

(1987) 11 BOM CK 0042

In the Bombay High Court

Case No : Letters Patent Appeal No"s. 14 and 15 of 1983

Ishwarlal Sarabhai Parikh

APPELLANT

Vs

Prabhawati Ishwarlal Parikh (Smt.) and Another

RESPONDENT

Date of Decision : 27-11-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Evidence Act, 1872 — Section 3
Hindu Marriage Act, 1955 — Section 13(1)

Citation : (1988) 1 BomCR 464

Hon'ble Judges : S.N. Khatri, J;R.L. Aggarwal, J

Bench : Division Bench

Advocate : Hemendra Shah, C.G. Gavnekar and K.H. Panchal, for the Appellant;
C.R. Dalvi and P.N. Karlekar for respondent No. 1 and K.H. Mandlik, for the
Respondent

Final Decision : Dismissed

Judgement

S.N. Khatri, J.—This judgment disposes of L.P.A. Nos. 14 and 15 of 1983. Ishwarlal Parikh is the common appellant. Prabha who is the first respondent in both appeals is his wife. The husband has filed two petitions against her under the Hindu Marriage Act for dissolution of their marriage on the ground of adultery and cruelty. The first one was filed in January 1973, with one Ram Ahuja as the co-respondent. The second petition was filed in July 1976. Here are two co-respondents, Joshi and Malkan. The two petitions were tried separately by two Judges of the Bombay city Civil Court, Shri R.V. Joshi and the Late Shri Makhijani. Both came to be dismissed. The learned Single Judge (Mody, J.) has dismissed the two appeals preferred by the petitioner. Now he has preferred these two Letters Patent Appeals before this Court.

2. It is not in dispute that the marriage of the appellant and the first Respondent (hereafter generally referred to as "the Respondent") was solemnised according to Hindu Rites on 14th February, 1943 at Bhavnagar. They are at present about

73 years and 65 years old respectively. Ever since the marriage, they have been residing at Bombay. They have three sons and one daughter. The eldest issue-Kiran a son is now about 44 years old. The youngest son Yatin is about 30. The appellant is a double Graduate in Arts and Law and a Sales Tax practitioner by profession. There were no problems till 1964 or so. The appellant's case is that at about that time he noticed coldness and indifference developing in respondent's treatment to him. This conduct aroused his suspicion about her fidelity. In 1969 he arranged a watch on her movement with the help of certain private detectives. Although evidence was adduced in the first petition on as many as five incidents, ultimately the trial Court found that the appellant had succeeded in establishing just one incident of 30th November, 1971 (that too, partly). In the other petition the trial Court held that the appellant had met co-respondent Joshi on four occasions and respondent Malkan on two occasions. It was, however, held in both matters that the facts proved were not sufficient to establish the plea of adultery. So far as the question of cruelty was concerned, the trial Judges held that according to the law then obtaining, it was necessary for the appellants to establish that the conduct of the wife was of such a character as to cause danger to his life, limb or health-bodily or mental or to give rise to a reasonable apprehension of such a danger. As this particular ingredient remained unproved, the trial Judges negatived the plea of cruelty as well. Both petitions came to be dismissed and the learned Single Judge (Mody, J.) confirmed these decisions in the two First Appeals preferred by the appellant.

3. At this stage, it will be of advantage to take note of certain legislative changes brought about in the Hindu Marriage Act by Amending Act of 1976. The trial Court delivered its judgments in the first petition in February, 1979 and in the second in 1980. During the pendency of the first petition itself, the Amending Act came into force with retrospective effect. Before the amendment, cruelty was recognised only as a ground for judicial separation u/s 10(1)(b) and not as a ground for dissolution of marriage. There was a waiting period of 2 years after the decree of judicial separation was passed. Only thereafter could the aggrieved party come to the Court for getting a divorce. The Amending Act recognised cruelty as a ground for divorce.

4. After the advent of the Amending Act, the appellant took out a chamber Summons in the first petition for amendment of plaint. He sought to rely on the additional ground of "cruelty" for dissolution of marriage. He also sought to rely on certain activities indulged in by the wife subsequent to the filing of the first petition. The amendment was granted partly and the appellant was allowed to plead facts only prior in time to the filing of the first petition. He was asked to file a separate petition, based on subsequent facts. This order was upheld by the High Court in revision. It was in these circumstances that he filed the second petition in July 1976.

