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

Reserved on: 18.07.2016

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Decided on: 21.09.2016

+ MAT.APP.(F.C.) 90/2014, CM No. 7107/2008, CM No. 7109/2008, CM No. 2575/2009, CM No. 4199/2009, CM No. 8808/2014 & CM No. 9419/2014

MANJU PANWAR

..... Appellant

Through: Dr. Manmohan Sharma, Advocate along with Mr. Anurag Pratap and Mr. Rishi Raj, Advocates with Appellant in person.

versus

V.P.S.PANWAR

..... Respondent

Through: Mr. S.K. Sharma, Advocate along with Mr. Rahul Sharma and Mr. Prayas Aneja, Advocates.
Mr. Anuj Aggarwal, Advocate for CRPF.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MS. JUSTICE DEEPA SHARMA (JUDGMENT)

1. In the present appeal the respondent- wife challenges an order dated 13.12.2001 of the Delhi District Court, which dissolved the marriage of the parties on the ground of cruelty. The parties to the dispute were married on 24.12.1975 at Meerut and they were blessed with two children in the year 1976 and 1983. The petitioner/husband at the time of filing of the divorce petition was employed with the Central Reserve Police Force (CRPF) as a Commandant. The divorce petition, which was initially filed before the

Family Court, Meerut, was transferred to Delhi by an order, dated 28.03.2000 of the Supreme Court.

2. The petitioner/husband alleged that he and his family members were treated with cruelty by his wife (the appellant); she did not like his family members visiting their house, did not like his father to reside with them and that she was abusive towards him and all other family members. The husband alleged further that the wife had humiliated his father on several occasions and further, insulted and abused him as well in the presence of his family members, members of his staff, his superior officers and servants on several occasions and had also leveled false allegations against his character. He alleged that despite his requests, she did not correct herself, continued with the same abusive and insulting attitude and further used to threaten to commit suicide and involve him and his family members in false cases. It was alleged that the wife was acting at the instance of her mother, sister Indra Singh and brother in law Satbir Singh, who used to interfere in the matrimonial affairs of the parties, against the husband's wishes.

3. The husband alleged that in March, 1996 the wife had called certain bad characters into the matrimonial home, who threatened to kill him. In addition, she had filed several false complaints against him including the complaint to the Executive Magistrate under Sections 107/111 Cr.P.C. on 13.04.1989, to the CRPF, (leading to his transfer several times- which had adversely affected his career prospects). On one of such complaint led to his transfer from Jammu to Assam - this had also caused mental agony to him. It was alleged that newspapers, published reports of his wife's involvement in criminal cases, which affected his reputation in the eyes of his colleagues, friends and staff. The wife and their son Vikram were involved in criminal

cases under Sections 363/366 I.P.C. and an FIR was registered for kidnapping of a minor girl on 04.07.1996. The wife was also involved in other criminal cases under Sections 448/504/506/34 IPC. The wife did not allow his brother to stay in the house. She also withdrew herself from his company and stopped having any relation with him. It was alleged that her behavior had caused severe mental pain and agony and that he could not live with her as he was apprehensive of his life and felt unsafe.

4. The appellant in her written statement had controverted all the allegations in the husband's petition. She alleged that he had deserted her and the children since he developed intimacy with a Kashmiri family and had emotions for a woman in that family. It was alleged that the husband was not adequately providing for their daily necessities. She did not deny however, objecting to the stay of the husband's brother in their house but justified it alleging that the brother was involved in a murder case and she did not felt safe with him. She also denied that the petitioner/husband was transferred from Jammu to Assam on her complaint and alleged that in fact she had requested the higher officers for the transfer of him to Delhi and not elsewhere. It is submitted that she and her son were falsely implicated in the kidnapping of the minor girl.

5. In the replication the petitioner/husband had reiterated all his contentions and had further stated that in the year 1993 his father came to Delhi to stay with him but due to the appellant/wife's aggressive behavior he had to stay in the battalion. It was further submitted that he was not properly invited in the marriage of their son performed on 12.10.1999 as the invitation was sent by post – which amounts to an act of cruelty by the appellant.

6. In support of his case the petitioner/husband had examined himself and the appellant had examined herself (PW1) son (PW2) and daughter (PW3).

