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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 11th September, 2023***

\+ **MAT.APP.(F.C.) 203/2023 & CM APPL.35281/2023**

REKHA DRALL ..... Appellant

Through: Ms. Jyoti Batra, Advocate along with appellant in person.

versus

VIKASH DRALL ..... Respondent

Through: Mr. Shailender Dahiya, Advocate along with respondent in person.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T ***(oral)***

1. The appellant/wife aggrieved by the judgment dated 27.02.2023 passed by learned Judge, Family Court, North West District, Rohini Courts, Delhi granting divorce to the respondent/ husband under Section 13 (1)(ia) has filed the present Appeal under Section 19 of the Family Courts Act read with Section 28 of the Hindu Marriage Act, for setting aside the decree of divorce.

2. The parties got married on 11.03.2011 according to Hindu customs and rites at Gurgaon, Haryana, though no child was born from the wedlock. According to the respondent, when the appellant returned back from her parental home after the customary '*pag phera*' ceremony on 12.03.2011, she

denied the respondent to have any physical or emotional intimacy and did not show any willingness to have physical relationship with the respondent, despite his best efforts and persuasion. She shunned his overtures for physical contact and demanded a gift of diamond or gold set before he could touch her. The respondent tried to dissuade her by politely telling her about the financial crunch because of his meagre salary and huge expenditure on marriage and requested for twenty days time to arrange for the money on receipt of his salary, but the appellant became angry and shouted at the respondent. Left with no choice, he arranged for Rs.20,000/- from his friends and took the appellant to the jewellery shop on 13.03.2011. However, she selected a pair of gold earrings costing Rs.28,200/-, which the respondent did not have. His request to wait for another month did not prevail with the appellant who snatched Rs.20,000/- which the respondent was carrying by stating that she would purchase a gift of her own choice.

3. On the same day, they then went to Japanese Park, where the appellant made a call to her friend and thereafter demanded that respondent should pay her B.Ed course fee. When the respondent expressed his inability, she insisted that the respondent may ask her father to pay Rs.20,000/- for her fee. Noticing the reluctance of the respondent to ask her father, she directly ask for the fee from the father of the respondent, who also expressed his inability on account of his financial condition. He also told the appellant that if there was any outstanding fee, it is her parents who should pay the same. They also advised the appellant to pay her outstanding fee from Rs.33,500/- which she had received from the relatives as "*muh dikhai*". The appellant got infuriated and refused to utilize the said amount by claiming it to be her personal money. She even refused to share the

bedroom with the respondent in the night of 14.03.2011 and slept on a sofa in a separate room.

4. It was further asserted that on 15.03.2011 the appellant disclosed that she was having an interest in another boy Ritesh but that boy was not to the liking of her parents and she had been forced into this marriage with the respondent. She also disclosed that she was pregnant which came as a shock to the respondent since till then they had not had any physical intimacy. The brothers of the appellant were called who also were shocked at the statement of the appellant. They requested the respondent and took the appellant to their house in the afternoon of 15.03.2011. The appellant is claimed to have taken her entire jewellery, clothes etc. along with her when she left the matrimonial home. On the same night at about 9 P.M. the appellant returned to the matrimonial home along with her parents and brother and stated that she had claimed to be pregnant as a joke. The respondent and his family were taken her aback by this poor sense of humour and were totally shattered and found it difficult to have trust in the appellant. They stated that these kind of things cannot be taken as a joke and in order to ally their doubts insisted that appellant must get her medical examination done to which she did not agree as she insisted that it was merely a joke. She ultimately left the matrimonial home with her parents at 11 P.M.

5. After about a week the appellant's father called up the respondent's father and told that he has counselled his daughter to behave properly and not to repeat such mistakes and requested that respondent may be sent in a day or two to take back the appellant. The respondent thus, brought her back to the matrimonial home, but there was no change in her behaviour which in fact, became worse. She taunted the respondent and projected

herself as victorious while the respondent having been defeated.

6. The respondent had further asserted that the appellant did not respect him, his siblings or his parents. She threatened to commit suicide by strangulating herself or by consuming poisonous chemical and to implicate the respondent and his family in criminal cases. One day she locked herself in the bathroom and threatened to electrocute herself by putting an iron nail and it was with great difficulty that the respondent was able to dissuade her and to open the door of the bathroom. On another occasion, she again locked herself in the bathroom with a threat to kill herself on which the respondent called the appellant's father who handed over the mobile phone through the ventilator to the appellant and it was with great convincing that the father was able to persuade her to open the toilet door. It is asserted that such threats had put the respondent and his family under tension and fear of being implicated in false cases.

7. It is further asserted that she threatened to involve the family members of the respondent in false criminal cases to send him and all the family members to jail to ensure that his unmarried sister was defamed and would be unable to get married.

