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**(1950) 03 AHC CK 0017**  
**In the Allahabad High Court**  
**Case No : First Appeal No. 1 of 1945**

Mrs. Annie Baron

APPELLANT

Vs

B.K. Baron

RESPONDENT

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**Date of Decision :** 15-03-1950

**Acts Referred:**

Divorce Act, 1869 — Section 22

**Citation :** AIR 1950 All 516

**Hon'ble Judges :** P.L. Bhargava, J;Agarwala, J

**Bench :** Division Bench

**Advocate :** G.S. Pathak, for the Appellant; R.N. Gurtu and Shri Rama, for the Respondent

**Final Decision :** Allowed

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## Judgement

Agarwala, J.—This is an appeal by Mrs. Annie Baron against an order dismissing her petition for judicial "divorce and for consequential relief.

2. The parties were married on 11th October 1930 at the Methodist Church at Almora. Of this marriage they had three children, two boys and a girl. The eldest boy was born in December 1931. In March 1984 a girl was born and in September 1988 a second son was born. According to the appellant, for about four or five months after the marriage, the parties lived happily, but after that the respondent began exhibiting a disposition of distrust in money matters towards the appellant. The appellant alleged that the niggardly and distrustful behaviour on the part of the respondent began to increase as time went on; that the opposite party began to abuse and scold the appellant in the most filthy and obscene language on the slightest provocation, called her a bastard and a woman of low extraction and made her perform the most arduous and menial tasks. This behaviour was later on accompanied by assault and beating on several occasions, Particular instances of callous behaviour of the respondent were mentioned by the appellant. She alleged that at the end of 1933 when she was expecting the second child, the respondent gave her a thrashing and turned

her out of the house with the result that she had to go to her brother at Mukteshwar and lived there for three years: that at that time she contemplated proceedings against the respondent but the respondent's aged parents, who occupied high social status as taluqdars, prevailed on the appellant to refrain from doing so as a law suit would necessarily tarnish their reputation; that she returned to her husband at the end of 1936; that in February 1941 the appellant was severely beaten by the respondent with fists and cane, the only cause of that brutal behaviour being the appellant's reprimand at the respondent's indecent behaviour towards their daughter Joyce, then aged about 7 years; that on 23rd June 1941 the respondent locked up the appellant with her youngest child in a room and kept them there for the whole night denying them any food or water and would not allow them to go even to the bath room and that when the appellant managed to get out of the room in the morning after breaking a glass-pane, the respondent knocked her down and after seating himself over her beat her with his fists and throttled her, and that finally on 19th November 1942, the appellant was again cruelly beaten with fists and cane by the respondent while the parties were staying in Marine Hall, Mussorie, and that on account of the constant cruel behaviour of the respondent, the appellant ultimately left him for good on 24th November 1942. She filed the petition which has given rise to this appeal on 29th March 1943. The reliefs sought for were a judicial separation, custody of all the three children who were then aged 11, 9 and 5 years respectively, and costs.

3. In defence, the respondent admitted the marriage and the birth of the three children but denied that he had been guilty of cruelty towards the appellant. He admitted that the petitioner had gone away in 1933 and returned to him in 1936. According to him, the appellant is of low class being of illegitimate origin and born of a hill woman and, as such proved herself incapable of being a good wife or a good mother. He married her at the recommendation of the Principal of a Mission School for girls at Almora. At that time, according to him, he was not acquainted with the true facts of the appellant's birth or with respect to her temperament which, according to him, was so violent that she would behave like a mad woman, shout out filthy abuse at him and in the presence of her children and neighbours and would throw things on him and would beat him if he came near her. The respondent alleged that on certain occasions he himself was assaulted by the appellant and that instead of he being guilty of cruelty, the appellant was guilty of it as against him. According to him, in March 1932 at Dehra Dun, the appellant all of a sudden lost her temper and started throwing things at him and when the respondent tried to stop her, she bit him on various parts of the body; and in September 1933 the appellant drove him out of the house where they were staying, namely, Homestead at Mussoorie, and he had to engage a separate room for himself leaving the appellant with another family. He admitted that in 1933 the appellant had left his house, but alleged that she did so of her own accord at the instigation of certain mischievous persons and also to have a second confinement with her relations. According to him, during this

