

(2010) 07 GAU CK 0053

Gauhati High Court (Shillong Bench)**Case No:** Regular First Appeal No. (SH) 1 of 2008

Shantiranjana Saha

APPELLANT

Vs

Pranati Saha and Another

RESPONDENT

Date of Decision: July 30, 2010**Acts Referred:**

- Constitution of India, 1950 - Article 136
- Hindu Adoptions and Maintenance Act, 1956 - Section 18(1)
- Hindu Marriage Act, 1955 - Section 10, 13, 13(1), 24, 25

Citation: (2011) 2 DMC 17 : (2011) 1 GLR 287**Hon'ble Judges:** T. Nandakumar Singh, J**Bench:** Single Bench**Advocate:** S. Chakraborty, for the Appellant; A. Paul, for the Respondent

Judgement

T. Nandakumar Singh, J.

Heard Mr. S. Chakraborty, learned Counsel for the Appellant, Shri Shanti Ranjan Saha and also Ms. A. Paul, learned Counsel appearing for the Respondent.

2. This appeal, filed by the husband-Appellant, is directed against the judgment and order dated 30.11.2007 passed by the learned Addl. Deputy Commissioner, Shillong, rejecting the matrimonial (Divorce) Suit No. 2(T) of 2004 filed by the Appellant/husband.

3. The concise fact leading to filing of the Matrimonial (Divorce) Suit No. 2(T) of 2004, so also the case of the Respondent/wife in the said case is briefly noted.

On 28.4.1983 the Appellant-husband had married the Respondent-wife, Smt. Pranati Saha according to Hindu rights and customs at Silchar, Assam amidst a large gathering. The marriage was an arranged social marriage with the consent and approval of the parents of the parties. It is admitted fact of both the parties that they are Hindus and abide by the Hindu laws. Neither of the party disputed that the

Appellant-husband and Respondent, Smt. Pranati Saha are legally married and Respondent No. 1, Smt. Pranati Saha is legally married wife of the Appellant-husband; and also that of their wedlock one son namely, Mr. Subharaj Saha was born. The Appellant-husband filed the suit, i.e., Matrimonial (Divorce) Suit No. 2(T) of 2004 in the Court of Addl. Deputy Commissioner, Shillong for a decree of divorce u/s 13 of the Hindu Marriage Act, 1955 on the grounds of adultery and cruelty, i.e., Section 13(1)(i) and (i-b) from the side of the Respondent-wife. In the application u/s 13 of the Hindu Marriage Act for dissolution of marriage by a decree of divorce filed by the Appellant-husband it was pleaded categorically that on 28.4.1983 the Appellant-husband entered into a marriage tie with the Respondent-wife and solemnized according to Hindu Rites and Customs at Silchar, Assam. After their marriage, one son namely, Subharaj Saha was born on 31.08.1985 and at present their son, Subharaj Saha is aged about 19 years and the said marriage was short lived. After the birth of their son, the Appellant-husband was subjected to undue harassment and cruelty by the Respondent-wife with her indifferent attitude by frowning and screaming upon the Appellant-husband without any fault on his part and often created scene in the society in the presence of neighbours on several occasions; and on 23.12.2003, the Respondent-wife without any rhyme and reason became violent upon the Appellant-husband and cut the new shoes of the Appellant-husband into pieces and assaulted with "dao". It was also further pleaded that the Respondent-wife had threatened the Appellant-husband with dire consequences. And from 23.12.2003 onwards, the Appellant-husband, in order to save his life, was taking shelter at the house of his uncle which is situated nearby. The Appellant-husband further pleaded in the plaint/application, i.e., Matrimonial (Divorce) Suit No. 2(T) of 2004 that the Respondent No. 2, Chandan Deb who was residing in the same building where the Appellant-husband and Respondent-wife were residing often visited the Respondent-wife. It is specifically and categorically pleaded by the Appellant-husband that the co-Respondent, Mr. Chandan Deb, visited the Respondent-wife in absence of the Appellant-husband and they were together in the room of the house about 4/5 hours after locking the rooms. It is alleged that the Respondent-wife cohabited with the co-accused, Mr. Chandan Deb in the absence of Appellant-husband and had illicit relationship with the co-accused. On the fateful day of 28.12.2003, the Appellant-husband caught red handed the Respondent-wife committing adultery with the co-Respondent, Chandan Deb, hence, the suit for dissolution of marriage of the Appellant-husband with the Respondent-wife by a decree of divorce.

