

(18) There is no dispute on the fact that the Commandant (Selection Grade) is a Group A post under the Central Government and for Group 'A' posts the age of Superannuation is 58 years. Consequently, the petitioners have a right to continue in service up to the age of 58 years.

For the foregoing reasons, this writ petition is allowed and the order retiring the petitioners at the age of 55 years is set aside. The petitioners should be, forthwith taken back in service as Commandants, (Selection Grade) and they would be deemed to have continued in service in that rank from the date they were retired. Needless to mention that they would be entitled to all consequential benefits flowing therefrom. I make no order as to costs.

J.S.T.

Before : A. P. Chowdhri, J.

SAMITI KHANNA,—*Petitioner.*

versus

AROON KHANNA,—*Respondent.*

First Appeal from Order No. 14-M of 1991

April 9, 1992.

Hindu Marriage Act of 1955—Sections 13 & 13B—Application for divorce by mutual consent filed before District Judge—Statements of parties recorded—Wife withdrawing petition under section 13B claiming signature on petition obtained under threat—Said petition dismissed—Husband filing for divorce on ground of cruelty and desertion—Withdrawal of petition for mutual consent—Effect of on divorce proceedings stated—Decree of divorce granted by District Judge is unexceptionable—Denial of sex amounts to cruelty—In absence of evidence, wild and reckless allegations of fraud, coercion and undue influence made by wife cannot be relied upon—Findings of cruelty upheld—However, findings on desertion reversed—Decree of divorce upheld.

Held, that it was contended that withdrawal of the petition under section 13-B could not give rise to any adverse inference as the statute itself provides for a waiting period and it was open to either or both the parties to withdraw the petition. I am unable to accept the contention. The learned trial Court has duly considered the evidence on record and has supported the findings on issues Nos. 1 and 2 with independent reasons. Certain material admissions made in the application under section 13-B of the Act by the appellant have been taken to lend necessary corroboration to the findings which, as stated above, have been reached on the basis of the material on record.

(Para 8)

Held, that a normal and healthy sexual relationship is one of the basic ingredients of a happy and harmonious marriage. Denial of sexual relationship by a spouse when the other spouse is anxious for it would amount to mental cruelty, especially when the parties are young.

(Para 16)

Held, that, it was open to the appellant to have changed her mind and withdrawn the application under section 13-B made earlier. Instead of withdrawing the petition, she went out of the way to make wild and reckless allegations of fraud, coercion and undue influence against the respondent-husband and his relations. She made similar allegations in the petition under section 125 of the Code of Criminal Procedure. No effort was, however, made to substantiate these serious allegations.

(Para 16)

Held, that the learned trial Court fell into an error by giving undue importance to the admission regarding separate stay of the parties in the joint petition under section 13-B of the Act. Once the parties with the help of their common relations decided in principle that the parties should gracefully part company by making an application under section 13-B, the rest was only a legal formality.

(Para 17)

First Appeal from the decree of the Court of Shri P. L. Goyal, Addl. Distt. Judge, Karnal dated the 8th day of January, 1991 allowing the petition of the husband-petitioner against wife-respondent by passing a decree of divorce on the grounds of desertion and cruelty and dissolving the marriage between the parties.

Claim : Petition under section 13 of the Hindu Marriage Act 1955 as amended by Marriage law (Amended) Act 1976.

Claim in appeal : For reversal of the order of lower court.

L. M. Suri, Sr. Advocate with Deepak Suri, Advocate, for the Petitioner.

R. S. Cheema, Sr. Advocate with S. S. Narula, Advocate, for the Respondent.

JUDGMENT

A. P. Chowdhri, J.

(1) This appeal is directed against judgment and decree dated January 8, 1991, of the Additional District Judge, Karnal, allowing respondent's petition under section 13 of the Hindu Marriage Act 1955 (hereinafter referred to as 'the Act').