5. Now back to the relevant provisions of law. The provisions in section 10(1)(b) before the advent of the Amending Act and in section 13(1)(i-a) after its advent,

are as follows :---

"10(1). Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition to the District Court praying for a decree, for judicial separation on the ground that the other party---

(a) x x x x x

(b) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party.

13(1). Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party---

(i)

(i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty;"

6. The provisions of the newly added section 13(1)(i-a) alongwith the implications of the changed phraseology of "cruelty" came up for interpretation at the hands of a Full Bench of this Court in March 1984 in 1984 MH LR 536 Keshavrao Londhe v. Nisha Londhe. After reviewing the relevant decisions, the Full Bench held that after the advent of the Amending Act, it was not necessary for the petitioner to prove the character of cruelty by the higher standard, namely, that the conduct of the erring spouse constituted danger to the life or limb or health of the petitioner or at least caused reasonable apprehension of such danger. It was held enough to prove that the cruelty is "of such type that the petitioner cannot reasonably be expected to live with the respondent or living together of the spouses had become incompatible".

7. Now relying on the test of cruelty as formulated in the aforesaid decision, Shri Shah for the appellant submits that the conduct of the respondent as held proved by the learned "Single Judge, duly establishes this ground. He presses for divorce on this ground. The concurrent finding of the trial Judges and of the learned Single that the case of adultery was not proved, is not challenged by him before us. So also not the adverse findings relating to the unproved items. As against this, Shri Dalvi for the wife challenges the findings relating to the proved items. In the alternative, he contends that even on the basis of these limited items, it cannot be held that the living together of the spouses had become incompatible, according to the Full Bench test.

8. We will, therefore, first examine the correctness of the findings of fact reached by the learned Single Judge. There was some debate on the extent of the powers of this Court in a Letters Patent Appeal to examine the correctness of these findings. This question need not detain us for long. The Supreme Court has Ruled in Smt. Asha Devi Vs. Dukhi Sao and Another, , that the power of Division Bench

hearing a Letters Patent Appeal from the judgment of a Single Judge in First Appeal is not limited only to the questions of law u/s 100 C.P.C., but that it has the same power which the Single Judge himself had as a first Appellate Court in respect of both questions of fact and of law. The constraints imposed by section 100 C.P.C. in the case of a second appeal are not applicable to a Division Bench hearing a Letters Patent Appeal. This is because, a second appeal is from the decision of Subordinate Court, while, a Single Judge is not subordinate to the High Court. It follows who have all the powers of a Single Judge to reach our own findings on questions of fact.

9. We start with the incident of 30th November, 1971. This is the only item held by the learned trial Judge Shri R.V. Joshi to have been partly proved in the first petition. It was the appellant's case that with the help of the Investigation and Detective Services (India) Private Ltd., he had arranged a watch on the respondent's movements. On 29th November, 1971 the appellant left home on the pretext of going to Pune and came to stay in Modern Hindu Hotel situated in Fort. Three operatives of the detective agency-D'Souza Chitnis and Singbal---shadowed the respondent from her house upto New York Hotel situated at Huges Road. The appellant also accompanied them. The respondent is said to have clandestinely joined Ahuja in a family cubicle in the aforesaid Restaurant. That was at about 2 p.m. It is alleged that thereafter the operatives managed to effect a sudden entry into the cubicle. They found the respondent with her blouse and brassieres unhooked. Her breasts were bare and Ahuja was fondling them in his hand. Confronted by the appellant, Ahuja begged to be pardoned and handed over his two visiting cards to the appellant. Apart from himself, the appellant has examined Chitnis and Singbal to prove the aforesaid allegation. The third detective operative D'Souza has died before the trial.

10. In rebuttal, the respondent and Ahuja have entered the witness box. They deny the allegations against them in toto. Regarding his visiting cards Ahuja has explained that his mother had expired on 28th November, 1970 and her first death anniversary rites were performed for 3 or 4 days from 29th November, 1971 onwards. According to him, during this period the atmosphere at his Khar residence was gloomy. Therefore, he used to invite his customers at his aunt's residence. Ahuja used to note down her address on his visiting cards in his own hand and hand over such cards to them. The suggestion is that the appellant might have managed to secure two of such cards from his clients.

