

(2006) 08 P&amp;H CK 0169

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Manisha Tyagi

APPELLANT

Vs

Capt. Deepak Kumar

RESPONDENT

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**Date of Decision:** Aug. 25, 2006**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 10
- Penal Code, 1860 (IPC) - Section 34, 354, 417, 419, 420

**Citation:** (2007) 1 CivCC 808 : (2007) 1 RCR(Civil) 547**Hon'ble Judges:** H.S. Bedi, Acting C.J.; Ranjit Singh, J**Bench:** Division Bench**Final Decision:** Dismissed

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**Judgement**

This Judgment has been overruled by : [Manisha Tyagi Vs. Deepak Kumar, AIR 2010 SC 1042](#) : (2010) 1 DMC 451 : (2010) 2 JT 82 : (2010) 2 SCALE 294 : (2010) 4 SCC 339 : (2010) 2 SCR 554 : (2010) 2 UJ 991

Ranjit Singh, J.

All efforts made at reconciliation between this well educated and well placed estranged couple having failed, we explored the possibility of seeing an amicable settlement and permanent parting between them. We regret to note that we even could not succeed in these efforts. The case having been heard at length was put up for rehearing when a statement was made on behalf of the respondent husband that he was willing to pay Rs. 10 lacs to the appellant-wife and his child, which was turned down by her. At some stage of these proceedings, the appellant wife seemed willing to end this relationship in case some proper arrangements were made for the child.

2. We recollect that her demand was in the range of the present offer, which the respondent-husband had then expressed his inability to meet. This well educated couple, who are well placed in their respective fields, has continued to litigate this matrimonial dispute almost soon after their marriage. We have not been able to really appreciate the guts of the parties in failing to either reconcile this marriage or to see that the same ended with mutual understanding and agreement. Left with no other alternative we proceed to decide this appeal.

3. The appellant, a practicing Advocate, has impugned the judgment of the learned Single Judge, who, after appreciation of evidence and fact found fault with both the parties and modified the judgment of the trial Court by granting judicial separation. Respondent herein, an officer in the Indian Army, had sought divorce from his wife on the ground of cruelty, which was rejected by the trial Court. The prayer made by the respondent husband herein for divorce was declined by the Court of Additional District Judge, Gurgaon, against which, the respondent had filed appeal before this Court leading to modification of the said finding. The learned Single Judge, as already noticed, found that the appellant, though was guilty of cruelty, but still held that the respondent was not entitled to a decree of divorce. While setting aside the judgment of the trial Court, learned Single Judge granted decree of judicial separation u/s 10 of the Hindu Marriage Act, 1955 in favour of the respondent-husband and against the appellant-wife. This finding of the learned Single Judge is under challenge now before us in the present appeal.

4. Before proceeding any further, we may notice in brief the facts, which had led to the filing of the divorce petition so as to get the hang of the issues being agitated. The appellant and the respondent were married on 17.11.1991 at New Delhi. Respondent, who was Captain in the Army, was serving at Meerut at that time. Marriage was, accordingly, cohabited but it is pleaded that this was intermittent in nature. Soon after the marriage, the serious differences and dispute arose between the parties leading to separation, which is continuing since 31.12.1992. Appellant-wife gave birth to a female child on 2.6.1993 and the combat between the parties obvious has engulfed the life of this young child. Perhaps it may leave some permanent scars. From the record we could not discern efforts, if any, made by either of the parties or their parents to see that this marriage worked. Separation led the respondent-husband to file a petition for divorce making allegation that the appellant-wife was quarrelsome, crude, illmannered with further averment that her stay with the respondent has caused acute mental cruelty to him. The respondent had gone to the extent of terming the attitude of the appellant-wife to be schizophrenic, which had, as per him, made his life miserable. He narrated various instances of cruelty in para 7 of his divorce petition, total ten in number. Noticing in brief, these were the acts of the wife in switching off TV while he was watching with the remark that the husband had no business to use the television given by her parents. It is claimed that these instances were repeated leading to acute mental agony for the respondent. Respondent-husband has stated that seeing the