(2) Aroon Khanna, respondent married Samiti Khanna appellant on February 13, 1974. A male child named Amar was born to the couple within a year of the marriage on December 21, 1974. Aroon Khanna lost his father Vishwanath Khanna when the former was only about 6 years old. Vishwanath Khanna along with his wife Smt. Raj Khanna and two children Aroon and a daughter Sushma was living jointly with his brother Pran Nath Khanna and his wife Shakuntla Khanna. The two brothers Vishwanath Khanna and Pran Nath Khanna were joint in business in equal shares. After the death of Vishwanath Khanna, his widow Smt. Raj Khanna and her two children continued to live jointly with Pran Nath Khanna and his wife. At the time of marriage of Aroon Khanna thus they were living jointly with Pran Nath Khanna and his wife, who have no issue of their own. Samiti's elder sister Shashi is married to Smt. Shakuntla Khanna's nephew Jagdish Khullar. In other words, Smt. Shakuntla Khanna wife of Pran Nath Khanna is the *Bhua* of Samiti's elder sister's husband. The respondent herein sought dissolution of marriage on the ground of desertion and cruelty. His case was that after a few years of marriage, Samiti started coaxing him to separate from his mother Smt. Raj Khanna, uncle Pran Nath Khanna and aunt Smt. Shakuntla Khanna and start living in a separate house. This was not acceptable to Aroon Khanna, but Samiti refused to see reason and in order to press her demand she first started neglecting the respondent-husband and his close relations and then insulting his aforesaid relations. When he protested against such conduct, she reacted rudely. She also denied sex to him. This conduct caused deep mental torture to him and his said relations. Towards the middle of 1986, she started asserting herself by adopting a defiant attitude and exploiting all possible opportunities of insulting and humiliating him and said members of his family. In November 1986 she left the matrimonial home saying that she would not return till the respondent husband established his own independent house. Efforts for bringing about reconciliation by common friends and relations continued. Ultimately it was decided that the marriage be got dissolved by making an application under section 13-B of the Act. In pursuance of the above decision, Samiti Khanna appellant-wife accompanied by her elder sister Shashi and her husband Jagdish Khullar besides some other relations came to Karnal on March 17, 1988. A joint petition Exhibit P-1 under section 13-B of the Act was drafted incorporating the terms settled between the parties. According to the settlement, Samiti Khanna was entitled to take away all her jewellery besides personal effects including clothes, fridge, sewing machine, utensils, silver, furniture, bedding etc. as well. The parties had a locker in the State Bank of India, Model Town Branch, Karnal, which could be operated upon by the husband and the wife jointly

as well as severally. Smt. Samiti Khanna opened the bank locker on March 17, 1988, and took away all her jewellery etc. Her personal effects were loaded in a tempo and sent away to Samiti's parental house. Thereafter the parties presented the application under section 13-B of the Act before the District Judge, Karnal. Their statement was recorded by the District Judge and the case was adjourned for six months as statutorily required. Smt. Samiti Khanna left for Ludhiana along with her sister, bother-in-law and other relations by car the same day. Further case of the respondent-husband is that in October 1988, Smt. Samiti Khanna seems to have made up her mind to go back on her compromise. She accordingly moved an application Exhibit P-4 dated October 11, 1988, withdrawing the petition under section 13-B of the Act, which was pending before the District Judge, Karnal. She also moved another application before the Judicial Magistrate Ist Class, Ludhiana, for maintenance under section 125 of the Code of Criminal Procedure on October 18, 1988. In the application made before the District Judge, Karnal, it was stated that she had been a victim of fraud practised by her husband and his relations and, in fact, her signature on the petition had been obtained under threat that unless she signed the petition her life and that of her minor son would be in danger. She also sought to retract the various admissions of fact made in the said earlier petition under section 13-B of the Act. As a result of the said application, the petition under section 13-B of the Act was dismissed by the learned District Judge.

(3) In the written statement filed by Smt. Samiti Khanna, both the grounds were denied. It was stated that, in fact, Pran Nath Khanna was a man with a very dominating nature. He held control of all the properties and business of the family. He had not allowed Aroon Khanna to grow up and Aroon was always treated like a puppet by him. Aroon's mother i.e. mother-in-law of Samiti Khanna was a woman of submissive and docile nature and it was in these circumstances that Samiti advised her husband-Aroon to gain self-confidence and try to develop his own independent personality. It was further stated in the written statement that Pran Nath Khanna and his wife started usurping the properties of Aroon Khanna and his mother. Several properties were got transferred in the individual name of Smt. Shakuntla Khanna, and Pran Nath Khanna and Smt. Shakuntla Khanna took control of the cinema business of the family and utilised its income to themselves without giving due share to Aroon's family. When she protested and asked Pran Nath Khanna and Smt. Shakuntla Khanna to desist from committing illegalities in the property and business of the family and to give up their illegal design, Pran Nath

Khanna and his wife instigated Aroon and acting under their influence, Aroon started declaring that he would get rid of his wife and would remarry. Sometimes he went to the extent of giving beating to Samiti Khanna and compelled her to go away to her parents' house.