8. The respondent has asserted that the appellant's threats of registering false case against him and his family members turned out to be true when she filed a case FIR No.404/2011 under Section 498A/406/34 IPC not only against him but also against his parents and unmarried sister. He had to suffer the ignominy and humiliation of spending two days in jail, though his family members were able to obtain anticipatory bail. The Charge Sheet was filed and the respondent and his family members were acquitted under Section 498A IPC.

9. It is further claimed that after about 8-10 days of marriage, she went back to her parental home and despite persuasion and cajoling she did not return for about six months. All the efforts of the respondent to bring her back were in vain as she refused to join the company of the respondent. In September, 2011 some relatives of the respondent agreed to mediate and get their disputes resolved. The appellant's family assured that the conduct of the appellant has changed and requested for another chance to be given. The appellant was thus, brought back to the matrimonial home in September, 2011 but to the utter shock of the respondent there was no change in her behaviour and she continue to treat the family of the respondent with utmost cruelty. So much so that she even went to the extent of causing physical hurt to his private parts, much to his embarrassment. After a few days on the festival of *Karwa Chauth* she refused to keep the fast by claiming that she did not recognize the respondent as her husband as she had love and respect for Ritesh whom she recognized as her husband. On the day of *Diwali* also she picked up the fight and did not allow their family to perform *Laxmi puja* in a peaceful manner. The respondent called the appellant's father, but they refused to intervene by claiming that they were busy in the festivities and would come after a few days.

10. On 29.10.2011 appellant's father, brother and other relatives came to the respondent's house for a discussion to resolve the issues and her brother Navin took her to a room to make her understand and even raised his hand on her. When the respondent tried to intervene and cool the brother, he raised the hand on the respondent as well and when the situation got out of hand, respondent's father called the PCR at No.100. The MLC of the respondent and his mother was prepared.

11. On 30.10.2011 the *Panchayat* was held amongst the family members of both the parties, wherein the appellant insisted on having a separate residence. The respondent acceded to it and on 08.11.2011 took an MIG flat in Sector-28, Rohini, Delhi on rent, but the appellant refused to join on the pretext that she would not go to reside in a tenanted premises and that the family of the respondent may be shifted to the rented accommodation.

12. The respondent had further asserted that the appellant and her father visited the work place of respondent i.e. DCP office and created a scene thereby causing humiliation and embracement in front of the police and the superiors. The respondent was suspended from his service vide Order dated 16.01.2012 though it was revoked on 07.03.2012. Likewise, the appellant and her father visited the office of the respondent's father at Central Warehousing Corporation, Rana Pratap Bagh in the first and second week of December, 2011 and created a scene levelling false allegations of dowry demands. She even got published a defamatory Article in newspaper Dainik Jagran, Haryana against the respondent and his family members. The respondent thus, asserted that he had been subjected to extreme cruelty and sought divorce under Section 13 (1) (ia) of the HMA.

13. The appellant in her Written Statement had asserted that her father had booked an i10 car for giving her in dowry, but on the demand of the respondents, the car was changed to Accent Car of make Hyundai, but after marriage a demand was made for Skoda car. Moreover, her entire fee of B.Ed in the sum of Rs.45,000/- was paid by her father. She admitted that a *Panchayat* was called at Palam village, Delhi, wherein the matter was amicably sorted out. She denied having any interest in the boy Ritesh or ever being pregnant. She also denied that she did not participate in the

festivities in the month of October-November, 2011. She admitted the incident of 29.10.2011 but claimed that she had been locked up by the respondent and his family members in a room and she was rescued by her father and brother and that police was also called. She also asserted that her father and brother were got medically examined at BSA Hospital. The Panchayat held on 30.10.2011 was also admitted, though there was no settlement. She further admitted that she had visited the office of DCP, Delhi, but claimed that it was only to give a complaint of misbehaviour against the respondent. It was also admitted that the appellant and her father had gone to the office of the father of the respondent along with the police, but it was only to get him identified for the purpose of arrest. She also admitted that the respondent remained in custody from 16.11.2011 till 21.11.2011 on which date he was released on bail in the case under Section 498A IPC. She also explained that his suspension was on account of his arrest in the criminal case about which he had not given the intimation to his Department. She resisted the Divorce by asserting that it was the respondent/ husband who was in the wrong.

14. The **issues** were framed on **11.02.2014** as under :

> "*1.Whether the respondent has treated the petitioner with cruelty as stated in the petition? OPP.*
>
> *2. Whether the Petitioner is entitled to the relief as prayed for?*
>
> *3. Relief.*"

15. The respondent examined himself as well as five other witnesses in support of his case.

16. The appellant examined herself as RW1 and her father Shri Balbir

Singh as RW2.

17. Learned Principal Judge, Family Courts in her detailed discussion held that the various acts of the appellant namely her refusal to have conjugal relationship, threats of suicide, her complaints in the police and also the Domestic Violence Act which both have resulted in acquittal along with her alleged jokes of being involved with another person or being pregnant from him were all acts of immense cruelty and trauma for the respondent and thereby, allowed the petition and granted divorce under Section 13 (1)(ia) of HMA.

