

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

Judgment Reserved on: September 22, 2016
% *Judgment Delivered on: September 29, 2016*

+ **MAT.APP.(F.C.) 72/2016**

NISHI Appellant
Represented by: Mr.Rohit Kr. Modi, Advocate.
versus
JAGDISH RAM Respondent
Represented by: Mr.Suresh Chandra, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The appellant/wife is aggrieved by the judgment and decree dated February 24, 2016 whereby the divorce petition seeking dissolution of marriage under Section 13(1)(ia) of the Hindu Marriage Act, 1955 filed by the respondent/husband has been allowed thereby dissolving the marriage between the parties.
2. The social and economic status of the parties to this appeal can be inferred from their respective residential addresses. The marriage was arranged through a charitable trust of a mandir. The respondent/husband though an employee (UDC) with MCD, the appellant/wife was doing some private job earning about ₹6,000 - ₹7,000 per month and was having a mother with no source of income.
3. The appellant/wife entered the matrimonial home nurturing a dream to have separate home for two of them only. The respondent/husband was shouldering the family responsibilities and was not comfortable in having a

separate accommodation or bear the unnecessary burden of paying the rent and running two kitchens. Since the appellant/wife was not even allowing him cohabitation for days together, may be to put a pressure on him to concede to her demand to have a separate house, mid way found by him was to make some arrangement in the same house. He along with his wife shifted to the first floor within a few months of marriage. Apparently it was a perfect solution to strike a balance between sharing family responsibilities and meeting the demand of his newly-wed wife to make her happy. Even this could not succeed as the respondent/husband has claimed that he was not allowed to sleep on the first floor by his wife leaving no option for him but to sleep at the ground floor. Birth of a son to the parties also did not bring any change in their life so far as this issue was concerned. The appellant/wife left the matrimonial home on December 08, 2007 after making various police complaints against the husband and in-laws. A small issue i.e. to have separate accommodation could not be settled by the parties even after about four years of their togetherness. At the bottom of the problem, fault appears to be with the approach of the parties to tackle the issue.

4. Brief facts of the case are that the appellant/wife got married to the respondent/husband on November 29, 2003 according to Hindu rites and ceremonies. The couple was blessed with a son on August 02, 2005. The parties have been living separately since December 08, 2007 and the son is in custody of his mother.

5. The divorce petition was filed by the respondent/husband citing various instances of cruelty root of which was allegedly in the desire of the wife/appellant to live separately from her in-laws. Although in the divorce petition numerous instances starting from 4-5 days after the marriage are pleaded but even as per the respondent/husband the same were on petty

issues. The differences started when after 15-20 days of the marriage the appellant/wife started pressurizing him to get separated from his parents which he ignored. Soon it became a routine as everyday in the morning she would pick-up a quarrel and on his return from duty till night the issue will continue. The situation reached to the extent that the appellant/wife on not getting her demand of separate accommodation being acceded to, started denying sexual contact with her for days together. In March 2004 in the same house, she was provided separate accommodation but her attitude remained unchanged. She did not allow the husband to sleep with her on the first floor thereby compelling him to sleep on the ground floor in the same house.

6. On December 08, 2007 she again picked-up quarrel, abused her in-laws and called the police resulting into initiation of proceedings under Section 107/151 Code of Criminal Procedure against the respondent/husband. Thereafter she called her sister and brothers and after taking her belongings, left the matrimonial home along with the son and despite repeated efforts being made by him, refused to return to the matrimonial home. She also threatened to implicate all the family members in false cases.

7. The divorce petition was hotly contested by the respondent denying the accusations made against her or her desire to have separate accommodation. She has projected herself to be a victim at the hands of her husband and in-laws who were not only snatching her salary but also her *Istridhan*. She admitted to have shifted to first floor in the same house on January 14, 2004. She has pleaded that her mother died on February 05, 2004 due to heart attack suffered by her on account of demand of ₹2 lakhs by her husband on February 02, 2004. She was compelled to hand over her entire salary and savings on being threatened that her brothers, sister and

