In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

F.A. No. 1 of 2022

Mr. Dhiraj Guin
Vs.
Mrs. Tanusree Majumder

For the appellant	:	Mr. Shiva Prasad Ghose, Mr. Anjan Ganjan, Ms. Soma Biswas
For the respondent	:	Mr. Siddhartha Lahiri, Mr. Debraj Dutta, Ms. Nivedita Mallick
Hearing concluded on	:	26.11.2024
Judgment on	:	19.12.2024

Sabyasachi Bhattacharyya, J.:-

1. The appellant-husband has preferred the present first appeal against a judgment and decree dismissing his suit for divorce, which was instituted on the ground of cruelty.

2. The parties contracted marriage under the Special Marriage Act on December 15, 2005 and subsequently performed Hindu rites and customs, thus bringing the marriage within the purview of the Special Marriage Act. The parties married at Nabadwip, their matrimonial home, and thereafter shifted on March 8, 2006 to Kolaghat at Mecheda, where the husband has quarters by dint of his service. The parties lived

together there and on May 9, 2008, the respondent-wife shifted to her own quarters at Narkeldanga, which was allotted to her by virtue of her service in the Railways at Sealdah.

3. On September 25, 2008, the appellant-husbandinstituted the divorce suit. On October 27, 2008, the wife sent a complaint against the husband and his family by registered post to the Nabadwip Police Station. A criminal proceeding was accordingly initiated under Section 498A of the Indian Penal Code. Admittedly, during the pendency of the suit, the respondent-wife has shifted to another accommodation at Uttarpara on June 14, 2016.

4. Learned counsel for the appellant-husband submits that throughout the period of the parties' stay together, one Mousumi Paul, a friend of the wife, was imposed on him and used to reside for a substantial period with the husband and wife. The mother of the respondent-wife also used to stay with the spouses. It is contended that the wife, instead of spending time with the husband, used to devote most of her family time with Mousumi Paul, which itself constitutes an act of cruelty.

5. Learned counsel for the appellant further contends that during the period of living together, the respondent-wife did not lodge any complaint before any forum but only after receiving the summons of the suit, lodged a false complaint against the appellant and his family, thereby harassing and maligning them without any basis.

6. An application under Order XLI Rule 27 of the Code of Civil Procedure has also been filed by the appellant to bring on record the judgment

passed in the criminal proceeding during the pendency of the appeal, whereby the accused persons, including the husband and his other family members, were acquitted. It is contended that such acquittal and the timing of the complaint go on to show that the complaint was entirely false. Such baseless harassment also constitutes cruelty, it is argued.

7. Learned counsel appearing for the appellant next submits that the appellant-husband initially stayed with the respondent-wife in her Narkeldanga quarters for some days after her shifting but was subsequently turned out from the said premises. The wife never returned to the Kolaghat quarters of the husband.

8. Other allegations are also levelled against the respondent-wife, including that she was not interested in conjugal relationship and/or in having a child of the marriage. All of these, accordingly to the husband, cumulatively comprise of cruelty, furnishing sufficient ground for divorce.

9. The desertion of the husband by the wife without reasonable excuse and her refusal to return and resume conjugal life also constitutes cruelty, it is contended.

10. Learned counsel for the appellant places reliance on the cross-examination of the complainant/respondent-wife in the proceeding under Section 498A of the Indian Penal Code, which evidence was exhibited in the matrimonial suit. Contrary to her contentions in the matrimonial suit, she admitted in such cross-examination that she had a love affair with the husband before marriage.

11. It was further admitted that no complaint was lodged by the wife with any authority before October 27, 2008. The wife also admits in her cross-examination in connection with the criminal proceeding that the husband was in Kolaghat, and not at Nabadwip, when the alleged incident at Nabadwip, leading to the complaint, took place.

12. Learned counsel for the appellant places reliance on *Samar Ghosh v. Jaya Ghosh*, reported at *(2007) 4 SCC 511*, where certain illustrative situations of mental cruelty were laid down by the Supreme Court. It is submitted that the present case is covered by several by those grounds.

