

RAJASTHAN HIGH COURT

Smt. Nidhi Dalela

Vs.

Deepak Dalela

D.B. Civil Misc. Appeal No. 434 of 1998
(Shiv Kumar Sharma and Khem Chand Sharma, JJ.)

08.11.2001

JUDGMENT

Shiv Kumar Sharma, J.

1. "O you young couple, rising cheerfully to the occasion and recognising your responsibilities in the house that is the abode of joy, enjoying life by virtue of your own greatness, maintaining a spotless character, becoming proud parents and possessing an excellent house and living a meaningful life, pass through the bright and promising dawns."

(ATHARVA-VEDA 14.2.43)

The above advice of Atharva-Veda, turned into deaf ears of the wife and husband, the appellant and the respondent herein, who started their married life in November 1985 and within ten years of the marriage the husband approached the Family Court for dissolution of their marriage. Let us unfold the facts giving rise to the instant miscellaneous appeal.

2. The respondent husband has succeeded in the Court below in seeking a decree of divorce against the appellant wife on the ground that he was treated by his wife with cruelty and she lived a life of adultery after solemnization of her marriage with him. It is against this decree of divorce that the wife has preferred the instant appeal. For the sake of brevity we will hereafter refer the appellant wife and respondent husband by their respective names.

3. The marriage between Nidhi and Deepak was solemnized on November 25, 1985 according to Hindu rites and ceremonies. Both the parties cohabited at Jaipur and out

of this wedlock one male child named Ashvin was born on December 20, 1987.

4. On April 6, 1995 Deepak filed a petition in the Family Court Jaipur for the dissolution of his marriage with Nidhi under Section 13 of the Hindu Marriage Act, 1955 (for short the Act) on the ground of cruelty. It was averred in the petition thus :

(i) Nidhi used to spend most of her time lonely in her parents' house.

(ii) One day in November 1993 Nidhi, having taken too much of wine committed nuisance in the house and did not permit her son Ashwin to talk to his grand-parents. If per chance he did talk, he was beaten and manhandled by her.

(iii) Although Nidhi in 1989-90 sought admission in M.A. (Economics) P.G. Diploma (Finance) and evening classes of I.C.W.A. and used to go from house daily for attending classes yet she did not take examination nor did she offer a satisfactory reply.

(iv) Deepak's friend Arvind who used to visit frequently in their house, had developed illicit relations with Nidhi. Arvind and Nidhi simultaneously joined computer training course and planned to trade in jewellery. It is for the first time in July 1993 that Deepak learnt about Nidhi's illicit relations with Arvind. One Ram Pal told Deepak that Arvind and Nidhi were closely sitting side by side in a car behind stadium on July 8, 1993. Thereafter Deepak started keeping a vigilant eye on Nidhi and warned her not to meet Arvind any more and frequent visits of Arvind to their house were also stopped but meetings of Nidhi and Arvind did continue and Nidhi used to have long talks over telephone with Arvind. On July 15, 1993 around 11.30 a.m. Vandana, the wife of Arvind found Nidhi sitting on the rear seat of the car near the garage of Arvind's house. Vandana then picked up quarrel with Nidhi and Arvind and informed about this incident to Deepak. The couples then met in the evening at Statue Circle and it was agreed that Nidhi and Arvind would stop meeting, talking on phone and discontinue their business activities. But meetings of Nidhi and Arvind and their telephonic conversations did not come to an end on this count a quarrel ensued between Deepak and Nidhi on August, 1, 1993 when Nidhi declared Deepak to be good for nothing for all practical purposes and told that Arvind alone was capable of satisfying her physically. On a complaint made by Deepak to Vandana all the four at about 5 p.m. that day met at Statue Circle for final decision and Deepak secretly tape recorded that day's conversations.

(v) On April 9, 1994 one Aditya Kumar had seen Nidhi and Arvind together

climbing stairs and entering in 'Yashoda Hotel' near Polovictory Cinema. Deepak hired the services of Goliath Detective agency that gave its report on February 23, 1994.

(vi) On April 22, 1994 one Arjun Yadav had seen Nidhi and Arvind together in the vacant house of Prabhat Patni.

(vii) In April, 1994 Nidhi left the house with ornaments for participation in her sister's marriage to be performed at Delhi on April 27, 1994. She remained there upto May, 1994. On May 2, 1994 Deepak alongwith his father and brother went to Nidhi's parents house and handed over the report of Goliath detective agency and the cassettes of their conversations to Nidhi's parents and told them that she became unfit to be their daughter-in-law.

(viii) Arvind had committed suicide on May 3, 1994. Deepak in the petition also pleaded that he did not condone the matrimonial lapses of Nidhi and there was no connivance and collusion between them. He therefore prayed for the decree of divorce.

