

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

Reserved on: 08.05.2014

Pronounced on: 21.08.2014

+ **FAO NO.295/2000, CMs. 1065-67/2000, 740/2001, 7490/2006, 4499/2009 & 20065/2010**

MRS. ANIL SINGH

..... Appellant

Through: Mr. R.K. Gupta with Mr. M.K. Singh, Advs.

versus

DR. NARENDER SINGH

..... Respondent

Through: Mr. Rajiv Bahl, Advocate

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE NAJMI WAZIRI**

1. The present appeal challenges the judgment and decree dated 7.2.2000 of the Additional District Judge ("Trial Court") whereby the respondent's ("husband") petition for dissolution of marriage against the appellant ("wife") under sections 13(1)(i-a) and 13(1)(i-b) of the Hindu Marriage Act (the " Act") was allowed and the marriage was accordingly dissolved.

2. The facts leading to the present appeal are that the parties got married on 16.10.1988, a son viz. Master Amit was born to them in 1991. They lived in their matrimonial house, which was allotted to the husband by virtue of his being the Chief Medical Officer, CGHS, Delhi. The wife is employed with the National Airport Authority. Presently only the wife

and their son live in the matrimonial house. It is stated that the parties could not live together after 5.5.1992. These facts remain uncontroverted.

3. It is the case of the husband that the wife treated him and his family members with repeated cruelty and failed to perform her duties as a wife, hence dissolution of the marriage was sought. The attempts to reconciliation failed. The husband alleged that one day the wife's behaviour became unbearable as a result of which he left the matrimonial house but only for that day. When he tried re-entering the house, the wife refused to let him in. She also did not allow the husband to meet or spend any time with their son. In reply, the wife denied all these allegations. She alleged that it was the husband who abandoned her alongwith their son, without assigning any reason therefor and further that the husband alongwith his family members was cruel towards her.

4. The Trial Court recorded in detail the various acts and instances of cruelty committed by the wife against the husband and his family; of the several attempts at reconciliation which failed and that the wife withdrew herself from the company of her husband and his family. It was also noted that the wife had filed a criminal complaint with the CAW Cell, which according to the husband, was only to harass him and his family. In her Written Statement (WS), the wife, while denying the allegations of desertion and cruelty, submitted that it was in fact the husband who had abandoned her and their minor son without any reason nor had he returned to the matrimonial house ever since; that the husband was committing adultery with his colleague at work, thereby subjecting the wife to unimaginable mental cruelty and furthermore, that the wife was threatened

from disclosing this to any member of their family. The Written Statement however, denied all efforts as claimed to have been made by the husband towards reconciliation. Based on the submissions above mentioned, the Trial Court framed two issues being;

- i. Whether the wife (appellant herein) treated the husband with cruelty;*
- ii. Whether the wife deserted the husband without any justifiable reason.*

5. While adjudicating the first issue, the impugned order noted in detail the submissions of the husband, consisting of various instances including the dates, on which the wife was said to be cruel and negligent towards the husband and his family. It was submitted that the criminal complaint was filed with the CAW Cell after the filing the divorce petition and that a sum of Rs 8 lakhs was demanded from him in consideration for withdrawing the criminal complaint. It was noted that the wife had refused to have any sexual relations with respondent after the birth of their son. The Trial Court noted that during cross-examination, the wife did not put any questions to the husband pertaining to the allegations of her trying to immolate herself, or questions which would disprove the allegation of lock and denial of sexual relations between them. Admittedly the parties no longer live together in the matrimonial home and only the wife lives in it with the son. The accommodation was allotted to the husband. The appellant has failed to bring anything on record to show that she tried to reconcile her differences with the respondent. The Trial Court noted the submission of the wife that the parties lived together till 1993 was contradicted by the wife herself in the cross-examination, where it was

said that there were no relations between the parties since 5th May 1992. On a more serious allegation of adultery being levelled against the husband, the impugned order noted that the wife did not put any question to the respondent during his cross-examination to prove or strengthen the allegation. The Court noted that apart from mere allegations in the Written Statement, no evidence was brought forward by the appellant, to prove adultery by the husband. The Court noted that a mere statement that the respondent seemed to be in the company of the colleague often, does not establish the allegation of adultery. The lack of evidence and the absence of any of the allegations of adultery led the Trial Court to conclude that the wife failed to make out a case of adultery by the husband.