sister-in-laws would be kidnapped or killed. When she was in family-way, her husband and in-laws wanted her to go for abortion and on her refusal she was even beaten up by them. She was not provided necessary medical care and attention at that time and even at the time of delivery the hospital expenses were borne by her brother. In February, 2006 her husband and other family members demanded ₹4 lakhs failing which she would not be allowed to enter the matrimonial home and to save the marriage, her brother sold away portion of his house and paid ₹4 lakhs to her husband. Again in November, 2007 she was given beating by her husband and family members but to save her marriage she told everyone that the injuries were suffered in a roadside accident. When her brother was to get married, her husband demanded ₹50,000/- for attending the marriage. She obtained a loan of ₹30,000/- from her office and borrowed ₹5,000/- from her brother and despite being handed over ₹35,000/- he did not attend the marriage. She was compelled to report the matter to PCR on June 30, 2007 as her husband, his mother and sister gave beating to her. The matter was compromised when her husband and in-laws tendered apology with assurance not to ill-treat her in future.

8. In respect of the last incident dated December 08, 2007 when she finally left the matrimonial home, the appellant/wife has pleaded that again she was compelled by her husband and in-laws to bring money from her brother. On her refusal she was again beaten up by her husband and in-laws to the extent that she became unconscious and was left only after presuming her to be dead. After that they ran away from the house. On regaining consciousness she called the police and was taken for medical examination. Then on December 10, 2007 she lodged a complaint against her husband and in-laws at CAW Cell.

9. Before the Family Court both the parties examined themselves in support of their respective pleas.

10. Mr.Rohit Kr. Modi, Advocate appearing on behalf of the appellant/wife has submitted that it is a case where the husband who was a wrong doer and subjected his wife to cruelty, has been believed and testimony of the wife has been discarded though she levelled and proved various instances of physical and mental cruelty being committed on her by her husband. Her efforts to save the marriage have been ignored by learned Judge Family Court. She was compelled to leave the matrimonial home along with her son on being physically assaulted to the extent that she became unconscious and attempt was made on her life. It has been submitted that in the facts and circumstances that there was no material produced by the respondent/husband to prove that he was subjected to cruelty by the appellant/wife, the impugned order being passed on misappreciation of the evidence led by the parties, may be set aside.

11. Learned counsel for the respondent/husband has drawn the attention of this Court to the observation made by learned Judge Family Court in para No.23 of the impugned judgment wherein it has been specifically held that the appellant/wife had absolutely no evidence to support her extremely serious allegations and her testimony does not contain an iota of truth whereas the testimony of the respondent/husband has remained unassailed.

12. We have considered the rival contentions and gone through the evidence adduced by the parties to satisfy ourselves about the correctness of the finding of cruelty being committed by the appellant/wife recorded by the learned Judge Family Court which form basis for the dissolution of marriage.

13. In his examination-in-chief the husband had narrated all the instances of cruelty committed on him shortly after his marriage with the

respondent/wife just for the reason that he was not agreeing to the demand of his wife for separate accommodation. During cross-examination of the respondent/husband, no material could be brought on record by the appellant/wife to show falsity in the claim of the respondent/husband of he being subjected to unbearable cruelty by the appellant/wife.

14. In the affidavit filed by the appellant/wife, she has stated that she was working in a private firm whereas her husband was working as Upper Divisional Clerk with Municipal Corporation of Delhi. In her affidavit she stated that at the time of her marriage ₹30,000/- was given in cash with about 22 tolas of gold, silver and other precious gift but after 10-12 days of the marriage all the cash and jewellery were taken from her by her mother-in-law and sister-in-law. They also used to snatch her entire salary and also compelled her to withdraw her pocket money from her pre-marriage savings.

15. Another major instance of cruelty being committed by the respondent/husband is claimed to be demand of ₹ 2 lakhs by him from her mother on February 02, 2004 which caused heart attack and she expired on February 05, 2004. She has claimed that she used to work from 5'o clock in the morning till 11.30 in the night. She was not given proper food even during her pregnancy. When she was advised bed rest by the Doctor, she was made to do all household work and despite having washing machine she was made to wash heavy clothes manually. She has also deposed that when an attempt was made on her life she was compelled to call the police. She has also stated that in February, 2006 to fulfil the demand of her husband, her brother had to sell portion of the house and paid ₹ 4 lakhs to the husband but the greed was not satisfied and her husband demanded ₹50,000/- as a condition to attend the marriage of her brother on February 19, 2007. Though she arranged ₹35,000/- by taking ₹30,000/- as office loan and

₹5,000/- from her brother, despite receiving the said money, her husband did not attend that marriage. In respect of the incident dated June 30, 2007 the appellant/wife has stated that she was given beatings by her sister-in-law and mother-in-law and in order to save herself she called the police and also informed her brother about the incident. They all were taken to the police post Raghbir Nagar. There also the goons were called by her husband and in-laws who threatened her with dire consequences. When her brother reached the police chowki the family of her husband tendered apology. Last incident narrated by her is dated December 08, 2007 stating that on that date she was compelled to bring money and was given beatings till she fell unconscious and they all fled. On regaining consciousness she called the police. She was taken to the hospital and medically examined. Then on December 10, 2007 she was constrained to file a complaint before CAW cell, Nanakpura.

