1977, she could be said to have deserted the petitioner for a period of two years immediately preceding presenting the petition. She did not stay in the matrimonial home after 18/4/1978, i.e. approximately two months less than the period of two years. This petition of the husband on the ground of desertion of the wife is liable to fail for the reason of two years' period prescribed by Section 13(1)(b) of the Hindu Marriage Act having not been over at

the time of presentation of the petition. In these proceedings there could be no finding of desertion in favor of the husband and against the wife as this ground was not available to the husband at the time of presentation of the instant petition.

(46) The counsel for the respondent wife has referred to Amarjit Paul Singh v. Kiran Bala, for the proposition that instances of cruelty have not been given in this petition.

(47) In view of my finding above, I am of the view that this judgment has no application to the present case. In the present case instances of cruelty have been detailed in the judgment based upon the pleadings of the parties and the evidence recorded in the case. Counsel for the respondent wife has also referred to Abha Astavans v. Suresh Astavans. Air 1984 Del 131. This is not a full report of the judgment. The court in that case held that as far as cruelty is concerned, the conduct complained of must be grave and weighty. I do not accept the contention of counsel for the respondent wife that the conduct which has been dealt with by me in my judgment is not grave and weighty. Counsel for the respondent wife has also referred to Smt. Maya v. Brij Nath AIR 1982 Delhi 240. Neither of these judgments, therefore, come in the way of granting the relief to the husband on the ground of cruelty.

AIR 1985 P& H 332 was also cited before me. This case relates to desertion. I have already held that in view of the fact that the petition was filed two months before the two years' period postulated under Section 13(1)(b) was over, there can be no finding of desertion against the wife in this case. For this reason there is no reason to deal with this judgment. In any case the constituents of desertion have been laid down by the Supreme Court in 1957 SC 176 to be - (i) the factum of separation and (ii) the conduct of a particular kind, i.e. the intention to bring cohabitation to a close. It is admitted fact that the parties have not lived together since 18/4/1978. It is from the conduct of a particular kind that inference regarding intention to bring cohabitation to a close can be inferred. This intention has been referred to as 'animus deserendi', in parenthesis, by the Supreme Court.

(49) The reason for my mentioning 'animus deserendi' in the manner I have is that it would need to be clarified in some case, which I need not do in this one, as to

what is the meaning and effect of the words 'animus deserendi'. The reason for this is because in this case the court below has used the expression in paragraph 7 of the judgment 'calculated acts of animas deserendi'. Although Supreme Court has used this expression which appears to be a latin expression, it does not appear to be defined in either Black's Judicial Dictionary or Jowitt's Dictionary.

(50) In view of my above finding that the respondent has been guilty of cruelty towards the petitioner, I set aside the impugned judgment of the Additional District Judge, Shri G.S. Dhaka, dated 23. 1. 82 and grant a decree of divorce in favor of the appellant and against the wife respondent under Section 13(1)(ia) of the Hindu Marriage Act.

(51) There is no order as to costs.

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