

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

% *Judgment Reserved on : February 12, 2013*
Judgment Pronounced on : February 18, 2013

+ **FAO 484/2012**

RAHUL CHAUHAN Appellant
Represented by: Mr. Avinash K. Trivedi, Advocate.

versus

POONAM Respondent
Represented by: Mr. Ghanshyam Mishra, Advocate
and Ms. Kamlesh Vats, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Appellant Rahul and his father were earning their livelihood as jewelers. October 30, 2009 was a joyous day not only in Rahul's life but also the life of respondent Poonam. They exchanged matrimonial vows on said day. They were a happy couple. Soon Poonam was in the family way. A new soul was expected to enter their house anytime in the first week of September 2010. It is apparent that the 11 months were spent in happiness and bliss by the two. The dreams of the young couple came to be shattered by unexpected events which overtook the two, and as the events unfolded thereafter, which we shall be noting succinctly the young couple became a victim of circumstances; unfortunately Rahul's mother, who appears to be a superstitious lady, could not overcome the loss of her husband.

2. It was September 05, 2010. It was evening time. The shop at Inderlok wherefrom Rahul and his father were earning their livelihood i.e. the jewellery shop was shut by the father and son, and as they were returning home they were waylaid by hoodlums who were armed with a knife and a pistol. The ornaments which the father and the son were taking home were snatched and the two were fired at. Rahul was critically injured and was rushed to the Sushruta Trauma Centre for medical aid. His father unfortunately died at the spot. Poonam, who was expecting a baby anytime went into a state of shock upon hearing about the ghastly incident in which she lost her father-in-law and the cloud of she losing her husband loomed large. Ms.Ratna, the cousin of Rahul, rushed Poonam to Hans Charitable Hospital and by the night of the unfortunate day Poonam was in the maternity ward where she was blessed with a baby boy when the sun smiled on the window pane of the maternity ward at 6.00 AM on September 06, 2010.

3. The hope of Poonam that the new rays of the rising sun which fell on the window pane of her room and brought with them the bundle of joy, a baby boy, would somewhat remove the pain and sorrow and also the suffering which had left the family in cold. But it was not to be.

4. Discharged from the hospital on September 08, 2010, her mother took her to the parental house because the atmosphere in her matrimonial house was tense and in all probability her mother-in-law was of the opinion that the new born baby and the mother were an ill omen for the family. The grief, pain and sorrow of loss of her husband appears to have overtaken Poonam's mother-in-law.

5. But love between Rahul and Poonam continued to spread its fragrance. Rahul survived the brutal assault and regaining consciousness after a few days, followed by gaining in health, was discharged from the

hospital on September 14, 2010. The first thing he did reaching the house and accessing his mobile phone the day next after was to send a SMS to Poonam at 10:15 PM on September 16, 2010: '*I love U*'; followed by another SMS at 10:18 PM: '*I love you but I want to kiss you*'. Without a break, each day he would send an SMS message to Poonam till September 30, 2010 in which he expressed not only his love for her but even the pain of separation. With a lull of 18 days, on October 19, 2010 he sent an SMS to Poonam at 14:21 hours and thereafter continued to send SMS messages to her till January 20, 2011. On October 03, 2010 i.e. the marriage anniversary, at 12 midnight he SMS'ed: '*Happy marriage anniversary to you Nona*'. The SMS messages, being 39 in number, have been admitted by Rahul as transmitted by him to Poonam.

6. The SMS messages bring out Rahul's love and the pain of separation which he was feeling. Expressions like: '*I love you unlimited*'; '*Neither I nor you have done any wrong*'; '*Time has separated us*'; '*I have sent the SMS to you because your memory has forced me to do so*' bring out the innate feelings, the love and the pain of separation.

