



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 22nd August, 2023

Pronounced on: 18th December, 2023

MAT.APP.(F.C.) 287/2018 & CM APPL. 384/2019

BEENA NAUTIYAL

..... Appellant

Through: Ms. Meenakshi Kalra, Advocate.

Versus

KAMAL KISHORE NAUTIYAL

..... Respondent

Through: Mr. A.P. Mohanty, Mr. C.M. Thapliyal, Mr. S.P. Paul, Ms. Kiran Lata Pal & Ms. Kanchan Thapliyal, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Appeal under Section 19 of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955 (*hereinafter referred to as "HMA, 1955"*) has been filed on behalf of the appellant/wife (*Respondent in the Divorce Petition*) against the Judgment dated 11.09.2018 of the learned Principal Judge, Family Court, granting divorce on the ground of cruelty in a petition filed by the respondent/husband (*Petitioner in the Divorce Petition*) under Sections 13(1)(ia) and 13(1)(ib) of HMA, 1955.

2. **Briefly stated**, the parties got married on 15.04.2009 and one daughter was born from their wedlock on 27.10.2011. The respondent/husband in his petition seeking divorce claimed that since beginning, the conduct of the appellant/wife was indifferent and she had no



interest in discharging her matrimonial obligations. The appellant/wife refused to manage the house or to do the household chores. The father of the respondent/husband was compelled to take care of the household chores, including preparation of food.

3. The appellant/wife claimed that the parties had their marriage at Nagpur, Maharashtra, where the appellant/wife instigated the respondent/husband against his family members. Likewise, when they went to Hardiwar from 10.06.2009 to 15.06.2009, she picked up a quarrel with the brother, sister and father of the respondent/husband.

4. On the day of *Karwachauth* of 2009, the appellant/wife got annoyed with the respondent/husband as the respondent/husband had not got her mobile recharged and decided not to keep the fast.

5. It was claimed by the respondent/husband that the appellant/wife used to pick up quarrels on petty issues. In January, 2010, appellant/wife got annoyed and stopped taking food. The respondent/husband called the mother-in-law to resolve the situation, however, the appellant/wife got angry and broke the TV.

6. The appellant/wife left the matrimonial home for 47 days from 17.10.2010 and returned on 04.03.2010. Thereafter, on 02.04.2010, the appellant/wife went to her parents home because of the month of *Malmas* (when traditionally the husband and wife do not live together) which was to commence 12 days hence. However, the appellant/wife failed to return to the matrimonial home despite repeated requests of the respondent/husband. Being harassed by such conduct, the respondent/husband wrote the Letter dated 04.06.2010 to his father-in-law apprising him of the conduct of the appellant/wife. The respondent/husband also wrote a Letter dated



12.06.2010 to SHO, Police Station Hari Nagar. The appellant/wife eventually returned after 147 days on 26.08.2010 on her own with her mother. When the respondent/husband asked her for such delayed return, appellant/wife retorted that she was the master of her will.

7. The respondent/husband had also alleged that on 16.02.2011, appellant/wife developed breathing problems and when she was taken to the Doctor, it was indicated in the Echo and X-ray that it was a 10-year old problem. The respondent/husband had no inkling about her ailment and the same was not disclosed at the time of their marriage. The appellant/wife underwent a heart surgery and she was advised not to take oily and spicy foods.

8. When on 17.03.2011 the respondent/husband requested the appellant/wife to abide by the Doctor's advice, she called the PCR. The respondent/husband and his parents were called to the Police Station where they were put to unnecessary harassment. The respondent/husband telephonically informed the mother of the appellant/wife but she refused to intervene by claiming that she had no time.

9. The precipitative incident was on 02.04.2011, when the respondent/husband developed a slip disc. The appellant/wife, rather than taking care of the respondent/husband, removed her vermilion from her forehead, broke her Bengals and wore a white suit, declaring that she has become a widow.

10. In March, 2011, the appellant/wife was found to be pregnant and because of her heart ailment, she was advised caesarean surgery which was fixed for 24.10.2011. The appellant/wife, without informing the respondent/husband, stealthily left the matrimonial home from the back door



of the house on 19.10.2011. The respondent/husband tried to contact her but her mobile phone was found switched off.