7. The learned trial judge concluded that the husband had established cruelty on the part of the wife. For holding so, the court took into account copies of letters written to the husband's employer and the press, including copy of letter dated 06.04.1999 to the Crime Branch, photocopy of letters dated 12.06.1999, 05.03.1999 and 15.01.1999 to the Director General, CRPF copy of complaint dated 09.08.1999 filed before Smt. Mamta Sehgal, Member Secretary, Legal Aid Cell, Patiala House, Delhi. The documents, a copy of the FIR No.224/1996, PS Naraina dated 10.07.1996 against wife and their son under Sections 366/511 IPC; copy of another FIR No.380/1996, PS Naraina dated 13.10.1996 under Sections 448/504/506/34 IPC against wife showing her an accused. Likewise, a notice under Sections 107/111 Cr.PC received by him from the Executive Magistrate, South West, Delhi wherein he was asked to furnish bail bond, the summons received from the said court for appearance on 26.06.1989 and his reply in the said court on 06.07.1989 were also produced. The crime against women (CAW) cell of Delhi Police notices, undertaking by the wife before that body whereby she promised not to quarrel with him in future, too, was produced. The CAW investigation cell report, which found that the complaint was false, was considered. The petitioner had placed reliance on a letter written by him to SHO, PS Vinay Nagar informing him that his wife had been threatening to commit suicide and his letter written to Director General, CRPF in March, 1999 explaining the problem he had been facing because of the false complaints repeatedly

made by his wife. Letters written by the husband and his mother in law were produced.

8. The trial court considered the line of questioning on behalf of the wife, including a suggestion given to the petitioner/husband in his cross-examination that *the wife did not like the presence of the family members of the respondent*, and his answer. The trial court held that these materials showed that the wife did not like the husband's relatives and resented if they went to the matrimonial home. The learned judge also observed that the suggestions in the cross-examination to the effect "*whether he had illicit relationship with the Kashmiri girl*", was contrary to the pleadings of the respondent as she had not set up the case that the respondent was having an illicit relationship with any such lady. The court was of the view that the only plea urged in the written statement was that the petitioner/husband husband was having an inclination towards a Kashmiri family and there was no allegation of him having an illicit relationship with a Kashmiri lady and thus held that leveling such allegations amounted to mental cruelty specially when she had failed to produce any evidence to substantiate this plea. The learned Judge noted that in the cross examination, the wife did not dispute the husband's statement that whenever he visited Delhi he was not allowed to enter in his official flat allotted to him, where the rest of the family used to reside. The court further noted that the wife had admitted her fault and promised to change, before CAW cell. That she did not dispute the husband's statement about a compromise in the proceedings under Section 107/111 Cr.PC and that in that compromise she had admitted her fault was also noticed.

9. The Trial Judge held that the husband being a senior official CRPF was bound to feel humiliated due to the false proceedings initiated by his wife before the Executive Magistrate and that it had lowered his reputation in the eyes of not only his seniors but also his juniors. The document KA-1 dated 25.05.1989 records the appellant's undertaking before the police that "*she will not fight*". The registration of the FIR against the wife and the son for kidnapping a minor girl and wide publicity in the newspaper was considered by the learned Judge who then held that this had subjected the husband to ridicule. The Learned Judge has also noted that the letters written by husband to his wife, son and daughter showing his sufferings, were not disputed either by wife or the children in their testimonies. The impugned judgment also considered the fact that in the marriage of the son, the wife did not invite the husband at all and it was only the son who had sent the card and made a telephone call. Furthermore, the wife's false deposition that no invitation card was printed, though her witness deposed to the contrary, was noticed. The learned Judge has also relied on the letter as Ex.RW2/P1 addressed to the Director General, CRPF written by son and daughter who in their testimonies had admitted their signatures on it. In this letter they had stated that the various complaints and allegations made by their mother to the Director General, CRPF; National Human Rights Commission, Member Secretary; Legal Aid Cell and Crime Branch etc. were false and contained no truth. The court rejected the argument that the letter was written at the instance of the father for seeking his posting out of Assam. Taking into account the cumulative effect of the evidences on record the Ld Judge held that the appellant/wife treated the petitioner/husband with cruelty and that

she had failed to discharge her burden to prove that she had never treated him with cruelty or that it was he who had committed cruelty on her.

