

**Krishna Rani Vs. Chuni Lal Gulati**

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**Court :** Punjab and Haryana

**Decided On :** Aug-04-1980

**Reported in :** AIR1981P& H119

**Judge :** D.S. Tewatia, J.

**Acts :** Hindu Marriage Act - Sections 13; Evidence Act - Sections 65, 67, 74, 77, 79 and 114; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 107 and 151

**Appeal No. :** F.A.F.O. No. 2-M of 1980

**Appellant :** Krishna Rani

**Respondent :** Chuni Lal Gulati

**Judgement :**

1. The couple though married as far back as on 10th June, 1959 and blessed with three children, appears not to have been able to make a success of it. It was the appellant-wife Shmt. Krishna Rani (hereinafter referred to as the petitioner wife), who had in the first instance taken out divorce proceedings in March, 1978 which came to be dismissed on 1st Sept., 1978 in default. It is there after Chuni Lal, husband (hereinafter referred to as the respondent-husband) who took up the initiative by filing the present petition of 15th Nov., 1978 under S. 13 of the Hindu Marriage Act seeking divorce on the ground of cruelty. It was alleged in the petition that the wife has been of a nagging type constantly insulting him even in the presence of his friends, she had been neglecting the children for whom she would not cook meal in time, would frequently bear them and maintain an atmosphere in the house which was constantly surcharged with tension; that she was self-willed to the extent that she would leave the house and remain away for days without his permission. By way of illustration, it was mentioned that in Nov. 1977, she went away to Haridwar without his permission and returned to the house after a week, giving an instance of insulting behavior it was mentioned that on 18th Jan., 1978. his friends Om Prakash Chadha and Dr. Sanjay Sachdev visited his house. She declined to prepare tea for them, created a scene by beating the children with the result the guests left the house without taking tea, as a result he felt greatly insulted.

But what proved to be the proverbial 'last straw' was an imputation against the husband of having illicit relations with Shmt. Parmeshwari, wife of his elder brother made in report Ex P-1 that she had lodged against the husband on 6th Feb., 1978. On the basis of the said report, the husband had been arrested and proceeded against under Ss. 107 and 151 of the Cr.P.C. The wife left the house on that day returning only to collect her cloths and jewellery in the absence of the husband and thereafter has been staying away.

2. Wife, Shmt, Krishna Rani denied the allegation pertaining to the nagging and insulting behavior attributed to her. She has asserted that she had been dutifully cooking the meals and looking after the children; that it was the husband who at the instance of his mother had been maltreating her occasionally and gave beating to her. His beating assumed serious proportion on 6th Feb., 1978 which left her no alternative but to lodge a report with the police. She alleged that the husband was a follower of Nirankari Nirankaris with water which he made her to drink, although she did not believe in Nirankari Faith. On her refusal to do so, she used to be given beating.

3. Chuni Lal, husband, appearing as his own witness, deposed to the allegations mentioned in the petition stating that the attitude of the wife was extremely arrogant, insulting and non-co-operative. She had been insulting him before his friends; that she had been neglecting to cook food for the children, that she many times and sometimes for days together would not cook food for the family, would not prepare children for the school, withheld motherly affection from them, with the result that he used to get them ready for the school and used to cook their meals at such times. Om Prakash Chadha, P.W. 3, deposed to the fact that one day in Nov., 1977 he along with Dr. Sanjay Sechdev had visited the house of the husband. She in their present refused to prepare tea, started beating the children and they thereafter left the house without tea. Harish, P.W. 4 son of the parties corroborated the version given by Chuni Lal and Om Prakash Chadha. Dharam Singh, P.W. 5, who used to live in the house in front of the house of Chuni Lal, stated that whenever he visited the house of Chuni Lal, he found that his wife would not speak to him. She used to retort even on petty domestic affairs; that once he visited the house of Chuni Lal, he found that his wife was not present and had gone to Dehradun. He noticed Chuni Lal several times dressing up the children for sending them to the school.

