

**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.T. No. 28 of 2023

Vs.

For the appellant	:	Mr. Zohaib Rauf, Mr. Rajdeep Mantha, Mr. Barnamoy Basak
For the respondent	:	Mr. Kallol Basu, Mr. Nilanjan Pal
Hearing concluded on	:	20.01.2025
Judgment on	:	05.02.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been filed against a judgment and decree whereby the appellant/husband's suit for divorce on the ground of cruelty was dismissed. The brief facts of the case are as follows:
2. The parties entered into matrimonial tie under the Special Marriage Act, 1954 by registration under the said Act on August 15, 2007, which was followed by a 'social marriage'.
3. However, thereafter the relationship between the parties soured and the respondent/wife filed a complaint against the husband and his family members under Sections 498-A and 406 of the Indian Penal Code, giving rise to Thakurpukur P.S. Case No.69 of 2010, on February 15,

2010, according to the husband/appellant, immediately after the spouses returning from a visit to Digha.

4. On March 22, 2010, however, the respondent/wife wrote to the O.C., Thakurpukur Police Station not to proceed with the criminal case and accordingly, the police filed an FRT, dropping the criminal complaint.
5. Thereafter the parties resided at a rented house, apparently due to the wishes of the respondent/wife.
6. On February 21, 2012, the appellant/husband filed a suit for restitution of conjugal rights against the respondent/wife.
7. On June 5, 2012, the respondent/wife filed a 'Narazi' petition, thereby reviving the criminal case against the appellant/husband and his family members.
8. In the month of September, 2012, the respondent/wife returned to her matrimonial home and the parties resided together, culminating in the birth of a daughter on July 15, 2014 from the wedlock.
9. Thereafter the relationship between the parties was embittered again and on December 13, 2017, a divorce suit was filed by the appellant/husband, which, being dismissed on contest, the present appeal has been preferred.
10. Learned counsel for the appellant argues that several allegations of cruelty were made in the plaint, regarding torture meted out by the respondent/wife against the husband and his family members, particularly his mother. However, the plinth of the submissions regarding cruelty made by the appellant/husband revolve around two factors – the filing of several criminal complaints against the

appellant/husband and his family members before and during the pendency of the divorce suit and secondly, allegations of illicit relationship between the appellant and one of his office colleagues, whom we choose not to name in order to avoid invading her privacy unnecessarily.

- 11.** Learned counsel for the appellant/husband argues that even after withdrawing the initial criminal complaint, the respondent/wife, as a backlash to the appellant's suit for restitution of conjugal rights, filed the Narazi petition, reviving the complaint and seeking further investigation into the matter.
- 12.** It is argued that although there was no whisper of any claim for dowry in the written statement and evidence led by the respondent in the matrimonial suit, the primary premise of the criminal complaints was alleged claim for dowry by the husband and his family and resultant torture on the respondent/wife for not paying the same.
- 13.** It is argued that the said complaint and the subsequent revival thereof are counterblasts and arm-twisting tactics used by the respondent against the appellant to brow-beat and force him to accede to her wishes.
- 14.** Learned counsel next contends that although the wife has admitted in her evidence that the appellant's father has been supportive, both mentally and financially, to the respondent/wife, the criminal case initiated by the wife against not only the husband but his father as well, is still continuing after being revived by the wife. This itself proves that the said complaint is baseless, in view of the contradictory

statements made by her. The respondent/wife, on the one hand gives out that she wishes to live with her husband and on the other has been instituting numerous frivolous criminal complaints and cases against her husband and/or his family members even during pendency of the matrimonial suit.

