

ORDER

Arvind Savant, J.

1. This appeal is by the original petitioner-husband against the judgment and decree dated 15th March, 1993 passed by the learned Principal Judge, Family Court, Bombay, in M. J. Petition No. A-877 of 1991. The husband had filed the petition for divorce mainly on two grounds, viz. :--

(i) that he was treated by the respondent-wife with cruelty after the solemnisation of the marriage, as contemplated by Cl.(ia) of sub-sec. (1) of S. 13 of the Hindu Marriage Act, 1955; and

(ii) that the respondent-wife had deserted him for a continuous period of not less than two years immediately preceding the presentation of the petition, as contemplated by Cl. (ib) of sub-sec. (1) of S. 13 of the said Act.

Another ground on which relief was sought was under Cl. (a) of sub-section (1) of S. 13 of the Act contending that the marriage was not consummated. However, this contention has not been pressed before us. Under the impugned-judgment, the husband's petition has been dismissed with costs. The wife's counter-claim in respect of certain ornaments, which she claimed as her streedhan property, has been decreed fully to the tune of Rs. 1,15,415 and the husband has been ordered to pay Rs. 1200/- per month to the wife by way of maintenance. It is this decree which has been challenged before us by the husband in the present Appeal. At the stage of admission of this Appeal, this Court directed the husband to deposit a sum of Rs. 40,000/- from out of the amount of Rs. 1,15,415/- decreed in favour of the wife. This was the condition on which stay of the decree was granted. The amount of maintenance was raised to Rs. 1500/- per month pending the Appeal.

2. We have heard Shri Gupte, the learned counsel for the husband, and the respondent-wife in person at great length during the last two weeks. When this matter was initially called out, we enquired with the spouses as to whether it was possible to reconcile their differences and start living together. After a brief adjournment, the parties expressed their inability to reconcile their differences. We had even asked Shri Gupte to act as a mediator and try to bring about a reconciliation between the spouses. However, after a day, he regretted his inability to bring about any reconciliation. When the matter was part-heard over the last week-end, we had again requested both the spouses to meet and try to reconcile their differences, but on resumption of the hearing this week, the parties again expressed their inability to reconcile their differences. Under the circumstances, we are left with no alternative, but to proceed with the matter and decide the same in accordance with law.

3. A few admitted facts may be stated as under:--

The husband Rajan is a Chartered Accountant. The wife Shobha was a B.Sc. with Mathematics when she married the appellant, but in June, 1988 she has passed her First LL.B. and in June, 1990 she has passed her Second LL.B. and she is now doing her Final Year LL.B. Course. The spouses were distantly related and their families had known each other before the marriage. They were engaged at the house of the wife at Bandra --Bombay -- on the 19th December, 1985. The marriage took place at Dombivili, near Bombay, on the 4th June, 1986. There is some unpleasantness suggested on account of the husband's failure to mention his academic qualifications in the Marriage Invitation Card which was being finalised in the month of May, 1986. This event led the wife and particularly, her father to doubt the appellant being a Chartered Accountant and his holding the requisite qualification. This is clear from the letter dated 15th May, 1986 at Exh. 58 written by the wife to the husband. In the said letter, the wife

specifically confessed that she had felt sorry for having questioned his educational qualification and argued with him on that point which had hurt him very much. However, that issue was resolved between the parties and we are not attaching any importance to this controversy, because what is required by S. 13(1)(ia) is that after solemnisation of the marriage, one spouse has. treated the other spouse with cruelty.

4. After the marriage at Bombay on the 4th June, 1986, the spouses immediately left for Pune where the husband lives and where the husband's family had arranged a reception on the 7th June, 1986. After attending the reception at Pune, both the spouses returned to Bombay on the 8th June, 1986 and stayed at the wife's father's place till the 14th June, 1986 i.e. to say for 6 days. On the 14th June, 1986, the spouses returned to Pune and stayed at the husband's house till 30th June, 1986, that is to say for about 10 days. On June 30, 1986 the spouses came to Bombay. The husband dropped the wife at her father's place and returned to Pune and the wife continued to stay with her father till the 13th July, 1986 when she returned to Pune. The spouses stayed at Pune from 13th July till 12th August, 1986. Certain letters have been exchanged during this period and certain events have occurred, to which we will make a reference at a later stage of this judgment. On the 12th August, 1986 the wife returned to Bombay and stayed with her father till 8th September, 1986, that is to say for a period of about 28 days. Some more letters have been exchanged during this period, of which we will say a little later. On the 8th September, 1986, the wife returned to Pune and stayed with the husband till 9th October, 1986, that is to say for about a month. On the 9th October, 1986, both of them came to Bombay. The husband dropped the wife at her father's place and returned to Pune. Admittedly, there has been no cohabitation after the 9th October, 1986.

5. Initially, the husband filed the petition for divorce in the Court of the Civil Judge, Senior Division, Pune, on July 30, 1987. However, on a petition being made to this Court, the Pune petition was transferred to the Family Court, Bombay, and was heard at Bombay. The written statement, Exh. 11, was filed on 24th March, 1988. While generally denying the allegations of "cruelty" made against her, in Para 6, the wife admitted that the husband was the only son of his parents, both of whom were recently operated and hospitalised. The mother was suffering from blood pressure and the father was operated thrice for peptic ulcer. She admitted that in preparing food for both of them, special care had to be taken. In Para 9 she admits that the fall from the motor-cycle at Pune on the 23rd July, 1986 was purely an accident. In Para 18 of the written statement while purporting to put up her own case, she contended that there was a demand for additional dowry and hence, she was being harassed. Though the allegation is bald, the pointer is towards the mother of the husband. The written statement was amended pursuant to the order passed on the 2nd July, 1992 and by a counter-claim lodged on the 6th July, 1992 the wife claimed her ornaments and articles worth Rupees 1,15,415.

6. At the outset, Shri Gupte, the learned counsel for the husband, has frankly stated that he was not pressing the husband's case for a decree on the ground of desertion, as contemplated by Cl. (ib) of S. 13(1). He was also not pressing his case on the ground of absence of consummation of marriage and hence, it is not necessary for us to refer to these aspects of the matter. Both sides confined their arguments to the question of the alleged cruelty after the solemnisation of the marriage. We will have, therefore, to examine the contentions of both sides only on the question as to whether the husband has made out a case that after the solemnisation of the marriage, the respondent-wife has treated him with cruelty.

7. It is now well-settled that though the word 'cruelty' has not been defined in the Hindu Marriage Act, 'cruelty' contemplated under Cl. (ia) of S. 13(1) neither attracts the old English doctrine of danger, nor the statutory limits embodied in the old Section 10(1)(b) of the Hindu Marriage Act. After the amendment of 1976, 'cruelty' contemplated by S. 13(1)(ia) is a conduct of such

type that the petitioner cannot reasonably be expected to live with the respondent or that it has become impossible for the spouses to live together. This is now clear in view of the recent decision of the Supreme Court in the case of N. Bhagat v. Mrs. D. Bhagat, reported in Judgment Today . On a review of the earlier Supreme Court decisions, right from the case of Dr. N. G. Dastane v. Mrs. S. Dastane, .

the Supreme Court has laid down the legal position which now obtains after the amendment of 1976 to the Hindu Marriage Act. In Para 17 of the judgment in Bhagat's case , the Supreme Court has observed, thus, at page 437 (of JT (SC)) : (at p. 717 of AIR):--

"17. Mental cruelty in S. 13(1)(ia) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made".

Shri Gupte also invited our attention to the earlier Full Bench decision of this Court in the case of Dr. Kesharao Krishnaji Londhe v. Mrs Nisha Londhe , where a similar view

was taken. However, in view of the ratio of the Supreme Court decision reproduced above, it is not necessary for us to refer to any more decisions on the point.

