

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

% *Judgment Reserved on: September 06, 2016*
Judgment Delivered on: September 14, 2016

+ **MAT.APP.(F.C.) 80/2015**

NIRMALA Appellant
Represented by: Mr.Akhilesh Kumar Pandey,
Advocate.

versus

MANOJ KUMAR Respondent
Represented by: Mr.Sanjeev Bhandari and
Mr.Manoj Bhandari,
Advocates.

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

PRATIBHA RANI, J.

1. The appellant/wife is aggrieved by the judgment and decree dated March 24, 2015 passed by learned Judge, Family Court whereby her marriage with the respondent/husband has been dissolved on the ground of cruelty.

2. The appellant/wife got married to the respondent/husband on February 15, 2006 as per Hindu rites and customs. They were blessed with a female child born on April 02, 2007. The grievance of the respondent/husband was that his wife used to visit very frequently to her parental home without his consent and stayed there for a long duration. When the appellant/wife was in family way and the respondent/husband wanted her to be at the matrimonial home she refused to return. Even after the birth of the daughter she stayed for about one year at her parental home.

Finally she left the matrimonial home on March 07, 2010 without the consent of respondent/husband. The efforts made by the respondent/husband on different dates including on the occasion of '*Naamkaran Sanskar*' of his nephew, appellant/wife refused to join him.

3. Under the above circumstances the respondent/husband filed a petition under Section 9 of Hindu Marriage Act, 1955 seeking restitution of conjugal rights which was later dismissed as withdrawn with liberty to file fresh petition after the amendment. However, instead of filing fresh petition under Section 9 of Hindu Marriage Act, 1955, the respondent/husband filed a petition on August 27, 2010 for dissolution of marriage on the ground of cruelty.

4. In the petition under Section 13(1)(ia) of Hindu Marriage Act, 1955 filed by the respondent/husband, the main reason for seeking dissolution of marriage was the accusations made by the appellant/wife in the written statement filed to the petition under Section 9 of Hindu Marriage Act that he was having illicit relations with his '*Bhabhi*' and that she had seen him with his '*Bhabhi*' in undesirable/unacceptable/unwanted/objectionable position. Second ground taken by the respondent/husband for seeking dissolution of marriage was that appellant/wife was undergoing psychiatry treatment at AIIMS which fact was not disclosed to him at the time of marriage. However, when his wife returned to the matrimonial home after about one year of the birth of the child, 3-4 days thereafter his father-in-law called him to bring the appellant/wife to AIIMS for some medication. At that time he came to know that appellant/wife was undergoing treatment at AIIMS in Psychiatry Department and was given injection by the doctor. Another reason pleaded for seeking dissolution of marriage on the ground of cruelty was his wife insisting him to live separately from his family.

5. While contesting the petition seeking dissolution of marriage one of the plea taken by the appellant/wife was that she was harassed on account of dowry demand. She admitted to be suffering from depression but claimed that it was only because of the cruel treatment meted out to her at the matrimonial home. While not disputing her frequent and longer stay at her paternal home, the justification given by her is that her husband and his family wanted to get rid of her to the extent that one day gas knob was kept open and she was sent to prepare the tea for all of them with intention to kill her. She reiterated the accusations made against the respondent/husband regarding his illicit relations with his '*Bhabhi*' as earlier made in the written statement to the petition under Section 9 of Hindu Marriage Act, 1955.

6. While the respondent/husband examined himself as PW-1, the appellant/wife examined herself and her father as RW-1 and RW-2.

7. After considering the testimony of the parties as well of the father of the appellant/wife the learned Judge, Family Court considered the act of the appellant/wife to make scandalous allegations against her husband without any evidence to prove the same to be an act amounting to cruelty. On the issue of dowry demand also the learned Judge, Family Court was of the view that it was not proved even by her own father.

8. Finding the allegations about the illicit relations between the respondent/husband and his '*Bhabhi*' to be baseless thereby causing mental cruelty, it was considered sufficient to dissolve their marriage.

