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

Judgment reserved on: 28.07.2015

% **Judgment delivered on: 25.01.2016**

+ **MAT.APP. 62/2012**

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..... Appellant

Through: Mr. Vikas Arora, Advocate

versus

UC

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The present appeal under Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred as 'HMA') has been preferred to assail the judgment & decree dated 31.07.2012, passed in HMA No.251/2010 by Additional District Judge (ADJ), Delhi, whereby the learned ADJ dismissed the petition preferred by the appellant/wife under Section 13(1)(ia) of the HMA, seeking a decree of dissolution of marriage in her favour and against the respondent/husband.

2. The facts as delineated in the petition are that the marriage between the parties was solemnized on 24.06.2002 at 20/194-195, Tirlokपुरi, Delhi, according to Hindu rites and ceremonies. The marriage was consummated and two issues namely Baby K and Master A were born out of the wedlock.

3. The appellant asserts that after the marriage both the parties started living together at 20/302 Kalyanपुरi, Delhi, along with her in-laws. She claims that the respondent and his family members started taunting her for bringing insufficient dowry. They started harassing her for not bringing a motorcycle and cash with her. She alleges that after the birth of a baby girl i.e on 28.09.2003, the respondent started torturing her, as he wanted a male child. The respondent started demanding that she brings money from her parents, for repayment of his personal debt. She alleged that on 06.07.2007, the respondent, while compelling her to bring money for repayment of his personal debt, picked up a fight and started beating her mercilessly. The local police was called and the respondent was arrested and produced before the Court. He was also sent to judicial custody for three days. She further alleged that on 14.07.2007, the appellant was again beaten, and she sustained several injuries and was medically examined vide MLC No. 7567/07, Cr. No. 81286 dated 14.07.2007. Further, in the month of July 2008, when the appellant got pregnant for the second time, she was again tortured, physically and mentally. The appellant, thus, left the matrimonial home on 09.01.2009 and started living with her parents.

4. In the written statement filed by the respondent/husband, he denied all the allegations. The respondent took various preliminary objections, stating that the appellant had concealed material facts and had not approached the

court with clean hands. It was further stated that it was the appellant and her family members who had committed acts of cruelties upon the respondent.

5. After the relevant issues were framed, both the parties led evidence in support of their cases. The Trial Court on assessing the evidence on record, dismissed the petition.

6. The Trial Court came to the conclusion that the acts of cruelty attributed to the respondent had been condoned by the appellant. The fact that there is no whisper about forcible/ non consensual intercourse between the parties, which ultimately lead to conception and birth of the child namely Master A on 19.03.2009, is clinching proof of condonation of the acts of cruelty allegedly committed by the respondent/husband prior to July 2008- when the appellant got pregnant for the second time. The Court came to the conclusion that the appellant/wife has not explained the circumstances in which she came to lead and live a normal sexual life with the respondent, even after the alleged series of acts of cruelties on his part. The Court also came to the conclusion that the appellant has not proved a single act of cruelty committed by respondent after July 2008 with any corroborative evidence, and that there is no specific time, date and incident – constituting cruelty, mentioned in the petition, relating to the period after July 2008. Consequently, the petition was dismissed. Hence, the present appeal.

7. Learned Counsel for the appellant submits that since the very inception of the marriage, the respondent and his family members started harassing and torturing the appellant for not bringing a motor cycle and cash according to their expectations. He submits that on various occasions the appellant was beaten up by the respondent while making dowry demands.

He further submits that on 06.07.2007, the respondent while making dowry demands, picked a fight with the appellant and started abusing and beating the appellant mercilessly, due to which a police complaint was registered, and proceeding under section 107/151 Cr.P.C. was initiated against the respondent. The respondent was arrested by the local police and was remanded to judicial custody for three days. It is further submitted that after a few days from his release, on 14.07.2007, the respondent again started demanding appellant to bring money from her parents, and upon her refusal, the respondent started beating her with a belt, due to which she suffered various injuries on her hand and head. The respondent reported the incident to the local police. Subsequently, she was taken for medical examination by the police. The appellant submits that she got pregnant in July 2008, and during the course of her pregnancy, on numerous occasions, she was abused and beaten up by the respondent. She further submits that the acts of cruelties did not stop, and under such circumstances, the appellant was compelled to leave the matrimonial home on 09.01.2009.

