
(1989) 06 BOM CK 0023
In the Bombay High Court
Case No : First Appeal No. 574 of 1986

S.P. Trivedi (Dr.)	Vs	APPELLANT
Chandrakala Trivedi (Smt.)		RESPONDENT

Date of Decision : 27-06-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 1
Evidence Act, 1872 — Section 8
Hindu Marriage Act, 1955 — Section 13

Citation : (1990) 1 BomCR 715 : (1989) 91 BOMLR 449

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Advocate : K.K. Singhvi, P.K. Singhvi and Geeta Ganpati, for the Appellant; S.M. Jhunjhunwala, for the Respondent

Judgement

Sharad Manohar, J.—What the appeal is about ?

This appeal is filed by the petitioner/husband, whose petition for divorce filed against the respondent wife, was dismissed by the learned Judge of the Bombay City Civil Court.

Ground urged in the petition for divorce.

2. The ground mentioned in the petition for divorce was mental cruelty on the part of the respondent/wife vis-a-vis the petitioner husband.

Certain acts of cruelty were mentioned in the original petition for divorce. To the said petition, a written Statement was filed by the respondent wife. Certain statements were made by her in the said written Statement, which according to the petitioner/husband themselves constituted cruelty against her husband. Hence, the petition was amended by him, by the leave of the Court, and as per the amended petition he added an additional ground and a particulars relating to "cruelty". The statement made by the respondent/wife in her written statement was that the petitioner/husband had indulged in an adulterous conduct with his

female friends and, particularly with one Dr. (Miss) Sudha Kulkarni. This statement was, according to the petitioner/husband, itself an act of cruelty on her part. In para 10(a) of the amended petition, ground was taken that this allegation of adulterous conduct caused mental pain and anguish and tension to the petitioner and that itself furnished a cause of action for the petitioner for obtaining divorce from the respondent/wife.

The respondent/wife filed a supplementary written statement and reiterated her contention about the adulterous conduct of the husband.

Re-Issues

3. On the basis of these pleadings, issues were framed by the learned Judge. A very serious grievance is made by the learned Counsel for the appellant husband about the non-framing of one of the most vital issues in the petition. I will turn to that part of the grievance and to the effect of the same when I deal with the arguments advanced across the bar. At this stage, however, it may be stated that the parties went to trial as per the issues framed by the learned Judge. Both the parties examined their own witnesses as also certain documents in support of their claim.

The learned Judge has examined the evidence quite exhaustively and he has held that the plea of cruelty made by the plaintiff in his petition was not made good by him in his evidence. The petition is, therefore, dismissed by the learned Judge and hence, this appeal.

The main question

4. The main question in this appeal is as to whether the evidence by the petitioner and the evidence, which forms part of the record by virtue of certain statements made by the respondents herself prove the case of the petitioner of mental cruelty caused to him by the respondent or not. Hence, I will deal with the petitioner's case and evidence in relation to that act of cruelty arising out of the written statement. There is the additional question about failure to frame a very crucial issue arising out of pleadings, framing of which was obstructed and successfully prevented by the respondent's learned Counsel in the lower Court. I will have to consider the effect of the non-framing of the said issue.

I will examine the evidence in relation to each of the relevant acts of cruelty and will thereafter consider the effects of the same, either individually or taken in totality.

But before examining the said evidence, it is necessary to set out certain admitted facts as also the position resulting from alleged non-framing of a material issue.

Admitted Facts

5. (A) There is no dispute that the petitioner is one of the renowned Doctor of this city. He was married to the respondent as per the Hindu rites on 19th

January, 1965. He had passed his M.B.B.S. Examination at that time and was studying for his M.D. He was 25 years of age at that time. The respondent had not even passed her 10th Standard Examination ; she was 16 years of age at that time. It was an arranged marriage. It is the case of the petitioner that the sailing was rough for the matrimonial canoe even before the daughter was born to the couple. But according to the petitioner, after the daughter was born on 10th November, 1967, the two spouses started drifting apart, more & more. The respondent's father was a "Vaid". So also was the petitioner's father. The case of the petitioner is that the respondent's father was much better off financially than the petitioner's father and so far as the petitioner himself was concerned he was earning hardly anything because he was then a student at the time of marriage and sometime thereafter. The financial status of the two families has been put in issue in these proceedings, because the petitioner's case has been that the respondent was quite a vain glorious about the higher financial position and status of her father. The respondent has denied the said fact. Having regard to the view that I am ultimately taking, this question loses its relevance in this appeal. One fact, however, cannot be and has not been disputed viz. that the financial status of both the parties was quite high and, this is more important, on the date of the petition and from the time before that, the financial status of both of them was quite high. For the last few years the petitioner has been a renowned Doctor in the city of Bombay and whatever may be the reason for the marriage having gone on the rocks, the financial stringency is not one of them.

(B) In March, 1973 or so the petitioner went to England. He was not accompanied by his wife, the respondent initially. She joined him in Glasgow in April, 1974. It has been the case of the petitioner that they had stopped sexual relations with each other almost from the year 1967 that is to say after the birth of the daughter and that during the entire stay abroad in the various cities they did not have any material relations with each other, opportunities for privacy notwithstanding. In fact it is the contention of the petitioner that on account of the respondent's act of going into the shell and withdrawing herself from sexual activities, the two spouses were living in the same flat and were sleeping in the same bed-room but were having no sexual relations as such with each other. This has been alleged as one of the acts of cruelty. Whether the position is proved or not is a different thing.

The petitioner's further plea is that the respondent has been a nagging wife. Right from the time they started living together she has been indulging in asserting her higher status and subjecting the petitioner/husband to constant nagging on various accounts; on account of his financial inadequacy, on account of her peculiar behaviour with family friends and also on account of her suspicion that he had been having adulterous conduct with certain women. In addition to that, it is his grievance that the respondent on the other hand indulged in acts of culpable free behaviours with young male friends. He particularly resented her behaviours laced with all the trappings of intimate relationship with one Sajjan Sultania, whom the respondent proclaimed to be her "dharambhai". The plea of

the petitioner is that the mutual behaviours of said Sajjan Sultania and the respondent was so very odd and objectionable that one of the petitioner's neighbours started making fun of the petitioner that Sajjan Sultania was really "Sajjan Sultania". This according to the petitioner, was one of the acts committed by the respondent which caused untold mental anguish to the petitioner and that conduct of the petitioner brought him in disrepute because he was made an object of fun by the neighbours and acquaintance on that account. He was required to go once again to London in the year 1981. The relations between the husband and wife had turned so very sore by that time that the respondent even did not go to the Airport to give a send off to the petitioner. It is his grievance that she used to go constantly to her parental place and ignore her matrimonial duties in the matrimonial house. According to the petitioner, she did so even on other days in such a marked manner that when the petitioner called his friends for dinner at weekends or at any other day, she used to be away at her parental house. His further grievance is that even otherwise at the weekends she used to be at the parental place so that the two spouses had no opportunity to live with each other, because during all the days of the week the petitioner was in the Hospital or was immersed in the duties of the Hospital and in the weekend when he used to be at home, she used to be at her parental place. It is his case that she is the only child of her parents as a result of which she has been an undisciplined person and that fact has resulted in her particular obnoxious behaviour with the petitioner.

(C) But according to the petitioner, the last straw that broke on the camel's back was on the eve of his departure for London when he came across in the cupboard some photographs and a greeting card. The photograph showed the respondent to be in unseemly physical contact with young male strangers. According to him, she had been already supplying grounds giving reasons to the petitioner to believe that she was enjoying the company of other young boys and that Sajjan Sultania was just one of them. The suspicion had been gnawing at his heart that she was interested more in other boys and was not interested in her husband as such. According to him, this suspicion got confirmation from the photographs that he landed upon in the respondent's effects on that particularly day. He has not voiced any suspicion about any adulterous relation of the respondent with anybody. But he has stated repeatedly in the petition that she was thoroughly cold and indifferent in the company of the petitioner, whereas she enjoyed the company of other young boys and spent time with them behind the petitioner's back and without making him wise about the same. He has as given an illustration in that connection about the Roxy Cinema incident giving went to his suspicion that she was moving with other boys. I will state the position in that behalf while I examine the evidence relating to the alleged acts of cruelty. But all that needs to be stated here is that according to him great mental pain and anguish was being caused to him by virtue of such conduct of the respondent.

(D) The Respondent's case on the other hand was that it was the petitioner who

himself was a veritable Casanova having sexual affairs with his female friends. She has stated that he was having affairs of flirtation with lady doctors and nurses. But her latest grievances, is that when she went to London in 1974 she had occasion to put her hand in the coat pocket of the petitioner, evidently in his absence, and to lay hands upon one letter written by one Dr. Sudha Kulkarni. Said Dr. (Miss) Sudha Kulkarni is admittedly the petitioner's colleague. She has passed her M.B.B.S. Examination and has been practising as General Practitioner at Thane. She is having her dispensary there and she also has a residential flat in Thane. There is no dispute at least at this stage that the dispensary and the residential flat of said Dr. Sudha Kulkarni are situate in different buildings. The distance between the two is not on record. But it is common ground that the dispensary and the residential flat do not form part of each other and are away from each other. It is the petitioner's case that Dr. Sudha Kulkarni does not stay in Thane at all; she stays at Dombivli where she resides with her parents. Her residential flat in Thane was vacant. No body was staying there at the relevant time. But Dr. Kulkarni's dispensary continued to be in the old place where she was practising as a General Practitioner. The case of the respondent is that the letter (Exh. 4 in these proceedings) that she landed upon in the petitioner's pocket revealed the intimate sexual relationship between the petitioner and said Dr. Sudha Kulkarni. According to her, she became aware of this position during her London residence in the year 1974 itself. But she did not divulge this fact to the petitioner at all. According to her, she lived merrily & happily with the petitioner during her stay in England and on the continent. According to her, even when she came back she did not reveal this letter (Exh. 4) to any other person.

(E) Coming back to the petitioner's case, according to him, when he found those tell-tale photographs in the cupboard showing her intimate relations with the stranger boys he was struck by moroseness and depression so violently that he lost his mood completely. In addition to this, he found that the respondent did not even come to see to him off at the Airport. She gave some excuse or the other for this. She went to her father's residence on the eve of the petitioner's departure and did not go to the Airport at all. Instead, her father went to the Airport with the garland, but he did not bring his daughter with him. According to the petitioner all this was just cruel behaviours on her part and the cruelty was causing him great pain & anguish so much so that when he returned from abroad and when he found that the respondent had not even come to the Airport even to receive him when all the other had come, he went straight to the Hospital, did not go to the residence at all. Thereafter, according to him, he decided to live separately from his wife, the respondent, because, according to him, he was unable to bear the cruel conduct of the respondent any more. According to him, he was not able to acquire any flat in the city of Bombay immediately and had no option but to go all the way to Thane. The Flat of Dr. Sudha Kulkarni was vacant at that time. She gave that flat to the petitioner for residence temporarily. As stated above, her dispensary was at different place, though at Thane. The

petitioner used to come all the way from Thane to his Hospital (the Bombay Hospital) to which he was attached. The instant suit was filed by him for divorce on the ground of the various acts of cruelty mentioned above.

I may mention here that these are not the only acts of cruelty alleged by the petitioner in this petition. But I have referred only to those which, in my opinion, have quite some evidentiary support and which can be legitimately considered to be acts of cruelty, if proved. The other acts I may refer to ; but only for ascertaining the state of his mind.

Respondent's pleas in the Written Statement.

6-a. The facts pertaining to the respondent's case have been narrated to some extent in the above para. I may mention here the respondent's reaction to the facts pleaded in the petition. She has flatly & emphatically denied every allegation pertaining to each act of cruelty. Thus, she has denied that there was no marital relations between the two spouses from the year 1967. According to her, they lived as husband/wife, both in India as well as abroad and had their martial relations right till the year 1980 when he left for England for the 2nd time. According to her, the present petition was filed because the petitioner had developed intimate and adulterous relations with Dr. (Miss) Sudha Kulkarni and, according to her, because the two wanted marry each other. According to her the present petition was quite mala fide one, his aim being to get himself freed from marital bond with the respondent. During the course of this written statement, she has made frontal & unequivocal allegations stating that the petitioner was having sexual affairs with lady friends and particularly with Dr. (Miss) Sudha Kulkarni. This is evidently the allegation of adultery on the part of the other spouse. One of the most important pleas agitated in this Appeal by Mr. Singhvi, the learned Counsel for the petitioner is that it is very much false an allegation and that this has caused mental pain and anguish to the petitioner immeasurably. Further, these canards have been spread out by the respondent or her parents or her friends and acquaintance. The respondent or her people have seen to it that these allegations received publicity in the sensitive quarters and the result has been that the petitioner has become a laughing stock in the eyes of the members of his profession as also in the eyes of the Society. According to him, this has brought him to greatest disrepute and all this has inevitable resulted in immeasurable pain, anguish and tension to him making continuance of his married life with the respondent an impossibility. According to him, such an allegation in the Written Statement itself amounts to a fresh cause of action to the petitioner for getting a divorce on this ground all by itself. He claims divorce also on the basis of the other facts pertaining to cruelty. He amended his petition so as to plead this additional cause of action.

