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(21) The respondents—authorities will, however, be at liberty to impose one of the minor punishments as indicated in Section 11(1) of the C.R.P.F. Act, 1949.

(22) It is hoped that while considering the imposition of minor punishment, if any, the respondents would keep in mind the length of service of the petitioner, who was enrolled in C.R.P.F. on 1st March, 1972. The incident, which occurred on 25th September, 1989 and also the fact finding that there was no mensrea on the part of the petitioner. Besides, the writ petition has been pending in this Court since 1993. The petitioner will be entitled to the consequential benefits as a result of the impugned orders being set aside to the extent that he has been removed from service. The same would of course be subject to any minor punishment that may be inflicted upon the petitioner.

(23) The writ petition is accordingly disposed of. No costs.

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R.N.R.

*Before J. S. Narang, J*

MANMOHAN SINGH—Appellant

*versus*

ANEETA PREET—Respondent

F.A.O. No. 145/M OF 1999

4th October, 2002

*Hindu Marriage Act, 1955—S. 13—Allegations of physical as well as mental cruelty against the husband—Wife living separately for the last about 9 years — Husband or his family making no effort to bring about reconciliation— Husband filing petition for seeking custody of the children—Custody of the children settled by compromise— Wife not willing to come to the matrimonial home — No possibility of reconciliation of marriage— Order of the trial Court accepting the petition of the Wife & annulling the marriage upheld — Husband's appeal dismissed.*

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Held, that there is no doubt, the daughter-in-law is also expected to behave like daughter i.e. in a case where the family suffers on any count she must also feel in the same manner as the other members of the family feel. No doubt the house has to be owned and accepted by her before the house owns her. A woman has to carve out and create a place for herself in the mind and heart of the family where she goes. The equal efforts are required from both the sides, sometimes the efforts are less, sometimes the efforts are more. It depends upon every individual. However, to run the house, to run the family the equivalent efforts are required to be contributed by both.

(Para 37)

Further held, that the gulf and the gap between two spouses has widened every time they have tried to come closer. The facts which have come on record show that right in the beginning of this marriage, compatibility was not found by both the spouses. It is because of irritable thoughts and hazy vision in respect of the marriage, which propagated reason, both the spouses started drifting away from each other. Cruelty is a word with wide connotations. Sometimes the mental cruelty is far more damaging than physical cruelty. The mental cruelty continues to hurt the person all along and any amount of healing touch or healing words would not wipe out the scars which continue to prick and cause continuous hurt. So far as the physical cruelty is concerned, the injury caused may not cause a damage to that extent but may leave a scar to remind one of the incident but the impact of the incident may not be such which may constantly affect the person mentally. Some scars are always hidden under the clothes worn by a person and are, therefore, not to be seen all the time as constant memory. Sometimes a person may suffer cumulative effect of physical and mental cruelty which may result into a decision of breaking the thread.

(Para 50)

Further held, that generally, the wife has to be treated and accepted as protectorate of husband because she leaves her family and comes into family of the husband where sometimes the system of joint family is being adhered to. In the joint family every day is a date of test for everyone but such tests start diminishing, they start loosing

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their lustre when the homogeneity prevails amongst and upon the relationships. Thus, the cumulative effort is required to be made by everyone whosoever gets connected with the pious relationship in any manner.

(Para 52)

Further held, that the spouses have not been able to cement their relationship which came into existence on account of union created under the aegis of performance of religious ceremonies. The admitted fact is that wife left matrimonial home and remained in her parental home till the birth of the girl child and that till she attained the about one year and *plus*, goes to show a long way that there was not much effort made by the husband and so also by his family to bring around reconciliation. Everyone is egoistic but the ego should not be allowed to go over and above one's head, such kind of a situation looks to have prevailed amongst the spouses and *viz-a-viz* respective families.

(Para 53)

Further held, that I do not see any possibility of reconciliation of this marriage. Both the families are respectable families and are flush with money but the human relationship has to be measured above the weight of money, in the case at hand, the marriage does not look to be compatible and, therefore, the learned Additional District Judge has come to the correct conclusion in accepting the petition of the wife and annulling the marriage solemnised between the two.

(Para 53)

Further held, that enough is enough and that ultimately wife is made to open the door of the matrimonial home herself and walk out therefrom carrying all the misgivings, maltreatments, insults and thought provoking incidences which are kept under the carpet by her for and in the best interest of her children and the family at large. All this is for what ? To loose one's identity, to diminish individuality, ever be able to earn respect in society. Is she not entitled to expect respect required to be given to a woman by her husband ? It is strange when a son is born celebrations would know no ends and the rejoicings are multiplied manifolds when the son is to get married. The

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multiplication of such rejoices touches new heights when the progeny is born but where is the status ascribable to a woman who is responsible for playing the game of multiplication. Is it that she has to be treated like a machine to answer whenever the requisite buttons are pressed? Well: It is always the catch—22 formation—who is truthful—who is a liar has to be analysed by the Courts from amongst those who are standing apart yet united with the bondage of marriage and that the bondage yet stands strengthened still further with the birth of a child. The poles must be allowed to stand erect to hunt and provide shelter and to meet every kind of eventuality for the bondage (child) created out of the union of the spouses. It is generally expected that after the unification the current must flow but short circuiting must be avoided and saved with appropriate education, guidance and experience gained by us while living in society. However, the relay race should be played faithfully and honestly, so that the union created and to be created does not break at the drop of the hat but should be able to withstand the tremors.

(Para 55)

A. K. Chopra, Sr. Advocate with Harmender Singh Advocate,  
*for the appellant.*

R.S. Randhawa, Advocate, *for the respondent.*

### JUDGMENT

*J. S. NARANG, J.*

(1) The respondent—appellant and the petitioner respondent got married on November 26, 1978 in pursuance to and in accordance with Sikh rites by way of performance of Anand Karaj Ceremony at Ludhiana. The marriage was duly consummated and from this wedlock two children were born i.e. eldest is the daughter named as Mansharan Kaur Khamba who was born on March 29, 1981 at Ludhiana and the second child, a son named as Gur Simranjit Singh Khamba born on February 25, 1986 at Delhi. Petition for seeking dissolution of marriage by a decree of divorce had been filed by the wife i.e. petitioner-respondent on March 2, 1993. The plea taken is that she has been subjected to mental as well as physical cruelty by the husband. In respect thereof the pleadings have been set out, the said petition has

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been contested by the husband and a reply to the pleadings has been submitted.

(2) The allegations are that immediately after the marriage, the parents of the respondent including his sisters started taunting the petitioner for not having brought a car in the dowry and that the husband wanted a slim and prettier girl and that the respondent-appellant had agreed to get married to the petitioner-respondent because of pressure put by the mother of the respondent-appellant with a hope that they would atleast get a car in the dowry. It is further alleged that the petitioner-respondent had not been taken for honeymoon trip after their marriage because the husband was completely under the control of his father and that he did not have the courage to ask his father for permission to go on a holiday after marriage. It is alleged that the father of the petitioner-respondent made arrangements for their visit to Kashmir but they stayed only for a period of four days as the respondent-appellant had not taken the permission from his parents for visiting Kashmir and accordingly the couple came back to Delhi. It is further alleged that the petitioner-respondent was made to do all the household work and was also treated very shabbily and that she was not allowed to make a telephone call to her relations, who were residing at Delhi, leave apart permission to visit them. It is also alleged that whenever any of her relations come to see her, they were always made uncomfortable and were made to feel unwelcomed guests. Resultantly, the petitioner-respondent was subjected to a lot of psychological pressure. On the sad occasion of death of her grandfather, she had been allowed to go to Ludhiana after great persuasion and similarly at the time of marriage of one of her cousin sisters, which was performed in the year 1980, the petitioner-respondent was allowed to attend the marriage after the parents of the petitioner-respondent had come to get her from Delhi in car. However, she had been given two sets and bangles to be worn in the aforesaid marriage, which in fact were given by her parents for wearing in the marriages. None of the relations of the respondent-appellant and or his friends ever came to attend the marriage despite the fact that they had been invited personally. The petitioner-respondent was pregnant at that time and that the pregnancy was of four and a half months but upon medical check up at Ludhiana, she was advised rest and was not permitted to travel and resultantly she could

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not go back to Delhi till the date of delivery. It is in the year 1981, marriage of the sister of the husband was to be performed and the petitioner-respondent was asked to come to Delhi by train alone as the husband had no time to fetch her from Ludhiana, the petitioner-respondent was pregnant by eight months and that the doctors did not permit her to travel to Delhi, she could not attend the marriage. However, the parents of the petitioner-respondent did attend the marriage but they were treated in a very rude manner which was rather insulting. The petitioner-respondent gave birth to a female child but strange enough, neither the respondent-appellant nor any one from his family came to see the child what to talk of sending gifts and other articles required by a child at that time. It is at that time the mind was disclosed by the respondent-appellant and their family that they were not interested in taking back the petitioner-respondent to Delhi.