5. Nidhi in her written statement filed on January 15, 1996 controverted the aforesaid allegations in their entirety. It was pleaded by Nidhi that Deepak as per his own version, not only had gained knowledge of the alleged facts for the first time in July, 1993 but he had learnt about various incidents from his friends like Aditya Kumar and Arjun and also had got all these confirmed through hot pursuit and chasing investigation by a detective agency that gave its final report on February 23, 1994, then what prevented Deepak from filing the divorce petition then and there, firstly atonce after detective's report during the lifetime of Arvind upto May 3, 1994 and secondly thereafter too immediately but the petition was filed on April 6, 1995 and delay was not explained which hardly stands to reason. According to Nidhi, the reasons of late filing of divorce petition were none else but demonstratively establishing that after the death of Arvind, his parents left Jaipur for Bombay permanently after atonce disposing their immovable properties at jaipur with the clear intention of depriving Vandana, the widow of Arvind, of any share in it as per desire in the dying-note of Arvind dated May 3, 1994. Deepak who already developed illicit relations with Vandana, during the life-time of Arvind, manufactured false materials and procured fake witnesses for concocting a false story of Cock and Bull against Nidhi for getting rid of her, to be replaced by Vandana. This was so clandestinely manipulated as to ward off and forestall his defence as an offensive weapon against Nidhi's case for precluding her even from ventilating her silent suffering to which she

had been subjected of late. Nidhi a traditionally and socially domesticated housewife with old and feeble parents, how confronted with her over bearing, affluent, ingenious and influential spouse on the one hand and Vandana, widow of Arvind, how more free from all bonds of family and society on the other hand, both of whom through the gross abuse of process of law are awaiting impatiently the day for them according legal status to their adulterous lives. Deepak and Vandana while serving as boss and subordinate in one and the same department, had developed close intimacy leading to the illicit sexual relationship which pushing Nidhi into alleged Jewellery business venture as a sleeping partner with Arvind, Deepak and Vandana initially took a step to keep themselves in constant company in solitude to the exclusion of and keeping Nidhi in dark and unaware of their illicit affairs being carried on in the name of business activities and now the same is being sought to be employed as an instrument, not only to cut short her marital life but also to force here to lead a gloomy life with permanent social stigma of her character assassination. Alternative plea under Section 23 of the Hindu Marriage Act, 1955 was also averred by Nidhi in the written statement.

6. Deepak filed his rejoinder on March 27, 1996. Thereafter learned Family

Court framed following two issues on July 3, 1996 :

- (i) Whether the non-petitioner after the solemnization of marriage treated the petitioner with cruelty?
- (ii) Relief.

7. On a request being made by Deepak, following additional issue was framed on February 25, 1997 :

- (i) Whether the non-petitioner after solemnization of her marriage with the petitioner, has lived a life of adultery on the basis of which the petitioner is entitled to a decree of dissolution of marriage?

8. Deepak examined himself as PW 1 and produced Arjun Singh Yadav (PW 2), Aditya Kumar (PW 3), Rajesh Kumar Singh (PW 4), Laxman Singh Yadav (PW 5), Shambhu Sharan Dalela (PW 6), and Smt. Vandana Yadav (PW 7), whereas Nidhi examined herself as DW 1 and produced Manvendra Singh (DW 2), Girish Kumar Rajjada (DW 3), Tanuj Kumar Sinha (DW 4), Pradeep (DW 5), Govind Prasad Sinha

(DW 6), Mridul Sinha (DW 7), Kuldeep Singh (DW 8), Gyarsi Lal (DW 9), Naresh Gupta (DW 10), Mahesh Gupta (DW 11), Ashwin (DW 12) and Gopal Krishna Saxena (DW 13) in support of her case.

9. On hearing the final submissions the learned Family Court decreed the petition filed by Deepak as indicated hereinabove.

10. We have heard the detailed submissions advanced before us by the learned counsel for the parties and with their assistance scanned the record.

11. The learned Family Court decided all the three issues in favour of Deepak and held that Nidhi after the solemnization of marriage treated Deepak with cruelty and she lived a life of adultery.

12. The cruelty contemplated under Section 13(1)(ia) of the Act is conduct of such type that the affected party cannot reasonably be expected to live with the other party. The question whether the act complained of was a cruel act is to be determined from the whole facts and the matri-monial relations between the parties. Section 13(1)(i) of the Act provides that a marriage may be dissolved by a decree of divorce on a petition presented by either the husband or the wife on the ground that the other party after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse. Adultery can rarely be proved by direct evidence. Although the charge of adultery assumes a criminal character and demands of a rather strict proof yet the standard of proof required is not the same as is required to prove a criminal charge. Adultery can be established by circumstantial evidence and circumstances must be such as would lead the guarded discretion of a reasonable and just man to a conclusion of adultery.

