Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4905 OF 2012
(Arising out of S.L.P. (Civil) No. 16528 of 2007)

Vishwanath S/o Sitaram Agrawal .....Appellant

Versus

Sau. Sarla Vishwanath Agrawal .....Respondent

SUPREME COURT OF INDIA

J U D G M E N T

DIPAK MISRA, J.

Leave granted.

JUDGMENT

2. The marriage between the appellant and the respondent was solemnized on the 30th of April, 1979 as per the Hindu rites at Akola. In the wedlock, two sons, namely, Vishal and Rahul, were born on 23.9.1982 and 1.11.1984 respectively. As the appellant-husband felt that there was total discord in their marital life and compatibility looked like a mirage, he filed a petition for divorce

under Section 13(1) (ia) of The Hindu Marriage Act, 1955 (for brevity 'the Act').

3. It was the case of the appellant before the court of first instance that the respondent-wife did not know how to conduct herself as a wife and daughter-in-law and despite persuasion, her behavioural pattern remained unchanged. The birth of the children had no impact on her conduct and everything worsened with the efflux of time. The behaviour of the respondent with the relatives and guests who used to come to their house was far from being desirable and, in fact, it exhibited arrogance and lack of culture and, in a way, endangered the social reputation of the family. That apart, she did not have the slightest respect for her mother-in-law. Despite the old lady being a patient of diabetes and hyper tension, it could not invoke any sympathy from the respondent and hence, there was total absence of care or concern.

4. As pleaded, in the month of March, 1990, there was a dacoity in the house where the appellant was staying and, therefore, they shifted to the ginning factory and eventually, on 17.3.1991, shifted to their own three storeyed building situate in

SUPREME COURT OF INDIA
JUDGMENT

Gandhi Chowk. Even with the passage of time, instead of bringing maturity in the attitude of the respondent, it brought a sense of established selfishness and non-concern for the children. Whim and irrationality reigned in her day-to-day behaviour and frequent quarrels became a daily affair. As misfortune would have it, on 23.1.1994, the mother of the appellant died and the freer atmosphere at home gave immense independence to the respondent to make the life of the appellant more troublesome. The appellant and his father were compelled to do their personal work as the entire attention of the servants was diverted in a compulsive manner towards her. Her immature perception of life reached its zenith when on certain occasions she used to hide the keys of the motorcycle and close the gate so that the appellant could not go to the office of the factory to look after the business. Frequent phone calls were made to the factory solely for the purpose of abusing and causing mental agony to the appellant. As asserted, the appellant and his sons used to sleep on the second floor whereas the respondent used to sleep in the bedroom on the third floor and their relationship slowly but constantly got estranged. As the cruelty became intolerable, the appellant visited his in-laws and disclosed the

SUPREME COURT OF INDIA
JUDGMENT

same but it had no effect on her behaviour. Eventually, on 1.5.1995, the respondent was left at the house of her parents at Akola and the appellant stayed in his house with the two sons. As the factual matrix would unveil, on 24.7.1995, a notice issued by her advocate was published in the daily "Lokmat" stating, inter alia, that the appellant is a womaniser and addicted to liquor. On 11.10.1995, at 4.00 p.m., the respondent came to the house of the appellant at Gandhi Chowk and abused the father, the children and the appellant. She, in fact, created a violent atmosphere in the house as well as in the office by damaging the property and causing mental torture to the appellant and also to the family members which compelled the appellant to lodge a complaint at the Police Station, Chopda. It was alleged that she had brought gundas and certain women to cause that incident. The said untoward incident brought the A.S.P., Jalgaon, to the spot. The publication in the newspaper and the later incident both occurred during the pendency of the divorce petition and they were incorporated by way of amendment. On the aforesaid basis, it was contended that the respondent had treated the appellant with cruelty and hence, he was entitled to a decree for divorce.

5. The asseverations made in the petition were controverted by the respondent stating that she was always respectful and cordial to her in-laws, relatives and the guests as was expected from a cultured daughter-in-law. They led a happy married life for 16 years and at no point of time she showed any arrogance or any behaviour which could remotely suggest any kind of cruelty. She attended to her mother-in-law all the time with a sense of committed service and at no point of time there was any dissatisfaction on her part. She disputed the allegation that she had hidden the keys of the motorcycle or closed the gate or repeatedly called the appellant on phone at the office to abuse him or to disturb him in his work. It is her stand that the appellant owns an oil mill, ginning factory and a petrol pump at Chopda and had sold certain non-agricultural land by demarcating it into small plots. The appellant, as alleged, joined the computer classes which were run by one Neeta Gujarathi in the name and style of "Om Computer Services" and gradually the appellant started spending much of his time at the computer centre instead of attending to his own business in the factory. When the respondent became aware of the intimacy, she took

SUPREME COURT OF INDIA
JUDGMENT

serious objection to the same and therefrom their relationship became bitter.

