

Shri Pranab Biswas Vs. Smt. Mrinmayee Dassi and anr.

Shri Pranab Biswas Vs. Smt. Mrinmayee Dassi and anr.

SooperKanoon Citation : sooperkanoon.com/855730

Court : Kolkata

Decided On : Dec-18-1975

Reported in : AIR1976Cal156

Judge : M.M. Dutt and ;R.K. Sharma, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 10, 10(1), 12(1), 12(2), 13, 23 and 23(1)

Appeal No. : A.F.O.D. No. 116 of 1973

Appellant : Shri Pranab Biswas

Respondent : Smt. Mrinmayee Dassi and anr.

Advocate for Def. : Sitaram Bhattacharyya, Adv.

Advocate for Pet/Ap. : Amar Prasad Chakravorti and ;Benoy Kumar Banerjee, Adv.

Disposition : Appeal dismissed

Judgement :

R.K. Sharma, J.

1. This appeal is at the instance of the petitioner husband Pranab Biswas and arises out of the judgment and order of dismissal passed by the Third Court of 'the

Additional District Judge, Howrah, on 31-8-1971 in Mat. Suit No. 1 of 1970.

2. Stated in short the petitioner's case was that he entered into a negotiated marriage with the respondent No. 1 on or about the 10th of Falgun 1372 B.S., corresponding to the 22nd of February 1966. The marriage was solemnised according to the Hindu rites. Soon after the marriage the O. P. respondent No. 1 as bride went to the petitioner's house at Salkia and there she was found vomiting and ailing. On medical examination it was detected that she was pregnant at the time of marriage and had been carrying for about three or four months. The marriage had not been consummated between the parties and the petitioner got a rude shock on account of the unchastity of his spouse. The Respondent wife was first removed to a friend's house where she having admitted that she was in love with respondent No. 2 Ranjit Kumar Sinha Roy and had conceived through him, she was taken to the house of her father at Naihati and was left there. The petitioner husband was surprised to find that a fraud had been practised upon him by giving him in marriage a pregnant girl and so he wanted to avoid the marriage. In this behalf he consulted a lawyer and was advised to institute a suit after expiry of three years from the date of marriage for annulment of the marriage. Shortly before the proceedings were started some papers came to the hands of the petitioner husband through his friend who happened to be known to respondent No. 2 aforesaid, and from those letters the petitioner-appellant came to know that respondent No. 1 was living in adultery. That on account of adulterous life led by the respondent wife and regular offence committed by her the petitioner-appellant found himself humiliated as the offence of adultery was committed deliberately and with intention to injure the feelings and susceptibilities of the petitioner husband. The petitioner appellant was also threatened by several unknown persons with assault and physical injury and the petitioner-appellant became afraid for his life and there arose reasonable apprehension in his mind that living with respondent No. 1 would be harmful to him.

3. On the basis of aforesaid facts and pleading, the petitioner husband Prayed for a decree annulling his marriage under Section 12 of the Hindu Marriage Act 1955 (hereinafter called the Act). Alternatively he prayed for a decree of divorce under Section 13 of the Act and/or for a decree for judicial separation under Section 10

of the Act.

4. The suit was contested by respondent No. 1 Mrinmayee Dasi alone. She admitted in her written statement that she was married to the petitioner-appellant , on the 10th of Falgun 1372 B.S. according to the Hindu rites and after marriage she was taken to the house of her husband where she stayed for some time. The material allegations made against her in the petition filed by the husband were all denied. She contended that her husband was in love with some other girl and wanted to marry her by getting rid of the petitioner. She denied that she was pregnant at the time of her marriage and she also denied that she was in love with O.P. respondent No. 2 Ranjit Kumar Sinha Roy. She stated that she was desirous of making home with her husband and in the premises her petitioner husband was not entitled to the reliefs prayed for by him.