11. On 26.10.2011, the respondent/husband was informed by the appellant/wife that she has got admitted to Action Balaji Hospital for delivery. The daughter was born on 27.10.2011. Though the respondent/husband bore all the expenses of delivery, but the appellant/wife went to her parental home on 03.10.2011 along with the daughter and did not allow the respondent/husband and his family members to even see the child. The appellant/wife refused to talk to the respondent/husband on the issue of returning to home.

12. On 28.02.2012, the appellant/wife's father came to the matrimonial and threatened the respondent/husband's father and brother. On the occasion of the first birthday of the child as well, the respondent/husband was not allowed to meet her, but he was insulted and threatened that he would be sent to jail.

13. The respondent/husband has further asserted that the appellant/wife lodged a complaint in CAW Cell on 26.03.2011 against him and his family members. The respondent/husband was called in the CAW Cell on 09.04.2012 and subsequently, the appellant/wife withdrew her complaint.

14. To further harass the respondent/husband, the appellant/wife filed a complaint under the Protection of Women from Domestic Violence Act, 2005 (*hereinafter referred to as "DV Act, 2005"*) before the Ld. Mahila Court, Saket making allegations against the respondent/husband and his father, his brother and married sisters, including one sister who was residing in Dubai. Subsequently, by the Order of the Court, the name of the sisters was dropped. Such conduct of the appellant/wife resulted in great mental



agony and pain and the respondent/husband claimed that the appellant/wife had deserted him since 19.10.2011. The respondent/husband sought divorce on the ground cruelty under Section 13(1)(ia) and desertion under Section 13(1)(ib) of HMA, 1955.

15. **The appellant/wife in her Written Statement** denied all the allegations made by the respondent/husband. It was claimed that it was the respondent/husband who had encouraged her to go to her parental home and had returned after two or three days; she denied that she returned after 147 days as claimed by the respondent/husband.

16. She also denied that she had stayed away from the matrimonial home for 147 days as alleged by the respondent/husband. The appellant/wife asserted that the petition was without cause of action and was liable to be dismissed.

17. **Issues on the pleadings** were framed on 26.03.2014 and 22.07.2014 as under: –

“(1) Whether the petitioner was treated with cruelty by the respondent, as per averments made in the petition? OPP

(2) Whether the respondent has withdrawn from the society of the petitioner without any justifiable? OPP.

(3) Relief”

18. The respondent/husband examined himself as PW1 and his brother Ashok Nautiyal, as PW-2 in support of his evidence and the appellant/wife only examined herself as RW-1 in support of their respective claims.

19. **The learned Principal Judge, Family Court** observed that the conduct of respondent/husband towards the appellant/wife was non-cooperative and temperamental. The appellant/wife unnecessarily



stayed at parental home for long without the consent and information to the respondent/husband. The appellant/wife was also held to have caused mental cruelty to the respondent/husband by instituting the complaints against the respondent/husband and subsequently withdrawing the same. **It was thus, concluded that the respondent/husband was subjected to the cruelty and was entitled to divorce on the ground of cruelty under section 13(1)(ia) of the HMA, Act 1955.** However, it was found that the requisite two-year period of separation was not fulfilled as the petition was filed earlier than that. **Thus, the divorce sought on the ground of desertion was not allowed as the petition was pre-mature.**

20. Aggrieved by the impugned Judgment dated 11.09.2018, the appellant/wife has preferred the present Appeal.

21. **Submissions heard from the learned counsels for the parties and the documents as well as the evidence perused.**

22. From the pleadings of the parties, the admitted facts are that they got married on 15.04.2009 and they eventually separated on 19.10.2011. The parties resided together for barely one year and three months and even during this period, the matrimonial life was not blissful as is evident from the evidence of the parties.

23. The respondent/husband has proved that the appellant/wife had left the matrimonial home on 17.01.2010 and returned after 47 days on 04.03.2010, for which there is no explanation forthcoming from the appellant/wife.