6. It was alleged by the respondent that she was disturbed after knowing about the involvement of the appellant with another lady despite having an established family life and two adolescent sons and, therefore, she was compelled to make phone calls to make enquiries about his whereabouts. As the interference by the respondent was not appreciated by the appellant, he took the respondent on 1.5.1995 to Akola and left her at her parental house and never cared to bring her back to her matrimonial home. Her willingness to come back and stay with the husband and children could not get fructified because of the totally indifferent attitude shown by the appellant. Her attempts to see the children in the school became an exercise in futility, as the husband, who is a trustee of the school, managed to ensure that the boys did not meet her. It was further alleged that the said Neeta lived with him as his mistress and when the respondent came to know about it, she went to Chopda to ascertain the same and coming to know that Neeta was in the house of the appellant, she made an effort to enter into the house but she was assaulted. This resulted in gathering of people of

SUPREME COURT OF INDIA
JUDGMENT

the locality and the appellant-husband, as a counter-blast, lodged a complaint at the police station. The Deputy Superintendent of Police arrived at the scene and found that Neeta was inside the house and thereafter she was taken back to her house by the police. Because of the involvement of the appellant with the said Neeta, he had concocted the story of cruelty and filed the petition for divorce.

7. The learned trial Judge framed as many as four issues. The two vital issues were whether the appellant had been able to prove the alleged cruelty and whether he was entitled to take disadvantage of his own wrong. The appellant, in order to prove the allegation of cruelty, examined ten witnesses and on behalf of the respondent, eight witnesses were examined. The learned trial Judge, analysing the evidence on record, came to hold that there was conjugal relationship till 1.5.1995; that there was no substantial material on record to demonstrate that the respondent had behaved with immaturity immediately after marriage; that in the absence of cogent evidence, it was difficult to hold that the respondent had troubled the husband and his parents; that the evidence of PW-3, Ramesh, was not worthy of acceptance as he is close and an interested witness; that the

SUPREME COURT OF INDIA
JUDGMENT

allegation that whenever she used to go to her parental home, she was granting leave to the servants was not acceptable; that the appellant should have examined some of the servants including the maid servant but for some reason or other had withheld the best evidence; that the plea that the respondent was not looking after her mother-in-law who was suffering from paralysis from 1984 has not been proven; that the allegation that the respondent was hiding the uniforms of the children and not treating them well had not been proven because the version of Vishal could not be accepted as he was staying with the father and, therefore, it was natural for him to speak in favour of the father; that the stand that the respondent was hiding the keys of the motorcycle and crumpling the ironed clothes of the appellant did not constitute mental cruelty as the said acts, being childish, were enjoyed by the appellant-husband; that the factum of abuse by the respondent on telephone had not been established by adducing reliable evidence; that the respondent and the appellant were sleeping on the third floor of the house and hence, she was sleeping with him in the bedroom and the allegation that he was deprived of sexual satisfaction from 1991 was unacceptable; that from the witnesses cited on behalf of the respondent, it was

SUPREME COURT OF INDIA
JUDGMENT

demonstrable that her behaviour towards her sons and in-laws was extremely good; that even if the allegations made by the appellant were accepted to have been established to some extent, it could only be considered as normal wear and tear of the marital life; that the plea of mental cruelty had not been proven as none of the allegations had been established by adducing acceptable, consistent and cogent evidence; that the notice published in the daily "Lokmat" on 28.7.1995 and the later incident dated 11.10.1995 being incidents subsequent to the filing of the petition for divorce, the same were not to be taken into consideration.

8. The learned trial Judge further returned the finding that the appellant was going to learn computer and taking instructions from Neeta Gujarathi and the plea that she was engaged as a Computer Operator in his office was not believable as no appointment letter was produced; that the stand that she was paid Rs.1200/- per month was not worthy of any credence as she was operating a computer centre; that from the evidence of the witnesses of the respondent, namely, RW-3 to RW-5, it was clear that Neeta Gujarathi was living with the appellant in his house and he had developed intimacy with her and, therefore, the

