

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

% *Judgment Reserved on: September 09, 2016*
Judgment Delivered on: September 19, 2016

+ **MAT.APP.(F.C.) 106/2016**

AVINASH MAAN Appellant
Represented by: Mr.Babu Lal & Mr.Kuljeevan
Sidharth, Advocates.

versus

SANJANA MAAN Respondent
Represented by: Ms.Chanchal Sharma,
Advocate with respondent in
person.

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

PRATIBHA RANI, J.

1. The appellant/husband has preferred this appeal assailing the judgment and decree dated April 23, 2016 whereby the petition filed by him under Section 13(1)(ia) of Hindu Marriage Act for dissolution of his marriage with the respondent/wife has been dismissed by the learned Judge, Family Court.
2. The appellant/husband joined Indian Air Force as Corporal in the year 2002. The marriage between the parties was solemnised on December 01, 2008 as per Hindu rites and customs. Both the parties are from rural area of Delhi as can be inferred from their respective addresses given in the petition. The marriage has been consummated. They are issueless.
3. In the petition seeking dissolution of marriage the appellant/husband

has quoted numerous incidents to establish that right from the inception the matrimonial journey was not smooth. There were issues not only about doing the household work, the relationship between mother-in-law and daughter-in-law was also not cordial. The appellant/husband felt that the conduct of his wife with the passage of time became more stubborn and even her family members including her maternal Uncle used to complain that the respondent/wife was being treated as a maidservant. Whenever the appellant/husband tried to make her understand not to misbehave with his family, the advice remained unheeded by his wife so much so that she even stopped talking to him.

4. Both the parties have filed their written submissions.

5. On behalf of the appellant/husband it has been submitted that the various instances of cruelty referred to in the petition seeking dissolution of marriage and proved by the appellant/husband as well PW-2 & PW-3 were sufficient to prove the extent of mental cruelty caused to the appellant/husband. It has been submitted that the finding given by the learned Judge, Family Court is against the evidence adduced by the petitioner especially when so far as respondent/wife is concerned, she has not even cared to complete her statement which in itself is sufficient to draw adverse inference against her.

6. Learned counsel for the respondent while supporting the decision rendered by the learned Judge, Family Court, has referred to the cross-examination of the appellant/husband admitting that the respondent/wife was not taken for honeymoon instead taken to family's Guruji at Pune. Referring to the complaints made to the Indian Air Force authorities it has been contended that these complaints do not constitute cruelty as the respondent/wife was trying to save the marriage with the help of the

employer of her husband and also to seek maintenance from the department as per rules.

7. While referring to the observations made by the Family Court that the expectation of the wife to live with him at the place of posting was genuine and rather it was the husband who miserably failed to perform his matrimonial obligations and thus subjected the respondent to utmost cruelty, rather than vice-a-versa, he prayed for dismissal of the appeal.

8. We have considered the rival contentions. On going through the pleadings and the evidence on record we find that the appellant/husband has narrated in detail the instances of alleged cruelty being caused to him.

9. The incident of misbehaviour even by brother of his wife with his family in January, 2010 and complaints made by the respondent/wife to Indian Air Force allegedly caused mental cruelty to the extent that he insisted for divorce even during the meeting dated May 04, 2011 at Air Force Station, Begumpet, Hyderabad.

10. For the purpose of disposal of this appeal, we will ignore the instances prior to January, 2010 terming them as normal wear and tear in life or the quarrel being of a trivial nature not sufficient to constitute a ground to seek divorce for causing mental cruelty.

11. The instances causing mental cruelty as pleaded in the divorce petition w.e.f. January, 2010 onwards are:

(i) In January, 2010 marriage of brother of respondent/wife was to be solemnised. Her brother came to the matrimonial home to take her for attending his marriage and he misbehaved with his parents. She accompanied her brother to attend the marriage function and did not return thereafter.

(ii) The respondent/wife sent a written complaint dated January 10, 2011

making false allegations against the appellant/husband to Air Force Station, Begumpet, Hyderabad where he was posted at that time. The matter was taken up by the concerned authorities and not only the parties i.e. appellant/husband and respondent/wife but even their respective parents/relatives were called at the Air Force Station. A meeting was organised not only between appellant/husband and respondent/wife but also between their respective families. The issue could not be resolved.

