

(2013) 08 P&H CK 0107

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 4433 of 2010

Krishan

APPELLANT

Vs

Tripta

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Citation : (2013) 4 PLR 691

Hon'ble Judges : Jaspal Singh, J;Ajay Kumar Mittal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Jaspal Singh, J.—Aggrieved against the judgment and decree dated May 03, 2010 passed by the learned District Judge, Family Court, Gurgaon whereby the petition preferred by Sh. Krishan (petitioner-appellant) u/s 13 of the Hindu Marriage Act, 1955 (for brevity "the Act" only) was dismissed, instant appeal has been preferred. In nutshell, averments made in the divorce petition runs as under:--

xxx that the marriage of the petitioner/appellant was solemnised with respondent-wife Smt. Tripta on April 13, 2002 at Gurgaon according to the Hindu customs. They lived together as husband and wife but no child was born out of their wedlock. The petitioner-appellant had sought dissolution of marriage on the allegations that his wife stayed only with him for about one month. During her stay in matrimonial home, her behaviour was rude and obstinate although she was treated nicely by him as well as his family members. Though, they tried to provide her all respects and to keep her in good humour yet she left for her parental home and did not return to the matrimonial home. Thereafter, he went to bring her back but she refused to accompany him without assigning any reason. Rather, he was insulted by her family members, specifically stating that he should not visit there to bring her back and also refused to send her with him on February 22, 2003. Consequently, he preferred a petition u/s 9 of the Act on March 06, 2003 for restitution of conjugal rights, titled as "Krishan v. Tripta" but

the same was withdrawn by him on the assurance given by the respondent that she will reconstitute the conjugal rights. He alongwith his father and friend-Harish Kumar had gone to the house of the parents of the respondent with a view to bring her back to the matrimonial home but at that time also, she refused to join his company. Not only this, he as well as his father and friend-Harish Kumar were also insulted by the parents of the respondent-wife and other family members. Thereafter, the respondent-wife preferred a petition u/s 9 of the Act for restitution of conjugal rights on 16.08.2003 levelling contemptuous allegations not only against him but also against his family members and that petition was dismissed on merits on November 16, 2004. It has further been averred that the respondent-wife is living separately from him (husband) for the last more than two years without any plausible reason and during this period, no cohabitation has been taken place between them and thus she has deserted him. Due to the rustic behavior of the respondent, he has suffered a great mental agony. There is also no chance/likelihood of their living together.

2. Upon notice of the petition, the respondent-wife had put in appearance and filed written statement controverting all the allegations made in the petition. She took preliminary objections inter alia on the grounds that the petition is barred by law under the provisions of Order 2 Rule 2 CPC; that the present petition is not maintainable in the present form; that the petitioner has no cause of action to file the petition; that the petitioner is estopped from filing the present petition by his own act and conduct and he cannot take advantage of his own wrongs especially when he has not approached the court with clean hands and suppressed the material facts.

3. On merits, it has been submitted by the respondent-wife that the behaviour of the petitioner-husband towards her was very rude and cruel. In fact, the family of the petitioner had no love and affection for her and they always mal-treated and abused her for bringing insufficient dowry. She kept on tolerating the cruel behaviour of the petitioner-husband and his family members due to the social status of her parental family. On May 29, 2002 when she was pregnant at an early stage, the petitioner-husband, mother-in-law and sister-in-law gave beatings to her as a result of which, her foetus was aborted on May 30, 2002. At that time, she alone hired medical services of Dr. Ragini Aggarwal of Gurgaon. Despite this, the petitioner and his family members did not stop their illegal demand of dowry. Ultimately, she was turned out of the matrimonial home by the petitioner and his family members after giving severe beatings on August 30, 2002. Since then, she is living with her parents. Since due to the social values, she wanted to live with her husband in the matrimonial home, in a petition u/s 9 of the Act filed by the petitioner, she agreed to join his company but he made a somersault to the statement made in the court as he flatly refused to keep her as his wife in his house. It necessitated the filing of a petition u/s 9 of the Act by her, which was dismissed on November 16, 2004. In fact, the petitioner is bent upon to obtain divorce as he intends to remarry for the satisfaction of his lust of dowry. The cruelty and mis-behaviour of the petitioner with her did not end here.