period he always maintained the appellant by sending Rs. 40 per month for six months and Rs. 60 for 21/2 years. He did not admit the beating alleged by the appellant to have been given to her in February 1941. The incident of July 1941 was described by him in a different fashion, She mercilessly assaulted him by hitting him with shoes and other articles on his head and other parts of the body. The next morning she rushed into his room with a stick and when he caught her hand she gripped his thumb between her teeth and inflicted a deep wound which had to be treated for more than 20 days. He denied the other incidents of abuse and assault alleged by the appellant. He complained that the appellant was of indolent nature and did nothing about the house, that he had to engage as many as five servants to look after the house and that later on he could not afford this expenditure and he himself had to see to the house, food arrangements and the children. He even sent the appellant in 1936 to the Agricultural Institute at Allahabad to undergo a course of home craft and domestic science but the appellant did not put the knowledge she acquired there to any practical use in her home. He admitted that he had quarrels with the appellant in 1941 and 1942 because he noticed that the appellant was leading a frivolous life and was keeping undesirable company to which the respondent objected, The respondent further said that he was satisfied that the appellant was guilty of adultery with different persons on diverse occasions, in March April and May 1943, that is, after she had left him in November 1942 and after the petition had , been filed by the appellant. The respondent alleged that the appellant had filed this application because she wanted to live an immoral life without any restriction from him, that she imagined that he had inherited considerable property after the death of his mother and that she would get a liberal allowance to enable her to lead her own immoral life.

4. The learned District Judge came to the, conclusion that it had not been satisfactorily established that Mr. Baron at any time, beats Mrs. Baron "as a matter of habit and ill-will towards her". He held :

"There had been rows between the parties, and during such rows, he (Mr. Baron) might have used some violence. Mrs. Baron herself admits to have once bitten Mr. Baron's thumb. Such rows, and some violence during them, are not in my opinion, sufficient to establish legal cruelty."

He recorded his opinion that Mr. Baron was-entitled to the custody of Teddy Baron and would also be entitled to the custody of his second son after some years, but that as he was of the age of five years only, he could be better looked after by his mother. As to the custody of the girl Joyce, he was of opinion that though legally Mr. Baron may be entitled to her custody, in the circumstances of the case, she should be given in the custody of her mother till such time that any complaint about such conduct which might be injurious to her interest, might be established. On alimony the District Judge was of opinion that Rs. 70 per month for the expenses of Mrs. Baron in addition to the rent of Marine Hall, Mussoorie, should be awarded to the appellant. In view, however, of his finding on the

question of cruelty, he dismissed the petition.

5. In this appeal the main argument addressed to us has centred round the question of fact whether the respondent has been guilty of cruelty against the appellant. We have gone through the evidence on the record and, in our opinion, it has been satisfactorily established that the conduct of the respondent amounted to cruelty and that the appellant's petition should have been granted.

6. The marriage of the parties was admittedly an unhappy one. The parties could not make a harmonious couple. The respondent came of a rich and high-placed family, was educated for 18 years in England and started practice as an Advocate in the District Courts at Dehra Dun. He had no hesitation in giving up his real name of Bonerji, which sounded Indian, and in assuming a foreign name "Baron" so as to help him, as he imagined, in his practice. It appears that although his parents were in affluent circumstances, he himself had to depend mostly on his own earnings. On the other hand, the appellant was born of a hill woman and was brought up and educated in a Missionary School at Almora. She was obviously not so well-educated as the respondent and had not been brought up in a high-placed family. The marriage of the parties was not a marriage of love, but a marriage of convenience. Soon after their marriage the respondent, as he himself alleges, discovered certain facts about the appellant's birth and, though the fact has not been proved on the record, it cannot be denied that the respondent was told and believed that the appellant was an illegitimate child. We can very well imagine the chagrine which he must have felt when he made this discovery. But whether the appellant was an illegitimate child or not, the fact remained that they had been lawfully married and the marriage could not be undone. Instead of taking the things as they were and making the best of a bad bargain, it appears to us that the respondent entertained a grievance against the appellant on account of her low birth. It is in evidence that the respondent would go and tell the people that the appellant was a bastard and came of a low family. There is evidence on the record that he would taunt the appellant with the same remarks in the presence of strangers and her children. We do not, therefore, wonder that the appellant on hearing these remarks would retort and this would lead to constant friction and trouble in the house resulting in assaults and beating. The evidence on the record fully bears out this view.

