

Before M.M.S. Bedi & Gurvinder Singh Gill, JJ.

LT. COL. DR. SUMEET KAUR—Petitioner

versus

DR. DAVINDER SINGH RANDHAWA—Respondent

FAO-M No.379 of 2014

March 09, 2018

Hindu Marriage Act, 1955—S.13—Cruelty—To establish mental cruelty, appellant required to establish such conduct on part of respondent, which inflicts mental pain and suffering making it not possible to live together – Cross-examination basically a set of humiliating, insulting, vexatious and embarrassing questions – Fact that she had made a complaint to Commissioner of Police or she had got her children withdrawn from a school in Amritsar cannot ipso-facto be held against appellant – Also apposite to refer to statements of children of parties – From interaction, it is borne out both children have referred to fact that their father quarrels with their mother – Cruelty on part of wife not proved – Wife’s appeal against dissolution of marriage – allowed.

Held that, the appellant seeks dissolution of her marriage on the grounds of cruelty. In order to establish mental cruelty, the appellant is required to establish such conduct on part of the respondent, which inflicts mental pain and suffering making it not possible for her live together.

(Para 13)

Further held that, the appellant-wife, while stepping into the witness box has reiterated the averments made in her petition. The respondent, I order to assail antecedents of his wife’s family put questions to her regarding factum of divorces in her family, during her cross-examination. In fact a suggestion was given to her that her maternal uncle’s daughter, a dentist in America, after her divorce, was residing with someone in a ‘live-in’ relationship which was denied by appellant. A question was even put to her that her servant was staying with her in the same accommodation allotted to her while she was posted in Leh which she admitted as correct while clarifying that he was an old family servant. However, nothing substantial could be brought about during her lengthy cross-examination running into 25 pages spanning over 8 different dates. We have gone through the entire

cross-examination which is basically a set of humiliating, insulting, vexatious and embarrassing questions having no relevance for the issues in question. The appellant admitted having filed a complaint against her husband to the Commissioner of Police and also admitted having obtained transfer certificates of her children from Delhi Public School, Amritsar.

(Para 18)

Further held that, a lady, under normal circumstances, would not think of leaving her matrimonial home as in our society it is considered a taboo and it is only under compelling circumstances that she would think of severing her matrimonial relations. The fact that she had made a complaint to the Commissioner of Police or she had got her children withdrawn from a school in Amritsar cannot ipso-facto be held against the appellant. In fact the appellant, serving in Army, had remained posted at Several places and young school going children would be expected to accompany the mother especially when ample facilities are available to Army Officers. Under these circumstances, withdrawing children from a school in Amritsar cannot be said to be a circumstance against the wife.

(Para 19)

Further held that, perusal of the aforesaid extracts from the interaction of the Guardian Judge, Amritsar with the children reveals the impression left on the minds of the children by the conduct of the respondent. From the interaction it is borne out that both the children have referred to the fact that their father quarrels with their mother. A perusal of the aforesaid statements show that the same are not at all tutored and are infact very straight and honest expressions regarding nature of their father. They have not gone out of the way to speak all out against their father but their statements do reveal the fact that their father is of quarrel some nature and had been quarreling with their mother.

(Para 29)

R.S. Athwal, Advocate
for the appellant.

A.P.S. Sandhu, Advocate
for the respondent.

GURVINDER SINGH GILL, J.

(1) Aggrieved with dismissal of petition under Section 13 of the

Hindu Marriage Act, 1955 (hereinafter referred to as “the Act”), for dissolution of her marriage with respondent, the appellant-wife has filed the present appeal challenging judgment and decree dated 23.9.2014 passed by the learned Additional District Judge, Amritsar.

(2) The appellant-wife, in her petition under Section 13 of the Act averred that she was married to respondent on 8.5.1999 at Amritsar as per Hindu (Sikh) rites and they lived together till 18.5.2008 and during the said period they resided at different places including Amritsar, Bangalore and Jalandhar. A son namely Amarbir Singh and a daughter namely Simran were born out of the wedlock on 16.2.2000 and 5.4.2001, respectively. Though the respondent did not treat the appellant well right from the very beginning but such treatment was ignored by the appellant treating the same to be normal wear and tear of the married life. However, after January 2008, the behaviour of respondent became hostile, aggressive and violent not only towards the appellant but also towards the children making it extremely difficult for the appellant to endure the same and she lost not only her physical and mental happiness, but also sense of personal safety.