16. During her cross-examination she admitted that the marriage was arranged through a charitable trust of a Mandir. She also admitted that at the time of her marriage she was earning only ₹ 6000-7000 per month and her working hours were 10 a.m. to 6 p.m. She has also admitted that a telephone facility was available not only at the matrimonial home but also in her office. She could not produce any proof of the cash of ₹30,000/- and 22 tola gold being given in her marriage or from where and what jewellery was purchased by giving evasive reply that her mother knew about all this who had already expired. She admitted having a joint locker with her sister, namely, Meenakshi Sharma. She further admitted that her mother was a house wife, the demand of ₹ 2 lac was made by her husband from her mother only in her presence and that even after the death of her mother, she did not inform any family members that her mother had expired due to the

demand made by her husband. She has admitted about various police complaints made by her and the husband being booked in proceedings under Section 107/151 Cr.P.C. on her complaint. She has also admitted being made complaint to CAW Cell, Nanakpura, Delhi under Section 498-A/406 IPC in which trial is going on wherein she failed to appear as a witness despite many opportunities being given resulting into closing of her evidence. She was unable to admit or deny the suggestion that one opportunity was granted to lead evidence after the State filed a revision to seek one more opportunity. She has also admitted that the complaint filed by her under Domestic Violence Act has been dismissed. She stated that the demand of ₹4 lakhs was made by the respondent/husband on phone from her brother. In respect of the incident dated February, 2007 no FIR was registered and no MLC was prepared. The marriage of her brother on February 19, 2007 was attended by her father-in-law. She admitted that in February, 2007 she had a fracture of ribs which as per her version at that time was suffered in roadside accident with an Auto rickshaw.

17. Except the oral statement of the appellant/wife we have nothing in hand to look for corroboration to her version especially when all assertions against the respondent/husband and in-laws could have been proved through documentary evidence. She could have produced her bank account statement showing withdrawal of entire salary and for pocket money using her savings, taking loan of ₹30,000/- from her office to pay her husband. She could have also placed on record the MLCs showing the nature of injuries suffered by her and cause of injury as reported by her at the time of preparation of MLC. She has failed to prove on record complaints made to the police as well the report of medical examination and the nature of injuries suffered even on December 08, 2007. She has admitted that

preventive action was taken against her husband under Section 107/151 Cr.P.C.

18. The respondent/husband is a government servant and all these complaints and proceedings under Section 107/151 Cr.P.C. had adverse effect on his career also. Holding the respondent/husband responsible for the death of the mother without their being any evidence that he ever demanded ₹2 lacs from her in itself is a mental cruelty especially when the mother-in-law was a house wife having no means to meet such demand. It is her own case that she never informed anyone in the family even after death of her mother that cause of the heart attack was demand of ₹2 lacs by her husband. At least the factum of paying ₹4 lacs to the respondent/husband by selling portion of the house by her brother must have been documented. She claims that this demand was made telephonically by her husband from her brother but even the brother has not been examined nor any sale deed/agreement to sell is placed on record to establish the above fact. However, the brother was not examined to prove the above assertion.

19. It is admitted case of the appellant/wife that her working hours were from 10.00 am to 6.00 pm and she was getting a salary of ₹6000/- to ₹7000/- per month. The marriage was without any dowry demand, arranged through Charitable Trust of a Mandir and in that case expecting or making the dowry demands was more or less out of question. The fact is that she could not even give details of the jewellery and had vaguely stated that 22 *tolas* of gold was allegedly given by her mother in the marriage or from where it was purchased.