(4) With regard to the averments relating to March 17, 1988, Samiti Khanna stated that her husband, his uncle and aunt gave threats to her and got a few blank papers signed from her. On the following day i.e. March 18, 1988, she along with her minor son was forced to leave the matrimonial house with a few articles of their daily use. With regard to her statement purporting to have been recorded by the District Judge, it was stated that she was taken to

some courts without informing her anything about any proceedings under threat of injury to her and her son. She denied having operated bank locker on March 17, 1988 or to have removed her jewellery or other belongings.

(5) In the replication, *inter alia*, it was stated that Vishwanath Khanna and Pran Nath Khanna were running cinema business jointly. After the death of Vishwanath Khanna, Pran Nath Khanna made Smt. Raj Khanna as a partner and when Aroon completed his education he also joined the said partnership. Allegations of appropriating any property of the joint Hindu family exclusively in the name of Smt. Shakuntla Khanna was denied.

The trial Court framed the following issues :—

1. Whether the respondent has deserted the petitioner for a continuous period of more than 2 years immediately preceding the filing of this petition and as such the petitioner is entitled for a decree of divorce on this ground ? OPP.
2. Whether the respondent has treated the petitioner with such cruelty as to entitle him for a decree of divorce ? OPP.
3. Whether the previously instituted joint petition under section 13-B of the Hindu Marriage Act, 1955 was the outcome of fraud on the part of the petitioner ? OPR.
4. Relief.

(6) On an evaluation of the evidence, the learned trial Court held that the wife had deserted the respondent-husband since November 1986. The various ingredients of section 13 (1) (i-b) of the Act had been satisfied. It was further held that application under section 13-B of the Act had been voluntarily made by Smt. Samiti Khanna and it was later on withdrawn by her and that no fraud had been practised.

upon her by the respondent-husband in making that application and averments made in this behalf in the application seeking to withdraw the application under section 13-B or in the present written statement were false. The ground of cruelty was also held proved. Accordingly, the petition was allowed on both the grounds. Aggrieved by the decree, the wife has preferred this appeal.

(7) I have heard Mr. L. M. Suri, Senior Advocate, for the appellant and Mr. R. S. Cheema, Senior Advocate, for the respondent and have carefully perused the record with them.

(8) It will be convenient to first deal with issue No. 3 which has a bearing on issue Nos. 1 and 2. The finding of the trial Court on this issue has not been seriously disputed by Mr. Suri, but his contention is that the trial Court had blown the incident regarding making of application under section 13-B of the Act out of all proportion and has largely based its opinion on that ground. According to Mr. Suri, the long and short of the matter was that at one stage an application appears to have been made for mutual divorce but on second thought the wife withdrew the petition. It was contended that withdrawal of the petition could not give rise to any adverse inference as the statute itself provides for a waiting period and it was open to either or both the parties to withdraw the petition. I am unable to accept the contention of Mr. Suri. The learned trial Court has duly considered the evidence on record and has supported the findings on issues Nos. 1 and 2 with independent reasons. Certain material admissions made in the application under section 13-B of the Act by the appellant have been taken to lend necessary corroboration to the findings which, as stated above, have been reached on the basis of the material on record.

(9) On a consideration of the facts and circumstances of the case, there is no manner of doubt that the application Exhibit P-1 was made by the appellant along with her husband voluntarily and there was no question of any threat having been given to her or fraud practised on her. The reasons for this conclusion may be briefly stated as follows :

(10) In the application Exhibit P-4, withdrawing the application under section 13-B of the Act, several grounds such as undue influence, coercion, fraud, threat of injury to the person of the appellant and her son, were given without mentioning the supporting facts and particulars. The appellant does not deny her signature on the petition under section 13-B as well as going to the Court. Admittedly, the appellant is a graduate and belongs to a well-to-do family. The