[Their Lordships discussed the evidence and proceeded as follows ;]

7. Thus, it has been established that the respondent looked upon the appellant with contempt as being a woman of low birth and considered that she was illegitimate and habitually taunted her. There was no love lost between the parties. There were constant rows between them and abuse was exchanged. The appellant was once turned out of the house and she had to remain with her brother for a period of three years. On two occasions she was thrashed. There can be no doubt that, in these circumstances, it can be legitimately presumed that there is a reasonable apprehension of injury to the health of the appellant, both bodily and mentally. The question is whether this conduct amounts to

cruelty in the eye of law. We have no hesitation in holding that it does. The leading case on the point is a decision of the House of Lords in *Earl Russell v. Countess Russell* 1897 AC 395. In that case out of a Bench of nine, four including the Lord Chancellor held that legal cruelty should not be confined to cases of personal danger. The test, according to them, was to see whether the conduct of the husband or wife has made the continuance of cohabitation and the performance of conjugal duties an impossibility. Five noble Lords, however, disagreed with the above test and held that :

"To constitute legal cruelty there must be danger to life, or injury to health, bodily or mentally, or a reasonable apprehension of it."

8. We think that the test laid down by the majority of the noble Lords in the above case is fully satisfied in the present case.

9. In the present case, the conduct of the husband has not merely made the continuance of cohabitation and the performance of conjugal duties an impossibility, but has created a personal danger to the health of the appellant. The respondent's constant contemptuous attitude towards the appellant, coupled with occasional abuse and beating, is a fact which must necessarily lead to a reasonable apprehension of future injury to life or health of the appellant. It may be that if one party is guilty of beating the other on a solitary occasion, he may not be guilty of cruelty. But when the beating is a result of a habitual attitude of contempt or dislike towards the other party, a presumption can always be drawn that the beating is likely to be repeated in the future. We think that the appellant was entitled to a decree for judicial separation.

10. As regards the custody of children, the eldest son, Teddy Baron, is now over 18 years of age and no order is, therefore, necessary to be made in his case. He is at present living with the respondent and we think that he may continue to live with him. The girl Joyce, having made allegations against the respondent and having appeared against him in these proceedings, should not be allowed to remain in his custody. The appellant is entitled to her custody. But the respondent, who is meeting her expenses of maintenance and education, shall continue to defray those expenses. The extent of the expenses has not been proved in the case. The appellant will be entitled to have the amount of expenses fixed, if necessary, by an application to the lower Court. The youngest child, Nector Baron, is living with the respondent and we think that in the interest of his education and upbringing, it will be better if he continues to remain with the respondent and be in his custody.

11. As regards alimony to which the appellant is entitled, the lower Court was of opinion that she is entitled to a sum of Rs. 70 per mensem in addition to the rent at Marine Hall, Mussoorie. There is no evidence on the record to fix the rent. The appellant is entitled to a reasonable sum for the expenses of her residence, whether at Marine Hall, Mussoorie, or at some other place. This will also have to be fixed by the lower Court if the appellant applies for the same. The respondent

will pay the appellant a sum of Rs. 70 per mensem as permanent alimony. The respondent informed the Court that the appellant had taken up some service and was well placed ; but there is nothing on the record to prove that. The parties will be at liberty to apply for enhancement or reduction or stoppage of the permanent alimony as circumstances may require.

12. We, therefore, allow this appeal, set aside the order of the Court below and grant the appellant a decree for judicial separation, for a permanent alimony of Rs. 70 per month subject to the right of the parties to have the alimony increased or reduced or stopped as indicated above, and a reasonable sum as rent of the place of her residence. No order is necessary to be made for the custody of Teddy Baron. Joyce Baron will remain in the custody of the appellant until her marriage or until she attains the age of 21 years, whichever event is earlier, and the respondent will bear the expenses of her education and maintenance. Nector Baron will remain in the custody of the respondent. Each party will have a right of reasonable access to the child in the custody of the other party. The amount of rent and the expenses of Joyce's education and maintenance will be fixed by the Court below on an application being filed by the appellant after hearing the other side.

13. The appellant will have her costs of these proceedings, both here and in the lower Court, from the respondent.