8. Shri Gupte then invited our attention to the fact that though the petition was filed on July 30, 1987, it is well-settled in matrimonial law that while considering such a case, the events subsequent to the filing of the petition have also to be taken into account. He has contended that the conduct of the parties even subsequent to the filing of the petition, the letters exchanged between the parties subsequent to the filing of the petition, the pleas taken in the written statement are all matters which have to be taken into account while considering a case under S. 13(1)(ia). In support of this contention, our attention has been invited to the following decisions :- -

(i) Dr. N. G. Dastane v. Mrs. S. Dastane, . Reliance has been placed on the observations in para 35, at page 1941, para 63, at page 1547, para 71 at page 1548 and para 73, at page 1549 in support of the contention that the subsequent conduct of the spouses is relevant while considering the case under S. 13(1)(ia) of the Hindu Marriage Act.

(ii) Parihar (Priti) v. Parihar (Kailash Singh) . Reliance has been placed on the observations in para 28 at page 152 of the Report, where relying on the earlier decisions of the Rajasthan High Court, reported in

and , it has been observed that in moulding a

relief, even the appellate Court can take into account the subsequent events and facts occurring after the passing of the decree by the trial Court. The Rajasthan High Court took into account subsequent events for granting relief

in the suit on the principle that the relief can be suitably moulded in view of the subsequent conduct of the parties;

(iii) Smt. Nirmala Manohar Jagesha v. Manohar Shivram Jagesha, reported in . Reliance was placed on the summary of the judgment appearing in para 31 onwards at page 272 where the allegations made by the husband in the petition were held to be not sufficient for the purpose of granting a decree for divorce on the ground of cruelty. But since the wife had made wild and baseless allegation of lack of manliness and of impotency of the husband in the written statement, without any evidence in support of the said allegation, it was held that making of such wild and baseless allegation amounted to cruelty and the relief could be '*' granted on account of such conduct on the part of the wife.

(iv) Finally, Shri Gupte invited our attention to a recent decision of the Supreme Court in the case of V. Bhagat v. Mrs. D. Bhagat, . The Supreme Court was considering the

question in the context of the allegations made by the wife in her written statement. Though the wife was merely defending herself against what, according to her, were totally unfounded allegations against her, the Supreme Court observed that it was not necessary for her to go beyond that and allege that the petitioner-husband was a mental "patient and that he was not a normal person; that he required psychological treatment to restore his mental health; that he was suffering from paranoid disorder and menial hallucination and, to crown it all, to allege that he and his family members were a bunch of lunatics. These allegations coupled with the other factors, which are summarised in the said judgment, were held sufficient to amount to cruelty so as to entitle the husband to a decree for divorce.

9. In the light of the above decisions, Shri Gupte has contended at the outset that while considering the conduct of the respondent after the solemnisation of the marriage, even the events subsequent to the filing of the petition on July 30, 1987 will also have to be considered. In this view of the matter, the conduct of the respondent can be broadly divided into three phases:--

PHASE I : 4th June 1986 till 9th October, 1986 when the parties ceased to cohabit;

PHASE II : 9th October, 1986 till the filing of the petition viz. 30th July, 1987;

PHASE III : after 30th July, 1987.

Bearing this broad classification in mind, it is alleged that the respondent is guilty of the following acts of cruelty :--

PHASE I : (From 4th June, 1986 to 9th October, 1986)

(i) 8th June, 1986 :

It is alleged that when the spouses celebrated their first wedding night at Bombay, the wife told the husband that he was having an ugly face and that persons with an ugly face have also an ugly mind. The evidence on this point is only the oral evidence of the husband at Exh. 50;

(ii) The husband's parents were advanced in age and on account of surgical operations and ailments which they had suffered, their diets were supposed to be free from salt and chilly. The wife did not comply with these instructions and used to put excess salt and chilly in their diets. On this point also, the main evidence is the oral evidence of the two spouses at Exh. 50 and Exh. 98 respectively read with the letter Exh. 51 dated 7th July, 1986 by the wife to

the husband;

(iii) 23rd July. 1986:

When the spouses were having a ride on the husband's motor-cycle at Pune, the wife had a fall from the pillion seat of the motor-cycle. There are conflicting versions about this incident. The husband in his evidence at Exh. 50 in Para 12 has described this as a sheer accident. The wife in her written statement, which was filed on the 24th of March, 1988 at Exhibit 11 has also described it as an accident in Para

9. However, in her deposition at Exh. 98 in Para 10, the wife has given it a different colour describing it as a consequence of the threat given by the husband that he would divorce her. In her letter at Exhibit 34 dated 11th December, 1986 the wife has stated that she jumped from the motor-cycle when she heard of the threat of divorce. What is still surprising is the highly exaggerated version of this incident of the accidental fall from the pillion seat of a motor-cycle in the complaint dated 17th February, 1987 filed by the wife's paternal uncle Dr. M.C. Sheth -- R.W.I. This complaint is at Exhibit 118 and the subject of the complaint is described as "A bride saved from committing suicide by the parents due to harassment by in-laws and collaborators". It is addressed to the Commissioner of Police and Chairman, Mahila Suraksha Samiti, Greater Bombay. After enlisting 17 items against the husband, it is stated as under in respect of the accidental fall dated 23rd July, 1986--

"One day the bride was taken forcibly on the motor-cycle and she had thrown out from it and God saved her life".

PHASE -- II

10. The instances of alleged cruelty in PHASE-II i.e. between 9-10-1986 and 30-7-1987 are as under:--

(iv) On 7th February, 1987, the wife comes to Pune along with her parents and other relatives and visits the house of the husband. The husband is asked by his in-laws to go to Bombay for staying with the in-laws. The father and the uncle of the wife abuse and try to assault the husband, who was rescued by his relatives. The evidence in this behalf is the oral evidence of the husband at Exh. 50/ Para

17. There is also a notice given by Shri Karnik, Advocate, of Pune on the 16th February, 1987 to the father of the wife. It is marked both Exh. 75 and Exh. 95. Para 2 of the said Notice deals with the incident of 17th February, 1987 when the wife is alleged to have come with her parents and relatives to her husband's place in Pune, where the husband was abused and insulted;

(v) On 17-2-1987 the paternal uncle of the wife viz. R. W. 3 Dr. Manjunath Gopal Sheth filed a complaint -- Exh. 118 against the husband to the Commissioner of Police, Greater Bombay, alleging several acts of harassment to the wife. The husband was called by the Police at Bombay from Pune and had obtained anticipatory bail. However, on interrogation, the Police did not arrest the husband.

PHASE-III

11. The instances of alleged cruelty in PHASE-III i.e. after 30th July, 1987 are as under:--

(vi) On 26-10-1987 the father of the wife files a complaint under Section 498A of the Indian Penal Code against the husband and the member of his family. The said complaint is at Exh. 146. The statement of the respondent-wife has been recorded in support of the said complaint. The said statement dated 26-10-1987

is at Exh. 147. Both of them alleged that there were demands of additional dowry and since the said demands were not being complied with, the wife was being harassed. Pursuant to this complaint, the husband, his father and his two brothers-in-law viz. the husbands of his two sisters were arrested and detained in police custody for two days. The two brothers-in-law are (i) Bhalchandra Anvekar -- husband of Nutan; and (ii) Prakash Raikar -- husband of Neelam. The husband's mother his two sisters Nutan and Neelam are also roped in as accused in this criminal case, but the three ladies were not arrested and only the four male members were arrested and kept in the police custody for two days. The news of the arrest of the husband and the members of his family was flashed in the local newspaper at Pune soon after the arrest. This is deposed to by the husband in para 21 of his evidence at Exh. 50. A perusal of that complaint dated 26th Oct. 1987 by the wife's father and the statement of the wife shows that the main grievance voiced by them is about the alleged demand for additional dowry by the parents of the husband, resulting in the relations between the spouses being strained. We will point out from the correspondence on record that this story about the alleged demand for additional dowry is not at all supported by the correspondence during the relevant period. Indeed, there is not even a whisper of any demand for additional dowry, much less of any harassment of the wife by the husband; his parents or other relations.