4. The learned trial Court accepted the version of the husband and granted the decree of divorce.

5. On behalf of wife Krishna Rani, the judgment of the Matrimonial Court has been assailed on the ground that not preparing tea for the friends of the husband once or her going away to Haridar without his permission would not constitute cruelty and that in any case these lapses had been condoned, Regarding imputation of adulterous relation of the husband with his elder brother's wife, it has been contended that besides the testimony of the husband, there is no other admissible evidence to prove the said allegation Regarding the police report Ex. P-1, the stand taken is that the said report is inadmissible in evidence as the same had not been duly proved in accordance with law and therefore, the trial court ought not to have taken the same in to consideration. In the alternative, it was contended that the allegation contained in the report Ex. P-1 having not been repeated by her evidence the said stray allegation in the police report in question would not constitute cruelty of the kind envisaged in Section 13 of the Hindu Marriage Act. Regarding the proceedings under Ss. 107/151 of Cr. P.C. against the husband the position taken by the wife be clear from the cross-examination of Chuni Lal husband, is that he was discharged because the proceedings had become more than six months old.

6. Respondent husband's allegations that the wife had been arrogant, had been frequently insulting him, had been neglecting the children and would at times stay away from the house without his consent for days together and that she would insult the husband in the presence of his friends, have been held by the trial court, and

rightly in my opinion to be established from the evidence which is cogent and consistent and which carries the ring of truth about it. The criticism of the testimony of the son that he deposed on account of being under the influence of his father, in my opinion is totally unmerited. The answer that he had given in cross-examination lends credence to the impression that what he had spoken in his examination-in-chief he did so out of a sense of truth and not due to pressure from any quarter.

7. The criticism of the other witnesses of the respondent-husband on the score of his friendship with them, in a case like this, would not be of any avail, in that only friends and near-ones alone would have some knowledge of inter se relationship of the husband and the wife and the atmosphere of the family. Nothing else has been shown which may cause any doubt about the reliability of these witnesses. In the circumstances, the trial court has rightly placed reliance on the same

8. On the other hand petitioner wife's denial to the allegations in the petition in this regard rests on her own ipse dixit. The two witnesses that she had examined had nothing to say about her conduct towards her husband and children. Girdhari Lal, R. W. 2, relation of petitioner wife merely stated that when Krishan Rani, petitioner wife visited Mullanpur, she had many injuries on her person. On enquiry she had told him that her husband had given her the injuries; that 12 years back also there was a quarrel between them and that he got the settlement effected. She is said to have mentioned that her husband wanted his Nirankari guests to be served and wanted her to press their legs to which she did not agree and the quarrel started because of that. Dr. Ashok Gupta R. W. 3, Medical Officer, General Hospital, Sector 16, Chandigarh deposed to the fact that on 6th Feb., 1978, he had examined Krishna Rani wife of Chuni Lal and found a contusion 2' x 2' in the lateral side of right forearm in the middle, a contusion 2' x 2' on the palmar lateral aspect of left forearm just below a contusion 1' x 1' just below the right eye, a small lacerated wound of 1/2 cm. x 1/2 cm on the inner side of upper lip in the middle superficial laceration of 1 cm long on the lower lip, a contusion 2' x 2' over the scapula of left shoulder, complained of pain on the anterior wall of abdomen left to middle just below umbilicus with slight tenderness present over the area and contusion 1' x 2' just below the left on the anterior aspect. In cross-examination he admitted that the injuries in question would have been received as a result of a fall from the stairs or as a result of a fall from the cycle on a metalled road.

9. Besides her own evidence, she has not examined any witness to say that her behaviour towards respondent husband was not insulting or arrogant or that she had not been neglecting the children and that in fact she had been positively civil towards her husband and had been looking after the children well and that she did not leave the house without her husband's consent for Haridwar.