7. Though there is no evidence, but it is apparent that Rahul and Poonam were compelled by their parents to take extreme stands. Poonam's parents are less to blame for the reason Rahul's mother would just not relent and would refuse to welcome her daughter-in-law and her grandson to the house and somebody ill advised Poonam to lodge a complaint with the Women's Cell on April 02, 2011 alleging domestic abuse and dowry harassment, facts which would not be true and are obviously the creation of a person well versed in law. Experience shows to us that in each and every case where things go wrong, the first shot

fired by the wife is a complaint to the Women's Cell alleging dowry harassment and retaliation by the husband by seeking divorce. Rahul did so. A month after Poonam was compelled to fire the first shot he retaliated by filing a petition seeking annulment of the marriage alleging cruelty by Poonam.

8. That he had nothing of substance against Poonam is evidenced by the loose and laconic pleadings in the petition seeking annulment of the marriage and we can do no better other than to verbatim reproduce the reflection thereof in Rahul's examination in chief by way of an affidavit filed. In the first two paragraphs after deposing about the marriage and the status of the parties when they were married, on the subject of the alleged cruelty, Rahul deposed in paragraphs 3 to 8 of his affidavit by way of examination-in-chief as under:-

"3. That I say that after solemnization of marriage, the parties to the petition went to matrimonial house at the residence of deponent on 31/10/09. The marriage was consummated during the course of the stay of respondent with the deponent at her matrimonial home. She stayed with the deponent about 15 days from the date of marriage and thereafter, the parties to petition went to parental house of respondent to perform customary rights to go to the parent house and come back his matrimonial home. Thereafter, the respondent every now and then visited her parent at parent house.

4. That I say that after one month from the date of marriage, the relation of respondent was not good with deponent, his family members consisting of his father, mother namely Smt. Rani and two married sisters who are living at the matrimonial home with their family till 08/09/10 i.e. on the day when she went to her parent house from the Hans Charitable Hospital, GTB Nagar, Delhi after delivery of the baby. Out of said wedlock, a male child born on 06/09/10. The copies of birth certificate of child

and discharge slip dated 08/09/10 are exhibited as PW-1/5 and PW-1/6.

5. That I say that while the deponent and his father coming from shop to their house, they were attacked by unknown persons with knife and pistol at in front of Tagore Park Gurudwara with motive to rob their belongings consisting of tournaments and cash on 05/09/10. The father of deponent expired on spot and the deponent admitted in Sushruta Trauma Centre, 9, Metcalf Road, Delhi. An FIR No.315/10 was registered. The dead bodies of the father of deponent given to the family members on 06/09/10. The deponent was remained in the hospital till 14/09/10. The respondent was admitted in the hospital on 06/09/10 and discharge with baby on 08/09/10 and on the instruction of her parent, she went to her parent house without meeting with the deponent in the hospital or mother-in-law. The respondent neither visited the deponent while he was in the hospital i.e. during 05/09/10 to 14/09/10 nor participated in the any occasion of last ritual ceremony of father of deponent held after his death. The copy of death certificate, medical certificates, post-mortem report, handing over dead body and police report are exhibited as PW-1/7 to PW-1/11.

6. That I say that the deponent along with his mother and other family members went to parental house of respondent for the purpose of bringing her back along with baby at matrimonial home on 28/09/10. But the respondent as well as her parents refused to allow the newly born baby along with respondent to join the matrimonial home when the deponent and his mother went to their house with this request on 07/10/10. The behaviour of the respondent and her mother are unbearable with the deponent and her mother since last week of November 2009 till date.

7. That I say that the respondent is not discharging duties as Hindu wife and also using abusive, intolerable language with the deponent and his mother during the telephonic conversation as well as oral conversation. The deponent has recorded the voice of the respondent and how

mother during 04/05/11 and also some Pandit ji on 17/05/11. The CD and the transcript of the conversation is exhibited as PW-1/12.

8. That I say that the behaviour of the respondent with the deponent is cruel in his day to day life and during the stay at her matrimonial home. More so the respondent is so cruel that he never visited in the hospital while the deponent getting treatment during 05/09/10 to 14/09/10. The respondent is so cruel that even after the accidental death of his father-in-law, she did not participate in the last ritual ceremony. The respondent does not allow the deponent to meet with his son Dev.”