(vii) On 2nd April 1990, at the Churchgate Railway Station, the wife had fall from the moving train, soon after the train left Churchgate Railway Station at about 11.00 A.M., the wife had a fall on the platform and claims to have seen the husband on the platform where she fell. She was travelling in a Ladies Compartment. Her apprehension is that her husband and his brother-in-law Praksah Raikar must have hired some one to push her out of the train when it just started moving from the Churchgate Railway Station. In respect of this incident of fall at the Churchgate Railway Station, statement of the mother of the wife was recorded on the 2nd April 1990, which is at Exh. 70 and the wife's statement is at Exh. 71. This was pursuant to the report filed by the Railway Police authorities. Later on, the father of the wife filed a complaint to the Deputy Commissioner of Police (Western Railway), Bombay, on the 9th April 1990, which is at Exh. 72. The father states that it was an attempt by the husband Rajan and his brother-in-law Prakash Raikar, who had hired some "hoodlings" to throw her oat of the moving train. On this complaint being filed by the father of the wife on 9th Oct. 1990, the wife's statement was recorded at Exh. 72A on 4th May, 1990. In Exh. 72A she states that she had come to the High Court to meet the learned Chief Justice for getting her matter fixed on a priority basis and after meeting the Personal-Secretary to the learned Chief Justice, she came to the Churchgate Railway Station, She always travelled in the Ladies Compartment and when the train was moving out of the Churchgate Railway Station, she was pushed out of the train. When she fell on the platform of the Churchagte Railway Station, she saw her husband standing on the platform. She, therefore, supspected her husband and his brother-in-law Prakash Raikar for being responsible for the said incident. The father's statement recorded at Exh. 72B on the 4th May, 1990 is again to the same effect where he implicates both the husband and his brother-in-law Prakash Raikar;

(viii) There is a letter dated 14-2-1992, which is at Exh. 96, written by the wife to the husband followed by the letter dated 17-7-1992. In the letter at Exh. 96 dated 14-2-1992 the wife has made a grievance of the demand for additional dowry. In Para 2 of the letter, the wife suspects the relations between her mother-in-law and Prakash Raikar. She categorically suggests that there was some dirty relation between her mother-in-law and Prakash Raikar viz. the son-in-law of the mother of the husband. In the following Para, she calls Prakash Raikar as a 'bastard' and it would be appropriate to quote some of the exact words from the said letter at Exhibit 96:

"Mr. Rajan tell that Bastard Mr. Prakash Raiykar that all women on earth are not fallen cheap like his second hand wife Mrs. Nilam (who was already used by somebody prior to his marriage). He thinks that all are third class

charactered like himself and his wife, otherwise Bastard would not have defamed me by spreading false rumours about me amongst my relatives/friends....."

"It seems your mother too had affairs with her own brother-in-law (sister's husband) i.e. Mr. Vasant Revankar and so they got married even against the desire of your grand parents. Do you know your mother is the second wife of your father who married his first wife's sister itself."

"..... I would have never got married to you if only I knew that are from such a third class and dirty family. I wonder what makes you feel so proud about your dirty/ unchaste sisters / mother? Is it their valueless white skin or the flesh an their body. Do you know even a prostitute woman is beautiful and good looking, she too makes money and has luxuries....."

"..... May I know how many girls you have taken for a ride before and after your marriage."

"..... Also I know that even to day your mother both sisters are capable of pocketing any number of man by showing off their white skin and flesh and that is one of the reason why you take your sisters with you every-where"

"..... What a shame for you to call yourself their brother. Perhaps you, your mother/ sisters wanted me to earn money by sleeping with some one else."

(Underlining is ours)

12. The above eight circumstances/ incidents emerge from the evidence on record. The evidence consists of the deposition of the husband Rajan at Exh. 50. He is the only witness examined in support of the Petition for divorce. The wife has examined herself at Exhibit 98 and has examined six other witnesses in support of her case. R.W. 2 is the maternal uncle of the wife of Manjuriath Gajanan Vernekar at Exh. 131. He has been examined on the question of the settlement of the marriage and the terms thereof. It is suggested that the initial demand was for 25 tolas of gold and Rs. 10,000/- cash as dowry, but after negotiations the wife's father had agreed to give 15 tolas of gold ornaments and Rs. 10,000/- in cash. R.W. 3 is the wife's paternal uncle Dr. Manjunath Gopal Sheth at Exh. 132. He was the one who had also gone to the husband's residence at Pune on the 7th Feb. 1987 and after the alleged abuses and insult of the husband, he is the one who has filed the complaint at Exh. 118 to the Commissioner of Police, and Chairman, Mahila Suraksha Samiti, Greater Bombay.

13. The next witness is R.W. 4 Gajanan Venkatrao Vernekar -- a distant relation of the spouses, who, as stated earlier, were distantly related. He talks of the settlement of the marriage on the understanding that the wife's father would give 15 tolas of gold ornaments and Rs. 10,000/- cash. He is a goldsmith by profession. Both the spouses belong to the said community of Goldsmith -- "Sonars". In fact, this witness Gajanan Vernekar has himself prepared the ornaments weighing 15 tolas. R.W. 5 is Smt. Ahilya Rangnekar, a social worker, who acted as a mediator and had even accompanied the respondent's paternal uncle Dr. M.G. Seth to the Commissioner of Police, when the said Dr. M.G. Sheth had lodged his complaint at Exh. 116. Smt. Rangnekar's evidence is at Exh. 135. She claims to have known the wife and tried to bring about the reconciliation by approaching the Commissioner of Police. R.W. 6 is Mohan Shambhu Vernekar at Exh. 139. He is the husband of the sister of the mother of the wife. He speaks of the additional demands of dowry and the incident of 7th Feb. 1987 when all of them had gone to the husband's residence at Pune where the husband was absued and insulted. He also talks of the incident of 2nd April, 1990 when the wife had a fall from the train at the Churchagate Railway Station.

14. The last witness examined on behalf of the wife is R.W. 7 her father Vyankatesh Gopal Seth at Exh. 140. He has deposed to almost all the details of

the entire case that was sought to be made out by the wife. His evidence will have to be dealt with in details.

15. Apart from this oral evidence, there are a number of letters exchanged between the spouses. From the evidence on record, the stay of the spouses between 4th June, 1986 -- the date of the marriage and 9th Oct. 1986, after which there has been no cohabitation between the spouses, can be crystallised as under:--

(i) from 4th June to 8th June 1986 -- 5 days at the husband's house at Pune;

(ii) between 8th June, to 14th June -- 6 days at the house of the parents, at Bombay;

(iii) between 14th June and 30th June-- 15 days at the husband's place, at Pune;

(iv) between 30th June and 30th July 1986 -- when the wife alone stayed at Bombay with her parents and the husband returned to Pune after dropping her at Bombay immediately after 30th June 1986;

(v) between 30th July 1986 and 12th August 1986 at the husband's place at Pune for about 13 days;

(vi) The wife's stay at her parents' place at Bombay during 12th August to 8th Sept. 1986, for 28 days;

(vii) between 8th Sept. and 9th Oct. 1986 at the husband's house at Pune, for 31 days.

