



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 20th July, 2023
Pronounced on: 22nd August, 2023

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MAT.APP.(F.C.) 144/2019

..... Appellant

through: Mr. Ranjit Kumar Dubey and Mr.
 Piyush Nagpal, Advocate.

versus

..... Respondent

Through: Mr. Praduman Kumar Aggarwal,
 Advocate.

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 appellant husband had filed the present appeal against the judgment seeking divorce on the ground of cruelty and desertion under Section 13(1)(ia) & (ib) of the Hindu Marriage Act, 1956 (*hereinafter referred to as 'the Act, 1956'*) has been dismissed, vide Order dated 14.02.2019 of learned Principal Judge, Family Court.

2. The petitioner/appellant (*petitioner in the divorce petition hereinafter referred to as 'appellant'*) and the respondent wife got married according to Hindu Customs and Rites on 15.02.2002 and two children namely [REDACTED] were born from the said wedlock on 23.11.2003 and 16.07.2006 respectively. The appellant husband had asserted in his petition that soon after the marriage, the respondent did not



behave properly; fought routinely and abused all the family members by addressing them as 'Dogs' and she also addressed all the women, his mother and other ladies in the family as 'Bitches'. She went to her parental home after a month of the marriage and returned after a month and started making a claim for separate residential accommodation. She again went to her parental home with her brother on 02.08.2002 and came back only after much persuasion by the appellant and his parents.

3. The appellant has further narrated that from time to time, the respondent used to leave the matrimonial home but was brought back with much cajoling and convincing. The appellant had further claimed that when he had gone to the parental home of the respondent on 15.09.2002 along with his friend, they both were ill treated and humiliated. The appellant has further claimed that he and his friend Bablu on the invitation of Sh. Mahavir, brother of the respondent had gone to attend the marriage ceremony of Urmila, elder sister of the respondent but in the marriage function, he and his friend were not only neglected but were ill treated by the respondent and her family members. They were told that they had come as uninvited guests and were asked to leave immediately.

4. It was claimed that the daughter Nisha was born on 23.11.2003 in the parental home but he was not informed about the birth said daughter. He came to know about the birth on 02.12.2003 when he made telephonic call to the house of the respondent which was attended by the younger sister of the respondent namely Rama, who threatened him not to visit or else he would be beaten up. The appellant and his family members had a meeting with the family members of the respondent and the responsible persons of the village wherein both the parties reconciled the differences



and the respondent joined matrimonial home. Things were peaceful for about two months but in July 2005, when he was not at home, the police was called to the house to enquire if there had been any fight or quarrel and the respondent wife made a false allegation of a quarrel with the appellant. On 22.07.2005, he was called to PS Sarojini Nagar where he was surprised to find the parents of the respondent present and in their presence the respondent stated that she was not willing to reside with the appellant. The matter was resolved on the promise by the father of the appellant that he would provide money and a shop to enable the appellant to setup his new business.

5. The appellant claimed that on one occasion, the respondent went to the extent of making false allegation of rape against the father-in-law. Upset with the conduct of the appellant and respondent, the father issued a disclaimer Notice in the newspaper 'Statesman', disowning the appellant and expelling him from all his properties.

6. The appellant claimed that the respondent did not allow him to run the shop properly and despite having been given a separate accommodation her behavior did not change and she started calling her friends and relatives to their separate accommodation.

7. The appellant had further claimed that there were regular fights and proceedings under Section 107/151 Cr.P.C. were initiated by the SDM on three occasions. Not only this, the respondent got an FIR bearing No. 421/2007 under Section 498A/406/34 IPC registered against him.

8. The appellant asserted that he was being subjected to cruelty by the respondent who left the matrimonial home on 02.08.2002 without any cause. The appellant, thus, claims divorce on the ground of desertion and



cruelty.

9. **The respondent in her Written Statement** had a different story to tell. According to her, soon after her marriage, she was harassed by the appellant and his family members who made demands for cash and dowry. Her jewellery was taken away by the mother-in-law who did not give it to her to be worn on occasions and festivals. She was ill treated and abused by the appellant and his family members and because of their cruel behavior, she was compelled to return to her parental home. On their repeated apologies and repentance, she from time to time joined back, but the conduct of the appellant and his family members did not improve which made it difficult for her to live in the matrimonial home.