13. Keeping these principles in view we now proceed to consider the evidence adduced by the parties.

14. Deepak examined himself as PW 1. In his deposition he stated that he came to know in the month of July 1993 that Nidhi had developed illegitimate physical relations with Arvind. On July 8, 1993 one Ram Pal had seen Nidhi and Arvind sitting in close proximity and indulging in illegal activities in car behind stadium at 8 'O' clock in the evening. The Stadium was unfrequented at that time. Nidhi left the house

saying that she was going to her mother's house but she had reached Stadium with Arvind. Nidhi joined computer classes in Khandelwal Girls College and also got Arvind admitted there whereas no male member could take admission. On June 21, 1993 Nidhi and Arvind had gone on picnic to Ayub Khan's farm house with some other girls of their class and had returned late in the night. Photographs of the picnic were exhibited as Ex. 1 and Ex. 2. In the farm house Nidhi and Arvind had behaved shamelessly and had remained in close proximity like husband and wife. The girl who went with them had taken impression that they were husband and wife. Nidhi herself had disclosed this fact in the meeting held on July 31, 1993. She also told that computer teacher Dalpat had to be taught in his style otherwise all the talks would be disclosed to her mother. Aforesaid conversation of Nidhi was recorded in a cassette Ex. 5 and its transcription copy was exhibited as Ex. 6

Deepak further stated that Nidhi started Gems and Jewels business with Arvind and opened a firm in the name and style of A.N. Enterprises. On June 23, 1993 they got opened a current account in M.I. Road Branch of Canara Bank. The receipt of the same was exhibited at Ex. 7. The account was in the joint name of Arvind and Nidhi. On the same day Arvind and Nidhi also opened a joint account, whose pass book was Ex. 8. Nidhi and Arvind used to leave home saying that they were going to Nirmal Chand Luharia's shop for taking training but they used not to go there. On July 15, 1993 Vandana, wife of Arvind, who was working in the office of Deepak came to him and uttered good and evil. She told that why he did not keep *Bhabhi* in control. Quarrels had been picking up in her house for last several months in the matter of Nidhi *Bhabhi*. On being questioned as to what had happened Vandana replied that in the morning of the said day when for official work she had left office in the way she had thought that she should first go to home to know the condition of her father-in-law, she also had some personal work so she had gone to home. After doing the needful when she had to leave the house she had heard noise of Arvind's car coming from garage. When she had gone in garage from bedroom, seeing her there Arvind became non-plus and confounded. Suspected some thing wrong she peeped into car but what she found that Nidhi was lying on rear seat of car trying to conceal her. Thereafter quarrel had been picked up between Nidhi and Vandana. Upon this Arvind told her not to disclose about this incident to Deepak. He had threatened Vandana that if she would disclose that incident he would make her homeless. On hearing this Deepak suffered heavy mental agony. On coming to home Deepak talked to Nidhi on this subject and snubbed her that it did not behave her to go to some one's house in lying down position on rear seat of car to make merry with him more so when nobody

was expected there except old and ailing father and mother and further more when one gate of its bed room opened in garage. Thereupon heavy quarrel picked up between Nidhi and Deepak. Nidhi contacted Arvind on telephone same day. She informed him that Deepak had much strong case in his favour for that day's episode. She cautioned him in hard terms that he would not mention about that incident to any one in the terms it had happened. She also told him that he would say that Nidhi had not been lying down on rear seat of the car but had been sitting on it. Nidhi admitted that she liked Arvind. Nidhi was bent upon to meet Arvind to such extent that she replied to Deepak that no body could stop them from meeting and keeping partnership. Deepak recorded conversation which took place between Nidhi and Arvind on telephone. On the same day in the evening at 8' O clock Nidhi, Arvind, Vandana and Deepak met at Statue Circle and took decision atleast Nidhi and Arvind would not meet in future, would not talk to each other and would not carry on business in partnership. Arvind sought apology for his misdeeds. He felt sorry. He also repented and told that had he not thought of his family that he would certainly have committed suicide. Nidhi did not accept her misdeeds. The conversation of the meeting was recorded in cassette, which was Ex. 9 and its transcription copy was Ex. 10. The irresponsible behaviour of Nidhi's going to unknown man's house in his car in lying down posture caused mental shock to Deepak. Despite his forbidden Nidhi did not abandon Arvind and was continuously meeting with Arvind. On one night Deepak saw that at about 1.30 O' clock in the late night Nidhi had talks on telephone with Arvind from another room. When Deepak asked her as to whom she had talked she disconnected telephone and replied Deepak that she had talked with her friend Manisha. When Deepak pressed re-dial button of telephone to know the number on which Nidhi had talked it were number of Arvind's telephone. Nidhi, Vandana, Deepak and Arvind had another meeting st Statue Circle on August 1, 1993 and the conversation which took place in the said meeting were got recorded by Deepak in cassette was produced as Ex. 11 and its transcription copy was Ex. 12. In the computer copy of Nidhi poem scribed by Arvind was also placed on record as Ex. 14. Vandana confirmed that it was in the handwriting of Arvind. In the month of January 1994 Deepak went to Trichunappali. From there at about 10.30 in the night Deepak inquired on telephone about Nidhi, family members informed him that Nidhi had gone to her parent's house. Thereafter Deepak tried to contact her on telephone at her parent's house but family members of her parents' house told him that Nidhi had not come to them. Then Deepak telephoned at Arvind's house from where he was informed that Arvind too was not in the house. On coming back when Deepak asked parents about the time table of Nidhi they