8. On the aspect of condonation of the alleged acts by the appellant, learned counsel for the appellant submits that the previous acts of cruelty get revived when the offending spouse keeps committing or repeating, the acts of cruelty towards the other spouse even after condonation. He submits that on 26.11.2007 and 10.01.2008, the respondent apologized before the SEM Court, in the proceeding under section 107/151 Cr.P.C. initiated by the appellant against respondent for his behaviour, and assured that such incidents would not be repeated again. The appellant, relying upon the assurance, gave him another chance to reform and, thereafter, started living

together with the respondent. The resumption of conjugal relationship was only on the premise that such acts of cruelties shall not be repeated. He further submits that the behaviour of the respondent did not change towards the appellant, even after resumption of cohabitation. The respondent continued to harass and torture the appellant mentally. Learned counsel submits that in July 2008, when the appellant got pregnant for the second time, the respondent leveled various allegation of her having extra marital relationship, and put pressure on her to abort the child. The respondent also started insulting and humiliating her in public, and amongst the relatives and neighbours. He submits that in light of such specific allegations, the earlier acts of cruelty were revived.

9. The appellant, in her evidence by way of Affidavit towards examination-in-chief stated as under:

“I had agreed to give him another chance to reform himself to the respondent. But he had not changed himself and on the inducement of his family members, mostly of his mother he started to force me to give birth to a male child and his mother said that “YE HAMARA NAAM NAHI CHALAYEGI, TU ISE CHHOD DE, TERI AUR SHADI KAR DENGE”.”

10. Reliance is placed on ***Dr. N.G. Dastane vs. Mrs. S. Dastane***, (1975) 2 SCC 326, wherein it was held that condonation of acts of cruelty is always subject to implied condition that the offending spouse will not commit a fresh matrimonial offence, either of the same variety as the one condoned, or of any other variety. He further submits that in the present case, the previous acts of cruelties revived as the respondent kept repeating the previous offence. He relies on the following extract from ***Dastane*** (supra):

“57. But condonation of a matrimonial offence is not to be

likened to a full Presidential pardon under Article 72 of the Constitution which, once granted, wipes out the guilt beyond the possibility of revival. Condonation is always subject to the implied condition that the offending spouse will not commit a fresh matrimonial offence, either of the same variety as the one condoned or of any other variety. "No matrimonial offence is erased by condonation. It is obscured but not obliterated" [See Words and Phrases : Legally Defined (Butterworths) 1969 Edn., Vol. 1, p. 305 ("Condonation")]. Since the condition of forgiveness is that no further matrimonial offence shall occur, it is not necessary that the fresh offence should be ejusdem generis with the original offence. [See Halsbury's Laws of England, 3rd Edn., Vol 12, p. 306] Condoned cruelty can therefore be revived, say, by desertion or adultery."

11. Learned counsel for the appellant submits that condonation essentially implies two things: Firstly, forgiveness of the offences after one knows all the material facts and, secondly, reinstatement of the guilty spouse to his or her original status. Learned counsel submits that in the present case, the appellant had never reinstated the respondent to the original status. He submits that no cogent evidence has been led by the respondent to prove that there was normal sexual relationship between the parties after the first set of cruelties were inflicted in 2007. The appellant never completely forgave the respondent, but in her effort to save her marriage, she agreed to resume conjugal relationship. She was again subjected to the same cruelties after her pregnancy, which compelled her to leave the company of the respondent completely.

12. I have carefully considered the submissions of learned counsel for the appellant and perused the record laid in the case, including the impugned judgment.