18. Aggrieved by the said order of grant of divorce, the present appeal has been preferred.

19. **Submissions heard**.

20. Admittedly, the parties got married on 11.03.2011 but their marriage was tumultuous right from its beginning. The evidence on record established that the marriage for the parties was not a bed or roses as the appellant had extreme reluctance to conjugal relationship and it was after much cajoling that they were able to develop a conjugal relationship, though it was totally devoid of any emotional relationship.

21. The evidence as led by the parties also proved that the appellant had extended threats of committing suicide not on one but two occasions. It was with great efforts that the respondent was able to dissuade her from executing her threats. It has been held by the Apex Court in the case of *Pankaj Mahajan vs Dimple*, (2011) 12 SCC 1, that constant fear on account of threats of suicide can amounted to cruelty as it would be harmful or injurious to live with such a spouse.

22. In the case of *Nagendra vs K. Meena*, (2016) 9 SCC 455 the Supreme

court observed that the action of the Respondents such as locking herself in the bathroom and pouring kerosene so as to commit suicide, amounted to mental cruelty. It was further observed that had she been successful in her attempt to commit suicide, it was the husband who would have been put in immense difficulty because of the law and had his life ruined. Such an act of mental cruelty could not be looked upon lightly by the courts and was sufficient to entitle the husband to a decree of divorce. The Apex Court referred to the case of *Pankaj Mahajan* (supra) to arrive at this conclusion.

23. Such threats are likely to affect the peace of mind and take a toll on the mental wellbeing of the respondent and thus, the learned Principal Judge had rightly held this behaviour of the appellant to be an act of immense cruelty.

24. It has also emerged in evidence that because of incompatibility and non-adjustment, the appellant had left the matrimonial home merely within 8-10 days of marriage. It is not in dispute that the appellant had returned to the matrimonial home after about six months in September, 2011, but things did not become platonic even then. It has come in evidence that the appellant refused to participate in the festivities of *Karwa Chauth* and *Diwali*. The respondent in his testimony had deposed that she had even refused to keep the fast of Karwa Chauth by asserting that she considered 'Ritesh' as her husband and she had been forced into marriage with the respondent by her parents against her wishes. Such disconnect and constant rejection of any relationship or non acknowledgment of the respondent as a husband is again a source of great mental agony for a husband.

25. The respondent's assertion that there was threat to implicate him and his family members in false cases was turned into reality when an FIR under

Section 498A/406/34 IPC was registered not only against him but his parents as well as unmarried sister which according to the respondent was with the sole intent of defaming the unmarried sister and to create hurdles in her marriage. The criminal case has resulted in acquittal of the respondent and all the family members under Section 498A IPC thereby proving that all her allegations of dowry and harassment were not substantiated. Though the respondent had been convicted under Section 406 IPC and Rs.2 lakhs were directed to be paid but as observed by learned Principal Judge, Family Courts, Section 406 IPC pertained only to return of dowry articles and not to cruelty from which the respondent stood absolved. In the present case, the appellant has not been able to prove that she was subjected to any dowry demands or harassed or subjected to cruelty. Though she had alleged harassment on account of dowry, those allegations have not been proved either in the criminal case or in the present case.

26. The Apex 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 907

27. Further, it has been held by the Supreme Court in *Mangayakarasi v. M. Yuvaraj* (2020) 3 SCC 786, that when an unsubstantiated allegation of dowry demand or such other allegations made against the husband and his family members exposes them to criminal litigation and, ultimately, if it is found that such allegations were unwarranted and without basis, the husband can allege that mental cruelty has been inflicted on him and claim a divorce

on such a ground.

28. The respondent though was acquitted under Section 498A IPC as no cruelty could be established, has thus suffered the brunt of the reckless criminal actions initiated by the appellant.

29. Further, the appellant has not denied the incident of 29.10.2011 when her family members had come to her matrimonial home and a fight had ensued in which the respondent and his mother were injured and their MLC was prepared. The appellant has been unable to justify these acts of aggression by her or her family members. In addition, the appellant along with her father had visited the office of the respondent which according to her was to make a complaint against the respondent. She has also admitted having gone with the police and her father to the office of father of the respondent to get him arrested. These kinds of attempts, complaints and the conduct of the appellant can only be termed as designed to humiliate and insult the respondent and his family members. A relationship of marriage rests on mutual trust, respect and companionship and the acts of the appellant, as discussed above, clearly establish and proves that these elements were totally missing from their marriage, essentially on account of the conduct of the appellant.

30. The learned Principal Judge, Family Courts had rightly concluded that the parties have been living separately since October, 2011 and there has been no conjugal relationship and there was no possibility of reconciliation despite efforts being made by the families. The conduct of the appellant has been held to be to have caused immense mental suffering, pain and cruelty to the respondent thereby entitling him to divorce.

31. We find no merit in the Appeal which is hereby dismissed.

32. The pending application, if any, also stands dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 11, 2023
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