(iii) In the second week of May, 2011 the middle man met the maternal Uncle of the respondent/wife. The maternal Uncle levelled false allegations against the father of the appellant/husband that his father wanted to establish illicit relations with the respondent/wife and that the appellant/husband was having illicit relations with his own mother. The middle man was also informed that respondent/wife would not return to the matrimonial home.

(iv) On May 30, 2011 the respondent/wife sent an application to the Indian Air Force asking for maintenance allowance from the salary of the appellant/husband on the false ground that he had been refusing and neglecting to maintain her. A show cause notice was issued to the appellant/husband by Indian Air Force which was duly replied by him. The appellant/husband also sent several communications to the respondent/wife voluntarily offering to pay maintenance to her as per her requirement and his capacity. He even requested for her account number so that it could be transferred directly in her account. All his communications remained unanswered and she has been getting maintenance directly from Indian Air Force.

(v) On January 15, 2012 a meeting of both the families was organised at Dwarka to settle the issue. However, the meeting was not successful. When the appellant/husband alongwith his family was returning in Santro Car

which is registered in the name of brother of the respondent/wife but gifted in their marriage, they were intercepted by the brothers of the respondent/wife and attacked and threatened. The Santro car was also snatched. The matter was informed to PCR and ultimately with the intervention of Ct.Narender of PS Hari Nagar – a relative of respondent/wife, the matter was settled. The car was also returned to the appellant/husband. Thereafter he had sent communication to the concerned police that he wanted to return the car as well as other articles lying at the matrimonial home but the same were not taken back.

12. The appellant/husband sought dissolution of the marriage on the ground that the various acts of the respondent/wife detailed in the divorce petition caused mental cruelty to him of the degree that maintenance of matrimonial home was not possible.

13. The divorce petition was contested by the respondent/wife denying all the accusations made therein. She had taken the plea that her husband and in-laws were not satisfied with the dowry given in the marriage and the entire family was manipulating and fabricating the grounds to get rid of her. She also denied any communication between her maternal Uncle and the middle man or any allegation being made against her father-in-law assassinating his character. She admitted having approached the Air Force Authorities but claimed that it was only for redressal of her grievance so that she can live with her husband at the place of his posting. The respondent/wife also pleaded that various communications sent by the appellant/husband to her in respect of payment of maintenance was only with a view to avoid the maintenance to her from his department. She also pleaded that all the communications and money orders sent by him were pursuant to the legal advice obtained by him. It was further pleaded that she

was not willingly sent to attend the marriage of her brother on account of non-fulfilment of their dowry demands. The respondent/wife also denied that when her brother came to take her for purpose of his marriage, he misbehaved or insulted her mother-in-law and father-in-law. The respondent/wife claimed that she always wanted to live with her husband but it was he who informed the authorities that he wanted a divorce.

14. Before the Family Court, the appellant/husband examined himself as PW-1 and also produced Sh.Khazan Singh – common friend of both the parties as PW-2 and Sh.Bharat Singh – neighbour of the appellant/husband as PW-3.

15. The respondent/wife though filed her affidavit and was partly cross examined, refused to appear for completing her statement despite number of opportunities being given to her. On December 05, 2015 Sh. Kehar Singh, Advocate representing the respondent/wife informed the Court that the respondent/wife was not willing to come to the Court. At his request the respondent/wife's evidence was closed. Thus, incomplete statement of respondent/wife cannot be read in evidence.

16. After considering the testimony of the appellant/husband and the two witnesses examined by him, learned Judge, Family Court dismissed the divorce petition mainly for the following reasons:

(i) Filing of an application in the department of her husband seeking maintenance or informing them about she being neglected, was not sufficient to constitute cruelty.

(ii) The fact that only after the complaint was made that the appellant/husband started paying maintenance was taken as a proof that the husband was actually not maintaining his wife and not performing his legal and moral duty of maintaining his legally wedded wife.