11. This explanation has not found favour with the learned trial Judge. He has believed the evidence to the extent that the respondent and Ahuja were found together by the appellant and his detectives in the family cubicle. He however did not believe the further part of the story that at that time the Respondent's bosom was uncovered or that Ahuja was fondling the same. The learned trial Judge found that the truncated fact proved by the appellant, namely that the respondent and Ahuja were together in a family cubicle, did not establish even cruelty, much less adultery. The learned Single Judge is clear that the appellant

had failed to prove that Ahuja had indulged in any licentious behaviour with the respondent. He has however chosen not to record any firm finding even on the fact, whether they had at all met each other in the restaurant. In the opinion of the learned Single Judge, this limited fact, even if assumed to have been proved, is not enough to sustain a finding of cruelty. In view of the learned Single Judge's omission to record any firm finding, we have scrutinised the material evidence with special caution. Having done so and heard the learned Counsel of both sides, we find that the learned trial Judge was wrong in holding that the Respondent and Ahuja had at all met in the Restaurant.

12. The learned trial Judge has completely disbelieved Singbal and Chitnis on other incidents. He has recorded detailed reasons in this behalf in paragraphs 12 to 14 of his judgment. So far as Singbal is concerned, on his own admission, he was working as an Accountant in the Detective Agency. The only occasion when he claims to have operated as a detective was on 30th November, 1971. There is no explanation whatever why this man from the Accounts Branch was assigned the active role of a Detective only on that fateful day. The learned Judge also records that Singbal was "very uncomfortable in the witness box". So far as Chitnis is concerned, the learned Judge felt that his evidence required to be treated with "maximum caution". In the words of the learned Judge, the witness "gave his evidence in a very casual and irresponsible manner". The learned Judge has referred to quite a few other material deficiencies and discrepancies in the evidence of these two witnesses. He has also taken note of the fact and in our view, rightly that after all the detective agency were hired by the appellant for reward and as such they were favourably biased in his favour. Indeed the learned Judge would had no hesitation in discarding their evidence in toto, only if Ahuja had not hazarded to take an unsuccessful plea of alibi. Here it may be recalled that Ahuja had claimed that throughout the day on 30th November, 1971 till 6 p.m. or so he had been busy at his residence, performing his mother's death anniversary rites.

13. We cannot forget that after all the detective agency were employed by the appellant for substantial reward and they had drawn a blank on a number of previous occasions. Detectives are understandably interested in the success of their investigation. Their clients expect positive results from them. The Court must view their evidence with utmost caution. Please see A.J. Tulloch Vs. M.P. Tulloch and Another, and 164 E.R. 1509 Sopwith v. Sopwith. We are clear that after having held that the testimony of the two witnesses was not worthy of credence, the learned trial Judge went wrong in lending credence to them to the limited extent that the Respondent and Ahuja had actually met in suspicious circumstances in the family cubicle of the New York Hotel. Indeed when the learned Judge had no hesitation in rejecting their assertion that they had seen the bare breasts of the respondent, being fondled by Ahuja, he should also have appreciated that such unscrupulous persons could also lie on other lesser facts. There are other reasons also which demonstrate the gross improbability of the appellant's charge.

14. We have in mind the unnatural conduct of the appellant immediately following the alleged incident. He admits in para 65 of his cross-examination that when he rushed into the cubicle, there had been no scuffle whatever between him and Ahuja. He maintained an ideally philosophical stance. So much so, that even the attention of the waiters in the restaurant was not attracted to the incident. The appellant on his own showing did not think it necessary to report the matter to the police. From the New York Hotel he straightway proceeded to the Modern Hindu Hotel where he was staying temporarily. From that Hotel he retired home on the morning of 2nd December, 1971. He further admits that even after reaching home, he did not remonstrate with the respondent. He stoically ate his meal. Not a word about the incident with the respondent or any other member of the family; Could this have been the natural conduct of a jealous and suspecting husband that the appellant is, if he had really caught his wife with Ahuja taking indecent liberties with her ?