4. The Respondent-wife also filed written statement in the Matrimonial (Divorce) Suit No. 2(T) of 2004 categorically denying the allegation and assertions of the Appellant-husband. In the said application for divorce, the Respondent-wife also filed Miscellaneous Application u/s 24 of the Hindu Marriage Act, 1955 for grant of pendente lite which had been registered as Miscellaneous Application No. 31(T) of 2007, Ref.: Matrimonial (Divorce) Suit No. 2(T) of 2004 in the court of Addl. Deputy

Commissioner, Shillong and vide order dated 16.4.2004 passed in the said Miscellaneous Case No. 31(T) of 2007 directed the Appellant-husband to pay Rs. 4,000 per month as maintenance pendente lite to the Respondent-wife and also Rs. 5,000 as litigation expenses; and further observed that the educational expenses of their son, Subharaj Saha should be borne by the Appellant-husband. The Appellant-husband in support of his pleaded case had examined six P Ws, namely, PW1-Shanti Ranjan Saha, PW2-Smt. Charu Bala Deb, PW3-Shri Abhi Das, PW5-Smt. Madhabi Das, PW6-Shri Man Mohan Saha; and Respondent-wife also examined two D Ws, i.e. DW1-Respondent-wife herself and DW2-Shri Subharaj Saha. The learned court below, i.e., learned Addl. Deputy Commissioner, Shillong vide impugned judgment and order dated 30.11.2007 dismissed the Matrimonial (Divorce) Suit No. 2(T) of 2004 filed by the Appellant-husband for decree of dissolution of marriage of Appellant-husband and Respondent-wife. The learned Addl. D.C., Shillong on the basis of the pleadings of the parties had framed five issues: (1) whether this petition is maintainable in its present form? (2) whether there is any cause of action for filing this petition? (3) whether the Petitioner was subjected to cruelty by the Respondent? (4) whether the Respondent had committed adultery with the co-accused-Respondent/Chandan Deb, and whether the Petitioner had witness the act of adultery committed on 28.12.2003? and (5) what are the relief/ reliefs entitled to by the parties?

It is clear from the application/matrimonial suit filed by the Appellant-husband and also the written statement filed by the Respondent-wife that the matters in issue for deciding the Matrimonial (Divorce) Suit No. 2(T) of 2004 are: whether the Petitioner-Appellant husband was subjected to cruelty by the Respondent-wife and whether the Respondent-wife had committed adultery with the co-Respondent, Shri Chandan Deb.

5. It is admitted fact of both the parties that since 23.12.2003 the Appellant-husband and Respondent-wife are not living together and there has been no cohabitation till date. The Appellant-husband in his evidence as PW1 in the form of affidavit stated that for small trifle matters Respondent-wife used to scold him like anything and imposed her suspicion in a very low and narrow mental attitude and, her such behaviour and unnecessary suspicion used to hurt sentiment of the Appellant-husband and gave a lot of mental pain. He further deposed that on 4.10.2003 during Durga Puja Astami day the Respondent-wife unnecessarily picked up quarrelling with him in the morning with no rhyme and reason and left home. The Respondent-wife even went to the extent of treating him cruelly to such extent that only because of failure on the part of the Appellant-husband to cook food as ordered by the Respondent-wife, she (Respondent-wife) got furious and picked up quarrel with the Appellant-husband and started throwing things at the Appellant-husband which hit the Appellant-husband very badly and nearly assaulted him with a "dao". In order to avoid such cruel action from the side of the Respondent-wife, the Appellant-husband had to lock himself in another room for

safety. Finding no other way and in order to save his life the Appellant-husband had to leave the house and take shelter in his uncle's house which is nearby. Admittedly, both the Appellant-husband and Respondent-wife are not living together since 24.12.2003 and also there is no peaceful married life. This fact is clearly evident from the statements of P Ws 2, 3, 4, 5 and 6 and statement of DW2, Subhraj Saha.

6. The various grounds for divorce mentioned in the various clauses of Sub-section (1) of Section 13 of the Hindu Marriage Act, 1955 are to be liberally construed so as to give full meaning of the words used by the Legislature. In other words, the liberal approach has to be adopted in dealing with various clauses of Sub-section (1) of Section 13 of the Hindu Marriage Act. Matrimonial disputes have to be decided by the courts in a pragmatic manner keeping in view the ground realities. For this purpose a series of factors have to be taken into consideration. The most important being whether marriage can be saved and husband and wife can live together happily and maintain a proper atmosphere at home for upbringing of their offspring.