16. It will thus appear from the evidence on record that after the wedding at Dombivili on the 4th June 1986, the spouses left Dombivili on the 4th June itself and reached Pune the same day. The reception at Pune was to be on the 7th June, 1986. After attending the reception at Pune on the 7th June, 1986, the spouses returned to Bombay on the 8th June 1986 and stayed for six days at the house of the parents of the wife. They returned to Pune on the 14th June 1986 and stayed there till the end of the month of June 1986.

17. From the material that has been placed on record, the first letter by the wife to the husband is at Exh. 51 dated 7th July 1986. There is no whisper of any demand of additional dowry, much less of any harassment or ill-treatment. It is true that the wife has conveyed one fact clearly and that is "Please do take your own decisions." She made it clear that she would not tolerate the interference of her in-laws. In this behalf, it cannot be forgotten that the husband is the only son of his parents, both of whom are having some ailment or the other, necessitating a special diet. Both of them have undergone surgery. The second letter during this relevant period is by both the spouses to the parents of the wife, written on the 16th July 1986 which is at Exh.

11. The husband assures the wife's parents that they need not worry about their daughter and that he was taking due care of her and that she was trying to adjust herself. The wife also mentions that there was a change for the better and her mother-in-law was good to her now. It appears that there was some minor incident between the son-in-law viz. the husband and his mother-in-law, but the parties had forgotten the same and forgiven.

18. Then comes the letter dated 16th July 1986 which has not been exhibited but which is at page 210 of the compilation submitted by the husband. This is the letter from the sister of the wife viz. Sangeeta. In fact, both the sisters have written this letter to Shobha, expressing some dissatisfaction at the last brief visit of the couple to Bombay. Then comes the letter dated 16th July 1986

at Exhibit 53 sent by the wife's mother to her. She categorically praises the husband and congratulates her daughter for getting a good husband. She tells her that she need not get bored and if she so felt, she could join M.Sc. As and when she gets children, she would not get bored. She suggested Baba's books for reading, meaning thereby Saibaba's books. There is no whisper of any demand of additional dowry, much less of any harassment or ill-treatment.

19. Then we have the letter dated 19th July 1986 at Exh. 52 by the wife's father to Rajan. He sends him the cutting of the advertisement in the Times of India for a job in Bombay. Immediately, both the spouses write back to the wife's father thanking him for sending the cutting, but conveying that the husband had changed his plans, It appears that by this time the husband had secured some assignments in Pune and, therefore, was not interested in accepting the suggestion of his father-in-law that he should shift to Bombay. This is followed by the letter dated 18th August, 1986 at Exh. 106. This is by the husband to the wife. He explains how he was busy in Poona, making it difficult for him to visit Bombay often. Even then, they had planned to meet in Bombay on the 27th August 1986. This is followed by the letter dated 21st August, 1986 at Exhibit 55 by the wife to the husband. She conveys her apology of having hurt him when the spouses were at Pune, but begs to be forgiven. She then says that she was the most lucky woman for having such a loving and understanding husband and that they were made for each other. This letter was written when the wife was alone at Bombay with her parents. There is no whisper of any demand of additional dowry or of any unpleasant incident in this letter.

20. Then we have the letter dated 21st August, 1986 at Exh. 107 by the husband to the wife. He only conveys to her that he was somewhat busy at Pune. There are some other casual letters exchanged between the spouses in between but it is not necessary to make any reference to the said casual letters.

21. In the letter dated 29th August, 1986 at Exh. 109 written by the husband to the wife, the husband advises the wife to take proper care of her health. He sends some medicines and ointment for her eyes. The letter shows concern on the part of the husband for the wife and in particular for her health. Then comes the letter dated 1st Sept. 1986 by the wife to the husband. This is at Exh. 56. The wife acknowledges the love and care showered on her by the husband and the fact that the husband had done a lot to keep her happy. She expresses a hope of their meeting soon. The letter also acknowledges the fact that the couple would be soon completing three months of married life and that she had really enjoyed the said period and that she would never forget the same.

22. We have a letter at Exh. 115 dated 30th Sept. 1986. This is by the wife's father to her. The father expresses concern at the absence of any correspondence from his daughter. This letter of 30th Sept. 1986 is followed by another letter written on the very next date viz, 1st Oct. 1986 at Exh. 116 where again the father expresses concern at the absence of any letter from his daughter. He does suggest that the couple should come to Bombay for celebrating Dassera which was to fall on the 12th October, 1986. Again on 6th Oct, 1986 the father sent one more letter at Exh. 117 reiterating his concern for not having received any letter. Thus, during the span of a week, from Sept. 30, 1986 to Oct. 6, three letters -- Exhs. 115, 116 and 117 have been sent by the father. It is relevant to note that there is nothing to suggest the demand of any additional dowry or of any ill-treatment or harassment of the wife.

23. Thus, it would be seen from the above correspondence exchanged between the parties that during the First Phase of 4th June 1986 to 9th Oct. 1986, despite several letters having been exchanged between the spouses and their parents there is no suggestion or even a whisper of a demand for additional dowry, much less of any ill-treatment or harassment to the wife. It is in this background that one has to appreciate the oral evidence that has been led.

24. As stated earlier, the main evidence consists of the evidence of the two

spouses and of the father of the wife. Coming to the husband's evidence first at Exh. 50, it is true that he has deposed to the incident of 8th June 1986 when his wife is alleged to have expressed dissatisfaction at his ugly face. We are not attaching much importance to this part of the evidence of the husband. Even assuming that this evidence were to be believed, we do not think that this can amount to an incident of cruelty, as understood in the matrimonial law. Similarly, the complaint of the husband about the wife not preparing proper food for his ailing parents, does not impress us much on the question of alleged cruelty. It, however, does appear that as far as the incident of 23rd July 1986 is concerned, the wife and her relatives have tried to make undue advantage of an ordinary fall from the motor-cycle. In particular, the wife's paternal uncle -- R.W. 3 Manjunath Seth has painted this incident too dark in the context of the events narrated by him in his complaint -- Exh. 118. The incident has been described as an incident of harassment, leading the wife to attempt to commit suicide. This is not even borne out by the evidence of the wife at Exh. 98. Her written statement at Exh. 11, Para 9 categorically describes it as an accident. In her deposition at Exh. 98/ Para 10 she makes an improvement upon it and tries to connect it with the alleged threat of divorce given by the husband while riding his motor-cycle. She says that because of the threat of divorce, she was upset and "fell down". She has tried to reiterate this version in her letter at Exh. 54 dated 11th Dec. 1986 where there is a further improvement that pursuant to the threat of divorce, she "jumped" from the motor-cycle. As stated above, to top all this, her uncle Dr. Sheth, R.W. 3, has given highly exaggerated version of the incident in his complaint at Exh. 118.

25. In the second phase, let us consider the incident of 7th Feb. 1987 when the wife, her parents and relatives went to Pune to talk to the husband and his parents, at the end of which they abused and insulted the husband and even tried to assault him. The husband has deposed to this in Para 17 of his deposition at Exh. 50, which is supported by the Notice given by Advocate Karnik, which is at Exhibit 75 dated 16th Feb. 1987. Thus, within 10 days of the incident, the husband has conveyed his version through this Notice at Exh. 75, dated 16th Feb. 1987. Immediately after this, on the 17th Feb. 1987, the wife's uncle Dr. Sheth has lodged the complaint at Exh. 118. It is clear from the evidence that the husband had to apply for anticipatory bail. These are the principal incidents deposed to by the husband in his evidence as far as the first two Phases, that is to say (i) the period between 4th June and 9th Oct. 1986 and (ii) between 9-10-1986 and 30-7-1987 till the filing of the petition for divorce.