15. The topography of the family cubicle as given by the appellant is also revealing. In paragraph 121 of his cross-examination, he states that the cubicle had no full-fledged door. It had a spring door with two panels. Each panel was about 3 1/2-4 feet high. There was open space of about one foot between the bottom of the panel and the ground and another open space of about 1 1/2 feet between the panel top and the roof. It appears from his evidence that this cubicle was about 5 feet x 7 feet in area. Singhal P.W. 4 states that inside it were laid a table and 5-6 chairs. Yet the appellant has the cheek to say that the respondent could have indulged in sexual intercourse with Ahuja in that tight spot, open to easy public gaze. We cannot persuade ourselves for a moment to hold that there is any truth in his claim. We do not think Ahuja was so reckless or unimaginative as to select such a place for having a clandestine meeting with his beloved.

16. Here incidentally we may refer to the appellant's family background furnished by himself in his cross-examination. The learned Single Judge has adversely commented against the learned trial Judge for allowing this evidence to go on record. We think that this evidence is relevant and certainly useful in understanding the appellant's jealous and suspecting nature. He admits that his father had all along had a deranged mind till his death, ever since the appellant was a kid. He further admits that three of his first cousins also do not have normal matrimonial life, in that they have divorced their wives. Indeed two of them have done this twice each. We are mentioning these facts not in order to show that the appellant has some unusual mental streaks. Our endeavour is to point that the environment in which he has been brought up was definitely uncongenial for any one to develop healthy approach and attitudes to marital life. The learned trial Judge's anguish about the appellant's jealous and hypersensitive nature is reflected in his very opening words of the judgement:

"If proceedings were to be docketed with a caption instead of number, the most fitting caption for these proceedings would have been. "Much Ado about

Nothing". Unfortunately, instead of being an amusing light hearted comedy of that name, the present litigation is a sickening wrong-headed tragedy and it leaves one with a profound sense of waste of energy, time and money, particularly money of the parties as well as of the public."

On going through the record, we must say that these observations are entirely justified.

17. The only reason that appears to have tempted the learned trial judge to partially accept the appellant's case was the failure of Ahuja to satisfy him that he was held up at his residence on 30th November, 1971 all through the day, for performance of the death anniversary rites. The learned Judge is perhaps a serious student of Astrology. According to him, if Ahuja's mother had died on 28th November, 1970, it was impossible as per Hindu Calendar the anniversary would fall in the span of 4-5 days near about 30th November, 1971. Even if this assumption is right, that would not harm the credibility of the two detectives who have found to be utterly unreliable. This apart, even the learned Judge's assumption does not appear to be correct. If we are right, in the North-particularly amongst Punjabis and Sindhis it is the Solar Calendar that is in vogue and not the Lunar. Ahuja is a Sindhi. The Hindu Calendar referred by the learned Judge is the Lunar Calendar, that is in vogue in Maharashtra. According to that Calendar, there is a difference of about 10 days every year. This difference is restricted to a day or so only in the case of Solar Calendar. It is quite probable that if Ahuja's family follows the Solar Calendar, his mother's first death anniversary would have really fallen around 29th November, 1971 as claimed by him. We do not digress further.

18. The production of Ahuja's visiting cards by the appellant has also been duly explained by the former. We have already referred to his explanation in paragraph 10 supra. It is difficult to see the expediency or propriety of Ahuja's voluntary handing over his visiting cards to the appellants-cards which bore his aunt's Khar address in his own hand. We do not find this explanation improbable. Ahuja is a businessman, residing at Khar. The appellant and the respondent resided together at S.V.P Road, not far away. For an imaginative and energetic person like the appellant, it would not at all be difficult to lay hands on Ahuja's cards through some of his clients. So much cannot be made of production of the cards by the appellant.

19. A very high degree of probability is required in matrimonial matters to accept evidence on charges like adultery and cruelty. We are constrained to say that the trial Judge went wrong in accepting the worthless evidence of the appellant and his two witnesses even on the limited aspect of the alleged meeting between the respondent and Ahuja. We find that the incident of 30-11-71 remains totally unapproved. The first petition thus affords no ground whatever to the appellant.

20. Now we go to the second petition. At the outset we feel compelled to refer to the grossly unsatisfactory state of pleadings of the appellant. In this context the

learned Single Judge observes in para 4 of his Judgement:

"The allegations relied on by the petitioner in support of his case are to be gathered from the report of the detective agency rather than the petition which is delightfully and unjustifiably vague, resulting in vague denials in the written statement."