(3) It may be noted that the petitioner-respondent during her stay at Ludhiana did undergo a course of Business Management and Accountancy apart from undergoing training of typewriting. During her stay at the parental home, she never ever received any letter from her husband nor he sent her any money or any gift for the child. First birthday of the child was celebrated at Ludhiana and that neither the husband/father of the child nor any member of his family participated in the occasion.

(4) However, with the indulgence of some of the relatives and friends a meeting was arranged for reconciliating the marriage and for clarifying the doubts in the minds of the family of the respondent-appellant and for streamlining the manner in which the petitioner-respondent would be accepted to stay at the house of the respondent-appellant. In the said meeting, it had been agreed that an independent family set for the residence of the petitioner-respondent and respondent-appellant alongwith the child shall be provided. It is alleged that for furnishing the said premises, father of the petitioner-respondent provided funds but no independent accommodation was constructed and the amount so received for furnishing was quietly pocketed by respondent-appellant. It is alleged that only one room was built and the funds which were provided for furnishing the set were not even given to the petitioner-respondent to be spent for furnishings. The petitioner-respondent made an effort to end the dispute and settle the

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matter, resultantly came to Delhi alongwith the child and accompanied by Shri Inderjit Singh Pahwa, a relation and friend. The child was more than one and a half years old at that time. The respondent-appellant saw the child for the first time in November 1982 when she was brought to Delhi. It is alleged that the jewellery which was handed over to the petitioner-respondent for attending the marriage of her cousin was returned to the respondent-appellant by her father in the presence of Mr. I. S. Pahwa. The matter did not rest here despite the fact that she had taken steps to end the dispute by coming back to matrimonial home but she was again made to hear that she has given birth to a female child and that she does not look after the house nor she is able to look after the child. It is alleged that the petitioner was also falsely charged of having lost one heavy three-string gold Haar. However, in December, 1982, the petitioner-respondent was to attend the marriage of her another cousin sister but it was not so easy getting the permission but of course no jewellery was allowed to be worn. When she came back from the marriage, she found that the elder sister of respondent-appellant, who was pregnant, had also come to her parental home and was to reside there till the delivery of the child. The mother-in-law of the petitioner-respondent was required to undergo some kind of surgery, probably for removal of stones from the gall bladder. Resultantly, the petitioner-respondent was subjected to the entire responsibility and was required to look after everybody without any help from any quarters. She was maltreated beyond any comprehension by any and every person for any mistake which would occur unintentionally and also wherever she was little late in compliance of the demands of her sister-in-law and mother-in-law. It is on May 3, 1984, the petitioner-respondent had to run from the house for her safety to the house of her cousin. It is alleged that all misgivings had been into the mind of the respondent-appellant by the mother-in-law and he was being prepared and educated to give beating to the petitioner-respondent.

(5) The relations were duly informed including the parents of the petitioner-respondent, accordingly a meeting was arranged at the house of the cousin of petitioner-respondent at Delhi. It is at this time, the respondent-appellant assured them that no one will ever talk about the missing Haar. It is alleged that infact the story of missing Haar had been cooked up for the purpose of fixing her for having stolen the jewellery. It was in July, 1984, the father of the respondent-

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appellant alongwith relations and a friend came to Ludhiana to bring back the petitioner-respondent but the matter never got settled. Despite all this, the petitioner was allowed to visit Ludhiana only once in a year and that too at the expenses to be borne by the parents.

(6) It was in 1985, the petitioner-respondent again became pregnant but she was not allowed to go to Ludhiana for delivery of the child. Despite the odds against her, she delivered a male child, birth of a son in the family could have been celebrated but no such celebrations took place and the allegation was that despite the birth of a son, the parents of the petitioner-respondent have not given sufficient gifts and that they have not joined the celebrations. It may be mentioned that the allegation had been made that in-sufficient gifts had been brought by the parents of the petitioner-respondent, however, all those were taken by the in-laws of petitioner-respondent and that nothing was given to her or the child. It has been further alleged that despite understanding arrived at in the presence of the elders and the friends that petitioner-respondent shall be given money for meeting monthly expenses, nothing was given and that the petitioner was always penniless. It is alleged that the behaviour of in-laws of petitioner-respondent with the other daughter-in-law was also bad and that after a period of four months of the delivery of the male child, the elder daughter in-law was compelled to go back to her parents. Resultantly, the petitioner-respondent was required to look after two children of elder brother of the respondent-appellant but again without providing any finance in this regard. It is alleged that the requirements were met with but without giving any money under her control even if it had to be spent for the benefit of the children. It is strange that nicknacks which were ordinarily required, were given by the parents of the petitioner-respondent. Resultantly, children never ever got any gifts from their paternal grand-parents or from the father. It is alleged that always after persuasion, permission was granted to her for attending the marriage or function being performed in her parental home and whenever she went back, she was always taunted that she has not brought any gift for children nor for her husband nor for anybody else in the family. It is alleged that on the first birthday party of their son, she had been given beating by the respondent-appellant. Again in middle of May, 1992 when the respondent-husband had to go to USA, the petitioner-respondent was asked to go to her parents and that when he came back in June, 1992,



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he again summoned her and it is at that time that he wanted to have a third child but the petitioner-respondent refused and upon such refusal, she was slapped heavily. It was in 1992, a marriage was to take place at the parental house of petitioner-respondent but she was given the permission to attend the marriage provided she would bring back a sum of Rs. 5 lacs from her father as the said amount was required for purchasing a car.

(7) The alleged behaviour as aforesaid created a fear psychosis in the mind of the petitioner-respondent that whenever she asked for permission to go to parental home, one or the other thing was asked to be brought for respondent-appellant but the last one was too damaging i.e. either she would bring a sum of Rs. 5 lacs or in the absence thereof she would not be permitted to come back to her matrimonial home. Infact, the respondent-appellant is stated to have threatened her that he is destined to marry twice. If she brings money and the gifts from her parents, the effort to get married second time may not be seriously pursued. It is alleged that she was kept under permanent fear psychosis that if she does not agree to the demands of the respondent-appellant and his parents and other members of the family, she might have to abandon the matrimonial home and resultantly, the act which may be forced to be performed may prove the marriage union to be ruinous. The treatment meted out to her from time to time, when the children were also growing up and were becoming conscious of their surroundings, would be far too damaging and that the petitioner-respondent felt that they shall become psychological wrecks if they are allowed to see what is being done to petitioner-mother. The family of the respondent-appellant did not even restrain themselves while abusing petitioner-respondent in front of the children and that the language used was far too obnoxious. Thus, the incidents right from the beginning piled up to such an extent that it became difficult for her to continue to stay in the house of her husband. It is alleged that petitioner-respondent wrote two letters-one to her uncle and the other to her father and also contacted through other relatives. It is on January 22, 1993 her father came to Delhi and she took her children from the school bus and joined her father. It is alleged that the petitioner-respondent did not wish to go to the authorities for reporting the matter as to the method and manner in which she was being treated i.e. mental cruelty as well as physical cruelty being suffered by her at the hands of her husband

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and his relations. It is alleged that such circumstances were built up and created that she was made to walk out of the house. She thought that a case of theft may not be registered against her by the respondent-appellant and his family, only this promoted her to go to Women Cell for disclosing the truth. Her apprehensions came out to be true because when they did not find her back home alongwith children, a complaint was filed by her husband against her alleging that she has removed jewellery etc. and that she has run away to her parental home. Fortunately for her, the complaint reached the quarters where the petitioner-respondent was sitting. It is at this time, the information was given to respondent-appellant and his family, resultantly the effort for getting the complaint registered against the petitioner-respondent was perhaps abandoned and infact virtually a statement was made that since she has been found, they would not like to prosecute the complaint.