13. The appellant also relies on *Naveen Kholi v. NeeluKohli*, reported at *(2006) 4 SCC 558*, for the proposition that if the parties live separately for several years and criminal proceedings are initiated between the parties and the marriage between the parties breaks down beyond repair and is rendered defunct, to keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond. The Supreme Court, in the said case, granted divorce by observing that wisdom lies in accepting the pragmatic reality of life and taking a decision which would ultimately be conducive in the interest of both the parties.

14. Learned counsel for the appellant next relies on *Raj Talreja v. Kavita Talreja*, reported at *(2017) 14 SCC 194*, where it was observed by the Supreme Court that cruelty can never be defined with exactitude and depends on the circumstances of each case. If a complaint is lodged, mere inaction on complaint or acquittal in criminal case may not be a ground to treat such accusations of the wife as cruelty; however, if it is

found that the allegations are patently false and there can be no manner of doubt that such conduct of a spouse levelling false accusations against the other spouse were without any basis, it would be an act of cruelty.

15. Lastly, the appellant relies on *Rani Narashimha Sastry v. Rani Suneela Rani*, reported at *(2020) 18 SCC 247*, where, in a similar context of lodging of a complaint under Section 498A of the Indian Penal Code, it was held that when a person undergoes trial in which he is acquitted of the allegations levelled by the wife, it cannot be accepted that no cruelty has been meted out on the husband.

16. Learned counsel for the respondent places reliance on *A. Jayachandra v. Aneel Kaur*, reported at *(2005) 2 SCC 22*, where the Supreme Court held that the entire evidence led by the appellant therein did not even emit the smell of cruelty. To constitute cruelty, the Supreme Court held that the conduct complained of should be "grave and weighty". It must be something more serious than "ordinary wear and tear of married life". The court dealing with a petition for divorce on the ground of cruelty, it was observed, has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. The courts do not have to deal with ideal husbands and ideal wives, but with a particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court.

17. Learned counsel appearing for the respondent next cites *Savitri Pandey v. Prem Chandra Pandey*, reported at *(2002) 2 SCC 73*, where it was held that cruelty is contemplated in matrimonial matters as a conduct of such type which endangers the living of the petitioner with the respondents. Cruelty consists of acts which are dangerous to life, limb or health. It has to be distinguished from the ordinary wear and tear of family life and cannot be decided on the basis of the sensitivity of the petitioner but adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other.

18. Learned counsel for the respondent argues that there is no pleading in the plaint by the appellant-husband about any cruelty caused by false complaint lodged by the wife. Thus, the evidence on such score cannot be looked into. By the same logic, it is submitted, the application under Order XLI Rule 27 of the Code of Civil Procedure, being beyond the pleadings, cannot also be entertained.

19. As an immediate prelude to the lodging of the complaint on October 27, 2008, the wife faced atrocities from her matrimonial family when she went to Nabadwip to take back her goods and stay there.

20. It is submitted that the appellant-husband never made any endeavour to come and live with the wife at her official residence in Narkeldanga. It is contended that the wife had to travel daily from far-off Kolaghat to her workplace in Sealdah before she got her official quarters at Narkeldanga. It was far more convenient for the wife to travel between Narkeldanga and Sealdah than from Kolaghat and as such, she shifted to Narkeldanga. It is argued that the prerogative was on the husband

to come and stay with the wife at Narkeldanga, which he chose not to do. It is submitted that there is nothing on record to show that the husband was forcibly turned out by the wife from her Narkeldanga residence.

21. Accordingly, it is submitted that the appellant-husband having failed to prove his case of cruelty, the divorce suit was rightly dismissed by the learned Trial Judge.

22. Learned counsel for the respondent adds that in the ultimate analysis, although the originally framed issues included an issue as towhether there was cruelty or desertion on the part of the respondent-wife, no issue of cruelty or desertion was specifically framed at the time of passing the judgment. As such, in any event, there was no scope of a divorce decree being granted on the ground of cruelty.

23. In order to adjudicate the questions involved in the appeal, the Court is required to look at the evidence adduced by the parties. It has to be borne in mind that the yardstick of proof in a matrimonial proceeding, like any other civil case, is preponderance of probability and not proof beyond reasonable doubt as in a criminal case.