21. It may be called that Krishnadas Joshi and Himmatlal Malkan are the co-respondents in this petition. As regards Joshi, the appellant has made the following averments in his petition:

"Para 5. The petitioner says that after January 12, 1976 the respondent during the absence of the petitioner from home during day time moved with co-respondent No. 1 and visited various restaurants and cinemas. The petitioner further says that during this period the respondent moved out with the co-respondent No. 1 in the taxi and went not only to Cinema Theatres, but also to family rooms of various hotels where physical liberties were taken by the respondent and co-respondent No. 1 with one another. The petitioner says that during this period the respondent and co-respondent No.1 indulged in immodest acts and sex intercourse with one another."

22. And that is all that the appellant has stated against Joshi in his petition.

23. As regards Malkan, the appellant avers the following:

"Para 6. The petitioner says that, the respondent also moved out on January 12, 1976 with the co-respondent No. 2 in a car to various places and had sexual intercourse with one another in a room in a hotel called Moon Light Hotel situated at Dadabhai Nowroji Road in the evening."

25. Again we repeat that these are all the averments the appellant has made in his petition as against this Malkan.

25. During the pendency of the first petition the appellant claims to be engaged another detective agency, "Globe Detective Agency" One Surandarjit Tucker was the operative in charge. This agency kept surveillance on the respondent in January 1976 on as many as 16 days from 2nd to 29th. On the appellants own showing nothing material transpired on dates other than 13th to 17th, 24th and 29th. He claims that the results of the watch were kept in writing. The agency submitted their report to him on 2nd March, 1976. They also claim to have taken a number of photographs of the respondent moving with the co-respondents. Admittedly the petition was filed by him more than 4 months later to be precise, on 21st July, 1976. The appellant had filed a list of documents along with the petition. Thereafter he filed his first affidavit of documents as many as 18 on 21st August, 1976, and the second one more than a year later, on 16th September, 1977. Shri Dalvi has drawn our attention to the fact that there is absolutely no mention of the detective agency's report or their photographs in the list accompanying the petition or in the first affidavit. These documents were revealed for the first time in the affidavit of September 1977.

26. As if all this was not enough, it further transpires from the appellant's admission in his cross-examination that inspections was not given to the respondent or the co- respondents of these documents at least till 21st November, 1979 the date on which he gave the aforesaid admission. Para 62 to 66 of his deposition are in point. He has admitted that the reports as well as the photographs were available with him at the time of the petition was drafted. Yet they were not referred to in the list, as advised by his Advocate. Next the appellant admits that inspection was declined to the respondent and co-respondents, although he was alerted by his counsel that they pressing for it. The appellant left the matter to be dealt with by his Advocate as he considered it "needful and proper". Here is a appellant who is a Law Graduate and an actual Sales Tax Practitioner. It is plain that omission to make material averments in the petition (although all the data in the form of the detectives report and photographs was available) and to disclose these material document till September 1977, were wilful and deliberate. The object obviously was to spring surprise on the respondent and the co-respondents. Deliberate omission to give inspection of these documents also sprang from the same object. In absence of any pleadings, the trial Court fell into a serious error of admitting on record voluminous evidence. This had already resulted in palpable miscarriage of justice not only to the wife, but also the two alleged adulterers. The full impact of the mischief practised by the appellant does appear to have been fully gone home to the trial Judge. To say the least, the trial has been grossly unfair to the respondent, Joshi and Malkan. Even the learned Single Judge, after initially observing that the petition averments were "delightfully and unjustifiably vague", proceeded to construct for the appellant, his case on the basis of "the petition, the report and the evidence". Perhaps he took to this course to make his judgement foolproof against any possible remand.

26-A. To come to the point, on the state of the pleadings as obtained in para 5 of the petition , the only course open to the trial judge was to disallow the entire evidence that was admitted as against Joshi. As, against Malkan, only the evidence relating to the incident of 17th January, 1976 ought to have been allowed. The trial Court has failed miserably in its primary duty to intervene effectively, in order to keep the trial on the right tracks. In this view of the matter, for all practical purposes the fate of the second petition also stands sealed against the appellant. However inasmuch as the learned Single Judge has recorded some finding of the fact adverse to the Respondent, and the two co-respondents, we would like to examine them on merits also, ignoring the flaws in the pleadings.

27. The learned single Judge has summarised his findings in para 29 of his judgement as follows. He refers to the wife, Joshi and Malkan as 1st, 2nd, 3rd Respondent respectively:

"(a) that the respondents Nos. 1 and 2 were meeting frequently in a dubious manner and in a suspicious circumstances and it is clear that the purpose of the

meeting was not innocent or what is alleged in the instant petition.