(8) The allegations levelled by the petitioner-respondent have been emphatically denied by way of written statement filed before the trial court and to the contrary respondent has spelt out his own grievances to the effect that he had never been respected by the family of the petitioner-respondent. He has alleged that the father of the petitioner-respondent abused the respondent-appellant in the presence of the petitioner and some other persons. He had gone to Ludhiana to find out the welfare of the mother-in-law as he had come to know that she had to undergo some king of surgery, since he had not been welcomed in the house, despite that, he went to the hospital to see his mother-in-law, where he spent an hour or so and that during this period, the petitioner's father also reached the hospital and he enquired from the respondent-appellant as to what was he doing there and again insulting language was used. It is alleged that some of the relatives of respondent-appellant had gone to see the mother of the petitioner-respondent but they were not allowed to see her and that they came back without even having given access to the house. It is also pleaded that the respondent-appellant and his parents were never informed of the birth of female child on 29th March, 1981. It is only on April 3/4 1981, the respondent-appellant and his father made an effort to know about the welfare of petitioner-respondent when they came to know about the birth of a baby girl. The respondent-appellant alongwith his mother and sister went to see the child at Ludhiana and of course carried some gifts but again they were not

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welcomed either by the petitioner-respondent or her mother but despite that they spent 2/3 hours and it is at this time the mother of petitioner-respondent had stated that the petitioner alongwith child would be sent to Delhi after about 60 days.

(9) It is also alleged that the father of the petitioner-respondent and his brother had gone to see the 'Maama' of respondent-appellant at Ambala. They had told him that the respondent should withdraw from the business of his father and should start independent business and he should live separately from his parents and brother. It was also suggested that if he cannot set up independent business at Delhi he can be helped to set up his business at Ludhiana. However, he would be welcomed to join the business of father of the petitioner-respondent. This suggestion was taken as an insult to respondent-appellant and the respondent-appellant was belittled in the eyes of everyone. It was felt that the petitioner-respondent did not want to live in the joint family and that she wanted to rule the roost in the house which could be achieved only if she was living independently. It is alleged that despite the indifferent attitude of petitioner-respondent the discussions took place between the elders, father and the uncle of the petitioner-respondent also apologised to the father of the respondent-appellant for the indifferent behaviour of petitioner-respondent and that the petitioner alongwith baby girl could be sent to Delhi. However, in the larger interest of the child and also to maintain harmony in the house, the respondent-appellant alongwith his father and Piara Singh went to Ludhiana and the matter was again taken up with the indulgence of Shri I.S. Pahwa and Dr. Kartar Singh, who pulled up the father of the petitioner-respondent and also her uncle. Ultimately, both of them apologised and promised to send the petitioner and the baby girl on the coming Sunday. The respondent-appellant went to Ludhiana and brought the petitioner alongwith girl to Delhi. It was agreed that there shall be no mention so far as the partition of family business of respondent-appellant is concerned and also seeking partition in the residential house. It has been emphatically denied that the petitioner-respondent was ever treated dis-respectfully or any act of cruelty was meted out to her and that the allegations of cruelty mental as well as physical are false and frivolous. It is alleged that so far as gold necklace is concerned, she had herself stated that the same had been kept in her cupboard at Ludhiana and she had forgotten to bring back the same with her and she also stated

(J.S. Narang, J.)

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that the gold necklace might have been dropped or stolen by somebody. It is also stated that the articles which were kept by the petitioner-respondent in the house at Delhi always remained under her lock and key. The mother of the respondent-appellant had never ever interfered in the affairs of the petitioner-respondent and the respondent-appellant in any manner. It has been emphatically denied that the petitioner-respondent was ever required to do the domestic work as has been alleged, since the respondent-appellant was earning very well, domestic servants had/have been employed by them for carrying out the domestic works in the house. Infact after the birth of the son a separate maid servant had been engaged to assist the petitioner and her children. It is further alleged that so far as the children are concerned, fixed deposit receipts were created in their names and that insurance policies had been taken out by the respondent-appellant in his own name wherein the petitioner-respondent has been described as the nominee. It is also alleged that a policy has been taken out in the sum of Rs. 4 lacs. It has been emphatically denied that the respondent had ever desired or ever insisted for a third child. It is also emphatically denied that the respondent-appellant had ever demanded a sum of Rs. 5 lac, the business of the family of respondent-appellant was doing so well that they had never ever asked anyone to lend any kind of money, much less the parents of the petitioner-respondent. It has been alleged that infact the petitioner-respondent had approached the Women Crime Cell with the intention to extort money and to pressurise the respondent-appellant to set up independent residence and ask partition in business from his father and brother. It is at the instance of petitioner-respondent the police had threatened to register a case against the respondent-appellant, his father, mother and brother.

(10) The petitioner-respondent filed replication wherein reiterated the allegations contained in the petition while denying the pleas contained in the written statement. Upon the pleadings of the parties, an issue had been framed as to whether the respondent-appellant has treated the petitioner with cruelty, apart from this no other issue has been framed.

(11) The parties led evidence oral as well as documentary in support of their pleadings. The petitioner examined herself as her own witness and also examined Sh. Inderjit Singh Pahwa as PW-2,

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Shri M.S. Bhogal as PW-3, Shri Mohinder Singh Grewal as PW-4, and Shri Dhanwant Singh Bhogal as PW5.

(12) On the other hand the respondent-appellant examined himself as his own witness and also examined Shri Piara Singh as RW2, Mrs. Harsh Bajaj as RW-3 and Shri Kundan Singh as RW-4.

(13) The petitioner-respondent while stepping into witness-box as her own witness has made the statement while corroborating the alleged allegations made in the petition. However, it has been stated that her father and his younger brother are living together in the same house and likewise it has been stated that the family of respondent-appellant is also living jointly in the first floor. Except for the general allegations, no specific allegation has been made against the in-laws while making an allegation that she had been cursed for not bringing adequate dowry. However, one allegation has been made that the respondent-appellant had told her that he was expecting atleast a car from her parents and that her hopes have been completely shattered as nothing was given by her parents to him. It has also been stated that she was required to do the entire household work. Apart from this the statement has been made in confirmity with the allegations made in the petition. It is stated that a letter was written to her in-laws informing birth of the daughter but despite that letter no one came to see the newly born child and even the respondent-appellant did not come. It is also stated that she had taken admission in Business Administration at Bangalore and she also went for acquisition of qualification in Accountancy and ultimately joined her father's company but neither the dates have been given nor the time spent for acquisition of such qualification has been prescribed/described. It has also not been explained as to whether she had gone to Bangalore immediately after the birth of first child, if so, did anyone accompany her to Bangalore for helping her to look after the newly born child. It has been stated that his maternal uncle Shri Piara Singh had been asked to help reconciliating the marriage and that a meeting was held in his house in the presence of her 'Chacha'. Another meeting was held in the house of one Gurdial Singh father-in-law of her cousin sister. This meeting was attended by respondent-appellant and his father as well but no fruitful purpose was achieved. However, the matter was reconciled with the indulgence of one Shri I.S. Pahwa, a family friend. She went back to matrimonial home in November 1982. It is at that

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time the family members of her in-laws including the respondent-appellant met the girl child. It is at that time, the jewellery box was returned by her father to her in-laws. It is at that time she was informed that one necklace was missing from the jewellery box. That was a false allegation as no such necklace was ever taken by her nor she had seen such necklace. It has been stated that the mother-in-law of the petitioner-respondent used to taunt her and quarrel with her over trivials but nothing has been explained or disclosed in respect of the trivialities. It is also stated that the behaviour of her husband right from the beginning was not upto the mark. It is stated that it was on May 3, 1994 (this date has been stated to be incorrect in cross-examination and the correct date has been disclosed as May 3, 1984) her mother in law told her that she will get her beaten up from her son i.e. the husband of the petitioner-respondent, as and when he would come back home. She got so scared that she left the house of the in-laws and went to the house of her cousin sister in Delhi and that per chance her 'Chacha' and 'Chachi' were there. They contacted Shri I.S. Pahwa on telephone and they also contacted her father. It is stated that as per endurance of her 'Chacha', Shri I.S. Pahwa and Shri Ganpati reached Delhi and in the evening went to the house of her in-laws and that in their presence they said that they shall not harass her any more. It is also stated that she was never ever given any money for her personal expenditure and that her parents used to give money all the times for such expenses and that when ever her husband came to know that she has been given such money, he always took the same from her. It is admitted that she gave birth to a son on 25th February, 1986 at Delhi and thereafter the behaviour of her in- laws improved a little but for a short duration. It is also stated that she was given beating by her husband but neither the date or any corroborative statement has been made in respect thereof. It has been stated that money was given by her parents on various occasions and at odd times but it is no where stated as to how much money had been given and that did she ever report to anyone that the money given to her had been snatched away. It is stated that it was in the year 1992 when she had gone to attend the marriage of her cousin, the respondent-appellant asked her to bring an amount of Rs. 5 lacs so that he would be able to buy one Maruti-1000. It is also stated that he had said that he required money to make payment of some land deal and that the amount was falling short to the extent.