behaviour of the wife, he had brought her to his parents house at Noida. When she was counseled by his parents, wife is alleged to have lost all senses of proportion and had showered filthy abuses to the husband and his parents. The wife is also alleged to have stated that she being an Advocate would sort out the appellant and his family well and proper with the help of her two Advocate uncles and would make their lives miserable. It is then stated that the appellant wife while being with her parents during mid June 1992 contacted superior officers and colleagues of the respondent husband and leveled wild and baseless allegations expressing serious aspersion and agonizing insinuations against the appellant with the sole object of humiliating him and of spoiling his military reputation. This is claimed to have caused acute mental cruelty to the husband. In 2nd week of July 1992, the wife and her mother had hurled filthy abuses to the respondent-husband and his parents when the mother was called to control the wife, who was created commotion in the house of the respondent husband at Noida. It is further alleged that in August 1992 the wife, while at Meerut, started contacting the superior officers of the husband making baseless allegations against his character and integrity. Respondent husband has claimed that this seriously dented his military reputation, which for him, was not only miserable but unbearable. Appellant-wife is alleged to have misbehaved in the presence of army jawans and maid servant. She is further alleged to have misbehaved with her parents while they came to visit them at Meerut making allegation that visit to Meerut was to kill her. This was shocking for the respondent-husband and his parents to bear. During December 1992, the appellant-wife is alleged to have become violent and had created a scene by loudly shouting in the officers' mess area, which, as per the respondent-husband, was beyond any sense of proportion. It is then that the appellant-wife is stated to have left Meerut for Delhi by calling her sister and mother without informing the respondent-husband. Further allegation of mis-behaviour by the wife and her parents during January 1993 and leveling of wild and baseless allegations revealed in a most disgraceful and derogate manners have also been made. The respondent-husband had also complained against sexual behaviour of the wife saying it to be erratic, inhuman and unbearable. He has alleged that the appellant-wife used to intentionally indulge in coitus interruption and by doing so, she succeeded in causing mental agony to the husband. Allegation is further made that she, many a times, refused to share bed with the husband.

5. Making above allegations as base, divorce was prayed by the respondent-husband. During the course of proceedings, an application seeking amendment of the petition was filed, which was allowed. Additional allegations arising out of the various complaints that had been made by the appellant-wife to the police and Women Cell/Army authorities were added as additional grounds in support of the plea for divorce. It was alleged that all these allegations made to the police and army authorities etc. were false, baseless and malicious in which the parents of the husband have also been involved. It was pleaded that this was only as

a counter blast and in retaliation to the petition for divorce filed by the respondent-husband. Mention in detail was made to what all the respondent-husband and his family members were made to go through on the basis of these complaints. This petition for divorce, which had been filed before the Family Court at Meerut, was transferred to Courts at Gurgaon by order passed by the Hon"ble Supreme Court due to transfer petition filed by the appellant-wife. It has also been mentioned that the respondent-husband and his parents had to take various remedial measures to protect their liberty by seeking anticipatory bail etc. Grouse has been made that the appellant-wife even went to the extent of moving petition for cancellation of bail granted to the respondent-husband and his family members.

6. In response to the petition, the appellant-wife not only countered the allegations of cruelty by denying these being wrong and false but counter attacked the respondent-husband by alleging that rather his conduct amounted to cruelty. She alleged that the respondent-husband and his family members had demanded exorbitant dowry and when this demand could not be met then the respondent-husband had started treating the appellant-wife with cruelty. Elaborating the reasons behind this attitude of the respondent-husband, the appellant-wife claimed that he was interested in performing second marriage with a girl for whom he had a liking. It is claimed that the respondent had performed this marriage just for monetary consideration. It has been stated that the appellant-wife was treated with cruelty. Otherwise cohabitation of marriage and birth of a child as alleged in the petition was not disputed. It had also been conceded in the reply that parties were living separately since 31.12.1992. The averment in the petition that the husband had been discharging his obligation was disputed and it was pointed out that he had even not visited the wife at the time of delivery of the child. He had also not arranged any medical aid. The allegation of raising demand for car, jewellery and electronic items by the husband and his family members has also been made. It is further claimed that the husband and his family members had started mis-behaving from the very first day of the marriage and had even asked for payment of Rs. 10,000/- prior to the marriage for getting the car comprehensively insured with a threat that marriage may not take place in case this demand was not met. It has been brought out in the reply that the behaviour of the respondent-husband was rather very strange. In a fit of uncontrollable tempers, he used to throw household articles and clothes brought by the wife shouting and cursing the wife for bringing insufficient dowry. It is also claimed that besides taunting, the wife used to be beaten by the husband, on being instigated by his parents. The allegations of switching off TV and erratic and rude behaviour as made in the petition had been denied by the wife and so also the other allegations as had been enumerated above. It has also been alleged by the appellant-wife that she had suffered miscarriage in third weeks of June 1992 when her mother-in-law gave blow on her stomach during her first pregnancy. At that time no medical assistance was