9. For the purpose of the disposal of this appeal we shall be confining ourselves only on the two aspects (i) Reasons behind the appellant/wife staying at her parental home without the consent of her husband; (ii) Whether the accusation made in the written statement filed in the petition under Section 9 Hindu Marriage Act, 1955 as well in petition under Section

13(1)(ia), Hindu Marriage Act, 1955 by the appellant/wife was sufficient to establish mental cruelty.

10. The appellant/wife in her affidavit Ex.RW-1/A has deposed about the following instances of she being harassed and tortured by her husband and in-laws:

- (i) Regular demand of dowry and cruelty being committed on her on non-fulfilment of the demand.
- (ii) She being physically assaulted by her husband and in-laws in routine manner.
- (iii) An attempt being made on her life by asking her to prepare tea while keeping the gas knob deliberately open so that while lighting the gas stove she could catch fire and die.

11. Learned counsel for the appellant/wife has submitted that in this case the respondent/husband himself was leading an adulterous life and had been harassing the appellant/wife on account of non-fulfilment of dowry demands. The averments made in the written statement to the petition under Section 9 of Hindu Marriage Act, 1955 cannot be treated as malicious as the same were true. While relying on the decision reported as 2009(2) LRC 298 (All) Brajesh Kumar vs. Anjali (Smt.) it has been submitted that in that case also the accusations against the husband of being in intimacy with a lady was considered by the Court to be only humble one advising him not to misbehave with his wife.

12. The parties got married on February 15, 2006 and the instance of the gas knob being kept open is stated to be of January, 2010, the date she could not recollect. She was married for four years by that time and having a daughter also, born in 2007. Admittedly she had been frequently staying with her parents after her marriage. No complaint was made either by her or

by her father to the police in respect of the incident stated to have taken place in January, 2010. When the gas knob is kept open, it is not only the person who happens to be present near the gas stove but even those present in the house are likely to suffer burns for the reason that gas spreads very fast and any attempt to light the match stick could have set the entire house on fire. Not only that, the smell of the gas can even be felt in the neighbouring house and any such incident would not have gone unnoticed.

13. RW-2/Jaipal, father of the appellant/wife had nowhere stated about any specific dowry demands being made or his daughter being harassed for non-fulfilment of the demand except making a bald statement that in-laws of his daughter were of greedy nature and used to demand dowry from his daughter and also from him. The averments made by him in para 5 of the affidavit Ex.PW2/A about the gas knob being kept open so as to kill his daughter, is mere hearsay. At no point of time the appellant/wife got herself medically examined to prove that she was physically assaulted and tortured by her husband or in-laws. In the absence of any complaint to the police or any other authority by the appellant/wife about any dowry demand being made or she being physically tortured on non-fulfilment of the same, making such accusations have the effect of causing mental cruelty to the husband and in-laws.

14. The appellant/wife herein had been undergoing psychiatric treatment at AIIMS which is proved from the copy of the prescriptions (Ex. PW-1/2). RW-2/father of the appellant/wife, was an employee at AIIMS. Had the prescriptions being fake, the appellant/wife could have challenged the genuineness of the same. The prescriptions clearly show that appellant/wife was suffering from delusion and was continuously under treatment, so much so, even injections were prescribed to cure her. In such circumstances, her

impression that her husband and in-laws wanted to kill her could be due to the delusion from which she was suffering.

15. The appellant/wife had also repeatedly accused her husband of being in illicit relationship with his 'Bhabhi'. Identically worded allegations have been made by the appellant/wife in the written statement filed to the petition under Section 9 of Hindu Marriage Act, 1955 and written statement filed to the petition under Section 13(1)(ia) of Hindu Marriage Act, 1955, which are extracted as under:-

In the written statement Ex.RW-1/PW-1 in para B(ii) to the petition under Section 9 of Hindu Marriage Act, 1955

“ii) That many times the respondent found her husband (petitioner) and his 'Bhabhi' Usha to be in undesirable/unacceptable/unwanted/objectionable position. For this the petitioner has beaten the respondent to create terror in her mind so that she does not utter a word about such behaviour or the petitioner”