20. In para 7 of the written statement the appellant/wife has admitted that she was shifted to the first floor on January 14, 2004 at the instance of the petitioner. The marriage was solemnised on November 29, 2003 and within two months of her marriage she was provided separate accommodation

lends credence to the version of the husband that the root cause behind her various acts of causing mental cruelty to him and his family was to have a separate house. To achieve that she did not allow her husband to cohabit with him and by daily picking quarrel she tried to create an atmosphere which would compel the family members to ask the husband to have separate unit, so as to buy peace for everyone.

21. The concept of cruelty is directly related to human problem, psychological approach and conduct of the spouse which have to be considered while appreciating the concept of cruelty by the Courts.

22. Dismissal of the case filed by her under Domestic Violence Act evinces that a false case was registered against the husband and his family members.

23. It is admitted case of the parties that on several occasions the appellant called the police. On several occasions the husband was called to the police station and humiliated. The acts of cruelty included constant threat by the wife to have them arrested which caused stress to the husband and his family with the result that it was not possible for him to continue with the marriage. False accusations had adversely affected the mind and the health of the husband causing great embarrassment to him and his family leading them to be looked down upon by the relatives, friends and neighbours. The learned Judge, Family Court has rightly appreciated the evidence led by the parties in this case by correctly applying the law laid down in 2015 (2) LRC 301 (Delhi) Swati Vs. Arvind Mudgal, AIR 1975 SC 1534 Dr.N.G.Dastane Vs.Mrs.S.Dastane, AIR 1994 SC 710 V.Bhagat Vs. D.Bhagat, AIR 2006 SC 1675 Naveen Kohli Vs. Neelu Kohli, (2006) 3 SCC 778 Vinita Saxena Vs. Pankaj Pandit, (2007) 4 SCC 511 Samar Ghosh Vs. Jaya Ghosh, 2013 (136) DRJ 107 DB Suman Singh Vs. Sanjay Singh, AIR

2005 SC 534 Jayachandra Vs.Aneel Kaur referred to in the impugned judgment for arriving at the conclusion that the various acts of mental cruelty to which he and his family was subjected to over a period of time by his wife were sufficient to dissolve the marriage under Section 3(1)(ia) of the Hindu Marriage Act, 1955.

24. The respondent/husband had been able to prove the manner in which he was subjected to mental cruelty by the appellant/wife just because he could not provide separate house to his wife. In the decision reported as AIR 2015 SC 285 Vidhya Viswanathan vs. Kartik Balakrishnan that not allowing the spouse for long time to have sexual intercourse by his or her partner, without sufficient reason, was treated as causing mental cruelty to such spouse.

25. The act of the wife to deny cohabitation for a long period of time to the husband in itself is an act of cruelty and constitute a matrimonial offence for the purpose of Section 13(1)(ia) of the Hindu Marriage Act, 1955.

26. In view of the decision reported as K.Srinivas Vs. K. Sunita in Civil Appeal No.1213 of 2006, filing of the false complaint against the husband and his family members also constitute as mental cruelty for the purpose of Section 13(1)(ia) of the Hindu Marriage Act, 1955.

27. The way the appellant/wife was frequently calling the police at the drop of the hat and the family members being taken to the police station where perhaps her brother who is stated to be in Delhi Police was of some assistance to her, itself was causing harassment and mental cruelty not only to the husband but to his entire family.

28. Assessing the matrimonial life of the respondent/husband in this case as a whole we find that though her act of denial of physical contact for a long time without any justification in itself amounted to mental cruelty to the respondent/husband so as to entitle him to seek dissolution of the

marriage. In addition, making false allegations about the demand of dowry which allegedly caused her death due to heart attack, her brother had to sell part of the house and meet the demand of ₹4 lacs without any iota of evidence being brought on record but to substantiate the same, making the entire family to make rounds of the police station and remain under fear of being implicated in a criminal case or were sufficient to prove mental cruelty. Her version in respect of the incident dated December 08, 2007 when she was beaten to the extent that she was presumed to be dead, her call to PCR and medical examination in the Hospital also could not be substantiated. The above instances are sufficient to arrive at the conclusion that it was no longer possible for the respondent/husband to bear such type of conduct.

29. In view of the foregoing discussion, the Family Court was fully justified in dissolving the marriage of the parties by decree of divorce. The appellants failed to make out any case to interfere with the same.

30. No costs.

31. LCR be sent back alongwith copy of this order.

PRATIBHA RANI
(JUDGE)

PRADEEP NANDRAJOG
(JUDGE)

SEPTEMBER 29, 2016
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