(3) It is averred that the appellant who was initially working as a Resident in Paediatrics in Sri Guru Ram Dass Medical College Hospital, Amritsar, joined Army Medical Corps in the year 2002. It is further averred that the respondent and his mother were not content with the dowry brought by the appellant and demanded Rs. 1.5 lacs. The respondent’s mother used to keep nagging and finding faults in almost every action of the appellant in the presence of the respondent and the appellant had tough time to cope with her job and the environment at home. The appellant being helpless had to seek help from her parents to provide for a maid-servant, whose salary was paid by them. It is averred that the father of the appellant gave cash amounts ranging between Rs. 10,000/- to Rs. 20,000/- on more than 15 occasions to the respondent, upon being pressurized for the same. The appellant’s father was also pressurized to give an amount of Rs. 1.5 lacs to the respondent for depositing fee of Post Graduate course at Bangalore. It is further averred that the respondent even told the appellant to withdraw their children from Delhi Public School, Jalandhar and to get them admitted in some government school to save money and used to pass sarcastic comments.

(4) It is averred that on 9.3.2008, the respondent visited the appellant at Jalandhar Cantt. and upon his demand the appellant gave an amount of Rs. 7,000/- which she was having with her, but the

respondent after taking the money abused and threatened the appellant either to hand over the monthly salary to him or he would snatch and sell away her jewellery. Similarly, on 18.5.2008, upon the last visit of the respondent to the appellant at Jalandhar, he demanded appellant's salary and abused and slapped her in the presence of her parents and maid-servant. Upon refusal of the appellant to hand over the salary, the respondent created a scene by shouting at the top of his voice and went away holding out threat that he would sever all relations with the appellant and children and if need be, he would kill her.

(5) It is further averred that in June, 2008, when the appellant returned from duty from Kapurthala and had severe Typhoid fever, she informed the respondent and his parents but no one came to inquire about her health and when the appellant went to her parental home at Amritsar, the respondent felt annoyed and threatened to divorce the appellant. The appellant thus alleged that she had been subjected to cruelty, both physically and mentally, at the hands of the respondent.

(6) The respondent, in his reply, denied all the material averments made in the petition and took a stand that in fact the attitude of the appellant was cruel and indifferent who considered herself superior than the respondent on account of her status and education and was always nagging that the respondent was not up to her status and that even his parents were uneducated and were not having a good standard of life. The respondent thus took a stand that the appellant can not be allowed to take benefit of her own wrongs and that the petition deserves dismissal.

(7) The appellant filed rejoinder denying the stand taken by the respondent in his reply while reiterating the averments made in the petition. The parties were put to proof on the following issues:-

1. Whether the respondent is guilty of treating the petitioner with cruelty? OPP
2. If issue No.1 is proved in affirmative, whether petitioner is entitled to decree of divorce on the ground of cruelty? OPP
3. Whether petition is not maintainable in the present form? OPR
4. Relief.

(8) The learned lower Court upon considering the evidence on record, returned its findings on issue No.1 against the appellant holding therein that the appellant has been unable to prove that she had been

treated with cruelty by respondent. Consequently, issue No.2 was also decided against the appellant. Issue No.3 as regards the maintainability was not pressed. Thus, the petition was dismissed vide impugned judgment and decree dated 23.9.2014, which has been challenged by the appellant-wife by way of filing the present appeal.

(9) The learned counsel for the appellant while assailing the impugned judgment and decree submitted that the learned lower Court has not appreciated the evidence in the correct prospective and that the evidence on record clearly suggests that the respondent had met out ill-treatment to the appellant-wife, sufficient enough to constitute cruelty, so as to entitle the appellant for a decree of dissolution of her marriage.