(b) There is no dispute that the respondent has decided to take the bull by the horn. She filed a supplementary written statement and not only that she did not withdrew those allegations, but reiterated them in a more forceful & emphatic manner.

One of the questions to be considered is whether the petitioner could not be said to have got a cause of action by virtue of such statements made in the respondent's own original written statement and the supplementary written statement. As will be presently pointed out, if those allegations of petitioner's adultery were made good by the respondents the fact that the petition was actuated by the mala fides alleged by the respondent could perhaps be said to be proved. If the petitioner's adultery with any other woman is proved, he cannot have any grievance about the fact that the truth about the adultery has been voiced by his wife in her written statement. He cannot complain of cruelty having been practised by her because she has told something true in the written statement. No spouse can say that he or she would practice adultery ; but if the other spouses voices that fact in the written statement, that articulation would constitute cruelty towards him or her. But the question is whether she has proved those allegations of adultery or not and, further whether, if she does not prove them, she can still continue to contend that no cruelty has been practised by her against her husband, giving right to him to sue for divorce. Evidently, the allegation made by her in the Written Statement is double edged weapon. If proved, the mala fide character of the petition will stand illuminated. If not, the open and frontal allegation would, all by itself, amount to unmitigated act of cruelty.

Acts of alleged cruelty (relevant for this judgment enumerated.

7(A) I will first of all enumerate the acts of cruelty which I proposed to examine in this judgment. They are :---

- (i) The respondent's behaviour with her so-called "dharambhai" Sajjan Sultania ;
- (ii) her act of constantly nagging the petitioner ;
- (iii) the respondent's conduct indicated by the discovery the petitioner of the photographs Exhs. "D" & "E" in the cupboard on the eve of his departure for London in 1980 ;
- (iv) the Roxy Cinema incident which gets a meaning by virtue of the findings of the photographs, Exhs. "D" & "E" ;
- (v) the respondent's studies failure to see the petitioner off at the Airport in 1980 ;
- (vi) her frequent visits to the parents seen in the light of the fact that on such a significant date as the one when the petitioner left for London in 1980 she chose to go to her parents and to refrain from going to the Airport.

(B) In addition to the above incident, the petitioner has mentioned the following acts as the acts of cruelty on the part of the respondent :---

- (i) cessation of marital relations from the year 1971 ;
- (ii) refusal to cook food at the time when guests were invited ;

- (iii) neglect to perform the wifely duties ;
- (iv) the Mahalaxmi Temple incident ;
- (v) written anonymous letter to Doctors and the trustees of the Hospital, alleging immorality against the petitioner ;
- (vi) disinterestedness in the child

I may mention here that the petition mentions even other acts of cruelty or, rather, other acts which according to the petitioner amount to cruelty. They have been mentioned by the learned Judge, but I have not mentioned them because even Mr. Singhvi the learned Counsel for the petitioner, did not refer to them at the time of arguments in this Court.

Cruelty resulting from the averments in the W.S.

8. In addition to the above, of course, there is the act of cruelty allegedly arising out of Paras 10 & 11 of the Written Statement.

It is clear that two kinds of adultery is alleged against the petitioner in the Written Statement ;---

- (i) his habit of having extra marital relations with and keeping close friendship with female friends ;
- (ii) his living in adultery with Dr. (Miss) Sudha Kulkarni.

Legal position as regards respondent's averments in her W.S.

9. It is not disputed that in given circumstances these averments themselves constitute act or acts of cruelty on the part of the responding spouse. The legal position in that behalf is settled by the judgment of this Court reported in Sumanbai Vs. Anandrao Onkar Panpatil, . I myself had occasion to follow the said Judgment in the case of Jaishree Mohan Otavnekar v. Mohan Govind Otavnekar, F.A. No. 2547/83, decided on 12-11-1986. The principle underlying these authorities relate to one specie of mental cruelty which is capable of being inflicted even by the statements made in letters and documents, including the written statement. If a scurrilous allegation is made by one of the spouses against the other spouse, in, say, a letter, causing to him pain and anguish of such excruciating character that he cannot be reasonably expected to live with the responding spouse after suffering such heinous humiliation, similar allegation giving rise to similar effect upon the petitioning spouse, made in the written statement by the responding spouse, would have the same legal effect of furnishing an independent ground for divorce. Such a painful allegation would constitute a fresh cause of action in favour of the petitioning spouse for divorce on the ground of cruelty resulting from such allegation itself. This is precisely the ratio of the above mentioned two judgments.

It is, therefore, very much necessary to see if the evidence adduced by the respondent about the petitioner's adultery.

(a) with said Dr. (Miss) Kulkarni in particular, as emphasized in the supplementary written statement ;

(b) with all those nurses & female friends referred to in the supplementary written statement ;

The grievance about the failure on the part of the lower Court to frame an indispensable issue

10. But before advancing his arguments relating to the evidence led by the respondent to prove the allegation, Mr. Singhvi raised a very serious objection to the failure on the part of the learned Judge to frame the most apposite & unavoidable issue arising out of para 10- A of the amended petition read with the Written Statements.

A peculiar position arose by virtue of the failure on the part of the learned Judge to frame the most apposite issue arising out of the amended petition and a curious phenomenon materialised. The petitioner filed a petition for divorce on the ground of certain acts of cruelty allegedly committed by the wife. In reply to the said averments, the defendant came out with the plea that the petitioner had committed adultery with various women and was living in adultery with one Dr. (Miss) Sudha Kulkarni. The relevance of such averments is itself subject. Mr. Jhunjhunwala advanced what I have described elsewhere as Link Theory to prove their relevance. I will presently show that it cannot be accepted in the instant case. But assuming that they have some relevance, point is that the petitioner amended his petition and contended that such allegations were false and that they caused to him further pain, mental anguish and tension. Rightly or wrongly, the respondent filed a supplementary written statement and reiterated the said allegations. If the respondent proved the allegation, there was probably an end to the matter. But if she failed to prove those allegations, the normal rule would be that the petitioning husband could complain of (as he did complain) of mental anguish and tension caused to him. In such a case divorce would follow not because of the proof of the earlier acts of cruelty, but because of the evident act of cruelty contained in the unjustified allegations. This was the plaintiff's case, which the defendant denied in her own way. Point is that an issue on the point was indispensable. The issue would not be meant for the respondent; it would be the petitioner's issue.

But what transpired in the lower Court was that when the trial started, Mrs. Singhvi, who appeared for the petitioner, requested the Court to frame the additional issue, resulting from the averments in para 10-A of the petition. The issue was whether cruelty could be said to have been practised upon the petitioning husband by making such averment in the written statement or not. May be that the onus as regards the proof would rest upon the petitioner, but it would be the plaintiff's issue; the respondent could not take away the plaintiff's right to have that issue framed.

It is somewhat bewildering that when the learned advocate for the petitioner

invoked the Court to frame such an issue, the framing of the issue was stoutly resisted by Mr. Jhunjhunwala, appearing for the respondent. The position in this behalf is stated by the learned Judge in para 232 of his Judgment. This is what is stated in the said para:---

"When the issues were framed, Mrs. Singhvi had suggested an issue to the effect as to whether the petitioner has committed adultery with Dr. (Miss) Sudha Kulkarni in view of the pleadings of the respondent. At that stage Mr. Jhunjhunwala the learned Counsel for the respondent did not want that issue to be raised. Hence the issue was not framed."

With great respect, it defies understanding as to how the issue which was invited by the petitioner, upon which issue his cause of action was admittedly based, could be objected to by the Counsel for the respondent and as to how that objection could be sustained by the Court. It is not that the averment made in the amended petition was only an averment of a relevant fact. It was an averment about a fact in issue. The fact in issue was whether the allegation admittedly made by the respondent against the petitioner gave rise to a cause of action in favour of the petitioner or not. The petitioner contended that it did give rise to a fresh cause of action to get a decree for divorce. The respondent would be at liberty to contend that even though the respondent did make such an allegation against the petitioning husband, that allegation by itself gave no cause of action to the petitioner to obtain a decree for divorce. But the issue would be the petitioner's issue; not of the respondent. The respondent's Advocate could not have objected to the framing of the issue, far less the learned Judge could have upheld the objection. The observation made by the learned Judge in said para 232 leaves no room for doubt that the learned Judge refrained from framing the issue, (upon which the petitioner relied) merely because the respondent's Advocate did not find issue to be suitable for him. This is plainly unfair and unjust.

Even more serious result was bound to follow and it did follow. The fact that the respondent's Advocate did not allow the issue to be framed meant that he had abandoned the plea of adultery having been committed by the petitioner. In this connection, it is worthwhile referring to the observations made by the learned Judge while recording para 52 of the petitioner's evidence in cross-examination. In view of the fact that the respondent's Counsel did not allow the framing of issue arising out of the allegation of adultery made by the respondent in her written statement, the inevitable conclusion drawn by the petitioner's learned Advocate was that the plea of adultery was abandoned by the respondent. It is not as if that is the learned Advocate's ipse dixit at the time of the hearing of this Appeal. The point had been specifically raised by the petitioner's learned Advocate Mrs. Singhvi at the outset of the petitioner's cross-examination by Mr. Jhunjhunwala. Question was sought to be asked by Mr. Jhunjhunwala to the petitioner about his alleged relationship with Dr. (Mrs.) Sudha Kulkarni. Mrs. Singhvi objected to this question. She pointed out that the plea of adultery was

abandoned by the respondent's learned Advocate by not allowing any issue to be framed on that point. The answer given by Mr. Jhunjhunwala was quite bizarre. He admitted that he had objected to the framing of the most relevant and formidable issue. The reasoning advanced by the learned Counsel, Mr. Jhunjhunwala, in reply to the object on raised by the Counsel for the petitioner in the lower Court, is referred to by the learned Judge in para 52 of the petitioner's cross-examination. But with great respect, the reasoning is quite unintelligible. The respondent made the allegation of adultery. If the allegation was true, some help could be received by the respondent in explaining as to what actuated the petitioner to file the petition for divorce; but if it was not proved, the very allegation would constitute an act of mental cruelty on the part of the respondent and would afford a fresh cause of action to the petitioner to obtain a decree for divorce against the respondent. If the respondent did not want the issue, the meaning was that she wanted to abandon the plea of adultery having been committed by the petitioner. No other meaning can be imputed to her or to her Counsel's gesture. But merely because the plea of her husband's adultery was abandoned, it would not mean that no allegation of adultery was ever made by the respondent. She has made the allegation; it became known to the world at large and understandably it caused pain and anguish and tension to the petitioner and hence, it gave rise to a cause of action to obtain a decree for divorce for such act of cruelty. Nothing of this could be undone or effaced by the convenient device employed by the learned Counsel for the respondent of preventing the inevitable issue being framed on this point. By preventing such an issue, a veritable nail was struck in the coffin of the matrimonial relations of the parties.

The fact, however, remains that the plea relating to the petitioner's adultery was abandoned by the respondent through her learned Counsel which fact, as mentioned above, is referred to even by the learned Judge.

Plea regarding absence of evidence relating to tension.

11. Mr. Jhunjhunwala contended that not one word was stated by the petitioner in his evidence to the effect that the above mentioned wanton allegation now that the plea has been abandoned, the allegation cannot but be described (as wanton) resulted in causing of tension to the petitioner.

12. The argument is capable of two simple answers :-

Answer to the above plea

(A) Once framing of the issue was prevented by the respondent, there was no opportunity for the petitioner to lead evidence on that point. The parties lead evidence on the basis of the issues. No doubt the issue arise out of pleadings. But evidence is led on the basis of issues. It is true that sometime the Court allows the parties to lead evidence which is not strictly warranted by the issues. But if there existed no issue and if, on that ground, the petitioner does not lead evidence as intended by him, the Court cannot blame him and not the other side

will have the right to blame him.

Nedunuri Kameswaramma Vs. Sampati Subba Rao, distinguished

Reliance by Mr. Jhunjhunwala upon the judgment of the Supreme Court reported in Nedunuri Kameswaramma Vs. Sampati Subba Rao, , is quite misplaced. In that case the Supreme Court was considering the effect of non-framing of the material issue. But that was a case where even though the material issue was not framed, all the same, the parties did lead evidence on the question in issue. In those circumstances, the Supreme Court held that non-framing of the material issue in that case had academic value. In the instant case, Mrs. Singhvi was right in objecting to the cross-examination of the petitioner on the question of his alleged adultery with Dr. (Miss) Sudha Kulkarni and Mr. Singhvi, who appeared before me, rightly argued that since that entire plea was abandoned by Mr. Jhunjhunwala and since no issue was allowed to be framed on that point by him, the learned Counsel for the petitioner was justified in not asking any question to the petitioner in the Examination-in-Chief on the question of the effect upon him of the wanton allegations made against him in the written statement. The petitioner was made to believe that the challenge to the petitioner's pleas in Para 10(a) of the petition was given up by the respondent. This was obviously the reason why no question in that behalf was asked by his Advocate to him in the examination-in-Chief and when the examination in Chief was over, cross-examination started and was allowed to be started on the basis that the allegation continued to exist. This is unfair and unjust. This amounts to misleading the petitioner and no Court would be justified in countenancing such act of misleading.