24. Again, it is not denied by the appellant/wife that she was away from the matrimonial home for 147 days from 02.04.2010 till 26.08.2010. The respondent/husband as per his testimony had approached his father-in-law



for convincing the appellant/wife to return home; however, the appellant/wife admittedly stayed away for 147 days, but has not been able to give any reasonable explanation for staying away from the matrimonial home.

25. The appellant/wife had thus, admittedly stayed away from the matrimonial home for about 194 days i.e., almost six and a half month, out of the period of one year and three months. The parties resided together for barely nine months.

26. The respondent had deposed that when the appellant/wife underwent the heart surgery in February, 2011, she was advised by the Doctor to take non-oily and non-spicy food. When the respondent/husband tried to advise the appellant/wife against consuming such food, she on 17.03.2011 retaliated by calling the PCR and the respondent/husband and his parents had to spend a day in the police station which is definitely a source of infinite mental agony, pain and humiliation.

27. Another significant incident deposed by the respondent/husband was that when he developed a slip disc in April, 2011, the appellant/wife instead of taking care of him removed her vermilion from her forehead, broke her Bengals and wore a white suit, and claimed herself to be a widow. This is an ultimate act of rejection of matrimonial relationship, reflecting her intention of repudiation of the matrimonial relationship. In this context, it is pertinent to refer to the testimony of the respondent/husband that in the year 2009 on the first *Karwachauth* also, the appellant/wife had refused to keep the fast of *Karwachauth*, on a petty reason of her mobile being not recharged by the respondent/husband.

28. Though, we may hasten to clarify, that fasting or not fasting on



Karwachauth may be an individual choice and if dispassionately considered, may not be termed as an act of cruelty. Having different religious beliefs and not performing certain religious duties, *per se* would not amount to cruelty or would not be sufficient to sever a marital tie. However, when coupled with the conduct of the appellant/wife and in the circumstances as proved by the respondent/husband in the present case, it is established that non-conforming with the prevalent rituals in Hindu culture, which symbolizes love and respect for the husband as well as the matrimonial relationship, fortifies the irresistible conclusion that appellant/wife had no respect for the respondent/husband and their marital bond. It also reflects that the appellant/wife had no intention to continue her marriage with the respondent/husband.

29. Similar facts, as in hand, were considered in the case of Dr. N.G. Dastane Vs. S. Dastane, AIR 1975 SC 1534, wherein it was observed that, while adjudicating matrimonial disputes, it should not be overlooked that the parties before the court are not the “ideal man” or the “ideal woman”, because if so would have been the case, no dispute would have arisen between these ideal spouses in the very first place. The ideal-spouses would not be knocking the doors of the matrimonial courts and would be capable of moving past the ups and downs of married life. Hence, it must be borne in mind that the courts are dealing with this particular man and particular woman and the acts of cruelty as claimed by the parties have to be interpreted and considered in their own factual context. On the test of trivialities, since there exists no strait jacket formula for determining mental cruelty in such matrimonial disputes, it emerges that what may be an act of cruelty for one person may not be for another person clearly depending upon



the circumstances of each case, e.g. status in society, environment, education, local customs, cultural development, social condition, physical and mental conditions of the parties. The “conduct” complained is subjective and varies from person to person.

30. Similar situation as in present case, came up for consideration in the case of *Dastane* (supra) where the parties were highly educated and well placed. The wife had broken her *Mangalsutra* which was interpreted as symbolizing rejection of her marriage and was held to be an act of extreme cruelty.

31. Herein also, the conduct of the appellant/wife can only be interpreted as a manifestation of no respect for the matrimonial relationship and her husband. Nothing can be a more harrowing experience for a husband than to see his wife act as a widow during his lifetime, that too in a situation where he was seriously injured and expected nothing more than care and compassion from his significant other half. Undeniably, such conduct of the appellant/wife can only be termed as an act of extreme cruelty towards the respondent/husband.

32. On 17.03.2011, the appellant/wife lodged the complaint in CAW Cell on 26.03.2011, not only against the respondent/husband but also against his aged parents which she subsequently withdrew. The appellant/wife has not been able to explain any justifiable reason for having called the PCR or having made a complaint in CAW Cell. This fact assumes importance since subsequently, the complaint under CAW Cell was admittedly withdrawn by her.