SUPREME COURT OF INDIA
JUDGMENT

subsequent events, even if analysed, were to be so done on the said backdrop; that the allegation that there was a gathering and they were violent and broke the windows was really not proven by adducing credible evidence; that the testimony of the witnesses of the respondent clearly reveal that Neeta was inside the house of the appellant and effort was made to bring her out from the house and no damage was caused to the property; that on that day, the police had come in the mid night hours and taken out Neeta from the house of the appellant and left her at her house; that the notice which was published in "Lokmat" was to protect the interest of the sons in the property and basically pertained to the appellant's alienating the property; that the public notice was not unfounded or baseless and the question of defaming him and thereby causing any mental cruelty did not arise; that the allegations made in the application for grant of interim alimony that the appellant is a womaniser and is addicted to liquor cannot be considered for the purpose of arriving at the conclusion that the husband was meted with cruelty; that the allegations made in the written statement having been found to be truthful, the same could not be said to have caused any mental cruelty; that the cumulative effect of the evidence brought

SUPREME COURT OF INDIA
JUDGMENT

on record was that no mental cruelty was ever caused by the respondent; and that the husband could not take advantage of his own wrong. Being of this view, the learned trial Judge dismissed the application with costs and also dismissed the application of the respondent-wife for grant of permanent alimony.

9. Grieved by the aforesaid decision, the appellant-husband preferred Civil Appeal No. 23 of 1999. The first appellate court appreciated the evidence, dealt with the findings returned by the trial court and eventually came to hold that the cumulative effect of the evidence and the material brought on record would go a long way to show that the appellant had failed to make out a case of mental cruelty to entitle him to obtain a decree for divorce. The aforesaid conclusion by the appellate court entailed dismissal of the appeal.

10. Being dissatisfied with the judgment and decree passed by the learned appellate Judge, the husband preferred Second Appeal No. 683 of 2006 before the High Court. The learned single Judge of the High Court came to hold that there were concurrent findings of fact and no substantial question of law

SUPREME COURT OF INDIA
JUDGMENT

was involved. However, the learned single Judge observed that the sons of the parties had grown up and have been married; that the parties had no intention to patch up the matrimonial discord; and that the marriage had been irretrievably broken but that could not be considered by the High Court but only by the Apex Court under Article 142 of the Constitution. Expressing the aforesaid view, he did not admit the appeal and dismissed the same.

11. We have heard Mr. Arvind V. Sawant, learned senior counsel for the appellant-husband, and Mr. Vivek C. Solshe, learned counsel for the respondent-wife.

12. At the very outset, we would like to make it clear that though the learned single Judge of the High Court has expressed the view that the parties are at logger heads and have shown no inclination to patch the matrimonial rupture and the sons have grown up and got married and with the efflux of time, the relationship has been further shattered and hence, the marriage is irretrievably broken and only this Court can grant divorce in exercise of power under Article 142 of the Constitution, yet we

are not going to take recourse to the same and only address ourselves whether a case for divorce has really been made out.

13. At this juncture, we may note with profit that the learned senior counsel for the appellant exclusively rested his case on the foundation of mental cruelty. It is his submission that if the evidence of the husband and other witnesses are scrutinized in an apposite manner along with the stand and stance taken in the written statement, it will clearly reveal a case of mental cruelty regard being had to the social status of the appellant. It is urged by him that the trial court as well as the appellate court have not given any credence to the evidence of some of the witnesses on the ground that they are interested witnesses though they are the most natural witnesses who had witnessed the cruel behaviour meted to the appellant.

JUDGMENT

14. It is the submission of the learned senior counsel for the appellant that the court of first instance as well as the appellate court have failed to take into consideration certain material aspects of the evidence and the appreciation of evidence being absolutely perverse, the High Court would have been well advised to scan and scrutinize the same but it declined to admit the

appeal on the ground that there are concurrent findings of fact. It is canvassed by him that this Court, in exercise of power under Article 136 of the Constitution, can dislodge such concurrent findings of facts which are perverse, baseless, unreasonable and contrary to the material on record.

15. The learned counsel for the respondent, resisting the aforesaid submissions, contended that the view expressed by the High Court cannot be found fault with as the courts below have, at great length, discussed the evidence and appreciated the same with utmost prudence and objectivity and there is nothing on record to show that any material part of the evidence has been ignored or something extraneous to the record has been taken into consideration. It is highlighted by him that the stand put forth by the wife in her written statement having been established, the same cannot be construed to have constituted mental cruelty. Lastly, it is put forth that the appellant has created a dent in the institution of marriage and made a maladroit effort to take advantage of his own wrong which should not be allowed.

SUPREME COURT OF INDIA
JUDGMENT

16. First, we shall advert to what actually constitutes 'mental cruelty' and whether in the case at hand, the plea of mental cruelty has been established and thereafter proceed to address whether the courts below have adopted an approach which is perverse, unreasonable and unsupported by the evidence on record and totally unacceptable to invite the discretion of this Court in exercise of power under Article 136 of the Constitution to dislodge the same.