4. On November 21, 2004, the petitioner alongwith his brother Jaidev and brother-in-law Mahesh Kumar visited her parental house and hurled abuses to her and her family members and also threatened to kill them. Thereafter, she lodged a complaint with the Women Cell, Gurgaon and after enquiry F.I.R. No. 729 dated December 30, 2004 under Sections 406 and 498A IPC was registered at Police Station Gurgaon against the petitioner and his family members. It has further been submitted by her that she is ready to accompany the petitioner or live with him as his wife. In fact, he does not want to reconstitute the conjugal rights and wants to remarry and has intentionally deserted her. She accordingly, prayed for the dismissal of the petition.

5. From the pleadings of both the parties, the following issues were framed by the learned District Judge, Gurgaon in order to settle the matter in controversy between the parties:--

1. Whether the petitioner is entitled to decree of divorce on the grounds mentioned in the petition? OPP
2. Whether the petition is barred under the provisions of Order 2 Rule 2 CPC? OPR
3. Whether no proper court fee has been affixed on the petition? OPR
4. Whether the petition has not been presented as per rules? OPR
5. Whether the petition is not maintainable in the present form? OPR
6. Whether the petitioner has no cause of action? OPR
7. Whether the petitioner is estopped from filing the present petition by his own act and conduct? OPR
8. Relief.

6. Both the parties were afforded ample opportunity to adduce and conclude their evidence and they led oral as well as documentary evidence.

7. In order to substantiate his case, the petitioner examined Mahesh Kumar (brother-in-law) as P.W.-1, and he himself appeared in the witness box as P.W.-2. He also examined Constable Sunil Kumar as P.W.-3, who had produced the copies of F.I.R. No. 1042 of December 24, 1999, under Sections 406, 498A, 506 & 504 IPC (Ex.P-15) and F.I.R. No. 729 dated December 30, 2004 under Sections 498A and 406 IPC (Ex.P-16), both were registered at Police Station Gurgaon. Manohar Lal (father) as P.W.-4, Harish Kumar (friend) as P.W.-5, who visited the parental house of the respondent with the petitioner, P.W.-6 C.S. Nemwal Notary, Gurgaon, who had proved the entry made in the name of Preetam Lal (father of the respondent) in the register with regard to attestation of their affidavit. Veer Bhan P.W.-7 is one of the neighbours, who has supported the version of the petitioner as well as Manohar Lal P.W.-4. Thereafter, he closed, the evidence after placing on record certain documents.

8. To controvert his evidence, the respondent-wife appeared in the witness box

as R.W.-1 and had reiterated the allegations contained in the written statement filed by her. She also examined R.W.-2 Rajiv Manchanda (brother of the respondent) and R.W.-3 Han Chand, who was mediator in the marriage of the parties to the present petition.

9. After hearing the learned counsel for the parties and appraisal of the evidence, the petition preferred by the petitioner was dismissed vide impugned judgment and decree dated May 03, 2010.

10. Feeling aggrieved against the above said judgment and decree dated May 03, 2010, the instant appeal was preferred, which was admitted for hearing on January 23, 2012 (wrongly mentioned as 23.01.2011 in the order sheet).

11. Lower Court record was also requisitioned and received.

12. We have heard the learned counsel for the parties at length.

13. While assailing the findings recorded by the learned trial court especially on issue No. 11 and the judgment and decree dated May 03, 2010, it has been ebulliently argued by the learned counsel for the petitioner-appellant that the same are absolutely against the evidence available on the file. Mis-appreciation of evidence and the legal preposition has resulted into miscarriage of justice.