10. The findings of the Trial court are challenged before us. It is argued that learned judge erred in relying on the letter Ex.RW2/P1 of son and daughter and ignored the fact that the witnesses had clearly stated in their testimonies that their signatures were obtained on these letters for the purpose of seeking transfer of their father from Assam to Delhi. In fact, the husband obtained the said letter fraudulently from the children. Learned counsel argued that the materials on record showed that the husband used to neglect his family and wife and was habituated to not caring for them adequately. It was also submitted that the allegations with respect to the wife being involved in a criminal complaint leading to publication in the newspaper, tarnishing the husband's image, are not true. Learned counsel highlighted that the trial court fell into error in disbelieving the wife about the husband's involvement with someone else in Kashmir and ignoring the deposition of the daughter, who had stated in her evidence that her father had admitted to relationship with another woman. It was submitted that given these circumstances, the allegations that the wife was indulging in cruel behavior had to be discounted entirely. Learned counsel also submitted that the so called complaints given by the wife did not ultimately lead to any conclusion; in the circumstances, the trial court fell into error in taking them into consideration. Counsel also stated that there was no evidence to show that the wife was always aggressive in her behavior to the respondent/husband or that she was rude to his family members. Counsel submitted that the one instance, which the husband had managed to prove

was when she did not wish his brother to visit them; this could not be called unreasonable, given that he was facing criminal – in fact murder- charges.

11. It was argued by learned counsel that the trial court fell into error in giving importance to trivial incidents, to find cruelty by the wife, and overlooking or ignoring material documents and circumstances proved by her. It was argued that the husband neglected his own family and preferred to be away from them at every opportunity. Counsel submitted that the daughter of the couple in court in fact deposed to the husband's relationship with another woman. She had specifically stated that her father had admitted to a relationship with another woman in Srinagar. This gave a lie to the protestations of innocence and outrage by the husband.

12. Counsel for the respondent relied on the record, including the documents considered by the trial court and the depositions of witnesses. It was argued that this court should not interfere with the findings of the Trial court, which took into consideration all the evidence to find that the wife behaved cruelly toward the husband. It was submitted that the evidence, both documentary and oral, clearly established that the wife was aggressive and lost no chance to humiliate the husband. Counsel submitted that the wife addressed a series of frivolous and baseless complaints to the husband's officers, managed to damage his career and to top it all, leveled serious allegations of marital misbehavior, stating that he was involved with a Kashmiri lady. It was pointed out that the husband, during his posting in Srinagar, had become acquainted with a married couple; the wife went to the extent of labeling them as terrorists. It was urged that too much weight cannot be given to the daughter's evidence about the so called admission by the husband, her father in this regard. There was no shred of material to

substantiate the plea of cruel behavior by the husband, or his neglect of the wife.

13. We have given thoughtful considerations to the rival contentions and the material on record.

14. The evidence on record establishes that the husband was employed in the CRPF and more often than not, was posted out of Delhi. The wife stayed back in Delhi. In 1989, there appears to have been trouble and marital discord; eventually before the Delhi Police, the wife apparently acknowledged that she was quarrelsome and agreed not to fight with the husband in future. The husband alleged, in the evidence that the wife expressed discomfort and did not permit his brother to stay with them. The wife's unchallenged explanation to this allegation is that the brother was facing criminal charges for murder. In the light of this explanation, her reluctance cannot be considered unreasonable. Similarly, the husband said that the wife did not permit his family members to live or visit the matrimonial home. Now, as to this, all the three- the wife and the children, have deposed to the contrary; in fact the wife has even produced receipts showing payments made to the doctor and for purchasing medicine, for her father-in-law's use. This allegation too, is consequentially, baseless.