- 15.** Learned counsel for the appellant cites the judgment of *V. Bhagat v. D. Bhagat (Mrs.)*, reported at (1994) 1 SCC 337, for the proposition that mental cruelty comprises of conduct by one party which inflicts such mental pain and suffering as would make it not possible for the other party to live with her/him. Such suffering should be of such nature that the parties cannot reasonably be expected to live together and one party to put up with such conduct and continue to live with the other party. It was further held that it is not necessary to prove that the act of mental cruelty would cause injury to the health of the other.
- 16.** Learned counsel next cites *Uma Talapatra v. Manabendra Talapatra*, reported at (2008) 4 CHN 488, in support of the proposition that allegations in pleadings and putting such questions in the witness box which cause mental pain and agony, besides affecting the career and professional prospects of the other party, tantamounts to cruelty. Levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital relationship constitute grave assault on the character, honour, reputation, status as well as health of the accused.
- 17.** In such context, learned counsel moves on to the next limb of his submission that reckless allegations of extramarital relationship with

an office colleague have been made by the respondent/wife against the appellant/husband without any basis in her written statement and in her evidence as well. Those wild and unsubstantiated allegations tantamount to mental cruelty. Such baseless aspersions and character assassination, it is submitted, tantamounts to the worst form of insult and cruelty.

- 18.** In such context, learned counsel cites *Debabrata Chakraborty v. Rina Chakraborty*, reported at (2009) 1 CHN 893, where it was held by a coordinate Bench of this Court that unfounded allegations in the written statement of bad moral character which are proved to be baseless tantamount to cruelty. Although mere inability to prove allegations under Section 498-A or adultery, which are pressed in evidence, may not tantamount to cruelty, but if despite availability, competent witnesses are not produced to substantiate such allegations, an adverse presumption can be drawn.
- 19.** Learned counsel appearing for the appellant/husband also cites *Avinash Eknath Nikalje v. Leela Avinash Nikalje*, reported at 2003 (3) *Mh.L.J.* 450, where the Bombay High Court held that false and reckless allegations in the written statement and in open court about the character of the husband and his family members so as to injure the reputation of the husband constitutes mental cruelty.
- 20.** Next relying on *Poulomi Biswas v. Shamik Biswas*, reported at 2023 *SCC OnLine Cal* 6136, learned counsel for the appellant/husband argues that cruelty is not confined to the pre-litigation stage but also during currency of the litigation. In the said case, the wife admitted

that proceeding under Sections 498-A and 406 of the Indian Penal Code was initiated on the advice of advocate and ended in acquittal, which was held to be cruelty.

- 21.** Learned counsel next cites *Arlene Uday Heble v. Uday Laxman Heble*, reported at *1995 SCC OnLine Bom 174*, where the Bombay High Court held that wild and baseless allegations due to which the parties cannot be expected to live together amounts to cruelty.
- 22.** It is next argued by learned counsel for the appellant that the respondent/wife made allegations in her written statement, on the one hand that the appellant never took care of his daughter, while on the other, admitted in her evidence that the appellant was looking after his daughter. Such contradictory allegations also amount to mental cruelty, it is submitted.
- 23.** Learned counsel for the appellant thereafter argues that irretrievable breakdown of marriage has been considered to be a ground for dissolution of marriage in several cases by the Supreme Court, although primarily in exercise of its powers under Article 142 of the Constitution of India. In such context, learned counsel cites *Naveen Kohli v. Neelu Kohli*, reported at *(2006) 4 SCC 558*, where it was held that irretrievable breakdown by itself was not a ground but the Court left it for the Legislature to consider cases where dead marriages were unnecessarily kept alive. The Supreme Court held that a law of divorce based mainly on fault is inadequate to deal with broken marriages. If beyond repair, it would be unrealistic for the law not to take notice of such marriage; otherwise it would be harmful to the society and

injurious to the parties as well as detrimental to the public interest to sustain the marriage.

- 24.** In *Col. Manoj Kumar Gupta v. Sangeeta*, reported at 2024 SCC OnLine All 496, the Allahabad High Court took a similar view and observed that the respondent therein was not inclined before court to defend her case, nor intended to live with the appellant/husband or to continue matrimonial life and the marriage had become totally unworkable and emotionally dead. Again, the Supreme Court, in *R. Srinivas Kumar v. R. Shametha*, reported at (2019) 9 SCC 409, held that when both parties do not agree to divorce, the marriage can be dissolved under Article 142 of the Constitution.
- 25.** Learned counsel for the appellant places heavy reliance on *Rakesh Raman v. Kavita*, reported at 2023 SCC OnLine SC 497, where the Supreme Court went one step ahead and held that a marriage, if irretrievably broken down, spells cruelty to both parties, as in such relationship, each of the parties is treating the other with cruelty and therefore such relation is itself a ground for dissolution of marriage in view of the cruelty meted out between the parties by the relationship itself.
- 26.** It is, thus, submitted that, whether independently or in conjunction with the ground of cruelty, the irretrievable breakdown of the marriage between the present parties ought to be sufficient ground to dissolve the marriage.
- 27.** Learned counsel appearing for the respondent, on the other hand, submits that the marriage between the present parties cannot be said