26. The next incident is in the Third Phase after the filing of the Petition on 30th July 1987. On 26th Oct. 1987 the father of the wife filed a complaint under Section 498A of the Indian Penal Code. The husband, his father and his two brothers-in-law were arrested and kept in police custody for two days. Exh. 146 is the statement of the father, which alleges demand of additional dowry and harassment of the wife. The statement of the wife Shobha was also recorded on 26th Oct. 1987, which is at Exh. 147. She has also referred to the alleged demand of additional dowry and the harassment to her. There is a reference to a prior incident on 12th August, 1986 at Pune when the wife was staying at Pune. However, if one peruses the letters at Exhs. 115, 116 and 117, there is no reference to this incident of 12th August, 1986. All these three letters, from Exhibits 115 to 117, are written by the father of the wife to her on Sept. 30, 1986, Oct. 1, 1986 and Oct. 6, 1986. There is no controversy before us that apart from the four male members mentioned above viz. the husband, his father and his two brothers-in-law, his mother and his two sisters are also roped in as accused in the said case under Section 498A, T.P.C. However, the ladies were not arrested and only the male members were arrested. The husband has deposed at Exh. 50/ Para 21 that the news of their arrest was flashed in the daily newspaper at Pune, resulting in great humiliation for the husband and all the members of his family.

27. We have then, the incident of 2nd April, 1990 when the wife had a fall from the train when it was about to move out of the Churchgate Railway Station.

The statements recorded on the 2nd April, 1990 are of the mother of the wife Smt. Kusum Sheth and of the wife herself, which do not implicate the husband. These statements are at Exh. 70 and Exh. 71 respectively. However, the father of the wife filed a complaint on the 9th April, 1990 which is at Exh. 72 to the Deputy Commissioner of Police, Western Railway, Bombay, implicating the husband Rajan and his brother-in-law Prakash Raikar as being responsible for this fall. It is suggested in the statement of the wife herself at Exh. 72A, recorded on the 4th May, 1990, that when the fall occurred she saw her husband on the platform and it is the husband and his brother-in-law Prakash Raikar who were responsible for the fall. It is difficult to accept this version of the respondent-wife. She was travelling in a Ladies Compartment of the train. The train was about to move out of the Churchgate Railway Station. It is not unusual that one may fall out of a moving train. However, it is a farfetched suggestion that there must have been somebody in the Ladies Compartment, who has hired by the husband to push the wife out of a moving train and that too on the platform itself, before the train had gathered sufficient momentum. It is true that the wife has suffered injuries in respect of which the Medical Certificate of the St. George's Hospital is on record. The said injuries are possible by a fall like the one the wife had on the 2nd April, 1990.

28. The next incident of cruelty alleged by the husband is the writing of the letter dated 14th Feb. 1992 by the wife, which is at Exh. 96. We have reproduced some of the extracts from this letter. The letter casts serious aspersions on the character and chastity of the mother of the husband and his two married sisters. The wife has indulged in making wild and baseless allegations. She has gone to the extent of attributing some dirty relations between the husband's mother and her son-in-law Prakash Raikar. She has alleged that Prakash Raikar's wife (Neelima -- sister of the husband) was a second-hand wife. She has called Prakash Raikar a 'bastard' and an impotent person. The wife has gone to the extent of attributing an affair between the mother of the husband -- Mangala -- and her former brother-in-law viz. Vasantrao. Incidentally, it may be mentioned that the husband's father Vasantrao had earlier married Vithabai and on her death, Vasantrao married Vithabai's younger sister Mangala. Rajan is the son from Mangala. Shobha has clearly attributed unchastity to the mother and the two married sisters of her husband and has mentioned that even a prostitute could be beautiful and good looking. This is the comment on the mother and the sisters of the husband in the context in which reference is made in the relevant portion of Exh. 96. The wife has continued to make reckless and wild allegations against the mother and the two sisters as being capable of pocketing any number of men by showing off their white skin and flesh. The wife did not stop at sending the letter at Exh. 96 on 14th Feb. 1992. This is followed by another letter dated 17th July, 1992 which has not been exhibited, but which is at page 267 of the Compilation submitted by the husband in this Court. The wife has said that every word of her letter dated 14-2-1992 at Exh. 96 was a bitter truth. It is true that she has tried to justify her saying this on the ground that the husband has told the Judge that the wife was writing dirty letters to him. We are unable to find any justification for the wife making such wild, reckless and baseless allegations against not only Prakash Raikar, but the mother and two married sisters of her husband Rajan.

29. There is one more letter, dated 29th March 1992, at Exh. 73 written by the wife to the husband. The wife has made a similar reckless allegation against the husband also. In one breath she tried to recall the pleasant times they had spent during the nights and questioned him whether he remembered those nights. But in the next breath, she questioned him as to whether he had purchased another woman for his bed. There is no basis for making such wild and baseless allegations in this letter -- Exhibit 73 dated 29th March 1992.

30. In the above background of the various letters and incidents of alleged cruelty, let us examine the wife's evidence seeking to justify her own conduct. In her depositions at Exhibit 98, she has stated that when the marriage was settled there was initially a demand for 25 tolas of gold ornaments and Rs.

10,000/- cash. But it was ultimately settled at 15 tolas of gold ornaments and Rs. 10,000/- cash, which was complied by her father. She then talks of the photographs taken at the time of the engagement ceremony on the 19th Dec. 1985 and complains that the photographs were taken for the purpose of blackmailing her. The photographs are absolutely normal photographs taken at a family function like the engagement ceremony. There is nothing in the said photographs, which could be said to be obscene or capable of being used for blackmailing the wife, as suggested. She has then blamed her two sisters-in-law and their husbands for disturbing her matrimonial life. To a simple fall from the pillion seat of the motor-cycle on 23rd July, 1986, at Pune, she has given a different colour putting the blame on the husband. She says that the husband gave her a threat while he was riding the motor-cycle and on hearing the said threat of divorce, she fell down. As stated earlier, this is clearly inconsistent with her specific plea in the written statement where in Para 9 she categorically admits that the incident of fall from the motor-cycle on the 23rd July 1986 was an accident.

31. Further, in her evidence, the wife has given an exaggerated version of the incident alleged to have occurred on the 11th August 1986, pursuant to which her father visited Pune on 12th August 1986 when she was supposed to be unconscious. There is also a complaint of some white unprescribed tablets which were being given to the wife by the husband at the instance of his father. Then, we have the incident of 7th Feb. 1987 when the wife went to the husband's place along with her parents and other relatives when the husband was abused and insulted by the father of the wife and his brother R.W. 3 Dr. M.G. Sheth. It is true that while the parties met in the office of the Social Security Cell at Bombay, the husband is alleged to have lost his temper as a result of exchange of words between the spouses and slapped the wife, for which he was admonished under Section 110 of the Bombay Police Act, 1951. The wife then refers to the complaint that was filed on the 26th Oct. 1987 under Section 498A of the Indian Penal Code, pursuant to which the four male members were arrested and kept in custody for two days. There is a suggestion that she was being branded as schizophrenic and that Prakash Raikar had gone to the extent of casting aspersions on her chastity. The wife has, then, deposed to the alleged torture by the mother-in-law, both physical and mental. Beyond making a bald allegation, there are no details of the alleged incidents of either physical torture or mental torture by the mother-in-law. In her cross-examination, in the very first sentence in Para 25, the wife admits that the husband never harmed her, but his parents, sisters and brothers-in-law were torturing her. There are no details of any incident of the alleged torture by any of these persons. Admittedly, the husband has been exonerated from these allegations. The demand for additional dowry is not supported by the correspondence during the relevant period, which we have discussed above. She then complains of the photographs being taken at the engagement ceremony for blackmailing. She admits in Para 27 that the photographs were not obscene. She then admits in Para 28 that the fall from the motor-cycle was "an accident, pure and simple". She also admits that she did not know the name of the tablets which were being given by the husband and says that she had no reason to doubt the husband's intentions.