(B) But there is even a stronger reason why the above argument of Mr. Jhunjhunwala cannot be accepted. It may be that the petitioner has not disposed to the tension caused to him by virtue of such wanton allegation. But if there existed any case of *res ipse loquitur*, it is the present one. The petitioner is a renowned Doctor. As the evidence shows, he had to face an inquiry by the Board of Trustees of the Hospital to which he was attached as a Physician. He practises as a Consulting Physician outside the Hospital. The allegation of such serious character is bound to tell upon his practice. It is impossible that he would not feel mental pain, chagrin and anguish resulting into tension by such wanton allegation against him by non other than his own wife.

Question of relevance of the allegation of cruelty in the W.S. a question closely connected to the question of furnishing a fresh cause of action to the petitioner.

13. This question is closely connected with the question of the relevance of the allegation of adultery made by the respondent against the petitioner in the written Statement. When one of the spouses files a petition for divorce against the other spouse, the written statement of the other spouse has to be restricted to meeting and answering the pleas of cruelty alleged against him or her. Normally speaking, the allegation of cruelty against the responding spouse

cannot be met by an allegation of adultery against the petitioning spouse. The respondent cannot be heard to say that she was cruel but the petitioner was adulterous; (or even that she was not cruel, but the petitioner was adulterous). In the normal context of the allegations of cruelty on the part of the respondent, the counter-allegation of adultery by the petitioner is meaningless & irrelevant. This is precisely what the respondent has done in the present case. If against the petitioner's plea of cruelty meted out by the respondent to him she comes out with a case that he has been indulging in adulterous conduct all what she could be said to be revelling in would be mud slinging and washing the dirty linen in the public, nothing else. If the cruelty alleged by the petitioner was not proved, the petition would meet its fate of dismissal. If it was proved, he would be entitled to divorce. In the latter case, it would not lie in the mouth of the respondent to contend, "Yes, I was cruel, because he was adulterous". In normal circumstances adultery by the husband is no answer to justification for cruelty by the wife & vice versa. Plea of husband's alleged adultery in such case would be irrelevant.

Such allegation in given Cases, is even suicidal because it is a double edged weapon.

14. But the point is that it would be also suicidal for the respondent, in given cases, because the allegation would itself be a foundation for a cause of action for divorce on the ground of cruelty caused only by the earlier acts, but also by this very irrelevant plea of adultery made against the petitioning husband if (this is no doubt a big "if") the responding spouse fails to vindicate such grave and serious allegation. If (another big "if") the responding spouse proves the allegation on the test of probability, she may succeed and the petitioner's cause of action based upon false allegation of adultery will vanish away, but if she fails doing so, she herself proves her cruelty to the hilt.

The legal effect of such plea in the W.S. further discussed.

There could be two circumstances in which the responding wife could makes such an allegation and still could get away with it;

(A) When she in fact leads evidence and proves the fact that the petitioning husband was guilty of adulterous conduct;

(B) When she proves justification and relevance for the making of such pleas as an answer to the ground of cruelty.

(Mr. Jhunjhunwala argued about a third circumstance which I have rejected : I will refer to it presently).

(A) When the wife sets up the plea of husband's adultery and even proves the allegation in the Court, it would not lie in the mouth of the petitioning-husband to contend that the plea resulted in cruelty to him. If in fact he has been guilty of adultery, he cannot contend that the plea resulted in mental anguish to him. He committed a wrong against his spouse and it will not lie in his mouth to contend

that the wife to whom he had done that wrong was guilty of vociferating his wrong before the forum for justice. In our system of matrimonial jurisprudence, adultery by either of the spouses is a wrong done to the other spouse is articulate about such a wrong, the wrong doing spouse cannot complain of mental anguish and cruelty to him or her.

But the position is equally fatal for the responding wife who makes such allegation but is unable to prove the same. Normally speaking, if she cannot prove such allegation, the inference would be that she had no justification for making such allegation and for washing the dirty matrimonial linen in the public. If she cannot prove the allegation, that will vindicate the petitioning husband's grievance that grave pain and anguish was caused to him by such baseless plea.

(B) But in the case such as the present one, the plea of adultery made by the respondent in her written statement will have another relevance and it was very ably highlighted by Mr. Jhunjhunwala, appearing for the respondent. His argument was that there existed a legitimate reason for the respondent to allege adultery of the petitioner with Dr. (Miss) Sudha Kulkarni. It is the case of the respondent wife that their marital life was a normal one till the year 1980. There might have been some tiffs between the two spouses, but they exist in every house. According to the respondent, argued Mr. Jhunjhunwala, this divorce petition was a mala fide proceeding instituted by the petitioner against the respondent, because it was in the year 1980 that the petitioner started living with Dr. Sudha Kulkarni as husband and wife. The argument was that it was because they wanted to marry each other that all these stale incidents, some more than 10 years old on the date of the petition, were being raked up by the petitioner for the purpose of getting emancipation from the existing matrimonial tie. The allegation of adultery with Dr. Sudha Kulkarni was a LINK, according to the Counsel, to prove the motive for filing the unjustified petition. I will call this as the LINK theory of relevance and will examine it after examination of relevant evidence.

As stated above, still another justification was advanced by Mr. Jhunjhunwala for such allegation even assuming that the respondent cannot prove it. I will examine it after I examine the evidence of petitioner's adultery adduced by the respondent.

Examination of arguments re; the fresh cause of action pleaded by the petitioner begins.

15. As stated above the allegation of cruelty resulting from the above mentioned averments in the written statement is regarded by the petitioning husband as an act of cruelty of even more heinous character, probably because the earlier act of cruelty were at least not broadcasted by the respondent. But the above mentioned act of cruelty broadcasted before the forum of the public at large by incorporating them in the written statement cause even greater anguish to the petitioning husband. This is the reason why Mr. Singhvi, the learned Counsel for

the appellant, informed the Court that he would advance his arguments based upon this act of cruelty in preference to the arguments relating to the other acts of cruelty, averred in the unamended petition. No evidence was required to be adduced for proving this act of cruelty, because the averment was very much there in the written statement containing this scurrilous allegation resulting in mental cruelty to the petitioner.

As stated above, the allegation in the written statement constitute a double-edged weapon. If the allegations are proved, the husband's plea of cruelty resulting from the allegation would be meaningless because no one can complain about pain and suffering being caused to him by averments of truth. But if the allegations is not proved, it is bound to boomerang upon the person making it because such an allegation is bound to cause pain, suffering and mental anguish and tension to the person who is the target of this allegation. Mr. Singhvi, therefore, proceeded to advance his arguments in relation to this additional cause of action in preference to the original cause of action contained in the un-amended petition. According to him, not only that next to no evidence was led by the respondent-wife to prove the allegation contained in said Paras 10 & 11 of the written statement and reiterated in the supplementary written statement, but by obviating the most crucial issue on this point she has abandoned the plea of the petitioner's adultery. By thwarting such issue she has also incapacitated the petitioner from leading evidence relating to the pain, anguish and the resultant tension to the petitioner. Moreover, as mentioned above, in the circumstances referred in Para 12 above, no separate evidence is required for proving such tension because this is a case of *Res ipsa Loquitar*. For the reasons mentioned elsewhere in this judgment. I have accepted this argument. In my opinion, the petition must be decreed and the appeal must be allowed on this short point itself.

I am also inclined to accept Mr. Singhvi's argument that the objection raised in the lower-Court by the petitioner's learned Advocate to the petitioner's cross-examination relating to the various allegations of his adultery should have been sustained by the lower Court. It was not a matter of discretion but a matter of judicial obligation for the lower Court, because the plea of petitioner's adultery was abandoned by the respondent. This means that the entire evidence relating to this topic, including the letter, Exh. 4, must be held to be inadmissible. Only the cruelty unleashed by the respondent by making such wanton allegation in the pleadings, causing pain, anguish and tension (which could not be effaced by abandoning the plea of adultery) remained. As rightly argued by Mr. Singhvi, the petitioner was entitled to a decree for divorce on this narrow ground, all by itself.

Why respondent's evidence on her plea of petitioner's adultery being examined.

16. But the learned Counsel also argued on the assumption that the above argument was not acceptable. That argument required examination of evidence relating to petitioner's adultery which the lower Court allowed to be led, rightly or wrongly.

I will, therefore, examine that evidence which the lower Court allowed to be led :
In my opinion, wrongly.

Examination of respondent's evidence relating to adultery allegedly committed by the petitioner.

17. Let me first examine the evidence led by the respondent relating to the petitioner's adultery with said Dr. (Miss) Sudha Kulkarni.

Her plea is that in or about March 1974 when she was in Glasgow, she found in the petitioner's pocket a letter, which according to her was written by Dr. (Miss) Sudha Kulkarni to the petitioner addressing him as "My Dearest Suresh". According to her, the letter threw a floodlight upon the amorous and sexual relationship between the petitioner and said Dr. (Miss) Sudha Kulkarni. It is worthwhile setting out the relevant portion of the said letter. As stated above, the letter is addressed to some Suresh and there is no dispute that the name of the petitioner is "Suresh".

It cannot be disputed that the writer of the letter and the recipient of the letter are on very intimate terms. But it cannot be said that the intimacy revealed therein is of a sexual character. This position is conceded even by Mr. Jhunjhunwala before me. The entire trend of the letter is that the writer of the letter wants to enter into the bond of matrimony with the recipient of the letter, Suresh. But the letter makes it clear that she does not want to have any sexual relationship with the recipient unless they were married and their marriage was recognised by law. Some reference is made to a drug called "Iyndtol". But the respondent has stated in her evidence that she was herself taking this drug "Iyndtol" as a contraceptive. She further stated that this was the only contraceptive known to her. The word "Iyndtol" finds a place in the said letter, which is dated 12th March 1974. But one cannot make out head or tail of the user of the word "Iyndtol" in the said letter. There is no reason and logic attributable to the employment of the word "Iyndtol" in that letter. This is what the relevant portion of the letter speaks about the drug "Iyndtol".-

"Before writing about all other things let me write about main thing first about starting "Lyndtol" tab by darling I am V.V.V. sorry, it is not possible. I am V. much eager to give you your it side the way you want it, only after we are officially permitted. I hope and pray Mahalaxmi that you understand me & not angry with me. Although I can imagine your condition but even after knowing all about it. I have to give you negative answer, you don't know how painful it is to say you no, even though I would like my darling to be happy & to give him whatever (including my life) he wants, but this is not possible in the situation. I hope you understand me & the reason for my No."

If one reads the letter, one is left with the impression that it is written by a person whose knowledge of English language is marginal. It is not the language of a learned person like a doctor. It is a language of a person who has a smattering of the knowledge of the English language. The respondent would

doubt qualify herself for that description; but not the doctor.

The respondent has stated that the only contraceptive she knew was "Iyndtol". It is precisely this word which finds itself squeezed in this letter.

It is on the basis of this position that Mr. Singhvi forcefully argued that in all probability the letter was the doing of the respondent herself. He also invited my attention to the subsequent conduct of the respondent which showed that this letter was brought into being for the first time in or about the year 1980. But about that, a little later. Here, it needs to be noted that the letter by itself does not show existence of sexual relationship between the sender and the recipient of the letter. If at all, the letter proves that the writer of the letter did not want to have any sexual relationship with the recipient until she was married with the recipient.

This does not prove adultery. This may prove a very deep emotional relationship between the writer and recipient. But that is not the same thing as adultery. If a person makes allegation of adultery against the recipient on the basis of this letter, the recipient, if he is a respectable person, would be justified in having pain, anguish and tension. This will be more so, if the allegation flows from the recipient's own wife. And it will be still more so if the recipient knows that his wife is herself having a free and emancipated relationship with other young boys. I will presently point out that this is the precise position in this case. The respondent has been making any amount of wanton allegation against the petitioner, but at the same time she is having jolly good relations of a liberal character with young boys, whom she does not even know by names.

The effect of the letter further examined.

18. A number of other attendant questions arise.

(a) Is it proved that the letter was written by Dr. (Miss) Sudha Kulkarni ?

(b) If it was written by Dr. (Miss) Sudha Kulkarni, was the petitioner even aware of that letter?

(c) Assuming that the letter was written by Dr. (Miss) Sudha Kulkarni to the petitioner while he was in Glasgow and that he had read the letter and kept it in his pocket, does it establish any adulterous relationship between the two persons ?