33. Though filing of a criminal complaint *per-se* cannot be termed as an act of cruelty yet, at the same time, the allegations of cruelty as made in the



criminal case(s), should have been substantiated in the divorce proceedings. Making of such false and frivolous complaint to the Police and dragging not only the respondent/husband, but also family members has been consistently held to be an act of cruelty. In the case of K.Srinivas vs.K.Sunita X (2014) SLT 126, the Supreme Court held that filing of the false complaint against the husband and his family members constitutes mental cruelty for the purpose of Section 13(1)(ia) of the Act, 1955.

34. Similarly, it has been held by the Supreme Court in Mangayakarasi vs. M.Yuvaraj (2020) 3 SCC 786 that it cannot be doubted that in an appropriate case, the unsubstantiated allegation of dowry demands or such other allegations, made the husband and his family members exposed to criminal litigation. Ultimately, if it is found that such allegations were unwarranted and without basis and if that act of the wife itself forms the basis for the husband to allege the mental cruelty has been inflicted on him, certainly, in such circumstance, if a petition for dissolution of marriage is filed on that ground and evidence is tendered before the original Court to allege mental cruelty, it could well be appreciated for the purpose of dissolving the marriage on that ground.

35. Further, the Supreme Court in the case of Ravi Kumar vs. Julmidevi (2010) 4 SCC 476 has categorically held that “reckless, false and defamatory allegations against the husband and family members would have an effect of lowering their reputation in the eyes of the society” and it amounts to ‘cruelty’. Similar observations were made by the Coordinate Bench of this Court in the case of Rita Vs. Jai Solanki (2017) SCC OnLine Del 9078 and Nishi Vs. Jagdish Ram 233 (2016) DLT 50.

36. The appellant-wife has not been able to justify the ground on which



these complaints were being made. As discussed in the judgments mentioned above, repeated complaints with unexplained allegations to various agencies cannot be termed as anything but cruelty.

37. Significantly, the appellant/wife filed the complaint under DV Act, 2005, again not confined to the respondent/husband alone but his family members including his old father, brothers, and even married sisters, out of whom one sister was residing in Dubai. This can be interpreted only as a vindictive act on the part of the appellant/wife to unnecessarily embarrass, harass and agonise the respondent/husband for feeling responsible for the harassment caused to his family members on his account.

38. Pertinently, the married sister had shifted to Dubai permanently within 4 months of the marriage of the parties and hence, her name was dropped from the DV Act, 2005 proceedings. This clearly reflects the falsity of her implication.

39. Lastly, we may observe that the appellant/wife had left the matrimonial home on 19.10.2011, barely within one year and three months of marriage and since then, she has not made any reconciliatory efforts or attempted to return to the matrimonial home. It needs no reiteration that the bed rock of any matrimonial relationship is cohabitation and conjugal relationship. The gravamen of any marriage is the succour and the peace that the couple derive from the company of each other. For a couple to be deprived of each other's company, proves that the marriage cannot survive, and such deprivation of one spouse of conjugal relationship by the other spouse, is an act of extreme cruelty. This long separation and withdrawn conduct of the appellant/wife when considered in the light of the facts as discussed above clearly leads to only one conclusion of she having rejected



and abandoned her matrimonial relationship.

40. Such long separation, with no effort by the appellant/wife to resume matrimonial relationship, is an act of cruelty as is held in the case of Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511.

41. We thus, conclude that the evidence on record proved that there is no chance of reconciliation between the parties and such long separation peppered with false allegations, Police reports and criminal trial can only be termed as mental cruelty. The marital discord between the parties has pinnacle to complete loss of faith, trust, understanding, love and affection between the parties. This dead relationship has become infested with acrimony, irreconcilable differences and protracted litigations; any insistence to continue this relationship would only be perpetuating further cruelty upon both the parties.

42. **We, therefore, find that the appellant/wife has acted with cruelty towards the respondent/husband and divorce under Section 13(1)(ia) of HMA, 1955 has been rightly granted.**

43. Accordingly, we find no merit in the present Appeal to interfere with impugned Judgment dated 11.09.2018, which is hereby dismissed.

44. The pending applications, if any, are also dismissed.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

DECEMBER 18, 2023
S.Sharma/JN