5. Before the learned Additional District Judge letters marked exhibit 1 series purported to have been written by Mrinmayee Dasi to her lover Ranjit Kumar Sinha Roy or to her mother or to her husband or to some other person were produced in evidence. A number of witnesses were examined by either side and the learned Additional District Judge considered the matter and dismissed the suit.

6. Mr. Chakravorti, the learned Advocate for the appellant-husband, submits that the learned Court below decided issue No. 3 correctly and held that the respondent wife was pregnant at the time of marriage by some person other than the petitioner. But the learned Court below in deciding issues Nos. 1, 5 and 6 arrived at a wrong conclusion and held that the petitioner husband was not entitled to a decree of nullity as the proceeding had not been instituted within one year from the date of marriage. Mr. Chakravorti submits that the learned Additional District Judge took an erroneous view of law in coming to that conclusion. In view of the contention raised by Mr. Chakravorti it is necessary for us to see whether the learned Court below came to a wrong conclusion in holding that the petitioner husband was not entitled to a decree under Section 12(1)(d) of the Act. Mr. Chakravorti strenuously tried to persuade the Court to hold that under Section 23(1)(d) of the Act, it is for the Court to grant a decree if there has not been any unnecessary or improper delay in instituting the proceedings. Mr. Chakravorti

submits that in this case the delay of three years has been amply explained and the rigidity of time limit of one year imposed by Section 12(2)(b)(ii) stands tempered and mitigated by virtue of the enactment of the general provision contained in Section 23(1)(d) of the Act. In this connection Mr. Chakravorti seeks assistance from the case of *S. v. R.* reported in : AIR1968 Delhi79 . But that case was one which fell under the purview of Section 12(1)(a) to which the bar of Section 12(2)(b)(ii) was not attracted. Therefore, he can derive no assistance in support of his contention from that source. We also hold for reasons presently to be given that this argument that Section 23(1)(d) is of help to him has no substance at all.

7. Section 12(2)(b)(ii) states :

'12 (2) Notwithstanding anything contained in Sub-section (1), no petition for annulling a marriage-

(b) on the ground specified in Clause (d) of Sub-section (1) shall be entertained unless the Court is satisfied- (ii) that proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such commencement and in the case of marriages solemnised after such commencement within one year from the date of the marriage.'

8. Clause (d) of Sub-section (1) of Section 12 referred to above says:

'12 (1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:-- (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.'

9. Admittedly the marriage in question had been solemnised on the 22nd of February, 1956 i.e. long after the 18th May 1955, when the Act came into force. Therefore, in order to succeed in avoiding the marriage on the ground of pregnancy of the respondent wife at the time of marriage by some person other than the petitioner it was incumbent upon and imperative for the petitioner-appellant to institute the proceedings within one year from the date of the

marriage. Admittedly, the appellant-husband started the proceedings after waiting for three years. Therefore, Section 12(2)(b)(ii) stands as a bar against the appellant-husband's success in the proceedings.

10. Now it is to be seen whether this bar can be got rid of by invoking the aid of Section 23(1)(d). Section 23(1)(d) says-

'23 (1) in any proceeding under this Act. whether defended or not. if the Court is satisfied that- (d) there has not been any unnecessary or improper delay in instituting the proceeding then, and in such a case, butnot otherwise, the Court shall decree such relief accordingly,'

11. This general provision in the Act is not intended to nullify and frustrate the period of one year's limitation imposed by Section 12(2)(b)(ii) upon the suitor seeking relief under Section 12(1)(d). Section 23 does not Intend to free the hands of the Court from the fetters of one year's limitation which Section 12(2)(b)(ii) imposes in giving relief by having the marriage declared a nullity by a decree online ground given in Section 12(1)(d). Any suitor who wants to avoid the marriage entered into by him on the ground given in Section 12(1)(d) of the Act must start the proceeding within the time limit prescribed for that purpose by Section 12(2)(b)(ii). There is no escape from it whatsoever. On the other hand Section 23(1)(d) is there in the Act for a contrary purpose. It enables the Court to refuse relief to the suitor even when the suitor is under no bar of limitation and is otherwise entitled but has instituted the proceedings after an unnecessary and improper delay. For any case falling under, for example. Section 10 or 13 there is no outward time-limit prescribed for presenting a petition. Even so a suitor is under obligation because of Section 23(1)(d) to institute proceedings without unnecessary and improper delay. Therefore, what emerges from the above discussion is that Section 23(1)(d) enables the Court to refuse relief to late Latifs even under other sections kept free from the bar of limitation, should they approach Court after unnecessary and improper delay. Anyway, as in our view Section 12(2)(b)(ii) creates an absolute bar, the appellant-husband who instituted the proceedings after three years from the date of marriage cannot get any relief under Section 12(1)(d) of the Act. no matter what explanation, good, bad or