statement of the appellant Exhibit P-2 was recorded by no less a person than the District Judge himself. The statement was read over to the appellant and she put her signature on the statement in the Court. The material facts concerning the making of the application under section 13-B of the Act have been supported by (PW-3) Mr. Justice T. R. Handa, a retired Judge of the High Court of Himachal Pradesh. Mr. Handa was admittedly related to both the parties. He took interest and played an active role in bringing about reconciliation between the parties. He was personally present at Karnal on March 17, 1988, and he deposed in no uncertain term that the application was given a final shape in the presence of the parties and the same was read out and explained to the parties. He further deposed that the application was signed by the appellant in his presence with her free consent. The above incident is supported by the fact that dowry articles were loaded in a tempo and sent away to the parent house of the appellant. This fact is established from the testimony of Mr. T. R. Handa (PW-3), Arun Khanna respondent (PW-4), Ajit Singh (PW-5), owner-cum-driver of tempo, Smt. Raj Khanna (PW-6), mother of the respondent, and Kishan Lal (PW-7) who accompanied the tempo to Ludhiana. There was no question of any fraud or coercion because the proceedings took place in the presence of appellant's real elder sister and her brother-in-law, besides Mr. Justice T. R. Handa (retired). Another important supporting fact is that the appellant operated the locker that day as deposed by Mr. Dewan Singh (PW-1), Branch Manager of the State Bank of India. The fact that the appellant took away all her jewellery is also deposed to by Mr. T. R. Handa (PW-3).

(11) For the foregoing reasons, it is established that the appellant of her own free consent made the application under section 13-B of the Act and there was no question of any fraud having been practised on her in securing her consent or signature to the said application. There is thus no difficulty in affirming the finding of the trial Court on this issue.

I may now deal with issue No. 2. Allegations with regard to cruelty given in the petition may be briefly summarised :—

- (i) The appellant started coaxing the respondent-husband to live separately from his mother, uncle and aunt and when the respondent-husband did not agree, she reacted rudely.
- (ii) She showed her rudeness and insulting attitude towards the respondent-husband and his mother, uncle and aunt in

the presence of visiting friends and relations, resulting in grave mental torture to the respondent-husband and his said relations.

- (iii) She denied normal sexual relations to the respondent-husband.
- (iv) She levelled false and frivolous allegations against the respondent-husband, his uncle and aunt with regard to alleged coercion, fraud etc. in relation to the petition under section 13-B of the Act in the application for withdrawal of the said petition as well as in the application under section 125 of the Code of Criminal Procedure.

(12) Mr. L. M. Suri has raised three contentions. He submitted that the allegations made in the petition did not add upto cruelty within the meaning of section 13 (1) (i-a) of the Act. He further contended that allegations made in paragraph 4 of the petition are general and vague and in the absence of dates and particulars of specific incidents no case for alleged cruelty could be held proved. Thirdly, he submitted that the appellant *bona fide* believed that it was in the interest of her husband and their only child that they should live separately and there was nothing wrong if she expressed that view in the interest of the husband and his family i.e. the appellant and their son.

(13) The contention of Mr. R. S. Cheema is that in the peculiar facts and circumstances of this case, more particulars could not be given. The allegation related to attitude and behaviour of the appellant. He pointed out that no objection was taken by the appellant in the written statement with regard to greater particulars showing that all along the appellant understood what was being alleged against her. He further pointed out that not only that no objection regarding greater particulars was taken, the appellant came forward with her own version of the incidents which took place in the matrimonial home. Learned counsel specially emphasised that denial of sex itself amounted to infliction of mental cruelty. He also laid emphasis on the fact that holding a certain view was one thing but adopting an insulting attitude towards the husband and his close relations whom he held in high esteem was bound to cause deep anguish and mental torture. Learned counsel also highlighted the fact that the admitted position in the facts of the present case is that at the time of marriage of the appellant, the respondent-husband was living in a joint family with his uncle and aunt. His uncle and aunt were evidently held in high esteem by the respondent-husband as he

had brought up Aroon Khanna and his sister Sushma like his own children. He was himself issueless and the fact that his widowed sister-in-law Smt. Raj Khanna chose to continue to live with Pran Nath Khanna and his wife showed how closely-knit family they constituted. It was against this scenerio that the hostile attitude adopted by the appellatant had to be viewed.

(14) The word "cruelty" occurring in section 13 (1) (i-a) of the Act has not been defined. In *Sobha Rani v. Madhukar Reddi* (1), their Lordships of the Supreme Court have explained the connotation of the word "cruelty" in the following words :—

"..... It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adveresly affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment in the mind of the spouse. Whether is caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and *per se* unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted."

It was further observed :—

"It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case

may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the Judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in *Sheldon v. Sheldon* (1966) 2 All ER 257 (259) "the categories of cruelty are not closed." Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful realm of cruelty."

It was further emphasised :—

".....the Court in matrimonial cases is not concerned with ideals in family life. The Court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Reid observed in *Gollins v. Gollins* (1963) 2 All ER 966 (972) :

"In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman."

