

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

% *Judgment Reserved on: August 16, 2016*
Judgment Delivered on: August 23, 2016

+ **MAT.APP. 71/2011**

AJEET PANWAR Appellant

Represented by: Mr.M.S.Yadav, Advocate

versus

BABITA Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The appellant/husband having been declined a decree for dissolution of marriage with the respondent/wife is before this Court assailing the judgment and decree dated August 01, 2011 passed by learned Judge, Family Court, Rohini in HMA No.777/2006 under Section 13(1)(ia)(ib).

2. Notice of the appeal was sent to the respondent. Learned counsel for the respondent had put in appearance on September 26, 2012. The appeal was admitted on that date with direction to be taken up for hearing as per its turn.

3. The appeal reached for hearing on July 17, 2013 and thereafter had been taken up on October 28, 2013; August 13, 2016 and August 16, 2016. None has appeared on behalf of respondent on the above dates as well today.

4. The appellant/husband has assailed the verdict of learned Judge Family Court mainly on the following grounds:-

(i) The respondent lodged a false complaint at CAW Cell, Nanakpura which was later on withdrawn by her.

(ii) Concealing the above facts after leaving the matrimonial home she filed a complaint case against her husband, mother-in-law, father-in-law and two sisters-in-law (Nanad) at Gurgaon wherein on direction given under Section 156(3) Cr.P.C. FIR No.178/2006 under Section 498-A/406/506/34 IPC was registered at PS Sadar, Gurgaon.

(iii) The appellant and his father both were got arrested and they remained in Jail in Gurgaon. They even did not get the opportunity to apply for anticipatory bail. The father of the appellant, who was a Government servant, was placed under suspension due to his arrest in this case resulting in loss of reputation of the family.

5. We have perused the Trial Court's record and also considered the submissions made on behalf of the appellant/husband.

6. It is admitted case of the parties that they got married on April 13, 2000 at Gurgaon, Haryana as per Hindu Rites and Ceremonies. The marriage was consummated and the parties are having one daughter born on October 24, 2002 who is in the custody of her mother.

7. In the petition seeking divorce numerous instances of cruelty have been pleaded which can be noted as under:-

(i) In April, 2001 the appellant/husband was sick when his cousin Monty came to see him, instead of preparing tea in the kitchen, she created a scene and misbehaved with the guest who was his bua's son.

(ii) The respondent/wife insulted his mother when he asked her to help his mother in washing the clothes.

(iii) In August, 2001, the respondent/wife went to her parental home for her delivery despite being persuaded to remain in Delhi where medical facilities are better. With lot of persuasion she returned matrimonial home in February, 2004.

(iv) In June, 2004 on being asked as to how she got late in returning from market, she threw her Mangal Sutra on the face of the appellant/husband saying that she did not like him.

(v) On May 07, 2005 respondent/wife went to her parental home to attend the marriage of her sister. While she was at her parental home in Gurgaon, she filed a complaint under Section 498-A/406 IPC at CAW Cell, Nanakpura. It was resolved after number of appearances by the appellant/husband and his family before CAW Cell, Nanakpura.

(vi) On October 17, 2005, the respondent/wife sprinkled kerosene oil on herself. She was saved by the appellant/husband. Her family was also informed by the appellant/husband. Instead of counselling the respondent/wife they manhandled the appellant/husband. The respondent/wife accompanied her family members and did not return thereafter.

(vii) The respondent/wife filed a false complaint case wherein on the direction of the Court registered an FIR No. 178/2006 at PS Sadar Bazar, Gurgaon against the appellant/husband, his parents and two sisters leading to their arrest in that case and suspension of his father who was a Government servant for remaining in jail.

8. We concur with the finding of the learned Judge Family Court about the instances of cruelty upto July 2005, as recorded by us in para No. (i) to (v) i.e. till the complaint was filed before CAW Cell, Nanakpura were normal wear and tear of matrimonial life and not cruelty for the purpose of Section 13(1)(ia) of the Hindu Marriage Act. Otherwise also since the parties cohabitated together as husband and wife these acts were condoned.

9. Last two incidents i.e. sprinkling kerosene oil by the respondent/wife

on October 17, 2005 and then making a false complaint against her husband and in-laws including her two unmarried sisters-in-law (Nanad), namely, Rekha (married and aged about 30 years) and Arti (unmarried and aged about 21 years) need to be examined by this Court.