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However, she came back without money, she was ill-treated. It is also stated that she was given beating almost daily thereafter. It is stated that she was always afraid of her husband and in-laws and she apprehended danger to her life and self respect. It is stated that she wrote two letters on January 19, 1993, one to her father and one to her 'Chacha' and the said letters have been exhibited as Ex. A1 and Ex. A2. She has admitted that she had filed a complaint in the office of 'Women Cell for Crimes against Women', copy of the complaint has been exhibited as Ex. A3 but the same has been objected to in respect of mode of production. It is stated that a complaint had been lodged against her at Police Station Hauz Khas, New Delhi in respect of theft of gold ornaments by her but the said report was ultimately got cancelled. It is also stated that she found that the atmosphere in the matrimonial home was bad and she thought it proper to leave the house for her own safety and for safety of her children. Resultantly, she came back to her parental house on 23rd January, 1993 and that since then she is residing with her parents. It is also stated that she feels physically, mentally and psychologically shattered. It is also stated that she apprehends danger to her life and to the life of the children at the hands of her husband and his parents.

(14) In her cross-examination she has not been able to spell out as to what was exactly demanded from her as dowry or otherwise, however, it has been stated by her that the same is in the knowledge of her father. She has disclosed inability to divulge as to how much amount had been spent on her marriage by her father. However, it has been stated that she had been given four bangles, one pearl set, one gold kora for her husband and six rings for his relations and that total gold given by her parents was 20 to 22 tolas and that the rate of the gold at that time was R. 700 per tola. She was unable to give approximate value of the dowry articles given by her parents in marriage. She has categorically denied that the family of the respondent was in possession of two Ambassador cars, one Lambretta scooter and one Royal Enfield motorcycle. It has been admitted by her that there was only one servant by the name of Ramu in the house of her in-laws. It has been admitted by her that her son and daughter both got their education in Meadow Brooke School in Hauz Khas and they were subsequently admitted in Guru Hari Krishan Public School, Vasant Vihar, New Delhi. The daughter was brilliant and was always in first top three positions in her class.

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(15) Shri Inderjit Singh Pahwa, appeared as PW2 and has stated that he did participate in the meeting for bringing around reconciliation between the parties. He has also stated that the respondent appellant and his father had begged for pardon. He has also stated that he was accompanied by Shri Ganpati Sharma (he has not been produced as a witness). He has also admitted that he is a close friend of the father of the petitioner since 1947. He has also stated that the petitioner and her father had come to him alone. He has stated that the petitioner-respondent was not there when the respondent-appellant had begged to be pardoned.

(16) Shri M.S. Bhogal, appeared as PW3 and has deposed in respect of the averments made by the petitioner-respondent. He has stated that he and Inderjit Singh Pahwa but made correction immediately stating that I.S. Pahwa and Ganpati Sharma had gone to the house of the appellant. In his cross-examination he has not been able to spell out as to how much amount was spent on the marriage of the petitioner. However, he has stated that the record regarding expenditure borne at the marriage had been maintained but the same had not been brought by him. However, expenses were also shown in the income tax return but he does not know how much was spent and how much was shown in the income tax return. He has not been able to give the name of the shop from where the alleged furniture given as dowry had been purchased by the father of the petitioner and himself. He has also denied that any fault was found in himself, his brother and the petitioner by Gurdial Singh and that he had ever rebuked them for the conduct of the petitioner-respondent.

(17) Shri Mohinder Singh Grewal appeared as PW4 and he has corroborated the fact that bhog ceremony of grand-father of petitioner-respondent was attended by the father and the maternal uncle of respondent-appellant. He has stated that it was heard by him that the petitioner-respondent was not treated well in the house of her in-laws. However, it has been admitted by the witness that he knows the family of petitioner since long. However, no discrepancy has been illustrated *viz-a-viz* the statement made by the witness but in any case in the examination-in-chief the statement was made on the basis of knowledge derived from the father and mother of the petitioner.



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(18) Shri Dhanwant Singh Bhogal, father of the petitioner appeared as PW5. The averments contained in the petition have been corroborated by him to quite an extent. He has corroborated that his daughter has disclosed to him that she is in trouble as her husband was desiring her for one more male child and he has demanded Rs. 5 lacs from her for the purchase of car and for starting construction business. He has stated that he cannot tell the exact air fare but he had given a sum of Rs. 6000 in lumpsum for their fare and that his wife and brother were also sent along with them. He has admitted in cross-examination that he had not sent any amount by money order to his daughter for her pocket expenses or for stationery to be purchased by the children but the amount has/had been given in cash by him or through some other member of the family whosoever visited her but he has not been able to state how much money was given. However, it has been admitted by him that the bhog ceremony of grand-father of the petitioner was attended by the respondent and his parents, his maternal uncles Piara Singh and Ajit Singh. The answer to the question as aforesaid reads as under :—

“..... It is correct that Bhog ceremony was attended by the respondent, his parents, his maternal uncles Piara Singh and Ajit Singh. ....”

(19) It is admitted that the complaint Ex. A3 was written by Satish Dhanda having been dictated by the petitioner. He has also stated that may be the complaint was written by the petitioner in her own hand at that place but he does not remember correctly with regard to this fact. He has declined to identify the hand writing of his daughter but has identified her signatures. It may be noticed that Satish Dhanda has not been produced as a witness for corroborating the fact that the complaint was written by him upon dictation of the petitioner and at the same time no suggestion or statement has come from the petitioner that she had read over the complaint Ex. A3 to herself and it is thereafter she had appended her signatures. It has also not come anywhere that she had dictated the said complaint to Satish Dhanda. Thus, the mode of proof remained uncorroborated as the exhibition of this document has been objected to by the respondent-appellant. He has corroborated that upon demand by the respondent-appellant and his family, a T.V. set had been given costing Rs. 11,000 and a V.C.R. was also given and that in this regard amount in cash

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was given to the petitioner because the respondent stated that he will be able to get discount at Delhi upon these items. He has stated in cross-examination that he does not remember whether any jewellery was given to the petitioner. It has been admitted by him that besides, from the period of November, 1980 to November, 1982, the petitioner stayed with them in May, June and July 1984 and it is at that time, she had been turned out of the house after having been given beating.

(20) On the other hand the respondent-appellant has refuted the claim of the petitioner-respondent and has emphatically denied the statements of the petitioner-respondent and other witnesses.

