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**(2012) 01 MP CK 0043**  
**In the Madhya Pradesh High Court**  
**Case No : First Appeal No. 8 of 2009**

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|--------------------------------|----|------------|
| Sanjay Kailashchandra Upadhyay | Vs | APPELLANT  |
| Smt. Santosh Sanjay Upadhyay   |    | RESPONDENT |

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**Date of Decision :** 04-01-2012

**Acts Referred:**

Hindu Marriage Act, 1955 — Section 13(1)(ia), 28

**Citation :** AIR 2012 MP 93

**Hon'ble Judges :** Shantanu Kemkar, J;Prakash Shrivastava, J

**Bench :** Division Bench

**Advocate :** Sunil Jain, for the Appellant; Himanshu Joshi, for the Respondent

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## Judgement

Shantanu Kemkar, J.—This first appeal u/s 28 of the Hindu Marriage Act, 1955 (for short the Act) has been filed by the husband challenging the judgment and decree dated 29.11.2008 passed by District Judge, Neemuch in Hindu Marriage Case No. 32-C/2007 whereby the appellant's application u/s 13 (1) (ia) of the Act seeking divorce on the ground of cruelty has been dismissed. Brief facts necessary for disposal of this appeal are stated as under.

2. The appellant husband had filed an application u/s 13(1) (ia) of the Act before the District Judge, Neemuch seeking divorce from the respondent wife on the ground that after the solemnisation of his marriage on 04.05.1998 with the respondent she started treating him with cruelty. He averred that after their marriage, from the very beginning her behaviour with him and his parents was extremely cruel and irresponsible. She used to fight with him and even with his parents for no reason. She never prepared the food for him and their small daughter. She used to stay with him only for short duration. She was in the habit of leaving the house without informing him and to go at her parents house and live with them for years together. Whenever the appellant used to go to take her back she used to abuse him and also used to fight with him. On account of her cruel and indifferent attitude including fighting with him and their daughter and because of her habit of not preparing the food many a times he and his daughter

had to remain without food.

3. The respondent wife filed reply of the application and had denied the allegations of cruelty levelled against her by the appellant. The trial Court framed three issues and after considering the evidence led by the parties dismissed the application for divorce by recording a finding that the appellant had failed to establish that the respondent treated him with cruelty. Aggrieved the appellant has filed this appeal.

4. Heard learned counsel for the parties and perused the record.

5. Learned counsel appearing for the appellant has contended that the finding recorded by the trial Court that the cruelty has not been established is contrary to the evidence available on record. He argued that the evidence on record duly establishes the fact that the behaviour of the respondent with the appellant and also with their daughter was impulsive, erratic and lunatic. Her leaving the matrimonial house every now and then, her act of non-preparation of the food and keeping the appellant and his daughter without food, using of abusive language and beating him was sufficient to grant decree of divorce. According to him, the trial Court has committed error in holding that these are only minor things which cannot be a ground to grant decree of divorce.

6. On the other hand, learned counsel for the respondent supported the impugned judgment by arguing that the appellant having failed to prove the cruelty on the part of the respondent, the trial Court has rightly refused to grant decree for divorce.

7. Having considered the submissions made by the learned counsel for the parties and after going through the evidence on record, we find that in order to establish the ground of cruelty the appellant examined himself as AW-1, his friend Jagdish Chandra (AW-2) and Tulsiram his landlord (AW-3). The evidence of appellant clearly establishes that the respondent used to abuse, behave in erratic manner with the appellant. She used to do "Mara Peed" with the appellant. She was not preparing food for him and their daughter. His evidence also establishes that the respondent instead of living with the appellant, most of time used, to live with her parents and whenever he went to take her back she abused him and also caused "Mara Peeti" with him. Jagdish Chandra (AW-2) also supported the evidence of the appellant about erratic behaviour of the respondent with the appellant, non-preparation of food and "Mara Peeti" by the respondent with the appellant. Tulsiram (AW-3) landlord of the appellant also stated that the respondent used to raise unnecessary quarrel and dispute with the appellant and used to abuse him. He also stated that she used to refuse for preparation of the food. He stated that the appellant was being beaten up by her in his presence.

8. As against the aforesaid evidence led by the appellant in rebuttal the respondent examined herself. However, it is noted that the respondent in her deposition did not deny the allegations levelled by the appellant. On the other hand, the only statement made by her is that now she wants to live with the

appellant.

9. Having regard to the aforesaid evidence available on record, in our considered view the learned trial Court has committed error in holding that the appellant failed to prove cruelty on the part of the respondent. The trial Court has erred in treating the aforesaid evidence to be not sufficient to record a finding that the respondent was cruel with the appellant. In our considered view there is ample evidence available on record to reach to the conclusion that after solemnisation of marriage with the appellant the respondent treated him with cruelty by beating him up, raising unnecessary quarrels, using filthy abuses and not preparing the food resulting the appellant and their daughter to remain without food. In our considered view the trial Court's findings that these minor things are not sufficient to grant decree of divorce cannot be accepted more particularly in the absence of any plausible explanation for the same.

10. The Supreme Court in the case of A. Jayachandra Vs. Aneel Kaur, has held that the expression "cruelty" has not been defined in the Hindu Marriage Act, 1955. The said expression has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. It may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mentally or as to give rise to a reasonable apprehension of such a danger. The question of mental has 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 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. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party. In the case of physical cruelty the Court will not have any problem for determining it. It is a question of fact and degree. In physical cruelty there can be tangible and direct evidence but in 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 mental process and mental effect of incidents that are brought out in evidence. The concept, proof beyond the shadow of doubt, is applicable to criminal" trials and not to civil matters and certainly not to the matters of such delicate personal relationship as those of husband and wife. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect. To constitute cruelty the conduct should be grave and weighty so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than ordinary wear and tear of married life. Having regard to the aforesaid evidence and the legal position, we have reached to the

inevitable conclusion that the appellant is entitled to decree of divorce and we direct accordingly. Thus, the appeal is allowed. The impugned judgment and decree is set aside. The decree for divorce be drawn accordingly.

Parties to bear their own costs.