10. The appellant and his family members intended to throw her out of the matrimonial home. Left with no option, she filed a Suit bearing No. 291/2007 wherein the appellant and his family members were restrained from the dispossessing her forcibly from the shared household. She was also compelled to file a petition under Section 12 of Protection of Women from Domestic Violence Act, wherein the appellant was directed to provide her with a separate residence in the same house and pay Rs.5,000/- per month for the household expenses. In compliance of the order, she was given a separate room for her residence.

11. The respondent denied that she was in a habit of frequently leaving the matrimonial home without the consent or knowledge of the appellant. It was claimed that it is because of the harassment and the ill-treatment by the appellant and his family members that she was compelled to leave the matrimonial home.

12. In support of his contention, the appellant “husband” examined



himself as PW1 and two witnesses namely Ravinder Singh Gehlot (PW2) and Shri Lakshmi Chand (father of appellant) and exhibited documents (Ex. PW1/A& PW2/A). The respondent “wife” examined herself as RW1 and her mother Smt. Chand Kaur as RW2 and exhibited a number of documents Ex.RW1/1 to Ex.RW1/16.

13. **The learned Principal Judge, Family Courts** considered the evidence of the parties and concluded that there was some turmoil in the matrimonial life of the parties but aside from the incidents of wear and tear in relationships, the specific incidents as established from the testimony of the parties proved that it was the husband who were subjecting the wife to cruelty. The appellant and his family members may have been acquitted under Section 498A/406/34 IPC but the onus for proving the averments in the Criminal case are different from the Civil proceedings and mere acquittal cannot be a ground to hold that the respondent was not subjected to cruelty. It is asserted that the incident of alleged attempt to rape of the respondent also did not inspire confidence. It was thus concluded that the appellant was not able to prove any act of cruelty. It was further held that though the respondent had left the matrimonial home on 02.08.2002 but it cannot be held that it was without any reason. Moreover, the requisite period of two years did not get complete at the time of filing of the petition and the ground of desertion for divorce was not available to the appellant. **The divorce petition was accordingly dismissed.**

14. Aggrieved by the dismissal of the divorce petition, the present appeal has been preferred.

15. The main grounds for challenging the impugned Order are that the



evidence has not been appreciated in accordance with law and the impugned judgment is based on conjectures and surmises and is in contradiction to the pronouncements in judgment wherein similar facts as in hand, it has been held that such acts amount to cruelty and the divorce has been granted.

16. Submissions heard.

17. The divorce has been sought on the ground of cruelty. While “*physical cruelty*” is visible and easy to comprehend and determine, the more challenging aspect is “*mental agony*” which has been recognized as part of “*cruelty*” which once established, is a valid ground of divorce. The contours of “*mental cruelty*” were defined in case of *V. Bhagat v. D. Bhagat* (1994) 1 SCC 337, wherein the Hon’ble Supreme Court held that mental cruelty in Section 13(1)(ia) of the Act, 1956 can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put-up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the party. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case.

FALSE CASES AGAINST FAMILY MEMBERS

18. In the case on hand, the respondent ‘wife’ has deposed in her examination-in-chief that when she went to visit her matrimonial home on



05.03.2002, the appellant was not at home and her father-in-law with an intention to establish a physical relationship with her, dragged her in a room and attempted to commit rape in the presence of mother-in-law and grand mother-in-law of the appellant. It is peculiar that the respondent did not file any case against her father-in-law and the scandalous allegations raised were not taken to a logical conclusion and instead, were dropped midway. The allegations, on the face, appear to be false as there were multiple rounds of parties going to the Police Station but this incident never found any mention.

19. Secondly, a police complaint dated 11.08.2007 was filed by the respondent leading to registration of FIR No. 421/07 under sections 498A/406/34 of the Indian Penal Code, 1860, against the appellant and his family members. It is an admitted fact that all the accused including appellant and his family members were acquitted vide judgement dated 29.11.2017 of the court of Ms. Mayuri Singh, Ld. MM Mahila Court, South district as the prosecution failed to prove its case.

20. It has been held by the Supreme Court in Mangayakarasi v. 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 that 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.....”.

21. The Supreme Court in the case of *Ravi Kumar v. 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 v. Jai Solanki* 2017 SCC OnLine Del 9078.

22. During the trial, the allegations had not been established as held by the Order of Ld. Mahila Court, South District and amounts to a clear and categorical character assassination of the appellant as well as his family members.