10. The learned counsel for the petitioner wife argued that after she had returned from Haridwar where she had gone without the consent of the husband and after the incident of disrespectful behaviour towards the husband when she refused to serve tea to the guests, she had been allowed to stay in the house and continued to do so till 6th Feb., 1978. From this the Court must infer condonation of her acts and therefore, respondent husband is not entitled to any relief. In support of his submission he cited *Dr. N. G. Dastane v. Mrs. S. Dastane* AIR 1975 SC 1534.

11. The ratio of the decision relied upon would be attracted in my opinion a case where the relief is sought by pleading one particular instance which amounts to

matrimonial offence. If the Court finds that after the commission of such a misconduct by one spouse the spouse had forgiven him or her and had restored her to the original position, then that would amount to condonation of the act, thus disentitling the offended spouse in securing relief from the matrimonial Court. But where a continuing course of conduct on the part of a spouse, which tantamounts to causing mental cruelty, is made the basis of relief sought from the matrimonial Court, then no condonation can be pleaded because the subsequent and the latest act of cruelty would wipe out the effect of condonation of earlier acts of misconduct. Same would be the case where for instance one of the spouse commits an act of adultery, and that act is condoned, if he or she again commits an act of adultery and the offended spouse comes to the Court, the condonation of the earlier act would not disentitle the offended spouse of the relief for the latter act of misconduct would wipe out the effect of earlier condonation. I had the occasion to deal with such a contention in *Amrik Singh v. Smt Surjit Kaur* 1975 Cur LJ 360 and the observation made therein are an apt answer to the contention advanced on behalf of the petitioner wife, which are reproduced below. :--

'In the nature of things, neither it would be conducive for a married life nor it is thinkable that the moment a spouse commits an act which constitutes cruelty, the other spouse rush to the court for relief. A normal married couple would naturally make allowance for difference of temperament and allow time in order to stabilise the marital relation and would thus ignore the misbehaviour of the other spouse in the hope that things would improve with the passage of time, where the mental cruelty is said to time. Where the mental cruelty is said to have been caused by constant nagging, taunts, gestures full of disrespect towards the other spouse and towards those whom he or she either out of filial relationship or friendship greatly respects, it is only when the misconduct of the other spouse does not show any sign of improvement and a stage is reached where the last such taunt, nagging or gesture proves the proverbial 'last straw' and the spouse throws up the sponge gives up the hose that time would mend the matters and knocks at the doors of th Court.'

12. The latest act of cruelty on the part of the petitioner wife that has been complained against by the respondent husband, is that of imputation of carrying on illicit relationship with his elder brother's wife; that the respondents-husband forced her to take urine and night soil and that the husband after going to the toilet used to come straight for taking his meals without washing his hands. These allegation were made in the report that she had lodged with the police (Ex. P-1) on 6th Feb., 1978 and on that very day she had left the matrimonial house and had started pursuing security proceedings against the respondent husband and also the divorce petition that she had filed against him and had never lived together thereafter. All this is highlighted to show that there had been no occasion whatsoever for the condonation of her latest act of cruelty.

13. It has been urged on behalf of the petitioner wife that the report Ex. P-1 is inadmissible in evidence and once this piece of evidence is ruled out on consideration, there would be no evidence available on the record in support of any such allegation. Document Ex. P-1 is claimed to be inadmissible on the ground that it had not been duly proved in accordance with law, in that the scribe of the document has not been examined nor his signatures or the signatures of the petitioner-wife who is said to have made the said report, have been proved. It has been forcefully contended that mere exhibition of the document on the record would not make the document admissible if it had not been proved in accordance with law. Reliance has

been placed on the following observation of Ray J. Made in Sait Tarajee Khimchand v. Yelamarti Satyam, AIR 1971 SC 1865:--

'The plaintiffs wanted to rely on Exhibits A-12 and A -13, the day book and the ledger respectively. The plaintiffs did not prove these books. There is no reference to these books in the judgment. The mere marketing of an exhibits does not dispense with the proof of documents.'