provided to her and rather she was virtually kept as captive. It is further alleged that the demands for payment of various sums have been made from time to time. As per the appellant-wife, the parents of the respondent husband were not interested in her begetting a child and as such had not relished the news when she again became pregnant in September 1992. It is claimed that the parents had wanted the appellant-wife to terminate the said pregnancy. While denying the allegations made in regard to her erratic sexual behaviour, the appellant-wife rather made counter allegations against the respondent-husband. As per her, the husband used to insist to sexual intercourse during menstruation period and even after conception. Allegations of even acting in an unnatural manner were also made. Moving of petition seeking maintenance to the army and filing of other petitions etc. had been conceded in the reply.

7. Replication was filed by the respondent controverting the pleas taken in the reply. The trial thereafter followed on the issues as framed by the trial Court. Parties led their respective evidence. In support of the petition, respondent-husband had examined seven witnesses besides himself appeared as first witness. On the other hand, the appellant-wife besides appearing herself as a witness in her defence had examined six other witnesses. Evidence of Dr. Madhu Tyagi (RW4) was excluded from consideration, rightly, as she never turned up for being cross-examined after recording of her examination-in-chief. On appreciation of respective evidence led by the parties, the trial Court came to the conclusion that the respondent-husband had not been successful in proving the allegations of the cruelty. Petition was, accordingly, dismissed. In an appeal, as already noticed, the learned Single Judge has granted partial relief to the respondent-husband by setting aside the judgment of the trial court and by granting decree of judicial separation instead of divorce as prayed for in the first appeal.

8. The allegations and counter allegations had flown thick and proper in this case. To an extent these did receive support by the evidence led by the respective parties. The learned Single Judge chose a middlepath by holding that both the parties were at fault and accordingly granted decree of judicial separation instead of divorce. To what effect and what difference it has made to the lives of the parties can not really be made out. The parties are living separately since 31.12.1992. Though not revealed from the record but we can assume that efforts must have been made for reconciliation between the parties at the trial and at the first appellate stage.

9. Both the parties continue to differ and have refused to patch up. As noticed earlier, we also failed in our efforts to bring this matrimonial dispute to some agreed solution. What is left of this marriage? Both the parties though educated but are still standing firm on their respective stands. They both seem to be totally unconcerned about their young child and have continued with their combatant attitude without any remorse. This marriage, if we may say, has irretrievably broken down. That of-course cannot be a ground for granting divorce between this fighting

couple. No wonder, the Hon"ble Supreme Court in a latest decision in Naveen Kohli v. Neelu Kohli 2006 (3) Sca 252 has made a recommendation to the executive to provide this as a legal ground for divorce. Till the law is amended, we will remain handicapped to act even in those cases where one finds that a marriage just cannot work and existence thereof is nothing but an agony for both the parties. We, as such, are required to decide if the allegations of cruelty made by the respondent were proved or not.

10. Shri A.K. Chopra, learned Senior counsel appearing on behalf of the appellant-wife after drawing our attention to various documents on record has vehemently submitted that the allegations made by the respondent-husband of cruelty are not established. Supporting the judgment of the trial Court, the counsel has urged that the learned Single Judge could not have legally reversed the view taken by the trial Court and granted the decree of judicial separation. He would contend that the learned Single Judge has granted this decree of judicial separation despite concurring with the findings of the trial Court in regard to the allegations of cruelty remaining unproved and not established. It is further urged by the learned Counsel that the finding of the learned Single Judge is based on assumptions and presumptions and he got unduly swayed by the complaints filed by the appellant-wife with the police and army etc. Counsel would submit that what option would be with the wife who was turned out of the house and was not permitted even to retain or take back her Istri dhan and other dowry articles? He has also referred to exhibits mainly the letters written by the husband and wife and parents etc. to say that the allegations in regard to the behaviour of the wife has just been made up and the same in fact were not correct.

