

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:30.05.2014

+ MAT.APP. 60/2012, CM APPL. 18340/2012
SANDHYA PANDEY Appellant
Through: Mr. S.K. Chaturvedi, Adv.
versus
KUNJ BIHAR PANDEY Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE NAJMI WAZIRI**

1. This petition impugns an order dated 21.07.2011 which dismissed the petitioner's petition seeking grant of a decree of divorce under Section 13(1)(i-a) and 13(1)(i-b) of the Hindu Marriage Act, 1955.

2. The facts are that the petitioner had married the respondent on 06.05.1990 at Chhapra, Bihar. The petitioner started living along with respondent as husband and wife in her matrimonial home. Two children namely Abhilasha and Master Abhinav were born to them. Petitioner came into her matrimonial home along with gifts and jewellery. However, after marriage unreasonable demands towards money as well as jewellery etc. continued to be made by the respondent and his family members. Since the petitioner's parents

were not in a position to meet the said demands of money and jewellery, she was repeatedly beaten up by the respondent while the rest of his family members were extremely inimical and cruel towards her. However, an amount of Rs.50,000/- was paid to the respondent by the petitioner's family by taking the same on loan from their relatives. It is stated that despite the payment of the said amount of Rs.50,000/- the behaviour of the respondent and his family members did not improve towards her, rather they became more cruel towards her thereby resulting in torture and abuse of the petitioner in her matrimonial home and she was forced to do the entire household works like a domestic servant there. She alleged that she was thrown out of her matrimonial home on 30.06.2007 along with her two children. On that day all that they had with them were the clothes on their bodies. She sought refuge in one of her relatives' family namely Ashok Singh at D-99, Yadav Nagar, Samaipur Badli, Delhi. Thereafter, on 26.08.2007 when she went to her matrimonial home along with her minor daughter to take her minor daughter's bicycle and books etc. the respondent beat her and her minor daughter. The police was then called and thereafter she was medically examined at

trauma centre, Delhi. During investigation she came to know through her neighbours that the respondent has been trying to sell her matrimonial home A-14/6, Bawa Colony, Burari, Delhi-84 through Power of Attorney, sale deed etc. She claims that with the intervention of the local police as well as respectable members of the society, she was re-inducted in the matrimonial home on 08.09.2007 when the respondent and his family members also promised not to harass her in future. She claims that she is residing at the said address with her minor children ever since. She also stated that certain blank documents were made to be signed by her unknowingly by the respondent and his family members. That thereafter, the respondent and his family members continued to extend threat to her and her children to dispossess them from the matrimonial home of the petitioner as a result whereof she had filed a suit seeking permanent injunction against the respondent for restraining him from dispossession of the matrimonial home. An interim injunction was granted in her favour on 14.01.2008. The petitioner contends that since 05.10.2008, the respondent has left the company of the petitioner and is residing at his native place at Chhapra, Bihar; whereas the

petitioner has been living alone since then without any monetary support or help from her husband to meet her personal expenses and for upbringing of their children. It was stated that the petition was not filed in collusion with the respondent and she had not condoned the acts cruelty committed by the respondent; there was no delay in filing the petition. She stated that there was no reason why the relief sought by her could not be granted.

3. Although notice of the petitioner was issued to the respondent, but he could not be served through ordinary process but was served by substituted service through publication in Rastriya Sahara, Bihar Edition dated 16.04.2011. Due to default in appearance despite service through publication, the respondent was proceeded *ex parte* on 02.05.2011. The petitioner recorded her statement in *ex parte* evidence. However, there was no cross-examination. She reiterated her suffering of cruelty in evidence.

4. The Court reasoned that there was no ground to disbelieve her testimony more so when she was not cross-examined on particular points which amounted to admission on the part of the opposite party. The Court found no ostensible reason to disbelieve the allegations of

the petitioner. However, it went on to discuss the legal definition of cruelty with respect to the Black's Law Dictionary as well as concept contained in ***Shoba Rani vs. Madhukar Reddi* (1998) 1 SCC 105; *Naveen Kohli vs. Neelu Kohli* 1 (2006) DHC 489 (SC); *Savitri Pandey vs. Prem Chandra Pandey*, MANU/SC/0010/2002; *Vinita Saxena vs. Pankaj Pandit*, III (2006) SLT and *Samar Ghose vs. Jaya Ghose* IV (2007) SLT 76** to conclude that “*no comprehensive definition of concept of ‘mental cruelty’ can be given nor can any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters can be laid down.*”

5. The Court also borne in mind that for the purpose of Hindu Marriage Act “cruelty” would include subjection of one’s spouse at the hands of the other and manifestation of such feelings towards her; infliction of bodily injury upon the other or leading to apprehension of bodily injury, suffering or the actual injury to health. The cruelty would include both physical as well as mental cruelty. The latter would include the conduct of one’s spouse as to lead the mental suffering or fear to the matrimonial life to other. All that is required is reasonable apprehension that it would be harmful or injurious to the

apprehensive party to live with the spouse. However, cruelty has to be distinguished from ordinary wear and tear of the family life. The Trial Court reasoned that since there were no specific dates as to when the cruelty occurred; the evidence of any other person was not furnished in support of the case; despite her having lived in her matrimonial home for 17 years i.e. from 06.05.1990 to 30.06.2007, she never complained against the cruelty inflicted upon her or harassment for dowry before the Crime Against Women Cell, the Court thus concluded that:

“from the year 1990 till 2007, 17 years had elapsed, but it is not possible, that the kind of cruelty alleged, if afflicted upon the petitioner, would not have brought about any complaint from the petitioner to any authority and therefore, inference is adverse to the petitioner.”