24. From the evidence on record, utter lack of "*animus revertandi*" on the part of the respondent-wife is evident. In her cross-examination dated March 27, 2017, the respondent-wife admitted that the appellant-husband visited her Narkeldanga quarter about four times till June, 2008. She also admits that after June, 2008, she never visited the house of her husband at Kolaghat.

25. In the matrimonial suit, the wife consistently pleaded and led evidence to the effect that she left for the Narkeldanga quarter on the ground that it was close to her workplace at Sealdah and, thus, made it more convenient for her to commute. However, in her cross-examination in the proceeding under Section 498A of the Indian Penal Code, which was marked as Exhibit-4 in the divorce suit, she alleged that being in a "helpless situation", she started residing in her railway quarter at Narkeldanga and that the appellant-husband tortured her physically, coming to the said quarter and used to belittle her social prestige. Such contradiction of the cause of leaving for Narkeldanga raises a doubt on the veracity of her evidence on such count.

26. During her cross-examination dated September 27, 2016, the respondent-wife admitted that she is staying at Uttarpara since June 14, 2016, prior to which she used to stay at her Narkeldanga Railway quarters. There is nothing on record to indicate that the wife ever returned to or even visited her husband's quarter at Kolaghat from Narkeldanga, despite her having moved to Uttarpara subsequently, which is also far-off from Sealdah and could not be of much difference than Kolaghat insofar as distance from the workplace of the wife at Sealdah is concerned.

27. Again, the respondent-wife admittedly went to Nabadwip, her matrimonial home, in the Month of October, 2008 after receiving summons of the divorce suit, to take back all her goods from the matrimonial home. Hence, it was evident from her own admission that the respondent-wife, for all practical purposes, intended to close the

chapter of marriage by retrieving all her goods from her matrimonial home, although she did not find time to visit her husband at Kolaghat even once during the relevant period.

28. Although the husband has not pleaded desertion as a ground for divorce, the deliberate intention of the respondent-wife not to return to conjugal life itself constitutes cruelty, since cohabitation and conjugal life is an integral part of matrimony. Abstinence from the same by one of the spouses would undoubtedly lead to mental and, perhaps, physical agony of the other, making it impossible for the latter to live together with the former for the rest of their lives.

29. Next coming to the criminal complaint lodged by the respondent-wife against her husband and his family, the respondent-wife categorically admits in her cross-examination dated March 27, 2017, adduced in connection with the criminal proceeding, that she had received summons of the divorce suit prior to the lodging of the complaint, on which a First Information Report was registered.

30. The timing of the complaint is conspicuous. Although general allegations were levelled in the complaint against the appellant-husband and is entire family covering the entire period of her marriage, the respondent-wife not only did not lodge any complaint before any authority during the relevant period, she also lived together with the husband for almost three years without any demur or ventilation of grievance. Only upon the summons of the divorce suit being served on her did she grow wiser and send a complaint by registered post, that too to the Nabadwip Police Station where the husband has not been

residing since March, 2006. There is no contemporaneous complaint throughout the relevant period, which unerringly indicates that the general broad allegations made pertaining to the entire period of the marriage were an afterthought, devised only upon receiving summons of the suit to create a defence in the suit.

31. The respondent-wife, in her cross-examination dated December 15, 2016, admitted that on the day she went to Nabadwip in September, 2008, the appellant-husband was not present in the matrimonial house but was at Kolaghat. Hence, there could not be any basis whatsoever for lodging any complaint under Section 498A, Indian Penal Code at least against the husband for any act done on that date. Thus, the complaint against the appellant-husband is proved to be entirely baseless. As to the general allegations levelled against the husband and his family in the complaint, no particulars, dates or specific acts of cruelty and/or particular incidents of cruelty were mentioned in the complaint and the consequential FIR.

32. Learned counsel for the respondent argues that neither the evidence pertaining to the criminal complaint nor the additional evidence sought to be produced now by way of a certified copy of the judgment passed in the criminal proceeding can be looked into by the court since there was no pleading on record on such count. However, in Paragraph No.18 of the written statement, it is the respondent-wife who specifically avers about the lodging of the complaint and the consequential criminal proceeding under Section 498A and the fact of the pendency thereof. Hence, the respondent-wife, in her written statement, has herself

furnished the basis of pleadings for the courts to look into the evidence regarding said aspect of the case. Definitely, since the wife referred to the pendency of the Section 498A proceeding in her pleadings, the outcome of the same is a relevant piece of evidence for a proper and complete adjudication of the *lis.*

33. Order XLI Rule 27(aa) of the Code of Civil Procedure provides that the court would permit a party to produce additional evidence if he establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not be produced by him at the time when the decree appealed against was passed. In the present case, the judgment passed in the criminal proceeding having come into existence only subsequent to the impugned decree and during pendency of the appeal, the said provision is squarely applicable.