17. The expression 'cruelty' has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status. In ***Sirajmohamedkhan Janmohamadkhan*** **v.** ***Hafizunnisa Yasinkhan and another***[1], a two-Judge Bench approved the concept of legal cruelty as expounded in ***Sm. Pancho*** **v.** ***Ram Prasad***[2] wherein it was stated thus: -

> "Conception of legal cruelty undergoes changes according to the changes and advancement of social concept and standards of living. With the advancement of our social conceptions, this feature has obtained

[1] (1981) 4 SCC 250
[2] AIR 1956 All 41

> legislative recognition that a second marriage is a sufficient ground for separate residence and separate maintenance. Moreover, to establish legal cruelty, it is not necessary that physical violence should be used.
>
> Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors which may undermine the health of a wife."

It is apt to note here that the said observations were made while dealing with the Hindu Married Women's Right to Separate Residence and Maintenance Act (19 of 1946). This Court, after reproducing the passage, has observed that the learned Judge has put his finger on the correct aspect and object of mental cruelty.

18. In ***Shobha Rani* v. *Madhukar Reddi***[3], while dealing with 'cruelty' under Section 13(1)(ia) of the Act, this Court observed that the said provision does not define 'cruelty' and the same could not be defined. The 'cruelty' may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem to determine it. It is a question of fact and degree. If it is mental, the problem presents difficulty. Thereafter, the Bench proceeded to state as follows: -

[3] (1988) 1 SCC 105

> "First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted."

19. After so stating, this Court observed about the marked change in life in modern times and the sea change in matrimonial duties and responsibilities. It has been observed that when a spouse makes a complaint about treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatized as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. Their Lordships referred to the observations made in ***Sheldon* v. *Sheldon***[4] wherein Lord Denning stated, "the

[4] (1966) 2 All ER 257

categories of cruelty are not closed". Thereafter, the Bench proceeded to state thus: -

> "Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.
>
> These preliminary observations are intended to emphasise that the court in matrimonial cases is not concerned with ideals in family life. The court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Ried observed in *Gollins* v. *Gollins*[5] :
>
> > In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with *this* man or *this* woman."

20. In ***V. Bhagat* v. *D. Bhagat (Mrs.)***[6], a two-Judge Bench referred to the amendment that had taken place in Sections 10 and 13(1)(ia) after the Hindu Marriage Laws (Amendment) Act, 1976 and proceeded to hold that the earlier requirement that such cruelty has caused a reasonable apprehension in the mind

[5] (1963) 2 All ER 966
[6] (1994) 1 SCC 337

of a spouse that it would be harmful or injurious for him/her to live with the other one is no longer the requirement. Thereafter, this Court proceeded to deal with what constitutes mental cruelty as contemplated in Section 13(1)(ia) and observed that mental cruelty in the said provision can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. To put it differently, the mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It was further observed, while arriving at such conclusion, that regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances. What is cruelty in one case may not amount to cruelty in another case and it has to be determined in each case keeping in view the facts and circumstances of that case. That apart, the accusations and allegations have to be scrutinized in the context in which they are

SUPREME COURT OF INDIA
JUDGMENT

made. Be it noted, in the said case, this Court quoted extensively from the allegations made in the written statement and the evidence brought on record and came to hold that the said allegations and counter allegations were not in the realm of ordinary plea of defence and did amount to mental cruelty.

21. In ***Praveen Mehta* v. *Inderjit Mehta***[7], it has been held that mental cruelty is a state of mind and feeling with one of the spouses due to behaviour or behavioural pattern by the other. Mental cruelty cannot be established by direct evidence and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment, and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The facts and circumstances are to be assessed emerging from the evidence on record and thereafter, a fair inference has to be drawn whether the petitioner in the divorce petition has been subjected to mental cruelty due to the conduct of the other.

[7] AIR 2002 SC 2582

22. In ***Vijaykumar Ramchandra Bhate* v. *Neela Vijaykumar Bhate***[8], it has been opined that a conscious and deliberate statement levelled with pungency and that too placed on record, through the written statement, cannot be so lightly ignored or brushed aside.

23. In ***A. Jayachandra* v. *Aneel Kaur***[9], it has been ruled that the question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status and environment in which they live. If from the conduct of the spouse, it is established and/or an inference can legitimately be drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse about his or her mental welfare, then the same would amount to cruelty. While dealing with the concept of mental cruelty, enquiry must begin as to the nature of cruel treatment and the impact of such treatment in the mind of the spouse. It has to be seen whether the conduct is such that no reasonable person would tolerate it.