(10) The learned counsel further submitted that the averments made in the petition stand substantiated from the statement of the appellant, which finds ample corroboration from the most natural witnesses i.e. the maid-servant, the driver of her father and her father who would have several opportunities to observe the conduct of the respondent. The learned counsel thus submitted that the impugned findings on issue no. 1 and 2 cannot sustain and are liable to be reversed and consequently the impugned judgment deserves to be set aside and the petition for divorce deserves to be decreed.

(11) On the other hand, the learned counsel for the respondent submitted that there is no infirmity in the impugned judgment and decree, which has been passed after duly appreciating the evidence on record and that the appeal deserves dismissal.

(12) We have considered the rival submissions addressed before this Court and have also perused record of the case.

(13) The appellant seeks dissolution of her marriage on the grounds of cruelty. In order to establish mental cruelty, the appellant is required to establish such conduct on part of the respondent, which inflicts mental pain and suffering making it not possible for her to live together. Hon'ble the Supreme Court, in *Samar Ghosh* versus *Jaya Ghosh*¹, while extensively referring to earlier case-law, enumerated some instances of human behaviour relevant in dealing with the cases of “*mental cruelty*”. The relevant extracts read as under:

“98. On proper analysis and scrutiny of the judgments of

¹ (2007) 4 SCC 511

this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of “mental cruelty” within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acutemental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty. On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to

put up with such conduct and continue to live with other party.

(ii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iii) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(iv) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(v) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vi) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(vii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(viii) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(ix) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it

extremely difficult to live with the other party any longer, may amount to mental cruelty.

(x) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xi) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiii) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

(14) The above said list of acts consisting cruelty, is illustrative of various possible conducts of spouses but is not exhaustive. The social and financial status, the position and respect in society, the nature of job and business, family background and certain personal factors like individual's sensitivity are also the factors which can be taken into consideration while assessing as to whether the conduct of a spouse amounts to cruelty.

(15) In the present case, the appellant is a professional having respectable job. She is in fact working for a disciplined force having Army background. Apart from other parameters, the conduct of respondent has also to be measured in context of point of view of appellant i.e. as to how the conduct of respondent would affect the appellant. An act of slapping or abusing may not invoke sharp reaction or response in case of an uneducated lady in a particular culture or society. She may not mind abusive language, non-attendance by her husband during illness or an occasional slap by her husband. However, similar acts, under normal circumstances, when committed without any

provocation would certainly not be acceptable to any woman more particularly if the woman is educated and would be an act of cruelty as an intolerable insult to the mind and body.

(16) In a particular section of society, abuses are taken to be part of language and a woman herself could be abusive and even violent and capable of reciprocating and responding back in the same language which may be taken to be normal conduct in that section of society. Thus, every case has to be assessed in light of factors which may vary from case to case. What may constitute cruelty in a given case may be absolutely normal conduct in another case.

(17) In light of the above, we proceed to appreciate the evidence brought on record. The appellant has set up a case that the respondent used to maltreat her, abuse her, was even violent at times, used to take away a part of her salary forcibly and even pressurized her father to part away with money and his conduct was far from being humane.

(18) The appellant-wife, while stepping into the witness box has reiterated the averments made in her petition. The respondent, in order to assail antecedents of his wife's family put questions to her regarding factum of divorces in her family, during her cross-examination. In fact a suggestion was given to her that her maternal uncle's daughter, a dentist in America, after her divorce, was residing with someone in a 'live-in' relationship which was denied by appellant. A question was even put to her that her servant was staying with her in the same accommodation allotted to her while she was posted in Leh which she admitted as correct while clarifying that he was an old family servant. However, nothing substantial could be brought about during her lengthy cross-examination running into 25 pages spanning over 8 different dates. We have gone through the entire cross-examination which is basically a set of humiliating, insulting, vexatious and embarrassing questions having no relevance for the issues in question. The appellant admitted having filed a complaint against her husband to the Commissioner of Police and also admitted having obtained transfer certificates of her children from Delhi Public School, Amritsar.

