

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

% Date of Decision: 12.06.2020

+ **MAT.APP.(F.C.) 327/2019 & C.M. No.53990/2019**

VISHAL SINGH Appellant
Through: Mr. R.K. Jain, Advocate

versus

PRIYA @ PIHU & ANR Respondents
Through: None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE ASHA MENON

ASHA MENON, J.

1. The present appeal has been filed by Shri Vishal Singh being aggrieved by the judgement and decree dated 30.08.2019 of the learned Family Court, Dwarka, dismissing his petition seeking dissolution of his marriage with the respondent No.1, Priya alias Pihu under Section 13(1) (i) and (ia) of the Hindu Marriage Act, 1955 (the 'HMA' for short).

2. The brief relevant facts of the case are as follows. The appellant/husband was married with the respondent No.1 on 29.11.2012 in accordance with the Hindu rites and ceremonies. Though the marriage was duly consummated, no child was born to the parties. In the grounds taken for seeking dissolution of marriage, it was averred by the appellant/husband that since the beginning of the marriage, the attitude of the respondent No.1/wife was not positive as she declined to consummate the marriage or attend the

marriage ceremonies till some time had passed. She also showed a disinclination to join the matrimonial home after the *Phera* Ceremony and declined to go for the honeymoon. On 08.01.2013, when her mother and brother had come to discuss some matters at the matrimonial home, the respondent No.1/wife allegedly abused the appellant/husband and his family members and proclaimed that she had no interest in the marriage. She further disclosed that she was having a love affair with the respondent No.2, who was the brother of her brother-in-law (*jija*) and whom she had desired to marry.

3. According to the appellant/husband, he did his very best to salvage the marriage, but failed in all his efforts. He further claimed that on 22.03.2013, on the occasion of Holi, the respondent No.1/wife left her matrimonial home with all her jewellery and valuables with her brother and brother-in-law and on 28.03.2013, asked him over the phone to read the letter she had left under the mattress which contained shocking disclosures. The respondent No.1/wife also informed him that she would not return back and preferred to live her life with the respondent No.2, as both were planning to get their marriage registered.

4. However, on 03.04.2013, apparently, the respondent No.1/wife was brought back to the matrimonial home by her brother, but the appellant/husband did not allow them to enter the house. He further claimed that since 22.03.2013, the respondent No.1/wife was living at her parental home, though she had been calling him up on the mobile phone and apologizing for her conduct, while at the same time claiming that she was happy in the company of the respondent No.2. It was on the basis of these

facts that the appellant/husband filed his petition seeking divorce from the respondent No.1/wife.

5. The respondent No.1/wife opposed the divorce petition on the ground that the appellant/husband was in fact trying to take advantage of his own wrongs. She admitted that she had disclosed about her previous affair with the respondent No.2 but claimed that it was only after long discussions with the appellant/husband and his family members that they had agreed to the marriage. It was her allegation that despite expenditure of about Rs.13 lakhs on her marriage, the appellant/husband and his family members were dissatisfied and after just a month they had started harassing and torturing her for dowry and pressurized her to bring a luxury car worth Rs.10 lakhs which she could not fulfil. She further claimed that it was her sister-in-law who had given her a piece of paper on which she was compelled to write whatever the appellant/husband's family members forced her to write and sign and on threat to her life, she wrote the letter that was being relied upon by the appellant/husband. On 22.03.2013, an actual attempt was also made to kill her by pressing her neck and she was saved only because neighbours had gathered on hearing her cries.

6. According to the respondent No.1/wife, once again on 23.05.2013, at about 11:30 pm, her in-laws hatched a conspiracy to kill her by suffocating her with a pillow. During the said incident, she had received injuries on various parts of her body. The appellant/husband and his family members thought that she might die and so, the appellant/husband threw her near her parental village in his I-20 car on 24.03.2013 at about 4:00 am. In connection with this event, she had filed a complaint against the

appellant/husband and his family members at PS Khurja bearing FIR No. 28/2013 under Sections 498-A/307/504/506 of the IPC. She denied that she was living in adultery with the respondent No.2, brother of her brother-in-law. She denied that she ever had a physical relationship with the respondent No.2. In the circumstances, the respondent No.1/wife claimed that the petition being based on false facts, ought to be dismissed.