informed him that Nidhi used to leave house in the morning at 10 or 10.30 and used to return at 1 or 1.30 in the noon. In the month of February 1994 Deepak hired services of Goliath Detectives Private Limited. After interrogation for ten days this agency submitted its report. Report revealed that Nidhi and Arvind used to meet in Auto Centre shop situated in Ghat Gate. The officer of interrogating agency reported that they used to sit in inner portion of the shop and used to behave obscenely with each other. It was also reported that on February 22, 1994 they went to Aab-o-Dana restaurant, where they were found indulging in same activities. The investigation report submitted by M/s. Goliath Detectives was exhibited as Ex. 15. From July 15, 1993 Deepak put an end to physical relations with Nidhi.

On April 9, 1994 Deepak's friend Aditya Kumar informed Deepak that he had seen Nidhi and Arvind going to Hotel Yashoda and they remained inside the Hotel about one hour. On April 22, 1994 one Arjun Yadav told Deepak that when he had gone to meet his friend Prabhat Patni in his Furniture Shop he did (*sic* not?) find Prabhat Patni there. Thinking that Patni might be taking rest in his nearby house that was lying vacant, he went there. He found that the house was not locked from the outside. He being sure that Patni might be inside the house, knocked the doors. He repeated knocking. After about 5 to 7 minutes doors were got opened. He saw that his friend Arvind and Nidhi coming out of the house. On seeing him they confounded and left the place without uttering a single word. After suffering too much Deepak ultimately disclosed the activities and conduct of Nidhi to his family members. On May 2, 1994 Deepak, his brother Vishal and his father went to the parents' house of Nidhi and declared that henceforth they would not allow Nidhi to live in their house. Nidhi was in her parents' house for last 20 day. When she came to his house alongwith her father and brother, Deepak caused them to return.

On May 3, 1994 Arvind, Vandana and Kalpana @ Vinu (sister of Arvind) came to Deepak's house. Arvind told that he felt guilty conscious. Their conversation was got recorded by Deepak in a cassette Ex. 16. In the evening on May, 3, 1994 Arvind had committed suicide.

15. Arjun Singh Yadav (PW 2) stated that on April 22, 1994 at 2 p.m. he went to meet his friend Prabhat Patni at his Furniture Shop. Since Patni was not at the shop, he went to his nearby house and knocked the doors that were closed from inside. After about five to seven minutes the doors were got opened and Arvind and Nidhi came out of the house. Their clothes and hair were in disorder. Arvind was his friend and it had been a talk of discussion that Arvind had love affairs with some girl. On that day when he

saw Nidhi with Arvind, he came to know that the said girl was Nidhi. He then informed about this incident to Deepak.

16. Aditya Kumar (PW 3), a family friend of Deepak and Nidhi, deposed that on April 9, 1994 around 12 O'clock in the noon he had seen Arvind and Nidhi going upstairs together in Hotel Yashoda. He narrated this incident to Deepak and warned him to remain careful.

17. Rajesh Kumar Singh (PW 4) of Goliath Detectives Private Limited testified that as directed by his office he watched the activities of Nidhi and Arvind from February 14, 1994 to April 22, 1994. They used to go to Auto Centre at Ghat Gate. As the retiring room of Auto Centre was built of glass, he had occasion to see their activities. They used to sit in close proximity and rub gently cheeks and hair of each other. On February 22, 1994 they went to Aab-o-Dana restaurant and indulged in same activities. Report of investigation Ex. 15 was submitted by him.

18. Laxman Singh Yadav (PW 5) stated that he used to sit on the shop of Auto parts belonging to his brother. Arvind and Nidhi used to visit the shop and sit in cabin which was in the rear side of the shop. On one occasion he found one mechanic peeping inside the cabin from the hole of the gate. He reprimanded the mechanic but then he also peeped in the hole and found Nidhi and Arvind stark naked inside. He thereupon scolded Arvind who in turn said that Nidhi was his good friend.