23. It is not under challenge that the criminal proceedings under Section 107/151 Cr.P.C. were initiated against the parties. A Police Station is not the best of places for anyone to visit. It is a source of mental harassment and trauma each time he was required to visit the Police Station, like the “*Damocles Sword*” hanging over his head, not knowing when a case would be registered against him and he would be arrested. The respondent had done everything to get the appellant and his family entrapped in the criminal case. Such conduct of making false allegations and constant threat of being summoned to Police Station are the acts which severely impact the mental balance and all the acts of cruelty.

UNSUBSTANTIATED ALLEGATIONS RELATED TO DOWRY DEMAND

24. Admittedly, FIR no. 421/2007 u/s 498A/406/34 IPC was registered and the appellant and his family members were acquitted after the trial. The judgment of the acquittal, one may examine the nature of the allegations made by the respondent. It was deposed by respondent in her



examination-in-chief that while she was at her maternal home, she used to receive calls from her mother-in-law demanding an air conditioner and cash of Rs. 5 Lakhs and on 25.07.2003, mother-in-law asked for expensive gifts and clothes for the “*Teej Festival*”.

25. On the said aspect of desertion under Section 13(1) (ib) of the Hindu Marriage Act, we note that while there is a debate as to whether the Respondent-wife left her on her own volition, or was thrown out of the matrimonial home, it is a fact that she did not return to the matrimonial home despite the appellant efforts to bring her back. The respondent could not justify not returning to the matrimonial home, and her refusal to cohabit with the Appellant, to us, is sufficient to establish desertion by her.

26. It is an admitted fact that the parties have not lived together since 2007 i.e. a period of almost 17 years. It has been already noted time and again in the judgments of the Supreme Court that continuous separation between the parties for a long period itself is a ground for divorce. In one of the momentous decisions, the Apex Court in the case of Naveen Kohli v. Neelu Kohli (2006) 4 SCC 558 has held that once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.



27. A law of divorce based mainly on fault is inadequate to deal with a broken marriage. Under the “*Fault theory*”, guilt has to be proved; divorce courts are presented with concrete instances of human behaviour as they bring the institution of marriage into disrepute. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of the fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period continuous separation, it may be fairly surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. The Family Court ought to have visualised that preservation of such a marriage is totally unworkable which has ceased to be effective and would be a greater source of misery for the parties. The Family Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

28. In *Samar Ghosh v. Jaya Ghosh* (2007) 4 SCC 511, the Supreme Court held as under:

“no uniform standard can ever be laid down for guidance, yet it was deemed appropriate to enumerate



some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. When there has been a long period of continuous separation, it may be fairly concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of the marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties, it may lead to mental cruelty.

When a man and a woman get married, they do so with the intent of finding love; happiness; mental, physical and psychological satisfaction; progress; and procreation. The dream of the parties is to jointly face the challenges that life has to throw, and to grow and progress financially, socially, spiritually, etc. When the marriage sours, the vows that the couple takes at the time of marriage are a casualty. We take it that neither party enters into the matrimonial bond, only to break it later. For the said bond to breach, there are bound to be some underlying reasons. In some cases, those reasons may come to the surface and the court may be able to see them. In others, they may remain latent for myriad reasons. Those reasons would, invariably, be attributable to both the parties, as it takes two to fight. And when the fight goes to the point of them filing cases against each other, the situation becomes messy and bitter for both of them. Unless the situation is diffused early and the parties decide to reconcile and call a truce, with passage of time, the void between them only increases, and the feeling of love and warmth in their relationship begins to fade. What is left is only a feeling of hurt, hatred, disrespect, disregard and bitterness for the other. These negative feelings and thoughts are bound to give rise to mental trauma, harassment and cause immense cruelty to one-if not both the parties.

In such situations, continuation of the relationship between the warring spouses causes immense emotional



and psychological trauma to the parties which would, in itself, tantamount to cruelty by both parties, upon the other."

29. We conclude that in the present case; the parties are living separately for 17 years now; there is no chance of reconciliation between the parties and such long separation peppered with false allegations, Police reports and criminal trial has become a source of mental cruelty and any insistence to continue this relationship would only be inflicting further cruelty upon both the parties. The marital discord between the parties has pinnacled where there is a complete loss of faith, trust, understanding and love between the parties. The parties cannot be reasonably expected to live with each other anymore.

30. The appeal is accordingly allowed and the marriage between the appellant and the respondent is dissolved by decree of divorce under Sections 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1956. Parties to bear their own costs.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

AUGUST 22, 2023
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