(19) A lady, under normal circumstances, would not think of leaving her matrimonial home as in our society it is considered a taboo and it is only under compelling circumstances that she would think of severing her matrimonial relations. The fact that she had made a complaint to the Commissioner of Police or she had got her children withdrawn from a school in Amritsar can not *ipso-facto* be held

against the appellant. In fact the appellant, serving in Army, had remained posted at several places and young school going children would be expected to accompany the mother especially when ample facilities are available to Army Officers. Under these circumstances, withdrawing children from a school in Amritsar cannot be said to be a circumstance against the wife.

(20) PW-2 Sabu stated that he was employed as a servant by the appellant in the year 2005 while she was posted in Bangalore and that his salary was being paid by Col. Dr. B.S. Cheema, i.e. by father of the appellant. PW-2 specifically stated that respondent and his parents used to humiliate the appellant/petitioner by giving filthy abuses. He further stated that the parents of the respondent did not care for the children. PW-2 stated that when the appellant was transferred to Jalandhar, he accompanied them to Jalandhar. He stated that the respondent had been insisting upon the appellant to get her share out of the ancestral property of her maternal grandmother and upon refusal of the appellant, he slapped her and gave beatings to her. He further stated that in fact on 26.1.2008, when the appellant was dressed in military uniform for attending the military parade, the respondent even on the said day (Republic Day) gave beatings and slapped the appellant and demanded more money to be brought from her parents. PW-2 further narrated the incident of 18.5.2008 when the respondent visited the appellant at Jalandhar and demanded an amount of Rs. 20,000/- out of salary of the appellant and upon appellant's refusal the respondent started abusing her and slapped her and when the appellant's father intervened, the respondent even abused him. PW-2 further stated that after the incident of 18.5.2008, the appellant left for Kapurthala for her official duty, where she got typhoid fever and when the parents of the respondent came to know about the same they left Jalandhar for Amritsar. When the parents of the appellant came to know about the same, they sent a driver and the appellant and her minor children were brought to Amritsar, where she stayed for ten days and that the respondent and her parents despite being informed did not inquire about the health of the appellant.

(21) The testimony of PW-2 is sought to be assailed in view of his cross-examination, wherein he could not disclose the name of one of the two orderlies attached with the appellant, though the name of the other one was disclosed as Verma. His testimony is also assailed on the ground that he could not disclose the name of any army person who had visited appellant while she was posted in Bangalore and Jalandhar

and did not produce any document to show that he had ever resided in cantonment area or any documentary proof of his employment with the appellant. However, in our opinion, such an approach in evaluating evidence would be too hyper-technical as no appointment letters are issued and nor any record is normally maintained pertaining to employment of domestic help unless any such domestic help is provided through some professional agency, which is not there in the present case. In any case, the respondent himself having given suggestions to appellant during her cross-examination that her servant was residing with her in same accommodation shows that his employment is virtually admitted by respondent. Further the fact that the servant did not know the salary of the appellant cannot be said to be a fact to impeach his credibility.

(22) PW-3 Balwinder Singh has also supported the case of the appellant. He has stated that on 3.6.2008 he was sent by appellant's father to Jalandhar by car to bring appellant and children at Amritsar alongwith their two servants as appellant was suffering from higher typhoid fever and that the appellant after recovering from her ailment had to go to Jalandhar to join her service on 11.6.2008 and he had been directed by appellant's father to drop the appellant and children at Jalandhar alongwith her in-laws. He further stated that when he went to the house of in-laws of appellant, they refused to accompany the appellant. Despite lengthy cross-examination nothing substantial could be elicited to impeach his credibility.

(23) PW-4 Dr. Col. Dr. B.S. Cheema, father of the appellant, has stated in tune with the averments made in the petition as regards the cruel treatment met out to the appellant by the respondent. He has specifically stated regarding the demand of money by the respondent and that upon refusal of the appellant he used to give her filthy abuses. He further stated that the respondent did not even hesitate to give beatings and slapped the appellant even while she was in military uniform. He has stated that upon demand of respondent, he gave an amount of Rs. 2.5 lacs to the respondent as a part of capitation fee for Post- Graduation course. He has also stated to corroborate the incident of 18.5.2008.