11. On the other hand, counsel for the respondent-husband has prayed for bringing an end to this marriage, which, as per him, has not worked from the very beginning. He would refer to various averments made by the appellant-wife in the complaints etc. to say that the conduct and behaviour of the appellant-wife was so cruel that it had brought unbearable mental agony and sufferance for the respondent-husband. Let us now see whether the evidence would go to establish the allegations or not. Referring to Ex.R1 which is a letter written by the respondent-husband, counsel for the appellant contends that even before marriage he had found fault with the wife. He has invited our particular attention to the contents of the letter wherein the respondent had said that he expected the appellant to be more self composed and calculating in a worldly way as an Advocate, whereas she was totally to the contrary. This appears to be remarks made in general and cannot be construed to mean that the respondent was in any manner finding fault with the appellant. Letter Ex.R1 read in totality would not convey the meaning, which the counsel would wish us to attach to it. His assertion that this marriage had been performed at the instances of the father of the respondent by referring to Ex.R1 would also, to our mind, be a little far fetched. In a letter Ex.R2 wherein the father of the respondent had written to the respondent about his keeping his real cause close to his chest was something which

happened prior to the actual marriage between the parties. In this letter written on 30.9.1991 wherein the father had written that he was worried about his prestige, honour in society and even in official circle and had asked the respondent to disclose his mind. He had further written that despite his exhortation, the respondent had still not come out with what he was having in his mind and was even not saying a clear "No". The contents of this letter give an indication that there was something, which was being withheld by the respondent but perhaps cannot be construed to say that he was not agreeable for this marriage. No evidence has been pointed out to us to show that the respondent had ever expressed his reservations on this marriage. Despite his father letting him to say no, respondent went ahead with this marriage showing that he had no reservation about it. Similarly, the letters Ex.R33 and Ex.R34 are normal routine letters written by the husband to his wife. Nothing can be read into the words written by the respondent-husband that it was his father, who had chosen the wife rather than any body else, which seems to be mentioned in the context that she had not visited the parents at Noida, though she had gone to Delhi from her matrimonial home at Meerut. Reading few lines from a letter in isolation would, in our view, not give a complete picture. If we examine this letter in totality, it would be clear that this was nothing but a normal letter using these words to tell the wife to visit his parents. The argument of Shri Chopra that the respondent had filed this petition by taking advantage of his own wrongs and in fact had wanted to keep her away from Meerut as such cannot be discerned from these letters. On the other hand, Mr. Hemant Saini, Advocate while drawing our attention to various documents would contend that in this case the allegation of cruelty as levelled by the respondent-husband stood clearly established. While attacking the view taken by the trial Court and to an extent of the learned Single Judge, the counsel would contend that the plea of divorce made by the respondent-husband should have been allowed. He would draw our attention to statutory complaint filed by the appellant wife with special reference to the contents of para 13 of the same.

In this para, the appellant had said:

On 2.12.1991 my husband started behaving in a strange manner throwing the household articles and clothes all around in the room and also mimicking the sound of different animals and some times barking like a dog. I was not only stunned but also shocked because I had never seen a human being behaving that way even if very heavily drunk as he was most of the time I remained in his company. I was not allowed to touch any thing which belong to him. When I told my mother in law she warned me to ensure that I obeyed all orders given to me either my husband or in laws.

12. He would emphasize on the averment wherein the wife had described husband as mimicking the sound of animals and barking like a dog to say that this was in itself an act of cruelty, which stood established without showing anything more. Appellant had also described in this para that the respondent was heavy drunkard. He would then draw our attention to para 31 of this complaint wherein the wife had

made an allegation of torture on the ground of unnatural sex, which the husband had allegedly thrust upon her at odd hours. These allegations run as follows:

My health started deteriorating. My mind was disturbed to the extreme. Now another form of torture, unnatural sex, he would thrust on me at odd hours. I was no longer a human being but a slave to his wild passions.

13. Shri Chopra would, however, contend that from the contents of the para reproduced above, it cannot be said that the appellant-wife had made allegation of sodomy as is being construed and conveyed by the counsel for the respondent. He however, could not sustain this line of reasoning when it was found that while under cross-examination the appellant wife had clarified while explaining meaning of word "unnatural sex" used by her in the statutory complaint to mean sodomy. In response to a question, the appellant wife had said "by unnatural sex I mean sodomy." Having regard to these instances and the other allegations, which, as per the counsel representing the respondent-husband, clearly proved that these amounted to wrecking the tranquility, reputation, self esteem and career of the respondent-husband. Counsel would say that these allegations, which are clearly established even from the stand of the wife, would be enough to say that the respondent-husband had been treated with cruelty. As per the counsel, in this background and in the background of various complaints and other police reports that were made at the instance of the wife would certainly prove the allegations of cruelty made by the respondent.

14. Questioningly, the counsel would contend that what else would amount to cruelty if describing the husband as an abnormal person, one who barks like a dog etc. is not a cruelty.