19. Shambhu Sharan Dalela (PW 6) is the father of Deepak. He stated that Nidhi was a lady of independent ideology and was cheeky. She was in the habit of leaving the house without giving information. Persuasions put no effect on her. Since 1992 she put restrictions on his grandson Ashi from coming to him. In the month of January 1994 when Deepak had gone to Trichunapalli, she pretended to go to her parent's house but did go elsewhere. He pressed Deepak hard to let him know what the matter was. Upon this Deepak told him that Nidhi had illegitimate relations with Arvind. Deepak caused him to hear cassettes of conversations and peruse the report of Goliath Detectives. Thereafter on May 2, 1994 he alongwith Deepak and Vishal had gone to the parental house of Nidhi and handed over the cassettes and report of Detectives to her parents and declared that they did not want to keep her in their house. On April 3, 1993 Arvind alongwith his wife and sister came to his house and admitted that he was at fault in keeping relations with Nidhi. Later on he came to know that Arvind had

committed suicide.

20. Deepak also examined Vandana, the wife of Arvind, as PW 7. In her deposition she stated that she was married to Arvind in the year 1983. Her marital life was running good. With the co-operation of her husband Arvind she passed B.A., M.A. and M. Phil and topped in every examination. She was appointed as Assistant Manager in Diamond and Gem Development Corporation. Thereafter her family life faltered. The family members of D.G.D.C. used to meet together on the occasion of various ceremonies. In one such gathering her husband Arvind came in contact with Nidhi and their relations became deeper. On 24th and 25th May, 1993 Arvind sat with Nidhi for whole day on a shop of goldsmith situated in Bani Park and caused to be made a golden chain weighing 20 gms. for Nidhi. Nidhi put the chain on her neck on the occasion of her birthday. She requested her husband to be in limit but he trapped in fascination of Nidhi and paid no heed to her request. Arvind got admission in Khandelwal Girls College, and joined computer classes as a special case. Arvind and Nidhi formed A.N. Company to start Gemstone business in partnership. When she had gone to Delhi and remained there from June 21, to June 26, 1993 with her daughter, Arvind and Nidhi got opened joint current account in the name of A.N. Enterprises in M.I. Road Branch of Canara Bank. On the same day they also got opened a personal joint saving bank account in the same bank. She was totally against this business. No government servant could put his service in risk by carrying on business in his name and by opening accounts in Bank in the name of his firm. On June 21, 1993 in peak hot Arvind and Nidhi alongwith other colleagues went on picnic to Ayub's farmhouse. Ayub was friend of Arvind. They were in the farmhouse from 8 a.m. till 8 p.m. Their behaviour was intimate. They caused to be eating meals to each other by their own hands. They roved in farmhouse holding each other's hand. They took bath in pool together. They remained closed in a room that was on first storey for pretty long time on the pretext of changing clothes. For their objectionable behaviour Arvind and Nidhi both were expelled from the computer institution. On July 15, when she went home she found motor cycle of Arvind standing outside the house. It gave her astonishment because Arvind used to go to office on motor cycle only. When she entered the house she heard noise of car coming from garage. One gate of her bedroom opened in garage. She went in garage through the gate. Arvind was coming out of the car. Seeing her Arvind became flabbergasted. When she peeped in the car she became stupefied on finding Nidhi on rear seat of car lying down. She tried to conceal herself by leaning. To be wild with rage she dragged Nidhi out of car holding her hands and

spoke out bitter truth. From the circumstances it became clear to her that Nidhi and Arvind had accessed her bedroom several times and they had developed illegitimate physical relationship. Arvind sought apology from her. Arvind told her that Nidhi herself was after him and in such circumstances it was very difficult for man to keep control. Arvind, Nidhi, Vandana and Deepak had talked face to face. Nidhi did not admit her guilt. Arvind admitted his guilt. Nidhi wanted to tell story in different way but Arvind told the truth. Arvind promised her not to carry business together but despite all this the business was continued. In the month of September Deepak found a poem in the copy of Nidhi. Deepak showed it to her. Vandana confirmed that it was in the handwriting of Arvind. In the month of April 1994 she left the services of D.G.D.C. and joined the research institution named "SAANDHAN". On May 2, 1994 telephone message of Nidhi's mother came. She was very much bewildered. She told that as a result of Arvind and Nidhi's relationship members of her in-laws house had left Nidhi to her parental house. Hearing the news of Nidhi's exit Arvind deviated much. Arvind's father, mother and sister told much good and evil to him and told that because of Arvind the reputation of family had been come to dust. Deepak supplied one copy of report submitted by Goliath Detectives to Vandana's sister-in-law Venu. Her husband Arvind committed suicide because of Nidhi and it was Nidhi who devastated her happy marital life and before attaining the age of 30 years she became widow.

21. Nidhi (DW 1), in her deposition denied the allegations levelled against her by Deepak. According to her Deepak and Vandana while serving as boss and subordinate in one and the same department, had developed close intimacy leading to the illicit sexual relationship which pushing Nidhi into alleged Jewellery business venture as a sleeping partner. It was Deepak who during the life-time of Arvind manufactured false materials and procured fake witnesses for concocting a false story against Nidhi for getting rid of her. She denied of having adulterous relations with Arvind and stated that her behaviour with Deepak was never cruel.