In the written statement to the petition under Section 13(1)(ia) of Hindu Marriage Act, 1955

“ii) That many times the respondent found her husband (petitioner) and his 'Bhabhi' Usha to be in undesirable/unacceptable/unwanted/objectionable position. For this the petitioner has beaten the respondent to create terror in her mind so that she does not utter a word about such behaviour or the petitioner”

16. False and malicious allegations against the character of a spouse have been considered to be a ground for dissolving the marriage on account of causing mental cruelty. In the decision reported as (2003) 3SCR 607 Vijaykumar Ramchandra Bhate Vs. Neela Vijay kumar Bhate, the effect of accusations made by a spouse which has the effect of character assassination has been considered by the Supreme Court at length. In the said report,

while referring to earlier decision 3SCR 967 Dr.N.G. Dastane Vs. Mrs. S. Dastane and AIR 1994 SC 710 V.Bhagat Vs. D. Bhagat (Mrs.), it was held as under:

“7. The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(ia) of the Act. The position of law in this regard has come to be well settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with the person outside wedlock and allegations of extra marital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that no exemption could be taken to the findings recorded by the Family Court as well as High Court. We find that they are of such quality, magnitude and consequences as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible.”

17. The respondent/husband was living in a joint family along with his elder brother and ‘Bhabhi’ with whom the appellant/wife alleged to have seen her husband in undesirable/unacceptable/unwanted/objectionable condition. It may be noted here that neither in the pleadings nor in the

evidence the appellant/wife clarified what was the undesirable, unacceptable, unwanted and objectionable act that has been seen or noticed by her or how many times she has noticed and her reaction thereon. Ordinarily, if any such an incident is witnessed by the wife, even the matrimonial life of elder brother and the respondent/husband is bound to pass through turmoil. Admittedly, the appellant/wife had been living with her parents most of the time after her marriage and it is also not disputed that she had been under treatment at AIIMS (Psychiatry Department). Whatever may be the reason, of her living at her parental home, the fact remains that she had ample opportunity to complain either to the police or to her parents about alleged dowry demands, physical assault as well the adulterous life of her husband.

18. We concur with the finding of the learned Judge, Family Court that false and baseless allegations were made in the written statement by the appellant/wife against her husband which had remained unproved. Such allegations had a disastrous effect on the respondent/husband as well his entire family. Reliance placed by learned counsel for the appellant/wife on Brajesh Kumar vs. Anjali (Smt.) (Supra) has no applicability to the facts of the present case where the appellant/wife had repeatedly made accusations against her husband that he was in illicit relationship with his 'Bhabhi' but without leading even an iota of evidence to substantiate that even on probabilities.

19. The appellant/wife has been living separately from the respondent/husband for the last about six years and even prior to that she was an occasional visitor to the matrimonial home.

20. The prescription slip of the appellant/wife from AIIMS (Psychiatric Department) placed on record as Ex.PW1/2 starts w.e.f. February 20, 2008.

After initially keeping her on medicines, injection ‘*Risperidone*’ has been prescribed on November 01, 2008 to be repeated every two weeks. During consultation dated October 03, 2008 the observation made by the concerned doctor is as under:

*‘Pt. Incompliant with treatment.
Delusion of persecution +
Delusion socio – occupational dysfn.’*

21. May be because of the nature of the ailment and the treatment she was undergoing, she felt more safe at her parental home apprehending danger to her as well that of her daughter at the matrimonial home. This, however, cannot justify her conduct to make serious allegations about the illicit relationship with his ‘*Bhabhi*’ so as to destroy not only her matrimonial life but also of the brother of her husband. Such type of aspersions on the character of the respondent/husband or for that matter even on his ‘*Bhabhi*’ is worst form of cruelty.

22. For the above reasons we see no merit in the appeal and the same is hereby dismissed.

23. No costs.

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

**PRATIBHA RANI
(JUDGE)**

**PRADEEP NANDRAJOG
(JUDGE)**

SEPTEMBER 14, 2016
‘st/hkaur’