[8] AIR 2003 SC 2462
[9] (2005) 2 SCC 22

24. In ***Vinita Saxena* v. *Pankaj Pandit***[10], it has been ruled that as to what constitutes mental cruelty for the purposes of Section 13(1)(ia) will not depend upon the numerical count of such incident or only on the continuous course of such conduct but one has to really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude necessary for maintaining a conducive matrimonial home.

25. In ***Samar Ghosh* v. *Jaya Ghosh***[11], this Court, after surveying the previous decisions and referring to the concept of cruelty, which includes mental cruelty, in English, American, Canadian and Australian cases, has observed that the human mind is extremely complex and human behaviour is equally complicated. Similarly, human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in the other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious

[10] (2006) 3 SCC 778
[11] (2007) 4 SCC 511

belief, human values and their value system. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances.

26. In ***Suman Kapur* v. *Sudhir Kapur***[12], after referring to various decisions in the field, this Court took note of the fact that the wife had neglected to carry out the matrimonial obligations and further, during the pendency of the mediation proceeding, had sent a notice to the husband through her advocate alleging that he had another wife in USA whose identity was concealed. The said allegation was based on the fact that in his income-tax return, the husband mentioned the "Social Security Number" of his wife which did not belong to the wife, but to an American lady. The husband offered an explanation that it was merely a

[12] AIR 2009 SC 589

typographical error and nothing else. The High Court had observed that taking undue advantage of the error in the "Social Security Number", the wife had gone to the extent of making serious allegation that the husband had married an American woman whose "Social Security Number" was wrongly typed in the income-tax return of the husband. This fact also weighed with this Court and was treated that the entire conduct of the wife did tantamount to mental cruelty.

27. Keeping in view the aforesaid enunciation of law pertaining to mental cruelty, it is to be scrutinized whether in the case at hand, there has been real mental cruelty or not, but, a significant one, the said scrutiny can only be done if the findings are perverse, unreasonable, against the material record or based on non-consideration of relevant materials. We may note here that the High Court has, in a singular line, declined to interfere with the judgment and decree of the courts below stating that they are based on concurrent findings of fact. The plea of perversity of approach though raised was not adverted to.

28. It is worth noting that this Court, in ***Kulwant Kaur* v. *Gurdial Singh Mann (dead) by L.Rs. and others***[13], has held

[13] AIR 2001 SC 1273

that while it is true that in a second appeal, a finding of fact, even if erroneous, will generally not be disturbed but where it is found that the findings stand vitiated on wrong test and on the basis of assumptions and conjectures and resultantly there is an element of perversity involved therein, the High Court will be within its jurisdiction to deal with the issue. An issue pertaining to perversity comes within the ambit of substantial question of law. Similar view has been stated in ***Govindaraju* v. *Mariamman***[14].

29. In ***Major Singh* v. *Rattan Singh (Dead) by LRs and others***[15], it has been observed that when the courts below had rejected and disbelieved the evidence on unacceptable grounds, it is the duty of the High Court to consider whether the reasons given by the courts below are sustainable in law while hearing an appeal under Section 100 of the Code of Civil Procedure.

30. In ***Vidhyadhar* v. *Manikrao and another***[16], it has been ruled that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the courts below are perverse being based

[14] (2005) 2 SCC 500
[15] AIR 1997 SC 1906
[16] (1999) 3 SCC 573

on no evidence or that on the evidence on record, no reasonable person could have come to that conclusion. We may note here that solely because another view is possible on the basis of the evidence, the High Court would not be entitled to exercise the jurisdiction under Section 100 of the Code of Civil Procedure. This view of ours has been fortified by the decision of this Court in ***Abdul Raheem* v. *Karnataka Electricity Board & Ors.*** [17].

31. Having stated the law relating to mental cruelty and the dictum of this Court in respect of the jurisdiction of the High Court where concurrent findings of fact are assailed, as advised at present, we will scan the evidence whether the High Court has failed to exercise the jurisdiction conferred on it despite the plea of perversity being raised. Any finding which is not supported by evidence or inferences is drawn in a stretched and unacceptable manner can be said to be perverse. This Court in exercise of power under Article 136 of the Constitution can interfere with concurrent findings of fact, if the conclusions recorded by the High Court are manifestly perverse and unsupported by the evidence on record. It has been so held in ***Alamelu and***

[17] AIR 2008 SC 956

***another* v. *State, Represented by Inspector of Police*[18] *and Heinz India Pvt. Ltd. & Anr. v. State of U.P. & Ors.*[19]**