6. The Court held that since the appellant admitted to existence of certain efforts by the husband, the argument of the appellant that the husband, after abandoning her and their son, made no effort to reconcile their differences, stood negated. Accordingly, this aspect was decided in favour of the husband. The Court held that the husband had mentioned several dates when the wife was said to have ill-treated him, these dates were neither refuted nor reasonably explained by the wife. The lack of denial thereof would amount to admitting such instances of cruelty, which only strengthened the case of the husband. Based on these findings, the Trial Court held that the answer to the first issue was in the affirmative i.e. there was cruelty towards the husband.

7. On the issue concerning desertion by the wife/ appellant, the Trial Court noticed that the respondent/ husband was forced to leave his matrimonial house given the prevailing circumstances. It was the case of

the husband that he left the matrimonial house on 5.5.92 but was not allowed to re-enter it when he tried to as allegedly the house lock had been changed. This was denied by the appellant. In her Written Statement, she contended that they were not cohabiting since 1993. However, during cross examination, she admitted that they were not living together in the matrimonial house since 1992, thereby contradicting her own averments in the Written Statement. The Trial Court recorded that the appellant had failed to prove her case of living separately from her husband for justifiable reasons or that the husband was a consenting party to his living separately from his wife and their minor son. The Trial Court noted the contention of the husband, that the threat of the wife to commit suicide by immolating herself, had forced him to leave the matrimonial house. This allegation against the wife was remained uncontroverted by her, thereby leading the Court to conclude that she had admitted it. The Court further noted that the wife had agreed to live with the respondent after the death of his colleague, with whom he was allegedly being adulterous, only proves that she had herself wilfully distanced the respondent. The Trial Court concluded that she had intended to live separately from her husband much prior to 1993 and that she had no intention of living together in the matrimonial house anymore. Holding that the husband had made out a case of cruelty and desertion, which the wife was unable to disprove, the Trial Court passed an order dissolving their marriage under sections 13 (1)(i-a) and 13 (1)(i-b) of the Act. This appeal challenges the said dissolution order.

8. The learned counsel for the appellant/wife contended before this Court that the impugned order has failed to recognize the fact that it was the respondent/ husband who was cruel towards the appellant and it was the husband who deserted her and their minor son. The counsel contended that the Trial Court failed to take note that the respondent had alleged instances amounting to cruelty only after 1992 and that there was no case of cruelty or of desertion till 1992; and that the husband had failed to show the Court that there was cruelty towards him and desertion by the wife. He submits that the Trial Court fell into error by failing to notice that the husband's examination-in-chief was not corroborated; that failure of the wife's counsel to put suggestions to the husband in his cross-examination, for denying acts of cruelty and desertion alleged against the wife cannot be construed as a substitute for the burden of proof placed on the husband to prove his case. It was submitted that when the husband had condoned all acts of cruelty by the appellant, he cannot now claim dissolution of marriage on the same "condoned" grounds of cruelty and desertion; that this was a point in law which the Trial Court failed to take note of; that till date the appellant alongwith their son live in the matrimonial home at the expense of the respondent and continue to avail the residential benefits by virtue of her status as his wife, which only goes to show that the respondent has indeed forgiven and condoned the acts of the appellant. The learned counsel submits that in the circumstances, a petition for divorce was contradictory and not maintainable.

9. The learned counsel further contended that every method possible to reconcile differences between the parties was attempted, despite the

husband committing adultery; that it was gross error on the part of the Trial Court to not take into consideration these efforts of reconciliation; that it was settled law that divorce could not be granted merely because the wife had failed to prove charges levelled by her in her Written Statement (WS); whereas it was for the husband to disprove the charges levelled in the wife's WS. The counsel relied on *Naval Kishore Somani v. Poonam Somani*¹ in support of this submission. He argued that since the respondent has failed to disprove allegations of adultery, the respondent cannot be said to have discharged the burden of proof and the Trial Court fell into error in passing the decree of divorce. He also contended that the intervention of the police and issuance of summons of the husband does not constitute an act of cruelty per se and that the husband cannot quote such instances to build a case of cruelty against the wife. It was submitted that even if the wife had not shown a reasonable cause for her living apart from her husband, the latter is still required to show the Court that the desertion was without any justifiable cause.