The evidence shows that the petitioner has denied having received the letter from Dr. (Miss) Sudha Kulkarni whether in Glasgow or anywhere. He has denied any truck with the said letter. It was, therefore, incumbent upon the respondent to prove :-

(a) that the letter was signed by and was in the hand-writing of Dr. (Miss) Sudha Kulkarni ?

(b) that the petitioner has received that letter;

(c) that the letter went a long way to prove the adulterous relationship between the petitioner and the other "women".

Is the signature & hand-writing of the letter, Exh. 4. proved to be that of Dr. (Miss) Sudha Kulkarni?

19. For proving that letter, Exh. 4, was in the hand-writing of Dr. (Miss) Sudha Kulkarni, the respondent has called for record of the Maharashtra Board of Ayurvedic and Yunani System of Medicines. Admittedly Dr. (Miss) Sudha Kulkarni has made an application dated 10th December, 1967 to that Board for entry of her name and other particulars in the Register maintained u/s 17 of the Maharashtra Medical Practitioners" Act 1961. Two such documents are produced. The hand-writing on the documents, which are documents in the application Form, purports to be that of one S.N. Kulkarni, whose residential address is mentioned as "Shiv-Sankalpa", Vishnu Nagar, Sambhaji Peth, Naupada, Thane 2. There is no dispute that is the address of said Dr. (Miss) Sudha Kulkarni. I agree with Mr. Jhunjhunwala that Dr. (Miss) Sudha Kulkarni, to whom notice was issued by the City Civil Court for giving her say as regards the allegation made against her by the respondent, who appeared through her advocate Shri Shakh, admitted the application. But all that this means is that she has made the application. Question remains that whether the letter is written by herself or not. Mr. Singhvi submitted that it is possible that somebody had filed in and written the form and that Miss Kulkarni just signed the form or for the matter of that, even the signature was of somebody else made at the instance of Miss Kulkarni.

In my opinion, Mr. Singhvi's argument can be accepted so far as the hand writing in respect of the contents of the application are concerned. But it will be too very theoretical so far as the signatures on the documents are concerned. Moreover the hand-writings on the two documents, Exhs. 5 & 6 are manifestly different. Legally speaking, therefore, the hand-writing on the said applications, Exhs. 5 & 6 do not establish the fact that the said hand-writing were of Dr. (Miss) Sudha Kulkarni.

But the point is that even if she admitted the hand-writing on the said application, Exh. 5, one cannot say that the hand-writing on the letter, Exh. 4, is the same as the hand writing on the application, Exh. 5 or Exh. 6.

The contents of the letter in fact rule out inference of sexual intimacy.

20. Even assuming that the application, Exh. 4, was written by Dr. (Miss) Sudha Kulkarni herself and that the authorship of the two applications forms, Exhs. 5 & 6, and the letter Exh. 4 was of the same person viz. Dr. (Miss) Sudha Kulkarni, the letter, Exh. 4, does not establish the adulterous relationship between the two parties at all. I have set out the gist of the contents of the said letter. The said contents prove beyond any reasonable doubt that the writer of the letter had set her face against having any sexual relationship with the addressee or recipient of the letter.

The telling character of the subsequent conduct of the Respondent vis-a-vis the said letter.

21. As will be presently pointed out, the fact that respondent is a nagging wife is established by the petitioner beyond any shade of doubt. Her case is that she found that letter in the husband's coat-pocket. But, all the same, she did not give any indication to her husband in the U.K. and on continent and thereafter even in India till 1980 about her possession of the letter. She has stated in so many words in her evidence that she had neither told any one about the letter, Exh. 4, nor had shown it to any one at all. The fact that this statement made by her on solemn affirmation before the Court turns out to be a false statement is a different story. Factual position emerging from her own father's evidence is that just about the time when she filed her written statement this document happened to go in circulation. Whatever that may be, the fact remains that according to her she did not bring the letter to light right from 1974 to 1980. This argues against the existence of any such letter in the year 1974. If she did not do anything about the letter till the year 1980, an inference would be quite legitimate that she got hold of the document for the first time in the year 1980. If this is so, then the letter is nothing but forgery, because the letter bears the date 12-03-1974. The letter is written on an ordinary piece of paper. There is no independent evidence on record showing that the letter was received by her in March 1974. She has no evidence to prove that the letter was retained by her with herself for about 6 years without uttering any word about it to anybody else. According to her, she carried on her matrimonial transaction with her husband with such a volatile letter in her pocket all the time from 1974 till 1980.

All these facts do reflect seriously upon the very genuineness of the same.

The respondent found telling lie in relation to this letter.

22. But this is not all. The respondent has come out with an unnatural story that she caught hold of the letter in March 1974 but did not utter one word about it even to one soul. But even on this point, she has proved herself to be telling a white lie. Her father has come forth to state that she had shown the letter to him. According to him, on the basis of the said letter, she had made representations to various persons against the petitioner. As to why the respondent should have told a lie in the Court viz. that she had not shown the letter to anyone, before this litigation started, is a great mystery.

Exh. 4 a document of doubtful veracity, to put in mildly.

23. All these facts go to show that the writing of the letter by Dr. (Miss) Sudha Kulkarni to the petitioner is itself a document of doubtful veracity, to put it mildly, and probably a forgery by some one. But even assuming that the letter was written by said Dr. Kulkarni to the petitioner, it falls short, to a considerable extent, of proving the adulterous relationship between the petitioner and said Dr. Kulkarni.

This then is the position regarding proof of adultery given by the respondent/wife against the petitioning husband.

Is the petitioner's adultery proved by evidence independent of said letter, Exh. 4.

24. If we look at the evidence as regards adultery by the petitioner with said Dr. (Miss) Sudha Kulkarni, apart from the evidence of the said letter, Ex. 4, what we find is riot & anarchy. The respondent alleged that not only on the date of the petition, but even during the pendency of the petition, the petitioner was staying in adultery with said Dr. Sudha Kulkarni. According to her, immediately upon his return to Bombay from London the petitioner started residing with Dr. (Miss) Sudha Kulkarni in her flat at Thane and that, for that purpose, the petitioner even went to the extent of leaving his parental & matrimonial home. The fact that immediately after his return from England the petitioner started living separately and in fact in the flat belonging to Dr. (Miss) Sudha Kulkarni, at Thane is not disputed. He lived there for some time, but nothing on that point is exceptionable. He has given very good reasons why he was disgusted with the respondent. I will presently refer to the two photographs that he found in the effects of the respondent on the eve of the departure for London in the year 1980. Admittedly the respondent went to the extent of not seeing him off at the Airport on the date of his departure for London. He was to go by the midnight flight. The very evening the petitioner landed upon those photographs. Significantly enough, the respondent chose that very evening for going to live with her parents, at Matunga. Curiously enough, her father went to the Airport with garland for giving him a send off. Not one word is uttered by him as to why the respondent did not go there. The story repeated itself on the petitioner's arrival from England. The other members of his family went to receive him at the Airport; not the respondent. The petitioner went straight from the Airport to his Hospital and from there onwards he refused to stay under the same roof under which the respondent stayed. He had to search for accommodation. He makes no bone of the fact that Dr. (Miss) Sudha Kulkarni is his friend. It can be even assumed that there is an emotional bond between the two. The evidence on record clearly shows that by that time Dr. Sudha Kulkarni, who has got a dispensary of her own in Thane, had shifted her residence to Dombivli where her parents were staying. Her residential flat in Thane has become vacant and upon demand from the petitioner she kept it at the disposal of the petitioner as a stop-gap arrangement. He started residing in the residential flat at Thane. There is no dispute that Dr. (Miss) Sudha Kulkarni continued her general practice in the dispensary at Thane. But there is also no dispute that the dispensary and the residential flat are situate away from each other. The respondent took advantage of this position and contended that the petitioner and said Dr. Sudha Kulkarni were living in Thane in Dr. Sudha Kulkarni's flat as husband and wife. Beyond making this airy statement, she has led no evidence on that point. Positively false evidence is given by her by saying that she rang up the petitioner on the residential telephone number of Dr. Sudha Kulkarni in the early morning and late nights. According to her on each of the occasions the telephone was picked up by

Dr. (Miss) Sudha Kulkarni, although the residential flat was being occupied by the petitioner. This is how the respondent wants to put two & two together. The sheer falsity of her evidence is revealed by the fact that the telephone number, which is mentioned by her (on which telephone she allegedly rang up the petitioner) is the telephone number of the dispensary of Dr. Sudha Kulkarni. The respondent has produced a Visiting Card which, according to her, she received from Dr. Sudha Kulkarni. The visiting card shows that the number of the telephone is that of her dispensary. The visiting card, which is produced at Exh. 6, shows Dr. Kulkarni's residential telephone number to be 3133. The respondent wants the Court to believe that she rang up the petitioner on his residence on the telephone No. 50 64 57. This is an impossibility from the very nature of things. In her cross-examination she had to admit this position. Even the learned Judge, who has gone to some extent out of the way to believe her evidence has found it impossible to believe this part of the evidence.

Evidence relating to petitioner living in adultery in his Colaba Flat examined : found wholly unacceptable.

The respondent has further given evidence to contend that when the petitioner's flat at Colaba was ready for occupation, he shifted from Thane to Colaba. There is no dispute about this position. It is the petitioner's own contention that the moment the flat was ready, he shifted to the Colaba Flat. But what is incredible is the next evidence of the respondent. Her plea is that in the Colaba Flat the petitioner and said Dr. Sudha Kulkarni are residing as husband and wife. Beyond her own word she has not adduced any more evidence for proving that fact. As stated above, the petitioner is not a riffraff in the street. He is a person of some respectability and reputation. If he was indulging in adultery with any unmarried woman in the same Flat, that fact would not remain concealed for such a long time. The respondent has stated that she got this information from the Watchman of the Co-operative Society, to which the building in question belongs. The watchman is not examined. Not even the slightest attempt is made to prove that the petitioner is living in adultery with Dr. (Miss) Sudha Kulkarni in his Colaba Flat.

Falsehood resorted to by the respondent exposed.

26. It is, thus, clear that the respondent has not at all succeeded in establishing any adulterous conduct of the petitioner with Dr. Sudha Kulkarni. But this is not all. What the evidence shows is that she is telling a blatant lie in the Court relating to her telephone call to the petitioner at Thane on the number 506457 reveals nothing else.

If this is the state of evidence led by her to prove the petitioner's adultery, it cannot but be held that her allegation is patently and blatantly false and malicious. She has made the allegation in the public. Such an allegation cannot but have the effect of causing extensive pain, anguish and tension to the person such as the petitioner. In my opinion, the petitioner should be entitled to divorce

from the respondent on this solitary ground itself even assuming that the hand-writing on Exh. 4 is proved to be that of Dr. (Miss) Sudha Kulkarni. The other acts of cruelty-her relationship with Sajjan Sultania.

27. Let me now deal with other acts of cruelty alleged by the petitioner in his petition.

The 1st one, which I will refer to, is her relationship with Sajjan Sultania. Let me firstly state, very briefly, the objection of the petitioner to the respondent's relationship with said Sajjan Sultania.

Petitioners Evidence relating to respondent's behaviour with Sajjan Sultania

(i) According to him, she claims said Sajjan Sultania to be her "Dharambhai". She has given evidence to show that Sajjan Sultania's parent's and respondent's parents were family friends. There is no dispute that said Sajjan Sultania came to Bombay in the year 1970. There is no dispute further that Sajjan Sultania had not even attended the respondent's marriage with the petitioner, which took place in the year 1965. He came to Bombay for the first time in 1970 and when and when he started residing at her father's place, she tied him a Rakhi in the year 1970 and from that date he was treated as her "dharambhai". But the petitioner's grievance is about the behaviour of these two persons, the respondent and said Sajjan Sultania showed much more closer relationship than that of sister and brother and that relationship caused great mental anguish to the petitioner.

The averments made by the petitioner in the petition in this behalf is to be found in Para 6(a) of the petition. This is what he states there :---

"The petitioner states that even after marriage the respondent was in a habit of encouraging close friendship with young boys. One Shri Sajjan Sultania used to regular visit her at home after marriage. He used to stay for lunch at later both of them used to sit in the bedroom talking to each other for hours together while the petitioner used to go to the hospital. Petitioner's parents and sisters had witnessed this and they used to complain to the petitioner about the respondent's behaviour."