34. Also, in view of the allegations and counter allegations as indicated above, the final verdict in the criminal proceeding is required by this Court to enable it to pronounce judgment in the present dispute. Accordingly, the provisions of Order XLI Rule 27(1)(b) of the Code are also satisfied.

35. Thus, the application for production of additional evidence is allowed. Since the existence of the final judgment in the criminal proceeding is not disputed and the original certified copy of the same has been placed before the court for perusal and a copy of such certified copy is annexed to the application under Order XLI Rule 27, we dispense with formal proof of the same and take on record the said judgment.

36. Learned counsel for the respondent has insinuated that it was the failure of the prosecution, and not the respondent-wife, to prove its case and the acquittal of the accused persons in the criminal case do not necessarily prove that the allegations were baseless.

37. However, we find from the judgment of the criminal court that ample opportunity of leading evidence was given and the wife herself had led evidence and was cross-examined. Thus, it cannot be contended that it was the mere failure of the prosecution that the charges against the husband and his family were dropped and they were acquitted scot-free in the Section 498A proceeding. The criminal court, after looking into the police report and the entire evidence, including that of the respondent-wife, came to the conclusion that the husband and his family were not guilty of the offences alleged against them and all of the accused persons were ultimately acquitted.

38. Furthermore, since there was no contemporaneous complaint by the wife throughout the marriage and rather, she lived with the husband for three years from the year 2005 to 2008 without any grievance being raised, coupled with the fact that the wife's mother and her friend Mousumi Paul lived in the Kolaghat quarter of the husband even when the wife was not there, indicate that the allegations subsequently levelled against the husband were mere afterthought.

39. The timing of the complaint was crucial as well, since admittedly after receiving summons of the divorce suit, bald allegations were levelled against the husband and his family by the wife, even covering the

period when they had lived together and the wife had not contemporaneously raised any grievance.

40. The said allegations, although stemming from a particular visit on a particular day by the wife to her matrimonial home at Nabadwip, including general allegations over the entire span of the marriage, obviously to furnish a defence to the respondent-wife in the divorce suit.

41. Also, such general allegations pertaining to the entire matrimonial life were levelled only to rope in the appellant-husband, since admittedly he was in Kolaghat and not at the spot of occurrence at Nabadwip on the relevant date when the wife visited her matrimonial home at Nabadwip.

42. The Nabadwip visit was itself suspect, since the respondent-wife, although not finding time to visit her husband at Kolaghat even once after leaving the said locality, found sufficient time to go to her matrimonial home at Nabadwip to take back her belongings.

43. Hence, it is quite evident that the bald allegations made in the complaint by the wife under Section 498A of the Indian Penal Code, without any particulars, details or even mention of the specific acts or dates of cruelty, were completely baseless and unsubstantiated.

44. Such bald and false allegations constitute sufficient cruelty to raise a presumption that the husband found it impossible to continue to live together with his spouse, thus coming within the ambit of cruelty as contemplated in matrimonial cases.

45. The respondent-wife, in her cross-examination dated December 15, 2016, alleged that she went to her matrimonial house at Nabadwip but

was not allowed to stay there and a demand of divorce was made. It is rather absurd that the wife, instead of going back to her husband at Kolaghat, went all the way to Nabadwip to resume her stay in the matrimonial house, where her husband himself was admittedly not present, being in Kolaghat since 2006. The said allegation, thus, is mere fiction.

46. Another aspect of cruelty is borne out by the serious allegations made in the pleadings of the wife. It would be understandable if she stopped at the pleadings but throughout her examination-in-chief, the respondent-wife stood by her pleadings and continued to level allegations against the appellant-husband.