14. The marriage of the parties was solemnized on April 13, 2002 and the respondent-wife only stayed in the matrimonial home for a period of about one month and then left for his parental home in Gurgaon. During her stay in the matrimonial home, her behaviour was rude and obstinate although she was treated nicely by the appellant and his family members. The appellant-petitioner and his family members made endeavour to keep her in a good humour but once she left for parental home, she did not return to her matrimonial home without any rhyme and reason. Lot of efforts were made by the appellant-husband by visiting the parental house of the respondent-wife to reconcile the matter and bring her to the matrimonial home. But, he was insulted by her family members. Even they also extended threats to his life in case, he again visited there. However, leaving aside all these matters and with an intention to keep her in the matrimonial home, he preferred a petition u/s 9 of the Act for the restitution of conjugal rights. On her appearance with her Advocate in the aforesaid petition, she assured the appellant-husband as well as the court that she would resume cohabitation. It was only in view of her assurance, the appellant-husband withdrew his petition and got it dismissed as withdrawn on August 13, 2003. But she did not honour the assurance given by her. Despite the fact that the petitioner-husband alongwith his father and friend-Harish Kumar (P.W.-5) visited her parental home to bring her back, she not only refused to accompany him but also insulted them. Thereafter, the respondent-wife preferred a petition u/s 9 of the Act after 5 days i.e. on August 18, 2003 in the court of learned District Judge, Gurgaon leveling contemptuous allegations not only against the petitioner-husband but also against his family members. That petition was dismissed on merits vide order dated November 16, 2004 (Ex.P-5) in which serious

observations were made. The averment that the appellant-husband got aborted the foetus at the behest of his mother and sister was found to be false by the learned trial court as no medical evidence was adduced in this regard. The facts emerging from the evidence adduced by the respondent-wife in the said petition u/s 9 of the Act have been depicted in para 22 of the judgment. Learned counsel for the petitioner-appellant also brought our attention to the relevant paras of the said judgment. It was further stressed by the learned counsel for the appellant-husband that the respondent-wife also got registered F.I.R. No. 729 dated December 30, 2004 under Sections 406 and 498A IPC against her husband and his family members levelling false allegation as well as with regard to the allegation of abortion. The allegations on which the F.I.R. was registered, were absolutely identical with the allegations levelled by her in petition u/s 9 of the Hindu Marriage Act, which had also been disbelieved by the learned trial court vide judgment dated November 16, 2004 (Ex.P-5). That judgment has become final as no appeal was preferred against it by the respondent-wife.

15. 16 In criminal case, the petitioner-appellant as well as his parents were arrested and remained behind the bars for 4-5 days. This fact has been admitted by respondent-wife Tripta (R.W.-1) while subjected to cross-examination. The registration of F.I.R. referred to above is-nothing but device adopted by the respondent-wife to malign the respect and reputation of the appellant-petitioner and his parents, which amounts to cruelty especially in the circumstances that all the allegations narrated in the F.I.R. were already disbelieved by the Learned District Judge (Family Court) being without any substance. To fortify his contentions, learned counsel for the appellant-petitioner has placed reliance on the pronouncement of Division Bench of Karnataka High Court captioned as R. Nagarathna and Others Vs. Dodda Channaiah . He also placed reliance upon the judgments of Hon"ble Apex Court rendered in Suman Kapur Vs. Sudhir Kapur, and Praveen Mehta Vs. Inderjit Mehta, .

16. It has further been stressed by the learned counsel for the appellant-petitioner that the appellant-petitioner has also been deserted by the respondent-wife without any reasonable cause. She left the matrimonial home after about 1 month of her marriage i.e. on April 13, 2002 and thereafter, she did not turn-up despite the fact that lot of efforts were made to bring her back to the matrimonial home. Even, in a petition preferred u/s 9 of the Act by the appellant-petitioner, she assured to accompany him and to live in the matrimonial home as well as to discharge all the matrimonial obligations and in view of the said fact, he alongwith his father and friend-Harish Kumar visited the parental house of the respondent-wife with a view to bring her back to the matrimonial home but she did not honour the commitment/assurance, on the basis of which, the appellant-petitioner had withdrawn the petition filed by him for restitution of conjugal rights. Rather, after 3-4 days, she preferred another petition, which was ultimately dismissed on merits vide judgment and decree dated November 16, 2004 as the learned trial court found the allegations to be unsubstantiated. She left the company of the appellant-petitioner with an intention to put an end to

the matrimonial knot and further after the dismissal of the said petition she did not prefer any appeal. Rather, with an intention to harass the appellant-petitioner and his family members, she lodged an F.I.R.. So, it can be safely inferred that the wife is guilty of constructive desertion.