7. The word "cruelty", and the kind or degree of "cruelty" which may amount to a matrimonial offence has not been defined in the Act. What is cruel treatment is to a large extent a question of fact or a mixed question of law and fact and no dogmatic answer can be given to the variety of problems that arise before the court in these kinds of cases. The law has no standard by which to measure the nature and degree of cruel treatment that may satisfy the test.

8. The concept, prove beyond shadow of doubt, is to be applied to the criminal trial and certainly not to civil matters of such delicate personal relationships with those of the husband and wife. Ultimately it is a matter of inference to be drawn up taking into account the nature of the conduct and in its effect on the complainant spouse. The impact and injuries on the other spouse need not be entered into or considered. Cruelty will be established if the conduct itself is proved and admitted. To constitute a conduct complained of should be grave and witty so as to come to the conclusion that the spouse cannot be reasonably accepted to live with the other spouse. It must be something more serious than ordinary wear and tear of married life. The conduct has to be considered on the ground of several factors such as social status of the parties, their educations, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances which would constitute a cruelty. The expression "cruelty" has not been defined in the Hindu Marriage Act, 1955. Accordingly, this Court may refer to different decisions of the Apex Court in different cases regarding meaning of cruelty in the context of grant for decree of dissolution of marriage mentioned in Section 13 of the Hindu Marriage Act, 1955.

9. The Apex Court in [Savitri Pandey Vs. Prem Chandra Pandey](#), held (para 6 p.79) as follows:

Treating the Petitioner with cruelty is a ground for divorce u/s 13(1)(i-a) of the Act. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the Petitioner with the Respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the Petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the Petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the Petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other. In the instant case both the trial court as well as the High Court have found on facts that the wife had failed to prove the allegations of cruelty attributed to the Respondent. Concurrent findings of fact arrived at by the court cannot be disturbed by this Court in exercise of powers under Article 136 of the Constitution of India. Otherwise also the averments made in the petition and the evidence led in support, thereof clearly show that the allegations, even if held to have been proved, would only show the sensitivity of the Appellant with respect to the conduct of the Respondent which cannot be termed more than ordinary wear and tear of the family life.

10. The Apex Court in [G.V.N. Kameswara Rao Vs. G. Jabilli](#), observed that cruelty need not be physical if the conduct of the spouse is established an inference can be legitimately drawn that treatment of the spouse is such that it causes an apprehension in the mind of the other spouse about his/her mental welfare than the conduct and amount of cruelty in a delicate human relationship like matrimonial, one has to see the probability. In GVN Kameswara Rao's case (supra) paras 10, 11 and 12 of the SCC read as follows:

10. The omission of the words, which described "cruelty" in the unamended Section 10 of the Hindu Marriage Act, has some significance in the sense that it is not necessary to prove that the nature of the cruelty is such as to cause reasonable apprehension in the mind of the Petitioner that it would be harmful for the Petitioner to live with the other party. English courts in some of the earlier decisions had attempted to define "cruelty" as an act which involves conduct of such a nature as to have caused damage to life, limb or health or to give rise to reasonable apprehension of such danger. But we do not think that such a degree of cruelty is required to be proved by the Petitioner for obtaining a decree for divorce. Cruelty can be said to be an act committed with the intention to cause sufferings to the opposite party. Austerity of temper, rudeness of language, occasional outburst of

anger, may not amount to cruelty, though it may amount to misconduct.

11. This Court, in [Dr. N.G. Dastane Vs. Mrs. S. Dastane](#), held at AIR 1541, paragraph 34 as follows:

34. We do not propose to spend time on the trifles of their married life. Numerous incidents have been cited by the Appellant as constituting, cruelty but the simple trivialities which can truly be described as the reasonable wear and tear of married life have to be ignored. It is in the context of such trivialities that one says that spouses take each other for better or worse. In many marriages each party can, if it so wills, discover many a cause for complaint but such grievances arise most from temperamental disharmony. Such disharmony or incompatibility is not cruelty and will not furnish a cause for the dissolution of marriage. We will, therefore, have regard only to grave and weighty incidents and consider these to find what place they occupy on the marriage canvas. (SCC p.339)

12. The court has to come to a conclusion whether the acts committed by the counter-Petitioner amount to cruelty, and it is to be assessed having regard to the status of the parties in social life, their customs, traditions and other similar circumstances. Having regard to the sanctity and importance of marriages in a community life, the court should consider whether the conduct of the counter-Petitioner is such that it has become intolerable for the Petitioner to suffer any longer and to live together is impossible, and then only the court can find that there is cruelty on the part of the counter-Petitioner. This is to be judged not from a solitary incident, but on an overall consideration of all relevant circumstances.