14. The aforesaid observations relied upon on behalf of the petitioner-wife were made in the context and circumstances of that case. It was nobody's case there that when the documents were exhibited no objection to their admissibility had been raised. In fact in the latter part of para. 15 in which the above quoted observation appear, it has been observed that the defendants had impeached the plaintiffs books of account. The fact that in the judgment no reference was made to those exhibits appears to show that admissibility of these documents had been objected to. Since somehow these documents happen to be exhibited on the record the plaintiffs sought to take advantage of that fact.

15. In fact where a document is allowed to be exhibited and placed on the record and no objection is raised in the Court of first instance, then no objection can be permitted to be raised regarding the admissibility of such a document merely on the score of mode of proof thereof. The following observations of their Lordship of Privy Council made in Padman v. Hanwants, AIR 1915 PC 111, can be quoted with advantage :--

'It was urged in the course of the argument that a registered copy of the will of 1898 was admitted in evidence without sufficient foundation being laid for its admission. No objection, however, appears to have been taken in the first appears to have been taken I the first court against the copy obtained from the Registrar's office being put in evidence. Had such objection been made at the time, the District Judge who tried the case in the first instance, would probably have seen that the deficiency was supplied. Their Lordships think that there is no substance in the present contention.'

16. What is more, the document in question is an F. I. R. recorded by a police officer in the discharge of his official duty and therefore, is a part of the public record. Respondent husband had placed on the record certified copy of the F. I.R. He had also examined P.W. 1 Madan Mohan constable who had brought the original record for the perusal of the Court and had shown the same to the Court. Illustration(e) of S. 114 of the Indian Evidence Act which is in the following terms, permits the raising of a presumption that the official acts had been regularly performed:--

'114(e) That judicial and official acts have been regularly performed'

Section 79 of the Indian Evidence Act too permits the raising of a presumption as to the genuineness of the certified copies. In view of this it would have to be taken that the police official who had recorded the F.I.R had done so in a regular manner in due performance of his duty. Clause (e) of S. 65 of the Evidence Act, permits production of secondary evidence to prove the existence, condition or contents of an original document if the same is a public document within the meaning of S. 74 of the Evidence Act. The secondary evidence envisaged of such document is a certified copy. S. 77 of the Evidence act provides that certified copies can be produced in proof of the contents of the public documents of which they purport to be copies.

17. In *Madamanchi Ramappa v. Mathaluru Bojjappa*, AIR 1963 SC 1633, their Lordships have put a seal of authority on the assertion that if a document is a certified copy of a public document, then the same need not have been proved by calling witness.

18. On behalf of petitioner-wife, however, reliance was placed on *Hasta Ismail v. Emperor*, AIR 1937 Lah 593 and *Miyan Hasan Abdulla v. State of Gujarat*, AIR 1962 Guj 214 for a contrary proposition that where any writing of a police officer who had recorded the F. I.R. has not been proved in the manner provided by S. 67 of the Evidence Act, the document would be inadmissible in evidence to prove the truth of the facts mentioned in such document. The ratio of these decision is not attracted to the circumstances of the present case. In those cases, the documents in fact were pressed into service to establish the truth of the assertion made in the said document. But where what is sought to be done is only to show that such and such allegation form content of a document and not that such allegation were in fact true then to prove the contents of a public document certified copy of such a document is enough. Nothing more is to be required to make such a documents admissible in evidence.

19. For the reasons afore-mentioned, the contention advanced on behalf of the petitioner-wife that report Ex. P-1 is inadmissible in evidence, is repelled.

20. It has been next argued on behalf of the petitioner-wife that a bare imputation of the kind mentioned in Ex P-1 would not constitute cruelty as envisaged in the relevant [portion of S. 13 of the Hindu Marriage Act.