indifferent, he puts forward to explain the delay, Since the appellant is not entitled to any relief under Section 12(1)(d) of the Act, it is futile for us to enter into the question whether or not the respondent wife was pregnant on the date of marriage by a person other than the appellant before us. The Court below need not have entered into an enquiry on this point as the enquiry whatever its result was a superfluity and of no consequence for the purpose of coming to a decision whether or not the petitioner husband was entitled to relief under Section 12(1)(d) of the Act. In our opinion uncalled for enquiry or unnecessary investigations in matrimonial suits ought to be scrupulously avoided because an unnecessary finding may come to stand in the way of reconciliation of rapprochement that may be effected or hoped for.

12. The learned Additional District Judge rightly held that Section 5 of the Limitation Act was of no help to the petitioner husband in view of the provision contained in Section 29(3) of the Limitation Act. Mr. Chakravorti does not contend before us that Section 5 of the Limitation Act can rescue the petitioner from the position he has placed himself in. Hence the appellant husband can claim no relief under Section 12(1)(d) of the Act.

13. In the Court below the petitioner-appellant sought relief inter alia on the ground of desertion by the wife. The learned Court below rightly pointed out in its judgment the specific evidence on the point to show that if there was a case of desertion at all then the offending party was the petitioner husband himself and not the respondent wife. Since this ground is not canvassed before us in appeal we need only say that the learned Court below correctly held that the factum of desertion was not established within the ambit of Section 10(1)(a) of the Act and the petitioner-appellant was not entitled to any relief on that score.

14. Similarly, in this Court the contention that the respondent wife was living in adultery is not pressed. The learned Court below after adequate analysis of the evidence rightly held that there was no evidence to lead the Court to the conclusion that the respondent wife was living in adultery. Hence on this allegation too the Court below rightly held that the petitioner-appellant was not entitled to any relief.

15. Before us Mr. Chakravorti contends that as the respondent wife was guilty of having sexual intercourse with a person other than her husband, the appellant husband was entitled to relief under Section 10(1)(f) of the Act. It appears from the record that this contention was not at all raised in the Court below and no argument was advanced in this behalf there. Before us, Mr. Chakravorti contends that since the evidence is sufficient on record to prove this allegation, the petitioner-appellant should be granted a decree for judicial separation on that ground. In this connection to support his contention that fresh ground can be urged in appeal if evidence was on record, Mr. Ohakravorti relies upon a case reported in : AIR1969 Mad235 ; Dr. H.D. Vira Raddi v. Kistamma, and draws our attention to certain observation made by Rama Prasada Rao, J., who delivered a separate but concurrent judgment. We do not, nor does Mr. Bhattacharya the learned advocate for the respondent wife, dispute that proposition of law. Bearing in mind that this is a new contention raised before us we shall proceed to consider whether the allegation of the respondent wife's having sexual intercourse with a person other than the husband after the solemnisation of the marriage is established or not. Though allegation of adulterous conduct of the respondent wife after the marriage is made in para. 8 of the petition, there is no particular of the alleged offence given. The allegation made in para. 8 of the petition was traversed by the respondent wife in para. 13 of her written statement as false and baseless. To come to the evidence on the point the petitioner-appellant who was examined as witness No. 8 for the petitioner stated in his examination in chief,

'I came to know afterwards that Mrinmayee continued to mix with Ranjit and another relation of her's. His name was Subhash who was being called Sejda by Mrinmayee.'