10. In respect of the incident dated October 17, 2005 learned Judge, Family Court has considered following aspects to hold that it was not sufficient to grant decree of divorce:-

- (i) The incident is not proved as PW-3 Kartik Mandal, Landlord of the house has not supported the case of the appellant/husband. He was living in the house opposite to the appellant/husband and their addresses are different.
- (ii) No complaint was lodged by the appellant/husband in respect of the above incident has been placed or proved on record.
- (iii) Single incident of alleged behaviour cannot constitute cruelty so as to cause mental harassment to the extent that it is not possible for the parties to live together.

11. We find no discussion by the learned Judge, Family Court on the issue of registration of FIR No.178/2006 at PS Sadar, Gurgaon and arrest of the appellant/husband and his family members in said case. May be because the acquittal of the appellant/husband and his family in the above FIR is a subsequent event.

12. There is no dispute about the fact that twice a complaints were made by the respondent/wife against her husband and in-laws for the alleged commission of offence under Section 498A/406 IPC. The complaint before CAW Cell, Nanakpura was resolved and they resumed cohabitation.

13. After leaving the matrimonial home on October 17, 2005 she filed a complaint case wherein direction was given by the learned MM, Gurgaon to PS Sadar, Gurgaon for registration of an FIR.

14. The appellant/husband in his affidavit has specifically stated that after the incident of October 17, 2005 the respondent/wife accompanied her family members to her parental home, she lodged an FIR No. 178 dated March 14, 2006, under Section 498A/406/506/34 IPC. It was done without disclosing the other complaint made to CAW Cell, Nanakpura, Delhi. He also stated that on April 21, 2006 Gurgaon police arrested him and his father from Delhi and they remained in Jail till bailed out by the Court of ACJM, Gurgaon. Not only that, the complainant tried to get her mother-in-law, unmarried Nanad Arti, aged about 21 years at that time and married Nanad Rekha too also involved in this case but they were granted anticipatory bail. He has also stated that due to arrest and remaining in JC his father was placed under suspension.

15. Testimony of PW-2 Rama Nanad Panwar, father of the appellant is also to the above effect.

16. The respondent/wife Babita in her cross-examination has categorically admitted that her father-in-law and husband were put behind bars and sent to jail. She has also admitted that Gurgaon police came to Delhi without informing the accused persons and they were picked up from Delhi without getting an opportunity to move for anticipatory bail. The appellant has placed on record certified copy (photocopy) of the judgment dated March 24, 2014 whereby all the five accused i.e. husband, parents and both the Nanads have been acquitted by the learned Judicial Magistrate disbelieving the testimony of the prosecution witnesses which include the respondent/wife and her brother Rajan who also appeared as a witness in the divorce petition HMA No.777/2006.

17. In case FIR No. 178/2006, PS Sadar, Gurgaon the learned Magistrate has specifically noted that it was not a case of any dowry demand. The

witnesses i.e. complainant Babita (respondent/wife herein) and her brother were making false statement and the allegations made against in-laws was nothing but an afterthought. It was held that if the complainant Babita has left the matrimonial home on October 17, 2005 where was the occasion for the mother-in-law Kanta to give her beating in presence of her brother Ranjan (PW-3) on April 29, 2006. Disbelieving the testimony of the complainant Babita and her brother Rajan and finding it to be a case where the prosecution failed to establish its case beyond reasonable doubt, all the accused were acquitted.

18. In view of the above evidence surfacing on record the question that requires consideration is whether lodging a false complaint under Section 498A/406/506/34 IPC by the respondent/wife amounts to cruelty? Legal position is well settled that making a false allegation of cruelty under Section 498A against husband and in-laws itself amounts to cruelty. (Ref. 176(2011) DLTD 165 *Nitu Aggarwal Vs. Gireesh Gupta*; 2005(2) CCC 795 (Delhi) *Smt. Pinki Jain Vs. Sanjay Jain*; (1994) 1 SCC 337: AIR 1994 SC 710 *V. Bhagat Vs. D. Bhagat*.)