32. Referring to the incident of 2nd April, 1990 at the Churchgate Railway Station, the wife denies in Para 32 that she jumped out of the train because she was not in a proper mental state. In the next breath, in Para 33, she says that she is not certain whether her husband was on the platform. It is not possible to accept these inconsistent, imaginary and after-thought versions given by the wife in her cross-examination. While we find that the husband has given a consistent version in respect of the incidents of cruelty, the wife's explanation of the alleged demand of additional dowry is not supported by the correspondence during the relevant period. The wife's involving the husband and attributing motives to him for a simple fall from the motor-cycle on 23rd July 1986 is wholly unjustified. Her involving the husband in the incident of 2nd April, 1990 is totally imaginary.

33. The other witnesses examined by the wife can be disposed of briefly. R.W. 2 is her maternal uncle Manjunath Vernekar. He only talks of the marriage settlement, commencing with the demand for 25 tolas of gold ornaments and Rs. 10,000/- cash and the settlement at 15 tolas of gold ornaments and Rupees 10,000/- cash. He is not sure of the demand of additional dowry, when made, by whom and at what stage.

34. R.W. 3 Dr. Manjunath Sheth is the paternal uncle of the wife. He is the one who had gone to Pune on 7th Feb. 1-987. He has given a highly exaggerated version in his complaint at Exh. 118, enlisting 17 items of alleged harassment and/or improper behaviour by the husband and the members of his family. We are of the view that this witness was not at all justified in blowing out of proportion, minor incidents of day to day wear and tear between the spouses.

35. It is also clear from the evidence that the wife's parents approached the Commissioner of Police, Bombay, with Smt. Ahilya Rangnekar -- R.W. 5 and it does appear to us that R.W. 3 Dr. Manjunath Sheth has taken undue advantage of this to make a thoroughly unjustified complaint against the husband and the members of his family. In his cross-examination, he has admitted that he had not visited the house of the husband any time either prior to or after the incident of 7th Feb. 1987. His evidence inspires little confidence in our mind.

36. R.W. 4-Gajanan Vernekar is a distant relative of the wife. He also deposes to the details of the 15 tolas of gold ornaments given to the wife at the time of her marriage and tries to depose to the demand of additional dowry. However, there are hardly any details deposed to so as to inspire confidence in the evidence of this witness.

37. R.W. 5 is Smt. Ahilya Rangnekar, the social worker, who tried to bring about reconciliation between the spouses, but did not succeed. Since a suggestion was made that the respondent-wife was suffering from schizophrenia, Smt. Rangnekar deposed that she had known the wife to be mentally sound and fit. She frankly stated that she had gone to the office of the Police Commissioner with the wife and her parents to bring about a reconciliation. She also deposes to the ornaments given to the wife being her streedhan property. There is no controversy before us about this aspect of the matter.

38. R.W. 6-Mohan Vernekar is another relative of the wife, who has deposed to the giving of 15 tolas of gold ornaments and Rs. 10,000/- cash, as also the demand for additional dowry, which has been deposed to in general terms without any details thereof. He is frank enough to admit that he learnt about the alleged harassment, if any, after the 9th Oct. 1986.

39. The last witness is R.W. 7, the father of the wife -- Vyankatesh Sheth. He has tried to depose to several facts and circumstances. Looking at the manner in which he has acted, we are inclined to observe that rather than showing a sense of maturity and sobriety, he has blown out of proportion several minor incidents which occur in day to day life. The incident of 11th August, 1986 has been exaggerated and the story of the wife being unconscious on 12th August 1986 is not supported by the letter dated 21st August 1986 at Exh. 55. Exhibit 55 is written by the wife to the husband, where she categorically says that when she was at Pune she had hurt the husband's feeling for which she expressed her sorrow and wanted to be forgiven. She confessed that she was "the most lucky woman for having such a loving and understanding husband". She felt that they were "purposely made for each other". They had forgiven their past and loved each other, says the wife in her letter -- Exh. 55. There is no whisper of the alleged ill-treatment of the 11th August, 1986 or the prolonged unconsciousness of 12th August, 1986 which her father now wants us to believe. The father then deposes that it was because of the demand for additional dowry that the son-in-law was not treating his daughter properly. He says that he was told by his daughter that she was physically and mentally tortured by everybody in the husband's family viz. the parents in-law, sisters of the husband and his

brothers-in-law. The allegation is totally vague and devoid of any particulars. He then says that husband Wanted to contract a second marriage saying that a girl who was Ph.D. was in contemplation. This made him approach D.C.P. Pawar at Pune on 7th Dec. 1986 and file a complaint against the husband and the members of his family.

40. In his cross-examination, the very first sentence which the father utters is significant. He says that "the petitioner is also involved in harassing the respondents." By this time, the witness had realised that he had not alleged any improper behaviour or harassment by the husband. He admits in Para 18 that his daughter never told him that she was not interested in staying at Pune in the matrimonial house. He further admits that he hoped that his daughter could stay happily with her husband since she had never complained about any ill-treatment given to her till the time she was deserted by the husband and the members of his family, meaning thereby till 9th Oct. 1986. He is frank enough to admit that though the husband was blaming the wife for the sorry impasse, the wife -- his daughter never told him anything about ill-treatment given to her till 9th Oct. 1986. He also admits that he did not learn about the motor-cycle incident till after 8 to 10 days of its occurrence on the 23rd July 1986. About the incident of 2nd April, 1990 at the Churchgate Railway Station, the father admits in the cross-examination that his daughter had not specifically told him as to who had pushed her out. But since she suspected the husband on seeing him on the platform, as she thought, he has mentioned his name in the complaint. Thus, the evidence of the father of the wife shows that it is full of inconsistent versions and improbabilities and does not inspire any confidence. As stated earlier, there was no complaint in the correspondence during the relevant period of any demand for additional dowry, much less of any harassment or ill-treatment. Though the father tried to depose to the demand for additional dowry and the harassment, he was cautious enough to attribute the same to somebody other than the husband. When confronted in the cross-examination he had to admit that the wife had never complained about any ill-treatment at the hands of the husband till 9th Oct. 1986, when the parties ceased to cohabit.

41. On appreciation of the oral evidence mentioned above, it is clear to us that the wife's complaint of demand for additional dowry and the consequent harassment or ill-treatment is not at all supported by the evidence on record. The oral evidence led by the wife is totally unsatisfactory and highly discrepant in material particulars. There are no details of the alleged demand for additional dowry. There are no incidents of either mental or physical torture even by the mother-in-law, who seems to be the main target of attack by the wife. Admittedly the wife's letters praises the husband's conduct, his showering of love on her, his forgiving her mistakes and his being made for her.

42. Thus on appreciation of the oral evidence that has been led by the wife, viewed in the light of the correspondence on record, particularly the letters written by the wife herself during the relevant period, it is not possible for us to accept the wife's story that there was either any demand of additional dowry or that there was any mental or physical torture of the wife while she was in Pune from 4th June 1986 to 9th Oct. 1986. As stated earlier, from the letter Exh. 51 dated 7th July, 1986 by the wife to the husband, all appeared to be well between the spouses. When both of them wrote to the wife's parents at Bombay on 16th July, 1986 at Exh. 111, the wife specifically admitted that the atmosphere in the house had changed for the better and that her mother-in-law was good to her. There is no suggestion of any demand for dowry much less of any ill-treatment. When the wife's mother wrote to her on 16th July 1986 at Exh. 53 she told her that she was lucky to get such a good husband and if she was getting bored, she will overcome the same when she had children. In fact, the mother contemplated sending her other two daughters Sandhya and Sangeeta to Pune. On 19th July 1986 at Exh. 52, the father even sent an advertisement from the 'Times of India' for a job for his son-in-law in Bombay. The wife's letter dated 21st August, 1986, Exh. 55, speaks volumes of the understanding between the spouses and in fact the wife apologises for having hurt the husband's feelings in Pune

and prayed to be forgiven. She says that she was the most lucky woman to have such a loving and understanding husband and that they were made for each other. Even when the husband writes to the wife on 29th August, 1986 at Exh. 109, he advises her to take proper medical care. The wife responds on 1st Sept. 1986 by her letter at Exh. 56 acknowledging the fact that she had enjoyed the period she stayed with him and that the husband had done a lot for her to make her feel happy and that she would never forget it. These letters do not show any strained relationship between the spouses much less do they show any harassment or ill-treatment of the wife by the husband or members of his family as a result of a demand of additional dowry or otherwise. Even the three letters sent by the father at Exh. 115 dated 30th Sept. 1986, Exh. 116 dated 1st Oct. 1986 and Exh. 117 dated 6th Oct. 1986 do not suggest any demand for additional dowry or apprehension of ill-treatment or harassment to the wife at the hands of anybody in the husband's family much less the husband.