16. This statement is no evidence being in the nature of a hearsay. The petitioner-appellant did not disclose the source of this knowledge nor anything about the time when he gained that knowledge. Therefore, it is not a statement which can be relied upon. But on cross-examination he improved matters by saying.

'I only saw Ranjit and Subhash to roam about with Mrinmayee during nights on several days. I have seen Ranjit to lie down in a room in the father's house of

Mrinmayee in the same bed with Mrinmayee. This I saw from outside the house.'

17. This is a clear improvement. For the first time the petitioner-appellant claimed to have seen with his own eyes from outside the house of his father-in-law, Ranjit lying down in the same bed with Mrinmayee inside a room of her father's house at Naihati. Such a vital information of which it seems the petitioner-appellant was in possession was not disclosed in his petition and it was kept withheld even during his examination-in-chief. This precious piece of evidence inspires no confidence. The petitioner-appellant was a resident of Salkia. When and for what purpose he went to Naihati, from where and at what hour he saw the two respondents lying in the same bed are matters not disclosed. Had the story been a true one such a vital weapon in the armoury of the petitioner would have certainly found a launching at the time the petition was drafted and/or the petitioner was examined by his own advocate. Hence this statement is no more than a broken reed for the purpose of reliance. P.W. 4 stated,

'I have seen Ranjit to move about with Mrinmayee even after Mrinmayee's marriage. I have seen her to move about with Ranjit.'

18. This witness admittedly lives at a distance of about one mile from the house of Mrinmayee's father. P.W. 3 on the other hand stated,

'Ranjit left the house of Mrinmayee's father just after Mrinmayee's marriage after a quarrel with Mrinmayee's father. After that I have never seen Mrinmayee to mix with Ranjit.'

19. This witness lives just outside the house of Mrinmayee's father. Therefore, if Mrinmayee was moving about with Ranjit and if Ranjit was a frequenter of the house of Mrinmayee's father at the time when Mrinmayee was there after marriage, then P.W. 3 being a close neighbour had much better opportunity to see and observe the goings on and not P.W. 4 who lives quite a distance away. Moreover, when asked on cross-examination P.W. 4 could not give any date or the month regarding the alleged movement of Mrinmayee with Ranjit. The evidence of P.W. 3 which we have no reason to disbelieve knocks the bottom of the story that Ranjit was seen in the vicinity of her father's house even after Mrinmayee's

marriage not to speak of his lying in the same bed. Hence, the allegation that the respondent wife committed adultery with any one remains utterly unproved. We have already said that this is a fresh ground urged to prop up the appellant's case in this Court; but on analysing the evidence on record we find it hopelessly unreliable and inadequate to substantiate the allegation of any act of adultery. Therefore, the appellant is not entitled to any relief on the ground of adultery.

20. The next ground upon which relief in the form of judicial separation is sought for in this Court is the ground of cruelty under Section 10(1)(b) of the Act. This too is a ground canvassed for the first time in this Court. Let us now turn to the contents of the petition and see how the foundation for the allegation of cruelty is laid down there. In para 9 it is stated,

'That on account of such adulterous life and regular offence committed by the respondents your petitioner has become a victim of cruelty as the offence is being committed with deliberate intention of wounding and humiliating your petitioner who is also threatened by several unknown persons of assault and physical injury on behalf of the respondents and your petitioner is afraid of his life and there is a reasonable apprehension in the mind of the petitioner that it will be harmful for the petitioner to live with the respondent No. 1.'