17. While concluding his arguments, it has been submitted by learned counsel for the appellant that in the given circumstances, it would be harmful or injurious to live with the respondent-wife. Since the appellant has successfully proved that the respondent meted-out him with cruelty and had deserted him with an intention to put an end to the marriage, the petition preferred by him for divorce deserves to be accepted by way of setting aside the impugned judgment and decree dated May 03, 2010.

18. These arguments have been controverted by the learned counsel for the respondent-wife contending that admittedly, the marriage of the parties was solemnized on April 13, 2002. In fact, she did not leave the matrimonial home rather she was turned out of the matrimonial home by the appellant-petitioner as her parents could not fulfill the demand of dowry raised by them. Even, the appellant-petitioner as well his mother and sister had gone to the extent that they kicked in her abdomen when she was carrying a pregnancy and as a result of which, she had to face miscarriage. So far as the registration of the F.I.R. against the appellant-petitioner and his parents is concerned, it was not mala fide rather based upon the actual facts. The dismissal of the petition u/s 9 of the Act preferred by the appellant-petitioner has nothing to do with the registration of the F.I.R.. Moreover, the criminal case is still pending for disposal and it cannot be said that the allegations levelled in the F.I.R. were unfounded or false. The allegations levelled in the petition u/s 13 of the Act moved by the appellant/petitioner are general and vague. Similarly, the respondent-wife turned out of the matrimonial home on August 30, 2002 by giving severe beatings. Though Panchayats were convened a number of times by her parents to patch up the matter but the respondent-wife could not succeed as the appellant-petitioner and his family members were adamant not to rehabilitate her in the house. Petition u/s 9 of the Act was preferred by the appellant-husband but when she came to know, she happily agreed to accompany him but thereafter, nobody came to take her to the matrimonial home. The said assurance was given by her as she intended to live in the matrimonial home. It was only, thereafter, she was constrained to file a petition u/s 9 of the Act which was dismissed on technical grounds vide judgment and decree dated November 16, 2004. She is still ready and willing to live with the appellant and to perform all the matrimonial obligations on the part of the respondent-wife, whereas the appellant-husband has no intention to keep and maintain her as his wife in his house.

19. It has further been argued by the learned counsel for the respondent that the withdrawal of the petition filed by the appellant/petitioner u/s 9 of the Act is suggestive of the fact that he has condoned all the previous acts of alleged cruelty. After the withdrawal of the said petition vide order dated August 13,

2003, there is no instance of any cruelty brought on record by the appellant/husband. It is well settled that even though condonation has not been pleaded as a defence by the respondent. Yet it is the duty of the court to find out whether cruelty was condoned and in the facts and circumstances of the instant case, in view of the order dated August 13, 2003, the husband has already condoned and there is no subsequent instance which could amount to cruelty. Finally, it was submitted by the learned counsel for the appellant that the impugned judgment and decree dated May 03, 2010 is well reasoned and is absolutely in-consonance with the evidence available on the file. As such, it requires no interference by this Court. Appeal being without merit, deserves to be dismissed.

20. We have given our anxious thought to the rival contentions of the learned counsel for the parties, besides going through the evidence available on the lower courts record. Undeniably, the marriage of the parties was solemnised on April 13, 2002. The parties lived together and cohabited. The respondent-wife lived with the appellant-husband for a short period after the marriage and ultimately, she left and is residing with her parents. No child was born out of their wedlock.

21. u/s 13(1)(i-a) of the Act the marriage can be dissolved by a decree of divorce on a petition preferred either by the wife or husband on the ground of cruelty, in case, other party after the solemnisation of marriage has treated the petitioner with cruelty. In a large number of cases, the Hon''ble Apex Court as well as the High Courts have repeatedly stated the meaning and outlined the scope of term "cruelty". In Samar Ghosh Vs. Jaya Ghosh, , the Hon''ble Supreme Court set out some illustrious cases where inference of mental cruelty can be inferred. This pronouncement was relied upon by the Hon''ble Apex Court in case K. Srinivas Rao Vs. D.A. Deepa, . Para 11 of this judgment reads as under:--

11. In Samar Ghosh this Court set out illustrative cases where inference of "mental cruelty" can be drawn. This list is obviously not exhaustive because each case presents its own peculiar factual matrix and existence or otherwise of mental cruelty will have to be judged after applying mind to it. We must quote the relevant paragraph of Samar Ghosh. We have reproduced only the instances which are relevant to the present case:

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

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other

party.