10. The impugned judgment addresses the contentions raised and submissions made on the three issues in separate parts i.e., cruelty, desertion and adultery. In adjudicating the three issues, this Court has arrived at the following conclusion:

Cruelty

11. In a petition for divorce filed on grounds of cruelty, the petitioner is required to show that he/she was subjected to such conduct which was

¹ AIR 1999 A.P 1

harmful to her/his existence. It is settled law that in matrimonial cases, the fact of cruelty would need to be assessed from the peculiar facts of each case. The Supreme Court has held that cruelty is a course or conduct of one, which adversely affects the other. Cruelty may be mental or physical, intentional or unintentional. The cruelty alleged may largely depend upon the type of life the parties are accustomed to; their economic and social conditions and the cultural and human values to which they are exposed or attach importance to. Each case has to be decided on its own merits.² The term Cruelty, has not been defined in the Hindu Marriage Act, hence its contextual definition has evolved through judicial pronouncements. It is more than mere physical and mental cruelty. The facts shown by the petitioner must indicate to the Court, the existence of such behaviour which may be objectionable or that may cause discomfort in the marriage. It is settled law that so far as proving the facts/instances of cruelty alleged in the petition are concerned, the burden of proof lies on the one alleging it. The burden of proof will lie on the party who affirms a fact and not on the party which denies it. The petitioner must therefore prove that the respondent has treated him with cruelty under the Act.³

12. In the present instance, the husband alleged that the wife had treated him and his family with cruelty and ultimately deserted him without any reason. He gave an account of a series of instances with specific dates on which he was subject to cruelty. It is unnecessary to recount the facts again. However, it would be pertinent to note that the wife alleges the same acts of cruelty and desertion to have been inflicted upon her by the

² Naveen Kohli v. Neelu Kohli (2006)4 SCC 558

husband. The Court would be required to see what constitutes cruelty. Such determination will vary from case to case. Acts which are part of the wear and tear of the marital life cannot be defined as acts of cruelty. It has been held by the Supreme Court that there is no longer a standard required to classify an act as cruelty. It holds:

*“27. Now it would be sufficient to show that the conduct of one of the spouses is so abnormal and below the accepted norm that the other spouse could not reasonably be expected to put up with it. The conduct is no longer required to be so atrociously abominable which would cause a reasonable apprehension that it would be harmful or injurious to continue the cohabitation with the other spouse. Therefore to establish cruelty it is not necessary that physical violence should be used. However, continued ill-treatment, cessation of marital intercourse, studied neglect, indifference of one spouse to the other may lead to an inference of cruelty.”*⁴

13. Prior to the 1976 amendment to the Hindu Marriage Act 1955, cruelty was not a ground for grant of divorce. It was only a ground for judicial separation under Section 10 thereto. However, with the amendment in the year 1976, cruelty was incorporated as a ground for dissolution of the Hindu Marriage. Simultaneously, the words *“as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious to the petitioner to live with the other party”* has been deleted. The statute no longer requires that proof. In a matrimonial dispute, the same set of facts may lead to different conclusions because the interpretation would depend upon the context of

³ N.G. Dastane(Dr) .v S. Dastane (1975)2 SCC 326

⁴ Manisha Tyagi v Deepak Kumar (2010)4 SCC 339

the parties and the complexion of the case. The Courts are not to search for a standard in life to determine cruelty in a complaint of cruel treatment by one spouse against the other spouse or his/her relatives. A set of facts stigmatized as cruelty in one case is so in another case. Cruelty may allegedly depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their cultural orientation and the human values in which they are imbued.⁵