21. Even a cursory analysis of the allegation contained in para. 9 of the petition would show that the petitioner considered that the adulterous life led by the respondent wife turned him into a victim of cruelty. The paragraph gives further reason why the petitioner considered that as an act of cruelty by saying 'as the offence is being committed with deliberate intention of wounding and humiliating your petitioner.' To prove the cruelty or rather the effect of aforesaid cruelty falls within the ambit of Section 10(1)(b), the petitioner further states in that paragraph 'who is also threatened by several unknown persons of assault of physical injury on behalf of the respondents.' In the whole petition there is no other paragraph which deals with the question of cruelty. The cruelty that is pleaded in para. 9 of the petition has not been proved. It has not been established that the respondent wife was living in adultery. It is also not established that she was guilty of any act of adultery. So there was no question of her being cruel to the petitioner by her

indulgence in any act of adultery far less being cruel on account of any deliberate adultery to inflict injury and humiliation upon the petitioner-appellant. As regards threat by unknown persons (apart from the question whether and in what circumstance it means cruelty by the wife) there is no soupcon of evidence to justify even the inclusion of such allegation in the petition. Therefore, the ground of cruelty as made out in the petition is in a sorry mess.

22. Mr. Chakravorti, however, makes out a case of cruelty not on the basis of pleading but with the help of a letter which is on record. He submits that Exhibit 1 (one of the letters belonging to Exhibit 1 series and allegedly written by the respondent wife to her paramour) supplies the foundation for the alleged cruelty. Mr. Chakravorti contends that Exhibit 1 shows what respondent No. 1's premarital relation with respondent No. 2 was. In the letter respondent No. 1 bewails that she had to marry a person other than the one whom she had loved and assures that she had not physically done anything with her husband which she had done with her lover. In short, in Exhibit 1 there is some recollection of a romantic past, and some tears for her unromantic present. Of course the authorship of this letter as well as that of others in Exhibit 1 series is denied by the respondent No. 1; but for the present we shall proceed on the assumption that the letters were written by respondent No. 1 herself. Mr. Chakravorti contends that Exhibit 1 inflicted cruelty -- a mental one -- by the respondent wife upon the petitioner-appellant. He submits that cruelty can be mental as well as physical and the case with which the petitioner-appellant has come to Court is a case of mental cruelty. In this connection he cites a few lines from the judgment of S.K. Chakravorti, J., reported in (1970) 74 Cal WN 924, *Dr. Akalanka Bhandari v. Smt. Aruna Bhandari*. There is no dispute at this time of the day that cruelty can be mental or physical or both. Mr. Chakravorti does not speak of any physical cruelty at all. All that he submits is that Exhibit 1 caused such mental cruelty to the petitioner-husband as to entitle him to relief under Section 10(1)(b) of the Act. Section 10(1)(b) is in the following terms;

'10 (1) either party to a marriage, whether solemnised 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,

(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.'

23. This section stipulates not only infliction of what the other spouse might consider a cruelty but cruelty of such particular virulence as to cause reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party. The letter Exhibit 1 is an unpleasant material for the husband to read no doubt. But how did the letter Exhibit 1 cause reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for him to live with the other party is not clear at all. This . letter if it was such a source of cruelty as sought to be made out at this stage by the learned advocate for the petitioner-appellant, it is strange that this letter found neither specific nor a passing reference in the petition filed by the petitioner-appellant seeking relief of various nature. It is strange that the effect produced by this letter upon the mind, mental condition and thinking process of the petitioner-husband has not even been given casual reference in the petition. It is equally strange that the mental cruelty allegedly inflicted upon the petitioner by this letter has not been shown to have produced any deleterious effect upon the health of the petitioner appellant. There is nothing either in the petition or even in the evidence of P.W. 8, the husband, to show that this letter shattered his health, upset his mental equilibrium or tranquillity of the mind by producing a sense of persistent gnawing in his heart or stomach. There is no evidence to show that by brooding over this letter the petitioner-husband lost weight or suffered cessation of appetite. There is nothing on record to show that this letter Exhibit 1 made him a laughing stock of friends or a convenient butt for ridicule and thus caused him to lose face. There is no such averment either in the petition or in the evidence of the petitioner-appellant himself.