to have irretrievably broken down, since the respondent/wife is eager to resume conjugal life with her husband. In the year 2010, when a complaint was lodged with the police, the appellant/husband assured the respondent to stay at any place other than her matrimonial house. However, after about 2-3 days of living together, the appellant allegedly left the said house. The Narazi petition was filed subsequently, it is contended, since the appellant/husband retracted from his assurance to live together and started living elsewhere.

- 28.** It is contended by the respondent that mere filing of a criminal complaint does not tantamount to cruelty. It is argued that the criminal cases are still pending and the appellant and/or his family have not yet been acquitted. Hence, it would be premature for the court to hold that the criminal complaints are baseless and tantamount to cruelty.
- 29.** Learned counsel cites *Debjani Sinha v. Bikash Chandra Sinha*, reported at (2006) 2 CHN 235, where it was held that in order to get a decree for divorce on the ground of making baseless allegations in the written statement, it must be clearly established that such allegation was really baseless. The mere fact that the party filing written statement could not prove such allegation will not be a ground of divorce. If it is established from the evidence that such allegations were evidently false, only then can the court pass a divorce decree on the ground of such false allegations.
- 30.** Learned counsel appearing for the respondent/wife next cites *Rani Narsimha Sastry v. Rani Suneela Rani*, reported at (2020) 18 SCC 247,

for the proposition that it was open for anyone to file complaint or lodge prosecution for redressal of his or her grievances and lodge a first information report for an offence also and mere lodging of complaint or FIR cannot *ipso facto* be treated as cruelty. When a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498-A of Indian Penal Code, it can be accepted, however, that cruelty was meted out by making such allegations.

- 31.** It is argued that, in the instant case, there was sufficient basis for the allegations of illicit relationship of the husband with an office colleague in view of the husband having resided with her and the said lady having been all along involved with the husband during his Gallstone surgery. Further, the husband lives in a rented accommodation opposite the house of the said lady.
- 32.** Thus, it is submitted that the dismissal of the appellant/husband's divorce suit was justified.
- 33.** Upon hearing learned counsel for the parties, we arrive at the following conclusions:
- 34.** The first limb of the allegation of cruelty is that the respondent/wife tortured the family members of the husband as well as the husband himself during the marriage. However, no clear corroborative evidence, apart from the appellant/husband's own deposition, comes forth to substantiate such allegations. Moreover, the husband, even after such alleged cruelty and torture by the wife, started living with the wife from September 2012, leading to the birth of a daughter on July 15, 2014.

Hence, at least the alleged acts of mental torture by the wife up to July 15, 2014 were condoned by the appellant/husband.

- 35.** The more serious allegation is of cruelty on two-fold grounds - the first being the incessant lodging of frivolous complaints by the wife against the husband and his family members and the second, the obnoxious allegations of illicit relationship with an office colleague.
- 36.** Taking first things first, we find that the wife had withdrawn her initial criminal complaint, lodged on February 15, 2010, after only about a month by a communication to the Thakurpukur Police Station dated March 22, 2010. Subsequently, she revived the criminal complaint and sought a reinvestigation by a Narazi petition dated July 5, 2012, which was five months after the institution of the previous suit for restitution of conjugal rights by the husband.
- 37.** Surprisingly, despite the wife living with her husband from September, 2012 at least till July 15, 2014, when the couple were blessed with a daughter, the wife never withdrew such criminal complaint. The respondent/wife has consistently stated in her evidence that she wants to live with her husband but till date has persisted with the criminal complaints and the pending criminal proceeding against her husband and her in-laws.
- 38.** The repetitive nature of the police complaints are evident from the dates of lodging of such complaints, which continued throughout the pendency of the divorce suit as well. Apart from the initial 2010 complaint being revived subsequently by a Narazi petition on July 5, 2012, the respondent/wife lodged another complaint on October 10,

2017 on the ground that the appellant was staying away from her. Again, on January 23, 2018, a police complaint was lodged by the respondent/wife against the husband, apparently seeking return of her husband.