47. Of the more serious allegations, the respondent-wife, between Paragraph Nos.30 and 32 of her examination-in-chief, stated that the appellant-husband is a rude and greedy person, he compelled the respondent-wife to hand over her salary to him and "enticed" the respondent to look after her mother and that the husband does not know anything "except flesh and blood" of the respondent and her earned money and her mother's pension.

48. The evidence to the contrary belies such allegations. The mother of the respondent would not have lived at the Kolaghat residence of the appellant if he extorted her pension or the respondent's earned money. In any event, the continued presence of Mousumi Paul and others of her family at the residence of the husband despite his objection and discomfort on such count is borne out by the records. Such imposition of friend and family of the respondent on the husband at his

quarteragainst his will, sometimes even when the respondent-wife herself was not there, over a continuous period of time, can definitely be constituted as cruelty, since it might very well have made life impossible for the appellant, which would come within the broader purview of cruelty.

49. In *Samar Ghosh (supra)*, the Supreme Court gave certain illustrations, one of which was acute mental pain, agony and suffering as would not make possible for the parties to live with each other and a situation such that the wronged party cannot reasonable be asked to put up with the conduct and continue to live with the other party. Mental cruelty, it was held, is a state of mind and a feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of the other for a long time also comes under mental cruelty. Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other and sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health would also come within the purview of mental cruelty.

50. The wife, in the present case, unilaterally took a decision of refusal to have conjugal life with the husband for a considerable period and there is admittedly a long period of continuous separation, unerringly indicating that the matrimonial bond has gone beyond repair.

51. In *Naveen Kholi (supra)*, the Supreme Court, although not going to the extent of holding that irretrievable break down is itself a ground for divorce, observed that the same would be a vital consideration in

considering a divorce decree. The Supreme Court held that the High Court ought to have considered that a human problem can be property resolved by adopting a human approach. In the said case, it was held that not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may a ray of hope for the parties that after a passage of time after obtaining a decree of divorce, the parties may psychologically and emotionally settle down and start a new chapter in life. The High court, it was also held, ought to have visualised that preservation of such a marriage is totally unworkable and has ceased to be effective and would be a greater source of misery for the parties. False allegations by one of the spouses, as a constituent of cruelty, was squarely brought within the purview of cruelty both in *Raj Talreja (supra)* and *Rani NarashimhaSastry (supra)*.

52. Learned counsel for the respondent relies on *A. Jayachandra (supra)*, where it was held that the entire evidence did not even emit the smell of cruelty. The facts of the present case are, however, diametrically opposite to the said case. The cruelty perpetrated by the wife in the instant *lis*, as discussed above, is undoubtedly grave and weighty and would make ample ground for apprehension in the mind of the husband and anxiety, making it impossible for him to live together further as a couple with the respondent. Mental cruelty as defined in *A. Jayachandra (supra)* does not militate against the factual matrix of the present case at all.

53. In *Savitri Pandey (supra)*, no evidence was led by the appellant to show that she was forced to leave the company of the respondent or was

thrown away from the matrimonial home or forced to live separately and that the respondent had "*animus deserandi*". Borrowing the said logic, in the present case, the respondent-wife admitted in her cross-examination that the appellant-husband visited her at least four times since she left for Narkeldanga whereas she has not pleaded or proved anything regarding her ever having returned to her husband at Kolaghat or even visiting him there.

54. The only corroborative evidence of alleged cruelty by the husband was by Mousumi Paul,who was in the thick of the controversy and an admitted close friend of the respondent-wife, thus rendering her an interested witness who cannot be relied on in the circumstances of the present case. There is palpable contradiction even between the different versions given by the respondent herself at different points of time. Whereas she seeks to justify her departure for Narkeldanga on the ground of torture by the husband in her cross-examination in the criminal proceeding, the respondent cites convenience of travel as justification for her shifting to Narkeldanga in the matrimonial suit, since the said place is close to her workplace at Sealdah.

55. In Paragraph No.21 of her written statement, the respondent states that only "some intimacy" grew between the parties but that the marriage was contracted between the parties on threat of suicide by the appellant. In Paragraph No.12 of her examination-in-chief that the respondent reiterates that she was compelled to marry the appellant. Such case, however, was never substantiated by any independent evidence.