(iii) In the opinion of the learned Judge, Family Court the appellant/husband entered into matrimony not wanting a wife but rather a maid who would work in his house in his absence from early hours of morning till late night and serve his family waiting for his intermittent visits during the leave period granted to him.

17. We have no hesitation to hold that the observations made in the impugned judgment by the learned Judge, Family Court are based on 'no evidence'. We have already noted that both the parties are from rural background. The address of the appellant/husband is given as Village Budhpur, Post Office Alipur, Delhi and the address of the respondent/wife is given as Village Nasirpur, Post Office Palam, Delhi. It is not the case of the parties that they are coming from a family where household work is done by the servants. It is admitted case of the parties that in their respective house, the family members do their household work. In that circumstance, where is the question of treating the wife as maidservant when there is no suggestion put to the appellant/husband (PW-1) that only the respondent/wife used to work and his mother and sister used to sit idle at home.

18. Status of the parties as reflected in the divorce petition shows that at the time of marriage the appellant/husband was 23 years and 4 months old and the respondent/wife was 22 years and 9 months old. The divorce petition has been filed after four years of the marriage. At the time of marriage not only the respondent/wife but also her entire family must be having the knowledge that the bridegroom was a Corporal in Indian Air Force. At the time of marriage he was posted in Jamnagar (Gujarat). It has come in the testimony of PW-1 Avinash Maan – appellant/husband that he was living in bachelor accommodation. He had applied for in-campus family accommodation which he could not get. He has also stated that as

per rules of Air Force in-campus accommodation is allotted after the age of 25 years. He has also stated that he informed his wife about the rule position and assured her that whenever he get incampus accommodation he would take her with him. He applied for incampus accommodation in Jamnagar and thereafter also in July, 2009 when he was posted at Begumpet, Hyderabad. He continued living in bachelor accommodation. This was something beyond the control of the appellant/husband. If this was the grievance of the respondent/wife that she was not taken by him to his place of posting, he had valid reasons for the same.

19. The respondent/wife has admitted that when she left in January, 2010 for attending the marriage of her brother, her husband did not come to take her back to the matrimonial home. She has nowhere pleaded that her husband was properly invited in the marriage or he was present at home on the day when her brother came to fetch her for the marriage function. This shows that in January, 2010 relationship was not cordial and her husband/in-laws being not properly invited they did not attend the wedding. In that circumstance, where was the occasion for her to wait for the appellant/husband to take her back to the matrimonial home as complained by the respondent/wife to the Indian Air Force Authorities.

20. The appellant/husband has placed on record the complaint filed by his wife with AFWWA Air Force Station, Begumpet Secundrabad, A.P., which is an admitted document in the written statement. In the said complaint she has highlighted her grievance as under:

(i) She got married to Avinash Maan (Rank – Corporal) on December 01, 2008 and lived with her in-laws upto January 2010.

- (ii) Her husband promised to take her to his place of posting after allotment of service quarter and asked to stay with her in-laws till then which she complied with.
- (iii) In January, 2010, she visited her parent's home to marriage of her elder brother. She waited for her husband to take her back but he has not come to her or having any communication with her. Through some source she came to know that he had come to Delhi but did not come to see her.
- (iv) She is mentally disturbed and feeling lonely. She wanted to be with her husband to improve her health condition.
- (v) Her husband be made to understand her problems as they had been living separately for two years and continuation of this state is causing more problems.

21. On the above complaint received from the respondent/wife, a meeting between the parties and the respective families was organized on May 04, 2011 at 1000 hrs. at Air Force Station, Begumpet Secundrabad, (A.P.), Ex. PW-1/2 is the statement of the appellant/husband wherein he has stated that after interaction with his wife he was convinced that there was no change in her habits, thoughts and attitude hence he has decided to take a divorce. This statement is signed by the respondent/wife as well Sqn. Ldr. Rajani Gupta, Hony. Jt. Secy. AFWWA (L), AF Stn. Begumpet.

22. Ex.PW-1/3 is the statement of the respondent/wife Sanjna Maan wherein she has stated after interaction with her husband, she felt sorry for the mistakes committed by her in the past and tendered apology to her husband and to her father-in-law with a request to give her one more chance to live with them. But her husband wants to divorce her, though she does not want to separate from her husband.