7. Chandrachud, J. (as he then was) in *Narayan Ganesh Dastane v. Sucheta Narayan Dastane*. (1975) 3 SCR 967 (978) : (AIR 1975) SC 1534 at p. 1541 said :

"The Court has to deal, not with an ideal husband and an ideal wife (assuming any such exists) but with particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court, for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures."

(15) A Full Bench of Bombay High Court in *Dr. Keshao Rao Krishnaji Londhe v. Mrs. Nisha Londhe* (2), traced the legislative background of section 13 (1) (i-a) and after reviewing the case law and particularly the law laid down in *Dastane v. Dastane* (3), stated the following conclusion :—

“.....in our view, the cruelty contemplated under Section 13 (1) (i-a) of the Act neither attracts the old English doctrine of danger nor the statutory limits embodied in old Section 10 (1) (b). The cruelty contemplated is a conduct of such type that the petitioner cannot reasonably be expected to live with the respondent.”...

The learned Judges of the Full Bench referred with approval to *Ashwini Kumar Sehgal v. Smt. Swatantar Sehgal* (3), and extracted the test to determine cruelty in matrimonial cases. The test laid down in the aforesaid decision of this Court is as under :—

“Cruelty in such cases has to be of the type which should satisfy the conscience of the court to believe that the relations between the parties had deteriorated to such an extent due to the conduct of one of the spouses that it has become impossible for them to live together without mental agony, torture or distress.”

Applying the above test, I have no doubt that the allegations made and established on record amount to mental cruelty. The allegations cannot be dismissed on the ground that they are general and vague in nature. It has been rightly pointed out by Mr. Cheema, learned counsel for the respondent-husband that in the peculiar facts and circumstances of this case, it could not be expected that greater details were given.

(16) No criticism was made by the learned counsel for the appellant with regard to appreciation of evidence by the trial Court. After careful perusal of the evidence I find that the testimony of the respondent-husband, his mother and uncle is clear, cogent and inspires confidence against the testimony of the appellant. That the allegations made must be substantially true is borne out by the fact that in spite of the intervention of close relations reconciliation could not be brought about and the only way found to solve the

(2) A.I.R. 1984 Bombay 413.

(3) A.I.R. 1975 S.C. 1534.

(3) 1979 Mat L.R. 26 (Punjab & Haryana).

problem was to get the marriage dissolved by mutual consent. This all important fact goes to show that the relations between the parties had deteriorated to such an extent that it could not be taken as ordinary wear and tear of married life and it was not found possible to save the marriage, nor was the decision to get the marriage dissolved taken in any haste. Aroon Khanna (PW-4) deposed that in July 1986 the appellant turned him out of her bed-room. From that day onwards uptill November 1986 when the appellant left the matrimonial home she did not permit him to have sexual relations with her. This statement of Aroon Khanna is corroborated by his mother Smt. Raj Khanna (PW 6), his uncle Pran Nath Khanna (PW-8) and their family doctor Dr. Gian Bhushan (PW-9) to whom Aroon disclosed his plight. A normal and healthy sexual relationship is one of the basic ingredients of a happy and harmonious marriage. Denial of sexual relationship by a spouse when the other spouse is anxious for it would amount to mental cruelty, especially when the parties are young. (Reference in this connection may be made to *Anil Bhardwaj v. Nirmalesh Bhardwaj* (4) and *Shakuntla v. Om Parkash* (5). Coming back to the petition under section 13-B of the Act, it was absolutely open to the appellant to have changed her mind and withdraw the application made earlier. Instead of withdrawing the petition, she went out of the way to make wild and reckless allegations of fraud, coercion and undue influence against the respondent-husband and his relations. She made similar allegations in the petition under section 125 of the Code of Criminal Procedure. It will further be seen that in the written statement in the present case she went out of the way of level allegations against the respondent-husband and his close relations. The allegations made were of a serious nature, namely, that Pran Nath Khanna and his wife took hold of all the jewellery and valuable articles of the appellant which had been given to her by her parents in the marriage. It was also alleged that the respondent-husband and his said relations had given her a beating. She did not spare Pran Nath Khanna and his wife in her statement as RW-3 where she stated that the family had some plots at Railway Road and a Rice Mill at Nilokheri and the said properties were sold and the amount deposited under a fixed deposit receipt in the name of Mrs. Pran Nath Khanna. No effort was, however, made to substantiate these serious allegations. In the absence of any cogent material, it cannot be said that the joint family comprising of Vishwanath Khanna and Pran Nath Khanna had any interest in any Rice Mill at Nilokheri or had any plot or plots

(4) A.I.R. 1987 Delhi 111.