(b) that they were seen by the detective in the Shabnam and the Paramount restaurants and the story that they had met at saree centres or hospital is not worthy of any credence.

(c) that they were travelling together in taxis and were seen travelling at least once. Ascertain by both of them to the contrary cannot be believed.

(d) that the visit of the 1st respondent at least to the office of the 3rd respondent on 17th January, 1976, is proved and that, visit was for some unexplained purpose which is bound to arouse anybody's suspicion as to the purpose of the visit.

(e) that the 1st respondent carried on with her flirting inspite of two complaints in writing by the petitioner, to which there is no reply nor any explanation as to why replies were not given.

(f) it is clear that the 1st respondent did not care for the feelings of the petitioner and had at no time made any attempt to allay such suspicions; on the contrary she continued to act in a manner which would fan the fire of suspicion."

28. As done by the trial Court and the learned Single Judge, we will first take up the incident of 17th January, 1976 involving Malkan. Malkan is a Income Tax Practitioner. The case as emerging from the Detective agency report is stated by the learned Single Judge in para 8 of his judgement. It is this. On 17th January, 1976 at 5.42 p.m, the respondent was seen by Tucker entering the office of Malkan. Here we note that this office visit is admitted by the respondent and Malkan. Their explanation will dealt with later. The main allegation is that the two came out of the building 10 minutes later and entered the Moon Light Hotel. They went to the third floor in the hotel, and stayed in a family room inside the hotel for about an hour. As singles are not admitted to the family rooms. Tucker picked up a girl of easy virtue from the street and again went back to the Hotel. He followed the respondent and Malkan after they came out of the Hotel. This is all the evidence against Malkan.

29. The trial Court has disbelieved the evidence of Tucker in its entirety, for the reason that without the assistance of the report, he could not recall any fact whatever. Indeed even after seeing the report, he could not recall any facts beyond those actually recorded in the report. As a sample of his absolute incapacity to revive his memory, the learned trial Court judge has quoted the following paragraph from his disposition. Malkan is referred to as co-respondent No. 2:

"Without reference to file, I am unable to say whether I followed the respondent in the car. Without reference to file I am unable to say whether I went to the chambers of the co-respondent No. 2. Without reference to the file I am unable to state as to how ascertained that the chamber in which she went in the Indian Globe Chambers was the chamber of co-respondent No.2. Without reference to

the file I am unable to say how long i waited for the respondent to come out from the said chamber. Without reference to file, i am unable to say whether i waited outside the chamber or outside the building. Without reference to file, i am unable to say whether the respondent came out alone or accompanied by any person. Without reference to file, I am unable to say where the respondent went after coming out from the chamber."

30. The trial Court has further held that 6 photographs at Exhs E and F alleged to have been taken by Tucker at 5.45 p.m. when the respondent and the Malkan were emerging out of the Hotel, are faked ones. According to the learned Judge, taking into consideration the stage of meagre sunlight that it would be available on the eve of the sun set, the claim of Tucker was false, that he had taken the photographs Exhs E and F at the aforesaid late hours. These photographs show that they were taken in bright sun shine. The learned single Judge endorses this view of the learned trial Judge. We see no reason to differ.

31. The learned trial Judge has observed at more than half a dozen of places that he is not at all ready to accept the evidence of Tucker under any circumstances. Why? Because Tucker has indulged into gross and false exaggerations. While deposing to the conduct of Joshi. He goes to the extent of alleging that he has taken Joshi taking lewd liberties with the respondent, like fondling breasts and kissing. The learned trial Judge evaluation of Tucker's veracity has been endorsed by the learned Single Judge, without any reservation. We are absolutely at one with them. Now if a witness can touch such a low in perjuring himself without any pang of conscience, will it not be imprudent to accept his word even with regards to Malkan, unless independent convincing corroboration is forthcoming? Such corroboration is absolutely lacking here.