23. Ex.PW-1/4 is the document captioned as 'Settlement of Marriage

Case: Avinash Maan & Sanjna Maan' prepared by Sqn. Ldr. Rajani Gupta, Hony. Jt. Secy. AFWWA (L), AF Stn. Begumpet recording the gist of the proceedings as well obtaining signature of both the parties as well their respective family members who attended the proceedings and the respective stands of the parties has also been recorded.

24. Ex.PW-1/5 is reply to the Show Cause Notice served on the appellant/husband by the Station Commander, 404, AF Station, Begumpet Secundrabad-11. In reply to the said Show Cause Notice the appellant/husband has stated his wife was not willing to take monetary help from him out of annoyance and disgust. He expressed his willingness to pay her as per her requirement and his capacity. While replying the Show Cause Notice, the appellant/husband has specifically stated that she has filed this application just to insult him. While denying that he had been neglecting her since January, 2010, he claimed that his wife and her family members have caused mental agony for a long time and he cannot summon courage to live together and go through the ordeal once again without his fault. He volunteered to pay ₹2,500/- per month instead of making him required to pay under Section 92(i) of the Air Force Act, 1950. The appellant/husband has also placed on record various letters (five) written by him to his wife with proof of delivery asking for her bank account number or at least acknowledge that she was receiving his letters as well the amount sent by him by way of money order.

25. Vide Ex.PW-1/10 he had written to her that this was his fifth letter to her and she had not replied any of his earlier communications or cooperated even to the extent of giving the bank details which would have made it easy to send the money to her.

26. The respondent/wife had made vague allegations of harassment in the

written statement on account of dowry demand with no material to substantiate that even on probabilities. She made complaints to the Indian Air Force Authority against her husband making allegations which cannot be termed as innocuous. It is not even pleaded by the respondent in the written statement that prior to January, 2010 she was not being maintained by her husband or while at her parental home since January, 2010 she expressed her desire to be financially supported but her husband neglected her. When she sent the complaint to the Air Force Authorities against her husband, it was for more than a year that she was residing at her parental home. Filing of such a complaint in the year 2011 i.e. after three years of the marriage and after staying for one year at the parental home, was not an innocent act on the part of the wife. It contained almost all the allegations which could affect the career of the appellant/husband professionally and also lower down his reputation in the eyes of his superior. Had it been a case of harassment on dowry demand as pleaded in the written statement, at least on May 04, 2011 when a meeting between the parties and their respective family was organised at Air Force Station, Begumpet, Secundrabad, this issue could have been highlighted either by the respondent/wife or by her family. This shows that dowry demand was not an issue. If the issue was that her husband was not getting in-campus accommodation at the Air Force Station then at the most she could have written to the concerned authorities for providing in-campus family accommodation to enable her to live with her husband at the place of posting but it was not so. Thereafter when she filed an application before the Air Force Authorities demanding maintenance, at least during meeting before Sqn. Ldr. Rajani Gupta on May 04, 2011 when she was informed that the husband was intending to seek divorce, she could have pointed out at that

time that maintenance was also an issue. The fact that she again wrote to the Air Force Authorities complaining about being neglected by her husband and thus demanding maintenance under Section 92(i) of the Air Force Act, 1950, it resulted in issuing a Show Cause Notice on the appellant/husband.

27. It is a case where the appellant/husband had taken a plea which is not specifically denied by the respondent/wife that he never neglected to maintain her. Rather she was not willing to accept the amount voluntarily paid as per his means. The wife appears to have drawn sadistic pleasure by getting maintenance under provision of Section 92(i) of the Air Force Act, 1950 and not as a voluntary act by the appellant/husband. No doubt the statutory remedy can be availed but only under the compelling circumstances when neglect could be shown.

28. In the decision reported as (2006) 3 SCC 778 Vinita Saxena Vs. Pankaj Pandit the Supreme Court has discussed the concept of 'cruelty'.