- 39.** Conspicuously, after the demise of the mother of the appellant/husband, the wife continued to reside with her father-in-law. During such stay, the father-in-law lodged a complaint by himself against the appellant, his son, on February 23, 2018 and thereafter along with the respondent/wife on May 16, 2018. Not stopping there, the wife lodged further complaints on January 13, 2020 and on March 16, 2021. Therefore, not one but at least seven (07) complaints were lodged at different points of time by the respondent/wife against the appellant/husband, although all along she has been taking the stand that she wants to live with her husband. Such contradictory acts on the part of the wife are inexplicable.
- 40.** There are other glaring contradictions in the stand taken by the respondent/wife. One of them is that although the wife stated in her written statement that an amount of money was given to her in-laws at the time of her marriage, not a single specific allegation of claim of dowry, or torture by her in-laws due to non-payment of dowry, has been levelled in her written statement as well as her evidence in the matrimonial suit. However, surprisingly, the claim of dowry and related torture are the main accusations in most of the criminal complaints, particularly in the pending criminal case. It is not understood as to why, if the wife persists with her criminal cases since

2010 on the ground of dowry torture, she never took such plea as a ground of cruelty by the husband in her written statement or in her entire evidence in connection with the divorce suit.

- 41.** The next contradiction is that the wife has categorically alleged that the appellant/husband has not been looking after her and her child. However, in her cross-examination, the respondent-wife unequivocally admitted at least in three (03) places that the appellant/husband has been bearing the expenses of the respondent/wife and her daughter. On the contrary, in her examination-in-chief, she alleges that her husband never took care of them. The falsity of such allegation, thus, was exposed by her admission in her cross-examination.
- 42.** The third inconsistency in the wife's allegation of cruelty is that she revived the criminal case not only against her husband but also against her father-in-law. Quite surprisingly, in her evidence-in-chief as well as her cross-examination, the respondent/wife states that her father-in-law is supporting her and stays with her. She has also lodged a joint complaint with the father-in-law against the husband, but till date persists with her criminal cases not only against the husband but also against her father-in-law who, as per her own statement in evidence, is supportive of her and her daughter.
- 43.** Let us now scrutinize the nature of the complaints of the father-in-law against his son, the appellant/husband. In a complaint lodged by the father-in-law jointly with the respondent/wife on February 23, 2018, it was alleged that the appellant/husband filed the divorce suit despite the objection of his parents and that the respondent/wife was dutiful

towards her father-in-law as well as the appellant and their daughter. It is clear from the said complaint that the father of the appellant was aggrieved with the filing of the divorce suit against his wishes. He also states in the complaint that he has become old and had suffered from a hernia operation recently and cannot participate in quarrels. Lastly, he states that by the General Diary, he is informing the police of the appellant having left the matrimonial home and returning thereto. Hence, no serious allegation corroborating torture against the wife is borne out from the said complaint.

- 44.** In the next complaint lodged by the father on May 16, 2018, he alleges an illicit affair between his son and a lady. He also alleges torture by the appellant against his wife and the fact that the husband left the house suddenly and thereafter returned to his matrimonial home again. He also alleges that when they went to the hospital, where his son was operated upon, he saw the lady being involved in all matters of the appellant. Importantly, the father states that if the appellant/husband immediately returns to his parental house, his physical condition may deteriorate due to squabbles, for which he and his daughter-in-law may suffer. It is further stated in the complaint that the father of the appellant/husband wishes that the appellant/husband does not return immediately to his parental home, since the father would not be able to handle the ensuing arguments and wishes that the appellant/husband returns to his parental house after three months, when he recovers fully.