22. Manvendra Singh (DW 2) was examined by Nidhi in order to establish that Deepak and Vandana used to visit frequently together. Manvendra Singh deposed that in the winter of December 1993 around six thirty in the evening he had seen Deepak and Vandana at Chokhi Dhani.

23. Girish Kumar Raizada (DW 3) maternal uncle of Nidhi, stated that he got the

marriage of Nidhi and Deepak arranged. He further deposed that he had seen Deepak and Vandana going together to the office in a jeep. After some time Deepak purchased his own Maruti car and he had seen Vandana many a times in the car of Deepak.

24. Tanuj Kumar Sinha (DW 4) brother of Nidhi, stated that while going to his office he used to see Deepak and Vandana going together in a vehicle. As and when he went to Nidhi at 1 O'clock in lunch time he found her ready for going to Ashwin's school to pick him up. In December 1993 and January 1994 he had seen Deepak and Vandana coming out of Chokhi Dhani. On May 2, 1994 Deepak, his younger brother and his father came to their house and told him not to keep Nidhi with them. In the night he took his sister in the car to Deepak's house but he found all the doors locked. There Deepak's friend Aditya came and told that he knew nothing. Aditya promised to act as mediator and persuaded him and Nidhi to return back to the house.

25. Pradeep (DW 5) cousin of Nidhi, deposed that he had seen Deepak and Arvind in the drawing room of Deepak and they were hotly exchanging the words. Arvind was asking Deepak as to why he used to take his wife hither and thither without his consent.

26. Gobind Prasad Sinha (DW 6) a near relative of Nidhi stated that Nidhi never behaved against the wishes of her in-laws. On one occasion Deepak and Vandana went to Delhi together. They had gone to Sariska on picnic together. In the month of May 1994 Deepak alongwith his father and mother came to his house and levelled allegations on the conduct and character of Nidhi and told that they would not keep Nidhi with them. They had referred about Nidhi's talks in cassettes and report of detectives. Deepak created false documents after the death of Arvind. The witnesses produced by Deepak were tutored by him.

27. Mridul Lal Sinha (DW 7) stated that he used to see Deepak and Vandana attending functions together.

28. Kuldeep Sinha (DW 8) uncle of Nidhi, deposed that he had a talk with Arvind before his death. Arvind told him that he had full knowledge about the relations of Deepak and Vandana. He also had a talk with Deepak about this. Deepak told him that Nidhi would be at number two because Vandana was at number one.

29. Gyarsi Lal (DW 9) was sub-Inspector on May 3, 1994 at Police Station Ashok Nagar, Jaipur. He deposed that after seeing the dead body of Arvind he initiated proceedings under Section 174 and got recorded the statement of Amrit Lal Yadav. A piece of paper Ex. 34 was found in the pocket of the deceased.

30. Naresh Gupta (DW 10) stated that Arvind was his friend and he used to be perturbed in the matter of Vandana before suicide.

31. Mahesh Gupta (DW 11) stated that he used to go to Arvind's house and from their conversation he came to know that Arvind did not have good relations with his wife who used to go and come with her office boss and had illegitimate relations with him.

32. Ashwin (DW 12) aged 10 years deposed that quarrel seldom picked up between his father Deepak and mother Nidhi. Vandana auntie used to come to his house. She used to go with his father. Once on January 14, his father told him that he would leave his mother and live with Vandana auntie.

33. Gopal Krishna Saxena (DW 13) stated that he used to see one lady with Deepak. On being inquired from Nidhi she told that the lady was working with Deepak in his office.

34. Mr. N.K. Joshi, learned counsel appearing for Nidhi vehemently canvassed that the learned trial Court while assessing the evidence left out broad and glaring circumstances. Learned trial Court did not consider that it was Vandana who initially introduced Arvind to Nidhi and Deepak in the late month of 1992. Arvind was only an Inspector, whereas Deepak occupied an important position and in such a situation Arvind could have hardly thought of hobnobbing with Nidhi who was the wife of his wife's superior officer. Arvind committed suicide because of shame and mental agony resulting from the relationship of Deepak and Vandana was disinherited by suicide-note left by Arvind. Vandana was so interested in joining the company of Deepak that she appeared as a witness against Nidhi who had a happy married life and gave birth to a male child on December 20, 1987. She did not know Arvind before 1992 and there was no apparent reason for her to ruin her happy married life.

35. Learned counsel further contended that Deepak in the petition did not plead that Nidhi had gone to Picnic on June 21, 1993 with Arvind and that Arvind and Nidhi met

in January and February 1994 in Auto Centre and that Nidhi brought Rs. 30,000/- from Shard for Arvind on her visit to Bombay in July 1993.