(iii) ****

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

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

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

(vii)-(ix) ****

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

(xi)-(xiii) ****

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

In V. Bhagat Vs. Mrs. D. Bhagat, , the following observations was made by the Hon"ble High Court:--

Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of Such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in

each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

"Mental cruelty" was also examined by Hon'ble Apex Court in *Praveen Mehta Vs. Inderjit Mehta*, , in which following observations was made:

Cruelty for the purpose of Section 13(1)(a) is to be taken as a behavior by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental Cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioral pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehavior in isolation and then pose the question whether such behavior is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.

In *A. Jayachandra Vs. Aneel Kaur*, , the Court observed as under:

The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse, same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or

corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial dispute.

22. In the light of the principles discussed in the above referred authorities, it is to be determined whether the appellant-husband was meted-out with cruelty and is entitled to decree of divorce. As per the facts of the case in hand, the respondent-wife stayed only a month or so in the matrimonial home and the parties are living separately since mid of the year 2002 and no child was born out of their wedlock. The allegations levelled by the appellant-husband in the divorce petition may be summarized as under:--

(i) that during her short stay in the matrimonial home, the behaviour of the respondent-wife was very rude and obstinate despite the fact that she was nicely treated by her in-laws;

(ii) that she left the matrimonial home and did not return without any reasonable cause or excuse;

(iii) that she appeared in the court in response to the summons in a petition u/s 9 of the Act preferred by the appellant-husband and on her assurance, he withdrew the petition but she did not resume the matrimonial home;

(iv) that when the appellant-husband alongwith his father and friend visited her parental house to bring her back on February 22, 2003, she flatly refused and insulted them and subsequently filed a petition u/s 9 of the Act for the restitution of conjugal rights, which was ultimately dismissed on merits on November 16, 2004;

(v) that she lodged F.I.R. No. 729 dated December 30, 2004 on the basis of same allegations which were already disbelieved by the court being unsubstantiated;

(vi) that the appellant-husband and his parents were arrested by the police in the criminal case and suffered traumatic experience resulting into the loss of their reputation and prestige;

(vii) that the respondent-wife deserted the appellant-husband for a period of more than two years with an intention to put an end to the marriage.

23. Undisputedly, the petition preferred by the appellant-husband u/s 9 of the Act was withdrawn vide order dated August 13, 2003 as the respondent-wife had shown her willingness to come to the matrimonial home but as noticed in the foregoing discussions, the appellant-petitioner accompanied by his father and friend-Harish Kumar visited the parental house but she refused to return to the matrimonial home rather they were insulted. Subsequent, thereto after 5 days of

the withdrawal of the petition by the husband, she preferred another petition u/s 9 of the Act. A copy of which is available on the record as Ex-P-3/D-3. That petition was contested by the appellant-husband and ultimately, dismissed vide judgment and decree dated November 16, 2004 (Ex.P-5). Since no appeal was preferred against the above said order, it has attained finality. Not only this, after the dismissal of the petition, respondent-wife lodged a complaint levelling similar allegations appearing in her petition u/s 9 of the Act bearing No. 729 dated December, 30 2004, in which, the respondent as well his father and mother were arrested by the police and they remained behind the bars for 4-5 days. This fact has been admitted by the respondent-wife (Tripta) when she appeared in the witness box as R.W.-1.

24. In case *Smt. Sadhana Srivastava v. Arvind Kumar Srivastava*, 2006 (1) R.C.R. (Civil) 107, the Division Bench of Allahabad High Court had categorically observed that it cannot be doubted that the respondent-husband must have suffered traumatic experience because of the arrest and confinement in prison of the entire family including himself. The arrest and imprisonment must have resulted in the loss of reputation and prestige of the husband and his family in the society. The mental agony of being arrested and imprisoned in a false case resulting into loss of reputation and prestige in the society would also amount to cruelty. It was further observed that there is no illegality in the trial court coming to the conclusion that false criminal proceedings initiated against the husband amounted to mental cruelty entitling him to a decree of divorce on the said ground.