- 45.** Thus, we find that the possibility of influence by the respondent/wife in the said complaints lodged by her father-in-law cannot be ruled out, since those were made at a time when he was living with his daughter-in-law and it would obviously be in his interest to cater to her wishes. This raises a presumption that the father-in-law did not corroborate the written statement allegations of his own volition.
- 46.** Moreover, the underlying refrain in the two complaints of the appellant's father has been that he was fed up with the skirmishes that would take place between his son and daughter-in-law if the son comes back, which lends support to the fact that the relation between the appellant and the respondent has deteriorated to a point where such squabbles are unavoidable if they reside together.
- 47.** That apart, the allegation by the appellant's father regarding the purported illicit relationship of his son has come as a side comment, without any indication that the father had any direct knowledge about the same. The premise of his complaints is that he does not want the arguments and quarrels to ensue between the parties to the present litigation in his own house and seeks to avoid such scenes. Apart from that, there is not a single piece of corroborative evidence led by the respondent/wife in support of her allegation of illicit relation of the appellant/husband.
- 48.** Following *Debabrata Chakraborty (supra)*, where the Division Bench of this Court held that if competent witnesses are not produced, an adverse presumption can be drawn, we find in the present case that although the allegations made by the respondent/wife regarding illicit

relation of the husband by themselves may not tantamount to cruelty, the absence of any corroborative evidence even by a single independent witness speaks volumes about the baselessness of the such allegation. The respondent/wife could very well produce at least one of the office colleagues of her husband or any person living in the neighbourhood of the house where the husband is now residing, which is allegedly opposite that of the lady with whom he has an extra-marital relationship. There is no explanation as to why no summons was issued to any of such persons by the wife to produce them as witnesses to corroborate her case of such illicit relationship.

- 49.** Rather, the husband alleges that the wife also made such allegations in his office, in the process tarnishing the character of the husband unnecessarily.
- 50.** This Court is not oblivious of the fact that the mere lodging of a criminal case is not by itself fatal to the defence case. However, it is not required that the court should wait till the acquittal or conviction by an accused in a criminal case to take a call on whether the allegations are *prima facie* baseless. In any event, the standard of proof in a criminal case is “beyond reasonable doubt” whereas in a civil dispute, the court proceeds on the yardstick of preponderance of probability. Thus, the civil court is to independently assess the evidence on record to ascertain whether there was reasonable basis for allegations of cruel acts due to dowry-related torture or illicit relationship of the husband with an outsider.

- 51.** No doubt, the allegations of illicit relationship need not be proved to the hilt by the defendant/wife. However, we are to see whether there is any basis to such serious allegations. Certain aspects of the allegation cannot be ignored in such context.
- 52.** In Paragraph 11 of her written statement, the respondent/wife states that she was forced to “do sex” with her husband “in absence of his girlfriend”, thereby clearly insinuating that the husband had a sexual relationship with the other lady and when he was unable to engage in such activity, he chose his wife to satisfy his carnal desires.
- 53.** The respondent/wife also alleges in her written statement that her husband has developed “physical relationship” with the lady, without any corroborative witness to that end.
- 54.** In her cross-examination, the wife categorically states that she can file documents to show illicit relationship between her husband and the lady and can file such documents on the very next date. Such document, however, is conspicuous by its absence. Therefore, there is no reason why adverse inference should not be drawn against the respondent/wife for non-production of such documents, coupled with the non-production of any independent witness to corroborate her case of cruelty and/or the husband’s alleged extra-marital relationship.
- 55.** On the other hand, the appellant/husband is candid in his evidence and does not suppress that his office colleague, the lady who has been embroiled in the matrimonial dispute, is a good friend of his and helped him during his Gallstone surgery, after which he stayed for two days in

her house. Moreover, he admitted that he lives in the vicinity of the house of the said lady in his office quarters.

- 56.** The friendship between two persons of different genders *ipso facto* cannot, in today's society, be construed to be an illicit relation. Conspicuously, the respondent/wife does not merely allege an affair going on between her husband and the lady but specifically, and in no uncertain terms, alleges a physical relationship between them, which allegation she stands by in her deposition.
- 57.** We do not find anything on record to corroborate such serious allegation, which can ruin the career and professional life as well as social image of the husband. Thus, on preponderance of probability and by drawing adverse inference due to non-production of any corroborative witness either from the office or the neighbourhood of the husband and or of the documents in that regard which the wife admitted to be in possession of, we find that the respondent/wife has not been able to establish any reasonable basis for such allegation, which itself leads to the allegations being construed to be baseless and as such, a cruelty of the first order perpetrated against the appellant/husband.
- 58.** Again, we cannot lose sight of the fact that the present case is one where not a single complaint, but a string of criminal complaints has been lodged by the respondent/wife, both before and during pendency of the divorce suit, against not only the appellant/husband but his family members as well. The criminal complaints have, as their pivot allegations of dowry-related torture, regarding which there is no

pleading in her written statement or evidence in the divorce suit. Thus, the wife has failed to furnish any reasonable basis of the criminal complaints, which might have serious consequences, not only of a penal nature but also damaging the husband's reputation in society beyond repair.