(24) To refute the evidence led by the appellant, the respondent examined RW-1 Harwinder Singh, Junior Assistant, office of District Transport Officer, Amritsar who produced record pertaining to the registration of Maruti Zen Car bearing No.PB-02-3113, which was initially registered in the name of Balbir Singh Cheema in the year

1999 and was thereafter transferred in the name of Sumeet Kaur in the year 2005. RW-2 Rajesh Kumar, Clerk, office of Commissioner of Police, Amritsar produced the record relating to complaint filed by Col. B.S. Cheema. RW-3 Nitika Mehra, Office Assistant, Delhi Public School, Manawala, Amritsar produced the record pertaining to admission of Simran and proved the record pertaining to change of name of the two children and their transfer certificates from Delhi Public School, Manawala to Delhi Public School, Leh. RW-4 Subhash Kumar, Record Clerk, State Bank of India, Town Hall, Amritsar brought record of PPF account in the name of respondent. RW-5 Harminder Singh, Supervisor, Sri Guru Ram Dass Hospital, Amritsar produced record regarding monthly salary of Dr. Sumeet Kaur who had joined as House Surgeon in the said hospital on 14.11.1998. RW-6 Munish Bhatia, AA Officer, LIC, Divisional Office, Amritsar produced record of insurance policy. RW-7 Subedar Kuldip Kumar, Military Hospital, Jalandhar produced leave record of Dr. Sumeet Randhawa. RW-8 Manav Mandal, Hawaldar, brought the personal dossier file of appellant. RW-9 Pardeep Kumar No.15422641 M, Leh produced the complaint moved by appellant against respondent. RW-10 Prem Kumar Bhalla, General Supervisor, Station Head Quarters, Amritsar Cantt. produced record from RTI Cell of Ministry of Defence pertaining to application moved by respondent under RTI Act. RW-11 Baldev Singh cousin of the respondent stated that the behaviour and conduct of respondent was very cordial and decent towards his wife and children. RW-13 Dr. Davinder Singh, respondent, while in the witness box stated that the appellant is under the influence of her parents and was making false allegations of cruelty, beatings and demand of dowry. He stated that he and his parents adjusted to shift to various parts of country and also started moving with bag and baggage with the appellant so that the appellant and children do not get disturbed.

(25) The learned counsel for the respondent-husband, while referring to aforesaid evidence attributed malafide to the wife to the effect that she wants to stay with her father following the precedent of her brother. Such an argument is not acceptable to us as a lady would not leave her matrimonial home merely to be a support to her father. Admittedly the father of the appellant is not a liability for the appellant as he appears to be well placed, financially and socially, having served in Army.

(26) The learned lower Court has disbelieved the contention of

the appellant regarding her contracting typhoid mainly on the ground that there was no medical evidence to establish that the appellant had taken any treatment for typhoid fever. As regards the leave period, the documentary evidence produced on record by the respondent in the shape of leave record showed that the appellant had in fact availed leave from 19.6.2008 to 29.6.2008 and not from 2.6.2008 to 11.6.2008 as stated by witnesses of appellant. The learned lower Court, thus, held that the allegation of the appellant that the respondent and her parents despite having been informed about her ailment did not inquire about her well being is a false allegation. The learned lower Court has noticed the fact that after the appellant was posted at Congo, she sought her transfer to Leh by stating that being nearer to Punjab and Chandigarh, she can travel by air to attend to her Court cases pending in Punjab and in Chandigarh but after she was posted at Leh, she sought her transfer to some station other than Punjab and Haryana and in fact sought her transfer to Mhow, Golconda or Wellington. The learned counsel for respondent-husband, while referring to the aforesaid fact has submitted that the aforesaid conduct on the part of the appellant shows that she wanted to deprive the respondent of his visitation rights granted to him by the Guardian Judge to meet his children once a month.

(27) While appreciating the aforesaid contention, it will not be out of place to mention that when the appellant got an opportunity of being posted at Congo, the respondent immediately thereafter moved an application seeking custody of the children rather than supporting his wife to avail of the opportunity of being posted abroad.