25. One of the allegations levelled by the respondent-wife is that her mother-in-law and sister-in-law gave merciless beatings on May 29, 2002 due to which her foetus was aborted on May 30, 2002. To the utter surprise, neither this fact could be proved by the respondent-wife in her petition u/s 9 of the Act, which was dismissed vide judgment dated November 16, 2004 (Ex.P-5) nor before the learned trial court. Oral statements of the witnesses do not find corroboration from any medical evidence. The medical services of Dr. Ragni Aggarwal, Gurgaon were availed at that time by the respondent-wife but neither Dr. Ragni Aggarwal has been examined as a witness nor any document/prescription slip or indoor card was brought on record.

26. So, from the above discussion, it can safely be concluded that the appellant-husband has successfully established the ground of cruelty entitling him to a decree of divorce.

27. As far as the ground of desertion for the dissolution of the marriage is concerned, Section 13(1)(i-b) provided that 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 has deserted the petitioner for a continuous period of not less than 2 years immediately preceding the presentation of the petition. This section provides that to establish desertion seeking the divorce is meant

intentionally and permanently forsaking abandonment of one spouse by the other without other's consent and without reasonable cause.

28. In case Bipin Chander Jaisinghbhai Shah Vs. Prabhawati, , the Hon''ble Apex Court observed that for the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely (i) the factum of separation and (ii) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly, two elements are essential so far as the deserted spouse is concerned; (i) the absence of consent and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. While relying upon decision in Bipinchandra Jaisinghbhai Shah's case (supra) the Hon''ble Apex Court again reiterated the legal position in Lachman Utamchand Kirpalani Vs. Meena alias Mota, and held that "in essence, the desertion means intentional permanent forsaking and abandoning of one spouse by the other without that other's consent and without any reasonable cause. So far as deserting spouse is concerned, two essential conditions have to be there (i) the factum of separation and (ii) the intention to permanently bring cohabitation to an end (animus deserendi). Likewise, two elements are essential so far as the deserted spouse is concerned, viz., (i) the absence of consent and (ii) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid."

29. Adverting to the facts of the case in hand, the respondent-wife left the matrimonial home in the last week of May 2002 and did not return to the matrimonial home despite her assurance in the Court on March 18, 2003 in a petition preferred by her husband u/s 9 of the Act. Rather, she opted to file another petition, which was dismissed. Meaning thereby, that the averments or allegations made by her in a petition u/s 9 of the Act were not accepted by the court being unsubstantiated or unproved. Further, after the dismissal of the petition u/s 9 of the Act vide impugned judgment and decree dated November 16, 2004, she lodged a complaint on the same allegations, which were the subject matter of the petition u/s 9 of the Act preferred by her and got arrested the appellant-petitioner and his mother and father. This act of the respondent can be said to be her intention to permanently bring cohabitation to an end i.e. animus deserendi. Admittedly, the case in hand, the parties did not live together under one roof since the date she left the matrimonial home. Thus, it cannot be said that the appellant-husband has condoned previous acts of cruelty at the hands of the respondent-wife. Though she gave assurance in the court to return to the matrimonial home on March 18, 2003 but she did not turn-up to join the company of her husband and resume cohabitation. Moreover, condonation means forgiveness of the matrimonial offences and the restoration of the offending spouse to the same position as he or she occupied prior to the commission of the offence. To constitute condonation, there must be two things i.e. forgiveness and restoration but in the case in hand both the things are not proved. Rather, it can be said that there is no evidence in this regard. Had the respondent-wife honoured the commitment made by her in the Court of March 18, 2003 and

resumed the company of her husband, the position would have been something different but she flatly refused to return to her matrimonial home when her husband accompanied by his father and friend Harish Kumar visited her paternal house on March 22, 2003. So ground of desertion also stands proved.

30. In the light of what has been discussed above, we are of the considered view that the appellant-petitioner is successful to establish cruelty as well as desertion. The findings recorded by the learned trial court as well as the judgment and decree dated May 03, 2010 are not sustainable in the eyes of law being contrary to the evidence. Therefore, the judgment and decree dated May 03, 2010 is set aside by way of acceptance of the instant appeal. Consequently, petition preferred by the appellant-husband u/s 13 of the Act is accepted/allowed and the marriage of the parties is dissolved by a decree of divorce. However, in peculiar circumstances of this case, the parties are left to bear their own costs.