36. It was next urged that computer course was run by Dalpat Singh and this fact was not refuted by Deepak therefore examination of Dalpat Singh was not necessary and no adverse inference could have been drawn against Nidhi by non-production of Dalpat Singh. The facts that influence of Nidhi's mother was used in getting Arvind admitted to computer course and Nidhi and Arvind were expelled from the classes have not been pleaded in the petition by Arvind. To establish this fact that Nidhi and Arvind were seen in a car sitting in a close proximity behind the stadium, Ram Pal was not produced. Similarly to prove that Nidhi and Arvind had gone for picnic at the Farm of Ayub Khan the witness present in picnic was not examined. The testimony of Aditya Kumar cannot be believed as there was no occasion for him to stay for one and half hour to see Nidhi and Arvind going in the Yashoda Hotel and after spending one hour there, coming out of it. No witness of Hotel was examined to prove this fact. The incident of Nidhi visiting house of Arvind on July 15, 1993 cannot be regarded as an incident which may have the effect of proving adulterous relation between them. Arjun Singh Yadav is a highly interested witness. It cannot be believed that after hearing knock at the door of Prabhat Patni, Arvind and Nidhi both came to the door and Nidhi did not try to conceal her presence. On April 22, 1994 Nidhi was not at Jaipur and had already left for Delhi. The testimony of Laxman Singh Yadav in seeing Nidhi and Arvind in a glass house without the clothes, is highly unnatural. The report Ex. 15 of Goliath Detectives neither was written by Rajesh Kumar Singh (DW 5) nor did he put his signatures over it. The report is inadmissible in evidence. No reliance can be placed on it as it was given by a private detective agency after charging money. The evidence of cassettes does not prove any adulterous relations. The cassettes were edited and dubbed. The allegations were fabricated after 11 months from suicide of Arvind.

37. Learned counsel further urged that the case of Deepak could not have been found proved on the basis of weakness or falsity of defence. The observations of learned trial Court that Nidhi looking to the allegations made against her in the petition levelled false allegations against Deepak, is absolutely unjustified. The grounds of cruelty and adultery could not be established and the petition ought to have been dismissed. Reliance was placed on (1) *Bharti Devi v. Sheo Narayan*, I¹ *Shan-kuntla v. Shiv Dayal*, I² *Deepak Kumar v. Sampuran Arora*, I³ *Om Prakash v. Rajni*, I⁴ *Mangal Singh*

v. State of Rajsthan, ⁵ *P. v. P.,* ⁶ *Mrs. D. Henderson v. Mr. D. Henderson,* ⁷ *Tapan Kumar v. Kamala,* ⁸

38. Per *contra* Mr. Paras Kuhad learned counsel appearing for Deepak supported the finding of learned trial Court and canvassed that the evidence produced by Deepak was rightly relied on by the trial Court. As the marriage of the parties appears to be practically dead, it would be futile to make any interference with the impugned order. Reliance was placed on (10) *Chandra Kala Trivedi v. Dr. S.P. Trivedi,* ⁹

39. On analysing the testimony of Nidhi closely, we find that she has admitted to join alongwith Arvind the computer classes in the Khandelwal College together but she gave explanation that the classes were joined by them on the pursuation of Deepak. It is also borne out from her statement that before joining the computer classes at Khandelwal College, Arvind used to attend the computer classes and he had to leave the classes of Cistems. Nidhi has also admitted that she and Arvind formed A.N. Company to start Gemstone business in partnership and they got opened joint current account in the name of A.N. Enterprises in M.I. Road Branch of Canara Bank. On the same day they also got opened a personal joint savings Bank account in the said Bank. But she gave the explanation that Deepak and Vandana persuaded them to do so, She has also admitted that she had gone to Arvind's house around 11.30 a.m. on July 15, 1993 in his car and Arvind directly parked the car in the house and on seeing Vandana in the house Arvind gabbled. In the evening when she went to her house Deepak uttered absurd words and imposed allegations on her entangling Arvind's name with her. Nidhi has also admitted that Deepak alongwith his brother and father came to her parents' house in the evening of May 2, 1994 and told that they would not keep her further more in their house and returned after levelling allegations on her referring conversation recorded in cassette and report of detective agency.

40. Nidhi in her cross-examination stated thus :

"It is true that Bank account A.N. Enterprises was got opened in joint names of Arvind and me."

"The second personal account, which I got opened on same day, was got opened in Arvind and my name."

Nidhi further stated thus :

"Arvind and I had reached Arvind's house at 11.30 a.m.... It is true that while going to Arvind's house on 15th July, I was not knowing as to whether Vandana would be in the house or not."

41. It is established from the statement of Vandana (PW 7) that one gate of her bedroom opened in garage and she went in the garage through that gate. Finding her husband flabbergasted, she peeped in the car and found Nidhi lying on the rear seat and was trying to conceal herself by leaning. Vandana categorically deposed that from the circumstance it became clear that Nidhi and Arvind had accessed her bedroom several times and they had developed illegitimate relationship.