(5) A.I.R. 1981 Delhi 53.

on Railway Road, Karnal, and that the sale proceeds thereof were deposited in the name of Mrs. Pran Nath Khanna under a fixed deposit receipt. For these reasons, I find no infirmity in the finding of the trial Court on this issue. The finding is accordingly affirmed.

(17) This brings me to a consideration of issue No. 1 relating to desertion. The case of the respondent-husband is that the appellant left the matrimonial home in November 1986. The present petition for dissolution of marriage was filed on January 11, 1989, after more than two years as required by the statute. Besides the respondent-husband, who appeared as PW-4, his mother Smt. Raj Khanna (PW-6) and uncle Pran Nath Khanna (PW-8) were examined. On behalf of the appellant, her son Amar (RW-4), cousin brother Vijay Kapoor (RW-5) and her real brother Parmodh Dhir (RW-6), besides the appellant, appeared. The learned trial Court preferred the oral evidence of the respondent-husband over that of the appellant. What appears to have weighed heavily with the trial Court was the admission made in the joint application under section 13-B of the Act, namely, that the parties had been living separately since November 1986. The same application as also application under section 125 of the Code of Criminal Procedure were further taken to express an unequivocal intention of the appellant to bring cohabitation permanently to an end. In the written statement, the appellant had taken a two-fold stand. She denied and seriously disputed the fact that she left the matrimonial home in November 1986. Her positive case was that she continued in the matrimonial home till March 1988. Her further case was that in fact the respondent-husband was guilty of constructive desertion i.e. she was forced by the conduct of the respondent-husband to live separately or to stay away. In support of her plea, the appellant produced in evidence Surjit Singh, Clerk of St. Taresa Convent School, Karnal (RW-2), who deposed that Amar Khanna was withdrawn from the school in March 1988. In other words, Amar Khanna continued his studies in the said school at Karnal till March 1988. No doubt, Amar is attached both to his father and relations on the side of the father as well as his mother but he is more attached to his mother and it is improbable that while Amar continued with his studies at Karnal, the appellant went away to her parental house at Ludhiana. Much evidentiary value cannot be attached to the entry in the electoral roll and the photographs Mark 'B' and 'C' stated to have been taken in the birthday function of Amar said to have been celebrated in December 1987 at Karnal. In my view, the learned trial Court fell into an error by giving undue importance to the admission regarding separate stay of the parties in the joint petition

under section 13-B of the Act. Once the parties with the help of their common relations decided in principle that the parties should gracefully part company by making an application under section 13-B, the rest was only a legal formality. The statement that the parties had been living separately for more than one year was thus in compliance with the requirements of section 13-B. One of the conditions for attracting the application of section 13-B of the Act is that the parties have been living separately for a period of one year or more. It may also be pointed out that Mr. Justice T. R. Handa (PW-3), who played an active role in bringing about reconciliation between the parties was totally silent with regard to the fact that the appellant had left the matrimonial home in November 1986. On a consideration of all these factors, I am unable to agree with the conclusion reached by the trial Court in so far as the ground of desertion is concerned. I, therefore, reverse the finding of the trial Court on this issue and hold that the respondent-husband failed to prove the ground of desertion.

In the result, in view of the finding under issue No. 2, the appeal fails and the same is dismissed, with no order as to costs.

R.N.R.

Before : Hon'ble Mr. Justice Jawahar Lal Gupta.

RASILA RAM,—Petitioner.

versus

STATE OF HARYANA AND OTHERS,—Respondents.
Civil Writ Petition No. 2067 of 1992.

April 23, 1992.

Constitution of India, 1950—Art. 226—Benefits of reservation—Promotion—Petitioner a Scheduled Caste employee of Haryana—Denied promotion on ground that petitioner is not domiciled in Haryana—Action of respondents denying promotion challenged—Held that petitioner a Haryana Government employee is bonafide resident and therefore entitled to get all benefits of reservation.

Held, that residents of another State on employment in the State of Haryana do not cease to be members of a particular caste to which they actually belong. As in the present case, a Chamar, who belongs to the category of Scheduled Caste in the State of Himachal Pradesh and is also recognised as such in the State of Haryana, continues to be a member of that class. By virtue of the instructions dated December 18, 1973, he becomes a bona fide resident of the State of Haryana and thus entitled to the benefit of reservation.

(Para 10)