- 59.** Much weight cannot be lent to the complaints lodged by the appellant's father against his son, since he was all along under the sword of Damocles due to the pending criminal case against him as well. The respondent/wife, despite having admitted that her father-in-law resides with her and takes care of her, has revived the criminal case against her father-in-law as well, which is still pending.
- 60.** It is true that the mere filing of a criminal complaint is not sufficient to constitute cruelty. However, the wife has continued to file criminal complaints against the husband incessantly on one ground or the other, sometimes on flimsy pretexts, both before the filing of the divorce suit and during pendency of the same. Such allegations have not been appropriately corroborated in her evidence in the divorce suit by independent witnesses.
- 61.** Another glaring contradiction in the wife's allegations is that there is not a single whisper in the written statement or the evidence led by the wife in the matrimonial suit regarding dowry torture, although the same has been the plinth of the criminal case. During at least two years, the wife stayed with the husband and had a child with him, without withdrawing the criminal complaint.

- 62.** The wife has been consistently giving out that she wants to live with her husband but has been simultaneously filing criminal complaints one after the other, which could lead to serious consequences not only of a criminal nature but also tarnishing the image of the appellant/husband irreparably in society.
- 63.** Despite having withdrawn the case once, she revived the same, the reason being given in her evidence that because the husband did not return to her, such revival was initiated. This itself is an act of cruelty, since, by virtue of such statement in her cross-examination, the wife makes it clear that the intrinsic worth of the offence alleged in the criminal complaint/case is not the reason for her pursuing the same but she has been using the criminal complaints and the criminal case as a tool to compel her husband to return to her. Seen from such perspective, the criminal complaints are not intrinsically worth their content but are a device formulated by the wife to force the husband to return to her every time he goes away.
- 64.** Again, it is borne out by the complaints lodged by the father of the husband against him that every time he is apprehensive of arguments and quarrels between the appellant and the respondent if the husband goes back to the matrimonial home, which clearly shows that the acrimony between the spouses has reached such a point of no-return. As such, they cannot be reasonably expected to live together. The parties have been living separately since soon after the marriage till date, apart from the period of two years when they lived together. Even after the birth of the daughter of the parties, ten years have elapsed,

without the conjugal life ever resuming between them, which clearly goes on to show that the marriage has irretrievably broken down.

- 65.** Although the wife canvasses her purported intention to live with her husband, her acts in lodging one criminal case after the other and levelling the serious allegation of illicit relationship with an office colleague and friend without any reasonable basis or corroborative evidence speaks otherwise, indicating that such intention of the wife to return to matrimonial life is mere lip-service.
- 66.** In *Rakesh Raman (supra)*, the Supreme Court went so far as to hold that if a marriage is irretrievably broken down, persisting with the same spells cruelty to both parties as in such relationship each party is treating the other with cruelty, which is itself a ground for dissolution of marriage.
- 67.** In *Naveen Kohli (supra)* as well, the Supreme Court observed that after a marriage has gone beyond repair, it would be unrealistic for law not to take notice of the same; otherwise it will be harmful to society and injurious to the parties and detrimental to public interest. A law of divorce, it was stressed, if based mainly on fault, is inadequate to deal with a broken marriage. The said principle applies squarely to the present case.
- 68.** In *Arlene Uday Heble (supra)*, the Bombay High Court observed that wild and baseless allegations by one party leads to a situation where the parties cannot be expected to live together.