15. We have given our thoughtful consideration to the whole issue. It cannot be disputed that the appellant had made the averments in paras 13 and 31 of the complaints, which have been reproduced above. She has also not denied the same, rather while giving her evidence, she had further elaborated the allegations of sodomy made by her in the complaint. Wife cannot deny that she had compared her husband to a barking dog that she also made allegations against him for having behaved in a strange manner.

16. She had also referred to him as heavy drunkard. Even if we leave aside the other allegations as made by the husband, we think that describing husband as dog and mimicking as animals and making allegations of sodomy would be enough to say that these amounted to cruelty on her part towards her husband. It can not be denied that the wife had lodged various complaints and criminal proceedings against the respondent-husband. FIR under sections 498-A and 406 IPC was got registered by the wife. Respondent husband, however, earned acquittal in this case. Another complaint filed before the Police Station Civil Lines, Meerut ended in dropping of the proceedings. Yet in another FIR got registered under Sections 417



419 and 420 IPC, the respondent-husband was discharged. The record also reveals that still another FIR was got registered under Sections 354 and 506 read with Section 34 IPC on 18.8.1999 against the father-in-law, an Advocate and son of an Advocate by the appellant-wife. We think that this conduct would exceed all bonds of moderation. A daughter-in-law making an allegation against her old and infirm father-in-law for molesting her would certainly be an intolerable behaviour, which can be termed nothing but an act of immense cruelty for a son, who was none else than the husband of such complainant-wife. This FIR was quashed on 20.3.2002. Seeing the cumulative effect of all these allegations, we would not have any hesitation to hold that the allegations of cruelty made by the respondent-husband stand established. We may notice here that the learned Single Judge had not held the allegations of cruelty not proved but found fault on the part of both the parties. We do not wish to go into this aspect as we think that Court is required to see if the allegations of cruelty as levelled by the respondent husband stood established or not. The counter attack made by the appellant wife was required to be appreciated only to see if the respondent-husband was taking any advantage of his own wrongs. So far as the proved aspect of allegations, as noticed by us are concerned, we can say that these do not flow from any conduct of the respondent-husband, which could have forced the appellant-wife to make such wild allegations. We can also notice that the various criminal proceedings that had been initiated at the instance of the appellant-wife had ended in either discharge, acquittal or quashing, meaning thereby that these had been preferred without much substance and could be termed untrue if not false. It has been noticed by this Court as well as by Hon"ble Supreme Court that cruelty has not been defined under the statute and is required to be seen from the facts and the circumstances of each case. It has also been noticed that word "cruelty" rightly has not been defined to avoid giving it a straight jacket fixed definition. We can say that in the present case, the allegations of cruelty as made by the respondent husband stand established. We would, accordingly, hold that the finding of the learned Single Judge in granting partial relief and that of the trial Judge in declining the relief of divorce cannot be sustained. As observed by Hon"ble Supreme Court in [V. Bhagat Vs. Mrs. D. Bhagat](#), while arriving at conclusion, regard must be had to the social status, education level of the parties, the society they move in, the possibility or otherwise of the parties living together in they are already living apart. We have already noticed that the parties are living separately since 31.12.92. We have also made reference to the efforts that we made to resolve the differences between the parties or other settlement and that we remained unsuccessful. We can thus say that there is no possibility of the parties living together. The respondent is an army officer and appellant-wife is an Advocate practising at High Court. They are thus belonging elite society. High standard of behaviour can rightly be expected from them. Any misconduct committed in the environment of the army service or in the presence of subordinates and colleague officers would have certainly been very degrading for the respondent and would show cruelty. Having regard to the social background and status of the parties and

other circumstances, we can say that the allegations proved in this case would amount to cruelty on the part of the wife. We would, accordingly, hold that the finding of the learned Single Judge in granting partial relief and that of the trial Judge in declining the relief of divorce cannot be sustained. We would, accordingly, set aside both the judgments and hold that the cruelty alleged by the respondent husband stands proved. As a result, we will dismiss the appeal and modify the judgment of the learned Single Judge to hold that the decree of divorce prayed by the respondent-husband is granted.

17. As already noticed above, the respondent-husband was willing to pay a sum of Rs. 10 lacs to the appellant-wife and his child. We would, as such, direct that this amount be paid to the appellant-wife and the child as early as possible. We would, accordingly, direct the respondent-husband to file an undertaking before this Court within a period of two weeks from today to the effect that he would pay a sum of Rs. 10 lacs within a period of two months thereafter. Liberty is granted to the appellant-wife to approach this Court in case the said undertaking given by the respondent-husband is not honoured and the amount is not paid to her within the stipulated period. We would leave the parties to bear their own costs.