(NB. Since aforesaid is an exact quote from the affidavit by way of evidence of the appellant the same is having syntax errors.)

9. Now, the particular instances of acts constituting cruelty would be that after Poonam was discharged from the hospital on September 08, 2010 she went to her parents’ house and did not bother to visit Rahul who was admitted at the hospital nor participated in the last ritual ceremony pertaining to the death of his father and that when Rahul and his mother went to the parental house of Poonam to bring her back along with the baby on September 28, 2010 she refused to return to her matrimonial home and similarly refused to do so once again on October 07, 2010. Without disclosing what the abusive and intolerable language was, Rahul deposed in paragraph 7 that Poonam and her mother used abusive and intolerable language against him and his mother on May 04, 2011 as also before some Pandit Ji on May 17, 2011, which as per him was recorded in a CD, transcript whereof was Ex.PW-1/12.

10. On being cross-examined Rahul admitted the SMS messages, being 39 in number, which were exhibited collectively as Ex.PW-1/R1. He denied that the *tehravi* i.e. the 13th day religious ceremony was attended to by Poonam's relatives. He denied the suggestion that his mother had termed Poonam and her son as inauspicious (manhoos).

11. Rani, Rahul's mother deposed as PW-2 and on similar lines as her son. She was subjected to the same line of cross-examination and made similar denials as her son.

12. Poonam deposed as a witness by stating that from the very inception of the marriage she was harassed for dowry. She deposed that on account of the death of her father-in-law, a day prior to when a son was born to her, she and her son became unacceptable to her mother-in-law who blamed the two for the death of her father-in-law.

13. Kuldeep Kaur, Poonam's mother and Surkhen Singh, Poonam's Uncle deposed of having attended the *tehranvi* of Rahul's father but without any interaction with the family members. Surkhan Singh deposed that attempts made by him to resolve the issue failed.

14. Ignoring the transcript Ex.PW-1/12, as not properly proved, but at the same time holding that assuming the contents thereof were correct, holding the same would reveal the state of distress of Poonam and her mother upon Poonam and her son being treated as inauspicious by Rahul's mother, the learned Family Judge has heavily relied upon the SMS messages sent by Rahul to Poonam to bring home the point that allegations and counter-allegations by the husband and wife for alleged acts inter-se each other were completely false. The language of the SMS messages, which we have briefly reflected upon above, has been used by

the learned Family Judge to opine that there was nothing wrong in the relationship of husband and wife who loved each other. In the Indian circumstances of suspicion and the habits to blame others for misfortune which befalls self, finding an unfortunate connection between the date when Poonam's father-in-law was shot dead and her husband i.e. Rahul was critically injured, and the birth of a baby boy to Poonam, the learned Family Judge has opined that the preponderance of probability would be to accept Poonam's plea that her matrimonial life was torn apart due to her mother-in-law obstinately insisting that the ill omen which fell on the family was the result of an evil spirit casting its shadow on the family and that the evil spirit was the unfortunate baby boy born to Poonam in the wee hours of September 06, 2010.

15. The narratives above by us wherein we have interspaced the events with the pleadings of the parties and the evidence hardly warrants any further discussion by us for the reason the evidence is of a kind where inferences flow on their own logic.

16. The SMS messages sent by Rahul to Poonam till January 2011 would show the deep love between the two. That Poonam did not attend the tehranvi of his father was not a voluntary act by her it was her compulsion because she was not wanted in her matrimonial house by her mother-in-law. The statement of Poonam's uncle that he had attended the tehranvi of Poonam's father-in-law but without any interaction with her relatives from the in-laws side confirms said fact. That in spite of there being immense love between the couple, Poonam could not be reunited with her husband is explainable only on one cause: She and her baby being treated as evil spirits casting an evil shadow which took the life of Poonam's father-in-law. In the superstitious Indian middle class

ethos this is the only probable fact which emerges from the evidence on record.