(28) In this context, it is also apposite to refer to the statements of the children of the parties i.e. daughter Simran and son Amarbir Singh, aged 10 and 11 years, respectively, which were recorded by the Guardian Judge, Amritsar on 16.5.2011, which are annexed as Annexures P-1 and P-2, respectively. The learned Guardian Judge, Amritsar in his interaction with the children, after making them comfortable and asking several questions about them and put them questions about their father, which for the sake of ready reference are reproduced below:-

Extract from statement of Simran (daughter)

“Q. 9. What do you like to become in life?

A. I cannot say but I will become some officer or doctor.

Q. 10. Do you love some gurudwara/temple?

A. I love golden temple. We visit it many times.

Q. 11. Tell me serial wise the persons whom you love?

A. I love my mummy, my nana, my nani. I love my papabut he quarrels with mummy and her mother.

Q. 12. Your mother is in job? How do you feel?

A. My mother keeps on talking with us on phone daily. She comes on Sunday and stay with us. Sometime she comes on long leave.

Q. 13. If I tell you, you stay with your papa for month fromtoday, what would you say?

A. No, I do not want to stay there. I love my mummy. She is very good.

Q. 14. How do you feel when your papa meet you everySaturday 3 p.m. to 6 p.m.?

A. My papa brings some toys and food but I want to go with my mother. ”

Extract from statement of Amarbir Singh (son)

“Q. 15. If I ask you to stay with your papa for one month from today, what would you say?

A. I have no objection, but I would like to stay with my Mamma. I can stay with my father but I will comfortable with my Mamma because she loves me.

Q. 16. How do you feel when your papa meets you every Saturday 3.00 p.m. to 6.00 p.m.?

A. I feel good as my papa loves me. He brings toys for me also. But many times he quarrels with Nana in case I am late to meet him.

Q. 17. How is your papa?

A. My papa is good man but sometimes he shows his angry mood, which I don't like. ”

(29) A perusal of the aforesaid extracts from the interaction of the Guardian Judge, Amritsar with the children reveals the impression left on the minds of the children by the conduct of the respondent. From the interaction it is borne out that both the children have referred to the fact that their father quarrels with their mother. A perusal of the aforesaid statements show that the same are not at all tutored and are

infact very straight and honest expressions regarding nature of their father. They have not gone out of the way to speak all out against their father but their statements do reveal the fact that their father is of quarrelsome nature and had been quarreling with their mother.

(30) While disbelieving the case of appellant, the learned lower Court has given undue weightage to omission on part of appellant to examine any witness from the vicinity of her residence. Such reasoning can not be said to be sound in every case because the respondent would not have been hurling abuses and beating the appellant in the presence of the neighbours. In any case, more often than not the neighbours would prefer to keep away from personal matters of others. The conduct of respondent in repeatedly pressurizing his wife to hand over a substantial part of her salary and hurling abuses upon her refusal to do the same and also beating her even while in uniform is sufficient to constitute physical and mental cruelty. The findings of the learned lower Court to the contrary are not supported by any sound reasoning and can not sustain and are hereby reversed. It is thus held that the respondent had been treating the appellant with cruelty entitling the appellant for a decree of divorce.

(31) Apart from the aforesaid discussion regarding cruelty, another aspect which also needs to be noticed is that the parties have been living separately since 2008 i.e. since the last ten years. Despite efforts for re-conciliation, they have been unable to resolve their differences. In other words, it is a case of irretrievable breakdown of marriage. In *Samar Ghosh's* case (supra), the Hon'ble Supreme Court while enumerating some instances of human behaviour, relevant in dealing with the cases of "*mental cruelty*" observed as under:

"Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

(32) In view of our aforesaid discussion, and bearing in mind the overall facts and circumstances of the case, we are of the considered view that the appeal merits acceptance. The appeal is accepted and the impugned judgment and decree are hereby set aside. As a result, the petition filed by the appellant under Section- 13 of the Hindu Marriage

Act, 1955, is accepted. The marriage of the parties is hereby dissolved by passing a decree of divorce.

(33) Decree-sheet be drawn. Parties are left to bear their own costs.

Shubreet Kaur