(21) The respondent stepped into witness box as his own witness as RW1. It is stated by him that the house where the family is residing is owned by his father and that he is partner in hardware business being run in the name and style of M/s K.S. Khamba & Sons and that building where the shop has been opened is a commercial building which is again owned by his father. It is stated by him that in pursuant to an advertisement made in the paper, the father of the petitioner-respondent, his brother and other members of the family visited the house of the father of the respondent and they also found out about the family business. It is after satisfying themselves, the marriage ceremony was performed. It has been stated that infact grand-father of the respondent died on 11th November, 1978 but despite the request made by his father for postponement of the date of marriage, the same was not postponed and that the marriage was solemnised on the date fixed. Resultantly, a simple marriage was performed and that very few persons went to Ludhiana as Barat. It is stated that the parents of the respondent-appellant desired that the newly wedded couple should visit Darbar Sahib for seeking blessings of the Almighty. The programme was made and resultantly the visit to Kashmir was also included for honeymoon. It is also stated that they both drove down to Amritsar with stoppage at Ludhiana and after taking flight from Amritsar, the car was sent back to Delhi. It is stated that the petitioner-respondent purchased some articles for herself and her relations. It has been emphatically denied that the arrangement for going to Kashmir was made by the father of the petitioner-respondent. It is stated that after the marriage both the husband and wife started residing on the second floor of the house which was absolutely independent. The existence of two rooms at second floor

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has been corroborated by an assessment order passed by Municipal Corporation, Delhi exhibited as Ex. DW1/A. It is also stated that relations of the petitioner used to visit her and they were always looked after with kind attention. It is alleged that infact the relations of the petitioner i.e. brother-in-law of the father of the petitioner-respondent had asked for money from the respondent-appellant and infact he paid the same but the money was never returned. It is also alleged that maternal grand-father of petitioner-respondent had also taken money from the respondent-appellant when he came to India from Malaysia but he also never returned the amount. It has been denied that the petitioner was ever maltreated by the parents or the respondent-appellant himself. It has been emphatically denied that she was ever given beating or taunted by any one. It has been emphatically denied that any dowry was ever demanded, as such, question of asking for any articles having not been brought or asking to bring those articles did not arise. Since the respondent-appellant was earning himself very well, there was no need to ask from any one any article or any help. It is stated that infact the petitioner was given money by him for spending as per her wish and need. It has also been denied that the parents of the petitioner ever gave money to her for meeting out her personal expenditure. The respondent-appellant has stated the articles which are stated to have been given by the parents of the petitioner-respondent are not correct. He has stated as to what articles had been given by the parents of the respondent-appellant. It is stated that infact the petitioner-respondent had asked the parents of respondent-appellant that they should show atleast five sets of gold given to her so that the prestige of the family of the petitioner is enhanced in their Biradari. The sets were given and they always remained in possession of the petitioner. It is stated that at the time of death of grand-father of the petitioner, the respondent-appellant, his parents, his maternal uncles had gone to Ludhiana to join in the performance of last rites and also for attending the bhog ceremony. It is stated that the petitioner infact stayed at Ludhiana of her own volition till the bhog ceremony. It is alleged that when the petitioner had gone to attend the marriage of her cousin sister, she had taken substantial amount of jewellery sarees and suits. The respondent-appellant has admitted that he did not attend the marriage on account of some ill-will between the family of the would be bride-groom of the cousin sister of the petitioner. Families have

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retracted as the respondent-appellant and his father had declined the offer of marriage to the family of the would be bride-groom. It is stated that after the marriage, the petitioner and her father had been pressurising him to separate out from the business of his father and join the petitioner's father in his business at Ludhiana as they did not have any male child in the family. The respondent-appellant had declined to join the business of father-in-law at Ludhiana. Suggestion having separate residence from his parents was also mooted but the same was again declined by the respondent-appellant. It is also stated that the family had domestic help and that the daughters-in-law of the family were not asked to do the menial jobs in the house. It is alleged that petitioner had refused to come back from Ludhiana at the pretence that she had been advised rest because of pregnancy. It is stated that after the conception, the petitioner was got medically checked up by Dr. Saroj Likha at her nursing home at Delhi. The expected date of delivery had also been given by her. The petitioner has been visiting her periodically for the medical check ups. It is correct that the petitioner gave birth to the first child at Ludhiana but no information was sent by the family either by any letter or telegram or by telephonic call. On the other hand, the respondent-appellant had called up at Ludhiana to know her well being. Since the expected date of delivery was known to the respondent-appellant, he had called up some where near that date and it was at that time it was informed that she has delivered girl child. It is thereafter the respondent-appellant alongwith his parents, elder sister and maternal uncle went to Ludhiana with customary gifts and presents and that he also gave a sum of Rs. 2,000 to her. The petitioner refused to come back to matrimonial home. It is admitted by the respondent-appellant that the petitioner's father and his brother had gone to the residence of the maternal uncle of respondent-appellant and they had told him that they would send the petitioner to Delhi, only if, the respondent-appellant separates out from the family business and also lives independently. Since the matter could not be resolved, father of the respondent-appellant approached one S. Gurdial Singh, a relative of the petitioner, the conditions imposed for bringing the petitioner to Delhi were also disclosed to him. A meeting was held at his house where the petitioner's father, his brother and other members of the family had also come. After considering the facts and story of both the sides, he had opined that the parents of the petitioner were wrong

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by not sending their daughter to Delhi. The decision given in favour of the respondent-appellant agitated the family of the petitioner and infact daughter-in-law of Gurdial Singh, from the family of the petitioner, was also taken away from her matrimonial home and she came back to her matrimonial home only after the death of Gurdial Singh in the year 1992. However, a meeting of the elders again took place which was attended by the respondent-appellant, his father and his uncles. It was decided that the respondent-appellant should go to Ludhiana to bring back the petitioner to Delhi. Resultantly, the respondent-appellant brought the petitioner and their daughter to Delhi and that no one had accompanied them from Ludhiana. It is emphatically denied that any bag of jewellery was handed over to him by the parents of the petitioner or Inderjit Singh Pahwa. The incidents of the year 1984, as has been alleged by the petitioner, have been emphatically denied. The meeting which is alleged to have taken place at the house of respondent-appellant with Inderjit Singh Pahwa or Mr. Ganpati has been emphatically denied. (It may be noticed that name of Mr. Ganpati has been mentioned by Sh. Inderjit Singh Pahwa in his statement but the said gentleman has not been examined as a witness for corroborating the fact.)

(22) It is stated by the respondent-appellant that the allegations of beating having been given to her or any other such insinuations, are absolutely incorrect. He has produced photographs taken at the time of birth of the son alongwith daughter marked as Mark X1. The photographs of first birthday party of their son have been marked as X2 and X3. (No effort has been made to prove the said photographs). It has been denied that father of the petitioner gave any shagun to his son-in-law or to his daughter on the occasion of celebration of first birthday, the question of snatching the same and giving beating to the petitioner did not arise. It has been emphatically denied that the respondent-appellant had ever demanded from the petitioner that she should bring Rs. 5 lacs from her parents. No demand was ever made for the purchase of car or starting construction business or buying a shop or for a land deal and that the allegations are false and based on conjectures. The allegations made in the communication Ex. A3 have also been emphatically denied. It is stated that on account of false report made with the Delhi police, the petitioner and her family

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extorted a sum of Rs. 2.5 lacs and jewellery weighing 239 grams, which were given to save themselves from harassment and arrest of the members of the family of respondent-appellant. The letters Ex.-A1 and Ex.-A2 have been emphatically denied and are alleged to have been fabricated. The respondent-appellant has stated that he is ready and willing to take the petitioner and his children with him.

(23) The allegation of theft against the petitioner, stated to have been made by respondent-appellant has been emphatically denied. The stand taken is that the jewellery given to the petitioner was taken by her out of 'her own sweetwill' and when she came back after two years and upon enquiry by respondent-appellant as to what happened to her gold necklace which she was wearing, it was stated by her that the same was lying in the cupboard of her parents house Ludhiana and it might have been stolen from there. However, it has been admitted in cross-examination that the respondent-appellant had lodged a complaint of theft against his wife when she left the house on 22nd January, 1993 and it has also been stated that the complaint was not false. It shall be apposite to notice excerpt of the statement verbatim in this regard, ". . . . . I had lodged a complaint of theft against my wife when she left my house on 22nd January, 1993. It is wrong to suggest that the complaint lodged by me against my wife was false. It is incorrect to suggest that this complaint was found to be false and was later on cancelled . . . . ." (Learned counsel for the appellant has contended that the word 'not' is missing and perhaps the suggestion given to the witness had been denied. It has been admitted by the learned counsel for the appellant that no application had been filed for seeking correction of the statement before the trial court). It has been emphatically denied in cross-examination that the respondent-appellant was ever annoyed with the petitioner or her family on account of having not given adequate dowry and having not welcomed properly the family of the respondent-appellant at the time of marriage. It has been emphatically denied that the petitioner was ever ill-treated or any cruel act had been committed towards her. It has been stated that the petitioner was pregnant by four and half months when she went to Ludhiana. It is stated that he had written letters and had also sent money to the petitioner during her stay at Ludhiana before the delivery of the girl child. However, it has been admitted that the respondent-appellant did not attend the first birthday of his daughter. It has been admitted that the income of the appellant in the year 1998

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i.e., at the time of recording of statement, was Rs. 8,000 per month and that at the time of marriage his income was Rs. 5,000 to 5,500 per month. However, it has been stated by the witness that it is incorrect that he had given an amount of Rs. 2.5 lacs besides '*istri dhan*' to the petitioner at the time when he was granted bail by the court. The excerpt of the statement reads as under :—

“ . . . . . It is incorrect to suggest that I had given the amount of Rs. 2.5 lacs besides '*istri dhan*' to the petitioner at the time when I was granted bail by the court . . . . . ”

(24) The suggestions given have been negated and specifically the suggestion that he had demanded Rs. 5 lacs from the family of the petitioner-respondent to buy Maruti-1000.