7. On the pleadings of the parties, the learned Family Court framed the following issues:

- “1. *Whether the respondent No. 1 after solemnization of the marriage has treated the petitioner with cruelty? (OPP)*
- 2. *Whether the respondent No. 1, has committed the act of adultery as claimed in the petition? (OPP)*
- 3. *Relief.*”

8. Thereafter, the appellant/husband examined himself as PW-1 while the respondent No.1/wife examined herself as RW-1. After analysing the evidence that had come on the record, the learned Family Court concluded that the appellant/husband was unable to prove the allegations of unchastity levelled against the respondent No.1/wife and nor could he establish facts on the record to prove that the respondent No.1/wife had treated him with cruelty. Thus, it was concluded that having failed to prove his case under Section 13(1) (i) & (ia) of the HMA, the appellant/husband was not entitled to divorce and the petition was dismissed.

9. Aggrieved, the appellant/husband has preferred the present appeal on

the grounds that the learned Family Court has not considered the evidence in a proper perspective and that facts averred by him in the evidence, had remained unchallenged and un-rebutted. Shri R.K. Jain, learned counsel for the appellant/husband submitted that the learned Family Court had noticed that the allegations deposed by the appellant/husband in his affidavit had not been controverted and yet it wrongly concluded that the appellant/husband had failed to prove his case. He urged that the respondent No.1/wife was in an illicit relationship with the respondent No.2 and that single fact was sufficient to dissolve the marriage. It was also submitted that in the light of the criminal cases that have been registered against the appellant/husband and his family members and particularly, the fact that the appellant/husband had been taken into custody and he remained in jail from 20.11.2013 to 28.11.2013, he had suffered immensely and was thus entitled to dissolution of the marriage with the respondent No.1/wife.

10. We have heard the learned counsel for the appellant/husband and have perused the record. No doubt, the learned Family Court did observe that the appellant/husband has not been cross-examined on the averments made in the affidavit. However, a perusal of the said affidavit (Ex.PW-1/A) would show that no case of adultery and cruelty has been made out even if all those averments made in Ex.PW-1/A, were to be considered as being uncontroverted and correct.

11. The most serious allegation made by the appellant/husband is with regard to the respondent No.1/wife leading an adulterous life. The appellant/husband claimed in his cross-examination that he had filed proof regarding the allegation of adultery. However, no such proof is on record.

What he did file were certain documents which reveal that the respondents had filed an application before the SDM Hapur on 23.12.2011, expressing their intent to get married. However, admittedly, that marriage was not conducted on account of the objections raised by the brothers of the two respondents. The marriage between the appellant/husband and the respondent No.1/wife took place on 29.11.2012, almost a year later. Though the appellant/husband claimed that he was not told about the previous affair of the respondents, the respondent No.1/wife during her cross-examination in response to a query, stated unequivocally that she had disclosed everything to the appellant/husband prior to her marriage with him. She denied the suggestion that prior to this marriage, she had entered into a live-in relationship with the respondent No.2. No witnesses were examined by the appellant/husband to substantiate this allegation, which was introduced for the first time during the cross-examination of the respondent No. 1/wife.

12. Moreover, adultery could have been committed only after the marriage between the appellant/husband and the respondent No.1/wife had been solemnized and the allegation of adultery on the ground that before the marriage of the parties, the respondents had stayed together, is completely meaningless. Though, the appellant/husband claimed that after marriage, the respondent No.1/wife continued her affair with the respondent No.2, no such evidence has been brought on record, nor has any specific instance been pleaded or proved as to when he had come across the two respondents in such an adulterous/live-in relationship. Even during the cross-examination of the respondent No.1/wife, the appellant/husband has not suggested that at some point of time during the subsistence of the marriage, both the

respondents were living together in an adulterous relationship. Clearly, the appellant/husband has failed to prove his entitlement to divorce on the grounds of adultery under Section 13(1) (i) of the Act.