In para 22 and 23 of the report it was observed as under:

'22. The legal concept of cruelty which is not defined by statute is generally described as conduct of such character as to have caused danger to life, limb or health (bodily and mental) or to give rise to reasonable apprehension of such danger. The general rule in all question of cruelty is that the whole matrimonial relations must be considered, that rule is of a special value when the cruelty consists not of violent act but of injurious reproaches, complains accusations or taunts. It may be mental such as indifference and frigidity towards wife, denial of a company to her, hatred and abhorrence for wife or physical, like acts of violence and abstinence from sexual intercourse without reasonable cause. It must be proved that one partner in the marriage however mindless of the consequences has behaved in a way which the other spouse could not in the circumstances be called upon to endure, and that misconduct has caused injury to health or a reasonable apprehension of such injury. There are two sides to be considered in case of cruelty. From the appellant's side, ought

this appellant to be called on to endure the conduct? From the respondent's side, was this conduct excusable? The court has then to decide whether the sum total of the reprehensible conduct was cruel. That depends on whether the cumulative conduct was sufficiently serious to say that from a reasonable person's point of view after a consideration of any excuse which the respondent might have in the circumstances, the conduct is such that the petitioner ought not be called upon to endure.

23. As to what constitute the required mental cruelty for purposes of the said provision, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home. If the taunts, complaints and reproaches are of ordinary nature only, the court perhaps need consider the further question as to whether their continuance or persistence over a period of time render, what normally would, otherwise, not be so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonably conclude that the maintenance of matrimonial home is not possible any longer.'

29. On perusal of the oral and documentary evidence led by the appellant/husband, we are of the opinion that projecting of the appellant/husband without any material to substantiate the accusations before his employer in a manner that may call for departmental action against him, is an action of causing mental cruelty. Even Show Cause Notice was served upon him. Such complaints to the Indian Air Force Authorities by the respondent/wife have certainly caused mental cruelty. It had the effect to lower down the reputation of appellant/husband in the eyes of the Indian Air Force authorities. These complaints would have played on his mind and adversely affected his peace of mind so as to affect his efficiency. Being a member of the Indian Air Force the appellant/husband is

expected to maintain a reasonable and decent conduct even in his personal life so as not to bring discredit to the elite force of which he is a member. The conduct of the respondent/wife in making complaints to the Indian Air Force has to be seen in the light of above circumstances.

30. The appellant/husband has specifically deposed about the instances of cruelty referred to by us in para No.13. The respondent/wife preferred not to examine herself despite numerous opportunities being given by the learned Judge, Family Court. Ultimately the respondent's evidence was closed on the submission made by her counsel that she did not want to enter the witness box.

31. Thus, there is no evidence from her side to rebut or repudiate the serious allegations against her. Rather the proceedings dated May 04, 2011 at Air Force Station, Begumpet recorded in Ex.PW1/2 to 4 records that she tendered apology for her past acts of misconduct to her husband and father-in-law. These proceedings were conducted on her complaint. She was accompanied by her family members and if there was no act of cruelty committed by her, she had no occasion to tender apology to her husband and father-in-law.

32. The complaints made by the respondent/wife against the appellant/husband to Indian Air Force without any attempt to resolve the issues at family level caused humiliation/embarrassment to her husband in the eyes of his superior and fellow colleagues and clearly prove that she had committed the acts of cruelty. Mere denial in the written statement would not wipe out the scar on the husband. Viewed in that perspective, we come to the irresistible conclusion that these acts of causing mental cruelty to the appellant/husband were so painful that the appellant/husband found it not possible to live with the respondent/wife.

33. The learned Judge, Family Court failed to weigh and assess the oral and documentary evidence available on record in proper manner in arriving at the conclusion on the issue of causing mental cruelty to the husband.

34. Accordingly, the appeal is allowed. We grant a decree of divorce in favour of the appellant/husband by dissolving his marriage with the respondent/wife that had been solemnised on December 01, 2008.

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

**PRATIBHA RANI
(JUDGE)**

**PRADEEP NANDRAJOG
(JUDGE)**

SEPTEMBER 19, 2016
‘st/hkaur’