24. Now the question is in this stage of evidence on record, even assuming that the contents of Exhibit 1 are cruel for the appellant-husband to read, can it be said that the case of petitioner appellant is fully covered by Section 10(1)(b) The wordings of Section 10(1)(b) has already been reproduced above an analysis of the same shows that cruelty simpliciter is not a ground for passing a decree for

judicial separation. The cruelty of a particular nature, of a particular virulence only entails the consequence of judicial separation. The qualifying word 'such' placed before the word 'cruel' in Section 10(1)(b) makes it abundantly clear that cruelty in its universality has not been brought within the ambit of the section. Only cruelty which produces a particular type of consequence falls within the scope of Section 10(1)(b). The cruelty has to be such '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.' Assuming that the contents of Exhibit 1 fall within the scope of cruelty, there is no further support to be had from evidence to show that the cruelty inflicted by the contents of Exhibit 1 caused a reasonable apprehension in the mind of the petitioner that 'it will be harmful or injurious for the petitioner to live with the other party.' Therefore, it cannot be held that the petitioner appellant has made out a case of cruelty falling under Section 10(1)(b) for achieving judicial separation. Add to this the fact that this is a new ground taken before this Court, add to that there is no case made out on the ground of cruelty caused by Exhibit 1 in the petition, and add further even in the memorandum of appeal the allegation of cruelty is not conjugated with the impugned letter, the picture becomes clear to show that this ground is taken only as an afterthought and was not a real ground keenly felt at any time by the petitioner-appellant. Cruelty is a matter to be felt and experienced by the victim and not merely to be presumed and notionally suffered.

25. But to support the contention raised by him, Mr. Chakravorti has cited some Indian and English cases on the point which need be noticed now. In the case of Smt. Saptami Sarkar v. Jagdish Sarkar, reported in (1969) 73 Cal WN 502, it was found that the offending husband called the wife a prostitute shouting from the road even, he tried to wipe off the vermilion mark from the parting of her hairs, he dashed her head against the wall endangering her limb, liberty and health and it was considered to be a case of cruelty. In the case of Mrs. Annie Baron v. B.K. Baron (which was a case under Divorce Act. 1869) reported in (1970) 74 Cal WN 1924, it was found that the husband looked upon the wife with utter contempt as a woman of low origin and illegitimate by birth; he habitually taunted her and there were constant rows leading to exchange of abuse. The husband had turned the wife out of the house on one occasion and she had been forced to live with her brother for a pretty long time. The act of the husband was held to be cruel. In the

case of *Dr. Akalanka Bhandari v. Smt. Aruna Bhandari*, (1970) 74 Cal WN 924 (Supra) it was found that the husband taunted his wife in letters after letters on mere suspicion that she had not been a virgin at the time of her marriage. The husband had even called upon the wife to prove that the children born to them in wedlock wereborn of his loins. The husband suffered from a grave suspicious menia and abused the wife calling her prostitute, calling her a girl of little learning in spite of the fact that she had received education up to IV year B.A. class. Treatment of this sort were meted out by the husband day in and day out and the Court considered this to be a case of cruelty. In the case of *Cooper v. Cooper*, (1954) 3 All ER 415 the cruelty of the husband consisted in indecently assaulting the child of the marriage, causing of physical injury like breaking thumb of the wife and striking and knocking her dawn. The offending husband had also shown rudeness of conduct to guests in the house. All these matters were taken together as forming a composite picture of cruelty.