11. The Apex Court in *Sujata Uday Patil v. Uday Madhukar Patil*, (2006) 13 SCC 272 (paras 6 and 7 of the SCC) observed as follows:

6. Sub-section (1) of Section 13 of the Hindu Marriage Act, 1955 ("the Act") lays down the grounds on which a marriage may be dissolved by a decree of divorce. This Sub-section has several clauses and under Clause (1-a) cruelty and under Clause (1-b) desertion for a continuous period of not less than two years immediately preceding the presentation of the petition, are grounds for granting a decree of divorce. The following observation made by this Court in [Reynold Rajamani and Another Vs. Union of India \(UOI\) and Another](#), which is a case u/s 10 of the Divorce Act, throws considerable light on the approach which should be adopted in dealing with a provision relating to divorce: (SCC pp.478-79, para 4)

The history of all matrimonial legislation will show that at the outset conservative attitudes influenced the grounds on which separation or divorce could be granted. Over the decades, a more liberal attitude has been adopted, fostered by a recognition of the need for the individual happiness of the adult parties directly involved. But although the grounds for divorce have been liberalised, they nevertheless continue to form an exception to the general principle favouring the continuation of the marital tie. In our opinion, when a legislative provision specifies

the grounds, on which divorce may be granted they constitute the only conditions on which the court has jurisdiction to grant divorce. If grounds need to be added to those already specifically set forth in the legislation, that is, the business of the Legislature and not of the courts. It is another matter that in construing the language in which the grounds are incorporated the courts should give a liberal construction to it. Indeed, we think that the courts must give the fullest amplitude of meaning to such a provision. But it must be a meaning which the language of the section is capable of holding.

(emphasis supplied)

Therefore, a liberal approach has to be adopted in dealing with various clauses of Sub-section (1) of Section 13 of the Act and full meaning should be given to the words used by the Legislature.

7. The word "cruelty" and the kind or degree of "cruelty" necessary which may amount to a matrimonial offence has not been defined in the Act. What is cruel treatment is to a large extent a question of fact or a mixed question of law and fact and no dogmatic answer can be given to the variety of problems that arise before the court in these kinds of cases. The law has no standard by which to measure the nature and degree of cruel treatment that may satisfy the test. It may consist of a display of temperament, emotion or pervasion (sic perversion) whereby one gives vent to his or her feelings, without intending to injure the other. It need not consist of direct action against the other but may be misconduct indirectly affecting the other spouse even though it is not aimed at that spouse. It is necessary to weigh all the incidents and quarrels between the parties keeping in view the impact of the personality and conduct of one spouse upon the mind of the other. Cruelty maybe inferred from the facts and matrimonial relations of the parties and interaction in their daily life disclosed by the evidence and inference on the said point can only be drawn after all the facts have been taken into consideration. Where there is proof of a deliberate course of conduct on the part of one, intended to hurt and humiliate the other spouse, and such a conduct is persisted cruelty can easily be inferred. Neither actual nor presumed intention to hurt the other spouse is a necessary element in cruelty.

12. On perusal and appreciation of the statements of P Ws and D Ws it is crystal clear that the Appellant-husband could prove high degree of probability of cruelty for a decree of divorce; and also that the marriage tie of the Appellant-husband and Respondent-wife cannot be saved and they cannot live together happily and maintain a proper atmosphere at home. No doubt, irretrievable breakdown of marriage cannot be the ground for dissolution of marriage inasmuch as it is not one of the grounds for dissolution of marriage mentioned in several clauses of Sub-section (1) of Section 13 of the Hindu Marriage Act, 1955. It is clear finding of this Court that there are materials for grant of divorce on the ground of cruelty keeping in view the evidence on record.