(25) Apart from him the uncle of the respondent-appellant Piara Singh son of Sh. Harnam Singh appeared as RW2. He has disclosed that the respondent-appellant is his sister's son. The witness has corroborated some of the statements made by the respondent-appellant, as a witness would do while appearing for the party. However, he has corroborated the fact that he had accompanied the respondent-appellant and his parents for going to Ludhiana for attending the last rites on the death of grand-father of the petitioner-respondent. He has also stated that all of them had attended the bhog ceremony at Ludhiana. He has further stated that the father of the petitioner-respondent and her uncle came to Ambala to the house of the witness for reconciling the matter and they had put a condition that the petitioner-respondent would go back to Delhi provided the respondent-appellant separates out from the joint business and so also the joint residence. He has corroborated the factum of a meeting having been held at the residence of S. Gurdial Singh at New Delhi, who is relation of the family of petitioner-respondent. It is also corroborated Gurdial Singh did not find any fault with the respondent. It has been denied that any one had ever raised any demand of dowry from the family of respondent-appellant. However, the witness could not tell the year or the date of birth of the daughter of the respondent-appellant and the petitioner-respondent. He also could not remember the year in which the petitioner's father and his brother had come to him at Ambala/Delhi. He has denied that Gurdial Singh found the

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respondent-appellant at fault. He has stated that he is not aware of the fact as to whether the respondent-appellant had lodged a complaint of theft against the petitioner-respondent in 1993 and that the same was later on found to be false and cancelled. However, he has admitted that the marriage was solemnised with great pomp and show and sufficient dowry was given. He has stated that in fact there was no dispute between the parties.

(26) Another witness Mrs. Harash Bajaj wife of Sh. Parveen Bajaj has been produced as witness i.e., RW3. She has stated that she has been friendly with the petitioner-respondent and that they used to attend the family functions and have been meeting them on various other occasions being friends. She has stated that she and the petitioner-respondent had been going to market for shopping and that she was always possessed of money. She has also stated that petitioner-respondent had never complained to her about any maltreatment or any act of cruelty committed towards her by her husband or her in-laws. It is also stated that the mother of respondent-appellant never complained about the behaviour of petitioner-respondent. The witness has produced her passport, identity card issued by Election Commission of India for proving the factum that she is residing at the address stated by her which is at distance of about 50 yards from the house of respondent-appellant. However, she has categorically admitted that she never attended the marriage because a son had been born to her at that time. She has admitted that her husband and the family of respondent-appellant are carrying on same business for the last thirty years. She has corroborated that the daughter of petitioner-respondent was born somewhere in February/March 1981 and that she had come back to her matrimonial home when her daughter was one year old. She has been able to give description of the house of the respondent-appellant which matches with the description given by the respondent-appellant. She has corroborated the fact that sister of respondent-appellant stayed for some time with the parents but she did not find out as to what was the reason. She has also corroborated the factum of domestic servant in the house of the respondent-appellant. She has denied the factum of complaint stated to have been made by respondent-appellant but in the next breath it has been stated that she had heard that the petitioner filed a complaint in the year 1993.



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(27) The father of respondent-appellant appeared as RW4 i.e. Kundan Singh son of Waryam Sing. He has corroborated certain facts alleged by respondent-appellant, as a witness of the party is expected to do. The factum of renting out the premises in the building has been corroborated by him. He has also admitted that the entire household expenses were given by him and his son used to draw Rs. 5,000 for his own expenses as salary but the said amount would be some times more as per the need base of respondent-appellant. He has emphatically denied any demand having been made of dowry from the petitioner-respondent after her marriage. He has emphatically denied the alleged incriminating behaviour of the members of the family of respondent-appellant. He has also emphatically denied that the petitioner-respondent was ever beaten or treated with cruelty. He has stated that the relatives of the petitioner-respondent used to come to the house and they used to stay in their house. He has also corroborated the fact that maternal grand-father of petitioner-respondent and the sister of mother of the petitioner-respondent used to come from Malaysia and used to stay with them for about 3 to 4 months for completing their business in India. He has also stated that the income in the business used to be from Rs. 40,000 to Rs. 50,000 per month and that at time of making statement in the year 1998, it has been stated that the income is more than Rs. 1 lac per month. He has corroborated that fact that the petitioner had gone to Ludhiana for attending the marriage of her cousin sister and at that time she was pregnant but she came back to the matrimonial home in November, 1982. He has corroborated the fact of meeting having been held at the house of Piara Singh and Gurdial Singh. He has also admitted the presence of the father and uncle of petitioner-respondent and also that of Mr. Mohinder Singh Grewal. He has also stated that Gurdial Singh found fault with the family of petitioner-respondent. He has also corroborated the fact that Inderjit Singh Pahwa had also acted as mediator for resolving the matter between the parties. He has stated that whatever articles had been brought by her they were kept by her. He has disclosed that his sons including the respondent-appellant are the partners in the business. He has admitted that the daughter of the parties was born at Ludhiana and her first birthday was also celebrated at Ludhiana. It is also stated that at the time when the petitioner-respondent had left for Ludhiana, no dispute had ensued amongst members of the family of the witness. He has also corroborated the

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fact that the petitioner-respondent stayed at Ludhiana for about two years i.e. from November 1980 to November 1982. He has admitted that neither he nor any family member went to attend the first birthday of his grand-daughter. The factum of complaint having been filed by the petitioner-respondent with Women Cell, Delhi has been corroborated and he has admitted that he had been summoned by the official concerned. It has been denied that the elder daughter-in-law had any dispute with her husband and that she had gone back to her parental house for quite sometime. However, it has been admitted that the kitchen of the witness and that of the family of his elder son are separate. The other suggestions have been denied. However, it has been admitted that the witness did not attend the religious functions at the house of the petitioner-respondent.

(28) On the basis of oral and documentary evidence brought on record, the trial court allowed the petition filed by the wife and a decree of divorce by annulling the marriage between the parties has been granted,—*vide* judgment and decree dated 2nd August, 1999. The said judgment and decree has been challenged by way of present appeal.

(29) Learned counsel for the appellant has argued that the trial court has erred in law and facts of the case while accepting the alleged allegations of mental as well as physical cruelty. It is argued that the allegation of loss of necklace against the petitioner-respondent alleged to have been made in the year 1980 is not at all sustainable. The petition for seeking dissolution of marriage has been filed by the petitioner-respondent in the year 1993. The allegation is totally misconceived, the theft could not have been alleged because even if it is accepted that she had taken the necklace and other jewellery for attending the marriage of her cousin at Ludhiana, the allegation of theft would not be sustainable because she had taken her own jewellery for the purpose. The allegation of loss of necklace has been alleged, has not been substantiated by corroborative piece of evidence. It is only the statement of petitioner-respondent which has come on record and that the same has not been corroborated or substantiated by any other witness.

(30) It is further argued that the alleged physical beating has not been established as no date has been given on which the alleged

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physical beating was given to the wife nor any medico legal report has been submitted in support thereof. It is further argued that the allegation of demand having been raised by the respondent-appellant upon her for bringing Rs. 5 lacs from her parents for the purpose of purchasing Maruti-1000 stands belied because she has stated that the amount was required for purchasing the property and the witnesses produced in support of said allegation have also not been substantially and correctly able to spell out the need for demanding Rs. 5 lacs. It has also been contended that no specific date has been given on which the alleged amount had been demanded from the petitioner-respondent. There is no evidence much less corroborative evidence brought on record to prove the said alleged allegation. The pleadings in respect thereof are also scanty and not exhaustive in this regard.

(31) It is also argued that the alleged complaint stated to have been filed by respondent-appellant allegedly dated 23rd January, 1993 has not been mentioned in the pleadings, there is no specific pleading in respect of the complaint nor the same has been substantiated or established by way of cogent piece of evidence.