13. In *Dastane* (supra), it was observed that:

“55. Condonation means forgiveness of the matrimonial offence and the restoration of offending spouse to the same position as he or she occupied before the offence was committed. To constitute condonation there must be, therefore, two things: forgiveness and restoration. [The Law and Practice of Divorce and Matrimonial Causes by D. Tolstoy, 6th Edn., p. 75] The evidence of condonation in this case is, in our opinion, as strong and satisfactory as the evidence of cruelty. But that evidence does not consist in the mere fact that the spouses continued to share a common home during or for some time after the spell of cruelty. Cruelty, generally, does not consist of a single, isolated act but consists in most cases of a series of acts spread over a period of time. Law does not require that at the first appearance of a cruel act, the other spouse must leave the matrimonial home lest the continued cohabitation be construed as condonation. Such a construction will hinder reconciliation and thereby frustrate the benign purpose of marriage laws.

56. The evidence of condonation consists here in the fact that the spouses led a normal sexual life despite the respondent's acts of cruelty. This is not a case where the spouses, after separation, indulged in a stray act of sexual intercourse, in which case the necessary intent to forgive and restore may be said to be lacking. Such stray acts may bear more than one explanation. But if during cohabitation the spouses, uninfluenced by the conduct of the offending spouse, lead a life of intimacy which characterises normal matrimonial relationship, the intent to forgive and restore the offending spouse to the original status may reasonably be inferred. There is then no scope for imagining that the conception of the child could be the result of a single act of sexual intercourse and that such an act could be a stark animal act unaccompanied by the nobler graces of marital life. One might then as well imagine that the sexual act was undertaken just in order to kill boredom or even in a spirit of revenge. Such speculation is impermissible. Sex plays an important role in marital life and

cannot be separated from other factors which lend to matrimony a sense of fruition and fulfilment. Therefore, evidence showing that the spouses led a normal sexual life even after a series of acts of cruelty by one spouse is proof that the other spouse condoned that cruelty. Intercourse, of course, is not a necessary ingredient of condonation because there may be evidence otherwise to show that the offending spouse has been forgiven and has been received back into the position previously occupied in the home. But intercourse in circumstances as obtain here would raise a strong inference of condonation with its dual requirement, forgiveness and restoration. That inference stands uncontradicted, the appellant not having explained the circumstances in which he came to lead and live a normal sexual life with the respondent, even after a series of acts of cruelty on her part.”

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“59. ‘Condonation’ is a technical word which means and implies a conditional waiver of the right of the injured spouse to take matrimonial proceedings. It is not “forgiveness” as commonly understood. [See Words and Phrases: Legally Defined (Butterworths) 1969 Edn., p. 306 and the cases cited therein] In England condoned adultery could not be revived because of the express provision contained in Section 3 of the Matrimonial Causes Act, 1963 which was later incorporated into Section 42(3) of the Matrimonial Causes Act, 1965. In the absence of any such provision in the Act governing the charge of cruelty, the word “condonation” must receive the meaning which it has borne for centuries in the world of law. [See Ferrers v. Ferrers, (1791) 1 Hag Con 130, 131] “Condonation” under Section 23(1)(b) therefore means conditional forgiveness, the implied condition being that no further matrimonial offence shall be committed.”.

(Emphasis supplied)

14. In *Dastane* (supra), the allegation of cruelty were established, but the parties continued to have marital intercourse and a child was born. The

Supreme Court held that resumption or continuance of conjugal relationship, after allegation of acts of cruelty on the part of a spouse, that lead to a birth of a child amounted to condonation.

15. In *Inglis vs. Inglis and Baxter*, (1967) 2 All ER 71, the Court has observed:

“Condonation is the reinstatement of a spouse who has committed a matrimonial offence in his or her former matrimonial position in the knowledge of all the material facts of that offence with the intention of remitting it, that is to say, with the intention of not enforcing the rights which accrue to the wronged spouse in consequences of the offence.”