17. We concur with the reasoning of learned Family Judge that the general allegations of cruelty without any specific particulars are to be ignored and that the specific allegation of cruelty in the act of Poonam not attending the tehranvi of her father-in-law stands explained by it not being Poonam's voluntary act but her compulsion on account of not being wanted back by her mother-in-law. The other instance of cruelty, in the form of refusing to return to her matrimonial house when Rahul and his mother allegedly went to her parents' house on September 28, 2010 and thereafter on October 07, 2010 have been proved to be prima facie wrong and the preponderance of probability is what Poonam states that after the unfortunate incident of September 05, 2010 she became a persona non-grata in her matrimonial house. We reinforce the reasoning of the learned Family Judge by dovetailing the documentary evidence in the form of the SMS messages sent by Rahul to Poonam which embrace the two dates September 28, 2010 and October 07, 2010. The SMS message sent by Rahul to Poonam on September 29, 2010 reads: ***'Taqdeer likhne vale ek ehsaan likh de, mere pyar ki taqdeer mein ek aur muskaan likh de, na mile kabhi dard usko chahe to uski kismet mei meri jaan likh de.'*** Now, if indeed Poonam had wronged Rahul and his family as is alleged by Rahul on September 28, 2010, his written feelings for Poonam the next day, which ooze out of the SMS aforementioned, would be most incongruous.

18. Before putting the curtains down we cannot but resist penning a few more lines. Our experience is showing, and in every second case either party before us confesses in chamber, that the pleadings

constituting divorce petitions and the language of the complaints alleging dowry harassment are not their thoughts but are the thoughts and the ink of some other person who has compelled them to sign on the dotted lines. The adversarial legal system rests on the premise that the pleadings are the thoughts of the propounder and the ink used to pen the same truthfully reflects the said thoughts. But this is not happening. The exaggerated versions presented in the pleadings and in the complaints made to the police are not the thoughts and the versions of the party. Trumped up and highly exaggerated and psychologically damaged versions are projected in the pleadings and the complaints which are not made good by the parties when they appear in the witness box. But they create irreversible damage and prevent conciliation by the courts. Instant case is a classic illustration of said unfortunate processes in matrimonial proceedings. We only wish that the person who prompted Poonam did not compel her to make all and sundry allegations in the complaints made by her to the dowry cell and likewise restraint was shown by the person who was counselling Rahul to sign on the dotted line in the counter pleadings. Rahul and Poonam could not be patched up in spite of counselors available with the Family Court. Even the efforts of the learned Family Judge went in vain. Endeavour made by us for the parties to patch up before hearing arguments failed. With respect to his feelings evidenced in the SMSs sent by him to Poonam, when we asked Rahul as to how come he pleaded that Poonam's attitude towards him was negative from the very inception, except for looking down and smile (when the SMS messages were re-read to him), Rahul frankly conceded that it was too late in the day to patch up because of the bad blood created in the complaints filed under the signatures of Poonam. As regards Poonam, she maintained the truthfulness of her

complaints, and we do understand her compulsion to do so inasmuch as proceedings for alleged offences committed by her husband and her mother-in-law under Section 498A/406 IPC and the Domestic Violence Act are pending, but stated that for the sake of her son she was willing to continue to suffer and return to her matrimonial house, only if her husband would assure her that he would act as a buffer; a backwater breaker barrier, and insulate her and her son from her mother-in-law; a demand which was genuine, but not within the mental strength of Rahul who appeared to be torn between the love for his wife and his child on the one side and the mother on the other; but angered and insulted by the fact that he and his mother had to spend a few days in jail when bail was denied to them for the charges under Section 498A/406 IPC.

19. Hoping that time would be a healer and somewhere Rahul would realize that what is the span of one life in this great scale of time, and would realize the futility to live by the sentiments of his mother which are rooted in superstition and accept fate and destiny; hoping that at some point of time spring would loom in the life of Poonam and Rahul when the seed of love between the two, which is lying buried in the humus leaves fallen during autumn of their life and stored during the winter of their lives would bloom again, we dismiss the appeal but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 18, 2013
srb/dkb