(32) It has been further argued that the alleged allegations relating to the year 1980, 1981, 1982, 1983, 1984, 1985 and 1986 stand belied as the children were born i.e. daughter on 29th March, 1981 and thereafter a son on 25th February, 1986. Resultantly, the petitioner-respondent lived in the house for 13 years after the said alleged allegation. The alleged allegations do not inspire confidence for coming to a conclusion that the petitioner-respondent was ever meted out mental cruelty much less physical cruelty. It looks that she always wanted to enjoy absolute freedom and she also perhaps wanted to be a working business women, this stands established from the fact that she acquired such qualifications during her stay at Ludhiana from the year 1980 to 1982 and that a rouge had been set up that she had not been taken into the matrimonial home with dignity and honour and therefore, she would not like to go back to Delhi. But the fact of the matter is that she had joined some kind of course for acquiring certain qualifications with the intention to take up the reins of the business of her father. Admittedly, the petitioner-respondent does not have a brother and perhaps she wants to control the business of her father and have absolute control over the income from the said business, such chance she would have never ever got so far as the

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family business of her husband is concerned. The husband has been always cooperative and has always been helpful to her. However, the wishes of the petitioner-respondent that they must have independent business and independent place of residence was always on the mind of the petitioner-respondent and that vague allegations of mental and physical cruelty have been set up. It has been further argued that two letters Ex. A1 and Ex. A2 shown to have been written to her father and her uncle are nothing but an effort for creation of attendant circumstances in the direction to establish alleged mental and physical cruelty. The letters have been cleverly written and posted from Delhi, shown to have been received by her father and her uncle, to be used in the case as a piece of evidence. The perusal of the said letters also does not show or establish the acts of alleged cruelty. The language used in the letters is nothing but tutored expression so that the plea in this regard can be conveniently taken for asking the dissolution of marriage. In fact the purpose and object is something else.

(33) It has been argued that for establishing mental cruelty, the sequence of facts has to be alleged so that the cumulative reading of the same can conveniently culminate into mental cruelty. The perusal of pleadings and the evidence led by the petitioner-respondent cannot make one infer that mental cruelty stands established. So far as physical cruelty is concerned, the same has not been established because no corroborative evidence is forthcoming on record, there is no medico legal report brought on record, and that no witness produced by the petitioner-respondent has established any act of alleged physical cruelty except that they had heard her stating that she has been physically maltreated but no one has been able to establish what kind of physical cruelty had been suffered by the petitioner-respondent.

(34) On the other hand, learned counsel for the petitioner-respondent has argued that the trial court has given a well reasoned conscious judgment upon the pleadings and the evidence brought on record. The trial court has discussed the statements of each and every witness and has thereafter come to a conscious decision in accepting the petition and granting the decree of divorce.

(35) It is argued that no woman would like to break her matrimonial home especially when children are born from the wedlock. Even if she has to suffer something or the other, woman would accept

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the same for the best interest of the children. In the case at hand, the situations through which the petitioner-respondent has gone through, her cup of forbearance has spilled over. The cumulative effect of all the circumstances which have been spelt out have culminated into deep impressionable mental cruelty beyond being retrieved and forgotten under any circumstance. Every person be that a man or a woman look for respect, dignity and honour. All these things were missing in the house of the respondent-appellant. The petitioner-respondent has never ever been treated as daughter of the house but the label given was always of "daughter-in-law". It hurts a person when the rule of equivalence is applied differently especially when it came to the treatment given to the daughter of the house and the daughter-in-law of the house. Ordinarily at common parlance, the daughter-in-law of the house is supposed to be manning the house and not that she should be told to touch an article or not to touch the other article, this situation creates distrust in the mind of daughter-in-law viz-a-viz the house of her husband. No doubt the matrimonial home is a mental make up but the mental make up also has certain conceptions which are equated with the outside world, nothing goes wrong if the daughter-in-law is given the same treatment as is given to the daughter of the house.

(36) Why is it that a daughter-in-law cannot have the same respect, love and affection as was being given to her in her own house by her own parents ?

(37) There is no doubt, the daughter-in-law is also expected to behave like daughter i.e. in a case where the family suffers on any count she must also feel in the same manner as the other members of the family feel. No doubt the house has to owned and accepted by her before the house owns her. A woman has to carve out and create a place for herself in the mind and heart of the family where she goes. The equal efforts are required from both the sides, sometimes the efforts are less, sometimes the efforts are more. It depends upon every individual. However, to run the house, to run the family the equivalent efforts are required to be contributed by both.

(38) It has been argued that the respondent-appellant has made categorical assertion in examination-in-chief that the petitioner-respondent by making false report with Delhi police i.e. Ex. A3,

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extorted Rs. 2.5 lacs and jewellery weighing 239 grams which was given by respondent-appellant and the family under the threat and fear of harassment and arrests of the family. The excerpt reads as under :—

“ . . . . . The petitioner by making false report with Delhi police which is Ex. A-3 extorted Rs. 2.5 lacs and jewellery weighing 239 grams which was given by us under the threat and fear of harassment and arrest of myself and my parents who are quite old. . . . . ”

(39) On the other hand in cross-examination it has been emphatically denied that he had given the amount of Rs. 2.50 lacs besides '*istri dhan*' to the petitioner at the time when he was granted bail by the court.

(40) It has been further argued that the other witnesses produced by respondent-appellant have alleged that the family members had gone to attend the first birthday of the daughter of the parties, whereas father-in-law has categorically stated in cross-examination that neither he nor any family member had gone to attend the first birthday of the daughter of the parties, the excerpt reads as under :—

“ . . . . . I did not go nor any family member went to attend the first birthday of the daughter of the parties (respondent-appellant and petitioner-respondent) . . . . . ”

(41) Thus, it is obvious as to what kind of love and affection was shown by the respondent-appellant and by the members of his family at the time of birth and at the time of celebrations of the birthday of the grand-child.

(42) It has been further argued that the demand of Rs. 5 lacs stands corroborated from the fact that the respondent-appellant perhaps wanted to show in his circle that he had received a car in the dowry or he had been given substantial dowry, no doubt the husband has stated as to what kind of vehicles were owned by the respondent-appellant and his family members but no corroborative evidence in support thereof has been brought on record. The petitioner-respondent

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could have filed a case for having demanded dowry but it was only to protect the honour and in the interest of children that no such step was taken by the petitioner-respondent, the fact of the matter is that he did demand the money for purchase of car or buying property or showing his he-manship and control upon the family of the petitioner-respondent.

(43) During the pendency of the appeal, various efforts have been made by this Court for reconciling the matter between the parties, the parties were called and the matter was taken up in the chamber by calling the spouses individually and collectively. One Shri Inderjit Singh Pahwa who has also deposed as a witness and is also known to both the spouses and is also known to the family of the husband and is accepted to be a neutral person was also called for seeking some clarifications and an effort was made to clarify some doubts in the minds of the spouses. The aforesaid person had come present and additionally father of the wife had also come, the matter was discussed and it was considered appropriate to call the father of the husband. The father of the husband also came present and every kind of possibility to bring around reconciliation between the parties was discussed. After discussion again time was given to come to an understanding in the best interest of the children. Both the children were also called and I have talked to them individually and collectively in presence of respective counsel of the spouses. Both the children are of conscious and dispensable mind and are quite aware of the facts around themselves and also the status between their parents. Both the children i.e. daughter who is about 21 years 6 months of age and son is about 17 years and 7 month of age.

(44) The efforts and the possibilities of reconciliation of this marriage have failed, resultantly the arguments were heard.

(45) A number of decisions of the Apex Court have been cited at the bar, which are as under :—

(i) **Chanderkala Trivedi (Smt.) versus Dr. S.P. Trivedi (1);**

(46) I am afraid the aforesaid judgment is not applicable to the facts of the case in hand. In any case the alleged unbecoming

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behaviour of the wife has been held to be shaky and that the findings in respect thereof stood deleted, yet the order passed by the Division Bench of the High Court has not been set-aside.

(ii) **G.V.N. Rameswara Rao versus G. Jabilli (2);**

(47) In the aforesaid judgment, the facts,— *vide* which mental cruelty has been inferred are quite distinct from the facts averred in the petition. Mental cruelty would always depend upon the facts and circumstances of each case which are brought on record.