19. Coming to the incident dated October 17, 2005 we have the testimony of three witnesses i.e. the appellant himself, his father and the land lord to the effect that on that date the respondent/wife poured kerosene oil on herself and the untoward incident was averted by preventing her from lighting the match stick. The learned Judge Family Court, Rohini has disbelieved the incident recording that **no complaint was lodged by the appellant/husband to this effect has been placed on record or proved by the petitioner.** Unfortunately this is contrary to the record. The appellant in his cross-examination itself by way of affidavit Ex. PW-1/A, in para 19 disposed as under:

*“That on 17th October, 2005 the respondent in the morning sprinkled kerosene oil on her person herself and that respondent was forcibly stopped by the husband not to do such an act and resultantly she could not succeed in lighting with match stick and was saved by the petitioner/husband. The petitioner immediately informed the parents of the Respondent about her misbehaviour and dangerous act committed by her, thereafter the parents of the respondent came to the matrimonial home alongwith the brother of the respondent and one another person on the same day 17.10.2005 at 12.00 noon. All of them instead of giving good advice to the respondent manhandled with the deponent and his parents. **The information in this regard was duly made in the local police station Dabri, New Delhi on the same day. The copy of the complaint dated 17.10.2005 lodged with PS Dabri is annexed herewith as Ex.PW-1/1.***

20. The incident has been corroborated by his father PW-2 and the landlord Kartik Mandal PW-3 in his affidavit Ex. PW-3/A by making statement to the following effect:

*“That the Deponent was present when the respondent had poured upon her kerosene oil at RZ 26A, Madanpuri, Gali No.9, West Sagarpur, New Delhi 46, at that time the deponent was residing in the said premises as the owner of the said premises, and **the petitioner and his family members were residing in the said premises mentioned above as tenants. After pouring kerosene oil she attempted to light the match box to set herself ablaze. But she was saved by her husband/petitioner. She had the intention to implicate the petitioner and his family members in a false case. The said incident was seen by the deponent himself.**”*

21. Learned Trial Court disbelieved the testimony of PW-3 noting that the address given by PW-3 Kartik Mandal is different from the address of the petitioner or his father. No Court question was put to clarify this aspect, **no cross-examination is there by the respondent/wife to the effect that Kartik Mandal was a stranger or that whatever he has stated in para 1**

and 2 of the affidavit in respect of incident dated October 17, 2005 was false. In fact in his cross-examination recorded on a subsequent date, only three questions have been put regarding nature of his business, whether he had brought the sales deed of the house and about anybody taking rented accommodation in his house at any point of time. Rather his statement is that he knew the petitioner and they are living opposite to each other. Even the respondent/wife Babita's case is not that they were living in their own house rather she has stated the family of her in-laws was living in rented accommodation. Thus there was hardly any reason for learned Judge Family Court to discard the testimony of independent witness in respect of the incident dated October 17, 2005.

22. Learned Judge Family Court also failed to consider the admitted case of the parties that the respondent/wife left matrimonial home in the company of her father, brother and one more person on October 17, 2005. It was also admitted case of the respondent/wife RW-1 and her brother RW-2 that intimation about the incident was given by her husband at her parent's house and pursuant to that they visited the matrimonial home of the respondent/wife and brought her back.

23. Falsity of the case of the respondent/wife is apparent on face of record not only from her pleadings but also from her deposition and that of her brother. In para 18 and 19 of the written statement it has been pleaded as under:

“Para no. 18 of the petition is wrong and denied. However, the petitioner gave undertaking that he will not commit any unlawful or dangerous act but he did not stick on is assurance. And on 17.10.2005 she was beaten up by the petitioner and his family members and a DD no. 52 B Dt. 17.10.05 was lodged with P.S. Dabri. The Photostat copy of the report is attached herewith. The answering respondent joined the matrimonial house as the petitioner gave undertaking before the women cell

that he will keep the petitioner nicely but in few days he did not stick to his assurance and gave beatings.

Para no. 19 of the petition is wrong and denied. It is wrong to allege that on 17.10.2005 in the morning respondent sprinkled kerosene oil on herself and the respondent was forcibly stopped by the petitioner. It is also wrong to allege that the respondent could not succeed in lighting with matchstick and was saved by the petitioner. It is also wrong to allege that the parents of the respondent were informed and they came to the matrimonial home and misbehaved with the petitioner. All story put forward by the petitioner is concocted. Rather on 17.10.2005 the answering respondent was beaten up by the petitioner and his family members mercilessly and when the answering respondent informed her parents then the father of the answering respondent and her brother went there and they found that the answering respondent was beaten up and she was brought to village Fajilpur.”