32. The respondent and Malkan do admit that they had met at the latter's office two times in 1975. According to them, the respondent's advocate had asked Malkan to get unofficial copies of appellant's Income Tax returns. These were presumably required to prove his income in the respondent's application for interim maintenance. Malkan is himself an Income Tax Practitioner. The explanation is quite reasonable and can be accepted without any hitch. The learned Single Judge was perhaps not impressed by it, because according to Malkan the visits came off in 1975, While according to the appellant it was on 17th January, 1976. After all the distance between the close of 1975 and this date is just a fortnight. No importance should be given to this discrepancy. Thus there was nothing to remiss in the respondents two visits to Malkan in his office. Tucker's claim that the office visit of 17th January was immediately followed by a visit to Moon Light Hotel, has been rightly rejected by the learned trial Judge as well as the Single trial Judge. As a result we must reverse the learned single Judges finding at Item (d) in para 29 of his judgement, to the extent that the visit was "for some unexplained purpose which is bound to arise anybody's suspicion as to the purpose of the visit". The purpose was absolutely legitimate.

33. We now proceed to the evidence involving Joshi. The learned Single judge

has held that the respondent and Joshi met each other on the following four occasions under suspecting circumstances:

(i) At Paramount Restaurant on 14-1-1976.

(ii) At Shabnam Restaurant on 15-11-1976.

(iii) At Oriental Restaurant on 16th or 24th of January, 1976.

and

(iv) At Sangam Lodge on 27-1-1976.

Although the learned single Judge is conscious all along that Tucker is a thoroughly unreliable witness, he has believed on him on the aforesaid four visits. Because, the learned judge thinks, he receives corroboration from the falsity of the explanations sought to be given by the respondent and Joshi.

34. The respondent and Joshi admit that they did meet at Sangam Lodge at 29th January, 1976. They deny that the remaining three meeting took place in restaurants as alleged. According to them, those meetings came off in the open at Sangam Kala saree centre (in the vicinity of the Shabnam restaurant), Venilal Saree Shop (in the vicinity of Paramount Restaurant at Chaupatti), and at Harikisandas Hospital. The gist of their evidence in this regard is that the respondent who is not conversant with English sought the assistance in explaining to her in details the pleadings of the appellant as well as of herself. It was in this connection that the respondent and Joshi claim to have met each other at the aforesaid three places. It has come in their evidence that Joshi's wife is the sister of one B.C. Joshi who is admittedly a close neighbour of the appellant. This B.C. Joshi is an Income Tax Advocate. His house is just a 3-4 minutes walk from the appellant's. The appellant and the respondent came to be introduced to Joshi at B.C. Joshi's place, where, according to them, the couple used to go to play cards.

35. The learned Single Judge was disbelieved this explanation given by the duo. According to him, the falsity of the explanations serves as corroboration to Tucker. The learned trial Judge does not find the explanations false. He accepts it and holds that the three meetings took place in the open and not in the restaurants.

36. With great respect, we find ourselves unable to agree with the learned Single Judge that the aforesaid explanations is false. It has come in the evidence of the appellant himself that the respondent has studied just upto VIth Gujarati standard. She is not at all conversant with English. According to her, her Senior Counsel and advocate were too fast for her comprehension. So she requested Joshi to translate the English pleadings for her into Gujarati. We do not find anything inherently improbable in this explanations. We cannot forget that the appellant have been quite unfair to the duo at the trial by the first wilfully omitting material facts from the petition , and therefore delaying discovery and

inspection of material documents. We cannot have double standards for the two sides-one extraordinarily lenient for the erring appellant and the other equally strict for others.

37. The learned single Judge wonders why the duo could not have met each other at the residence of the respondent herself or at B.C. Joshi's, if the purpose of meeting was innocuous. We have only to comprehend the unenviable plight in which the appellant had landed the respondent by his reckless imputations of adultery and lewd behaviour. How could she have dared to call Joshi to her family house where a sizeable number of members-the appellant, grown up children, their spouses and grand children-were living? Had B.C. Joshi dared help the old woman by allowing her to meet Joshi at his place, we are sure, the appellant would have arranged him as the fourth co-respondent. We quite appreciate the odds in the respondent's way to arrange the meetings at her residence or at B.C. Joshi's.

38. Here we pause a little to consider the circumstances in which the Sangam Lodge meeting came off. According to the duo, they had planned this meeting at the open ground of Parsi Gymkhana. However, when they reached there, they found it dug up. Joshi proposed to move to the nearby Sangam Lodge and the old woman agreed. Again we do not see an improbability in this explanation. If anything, we have the admission of the appellant himself that when he confronted the duo at the entrance of the Lodge immediately on coming out, the respondent told him that she had called Joshi to translate the pleadings for her in Gujarati. This conduct of the respondent further fortifies her stand.