14. The husband had alleged acts of cruelty against the wife including her withdrawal from his company and also his family. The Trial Court was to examine this aspect. The wife in her WS had alleged adultery by the husband with his colleague. This allegation was never proved. It is a most severe allegation which, if false, by itself amounts to cruelty. The learned counsel for the respondent submits that the wife had consistently failed to perform her marital obligations, i.e., she had withdrawn from his society – more particularly keeping husband away from her society and company for years, and indeed did not allow him to meet their son on the latter's birthdays. These allegations were found by the Trial Court to be true. It is not always the harsh words or physical violence that only amounts to cruelty. Unspoken hostility or continued neglect, sullenness or indifferent coupled with the spouse refusing to cohabit or have any marital relationship with the other spouse could be termed as cruelty. Denying or abstaining from physical relations unilaterally without any justifiable reasons amounts to cruelty towards the other spouse. In the present case, the wife had failed to disprove the allegation made by the husband. On the

⁵ Shobha Rani vs. Madhukar Reddi, (1988) 1 SCC 105

contrary, her allegation of adultery remained unproved. Her allegations were false, it amounted to cruelty. Therefore, this Court is of the view that the Trial Court was right in concluding that the husband had been subjected to cruelty by the wife. There is no infirmity in the impugned order apropos the conclusion arrived at in this regard.

Desertion

15. The husband had alleged desertion by the wife. He would also need to prove it. The concept of desertion has been explained in Halsbury's Laws of England as;

“In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases.”⁶

Just as the incidence of cruelty, desertion too has to be proven by the spouse so alleging it against the other. In doing so, the factum and the intention of desertion have to be proved. Such desertion ought to be for continuous a period of two years prior to filing of the petition. It would need to be shown that such desertion was without justifiable cause for withdrawal from the society of the other spouse. The events narrated in the divorce petition indicated that the husband was made to leave the matrimonial house, since the wife was extending threats of committing suicide, only to implicate him. Furthermore, she did not permit the

⁶ (3rd Edn) Vol 12

husband to re-enter the house when he tried to return back home immediately, after having left for a day on 5.5.1992. The husband only left the home with the intention of returning back. He showed that he left for temporarily, only to tide-over the threat extended to him; the temporary removal of his physical presence was merely in his own interest as well as in the interest of his family to overcome the momentary matrimonial upheaval occasioned by wife's threat to commit suicide. His having endeavoured to re-enter the house was thwarted by the wife as the house lock had been changed. This aspect remained uncontroverted by the wife. Therefore, the only conclusion would be that the wife had prevented the return of the husband. The husband could not be said to have deserted the wife. On the contrary, the wife had continued to keep him away from her society and company. Therefore, although the wife was residing in the accommodation allotted to the husband, she had deserted him. She had shown no reason why she did not allow the husband to return. The factum of her withdrawing from the society of the husband without reason and continued to do so for more than two years showed her intention and factum to desert the husband.

16. This Court notices that there are no averments as to the causes or reasons or events leading to the alleged desertion by the husband except for a bald averment or the assertion by the wife that the husband deserted her without any reason. There is no proof on the record to support the aforesaid bald averment. The lack of relevant and appropriate material or proof would only lead to the conclusion that there was no just reason for not allowing the husband to go into the matrimonial home and that the

wife always intended to desert the husband. A mere counter-allegation will not suffice to make out a case of the desertion of the appellant. The Trial Court was therefore, right in holding and concluding that the husband had established desertion by the wife. This Court is of the view that the reason for and the conclusion arrived at by the Trial Court cannot be faulted.

Adultery

17. The wife had alleged adultery by the husband. This was never proved. She never filed any criminal case or complaint elsewhere nor had she mentioned such a serious matter, if it were so, to any member of the family. Logically then, only the appellant seemed to have knowledge of the said adultery. In the cross-examination no questions were put to the husband on the alleged adultery. The allegation was levelled only in the WS. It was a mere bald statement unsupported by any proof. Incidentally, a colleague with whom the adulterous relationship was alleged had passed away much prior to the filing of the divorce petition. Apart from the wife's statement in this regard, there was nothing on record either by way of document or in deposition or cross-examination to prove the allegation of adultery. Therefore, there was really nothing which the husband could be required to negate. The learned counsel for the appellant submitted that the wife having made the allegation of adultery, it was for the husband to have negated such an allegation. He relied upon *Naval Kishore Somani v. Poonam Somani*⁷ to contend that where the husband does not traverse the charges made by the wife in the