15. The second set of circumstances relied on by the husband to allege cruelty is that the wife used to address several complaints to his superior officers, which according to him lowered his reputation in their eyes as well as those of his superior officers. Now, the wife does not deny this; in the court deposition she admitted to having sent four complaints (some of them in 1997-98) to the Director General and other superior officers. The explanation given is that the wife was neglected or treated cruelly. However,

the wife has not produced any material to support her allegation that she was neglected. She on the other hand, admitted in court that the family used to live in government accommodation whenever the petitioner was posted away from Delhi. Beyond a general allegation- unsupported by any bank account statement etc, there is nothing to prove that the husband failed to provide financial or other material support to his family. Equally, the children who deposed generally talked about neglect; they however did not assert, if so, who supported them and funded their education. The wife's allegation about neglect and cruelty by the husband is therefore without any foundation. In the circumstances the husband's argument that the wife's letters to his superior officers, constituted cruelty as they contained allegations, has merit.

16. As far as previous acts of cruelty and complaints to the police etc. are concerned, this court is of opinion that given the compromise of the parties – long back, resuscitation of those details is impermissible. Once the parties patch up and resume co-habitation, the question of digging up past conduct to prove cruelty – or allege some kind of serial behavior, does not arise. The husband is on record, to the effect that the parties co-habited and had physical relationship till 1994 and not after.

17. As far as the conduct of cruelty attributed to the wife that she manipulated the situation so as to ensure that the husband was not properly invited for their son's marriage is concerned, the wife deposed that no invitation card was printed and that the husband was notified on telephone. The son, in his cross-examination admitted that invitation cards were printed and guests were invited. However, concededly the husband was not invited. A family's neglect of his father, in these circumstances, having regard to the

false evidence of the appellant, is indicative of her true intention. It can under no circumstances be pleasant for a father to be confronted with complete alienation from his children. The deposition of the two witnesses and absence of explanation as to why the husband was not notified properly so that he could be present at the wedding, is not only hurtful; it is also cruel behavior for which the wife is, in part responsible. Her attempt to manipulate the truth is proof of her intention to neglect and sideline the husband in the ceremonies.

18. The appellant had argued that the learned Judge erred in holding that the failure on her part to prove that the respondent had an illicit relationship with a Kashmiri lady amounts to cruelty. The appellant argued that the finding that such an allegation was not proved is contrary to the record. It was submitted that RW3, the daughter clearly stated in her cross examination that the respondent had confessed to her of his relationship with the Kashmiri lady and there was no cross examination in that regard and consequently the husband admitted the appellant's allegations.

19. At no stage of the matrimonial proceedings-either in the written statement or in any of the previous communications by the appellant to CAW Cell, complaint to Executive Magistrate, to the Director General of the respondent, did she complain of the husband having a relationship with a Kashmiri lady. She had on the other hand, complained that he was having close association with a Kashmiri family. In her written statement too the wife had pleaded that he had *inclination* towards a Kashmiri family. It is also on record that the Kashmiri family includes the two spouses- husband, wife and three children. In the absence of any allegations of adultery no inference can be raised. Furthermore, in family disputes the evidence should

not to be read in isolation but the inference of existence of a fact or set of facts has to be drawn on the basis of totality of facts and the circumstances. It is evident in this case that for the first time: and that too as a voluntary statement, the daughter had deposed that her father had confessed to her about his relationship with a Kashmiri lady. However, in her letter which is Ex.RW2/P1, bearing her signatures she had categorically stated as under:

“We categorically state and affirm that all these complaints are false and far beyond truth. The mentioned Kashmiri family is well known to both of us and we have visited them on several occasions in Jammu and Srinagar. They are very respected people and there is no truth in the allegations about them or my father. Our father has always given us the best of education and living within his legitimate means and has always guided us on the right path. In fact, both of us being children committed certain mistakes which he has always overlooked and forgive.”

20. The daughter, RW-2, in her cross-examination, nowhere stated that the contents of this letter were untrue. The only statement made was that the father wrote this letter. Even if it were so, nothing had prevented the witnesses, both the son (RW2) and the daughter (RW3) to state in the witness box that the contents of this letter were false. In the light of totality of circumstances, the solitary statement of the daughter that the father confessed to her of his relationship with another woman, that too in the absence of any suggestion in the cross-examination of the husband that he confessed of his relationship to his daughter, this passing statement volunteered to by her is insufficient to prove the husband's infidelity even by rule of preponderance.