26. There is a streak of common feature running across all these cases cited before us. In all the cases noticed above there was deliberate, intentional, open, persistent, insufferable act on the part of the offending spouse. In all these cases physical violence was also thrown in as additive and sense of remorse or repentance was conspicuous by its absence. Whereas in the case before us such is not the position. An unposted letter was written by the offending spouse to her (let us so describe) premarital boyfriend surreptitiously without any deliberate desire to openly hurt the feelings of the husband or cause humiliation to him. But the offending spouse was never confronted with the letter in question. Later the offending spouse several times begged to be forgiven and also wrote a repentant letter Exhibit 1 (f) to the husband herself. There was no sadistic desire to cause mental pain to the husband openly, defiantly and unmindful of his remonstrance or protest. In this case the husband came accidentally by a letter which was not meant for his eyes or cognisance. The alleged letter did not reach its destination. Ample amend was made by pledging loyalty and showing remorse and repentance. After such amends no reasonable apprehension can subsist in the mind of the aggrieved spouse that it will be harmful or injurious for him to live with his repentant spouse. There-fore, the facts and circumstances of this case being poles apart from the facts and circumstances of the cases cited before us, they do

not provide an infallible touchstone or an adequate yardstick to judge this case. Hence they do not serve as true guides.

27. However. Mr. Chakravorti relying upon the case reported in (1954) 3All ER 415 contends before us that observation of Lord Merriman in *Cooper v. Cooper* (Supra) would show that intention to injure is not an essential averment in cruelty. Lord Merriman observed,

'I am also entitled to point out following what Karminski. J.. has said, that in more than one of the recent cases in which *Boyd v. Boyd*. ((1938) 4 All ER 181) has been followed, expressly or by implication the decision in *Jamieson v. Jamieson* ((1952) 1 All ER 875) is treated as laying down that intention to injure is an essential averment in cruelty. That is not the case.'

28. This brings us right back to Section 10(1)(b) of the Act. The relevant provision has already been given above. The use of the verb 'treat' made by the section in our opinion is indicative of the fact that the act on the part of the offending spouse is required to be volitional, intentional, deliberate and designed to be cruel. Of course, cases and cases differ and there may arise some cases where, by some indirect or covert act cruelty may be caused. But a single, solitary act of cruelty followed by remorse does not fall within the mischief of the section unless it satisfies the requirement of Section 10(1)(b) wholly. Be that as it may, in the case before us, we hold that the requirement of Section 10(1)(b) has not been satisfied by the act complained of. All acts of cruelty are not covered by Section 10(1)(b) which only deals with and takes notice of some virulent acts of cruelty which cause the sort of apprehension envisaged by the Act. Hence the solitary act complained of followed by remorse does not at all constitute such a cruelty as has to be made out to attract the provision of Section 10(1)(b) of the Act. The averment that a lawyer of Howrah Court advised the petitioner-appellant to institute proceedings after 3 years from the date of the marriage is a clear indication that the advice was sought for with a view to obtaining divorce and the advice was given keeping in view Section 14(1) of the Act. The content of the petition filed in this case shows that relief in the form of divorce is sought for on the ground of the wife's living in adultery. The husband has failed to establish that the wife was living in adultery.

Therefore adding two and two, so to speak, it can be seen that grounds for judicial separation under Section 10 and grounds for avoiding the marriage under Section 12 of the Act werenot originally contemplated when the Howrah lawyer was consulted. So the lawyer advised the petitioner-appellant to wait for a period of 3 years from the date of the marriage before presenting the petition. In this view of the matter also it is clear that relief under Section 10(1)(b) has been sought for as an afterthought. It is a sort of a fishing venture to secure some relief somehow anyhow.

29. The end product of the exercise undergone in the above paragraphs is that the petitioner-appellant has not succeeded in making out a convincing case of legal cruelty 'also. In the result, he is not entitled to a decree for judicial separation on that ground nor is he entitled to any relief whatsoever.

30. Since the petitioner-appellant has failed to make out a case even on the assumption that Exhibit 1 series were written by the respondent wife, we do not feel it necessary to enter into the question whether Exhibit 1 relied upon by the petitioner was actually written by the respondent wife or not.

31. No other point has been urged before us. In the result this appeal fails and is dismissed. In the facts and circumstances of the case, however, we make no order as to costs.

32. As no cross-objection against a finding lies in this Court by a party who is not affected by the decree passed, the cross-objection is dismissed but without costs.

M.M. Dutt, J.

I agree.