The respondent denies any indecent conduct with said Sajjan Sultania. She affirms that he was her "dharambhai" because she has tied rakhi around his wrist. Evidently, she believed that tying of rakhi is a licence for any kind of conduct with the so called "dharambhai". This is what he states in Para 10 of his evidence in this behalf :---

"The respondent used to be visited by one Mr. Sajjan Sultania at our house. He used to come usually in the afternoon when I was not at home. He used to stay on for quite sometime and even for dinner. Whenever I was present at the dinner the respondent used to share one common thali with Mr. Sultania and used to give me another thali. While eating many times they made odd gestures. She used to feed him and he used to reciprocate. Whenever I used to ask her about

Sultania and his visits she used to flare upon and shout and say that he was her "dharambhai". She further said that even if he is not a dharam bhai he will come as and when he and she wanted, and nobody can stop. She said that he will stay as long as he and she wanted. Many times I used to feel bad and hurt and told her the same and asked her not to call him but she refused to listen to me. Next time he came they started making gestures with each other more freely to annoy me. Many time I left the thali and went away feeling hurt. I used to complain to my mother about the visits of Sultania. She herself was upset and worried. The visits became more frequent and the duration of the stay kept on increasing. Even our neighbours started talking about these visits. One of the neighbours Mrs. Leena Lyalka even cracked a joke saying that "he looks and behaved more like a Sajjan than Sajjan."

Cross examination of petitioner Re : Sajjan Sultania.

He has been elaborately cross-examined on this point in para 58 onwards. No doubt he stated there that if a woman ties rakhi to a man, their relationship becomes that of brother and sister and such brother can visit his sister at any time. He also further stated that he would not object to the man's presence in the sister's room, provided their moments with each other were not indecent. Evidently, he felt that their gestures did not measure well on the parameters of decency. In para 59 he has stated that on all occasions when he met Sajjan Sultania in the house, he found him sitting in the bed-room of the petitioner and the respondent. He admitted that when he saw Sajjan Sultania in the bed-room, he (the petitioner) also sat in the bed room. He also admitted that when dinner was served to Sajjan Sultania in the bed-room, it was served to the petitioner also in the bed room. From this, it is sought to be argued that on those dates when this took place, before 1973, the petitioner had not found anything objectionable in the conduct of the respondent.

A question was asked to the petitioner as to his reaction to the gestures made by the respondent and said Sajjan Sultania towards each others. The petitioner states that he used to get upset and hurt. He was asked whether he did not scold Sajjan Sultania for making those gestures. The petitioner stated that he did. He further stated that initially he told even the respondent that this behaviour was not good. He also told Sajjan Sultania that such behaviour was not good. But the petitioner also stated in consonance with what is stated in the petition, that upon any such admonition the respondent used to get flared up stating that he (Sajjan Sultania) was her "dharambhai" and that he could come at any time and that even if he was not her "dharambhai" he could come so long as he and she wanted and stay as long as they want. This is precisely the statement made by the petitioner in his petition. The petition was filed on 30th July, 1982. The above evidence was being given by him in August, 1985 and still he reiterated what is stated in the petition. He has further stated in the cross-examination that even after he gave the mild admonition to Sajjan Sultania, the above mentioned behaviour continued. He admitted that he did not take any action against the

respondent or against said Sajjan Sultania, but reported the matter to his mother, who spoke to the respondent and her mother and thereafter Sultania's visits became rare. He stated that even during his less frequent visits, Sultania used to have dinner in their bed room and that the respondent used to share the same thali with Sultania.

The learned Judge opined that this conduct of the petitioner is natural. With respect, I cannot agree. A decent husband would not make a row on account of such things. Reaction to such incidents and happenings differ according to the class to which the parties belong. The petitioner is an educated respectable person. He would not make a hue & cry about such conduct of the respondent even if he resented the same most deeply. There is nothing unnatural in his reporting the fact to the mother and asking her to give appropriate warnings to the respondent and to her parents. The entire story appears to be quite consistent and natural.

As I can see, the case related by the petitioner in the petition as well as in his evidence has received no dent whatsoever in his cross-examination.

Evidence of Petitioner's sister, Shashi, P.W. 2, Re. Sajjan Sultania

(ii) The petitioner's sister Shahi, has given her evidence on behalf of the petitioner. She has stated in para 3 of her evidence that Sajjan Sultania frequently visited their Chowpathy residence. Sometimes he came during the day time and sometimes in the evening. At that time, the witness was going to College where she used to be engaged between 10.00 a.m. & 4.00 P.M.

There need have been no cross-examination of this witness, because she has not stated anything which is not admitted by the petitioner. The frequent visit of Sajjan Sultania had not been seriously disputed.

All the same, the witness is cross-examined in para 19. She has asked as to whether she ever had a talk with Sajjan Sultania. She stated that she rarely talked with him and whenever she had a talk with him, it was a general talk. She stated that the petitioner as such did not have much of a talk with Sultania. The other members of the family had no talk with him.

This may not be quite correct, because petitioner's mother had admitted that she had a talk with Sajjan Sultania. But it cannot be said that any falsehood is stated by this witness when she stated that no other members of her family (other than herself, the petitioner and the respondent) had a talk with Sajjan Sultania. It is not argued before me that the witness was telling any falsehood, and quite rightly so because the witness had not stated anything which she did not know. But one thing becomes clear viz. that Sajjan Sultania had frequent visits to the petitioner's place and had extensive talk only with the respondent. Both the respondent and Sajjan Sultania posed to be tied down with fraternal bond. He regards the respondent as his sister. One wonders whether any person could visit his own sister so frequently as that. I do not wish to cast any

aspersion upon the relationship between the two persons. Point is that all this hurt the feelings of the petitioner. Both the parties claim themselves to be belonging to the orthodox family. Not even any effort is made on behalf of the respondent to deny that she is of the extreme orthodox type in the matter of relationship of two persons of opposite sex. But she was having a merry relationship with the so-called, dharambhai who had not even attended her marriage. A rakhi which was tied by her on his wrist was for the first time in the year 1970. She considers him to be her dharambhai, but when the question comes about the other members of her dharambhai's own family and when she is asked about the particulars of his family, what one draws from her evidence is blank.

Evidence of petitioner's father, P.W. 3, on this point examined.

(iii) The petitioner examined his father, Prahladrai, as P.W. 3. He has stated in para 4 of his evidence that the respondent treated one Sajjan Sultania as her "dharambhai" who started coming to their house regularly and started remaining in the house sometimes for hours together, sometimes even for the whole day. He further stated that Sajjan Sultania and the respondent started eating together, meaning thereby that they were eating in the same thali. He stated that neither the witness nor his wife (the petitioner's mother) liked this behaviour of the respondent. He stated that he advised the respondent on several occasions and even informed her mother on the phone that the respondent's behaviour with Sajjan Sultania was not proper. He stated that there was no effect of that advise upon the respondent.

The witness is cross-examined in para 16. He was asked as to the period when said Sajjan Sultania came to their house. The witness stated that might have been about 2 years after the marriage of the petitioner. He also stated that his coming to the house was not at any fixed time. He admitted that Sajjan Sultania came to his house in his absence, that is to say during the time when the witness was in the dispensary and hence, he would not be having personal knowledge about Sultania's visit. But he also stated that he himself seen Sultania at least 50 times in the house. He admitted that he himself too had a talk with Sajjan Sultania.

In my opinion, there is no effective cross-examination of the witness on the question of Sultania's unnatural frequent visit to the matrimonial house of these spouses. There is practically no cross-examination on the question that the respondent and Sajjan Sultania used to eat in the same thali.

In fact there is no effective cross-examination of this witness at all. The witness has not stated anything which he has not seen. He has not stated anything which the petitioner has not stated.

Evidence of petitioner's mother, P.W. 4, examined.

(iv) The petitioner has also examined his mother as P.W. 4.

In para 6 of her evidence, she stated that when Anisha was about 2 years only, Sajjan Sultania started coming to their house. Anisha was born in 1967, which means that Sajjan Sultania started coming to their house by about the year 1969-70.

The witness further stated that sometimes Sultania came everyday for about 2 or 3 days, that sometimes he took meals in their house. She further stated that the petitioner was accustomed to eat his food by squatting on the floor, but at that time the respondent and Sultania would eat on the cot and eat in one thali. She stated that they would offer food to each other with great affection. The witness stated further that she saw the petitioner looking pained by this spectacle. The witness has stated that the petitioner used to come out of the room with his thali and have food outside alone. The witness further deposed to his advise to the respondent as also to her mother. The witness stated that the respondent's mother used to tell her that the respondent was still, a child.

Cross Examination of P.W. 4 on this point examined.

(v) The witness has been cross-examined quite elaborately. In para 33 she stated that she used to have formal talk with Sultania. She denied the suggestion that Sajjan Sultania used to have free talk with her elder daughter, Sudha. The witness was asked as to how many times she had seen the respondent and Sajjan Sultania eat in one thali. The answer was that the spectacle was 2 or 3 times. On these occasions, she saw the petitioner coming out of the room with his thali and eating alone outside. When the petitioner told the witness the reason for his coming out, his mother, the witness, went to the wash-basin on the pretext of washing hands, casually looked into the room of the petitioner and went inside asking if they wanted anything. She did so on 2 or 3 occasions and on those occasions she saw the respondent and Sajjan Sultania eating in the same thali and feeding each other. She also could guess this position because she saw that when those two of them were to eat the food, only one thali was taken in by the respondent saying that their relationship was of brother and sister and that they would eat together. She stated in the cross-examination categorically that she saw them doing so on three occasions.

A very curious statement was made to the witness viz. that dharambhai Sajjan Sultania used to come to the house on the day of the Rakhi Poornima and on the day when respondent's mother wanted to send something to the respondent and on the occasion Anisha's birthday. A suggestion was put to her that excepting on those days Sajjan Sultania never came to their house. The reply was that he did come on those days, but it was denied that he did not come on any other day. The witness has further stated that on the Rakshabandhan day it was the respondent who herself used to go to her parents, meaning thereby that there was no question of Sajjan Sultania coming to the petitioner's house on Rakshabandhan day.

What is curious about the above suggestion is it is the respondent's own case

that it was she herself who was going on the Rakhi Poornima day to the parental home where Sajjan Sultania used to come for Rakhi Bhandhan. The suggestion made to the witness is, therefore, plainly misleading and untrue to the knowledge of the respondent.

Respondent's Evidence.

(vi) The respondent has given her evidence on this point in para 26. From her evidence, it becomes evident that she was not even knowing this "dharambhai" almost till the year 1970, at least not much of him. He came to Bombay in 1969 or 1970 and started residing with her father for about one year. She was 22 or 23 years old at that time. It was in the year 1970 for the first time that she tied him a Rakhi. In para 27 she has admitted that he used to visit her matrimonial house at Chowpathy occasionally to wish her as also on the day of Anisha's birthday and on the "bhoubeez" day and used to take meals on those days. Now the evidence gives an impression that he was coming on quite a few occasion. Looking at the fact that all these things happened between 1970 and 1972 it would be inconceivable that he would be there more than 3 or 4 times. But her evidence leaves no room for doubt that he came there on several occasions. This evidently means that she is trying to concease something from the Court. In addition to this suppretio veri, there is also the suggestio falsi. I have referred to the suggestion made to the petitioner's mother, P.W. 4, in her cross-examination to the effect that Sajjan Sultania came to their house only on Rakhibandhan day and on Anisha's birthday and for bringing something to the respondent from her mother. The respondent has admitted that on the Rakshabandhan day she herself used to go to parental place. The suggestion made to P.W. 4 was evidently a false suggestion.

The very Examination-in-Chief of the respondent gives rise to a guess that Sajjan Sultania came to the petitioner's house for meeting the respondent much more often and much more frequently than is sought to be made out by the respondent.

The eating together part is explained by saying that this was done only when sweets were put by each of them in the mouth of the others on the festival day such as "bhoubeez". But this could be only for 3 days. The evidence gives an impression that this they did not many occasions. There could not have been more than 3 Bhoubeez days since the contact started in 1970 and ended in 1972. From that day onwards the respondent used to send rakhi by post and he used to send monies by post. Why this sudden stoppage? Evidently because of the displeasure shown by the petitioner. Nobody has stated this. But the Court has to put two & two together.

Cross-Examination of respondent examined.

(vii) Let me now turn to the respondent's cross-examination, which is to be found in para 54. In her cross-examination, she has reiterated her plea about her close family relationship with Sajjan Sultania's family. She stated that she was

treating him as "dharambhai" from 1966-67 or thereabout but had to admit that she tied Rakhi around his wrist in 1970. She stated that she knew him from the childhood days. But obviously she postponed Rakhibandhan till she was married, had a child and there was a passage of 3 further years. She is not sure since when he became her dharambhai; at one place she says that he became dharambhai from 1966-67 and then she says that she adopted him as dharambhai from 1970. She admitted that he was not related to her father. She did not even know as to when Sajjan Sultania was married. Admittedly he also did not attend her marriage though they treat each other as "dharambhai" and "dharambhagini". She was asked many particulars about him; she knew nothing of them, though she is very affectionate to him when he comes at home.

Evidence of Sajjan Sultania, R.W. 3 examined.