21. Cruelty under Hindu Marriage Act is advisedly undefined. However, the ‘Cruelty’ can either be physical or mental or both. Physical cruelty is easy to prove but the mental cruelty depends on various factors. A three - judge bench of the Supreme Court in ***Samar Ghosh vs. Jaya Ghosh (2007) 4 SCC 511*** while dealing with the concept of mental cruelty has observed as under:

“The human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound; therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in the other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances....”

22. Further, in ***Ravi Kumar vs. Julmidevi (2010) 4 SCC 476***, the Supreme Court held that cruelty is to be judged from the behavior taking into account the entire facts and circumstances of the case. The court has observed-

“Therefore, cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the husband is cruel to his wife or the wife is cruel to her

husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in matrimonial cases can be of infinite variety—it may be subtle or even brutal and may be by gestures and words.”

23. These authorities underline that it is the total behavior, which is to be taken into account. If one spouse's consistent behavior shows lack of respect, understanding, faith and also reveals acts intended to- and which have caused pain, discomfort or brought disrespect or disrepute, to the other spouse, such behavior would constitute cruelty. Trust, mutual respect, understanding and commitment sustain marriages. A certain level of tolerance and accommodation to each other's propensities, preferences and habits is expected. One cannot and should not expect one's spouse to possess identical tastes, temperament and behavioral traits as oneself or one is used to with one's family members. Over sensitivities to innocent behavior, attitudes of having one's way only cannot but result in mismatch and matrimonial discord. Spouses are expected to be supportive to each other and pillars of strength in adversities.

24. The respondent was posted to Kashmir, at the time when that state bristled with terrorism. The husband as a senior officer of CRPF was expected to shoulder his official responsibilities. In this context the wife's letters to his seniors telling them that he had an inclination towards a Kashmiri family, leading to inquiries and his transfer to Assam, caused him serious trouble and embarrassment. It could be reasonably assumed that it affected his standing in the eyes of his staff and colleagues, and this bound to cause him humiliation and anguish, as there was no truth in the complaint.

Beside this the document KA-1 given by appellant in police station that “*she will not fight*” is the admission of the appellant of her conduct.

25. While appreciating the evidence in such matters the Supreme Court in ***Deb Narayan Halder vs. Anushree Halder*** (2003) SCC 3174 has held that the court should rely on evidence, which is contemporaneous. The court observed-

“In cases where there is a dispute between husband and wife it is very difficult to unravel the true reason for the dispute. After separation when the relationship turns sour, all sorts of allegations and counter allegations are made against each other. Evidence of contemporaneous nature therefore plays an important role in such cases as it may reveal the thinking and attitude of the parties towards each other at the relevant time. Such evidence is usually found in the form of letters written by the parties to each other or to their friends and relatives or recorded in any other document of contemporaneous nature. If really the respondent was subjected to cruelty and harassment in the manner alleged by her, we have no doubt she would have written about such treatment to her friends and relatives with whom she may have corresponded.”

26. In this case the contemporaneous evidence on record is thus important to ascertain the conduct of the appellant towards the husband. The false complaints leading to enquiries, transfers, face loss in front of seniors and staff and subordinates, clearly show that this behavior of the appellant had lowered the husband’s reputation and professional standing. There was absence of trust, faith and respect for respondent. In the case of ***G.V.N. Kameswara Rao vs. G. Jabilli*** (2002) 2 SSC 296 the Supreme Court had taken into consideration false police complaints as a mental cruelty as it considered that this leads to loss of reputation and standing in the society at

the instance of one's spouse in view of social status and level of education. Appellant has been persistently cruel towards her husband not only during their stay together but also during the divorce proceedings which is apparent from the fact that she had leveled the unsubstantiated charges of adultery against him. In *R. Balasubramanian vs. Vijaylakshmi Balasubramanian (SMT) (1999) 7 SCC 311*, the Supreme Court has held that unfounded allegation of adultery is a serious allegation amounting to cruel conduct. Here too, such elements have been established. These factors cumulatively prove cruelty on the part of the appellant, as to entitle the husband to dissolution of the marriage.

27. For the foregoing reasons, this court finds no merit in this appeal; it is dismissed along with the pending applications with no orders as to cost.

**DEEPA SHARMA
(JUDGE)**

**S. RAVINDRA BHAT
(JUDGE)**

SEPTEMBER 21, 2016

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