42. We have been persuaded by Mr. N.K. Joshi learned counsel to ignore those incidents which have not been pleaded in the petition and also the testimony of the witnesses Arjun Singh Yadav (PW 7) Aditya Kumar (PW 3), Rajesh Kumar Singh (PW 4) and Laxman Singh (PW 6), who deposed to have seen Nidhi and Arvind together at Yashoda Hotel, Prabhat Patni's house and Auto Centre, Overlooking the statements of these witnesses and the evidence of detective's report and the cassettes if we proceed to consider the statement of Nidhi, we find that from her own admissions it is established that Nidhi and Arvind were so involved with each other that they had joined computer classes together, and they had formed A.N. Company to start Gemstone business together and got opened personal joint savings Bank account in Canara Bank. Nidhi and Arvind had gone on July 15, 1993 at 11.30 a.m. to Arvind's house in a car and went straight to garage which was directly connected with Arvind's bedroom. They never expected Vandana in the house as she had gone to the office but finding her there Nidhi made an attempt to conceal her presence by lying on the rear seat of Arvind's car. Vandana narrated this incident to Deepak who scolded Nidhi for that. These facts in our considered opinion are sufficient to lead to the only conclusion that Nidhi and Arvind had developed illegitimate relationship. It is well settled that fact of adultery is not required to be proved by direct evidence. It would be even unreasonable to expect direct evidence and such evidence, if produced would be normally suspected and be discarded. The fact of adultery is expected to be established by circumstantial evidence but in that event the circumstances must be such as lead to the necessary conclusion that the adultery was committed by the spouse concerned.

43. Evidently the words 'A' and 'N' of A.N. Company' appear to have denoted 'Arvind' and 'Nidhi'. Although counter allegations have been levelled against Deepak and Vandana that they had illicit relations and the divorce petition has been filed by Deepak to get rid of Nidhi and to give his adulterous life with Vandana, a legal status but we find unable ourselves to agree with this submission. We are also unable to agree that Nidhi was a traditionally and socially domesticated housewife. After having closely scrutinised the entire testimony of Deepak, Vandana and Nidhi, we find that the version of Deepak and Vandana has ring of truth and their testimony does not seem to be in any way tainted and we are inclined to accept it. The circumstances indicated as above by us necessarily lead to an irresistible inference of adulterous relation between Arvind and Nidhi. The explanation offered by Nidhi cannot be termed as truthful. We are not impressed by this submission that it was Deepak who persuaded Nidhi to join computer classes with Arvind or to open joint savings account or to go with him to his garage which was attached to Arvind's bedroom. By adducing the evidence of her relatives Nidhi only made an unsuccessful attempt to establish that Deepak had illicit relations with Vandana and he wanted to marry her. An overall view of the evidence only demonstrates that Nidhi has levelled these allegations only to counter the facts pleaded by Deepak in the petition against Nidhi. The evidence produced by Nidhi, in our considered view, is not sufficient to disprove the charge of cruelty and adultery levelled against her. So far as the testimony of Ashwin (DW 12) is concerned we find that Nidhi used his influence on him and he was made to depose that Deepak told him that he would leave his mother and live with Vandana auntie. We are also not impressed with the submission that Arvind had committed suicide because of shame and mental agony resulting from the relationship of Deepak and Vandana. After having carefully perused the suicide-note we do not find that Vandana was disinherited by Arvind. We do not find any reference of Vandana in the said suicide-note and it appears that Arvind was worried about her only daughter.

44. We are also unable to agree that the reason for late filing of divorce petition was that some time was consumed in manufacturing the false materials and procured fake witnesses for concocting a false story of Cock and Bull against Nidhi. The plea under Section 23 of the Act is also not found established from the material on record. The time consumed in filing the divorce petition is not fatal in the facts and circumstances of this case.

45. Deepak in our considered opinion has established that he had a reasonable

apprehension in his mind that it will be harmful for him to live with Nidhi because of her conduct that caused disgrace to him in the society and caused him mental agony. Both the issues of cruelty and adultery were rightly decided by the learned trial Court. From the total evidence as discussed above and other facts and circumstances we are constrained to hold that Nidhi after marriage, treated Deepak with cruelty and she lived a life of adultery and the matter went so far that it is evident that marriage between the parties has irretrievably broken down and there are no chances of their living together. In this background we do not find any reason to interfere with the decree of divorce granted by the learned Court below.

46. The appeal is accordingly dismissed and impugned decree of divorce stands confirmed. But having regard to the facts and circumstances, we make no order as to costs.

Appeal dismissed.

Cases Referred.

1. (1984) DMC 150
2. (1984) DMC 377
3. (1981) DMC 55
4. AIR 1988 Del 107
5. 1984 RLR 953
6. AIR 1982 Bom 498
7. AIR 1970 Mad 104
8. AIR 1985 Cal 74 and (9) P. v. P., I (1989) DMC 56
9. (1993) 4 SCC 232