32. Presently, to the core issue, viz, whether the appellant-husband had made out a case for mental cruelty to entitle him to get a decree for divorce. At this juncture, we may unhesitantly state that the trial court as well as the first appellate court have disbelieved the evidence of most of the witnesses cited on behalf of the husband on the ground that they are interested witnesses. In a matrimonial dispute, it would be inappropriate to expect outsiders to come and depose. The family members and sometimes the relatives, friends and neighbours are the most natural witnesses. The veracity of the testimony is to be tested on objective parameters and not to be thrown overboard on the ground that the witnesses are related to either of the spouse. Exception has been taken by the courts below that the servants of the house should have been examined and that amounts to suppression of the best possible evidence. That apart, the allegations made in the written statement, the dismissal of the case instituted by the wife under Section 494 of the Indian Penal Code, the non-judging of the material regard being had to the

[18] AIR 2011 SC 715
[19] (2012) 3 SCALE 607 = (2012) 2 KLT (SN) 64

social status, the mental make-up, the milieu and the rejection of subsequent events on the count that they are subsequent to the filing of the petition for divorce and also giving flimsy reasons not to place reliance on the same, we are disposed to think, deserve to be tested on the anvil of "perversity of approach". Quite apart from the above, a significant question that emerges is whether the reasons ascribed by the courts below that the allegations made in the written statement alleging extra marital affair of the appellant-husband with Neeta Gujarathi has been established and, therefore, it would not constitute mental cruelty are perverse and unacceptable or justified on the basis of the evidence brought on record. These are the aspects which need to be scrutinized and appositely delved into.

33. The appellant-husband, examining himself as PW-1, has categorically stated that the wife used to hide the pressed clothes while he was getting ready to go to the factory. Sometimes she used to crumple the ironed clothes and hide the keys of the motorcycle or close the main gate. In the cross-examination, it is clearly stated that the wife was crumpling the ironed clothes, hiding the keys of the motorcycle and locking the gate to trouble him and the said incidents were taking place for a long time.

This being the evidence on record, we are at a loss to find that the courts below could record a finding that the appellant used to enjoy the childish and fanciful behaviour of the wife pertaining to the aforesaid aspect. This finding is definitely based on no evidence. Such a conclusion cannot be reached even by inference. If we allow ourselves to say so, even surmises and conjectures would not permit such a finding to be recorded. It is apt to note here that it does not require Solomon's wisdom to understand the embarrassment and harassment that might have been felt by the husband. The level of disappointment on his part can be well visualised like a moon in a cloudless sky.

34. Now we shall advert to the allegation made in the written statement. The respondent-wife had made the allegation that the husband had an illicit relationship with Neeta Gujarathi. The learned trial Judge has opined that the said allegation having been proved cannot be treated to have caused mental cruelty. He has referred to various authorities of many High Courts. The heart of the matter is whether such an allegation has actually been proven by adducing acceptable evidence. It is worth noting that the respondent had filed a complaint, RCC No. 91/95, under Section 494 of the Indian Penal Code against the husband. He

was discharged in the said case. The said order has gone unassailed. The learned trial Judge has expressed the view that Neeta Gujarathi was having a relationship with the husband on the basis that though the husband had admitted that she was working in his office yet he had not produced any appointment letter to show that she was appointed as a computer operator. The trial Judge has relied on the evidence of the wife. The wife in her evidence has stated in an extremely bald manner that whenever she had telephoned to the office in the factory, the husband was not there and further that the presence of Neeta Gujarathi was not liked by her in-laws and the elder son Vishal. On a careful reading of the judgment of the trial court, it is demonstrable that it has been persuaded to return such a finding on the basis of the incident that took place on 11.10.1995. It is worth noting that the wife, who examined herself as RW-1, stated in her evidence that Vishal was deposing against her as the appellant had given him a scooter. The learned trial Judge has given immense credence to the version of the social worker who, on the date of the incident, had come to the house of the appellant where a large crowd had gathered and has deposed that she had seen Neeta going and coming out of the house. The

evidence of the wife, when studiedly scrutinized, would show that there was more of suspicion than any kind of truth in it. As has been stated earlier, the respondent had made an allegation that her son was influenced by the appellant-husband. The learned trial Judge as well as the appellate court have accepted the same. It is germane to note that Vishal, the elder son, was approximately 16 years of age at the time of examination in court. There is remotely no suggestion to the said witness that when Neeta Gujarati used to go to the house, his grandfather expressed any kind of disapproval. Thus, the whole thing seems to have rested on the incident of 11.10.1995. On that day, as the material on record would show, at 4.00 p.m., the wife arrived at the house of the husband. She has admitted that she wanted to see her father-in-law who was not keeping well. After she went in, her father-in-law got up from the chair and went upstairs. She was not permitted to go upstairs. It is testified by her that her father-in-law came down and slapped her. She has deposed about the gathering of people and publication in the newspapers about the incident. Vishal, PW-5, has stated that the mother had pushed the grandfather from the chair. The truthfulness of the said aspect need not be dwelled upon. The fact remains that the