21. That the imputation of adulterous conduct constitutes cruelty of a type envisaged in S. 13 of the Act, is by now judicially well recognized. Reliance has been placed on *Amrik Singh P.C. S v. Smt. Surjit Kaur*, 1975 Cur LJ 360. *Smt. Gayatri Devi Jain v. Dip Chand*, 1977 Hindu LR 425 and *Jiwan Lata v. Krishan Kumar*, 1979 Hindu LR 599.

22. Their Lordships of the Supreme Court in *Narayan Ganesh Dastane v. Mrs. Sucheta Narayan Datane*, 1975 Hindu LR 111: (AIR 1975 SC 1534) have held inter alia that injury to reputation is of important consideration in determining the question of cruelty. Their Lordships have also further held that wife's inflexible temperament of her taking delight in causing misery to husband and his relations, constant menacing of the Peace and well-being of the household and nagging of the husband, constitute cruelty.

23. In the present case, taking an overall picture of the conduct of the petitioner-wife towards the respondent-husband and the circumstances that she launched security proceedings against the respondent-husband with certain allegation of maltreatment regarding which she led no evidence and the respondent-husband was discharged, that she also took out divorce proceedings against the husband that court's efforts at reconciliation of the parties in that case failed, but later on despite opportunities she did not adduce any evidence and allowed the suit to be dismissed in default, and that these proceedings it would appears were attempted by way of harassment which without doubt must have caused mental torture to the respondent husband it must be held that the respondent has established the factum of cruelty.

24. It has however, been argued on behalf of the petitioner-wife that the respondent-husband had caused her injuries on 6th February, 1978 regarding which she had lodged a report and as a result where of she had left the house the therefore, it is a

case of mutual cruelty. Even if for argument's sake, it is accepted that the injuries in question had been caused by the respondent-husband on 6th Feb., 1978, it would not make any difference. If the respondent-husband had sought relief on the ground of desertion then, of course, this conduct on the part of the respondent-husband could have been pleaded by showing that it was he who had given cause to the petitioner wife to leave the houses. Here the position is entirely different.

25. It has been lastly contended that the refusal on the part of the petitioner wife to prepare tea on one occasion for the respondent-husband's friends, would not constitute cruelty and in support of his submission reference has been made to *Smt. Santosh v. Bharat Bhushan*, 1980 Hindu LR 85. There is no dispute with the proposition that a stray case of this kind by itself would not constitute mental cruelty of the kind, but the respondent-husband case is that the petitioner wife has been arrogant, that her conduct has been constantly insulting towards him, that she had been neglecting the children, that at times he used to cook meals for the children and he used to dress them up himself and that she used to leave the house without his consent and used to remain away days together and that in her absence he had to cook the meals for the children and for himself and dress up the children, besides the other allegation pertaining to the imputation of illicit relations with his brother's wife.

26. Mr. Gopi Chand learned Counsel for the petitioner-wife placed reliance on *Mst. Raj Kumari v. Ram Parkash Singal*, (1968) 70 Pun LR 879 wherein allegation that she abused the husband and would at times not cook meals as a protest because he would send money to his aged parents and an infirm brother, and had brought a tawiz into the house to create in him hatred for his parents, which are of more serious nature, were held not to amount to cruelty. In My opinion this authority can be of no help to him. *Sharma J.* Clearly observed that there was no cogent evidence on the record to prove those allegations and it was by the way observed that even if for the sake of argument it was to be considered that the facts alleged by the husband were true then also the same would hardly furnish a good ground for granting a decree for judicial separation because the same were clearly instances of conjugal life. What is more the concept of cruelty is undergoing a change as observed by *Tiwana, J.* In *Ashwani Kumar Sehgal v. Smt. Swatantar Sehgal*. 1978 Cur LJ 443 and the View taken by *Sharma J.* appears to be on the conservative side which no longer holds good.

27. For the reasons afore-mentioned, I entirely agree with the view taken by the matrimonial court below. Therefore, I find no merit in this appeal and dismiss the same, but leave the parties to bear their own costs.

28. Appeal dismissed.