13. Cruelty is no doubt, not measurable as a tangible commodity, but the standard for determining as to whether a particular conduct amounts to cruelty or only to normal wear and tear of marriage, has been the subject matter of several decisions of the Supreme Court. Suffice it to quote the observations of the Supreme Court in V. Bhagat vs. Mrs. D. Bhagat, AIR 1994 SC 710, as below:

“16. Mental cruelty in Section 13(1)(i-a) 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 petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. 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. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

(emphasis added)

14. From the affidavit, Ex.PW-1/A filed by the appellant/husband, it is difficult to discern as to what conduct of the respondent No.1/wife impacted him as being cruel. He accuses the respondent No.1/wife of having been (i) 'rude' and of a 'cruel behaviour' immediately after the marriage; (ii) of her picking up quarrels with every family member on trivial matters; (iii) of her refusal to have any physical relations with him immediately after the marriage; (iv) of locking herself in the room to be requested several times to come and participate in the *muh dikhai* ceremony; (v) of looking nervous and unhappy at the marriage reception on 01.12.2012; (vi) of keeping herself to her room, showing disinclination to do any household work or cook food. These were the 'cruel acts' attributed to the respondent No.1/wife. To our mind, none of these acts, if at all were committed by the respondent No.1, could tantamount to 'cruel' conduct. A new bride would be hesitant in her new surroundings in the matrimonial home. It is always for the husband's family to make the new bride feel at home and accepted as a family member. Therefore, such conduct of the respondent No.1/wife of being interested in remaining in her room or not showing initiative in doing household work can by no stretch of imagination be described as cruel behaviour and that too upon the appellant/husband.

15. With regard to her disinclination initially for a physical relationship with the appellant/husband, he himself admits that the marriage had been consummated and except for this one occasion, there were no repeated instances cited of refusal on the part of the respondent No.1/wife to have any sexual interaction with the appellant/husband. Therefore, this ground too is not available to the appellant/husband to claim 'cruelty'.

16. Another allegation is that the respondent No.1/wife used to shout at her in-laws and insult them in the presence of guests. Neither such guests, nor the parents or other relatives of the appellant/husband have been examined to substantiate this alleged misbehaviour which therefore is insufficient to conclude 'cruelty' on the part of the respondent No.1/wife.

17. The appellant/husband has also claimed that by filing a false and frivolous complaint against him and his family members at PS Khurja Junction, District Bulandshahar, UP and having remained in jail for some days, he had been subjected to cruelty. However, he has not been able to counter the testimony of the respondent No.1/wife in her affidavit, Ex.RW-1/PX to the effect that on 23.05.2013, an attempt on her life had been made and that she had been thrown by the appellant/husband himself near her parental village at about 4:00 am on the next day, in respect of which an FIR bearing No. 28/13 under Sections 498-A/307/504/506 of the IPC had been registered against him and his family members. *Prima facie*, the FIR cannot be held to be a false, frivolous or a vague one, as the trial is still going on. It is not as if any court of law has come to a conclusion that the FIR so lodged by the respondent No.1/wife was a false one. Therefore, this plea of the appellant/husband also falls flat.

18. It is thus clear that the learned Family Court had arrived at the right conclusion including observing that the accusations of adultery heaped by the appellant/husband on the respondent No.1/wife are without any proof whatsoever of the respondents living in adultery and having an illicit relationship either before or post the marriage of the parties and that the respondent No.1/wife had treated the appellant/husband with any cruelty. It

is also noteworthy that in para 20 of the affidavit, Ex.PW-1/A, without of course, giving any specific dates, the appellant/husband had claimed that he had “*reconciled*” with the respondent No.1/wife and had hoped for a “*bright future*” and “*had saved his matrimonial life*”. In other words, whatever “misconduct” that the appellant/husband had noticed and alleged, as delineated hereinabove, stood condoned by him, leaving no scope for him to have filed the petition before the court for dissolution of marriage between the parties either on the grounds of cruelty or adultery.

19. In view of the discussion above, there is no merit in the present appeal which is, accordingly, dismissed alongwith pending application.

(ASHA MENON)
JUDGE

(HIMA KOHLI)
JUDGE

JUNE 12, 2020
ak/pkb/s