56. On the contrary, in her cross-examination in the criminal proceeding under Section 498A of the Indian Penal Code, which was exhibited as Exhibit-4 in the matrimonial suit, she admitted to have had a love affair (as opposed to "some intimacy") with her husband and that her mother-in-law accepted the said affair. The respondent further goes on to say in the said cross-examination that even at the time of filing of the case under Section 498A, she had "moral commitment and love" towards her husband.

57. The above two versions do not go together, being mutually exclusive. Hence, the respondent's allegations against the appellant-husband lose all manner of credibility even on a bare reading of the evidence on record.

58. The respondent has argued that there was no issue framed on cruelty and as such, no decree could be granted on such count. The said submission is contrary to the records, to say the least. The formulation of issues in the impugned judgment is immediately preceded by a statement by the learned Trial Judge that the said issues were framed upon being recast *at the time of formulation of judgment,* apparently for proper adjudication of the suit. The original issues framed on January 28, 2011 include the issue as to whether the plaintiff suffered cruelty in the hands of his wife and whether he was deserted by his wife without any sufficient cause. Thus, the recast issues were formulated by the learned Trial Judge himself only at the time of passing the judgment whereas prior thereto, the parties had led extensive evidence and argued the case on the original issues framed, which include an issue

on cruelty. Hence, such contention of the respondent is misleading, as both parties had fully addressed all the issues including cruelty and it was only the recast formulation of issues in the judgment which does not specifically include cruelty but covers the general ground of entitlement of the plaintiff to get a decree for divorce as prayed for. Such recasting of issues was a matter of convenience for the learned Trial Judge but does not support the specious argument made by the respondent regarding issue of cruelty not being addressed. Nobody was taken by surprise, which is reflected in the arguments advanced and evidence led by the parties.

59. It is a well-settled principle of law that the appellate court ought not to substitute its own views for that of the trial court unless there is patent perversity, palpable error of law or fact in the impugned judgment and/or the learned trial Judge has entirely misconstrued the facts or law or resorted to conjecture.

60. Again, the impugned judgment and decree is tainted by perversity all through. The learned Trial Judge records that it is quite reasonable and sensible to appreciate that even in case of a trifling difference of opinion the parties can desert themselves voluntarily for “transactional period” but goes on to say that there must be “sensible role from the side of the husband to bridge the gap”. It is completely beyond reason as to why it would be the sacred duty of the husband alone to “bridge the gap” even if the parties have deserted themselves from each other’s company.

61. Strained relation was found by the Trial Court to existbetween the parties. It was further held that no doubt there is some plausibility in the argument that a decree of divorce will mitigate the problem forever. The learned Trial Judge even goes so far as to observe that no doubt, the wife is fond of making derogatory and ugly remarks against her husband which amounts to mental cruelty justifying a decree for divorce. She is held by the learned Trial Judge to be discourteous, rude and abusive in the matter of criticism. However, the learned Judge reads into the context the "lamentable condition of the lady" and its "negative impact on the traditional belief of our society".

62. Such findings are not based on any material evidence and may be the learned Judge's own convictions, but, as discussed above, the Supreme Court has been categorically holding that ideal couples would not come to the matrimonial court; it is the situation of the particular man and woman before the court which is to be considered and not Utopian notions of a perfect matrimonial life or vague "ideals" of Society.

63. Despite recording that therespondent-wife made derogatory and ugly remarks, those were diluted by labelling them as "the helpless lamentation of the lady urging for a blissful happy life" (whatever that means).

64. The learned Trial Judge discovered from the evidence that the husband had "hatred feelings" towards his wife and also a "capricious desire to keep him isolated from his wife". The language is flowery, but, with due respect, makes no sense whatsoever.

65. It does not stop there. There are more Easter eggs in the impugned judgment. The learned Trial Judge finds from the evidence that subsequent to the filing of the criminal case, the matrimonial relation between the parties was restored once again and they started residing unitedly in a house. This Court, despite searching from cover to cover, could not find an iota of evidence to that effect throughout the evidence of either of the parties and/or any supporting pleading in that regard. The learned Trial Judge found that the respondent-wife never had an intention to desert her husband, which is patently contrary to the evidence, as discussed above.