⁷ AIR 1999 A.P.1

WS, he failed to discharge that burden. It is noteworthy that in the aforesaid case, the Court concluded that the allegation of adultery made in the counter affidavit or WS by the respondent, if unproven or found false and baseless would itself constitute cruelty against the other spouse. But to hold that simply because the husband had failed to disprove such charges made by the wife in her WS would be stretching the limit of reasonableness. For adultery to be proven, cogent and substantive evidence has to be brought on record by the parties alleging so. In the present case, no such evidence was brought on record by the wife. In **Somani** (supra), the appellant seemed to have merely rebutted the allegations with a bald statement during the appellant's examination in chief. Whereas the respondent therein had provided enough proof to substantiate her allegations. There is clear difference in the facts of that case and the present appeal. The Trial Court concluded that there was lack of evidence from the wife in proving an allegation of adultery against the husband. Allegations of adultery have a consequence of damaging one's reputation, taking away the dignity of that person in the eyes of his family, friends and the society. The burden of proving adultery is placed on the individual who makes such an allegation. In the absence of any proof in this regard, the Trial Court rightly concluded that the charge of adultery against the husband was not proven.

18. The learned counsel for the respondent relied upon **Savitri Bulchandani v. Mulchand Bulchandani**⁸ which was a wife's appeal against the Trial Court decision granting divorce to the husband on the ground of

⁸ AIR 1987 Delhi 52

the cruelty and desertion. The Trial Court had found various documents authored by the wife threatening the husband and accusing him of having a bad character. The Court held that inability of the wife to prove the allegation of adultery against the husband amounted to cruelty. It observed:

“(44) In view of what is stated above, I am of the view that the appellant wife has persistently made false and baseless defamatory allegations against the husband regarding illicit relations with other women. She has failed to prove any of her assertions in accordance with law. Her own testimony in this regard is unworthy of reliance, for the reasons already stated. In the circumstances I am of the view that these false and baseless allegations which have been made by the wife in the written statement are sufficient in themselves, to bring home the charge of her having been cruel to the husband. In my view the husband is entitled to a decree of divorce on this ground alone.”

19. In an appeal⁹ filed by the husband against the decree of divorce granted to the wife, the Supreme Court looked into the allegations against the wife made by the husband in his WS. The Court held:

“7. The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(i-a) of the Act. The position of law in this regard has come to be well settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital relationship is a grave assault on the character, honour, reputation, status as well as the health

⁹ Vijaykumar Ramchandra Bhat v Neela Vijaykumar Bhate (2003)6 SCC 334

of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible.”

20. What emerges from the aforesaid discussion is that wherever adultery is alleged by one spouse against the other and the allegation remains unproven, it constitutes cruelty against the accused spouse, since the allegation was a concerted and deliberate action which had the capacity to tarnish the reputation and lower the dignity of the other spouse. It would also cause immense mental trauma and stress to the accused party. Therefore, insofar as the wife had been unable to prove the allegation of adultery as made in her WS, it would constitute cruelty against the husband and this alone would be a ground on which divorce could have been granted. Besides, the husband had shown that he was prevented from being in the society of his wife because of her lacking him

out and otherwise threatening to commit suicide so as to implicate the husband. He had shown that he had no intention to desert the wife or his son since he returned to the matrimonial home immediately after having left, for a day, on 5.5.1992. The wife's refusal to matrimonial relations with the husband and her false allegations of adultery constitute cruelty. The husband's divorce petition was justly allowed. This Court finds that the impugned order does not suffer from any infirmity or material irregularity. The respondent had sufficiently shown cruelty and desertion by the wife. The appeal is without merit and is accordingly dismissed. No orders as to costs.

NAJMI WAZIRI
(JUDGE)

AUGUST 21, 2014/acm/d/ak