(viii) The respondent has taken the bull by the horn, as it were by examining Sajjan Sultania himself in support of her plea that there was nothing in the conduct of herself with Sajjan Sultania which justified raising of the eye-brows. He has stated that he came to Bombay for the first time in 1970. He corrected himself to say that he came to Bombay in 1969. He further tried to establish not only friendship with the respondent's father's family, but stated that he regarded respondent's father as his uncle because the respondent was like his sister. He stated that he got a job with Birlas through the good offices of the respondent's father. He left Bombay in 1973. He stated that he visited respondent's Chowpatty residence on days such as the birthday of Manisha (daughter of petitioner and the respondent) or at the time of some function or when he was asked by respondent's mother to deliver something to the respondent. He claimed that he had similar relationship with all other members of the petitioner's family. He also stated that he took meals at the petitioner's place once in a while, but he added that he normally ate the meals in the drawing room. He further stated that most of the time he had the meals alone and that once or twice the petitioner was with him for taking meals. He further stated that on this occasion the respondent used to be busy in cooking and serving and her sister-in-law also served. He stated that once or twice he took meals with the petitioner in his bed-room. This evidence no doubt gives an appearance of a normal behaviour, but the difficulty is that while making the statement he falsified the respondent herself. In the respondent's evidence examined above she has nowhere stated that while Sajjan Sultania was taking his meals she herself used to be in the kitchen cooking and serving the meals. In fact she has not at all denied that she used to take meals along with Sajjan Sultania. His plea that he took meals in the drawing room is also not borne out by the respondent's own evidence.

This witness is evidently trying to whitewash his own somewhat orthodox conduct vis-a-vis the respondent. The fact is that his evidence is not at all in real consonance with the respondent's own evidence. Evidently he has tried to out Herod Herod in the sense that he says something in favour of the the respondent

about their mutual conduct which is not stated by the respondent herself. Evidently, this witness is a witness of convenience.

I make it clear that nothing in the conduct of this witness as is stated by the petitioner establishes any sexual and immoral relationship between the two. As a matter of fact, there are number of families where no objection is taken to such conduct between a Dharmbhai and his Dharambhagini or even between two friends of opposite sexes. The point is that the respondent claims that she avidly subscribes to orthodox beliefs and lives in orthodox world. Sajjan Sultania is obviously trying to exude innocence when he stated that he did not visit the respondent's matrimonial house as often as the petitioner complained but did so only on the birthday of Manisha and on the days of some functions. He has also stated that he went there when the respondent's mother wanted him to deliver some articles to the respondent. Nothing of this has been stated by the respondent at all-nor has the respondent's father, who has been examined by the respondent, has stated any such thing. The evidence of this witness does not help the respondent at all.

No doubt in his cross-examination the suggestion that he used to feed and used to be fed by the respondent has been denied by him; but he has admitted that on the date he was giving evidence, he had been staying with the respondent's father himself. He knew what his evidence was expected to be and the evidence that he has given serves his own interest eminently. The evidence of this witness does not help the respondent in any manner whatsoever.

This is the state of evidence about this relationship of the respondent with the so-called "dharmbhai" Sajjan Sultania. The learned Judge has disbelieved the petitioner's case about the pain caused to him by virtue of their abnormal relationship. He has examined the evidence of the petitioner's sister, father and mother and has stated that what the petitioner stated was not stated exactly by the other two and hence, all of them have been disbelieved by him.

In my opinion, such a treatment of evidence on such delicate issue is not justifiable. The evidence has got to be read as a whole. If each witness has stated exactly the same thing as the other witness has stated, a criticism will be levelled that they were tutored and spoke like parrot. When they do not speak the same thing about different manifestation of the same relationship, all of them are disbelieved because one does not say exactly the same thing as the other. In my opinion, the very fact that they are not speaking in a parrot-like manner vouchsafes their genuineness. They have stated what they saw; that may be different, but not contradictory. The evidence of the petitioner is quite in consonance with the statements in his petition. The evidence given by the mother is quite in consonance with the petitioner's evidence. The evidence given by his sister is not falsehood at all. She has not stated one word about anything which she did not know. The petitioner's father, P.W. 3, has also given evidence which does inspire confidence. None of them has contradicted each other. Each of them has stated what he/she saw. In fact the suggestion made to the

petitioner's witness falsifies the evidence of the respondent, as mentioned above.

In my opinion, therefore, the petitioner's case in the petition is fully borne out by the evidence led by him. Question is as to whether this would amount to mental cruelty.

This Court's reaction to the above evidence.

28 I must make it clear that left to itself this evidence would hardly furnish any support to the cause of action for the petitioner to obtain the decree for divorce. In the first place the incidents are as stale as one could have them. Everything was over by the year 1972 or latest by the beginning of 1973. The petitioner and the respondent lived as husband and wife at least for 7 or 8 years thereafter. Even during the period when the incident by which the petitioner was getting pain and anguish had taken place, the petitioner and the respondent were living together as husband and wife. It may be that according to the petitioner he had no sexual relation with the respondent from the year 1967 onwards. But frankly speaking I am not able to uphold the petitioner's said contention. I do not mean to say that he is telling a falsehood. But what I mean to say is that he is exaggerating. But even assuming that they were having no sexual relation, fact remains that they were living together and the petitioner lived with the respondent 8 years after those incidents. If these acts constitute mental cruelty to the petitioner, he would not have waited till 1980 to file the petition. In fact his averments in the petition themselves show that what caused him the greatest pain and anguish were the photographs that he found in the effects of the respondents, to which I will presently turn. Here, I may state that taken by itself, this rather unusual behaviour of the respondent with Sajjan Sultania cannot be treated as such an act of cruelty as would furnish the petitioner a cause of action for divorce as late as in the year 1981.

Delay in filing petition. Can it be a ground for denying decree?

29. The learned Judge has framed an issue on the effect of delay in filing the petition. In my opinion, the issue of delay is not as important as the plea of condonation. Issue of delay may not be even germane in many cases. One cannot say, for illustration, that when the wife has deserted the husband for 2 years, he is entitled to file a petition for divorce, but when he allows the desertion to continue for 10 years, he becomes disentitled to get the divorce on the ground of delay. Delay is no answer to every cause of action for divorce. Point is that this delay may some time result in condonation and one can say in favour of the respondent in this case that so far as this act of indecent behaviour of the respondent (which the petitioner thought to be indecent) with Sajjan Sultania was concerned, it was condoned by the petitioner.

But Mr. Singhvi rightly argued that this has to be considered as a background for further grievous act which has come to light for the first time in the year 1980 when the petitioner left for England. The wound which had healed started bleeding. As will be presently pointed out, that disclosure was a revelation to the

petitioner and that has got a serious impact of pain, anguish and tension that must have been caused to the petitioner.

I make it clear that the unorthodox conduct of the respondent with this witness Sajjan Sultania about which grievance is made by the petitioner cannot form the basis for a decree for divorce on the ground of mental cruelty. This is evidently so for the reason that this witness has left Bombay in 1973 and the petitioner has lived with the respondent for full period of 7 years thereafter. On the face of it this is something which has been condoned by the petitioner and although I do not find any difficulty in accepting the plea that such things must have caused mental agony and anguish to the petitioner, there is every reason to believe that the petitioner has condoned the respondent's merriment with this young man. But the Court is also required to look at the result of the totality of the evidence. As will be presently pointed out by me, while discussing the evidence relating to the two photographs produced by the petitioner, the grief that has been caused to the husband has gone on mounting and the photographs were the last straw on the camel's back. The evidence relating to the Sajjan Sultania episode is useful only for this purpose; not as the evidence of mental cruelty caused to the petitioner before 1973. I will examine the facts relating to the photographs after I examine the petitioner's evidence relating to the other species of cruelty such as "nagging" and indifference to the husband at the time of some momentous incidents in his life.

Plea of constant nagging urged as a specie of cruelty

30. It is probably taken for granted in this country (and probably in many other parts of the world) that some amount of nagging of the husband is the privilege of the wives. May be it keeps them in good shape.

The Court is not oblivious of this general belief, held by the wives and tolerated by the husbands. Normally it is dismissed as general wear & tear of married life.

But there can always be too much of anything. Quantitatively it may reach the breaking point and quantitatively the boiling point.

Nagging on the part of the respondent assumed, according to the petitioner, such formidable size and intensity that the mounting tension made life miserable for him.

(a) The grievance in this connection is made by the petitioner in para 7 of this petition. This is what he has stated therein :---

"The petitioner states that being a doctor he came across a large number of female patients as well as lady doctors. He always had a respectable attitude towards both. However, the respondent used to nag him at every opportunity about some imaginary female friends, and pass very nasty remarks. This attitude of respondent was not at all conducive for a normal marital relation. Ultimately, the marital life for the petitioner became a series of reproaches, nagging and insults. The petitioner could not bear these things any longer and started drifting

apart from the respondent, the time the daughter was born. The petitioner and the respondent had emotionally and physically drifted apart to such an extent that neither was interested in the other."

This allegation has been denied by the respondent in para 11 of her written statement. But significantly enough, even in the written statement she has made statements which turn out to be wanton allegations as regards the petitioner's conduct with his lady friends. I am not referring to her allegation against the petitioner relating to his living in adultery with Dr. (Miss) Kulkarni. In para 11 of her written statement, the respondent has stated in no uncertain terms that the petitioner is in the habit of extra marital relations with and keeping close friendship with female friends. Further, reference is made also to the petitioner's sexual relations with Dr. (Miss) Kulkarni, but the earlier reference is not to his relations with this other woman. The earlier reference is to the general flirting habit of the petitioner. She has depicted as a veritable Casanova. It may be mentioned at this stage itself that though the respondent has sought to adduce evidence relating to the petitioner's adulterous relationship with Dr. (Miss) Kulkarni, the respondent has not led an iota of evidence of the petitioner's Don Juan habit of flirting with all his female friends. Some insight into her nagging habit (about which better grievance is made by the petitioner) can be had even from these wanton allegations made in the written statement itself.

The petitioner has given evidence in this connection in para 10 of his depositions. This is what he states :

"I had a disturbed and traumatic married life. The respondent used to refuse sexual relationship on odd ground like tiredness, off mood, or not feeling well. Sometimes she would accuse me of having extra marital relations with my co-workers and staff members, and nursing staff in particular."

Para 88 of his depositions contains his cross-examination on this point. A perusal of the same would show that there is no real cross-examination on this point. A perusal of the same would show that there is no real cross-examination on this point at all. It is true that according to the petitioner the nagging about sexual immorality continued till 1967. It is true that this would show that this makes the nagging a stale phenomena. The petitioner would not be allowed to rake up these acts in the year 1981. It would be a legitimate inference that he fully condoned this specie of that cruelty indulged in by the respondent some 14 years ago. I refer to this aspect only because the respondent has been passing herself as an innocent soul upon whose head heaps of injustice has been loaded by the petitioner.

(b) The petitioner mother has given evidence as regards this nagging habit of the respondent.

In Para 11 of her evidence, she has stated as follows :

"I had many times told the mother of the respondent that the respondent treated

the petitioner like a small insect and forgetting about myself she should at least respect her own husband. Her mother replied me that she has been telling the respondent many times but the respondent was immature."

There appears to be no cross-examination on this part of her evidence.

(c) The respondent's own evidence in this case is to be found in Para 30 of her depositions. As stated above, there is intrinsic evidence in Para 11 of the written statement about her habit of nagging her husband with taunts and what you have. A question in that behalf was asked to her in said Para 30 of her evidence. It is worthwhile setting out the question and answers recorded in that Para.

"Q. In para 11 of the written statement, you have made the allegation that the petitioner is in the habit of having extra marital relations and keeping close friendship with female friends. What do you mean by this statement ?

A. My allegation of extra marital relations is relating to Dr. Miss Sudha Kulkarni and as far as other female friends are concerned I have known that at Nagpur as well as at Bombay, the petitioner has been very close with several female doctors and I was so told by doctors whom I know also.

(To Court :)

Q. What do you mean when you have used the expression "habit"?

A. I mean the habit of having close friendship with female doctors."

(d) In my opinion, these are wholly baseless allegations. No independent evidence, or in fact, no real evidence is led to vindicate them. These are, therefore, nothing but wanton allegations and the petitioner is entitled to make grievance about them and say that they result in grave mental cruelty to him. When the petitioner speaks about her nagging habit, the above statement made by her which she has voiced also in her written statement must give rise to an inference that in the home also she must have been nagging her husband's life miserable with such allegations. The petitioner has stated this position in his evidence. In the context of these wanton allegations, his plea of nagging must also be held proved.

(e) It may be that the petitioner may not be entitled to get a decree on this ground alone because the petitioner has admitted this nagging exercise to be of umpteen 1967 which means these are stale incidents which he has braved and has lived with in the past. But this fact does throw light upon the temperament and mental attitude of the respondent towards the petitioner.

Excessively frequent visits to the parental home, leaving duties at the matrimonial home to the winds and betraying complete indifference to petitioner's memorable movements.