testimony of the wife that the father-in-law did not like the visit of Neeta does not appear to be true. Had it been so, he would not have behaved in the manner as deposed by the wife. That apart, common sense does not give consent to the theory that both, the father of the husband and his son, Vishal, abandoned normal perception of life and acceded to the illicit intimacy with Neeta. It is interesting to note that she has deposed that it was published in the papers that the daughter-in-law was slapped by the father-in-law and Neeta Gujarathi was recovered from the house but eventually the police lodged a case against the husband, the father-in-law and other relatives under Section 498A of the Indian Penal Code. We really fail to fathom how from this incident and some cryptic evidence on record, it can be concluded that the respondent-wife had established that the husband had an extra marital relationship with Neeta Gujarathi. That apart, in the application for grant of interim maintenance, she had pleaded that the husband was a womaniser and drunkard. This pleading was wholly unwarranted and, in fact, amounts to a deliberate assault on the character. Thus, we have no scintilla of doubt that the uncalled for allegations are bound to create mental agony and anguish in the mind of the husband.

SUPREME COURT OF INDIA
JUDGMENT

35. Another aspect needs to be taken note of. She had made allegation about the demand of dowry. RCC No. 133/95 was instituted under Section 498A of the Indian Penal Code against the husband, father-in-law and other relatives. They have been acquitted in that case. The said decision of acquittal has not been assailed before the higher forum. Hence, the allegation on this count was incorrect and untruthful and it can unhesitatingly be stated that such an act creates mental trauma in the mind of the husband as no one would like to face a criminal proceeding of this nature on baseless and untruthful allegations.

36. Presently to the subsequent events. The courts below have opined that the publication of notice in the daily "Lokmat" and the occurrence that took place on 11.10.1995 could not be considered as the said events occurred after filing of the petition for divorce. Thereafter, the courts below have proceeded to deal with the effect of the said events on the assumption that they can be taken into consideration. As far as the first incident is concerned, a view has been expressed that the notice was published by the wife to safeguard the interests of the children, and the second one was a reaction on the part of the wife relating to the relationship of the husband with Neeta Gujrathi. We have

SUPREME COURT OF INDIA
JUDGMENT

already referred to the second incident and expressed the view that the said incident does not establish that there was an extra marital relationship between Neeta and the appellant. We have referred to the said incident as we are of the considered opinion that the subsequent events can be taken into consideration. In this context, we may profitably refer to the observations made by a three-Judge Bench in the case of ***A. Jayachandra*** (supra) :-

> "The matter can be looked at from another angle. If acts subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct."

37. We may also usefully refer to the observations made in ***Suman Kapur*** (supra) wherein the wife had made a maladroit effort to take advantage of a typographical error in the written statement and issued a notice to the husband alleging that he had another wife in USA. Thus, this Court has expressed the opinion that the subsequent events can be considered.

38. Keeping in view the aforesaid pronouncement of law, we shall first appreciate the impact of the notice published in the

"Lokmat". The relevant part of the said notice, as published in the newspaper, reads as follows: -

> "Shri Vishwanath Sitaram Agrawal is having vices of womanizing, drinking liquor and other bad habits. He is having monthly income of Rs.10 lacs, but due to several vices, he is short of fund. Therefore, he has started selling the property. He has sold some properties. My client has tried to make him understand which is of no use and on the contrary, he has beaten my client very badly and has driven her away and dropped her to Akola at her parent's house.
>
> In the property of Shri Vishwanath Sitaram Agrawal my client and her two sons are having shares in the capacity of members of joint family and Shri Vishwanath Sitaram Agrawal has no right to dispose of the property on any ground."

Immense emphasis has been given on the fact that after publication of the notice, the husband had filed a caveat in the court. The factual matrix would reveal that the husband comes from a respectable family engaged in business. At the time of publication of the notice, the sons were quite grown up. The respondent-wife did not bother to think what impact it would have on the reputation of the husband and what mental discomfort it would cause. It is manifest from the material on record that the children were staying with the father. They were

studying in the school and the father was taking care of everything. Such a publication in the newspaper having good circulation can cause trauma, agony and anguish in the mind of any reasonable man. The explanation given by the wife to the effect that she wanted to protect the interests of the children, as we perceive, is absolutely incredible and implausible. The filing of a caveat is wholly inconsequential. In fact, it can decidedly be said that it was mala fide and the motive was to demolish the reputation of the husband in the society by naming him as a womaniser, drunkard and a man of bad habits.