43. As far as the attempt to bring about the reconciliation is concerned, we may refer to a letter by one Vivek Shirodkar who is related to the wife. The said letter is dated 9th June 1987 at Exh. 68 A. This was immediately before the filing of the petition on 30th July 1987. Vivek Shirodkar has referred to the attitude of the family of the wife by saying that "the Sheths had messed up the things". He had expressed his doubts about the possible reconciliation on account of the attitude taken by the wife's parents. It would not be totally out of context to mention at this stage the letter at Exh. 61 dated 19th June 1989 written by the wife where she says that she and her parents had already decided that she would be living with her parents forever and that the husband will be required to pay for her maintenance life-long and that there could be no divorce between the two. We are mentioning this only to show the attitude of the wife and the members of her family.

44. However, we are of the view that though the incidents alleged to have occurred between 4th June 1986 and 9th Oct. 1986 resulted in some unpleasantness between the two spouses, the conduct of the wife in particular cannot be said to be such as to amount to cruelty in matrimonial law. It is true that the wife has given inconsistent versions about the fall from the motor-cycle on 23rd July 1986. However, the incidents and conduct of the wife after the filing of the petition i.e. to say after 30th July, 1987 needs to be viewed seriously. The complaint filed by the father on 26th Oct. 1987 for the alleged offence under Section 498A of I.P.C. resulted in the statement of the wife being recorded at Exh. 147 on 26th Oct. 1987. The wife has made several allegations in the said statement which are not borne out either by the oral evidence on record or by the correspondence on record. We are not at all satisfied that there was any demand for additional dowry and the consequent harassment or ill-treatment to the wife. The wife's version in her statement at Exh. 147 is, therefore, totally unjustified.

45. Similarly, in respect of the Churchgate incident of 2nd April 1990, the wife's involving her husband and Prakash Raikar appears to us to be totally unjustified and imaginary. There is no evidence on record to suggest that the husband or his brother-in-law Prakash Raikar were responsible for the wife's fall at the Churchgate Railway Station on 2nd April, 1990. The wife has in the course of her statement recorded on 4th May, 1990 at Exh. 72A implicated the husband and Prakash Raikar. Though in her earlier statement at Exh. 71 recorded on 2nd April, 1990 she did not implicate any one, she has tried to implicate her husband and Prakash Raikar in the statement at Exh. 72A recorded on 4th May 1990. This appears to us to be wholly unjustified, but deliberate.

46. What is worse and what disturbs us most is the wife's letter dated 14th Feb. 1992 at Exh. 96 where she has made wild, reckless and baseless allegations not only against Prakash Raikar but particularly against the mother of the husband and his two married sisters. She has abused them in the filthiest words attributing all sorts of illicit relations to them; compared them with prostitutes and as women who are capable of pocketing any number of men by

showing them their white skin and flesh. The wife did not stop at making these wild and scandalous allegations which are totally baseless. She has reiterated them in her letter dated 17th July, 1992 and has said that every word of the letter at Exh. 96 was a bitter truth. She has, however, not led any evidence whatsoever to justify or to prove the allegations made by her. Thus, the wife has resorted to making wild, reckless and scandalous allegations against the husband's mother and his two married sisters apart from condemning Prakash Raikar. It is difficult to expect the husband to cohabit with such a woman and in our view, no reasonable man can be expected to live with such a wife. As stated earlier, the wife did not even spare the husband and questioned him as to whether he had got another woman for his bed. This is clear from the letter at Exh. 73 dated 29th March, 1992 written by the wife to the husband. All these actions and her conduct after 30-7-1987 clearly amount to cruelty in matrimonial law.

47. As stated at the outset, in the recent decision of the Supreme Court in the case of V. Bhagat v. Mrs. D. Bhagat, , the Supreme Court had occasion to deal with a case where the wife was only expected to meet the averments that were made against her. The Supreme Court observed that it must be remembered that the wife was merely defending herself against what were, according to her, totally unfounded allegations and aspersions on her character. While doing so, it was not necessary for her to go beyond that. In Bhagat's case, the wife had alleged that the husband was a mental patient that he was not a normal person; that he required psychological treatment to restore his mental health and that he was suffering from paranoid disorder and mental hallucinations. To crown all this, the wife alleged that the husband and members of his family were a bunch of lunatics. It was in this background, inter alia, that the Supreme Court observed that mental cruelty under Section 13(1)(ia) could be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, the Supreme Court observed that mental cruelty must be of such a nature that the parties cannot be reasonably expected to live together. Looking at the letters at Exh. 96 dated 14th Feb. 1992 and Exh. 73 dated 29th March, 1992, in our view, it will be unreasonable to expect the husband to live with the respondent. The situation is such that the husband cannot reasonably be asked to put up with the conduct of the respondent and to live with her. The Supreme Court has observed in Bhagat's case that it is not necessary to prove that the mental cruelty is such as to cause injury to the petitioner. Bearing in mind, the ratio laid down by the Supreme Court in Bhagat's case, we are of the view that the appellant-husband has proved that the conduct of the respondent/wife, particularly after 30-7-1987, was such as to amount to cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act.

48. Shri Gupte has also invited our attention to the provisions of Section 14 and Section 20 of the Family Courts Act, 1984, apart from the decisions referred to earlier above, on the point that subsequent events can be taken into account in such matrimonial proceedings. The learned Counsel has placed strong reliance on the provisions of Section 14 and Section 20, which read as under:--

"14. A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act. 1872 (1 of 1872)."

"20. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

In the light of the above provisions, Shri Gupte contended that though these letters at Exh. 96 and Exh. 75 are subsequent to the filing of the Petition on 30th July 1987, in order "to assist this Court to deal effectively with the dispute" that was raised in this appeal, subsequent conduct and events are

relevant and admissible. We have already referred to the decisions in the cases of--

- (i) Dr. N.G. Dastane v. Mrs. S. Dastane ;
- (ii) Parihar (Priti) v. Parihar (Kailash Singh) ; and
- (iii) Smt. Nirmala Manohar Jagesha v. Manohar Shivram Jagesha, .

In these cases, the subsequent events and conduct even during the pendency of the petition and appeal have been taken into account for the purpose of granting relief to the petitioner. The recent Supreme Court judgment in Bhagat's case also takes into

account the reckless and wild allegations made by the wife in the written statement going beyond the purview of what was necessary for denying the allegations made against her. In this view of the matter, we are of the view that the respondent/wife has treated the appellant/husband with such cruelty as is sufficient to dissolve the marriage by a decree of divorce.