66. The crowning glory of the impugned judgment comes next. The learned Trial Judge, in a fit of conjecture, writes that generally a lady would not leave her husband's house unless she was tortured and that indeed to become an ideal husband, one has to possess a "judgmental attitude" to estimate the mental agony of his wife refraining himself from criticising, complaining and condemning her. So, the learned Trial Judge finds, from the stand-point of ethics, humiliation affecting the lady must be considered as cruelty with a deliberate intention. The learned Trial Judge also finds that the husband is guilty of "lustful attitude", which is not borne out by the evidence on record at all.

67. We are in a quandary whether such unfounded observations against the appellant tantamounts to defamation of the appellant-husband by the learned Trial Judge, but would stop short of saying so, since the learned Trial Judge was within his jurisdiction in recording

observations on the facts of the case. However, to say the least, the above allegations are utterly unfounded and baseless, thus, perverse.

68. The impugned judgment was an exercise in preponderance of surmise instead of preponderance of probabilities. We are surprised that the learned Trial Judge lists, in his own language, certain "auspicious principles, which could glorify the concept of a successful marriage in its optimum success". The sermon does not end there. He says that there should be "transcendental efforts"(!) to keep a perfect relation based on austerity of spouses for achieving purity of the relation. "Payment of honour to our traditional belief, sincere interest in cultivating fidelity and unmotivated and uninterrupted urge to completely satisfy each other" are found by the Judge to be a part of such auspicious principles.

69. The learned Trial Judge stands on a virtual edifice built on his perceptions of morality and delivers a lecture to the effect that one who propounds to continue a relation "being freely impatient or impulsive in action or reaction on spurious deterioration of all the virtues of her husband" cannot be said to be cruel to her husband.

70. There are several other such peculiar expressions which are a part of the impugned judgment which, we, with our limited knowledge of English, fail to understand, particularly in the context of the present case. The learned Trial Judge finds that it is "unpredictable that a lady would keep herself aloof" unless she was "double vulnerable in her life". So, he continues, he thinks that it is a capricious and whimsical desire

of the husband and such kind of "malfeasance and misfeasance" cannot be encouraged by the Court.

71. The *crème-de la crème* comes thereafter in the penultimate paragraph of the impugned judgment. The Trial Court holds that after evaluation and assessment of the evidence and materials and an "objective assessment of reality", there cannot be any "pinch of doubt" that the husband has sought for this kind of remedy out of his "erotic passion" and that is why his prayer for divorce is refused and that indeed, this problem is a sequence of his "incorrigible attitude".

72. The learned Trial Judge then says that"realistically speaking, the mind of the lady has been mutilated yet she does not wish to relinquish her dream, the feeling of love to her husband, and till now she has perceived that her husband will come to fetch her".

73. The commendable chivalry of the learned Trial Judge is appreciated, but his judgment is not. The entire judgment is tainted with perversity and conjecture and the learned Trial Judge's personal views of matrimonial life, without adverting at all to the particular man and woman before the court, as highlighted in *A. Jayachandra (supra)*, cited by the respondent-wife herself, relying on *N.G. Dastane (Dr) v. S. Dastane* reported at *(1975) 2 SCC 326*. The Supreme Court, in the said cases, underlined the proposition that the courts do not have to deal with ideal husbands and ideal wives but with the particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to the matrimonial court.

74. Thus, the impugned judgment suffers from perversity (being contrary to the evidence) and errors of law and fact and is based primarily on conjecture and as such, cannot but be set aside.

75. Upon a thorough perusal and appreciation of the evidence, where the learned Trial Judge was lacking, we find that a sufficiently strong case of mental cruelty has been made out by the appellant-husband against the respondent-wife to justify the grant of divorce on such ground.

76. Accordingly, F.A. No.1 of 2022 is allowed, thereby setting aside the judgment and decree dated September 4, 2017 passed by the learned Additional District & Sessions Judge, First Court at Sealdah, District: South 24 Parganas in Matrimonial Suit No.260 of 2008 and decreeing the divorce suit filed by the husband/appellant, granting a divorce decree to the appellant/husband against the respondent/wife on the ground of cruelty, thereby severing the marriage between the two.

77. There will be no order as to costs.

78. A formal decree may be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)