39. Considering the circumstance as a whole, we have no doubt whatever about the truth of the claim of the respondent and Joshi. The learned Single Judge fell into error in accepting Tucker's evidence even partially. We reject it outright.

40. Before concluding, we advert to the appellants registered notice issued to the respondent in May 1969. Vague charges of adulterous conduct were levelled in this notice. It appears that the appellant had also sent copies of this letter to her brother and maternal uncle. His case is that this letter remained unreplied. The respondent has given a cogent explanation in this regard. Admittedly this notice was sent to her at Bhavnagar address. She had gone there temporarily on a visit to attend some marriage. While the appellant was also alone at Bombay, he issued this notice to her. The respondent says that on her return to Bombay, she asked the appellant about the notice. He told her that he had lost his balance, when he despatched that notice to her. We have already referred to her family background. He is a jealous and hypersensitive husband, whose suspicion about the wife gets aroused readily. Against the peculiar backdrop of the instant case, we do not find anything improbable in the wife's explanations.

41. The finding of the fact reached by the learned Single Judge in para 29 of his judgement are not all sustainable on the materials available on the record. The meetings with Joshi on four occasions and with Malkan on two, were for very

legitimate purposes. In a civil trial more so on matrimonial case-a party must rely on his own strength and not on the weakness of the opponent. Tucker's evidence ought to be rejected in its entirety. As the evidence unmistakably shows, it is the wife who has been more sinned against than the husband. If at all any one has been wronged, it is she and not he. It is quite understandable in the social environment of this country why the respondent is averse to the break of the marital tie, having sustained it for nearly half a century.

42. Before we part with this case, one query. Here the appellant himself alleges his wife was too anxious to keep her objectionable activities concealed from him. They would have never come to his knowledge, had he not taken the initiative to employ detectives to unearth them. If the unearthed facts culminate in a finding of "adultery" it is clear that the husband will be entitled to get divorce. However, if the uncovered facts fall short of that, can it be held that the wife who had gone all the way to keep the facts concealed from the husband "has treated" him with cruelty? To render the husband the object of wife's alleged cruelty, perhaps there has to be some direct area of impact between the wife's objectionable acts and the husband. It may perhaps be argued with some seriousness that in such a situation, the real cause of such a prying husband's resultant misery would be his initiative to uncover facts by engaging detectives and not the wife's "treating him with cruelty". Take the example of a virgin, who has had a premarital serious love affair with some man other than her husband. She has received a bunch of letters from him. After the marriage, she vows to remain and actually remains chaste to her husband alone. If such a wife were to read these letters in the physical presence of the husband, one can appreciate that she is treating him with cruelty. But if she reads the letter in hiding, taking all precautions to keep them secret from the husband and the husband himself undertakes to unearth the secret activity of the wife by some ingenious means, it is doubtful whether the wife would be charged with "treating" him with cruelty. Illustrations can be multiplied. We are not called upon to record a firm opinion on this aspect, inasmuch as the husband before us has failed to establish any acts on the part of the wife, which, even if they had been committed openly to his knowledge, can be deemed to amount to cruelty. We leave this question to be answered in future in proper case.

43. There is no merit whatever in these appeals. In the apt words of one of the learned trial judges (Shri Joshi), "much ado about nothing". We dismiss them with the cost of the appellant throughout. In each appeal separate set of costs of the respondent and the co-respondent concerned.

44. Heard on the quantification of costs. Shri Dalvi for the respondent-wife submits that in each matter she should be awarded a sum of Rs. 3000/- to cover the costs of the trial Court, the first appeal before the learned Single Judge and the Letters Patent Appeal. Thus he claims total of Rs. 6000/- for both matters. As against this, the Appellant's learned Advocate suggests the amount of Rs. 2250/-. Bearing in mind the facts that the matters have been hotly contested, we feel

that the amount of Rs. 3000/- is fair and reasonable. The appellant has already paid to the respondent Rs. 3000/- towards costs. After adjusting the same, now the respondent is entitled to the balance of Rs. 3000/- only.

45. As regards the cost of the Co-respondents each of them will get Rs. 1000/-. This will cover the cost of three courts.