31. It has been the petitioner's grievance that the respondent was in the habit of going to her parental home almost every week and even on week ends, letting

her matrimonial duties to winds. This was one cause of agony to the petitioner. Evidence on this point is led but no such statement has been made in the petition. However, the act of the respondent of going to her parent's place exactly on the event of the petitioner's departure for London has some bearing upon the allegations of mental cruelty voiced by the petitioner in the petition. The position in this behalf and the entire episode is stated by the petitioner in para 25 of his evidence. It is stated there that the respondent did not care to go to Airport to see him off but went to Matunga (which is her parental home). He stated that her father went to the Airport and offered him garland. This position is not disputed in his cross examination. In para 19 of her evidence the family had gone to reach the petitioner at Airport on that occasion. Significantly enough, she has stated something further which throws light upon her attitude towards the petitioner at that time. This is what she has stated :-

"In 1980, the petitioner once again went abroad. He went with a patient. I was at home when he left. None from our family went to the Airport. Mr. & Mrs. Joshi and their children, however, had gone to the Airport. I asked my mother-in-law "Mataji why we people were not going to the Airport", she replied that as the petitioner was going with some patient, it was not necessary. Mr. & Mrs. Joshi came to our house to pick up the petitioner. After they left, I again said to my mother-in-law as to when Mr. & Mrs. Joshi could go, why we people could not go. She told me that Mr. Joshi was attached to Bombay Hospital and, therefore, he was going and we need not go."

One wonders as to why this case has not been put to her husband. Further, she wants the Court to believe that the wife who claims to be having happy relations with her husband is required to ask question to her mother-in-law as to why all of them were not going to the Airport. Her evidence is of unnatural conduct.

The learned Judge has examined it in para 139 of his judgment. He seems to have accepted the petitioner's plea that the respondent had gone to her parental home on the date of departure for London. Whatever that may be, the fact remains that even accepting the respondent's own contention that she remained at home on the date of the petitioner's departure for U.K., it does not explain her conduct towards the petitioner of not accompanying her husband at the Airport. It is not her case that her husband asked her not to come to the Airport. A normal wife could have herself gone to the Airport to see off her husband. This conduct on her part gives some support to the petitioner's plea that she herself had developed a thoroughly indifferent attitude towards her husband and that he was very much smarting under the indifferent attitude towards him.

As will be presently discussed in para 37 of this judgment, the view that the Court has to take is that of the total perspective. The above mentioned inhuman, or rather, unwifely indifference bared by the respondent towards her husband on the day of one of the memorable events of his life coupled with the fact on the very evening the petitioner had landed upon those impugned photographs Exhs. D & E explains the excruciating pangs and torments caused to the petitioner on

that evening. Evidently, they were much more intense than all that he experienced earlier and no medical evidence is necessary to vindicate his plea that tremendous tension was caused to him during his entire stay abroad during that trip. His entire subsequent conduct is in full consonance with this plea.

The impact of the photographs, Exh. "E" colly, The last straw on the Camel's back.-

32. According to the petitioner, the last straw that broke the Camel's back came in the shape of two photographs that he found in the effects of the respondent on the eve of his departure to England in 1980. The circumstances in which he came across the photograph are of no consequence, because the fact that those photographs were got held of by the petitioner on the eve of his departure for England is not disputed. Further, the fact that in those photographs the respondent is shown standing cheek by jowl with a total stranger (a handsome young boy) both holding each other's hand with great affection, is admitted. There is another photograph Exh. "D" which shows that the respondent is bending in close proximity with probably the same stranger in a manner which would not be approved of by any conventional husband. The photograph presents obviously a romantic scene bordering upon indecency, atleast for the conventional eye. If the photographs, Exhs. "D" & "E", are believed, then quite a floodlight is thrown upon the respondent's general demeanour. Both the petitioner and the respondent declare that they subscribe to the Orthodox way of life. The photographs do not show that the respondent is orthodox in her behaviour so far as the other young boys of handsome aspect are concerned. Curiously enough, the respondent has admitted the photographs; but she has also stated that she does not know from Adams the stranger with whom she had linked her hands and with whom she is standing cheek by jowl in one pose and over whom she had bent herself in another pose. According to her, she does not know the young boy at all and still she is very affectionate, nay, intimate towards him. The petitioner says that these photographs caused greatest pain to him and he realised the reasons why the respondent showed scant respect and affection towards himself. He says that because of this his entire tour of England was spoiled. The rest is history admitted on both the sides. When he came across the photograph, it was eve of his departure. Curiously enough, the very evening the respondent went away to her parental home, at Matunga. As stated above, her father went to the Airport, but not she herself. Explanation : next to nil. Her father went to the Airport with the garland; did not take his daughter with him.

The petitioner returned back from London; the respondent did not go to receive him at the Airport. The petitioner did not go to his home from the Airport at all. He decided to go straight from there to the Hospital and from that day he shifted his residence totally. He did not go to his Chowpathy house at all. He found a place of residence at Thane. Point is that the entire conduct of the petitioner subsequent to his gaze upon the photographs is crystal clear. He was smarting under the blow given by this visible testimony which spoke volumes for his wife's

conduct which was to him cruel and painful. The fact that it caused mental agony is stated in the petition as well as in the evidence.

That learned Judge's view about the above evidence.

33. Even the learned Judge was unable to find out any excuse for such behaviour of the respondent. In para 195 of his judgment, the learned Judge has stated in no uncertain terms as follows :-

"Now having regard to the fact that the respondent was a married woman, it does not appear to have been proper for her to have behaved so friendly with the boy as can be seen from these photographs. It is pertinent to note that the photographs appear to have been taken specifically to depict the respondent and that boy and their closeness. These are not the photographs taken while playing because all others are merely watching the fun of the respondent and the boy enjoying themselves and the respondent clearly appears from her looks to have been looking at the photographer. Likewise the respondent standing so closely to the boy and their holding each others hand is also objectionable, but the question remains as to under what circumstances and why and by whom these photographs were taken. To that point the only person who could speak was the respondent and she has given her explanation. That explanation unfortunately has not been demolished by the petitioner by any other evidence. Moreover, since the time of this picnic has not been established whether this had happened after filing of the petition also cannot be said with any amount of certainty. All said and done, the photographs leave an impression on the mind that the respondent had not acted in a responsible manner as a married woman when she made herself so close to the boy as seen in the photographs."

Even after taking the view that the behaviour of the respondent was manifestly objectionable, the learned Judge has held that it was necessary for the petitioner to ask for an explanation from the respondent as to how and in what circumstances these photographs have come to be taken and as to how she had permitted herself to be photographed with that boy. According to the learned Judge, the respondent would have in that event possibly given cogent explanation. According to him, that opportunity was denied to the respondent and with this reasoning the learned Judge has accepted the explanation given by the respondent in her cross-examination. I will presently turn to the explanation given by her in the cross-examination. But it is worthwhile referring to what the learned Judge states at the fag-end of para 196. This is what the learned Judge states here :-

"The petitioner has stated that he started brooding over the photographs and believed that was the reason for indifferent behaviour of the respondent towards him. I would say that the petitioner would be justified in carrying that feeling on seeing these photographs." Emphasis

Respondent's cross-examination on this point.

34. Let me now turn to the respondent's cross-examination on this point which is to be found in para 51 of her evidence. She stated that she had never gone to picnic with college friends. She was shown the photographs. She was also asked the names of certain boys. She denied having any friendship with any one of them. But when the photograph, Exh. "D" was shown to her, she admitted the photographs and admitted that she was shown bending in the photograph. The photograph is already described above. It shows a very unconventional posture, of a married woman linked with a young boy; the young boy lying below and the young married woman bending over him and holding his hand; he feeling her hair. Curiously enough, she states that she did not know any of the boys (they are three in number); not even their names. She knew the girls, not the boys. This is what she states about this photograph Exh. "D":---

"In all there were 8-10 girls. There were about 3-4 boys. I do not know any of the boys seen in the photograph. It is true that in the photograph it is seen that I am leaning in front of a boy and his hand is touching my hairs. I do not know the name of this boy."

The fact that the photograph was taken after her marriage is also an admitted fact.

About the other photograph, Exh. "E", she states as follows :-

"(Shown photograph x-1) It is true that in this photograph I am seen standing by the side of the same boy against whom I was leaning as seen in photograph Exh. D. It is true that I am seen holding the hand of the boy. I do not know who is this boy. This photo was taken during the picnic when the photo Ex. D was taken. I do not know his name. I do not know whether he is Ajit Dharwade. I did not ask the boy his name."

No explanation was given by this respondent about her strange, unconventional, uninhibited and emancipated behaviour with the young man whom she does not know from Adams. It appears that the Court went to her rescue. A question was put to her by the Court that the familiarity with the photograph showed between the respondent and the boy in question was somewhat out of normal. She was asked by the Court whether she wished to say anything. Her explanation was that her friend Sharda was engaged and had arranged a picnic which the respondent joined. She stated that she spent the time of the picnic by playing the games and moving around. She could not say when the photographs were taken, but she was inclined to think that they were taken while they were playing different games.

The learned Judge has accepted this so called explanation hook, line and sinker. With respect, I am unable to agree with the learned Judge. In the first place, the explanation explains nothing. One has just to look at the photograph, Exh. "E" to see that the photograph is not taken while the boys & girls were playing. The photograph is taken while the young man is showing unconventional nearness to a young girl, who happens to be married and who does not even know him. In

any event, that photograph is not the picture of one who is accustomed to orthodox thinking and orthodox behaviour.

Even the other photograph, Exh. "E", can have nothing to do with the games as such. Even assuming that it was taken while the games were being played, it was an unusual sight. Even the learned Judge thinks it to be so.

Moreover, the learned Judge feels the petitioner to be justified in having mental pain, anguish and brooding effect of the photograph upon the petitioner. This is nothing but mental cruelty. If it is not, one has to search in vain and rack one's brain to understand the meaning of mental cruelty.

This Court's view about the photograph. Its impact upon the petitioner must be considered.

35. I hasten to add that the question whether these photographs would give rise to mental anguish and consequent cruelty to the other, spouse or not will depend upon the particular state of the Society to which these parties belong. There are circles of the elite in which such behaviour leads to no raising of eye-brows. But it is the case of the respondent herself that she does not belong to the elitist class but subscribes to the orthodox way of thinking. Mr. Jhunjhunwala had been at pains to impress upon the Court that the parties belong to a community which has the most orthodox way of living & thinking. He was at pains to point out that the respondent herself strongly subscribes to this orthodox thinking. She has villified the petitioner in the written statement because she could not stand the sight of the petitioner having any kind of association with other young woman. Evidently, in the present case, this is the result of her orthodox upbringing. It is in this context that the impact of the said photographs upon the mind of the petitioner has got to be appreciated. He sees that the respondent does not bear the sight of himself having even a conversation with other young women whereas, behind his back she is herself having mighty merry and apparently pleasurable association with handsome young boys, doing something bordering upon criminal conversation. He has been complaining that she has been nagging, nagging and nagging him endlessly, making his life miserable. As has been pointed out elsewhere in this judgment, the evidence on record, read along with the respondent's outpourings in the written statement does bear out this grievance. But the point to be noted here is not only whether his grievance is true. Point is that he has this grievance gnawing at his heart for long time. Sajjan Sultania incident may be stale; but not that old. Scars still remained. In the wake of all this he lands upon these photographs depicting his wife's merry making with young boys. This is what causes excruciating anguish to him; the last straw on the camel's back.

It is significant to note that very night he left for U.K. and that very evening the respondent chose going to her parent's place, not bothering even to go to the Airport for giving him a farewell. Admittedly, he has had no truck with the respondent since that day.

The learned Judge has blamed the petitioner for not having asked for her explanation about the photographs and has, on that account, accepted the so called explanation given by the respondent (voluntarily) in her evidence. With respect I cannot agree. In the first place, this is unrealistic approach, Spouses do not follow judicial procedures of asking explanations and giving hearings in such matters. Secondly, as noticed by the learned Judge himself, the photographs are not taken in unwary moments. She has posed for them, and the photographs are themselves of the most tell-tale character so much so that nothing remains to be said or explained. Thirdly, it is not as if that the photographs were sprung upon her, as a surprise in the cross examination. There is a pleading about them in the petition, she has taken inspection of them and has filed her written statement thereafter. It was for her to explain the photograph which, otherwise, spoke for themselves. Fourthly, in fact she has tried to give explanation. It turns out to be quite bizarre: Explanation must explain. This one explains nothing. Explanation is that these photographs were taken at a picnic partly arranged by one of her friends after her (friend's) engagement. She could not say as to when exactly they were taken. If the implication is that the photographer has snapped her unawares, she is telling a blatant lie, because, as observed by the learned Judge himself, she and her boy friend are seen posing themselves for the photograph. The learned Judge has taken this as explanation and has accepted it on the ground that the petitioner husband had failed to ask for any explanation. This is unfair, You cannot accept a bizarre explanation from the wife because the husband has asked for none.