- 69.** Unfounded written statement allegations of bad moral character were also held by a co-ordinate Bench of this Court to be a ground for divorce in *Debabrata Chakraborty (supra)*.
- 70.** False and reckless allegations in written statement and in open court about the character so as to injure the reputation of the husband have been treated to be cruelty by the Bombay High Court in *Avinash Eknath Nikalje (supra)*.
- 71.** Cruelty during the pendency of litigation has been recognized by various courts, including the Division Bench of this Court in *Poulomi Biswas (supra)*, as a ground for grant of divorce.
- 72.** Again, in *Uma Talapatra (supra)*, it was held that levelling disgusting accusation of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital relationship constitute grave assault on the character, honour, reputation and health and create mental agony sufficient to constitute cruelty.
- 73.** In *V. Bhagat (supra)*, mental cruelty has been treated to be a conduct which inflicts such mental pain and suffering to one of the parties as would make it impossible for him to live with the other party. In such a scenario, the parties cannot reasonably be expected to live and put up with such conduct throughout the rest of their lives.
- 74.** In the present case, the parties' social status is not such that they hail from a rural area or from marginalized sections of the society. The wife works as a teacher with mentally challenged people, whereas the husband works in a reputed institution. Thus, they hail from quite an educated background and an enlightened section of society. In such

backdrop, mere friendship between the husband and his office colleague and the closeness between such friends at the time of the husband's surgery (during which he was having constant conflict at home with the respondent/wife and was under the guillotine of a pending criminal case at the instance of the wife) being perceived to be an illicit sexual relationship between them by the wife is unacceptable and, in the context of non-corroboration by any independent witness, must be held to be baseless in the present context.

- 75.** Such serious allegations themselves constitute cruelty, particularly read in the context of the marriage between the parties having irretrievably broken down for at least over a decade.
- 76.** Forcing the parties to live together in such acrimonious atmosphere between themselves, which is evident from the records, would be perpetrating cruelty on both of them and as such, borrowing the principle laid down by the Supreme Court in *Rakesh Raman (supra)*, it would be in the interest of both parties and the society at large to dissolve the marriage by construing such breakdown of marriage beyond repair to be cruelty against both the spouses. As held by the Supreme Court in *Naveen Kohli (supra)*, it would be unrealistic for law not to take notice of such irretrievable breakdown of marriage and sustaining the same would be harmful to society and injurious to the parties themselves.
- 77.** In such view of the matter, we are of the clear opinion that the marriage between the parties has broken down irretrievably and sustaining the same would be detrimental to the interest of both and constitute

cruelty by them against each other. Such element of the case has inevitably to be factored in while adjudicating the same.

- 78.** That apart, the unsubstantiated allegation of illicit physical relationship of the husband with an office colleague and friend as well as numerous criminal complaints being lodged baselessly (without the accusations therein relating to dowry torture being pleaded or proved before the civil court), while in the same breath, the respondent/wife canvasses her wish to live together with the husband, tantamount to mental cruelty of such an order that the parties cannot reasonably be expected to live together and endure such agony throughout the rest of their lives.
- 79.** The morbid stench of a dead marriage is writ large over the entire relationship of the parties, as borne out by the materials on record, and further sustenance of such marriage would lead them nowhere, apart from binding the parties forcibly to an ever-irreconcilable and illusory bond which has spent its force since long.
- 80.** We find from a thorough scrutiny of the impugned judgment and decree that the learned Trial Judge failed to take into consideration the above aspects in refusing to grant a divorce decree to the husband. Accordingly, the appeal succeeds.
- 81.** F.A.T. No.28 of 2023 is, thus, allowed on contest without costs, thereby setting aside the judgment and decree dated December 15, 2022 passed by the learned Additional District and Sessions Judge, Eighth Court (-in Charge) at Alipore, District: South 24 Parganas in Matrimonial Suit No.3034 of 2017.

- 82.** We hereby grant a decree of divorce to the plaintiff/appellant/husband, dissolving the marriage between the parties.
- 83.** It is, however, made clear that nothing in this judgment and decree shall preclude the appellant/husband from continuing to maintain the respondent and the daughter of the parties to ensure that they lead a decent life.
- 84.** The respondent/wife will be at liberty to file a proper application for permanent alimony and the above divorce decree shall not come in the way of such application being made and decided independently in accordance with law by the appropriate court.
- 85.** A formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)