24. At the time of filing the written statement on October 17, 2005 a list of documents was also filed which does not record filing of any police complaint. The details given are as under:

At Sr. No. 1 Written statement of the plaint with affidavit
(page 1 to 7).

At Sr. No. 2 Application U/S 24 of HMA with applicant
(page 8 to 11)

25. We have perused the entire LCR and we do not find any complaint lodged by the respondent/wife with PS Dabri on October 17, 2005 in respect of that incident. It was neither filed with the written statement nor summoned or proved by the respondent/wife either in her disposition or by summoning the record from the concerned police station. In fact there is no complaint on record. To the contrary Ex. PW-1/1 is the copy of the complaint filed by the appellant/husband before the SHO, PS Dabri on the same day wherein he has informed the authorities about threats being given

by his wife from time to time to ensure that his entire family is arrested. He has also stated that on that date also when he saw that his wife had poured kerosene oil on her, somehow or the other he managed to stop her and informed his father-in-law telephonically. They reached her matrimonial home, manhandled him and his entire family and thereafter taken his wife. He specifically stated that his family is living under fear of being falsely implicated and they may be provided some security.

26. The respondent/wife has not examined her father. Her brother Rajan had appeared as her witness not only in the criminal case under Section 498A/406 IPC at Gurgaon but also in the divorce petition. The respondent/wife and his brother though stated that she was thrown out of the house on that date and they took her back, could not deny the fact that it was the appellant who telephonically asked them to come and apprise about the situation so that to prevent any untoward incident. Upto what extent the respondent/wife has gone to implicate the family of the appellant is clear from her cross-examination dated December 11, 2009 which is to the following effect:

“I was beaten up on 17.10.2005 by Ajit, mother-in-law Kanta, Rekha and Arti. My father-in-law was also present and even my neighbour namely, Shanti Devi, who is an old aged women also gave beatings. The said old lady gave beatings to me two three times. Again said two times. Shanti Devi twisted my one hand with one hand and gave slaps with other hand at the instance of my mother-in-law. Shanti Devi is Nani of petitioner. The other persons gave beatings to me with chappals. I sustained injuries on my head. I was not taken to the Doctor. Since no blood was oozed out so no medicine was applied. It is wrong to suggest that I was not beaten up on 17.10.2005 or any other date by the petitioner or his family members and I was turned out in wearing clothes.”

27. This shows that even the neighbours were not spared by her.

28. Had it been a case of beating given by the husband, in-laws and neighbour, the appellant/husband would not have informed the parents of his wife to take stock of the situation to avert any unpleasant incident. The respondent/wife admits that she had not been taken to the doctor on that date though she suffered head injury when she was in the protective custody of her father, brother as well one other person, nothing prevented them to report the matter to the local police station and get her MLC prepared. May be, to avoid the registration of a case for attempt to commit suicide as stench of kerosene oil would not have gone undetected, she preferred to go along with her family members without reporting the incident to the police or her medical examination. The appellant/husband reported the incident on that very day vide Ex. PW-1/1 which is proved on record.

29. It is a case where not only false allegations were made against the appellant/husband and in-laws but they were also got arrested and later on acquitted on charges being found to be false. This in itself amounts to cruelty. Even the attempt by the respondent/wife to commit suicide so as to get his in-laws including unmarried Nanad and married Nanad implicated in itself is an act of cruelty on her part upon her husband and in-laws.

30. Learned Judge Family Court failed to consider all these aspects while dismissing the petition seeking divorce on account of cruelty. Learned Judge Family Court failed to note that in matrimonial pleadings appellant was not required to establish the case beyond reasonable doubt like any criminal trials but on preponderance of probabilities. Both the acts independently were sufficient to prove cruelty and grant of a decree of divorce to the appellant/husband.

31. The learned Judge Family Court in our estimate failed to approve and appreciate the pleadings of the parties and their evidence under correct legal

perspective.

32. The impugned judgment is not sustainable and is set aside.

33. We construe the pleadings and material available on record to be sufficient to grant a decree of dissolution of marriage on the ground of cruelty.

34. The appeal is allowed, marriage of the appellant/husband with the respondent/wife is hereby dissolved by granting a decree of divorce on the ground of cruelty established under Section 13(1)(ia)(ib) in HMA 777/2006.

**PRATIBHA RANI
(JUDGE)**

**PRADEEP NANDRAJOG
(JUDGE)**

AUGUST 23, 2016
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