13. Ms. Paul, learned Counsel appearing for the Respondent-wife vehemently submits that permanent alimony u/s 25 of the Hindu Marriage Act, 1955 should be granted to the Respondent-wife. In order to substantiate case of the Respondent-wife regarding this point Ms. Paul, learned Counsel relied heavily on the decision of the Apex Court in Smt. Chand Dhawan v. Jawaharlal Dhawan 1993 Cri. LJ 2930 . The Apex Court in Smt. Chand Dhawan's case (supra) clearly held that in the event of disruption of the matrimonial status by a decree of divorce, the court undoubtedly has the power to grant permanent alimony; and also that after passing the decree for dissolution of marriage advising the party to move the concerned court for grant of maintenance u/s 25 of the Hindu Marriage Act was an ill advised one. The Decision of the Apex Court (Paras 25 and 29 of the Cri. LJ) in Smt. Chand Dhawan's case (supra) read as follows:

25. We have thus, in this light, no hesitation in coming to the view that when by court intervention under the Hindu Marriage Act, affection or disruption to the marital status has come by, at that juncture, while passing the decree, it undoubtedly has the power to grant permanent alimony or maintenance, if that power is invoked at that time. It also retains the power subsequently to be invoked on application by a party entitled to relief. And such order, in all events remains within the jurisdiction of that court, to be altered or modified as future situations may warrant. In contrast, without affectation or disruption of the marital status, a Hindu wife sustaining that status can live in separation from her husband, and whether she is living in that state or not, her claim to maintenance stands preserved in codification and u/s 18(1) of the Hindu Adoptions and Maintenance Act. The court is not at liberty to grant relief of maintenance simpliciter obtainable under one Act in proceedings under the other. As is evident, both the statutes are codified as such and are clear on their subjects and by liberality of interpretation interchangeability cannot be permitted so as to destroy the distinction on the subject of maintenance.

29. On the aforementioned analysis we have been led to the conclusion that the step of the wife to move the court of Additional District Judge, Amritsar for grant of maintenance u/s 25 of the Hindu Marriage Act was ill advised. The judgment of the High Court under appeal could be no other than the one that it was in the present state of law and the facts and circumstances. It is still open to the wife to stake her claim to maintenance in other for a. The judgments of the High Courts earlier quoted, and others which have been left out, which are not in line with our view are overruled. The earlier and predominant view was the correct one and the later an aberration; something unfortunate from the precedential point of view. The appeals, thus, inevitably have to and are hereby dismissed, but without any order as to costs.

14. For the foregoing reasons, the impugned judgment and decree dated 30.11.2007 passed by the learned Addl. D.C., Shillong in Matrimonial (Divorce) Suit No. 2(T) of 2004 is interfered with and set aside. The Matrimonial (Divorce) Suit No.

2(T) of 2004 is allowed. Accordingly, the marriage between the parties stands dissolved by decree of divorce.

15. The question falls for consideration in granting decree of dissolution of marriage in the present case is what would be the justified quantum of permanent alimony. It is admitted fact of both the parties that the Appellant-husband is a Branch Manager of the State Bank of India (SBI) and also the parties are not disputing the salaries and emoluments of a Branch Manager of SBI. Over and above, both the parties are not disputing that the Respondent-wife has no source of income and she has no even place of her own for residing. Ms. Paul, regarding the quantum of permanent alimony, had taken support of several decisions of this Court and also the Apex Court.

16. On careful perusal of the several decisions of the High Court and Supreme Court cited by Ms. Paul, it is clear that the quantum of permanent alimony is decided basing on the fact of the case and there is no straight jacket formula for determining the quantum of permanent alimony. In the given case, the total pay and allowance of the Branch Manager of SBI is clear to the parties; and accordingly, taking into consideration the respective age of the parties, i.e., Appellant-husband and Respondent-wife and their social status, this Court is of considered view that lump sum amount of permanent alimony would be Rs. 4 lakh which shall be paid by the Appellant-husband at two installments. The first instalment of Rs. 2,00,000 shall be paid within two months from the date of passing this order; and 2nd instalment of Rs. 2,00,000 shall be paid within four months from the date of passing this order. The said amount of permanent alimony shall be deposited in the account of the Respondent-wife opened in a scheduled bank; account number of the Respondent-wife should be intimated to the Appellant-husband so as to enable him to deposit the said amount of permanent alimony in her account. The concerned authorities of the SBI be informed for making necessary steps for depositing the said amount of Rs. 4 lakh in the account of the Respondent-wife opened in the Scheduled Bank by necessary deduction from the amount of money entitled and payable to the Appellant-husband by the SBI.

17. The present decree for dissolution of the marriage of the Appellant-husband with the Respondent-wife shall be effective only after the amount of permanent alimony is fully paid by the Appellant-husband to the Respondent-wife.

The appeal is allowed to the extent indicated above.