39. At this stage, we may fruitfully reminisce a poignant passage from ***N.G. Dastane* v. *S. Dastane***[20] wherein Chandrachud, J. (as his Lordship then was) observed thus: -

> "The court has to deal, not with an ideal husband and an ideal wife (assuming any such exist) but with the particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures."

[20] (1975) 3 SCR 967

40. Regard being had to the aforesaid, we have to evaluate the instances. In our considered opinion, a normal reasonable man is bound to feel the sting and the pungency. The conduct and circumstances make it graphically clear that the respondent-wife had really humiliated him and caused mental cruelty. Her conduct clearly exposits that it has resulted in causing agony and anguish in the mind of the husband. She had publicised in the newspapers that he was a womaniser and a drunkard. She had made wild allegations about his character. She had made an effort to prosecute him in criminal litigations which she had failed to prove. The feeling of deep anguish, disappointment, agony and frustration of the husband is obvious. It can be stated with certitude that the cumulative effect of the evidence brought on record clearly establish a sustained attitude of causing humiliation and calculated torture on the part of the wife to make the life of the husband miserable. The husband felt humiliated both in private and public life. Indubitably, it created a dent in his reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity.

SUPREME COURT OF INDIA
JUDGMENT

Thus analysed, it would not be out of place to state that his brain and the bones must have felt the chill of humiliation. The dreams sweetly grafted with sanguine fondness with the passage of time reached the Everstine disaster, possibly, with a vow not to melt. The cathartic effect looked like a distant mirage. The cruel behaviour of the wife has frozen the emotions and snuffed out the bright candle of feeling of the husband because he has been treated as an unperson. Thus, analysed, it is abundantly clear that with this mental pain, agony and suffering, the husband cannot be asked to put up with the conduct of the wife and to continue to live with her. Therefore, he is entitled to a decree for divorce.

41. Presently, we shall deal with the aspect pertaining to the grant of permanent alimony. The court of first instance has rejected the application filed by the respondent-wife as no decree for divorce was granted and there was no severance of marital status. We refrain from commenting on the said view as we have opined that the husband is entitled to a decree for divorce. Permanent alimony is to be granted taking into consideration the social status, the conduct of the parties, the way of living of the spouse and such other ancillary aspects. During the course of

hearing of the matter, we have heard the learned counsel for the parties on this aspect. After taking instructions from the respective parties, they have addressed us. The learned senior counsel for the appellant has submitted that till 21.2.2012, an amount of Rs.17,60,000/- has been paid towards maintenance to the wife as directed by the courts below and hence, that should be deducted from the amount to be fixed. He has further submitted that the permanent alimony should be fixed at Rs.25 lacs. The learned counsel for the respondent, while insisting for affirmance of the decisions of the High Court as well as by the courts below, has submitted that the amount that has already been paid should not be taken into consideration as the same has been paid within a span of number of years and the deduction would affect the future sustenance. He has emphasised on the income of the husband, the progress in the business, the inflation in the cost of living and the way of life the respondent is expected to lead. He has also canvassed that the age factor and the medical aid and assistance that are likely to be needed should be considered and the permanent alimony should be fixed at Rs.75 lacs.

SUPREME COURT OF INDIA
JUDGMENT

42. In our considered opinion, the amount that has already been paid to the respondent-wife towards alimony is to be ignored as the same had been paid by virtue of the interim orders passed by the courts. It is not expected that the respondent-wife has sustained herself without spending the said money. Keeping in view the totality of the circumstances and the social strata from which the parties come from and regard being had to the business prospects of the appellant, permanent alimony of Rs.50 lacs (rupees fifty lacs only) should be fixed and, accordingly, we so do. The said amount of Rs.50 lacs (rupees fifty lacs only) shall be deposited by way of bank draft before the trial court within a period of four months and the same shall be handed over to the respondent-wife on proper identification.

43. Consequently, the appeal is allowed, the judgments and decrees of the courts below are set aside and a decree for divorce in favour of the appellant is granted. Further, the husband shall pay Rs.50 lacs (rupees fifty lacs only) towards permanent alimony to the wife in the manner as directed hereinabove. The parties shall bear their respective costs.

SUPREME COURT OF INDIA
JUDGMENT

.....J.
[Deepak Verma]

.....J.
[Dipak Misra]

New Delhi;
July 04, 2012

SUPREME COURT OF INDIA
यतो धर्मस्ततो जयः
JUDGMENT