(iii) **V. Bhagat versus D. Bhagat (Mrs.) (3);**

(48) In the aforesaid judgment, their Lordships of the Supreme Court have categorically observed that the mental cruelty must be of such a nature that parties cannot reasonably be expected to live together and that it has to be determined in the facts and circumstances of each case. Insinuations and the behaviour of the parties have always to be examined and seen in the context in which they have been made. The Apex Court has categorically observed that mental cruelty as has been used in the provisions of the Act can broadly be defined as “the conduct which inflicts upon the other party such mental pain and suffering as would make it impossible for that party to live with the other. The unusual step can be resorted to only to clear up an insoluble mess, when it is found that it shall be in the interest of both the parties.

(iv) **Shobha Rani versus Madhukar Reddi (4);**

(49) In the aforesaid judgment of the Apex Court, it has been held that word cruelty has not been defined under the Act but it has to be inferred from the facts and circumstances which are spelt out in each case and would also be discernible from the respective conducts of the parties.

(50) After hearing the learned counsel for the parties, I am of the view that the gulf and the gap between two spouses has widened every time they have tried to come closer. The facts which have come on record show that right in the beginning of this marriage,

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(2) JT 2002(1) SC 89

(3) (1994)1 SCC 337

(4) (1988)1 SCC 105



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compatibility was not found by both the spouses. It is because of irritable thoughts and hazy vision in respect of the marriage, which propagated reasons, both the spouses started drifting away from each other. Cruelty is a word with wide connotations. Sometimes the mental cruelty is far more damaging than physical cruelty. The mental cruelty continues to hurt the person all along and any amount of healing touch or healing words would not wipe out the scars which continue to prick and cause continuous hurt. So far as the physical cruelty is concerned, the injury caused may not cause a damage to that extent but may leave a scar to remind one of the incident but the impact of the incident may not be such which may constantly affect the person mentally. Some scars are always hidden under the clothes worn by a person and are, therefore, not to be seen all the time as constant memory. Sometimes a person may suffer cumulative effect of physical and mental cruelty which may result into a decision of breaking the thread.

(51) Learned counsel for the appellant has argued that the incidents which have been spelt out by the wife, cumulative effect thereof cannot be read to cause mental cruelty, there is no such incident even if admitted for argument sake, which may result into such mental cruelty that the pious relationship between the parties should be broken and more so when two children are born from this wedlock and they are of intelligible age and of balanced deliberations. Some of the allegations have been made for the sake of making allegations so that the same are read against the husband to hold him guilty to the extent that a husband is not expected to behave with the wife in such a manner and that if those acts of omission and commission are accepted the irresistible decision would be to dissolve the relationship between the two spouses.

(52) Apart from this, the respective families of the spouses sometimes play an important role in bringing around the reconciliation but sometimes the acts committed are so negative that they add fuel to the fire and resultantly, the episodes which may be small but are blown to such disproportionate extent that it is very difficult to traverse the same while the same is allowed to remain in existence. Generally, the wife has to be treated and accepted as protectorate of husband because she leaves her family and comes into family of the husband where sometimes the system of joint family is being adhered to. In

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the joint family every day is a date of test for everyone but such tests start diminishing, they start losing their lustre when the homogeneity prevails amongst and upon the relationships. Thus, the cumulative effort is required to be made by everyone whosoever gets connected with the pious relationship in any manner.

(53) In the case at hand, the cumulative reading of the evidence oral as well as documentary submitted by both the sides, I find that this effort has been missing with everyone and resultantly, the spouses have not been able to cement their relationship which came into existence on account of union created under the aegis of performance of religious ceremonies. The admitted fact is that wife left matrimonial home and remained in her parental home till the birth of the girl child and that till she attained the age of about one year and plus, goes to show a long way that there was not much effort made by the husband and so also by his family to bring around reconciliation. Everyone is egoistic but the ego should not be allowed to go over and above one's head, such kind of a situation looks to have prevailed amongst the spouses and viz-a-viz respective families. The father of the husband has categorically admitted that none of the members of his family including his son had gone to attend the birthday celebration of the grand-daughter of the family. Thus, it is obvious as to what kind of love and affection was shown by the respondent-appellant and by the members of his family at the time of celebrations of the birthday of the grand child. Another fact which cannot be lost sight of, is, that the wife made a complaint in the Women Cell at Delhi and resultantly was paid a sum of Rs. 2.5 lacs and jewellery weighing 239 grams. It is admitted by respondent-appellant that the aforesaid had to be paid as they were apprehensive of the arrest at the hands of the police authority. Another fact which cannot be lost sight of, is, that the husband filed a petition for seeking custody of children and has compromised and the son is taken by the husband and the daughter is left with the mother, such kind of division brought about by the parents amongst children goes a long way to create impregnable impressions upon the young minds viz-a-viz the parents, this has been seen by the Court when children were asked to come to the Court in the chamber and the matter was taken up with them. The age which has been acquired by the children is impregnable age and that whatsoever and wherever is wrong, makes long lasting impressions. Both the children who have acquired intelligible dispensations, which

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is shown from the fact that both are intelligent, they have achieved academic pursuits which glitters, though they may not have experience of the life which has to be lived after the union but they have observed, they have felt and they have seen through it and they have deposed that it is not possible for their parents to live together. I had the occasion to talk to the wife in chamber and I had asked her whether she would like to dissolve the marriage by way of mutual consent or she would like to ask for permanent alimony, both things were declined politely by the wife and she has stated that she has been living separately from her husband for the last now about nine years, it will be absolutely impossible for her to forget and forgive and start her life with a clean slate. I had the occasion to talk to the husband as well but he has uttered only one word that he would like her to come back to the matrimonial home and that he is agreeable to do anything and everything whatever she may ask him to do. Unfortunately words are not enough. The respective behaviour of both has to be seen which stands reflected by virtue of the incidents over the years when they have lived together and when they have lived separately, the behaviour and the facts which have been averred and the corroborative evidence has been brought on record, I do not see any possibility of reconciliation of this marriage. Both the families are respectable families and are flush with money but the human relationship has to be measured above the weight of money, in the case at hand, the marriage does not look to be compatible and therefore, the learned Additional District Judge has come to the correct conclusion in accepting the petition of the wife and annulling the marriage solemnised between the two.

(54) In view of above, I find that the appeal is without any merit and the same is dismissed with no order as to costs.

(55) Before I part with the judgment it would be appropriate to say "Enough is enough and that ultimately wife is made to open the door of the matrimonial home herself and walk out therefrom carrying all the misgivings, maltreatments, insults and thought provoking incidences which are kept under the carpet by her for and in the best interest of her children and the family at large. All this is for what ? To loose one's identity, to diminish individuality, never be able to earn respect in society. Is she not entitled to expect respect required to be given to a woman by her husband ? It is strange when

a son is born celebrations would know no ends and the rejoicings are multiplied manifolds when the son is to get married. The multiplication of such rejoices touches new heights when the progeny is born but where is the status ascribable to a woman who is responsible for playing the game of multiplication. Is it that she has to be treated like a machine to answer whenever the requisite buttons are pressed ?” Well ! It is always the catch-22 formation—who is truthful—who is a liar has to be analysed by the courts from amongst those who are standing apart yet united with the bondage of marriage and that the bondage yet stands strengthened still further with the birth of a child. The poles must be allowed to stand erect to hunt and provide shelter and to meet every kind of eventuality for the bondage (child) created out of the union of the spouses. It is generally expected that after the unification the current must flow but short circuiting must be avoided and saved with appropriate education, guidance and experience gained by us while living in society. However, the relay race should be played faithfully and honestly, so that the union created and to be created does not break at the drop of the hat but should be able to withstand the tremors.

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*R.N.R.*

*Before J.S. Narang, J.*

ANURAG SHARMA,—*Petitioner*

*versus*

HARYANA FINANCIAL CORPORATION & ANOTHER,—

*Respondents*

C.W.P. No. 1715 of 2000 (O&M)

13th August, 2002

*State Financial Corporation Act, 1951—S. 29—Default in payment of loan amount—Corporation initiating action under section 29 and taking over the possession of the Unit—Petitioner failing to bring any buyer despite ample and enough opportunity granted by the Corporation—No infirmity in the procedure and process followed by the Corporation in selling the Unit—Auction purchaser liable to all the liabilities as the Unit was sold on “as is where is basis”—After*