49. Before parting with this case, we wish to once again refer the Supreme Court decision in Bhagat's case. In that case, the allegations levelled by the husband against the wife were held not proved but, inter alia, on account of the allegations made by the wife in her statement, which allegations were totally reckless and unwarranted, the Supreme Court thought it fit to dissolve the marriage between the parties. While doing so, in Para 22 of the Judgment at page 441 of the Report , the Supreme Court referred to the fact that though irretrievable break down of the marriage is not a ground by itself for divorce, while scrutinising the evidence on record to determine whether the grounds alleged are made out and in determining the relief to be granted, the circumstance that the marriage has irretrievably broken down can certainly be borne in mind. We have already indicated above, the attitude adopted by the wife and her father. In our view, the marriage between the spouses has irretrievably broken down. This is, thus, an additional factor which has to be borne in mind while considering the question of granting the decree for divorce. On the evidence that has been led by the parties, we do not think that the husband is taking advantage of his own wrong so as to disentitle him to a decree for divorce. Indeed, nothing was pointed out to us in this behalf by the respondent/wife and having perused the entire material on record, we have no hesitation in recording such a finding as required by Section 23(1)(a) of the Hindu Marriage Act. Thus, the husband is entitled to a decree for divorce.

50. In so far as the decree granting the wife's counter-claim in respect of the ornaments of Rs. 1,15,415/- is concerned, Shri Gupte has not seriously canvassed this point though it was tried to be suggested that looking to the quantum of the gold ornaments, its valuation in the counter-claim is on the higher side. It was contended that in calculating the amount of Rs. 1,15,415/- an excessive rate of gold per tola has been adopted. Unfortunately, no evidence has been led by the husband on this point and hence, we do not wish to disturb the said finding.

51. Shri Gupte has also invited our attention to the fact that, the order granting relief in the nature of counter-claim in so far as the ornaments or their value worked out at Rs. 1,15,415/- is concerned, cannot be sustained under Section 27 of the Hindu Marriage Act. In his submission, the Court can only make a provision in the decree with respect to any property presented at or about the time of marriage which may belong jointly both to the husband and wife. His argument is that in the very nature of the claim of the respondent/wife that the ornaments are her streedhan property, such an order is not permissible under Section 27 of the Hindu Marriage Act. Strong reliance was placed by Shri Gupte on the Judgment of S. P. Bharucha, J. (as he then was) in the case of S.M. Hingorani v. M.A. Badami, . He invited our attention to the

observations in Para 9 of the said Judgment at Page 334 (of Mah LJ) : (at p 355 of AIR) of the Report. In our view, the said decision in Hingorani's case does support the arguments of Shri Gupte. However, the learned Counsel very fairly pointed out that having regard to the provisions of Section 7 read with Section 20 of the Family Courts Act, the position of law must be taken to have now changed. Section 7 of the Family Courts Act deals with the jurisdiction of the Family Courts. Clause (a) of subsection (1) of Section 7 talks of the Family Courts Act having jurisdiction exercisable by any District Court or by any subordinate Civil Courts under any law for the time being in force in respect of the suits and proceedings of the nature referred to in the Explanation. Coming to the Explanation, the suits and proceedings referred to in sub-section (1) have been illustrated from clauses (a) to (g). Clause (c) reads as under:

"a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them".

Further, Section 20 of the Family Courts Act provides that the provision of Family Courts Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any instrument having effect by virtue of any law other than this Act. Reading Section 7(1) Explanation (c), together with Section 20 of the Family Courts Act, Shri Gupte fairly stated that though the order granting counter-claim of the wife to the extent of Rs. 1,15,415/- being the cost of the ornaments, articles etc. as her streedhan property may not strictly fall under Section 27 of the Hindu Marriage Act, 1955, it is possible for the wife to contend that the Family Court can grant such a relief by virtue of the powers conferred upon it by Section 7 read with Section 20 of the Act. In view of this fair stand taken by the learned Counsel Shri Gupte, it is not necessary for us to pronounce any decision on the said question.

52. However, on merits of the said claim, Shri Gupte tried to contend that the wife has not established her case that the said ornaments and articles are in possession of the husband. The decree for Rs. 1,15,415/- is towards the costs of the ornaments and articles etc. which are of the ownership of the wife as her streedhan property. We are not satisfied with Shri Gupte's contention on this point. On the basis of the evidence which the wife has led, we hold that the wife has proved her counter-claim in respect of the said ornaments and articles which have been valued at Rs. 1,15,415/- for which a decree has been rightly passed against the husband. Out of the said decree for Rs. 1,15,415/-, the husband has already deposited Rs. 40,000/- in the trial Court pursuant to the order passed in this Appeal at the admission stage. Consequent upon the husband's claim in this behalf being rejected, the husband is hereby directed to deposit the balance of Rs. 75,415/- in the trial Court within three months from today. On such amount being deposited, the respondent/wife is permitted to withdraw the same forthwith.

53. Lastly, coming to the question of maintenance, under the impugned order, the wife has been awarded maintenance at the rate of Rs. 1200/- per month. As stated earlier, when this Appeal was admitted, by way of an interim arrangement, the amount of maintenance was increased to Rs. 1500/- per month. It is true that the husband had taken out Civil Application No. 5885 of 1993 in this Appeal for reducing the amount of maintenance. However, in view of the fact that the Appeal itself was fixed for final hearing on a priority basis, Shri Gupte points out that the said application was not pressed and was allowed to be withdrawn on 14th Feb. 1994.

54. As far as granting relief under Section 25 of the Hindu Marriage Act is concerned, it contemplates that the Courts exercising jurisdiction under the Act may, at the time of passing any decree, pass an order for maintenance of the spouse awarding a monthly or periodical sum of money which can be directed to be paid having regard to the income of the parties, property held by them and the conduct of the parties and other circumstances of the case. It was sought to be

contended by Shri Gupte that in the light of the finding recorded by us, which reflects the conduct of the respondent-wife, she would not be entitled to any permanent alimony.

55. On the other hand, the wife has pointed out that the husband has substantial income from his profession as a Chartered Accountant. The wife has deposed an exaggerated figure of Rs.8000/- per month. In Civil Application No. 5885 of 1993, the husband's version was that his net annual income was hardly Rs.24,500/-. He had disclosed his gross receipts at Rs. 32,900/- and deducting the expenditure of Rs. 8400/-, the net annual income was Rs. 24,500/- for the accounting year 1992-93.

56. Having considered the rival submissions, we are of the view that the order granting Rs. 1200/- per month as maintenance calls for no interference in this Appeal. The Family Court while granting the said amount of Rs. 1200/- per month has taken into account the fact that this will take care of the wife's maintenance in all respect. We find no reason to take a different view of this aspect of the matter.

57. Shri Gupte has pointed out that in accordance with the interim order passed by this Court, maintenance has been paid at Rs. 1500/- per month till the end of this month. Since the marriage is now dissolved by this order, we direct that with effect from April, 1994, the appellant/husband shall be liable to pay to the wife Rs. 1200/- per month by way of maintenance. The husband who is now employed gets his salary by the 7th of each month. Hence, he is directed to send a cheque to the wife by the 10th of each month. Thus for the month of April, 1994 the husband will have to send the cheque before 10th of April, 1994.

58. In view of the above, no further orders are necessary in the wife's appeal being Family Court Appeal No. 42 of 1993. The same will stand disposed of in the above terms by a separate order.

59. Accordingly, the appeal of the husband succeeds but only partly and there will be decree of divorce in favour of the husband.

60. In the circumstances of the case, there will, however, be no order as to costs in both the appeals.

61. At this stage, Smt. Revankar prays for stay of operation of the order granting divorce. She prays for a stay for a period of three months. Shri Gupte has no objection if some reasonable time is granted. We stay the operation of the decree for divorce for a period of three months from today.

62. Certified copy, if applied for, be issued expeditiously.

Order accordingly.