It needs to be mentioned here that this respondent has been telling the Court, through her learned Advocates, from the house tops as it were, that her own way of life and her own way of thinking prevent her from thinking in terms of divorce by consent. I have no right or power or desire to blame her for not consenting to divorce. Point is that this fact reveals her attitude towards her husband. So far as he is concerned, she wants him to lead an orthodox way of life. But towards herself she is most liberal unconventional and uninhibited; She wants to live herself in a thoroughly modern way, sometimes openly (as in the case of Sajjan Sultania) and at other times on the sly (as in the case of the young handsome boy in the photographs).

In my opinion, this evidence coming before the Court is itself enough for a finding that the behaviour betrayed by the respondent must have given a legitimate ground for the petitioner to believe that living with such a spouse would be a constant source of pain and misery for him for the rest of his life. In my opinion, this conduct is enough, all by itself, results in grave mental cruelty to her husband.

The Link theory referred to in Para 14 above.

36. A few words about the LINK theory urged by Mr. Jhunjhunwala for justification of the allegations of adultery against the petitioner-husband. Normally speaking, if the husband proves that his wife has meted out

excruciating cruelty to him, it is no answer to it by the wife that the husband has or had been indulging in acts of adultery. One spouse's adultery is no justification for the other spouse's cruelty : The statements and pleas about the husband's adultery would be, normally speaking irrelevant if no relief is asked for by the wife on the basis of those pleas. But, as stated in para 14 above, if the wife in fact proves the husband's indulgence in adultery, the husband cannot complain of at least one thing: he cannot complain that the allegation caused him agony & anguish and that, hence, the allegation was a specie of cruelty. The allegation may turn out to be irrelevant; but the wife may get away with it without being exposed to the liability of divorce.

But Mr. Jhunjhunwala tried to establish even the relevance of the wife's allegations by trying to establish what he called a link between the previous life of the spouses and the sudden outburst and action of the petitioning husband for divorce. This is what I have referred to as the LINK theory.

The process of reasoning is as follows :---

- (i) The petitioner/husband is a philanderer, the modern Don Juan & Casanova both rolled in one.
- (ii) Since 1974 or even before, he was having amorous relations with the Other Woman viz. Dr. (Miss) Sudha Kulkarni.
- (iii) Just at the time of the filing of the petition, he decided not only to continue revelling in sexual relation with the Other Woman but to link his lot with her by the permanent bond of matrimony.
- (iv) This he could not achieve unless he got emancipation from the subsisting bond of marriage between himself and the respondent.
- (v) Hence this petition for divorce by trying to dig out bones of past incidents of so-called cruelty, creating mountains out of mole-hills.
- (vi) This spells mala fides in the very filing of the petition for divorce.
- (vii) While making the allegation of adultery the respondent is only giving the genesis of this Divorce Petition. This link establishes the relevance, according to Mr. Jhunjhunwala, between the past married life of the spouses and the filing of this petition with volcanic out burst of bitterness.

Very attractive theory and persuasive argument, this. But the simple answer to the argument is that it must fail if the husband's adultery is not proved. If proved, it may serve the purpose of proving the motive, the Causa Causans, of the petition. But what if it is not proved ? In that case it will not only fail; it is bound to boomerang, because the allegation in the written statement will earn the legitimate epithesis of a wanton allegation and mudslinging, resulting in fresh agony anguish and tension to the petition and in fresh cause of action to him based on this fresh cruelty.

The link theory may establish relevance; but in the present case, it leads the respondent deeper into the quagmire. If the original pleas of cruelty are not sufficiently vindicated, this fresh cruelty stands proved to the hilt; if all or any of the original pleas of cruelty are established, this fresh act of cruelty adds itself to the heap.

As examined above, the respondent has not succeeded in leading any evidence of any sexual relations of the petitioner with the Other Woman at all. Her allegations, therefore must boomerang.

The third circumstance suggested by Mr. Jhunjhunwala as referred to in Para 14 above.

37. In para 14 above, I have also referred to the third category of cases in which a wife may make allegation of adultery against her respectable husband, may miserably fail in proving the allegation of sexual incontinence and still get away with it without incurring the liability of divorce on the basis of the fresh cause of action.

Argument was that though the respondent was unable to vindicate her allegations, she had placed before the Court whatever material she had got which gave rise to the belief of adultery in her mind. Plea is that the allegation may be wrong, but it was in good faith. They were not "wanton" allegations envisaged by this Court's judgment referred to above.

The argument is quite misconceived for more reasons than one.

Firstly, raising the question of good faith while making the allegations is misleading. It is the effect of heinous allegations upon the husband of the petitioner's status that is material and relevant; not the state of mind of the wife while making them. The damage that is done is done. The petitioner is complaining about the damage done to him; not about the sufficiency or insufficiency of the material with which his wife was equipped while making the wanton allegation.

Secondly, it is in fact not true that the respondent had any reason to infer commission of adultery by the petitioner on the basis of the material that she has placed before the Court. All that she has placed before the Court is the letter, Exh. 4, the very contents of which rule out sexual intimacy between the sender and recipient of the letter, even assuming that it is in the hand-writing of the Other Woman.

Thirdly, it not at all true that the respondent has placed all the material that came in her possession for proving that the petitioner was living in adultery with the Other Woman. Her evidence about the phone call at odd hours at the Thane residence of the petitioner turns out to be evidence of unqualified falsehood. Strong adverse inference must arise out of her failure to examine the watchman of the Co-operative Society building at Colaba (in the petitioner at present resides) who allegedly gave to her the information about the petitioner's

adulterous living. In fact adverse inference must arise for failure on her part to examine any independent witness whatsoever or to adduce any independent evidence whatsoever for proving the said allegation.

Fourthly, the falsehood of her evidence has surfaced at more places than one. She stated that the letter, Exh. 4, was not allowed by her to see the light of the day till the filing of the instant petition. But her own father's evidence has been falsified by her. It shows that the letter gone into circulation much earlier. Moreover, her general image surfaces from the pleadings and evidence belies exercise of any such prudence on her part.

Fifthly, (and quite importantly) question does remains as to what justification she had for making allegations of "extra material relation" of the petitioner with nurses, female friends and associates. Not one word is whispered by her, about these relations, in her evidence. At least these allegations are absolutely wanton allegations.

In my opinion, the said argument of the learned Counsel is quite unacceptable.

Sixthly, no part of the behaviour of the petitioner and said Dr. (Miss) Sudha Kulkarni would justify raising of eye-brows at least by the respondent. The fact that Dr. (Miss) Sudha Kulkarni is a close friend of the petitioner's entire family is manifestly evident. The evidence led by the respondent (apart from Exh. 4) shows nothing else. No one has even attempted making any secret about. Even if the letter, Exh. 4, is assumed to be genuine all that it reveals is the close emotional bond, nothing more. But there is nothing clandestine about it.

The respondent, on the other hand, is having merry liberal association with young boys like Sajjan Sultania and the boys shown in the photographs, openly with the former and on the sly with the latter. This attitude is atrociously cruel ; no other epithet could fit the phenomenon.

The Full Bench Judgment in Kesharao Krishnaji Londhe Vs. Nisha Londhe, relied on.

38. In this Court's view, the respondent's conduct examined above spells mental cruelty practised by her against her husband. The concept of mental cruelty should find a masterly exposition in the Full Bench Judgment of this Court in Kesharao Krishnaji Londhe Vs. Nisha Londhe, . It is held there that old English doctrine of danger to life is no longer a valid test. The Full Bench has laid down the test of cruelty by holding that any conduct of responding spouse of such type that the petitioning spouse cannot reasonably be expect to live with the other amounts to cruelty within the contemplation of the Hindu Marriage Act.

In my opinion, the conduct of the respondent revealed to the petitioner by the photographs, on the eve of his departure for U.K. (after he has admittedly snapped all his matrimonial relations with the respondent) as also the wanton allegations made and trumpeted by her in both her written statements spell mental cruelty to the petitioner.

Total view necessary and/or advisable conduct viewed jointly and severally.

39. Further, in my opinion, though the two above mentioned pieces of conduct of the respondent betray the respondent's cruelty to the petitioner, all by themselves, jointly & severally, the view that the courts must take at least in the cases of mental cruelty should be total and integrated view. There may be cases in which certain acts of cruelty particulars of which are given by the petitioning spouse analytically and which are not condoned by him, can be and are proved by him as complete acts of cruelty. That has happened in the present case vis-a-vis the conduct that surfaced from the photographs and the wanton or irresponsible allegations in the written statement.

But the Court must also envisage the total picture and in given cases the cruelty can be proved also by viewing the total picture. Pieces of conduct go on heaping up and there erupts a point, the last straw, which breaks the camel's back. This turns out to be the point of no return. Taken all by itself, the last straw will have next to no weight. In its own intensity and magnitude, the incident would not qualify itself to be regarded as an act of cruelty. But viewed to conjunction with the other or earlier incidents, it acts as the lighting of match-stick on the keg of gun-power. The earlier acts might have been even condoned by the petitioning spouse, But they are not wiped off from the memory. Coming to the facts of this case. I have mentioned above that the respondent's behaviour with her so called "dharambhai" Sajjan Sultania was of anomalous character. All the same, I have held that by itself would not be a ground for divorce at all mainly for the reason that the act was condoned by the petitioner. But as stated above, the petitioner is entitled to tell the Court that while he tolerated all that behaviour all these years, the photographs broke the camel's back and from that time he felt that it was impossible, for him to continue having any kind of relationship with the respondent. There is no dispute that from that day, he in fact parted ways with the respondent. If he entertained feelings of such an extreme character, you cannot blame him. Even the learned trial Judge has not been able to blame him. The opinion of the lower Court has already been extracted by me above. Evidently the mind's process was set on foot not only on the last occasion, on the eve of his departure for U.K. in 1980. The wound has been festering. What of the constant nagging, constant suspicion-mongering, constant trips to parental home and what you may have. The petitioner tolerated all these acts and pieces of conduct. One can say that he even condoned them; at least some of them. But when the volcano erupted, it was not on account merely of the revelation from the last incident. It was climax of the process which was already on foot. We of the legal community call it the result of the various pieces of conduct, jointly and severally.

The total perspective as perceived by this Court and the resultant conclusions.

40. Let me now set out the total perspective as Mperceived by this Court from the totality of evidence. This will automatically lead to setting out the resultant conclusions arrived at by this Court:---

(1) The respondent has been excessively nagging an excessively suspicious spouse.

(2) The Society takes for granted normal spouses (who are at the receiving end in those matters) take these attitudes and behaviours of the other half as part of the game; as something that comes with the matrimonial tie. But everything has its limit, transgression of which makes the case a pathological one. This is the grievance of the petitioner, viz. that the respondent as excessively suspicious and that she indulged in excessive nagging of the petitioner. The wanton allegations about the petitioner's extra-marital relations with all his female associates strengthen the Court's belief that the respondent indulged in excessive suspiciousness and the consequent excessive nagging.

(3) This must have made the petitioner's life quite miserable.

(4) But, while embittering the matrimonial life in this manner, the respondent herself indulged in quite free, liberal, uninhibited emancipated life incompatible with her orthodox stance. This was done, sometimes, quite overtly as in the case of Sajjan Sultania and some other times, on the sly.

(5) In all probability, her habit of going to and staying at her parents place even on crucial occasions when the wife was needed at the matrimonial home is sufficiently proved not only by the petitioner's evidence but even by virtue of the other evidence on record. It shows that even on such days as the eve of the petitioner's departure for U.K. in 1980, she went to her parental house and did not go to the Airport to see the petitioner off even in the company of her father who did go to the Airport to see him off. These small stray incidents of pain and anguish must have gone on mounting up.

(6) The photographs were the last straw which broke the camel's back. The mental turmoil that the petitioner suffered therefrom is in keeping with the orthodox way of life and matrimonial philosophy that both the spouses claim.

(7) There is nothing in the evidence on record which should dissuade the Court from accepting the petitioner's evidence relating to the mental agony and anguish caused to him by the revelations that dawned upon him by the sight of the photographs. It was torment and tension. This belief that any more association with the respondent would be suicidal for him was firmly rooted, in his mind, whether the Court likes it or not.

(8) This was supplemented by the wanton allegations made by the respondent in open public against the petitioner's moral character vis-a-vis the opposite sex. The person of his status and reputation is justified in being modified and in complaining that he was made a laughing stock and a target of ridicule and calumny in the eyes of the society jeopardising his professional career.

(9) Admittedly, since 1980, the spouses have never lived together or come together. Their minds have drifted leagues away from each other and the matrimonial bond has been torn as under at least for the continuous period of 9

years. The marriage has gone irretrievably on the rocks.

The final order

41. The appeal, therefore, succeeds. The decree of dismissal passed by the trial Court is set aside and the appellant's petition for divorce is decreed in terms of prayer (a) of the petition. However, there shall be no order as to costs throughout.