6. The Court reasoned that since no witness was examined by the petitioner to corroborate her evidence; nor was the medical examination at trauma centre on 26.08.2007 brought forth; nor any medical slip was produced to fortify her stand regarding the beatings; nor was there any document of her having been ousted from

matrimonial home along with children on 26.08.2007 proven by leading evidence of any respectable member of the society, the Court concluded that she failed to prove her case. The Court then proceeded to examine the issue of desertion and referred to ***Bipin Chandra vs. Prabhawati*** AIR 1957 SC 176 where the Hon'ble Supreme Court has held: *“desertion means the intentional permanent forsaking and abandonment of one spouse by other without the other's consent and without reasonable cause. It is a total repudiation of the obligation of marriage.”*

7. The Court reasoned that the allegation of desertion was vague and does not satisfy the requirement of 'cruelty' or mental “desertion” of the petitioner. The Court reasoned that for the 'desertion' to have been established, the Court must see the wilful conduct and neglect of the respondent. It was to be proved that respondent's attitude was such which was reflective of the fact that he had mentally forsaken the petitioner and that he was not interested in the continuation of the marital ties. The Court did not find merit the petitioner's contention that her husband was trying to dispose off the matrimonial house. The Court reasoned that such contention does neither inspire any

confidence nor does it point towards the respondent forsaking to the petitioner by act or conduct. Accordingly, the Trial Court dismissed the petition on the petitioner's failure to prove all contentions made in the petition.

8. This appeal was first listed before this Court on 13.10.2012 when notices were issued. However, the respondent was not found at the given address and consequently, he was served on 14.04.2013 by way of substituted service of publication in Rastriya Sahara, Hindu Edition, District Chhapra, Bihar. However, before this Court too there was default in appearance. Accordingly, on September 03, 2013, this Court proceeded *ex parte* against the respondent.

9. Counsel for the petitioner submits that the impugned order suffers from non-application of judicial mind. Respondent having deserted the petitioner on 05.02.2008; having inflicted and having beaten the petitioner repeatedly on various occasions and not having paid her any maintenance; having withdrawn from society and having not made any provision for maintenance of her and their children consequently, there was no legal impediment why the relief prayed could not have been granted. He submits that the Trial Court order

suffers from material illegality by dismissing the petition which otherwise had sufficient ground for grant of divorce.

10. From the judgments referred to in the impugned judgment by the Trial Court, this Court is of the view that where the respondent husband, in spite of due service of notice, did not appear before the Trial Court to contest the divorce petition and again before this Court to contest the appeal, he would really have no case against the averments made in the petition and evidence led by the petitioner herself. It cannot be said that for the reasons best known to her perhaps due to social circumstances and family values, economic need someone can endure for any duration the cruelty both physical as well as mental.

11. In the circumstances, the allegations made by the petitioner that the husband was habitually cruel towards her; her in-laws were active participants in meting out the cruelty towards her as well as making unreasonable demands of money and beating the petitioner in the presence of their children. The husband had not provided her any help when he left matrimonial home on 05.02.2008 till the filing of the petition for divorce in March, 2010 cannot be disbelieved simply

because the complaint was not made to CAW cell or to any other statutory authority/police against demand of money and dowry or against harassment or infliction or mental or physical cruelties. The petitioner has mentioned instances wherein the conduct of the respondent can be classified as cruelty. The Supreme Court in **A. Jayachandra v. Aneel Kaur AIR 2005 SC 534** explained what would amount to cruelty and the situation in which certain acts could be defined as acts of cruelty. The Supreme Court held;

“10. The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of his spouse same is established and/or an inference

can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.”

Applying the reasoning the Court in the abovementioned case, it would be unjust to the petitioner to rule out the probabilities of cruelty

against the petitioner as the respondent, despite due process of summons, failed to appear in Court to controvert the allegations. It cannot be said that the allegations per se were not possible. Such complaint is not sine qua non. Circumstantial evidence can be corroborative evidence. In the present case, although there was no corroborative evidence but in the absence of any cross examination by the respondent-husband who had proceeded *ex parte*, there was no reason to doubt the veracity of the petitioner-wife's contentions. She had given specific instance as to when she was beaten i.e. on 26.08.2007 as well as the fact that she was medically examined at the trauma centre and further that after intervention of the respectable of the society she was re-inducted in the matrimonial home. Therefore, her contention that there was demand of dowry, harassment, physical abuse which included severe beatings on 26.08.2007 leading to her medical treatment at trauma centre, Delhi and being thrown out of her matrimonial home along with her children on 30.06.2007 and thereafter her re-induction into her matrimonial home on 08.09.2007 because of intervention of the respectable members of the society amounted to cruelty which she had been suffering. Since there was no

rebuttal of her evidence, there could be no reason to disbelieve the same. Each of the aforesaid instances would tantamount to cruelty. Furthermore, the petitioner claimed that she was deserted on 05.02.2008 and she has been living separately from her husband who had moved on to his native place; that the petition was filed after 2 years of statutory period in March 2010. There again, being no controversy of this claim, there could be no reason to disbelieve her. The act of cruelty also stands established. Accordingly, in view of the aforesaid discussion, this Court is of the view that both the grounds of cruelty as well as desertion stand established and the petitioner is entitled to a decree of dissolution of marriage under Section 13(1)(i-a) and 13(1) (i-b) of the Act. The Trial Court fell into error in seeking corroboration of admittedly uncontroverted facts. In the circumstances, the impugned order is set aside. The petition is allowed and the marriage between the petitioner and the respondent is hereby dissolved on the grounds of cruelty and desertion. A decree be drawn accordingly.

**NAJMI WAZIRI
(JUDGE)**

MAY 30, 2014/acm