16. In the present case, that the appellant in her evidence by way of Affidavit has stated that:

“8.....The respondent along his family members had compromised with me in Police station Kalyan Puri on 17.09.2007 The copies of the same are Ex.Pw-1/E and

9.That at the time of appearance before the court of Ld. S.E.M, Krishna Nagar, Delhi-110051, the respondent had apologized for his wrongful acts and bad conducts and cruelties towards me on 26.11.2007 as well as 10.01.2008. I agreed to give another chance to reform himself to the respondent..... the respondent along with his family members had sold out his house of Kalyan Puri and we started to live at a rented accommodation opposite of the said house. I became pregnant second time in July, 2008.”

(Emphasis Supplied)

17. Thus, it is the appellant’s own case that a compromise was reached between the parties on 17.09.2007 and, thereafter, the appellant agreed to give another chance to the respondent and they started living together. The

appellant got pregnant for the second time in July 2008.

18. In *Hendreson vs. Hendreson*, (1944) AC 49, the House of Lords observed that when a spouse continues to maintain sexual relationship with the offending spouse, without any fraudulent misstatement by the offending spouse of his or her state of mind, the act of consensual intercourse amounted to condonation, debarring such a spouse from obtaining divorce. Sexual intercourse or restoration of conjugal relationship is conclusive evidence of condonation. Therefore, in light of the facts of the instant case, conception of a child clearly amounted to condonation of all the matrimonial offences committed prior to July 2008 - which is when the appellant got pregnant.

19. In *Gurbux Singh vs. Harminder Kaur*, (2010) 14 SCC 301, the Supreme Court has observed that the matrimonial life should be assessed as a whole and not on few isolated incidents. Irritation, quarrels and normal wear and tear are part and parcel of matrimonial life, which couples forgive and forget. In the instant case, it appears from the abovementioned facts that the appellant forgave and restored the respondent to the same position as he occupied before allegedly committing the matrimonial offences i.e. cruelty. It is also clear that the parties lead a normal sexual life after the compromise, which ultimately led to conception of a child in July 2008. It is not even the case of the appellant that the conception of the second child was a result of forced/non-consensual sex.

20. On the aspect of revival of the condoned offences, the appellant alleged that when she got pregnant for the second time in July 2008, the respondent leveled various allegations of infidelity. The respondent accused

her of having extra marital affair with persons outside the wedlock. The appellant in her petition has stated *“he started to insult me and humiliate me in the eyes of public i.e relatives and neighbourers by leveling false allegation and said I was joking.”* It is also averred that due such behaviour of the respondent, she was compelled to leave the matrimonial home on 09.01.2009 and live with her parents.

21. The allegations of cruelty have to be specific as to the time and date of the incident. There is no mention of any specific date or incident after July 2008 in the appellant’s petition. There is not even a whisper of filing of any complaint by the appellant before any authority, after the compromise dated 14.07.2007. The appellant has not produced a single witness to prove the allegations made with regards to revival of any matrimonial offence/cruelty. It is her own case that the respondent insulted her in front of the neighbours and relative. However, none of the neighbours or relatives were produced as witnesses by the appellant. Apart from her own testimony, the appellant has not produced any independent or reliable evidence regarding commission of acts of cruelty by the respondent, post July 2008. The appellant, in her cross-examination, has contradicted her own statement by deposing that the respondent never visited her parental home after she left the matrimonial home and, thereafter, she stated that he used to come outside her parental house and create a ruckus. The appellant in her cross-examination stated:

“Respondent has not visited my parental home after leaving matrimonial home. I left matrimonial home on 1.1.2009. Vol. Respondent used to come outside my parental house and pick up quarrels and use abusive language.”

22. On preponderance of probabilities, when the allegations have not been proved with any cogent evidence, it cannot be concluded that the charge of cruelty against the respondent/husband stands established.

23. In the light of the aforesaid discussion, I am of the view that there is no infirmity in the impugned judgment and decree passed by the learned ADJ. The present appeal, accordingly, stands dismissed, leaving the party to bear the costs.

VIPIN SANGHI, J

JANUARY 25, 2016