

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

Judgment Reserved on: September 05, 2016

% *Judgment Delivered on: September 09, 2016*

+ **MAT.APP.(F.C.)120/2015**

NAVAL KISHORE SEHGAL Appellant
Represented by: Dr.K.P.S.Dalal, Advocate with
Mr.Ranjit Singh, Advocate
versus

GURBACHAN SEHGAL Respondent
Represented by: Mr.Anshul Garg, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. After more than two decades of solemnisation of marriage and ten years of separation, the appellant/husband filed a petition seeking dissolution of marriage on account of cruelty but at the same time pleading that parties have been residing separately for more than twelve years. Why he preferred not to seek dissolution of marriage on account of desertion as well, cannot be ascertained from the record. On the basis of averments made in the divorce petition and appreciating the evidence led in support thereof, learned Judge, Family Court held that the accusations of cruelty against the wife could not be proved. This resulted in dismissal of the divorce petition.

2. The judgment and decree dated July 02, 2015 has now been assailed by the appellant/husband before this Court in the hope that the marriage having become dead, he may be able to get the marital ties with the respondent/wife snapped.

3. Learned counsel for the appellant/husband during hearing of the appeal was time and again requested to show from the record how the grounds taken by him to prove cruelty and the evidence led in support thereof can establish that the learned Judge, Family Court misdirected himself while dealing with those grounds or failed to appreciate the evidence in correct perspective. Unfortunately learned counsel for the appellant/husband drew complete blank. He submitted that written submissions have already been filed and the same may be considered.

4. Situation on the other side i.e. respondent/wife was no different. We have been handed over written submissions today in the Court which in fact appear to be list of dates and events and not the legal submissions with nothing further to add.

5. Thus, we have to take over the job to minutely go through the LCR to find out what were the pleadings of the parties, the evidence led during divorce proceedings by the husband as well by the wife and how the rival contentions have been dealt with by the learned Judge Family Court before reaching to the conclusion that it was not a fit case to grant divorce to the appellant/husband on the ground of cruelty.

6. It is admitted case of the parties that their marriage was solemnised on October 19, 1990 as per Hindu rites and customs. The marriage was consummated. The first child, a daughter, was born to them on May 11, 1993 who was given in adoption to the elder sister and brother-in-law of the respondent/wife. The circumstances under which the child was given, shall be dealt with in later part of the judgment. The parties were again blessed with a daughter on February 21, 2001. The parties resided together along with their daughter till April 29, 2002. At the time of filing the divorce petition the elder daughter was nineteen years old and younger was twelve

years old. Both the spouses are gainfully employed. While the husband was a Loco Inspector with Indian Railways; his wife was an Assistant in Oriental Insurance Company.

7. The grounds sufficient to constitute cruelty so as to entitle the appellant/husband to seek divorce under Section 13(1)(ia) Hindu Marriage Act, 1955 as pleaded in the divorce petition are:

(i) Though the appellant/husband was providing all the facilities, love and affection to his wife and family, the respondent/wife was ill tempered and used to abuse, misbehave with him and his parents. She was also not taking proper care of the child.

(ii) The respondent/wife used to be instigated by her elder sister Shikha Sharma and her husband Anil Sharma and they succeeded in brain washing the appellant/husband to the extent that he got separated from his family and also made a false complaint against his parents at the instance of his wife, her sister and brother-in-law.

(iii) The respondent/wife took away all the FDRs, NSCs and disposed of immovable properties purchased by him in the name of his wife and even took ₹60,000/- from his parents for vacating the house. All the amount so taken by her were given by her to her sister and brother-in-law. Though it was a simple dowry-less marriage, the respondent/wife filed a false complaint with CAW Cell, Amar Colony and FIR No. 18/2003 was registered at PS Lajpat Nagar. However, all the accused including the petitioner and his family were discharged.

(iv) He filed a petition under Section 9, Hindu Marriage Act which was withdrawn as his wife was not willing to join him.

(v) He had been paying maintenance as ordered by the Court from time to time in the proceedings under Section 125 Cr.P.C. and Section 24, Hindu Marriage Act, 1955.

(vi) He had been tolerating all the cruelties committed on him by the respondent/wife in the hope of getting the things normal with the passage of time. But the respondent/wife has made the entire life of the appellant/husband a 'living hell' by committing such acts which are absolutely immoral and uncaring amounting to utmost and extreme form of cruelty which any person can tolerate.

8. In the written statement the respondent/wife took the plea of she being deserted by her husband in the year 2002 in collusion with his family members. Since then she has been living with her sister. She denied having committed any act of cruelty on the petitioner or their being any interference in their matrimonial life by her sister or brother-in-law. She has pleaded that the relationship of her husband with other members of his family was not cordial. When the first child was born, she was informed that his family did not want a daughter and she should give her to somebody. She gave her first daughter to her sister and only then she was accepted back in the family. The respondent/wife has relied on the writing dated June 10, 1993 in the diary maintained by her husband. While denying the correctness of other allegations i.e. of taking away movable and immovable properties, she also denied having ever brainwashed her husband by making him to file false complaint with the police against his own family members. She has also denied having treated either the husband or any of his family member with cruelty. Factum of getting the maintenance as per the orders of the Court was admitted by her.

9. Vide impugned judgment the learned Judge, Family Court formed an opinion that the appellant/husband had not been able to prove any instance of cruelty being committed on him by his wife. The appellant/husband had failed to examine his parents or any family member to prove that they were insulted, humiliated or abused by the respondent/wife. No instance was given by him to show that the respondent/wife was not taking care of the child properly. No instance of the respondent/wife being acting on the advice of her elder sister or brother-in-law detrimental to her matrimonial life could be proved. Regarding the sale of two plots by the respondent/wife despite being put to notice by him and using the sale proceeds for her benefit or giving to her sister and brother-in-law could not be established by any documentary or oral evidence. Regarding the cash, jewellery, FDRs, NSCs being taken by her, the learned Judge, Family Court was of the view that she could deal with her belongings the way she desire. On the issue of taking ₹60,000/- from the parents of appellant/husband for vacating the house, the learned Judge, Family Court felt that his parents wanted them to vacate the house and they were more interested in making this payment. The reason could be their dispute with the parents/family of the appellant/husband.

10. While dealing with the contention of appellant/husband that he was compelled to make complaint against his own family members on being brain washed by his wife, it was disbelieved noting that he was a person of reasonable intelligence and the complaint to the police was handwritten. The version of the appellant/husband that he had tried to save the marriage by visiting the office and residence of his wife was disbelieved noting that he has just given the date 9th September without mentioning the year of the visit. The complaint made under Section 498-A IPC by the respondent/wife was dealt with observing that order on discharge in itself is no ground to

term the act as amounting to cruelty. Similarly petition under Section 125 Cr.P.C. was also a legal remedy availed by the respondent/wife. Finding no ground pleaded and proved which could be termed as cruelty for purpose of Section 13(1)(ia) of Hindu Marriage Act, the petition seeking divorce was dismissed.

11. We have already enumerated the instances pleaded by the appellant/husband to seek dissolution of marriage on account of cruelty being caused by the respondent/wife.

12. We will like to consider the alleged acts of cruelty from the angle of respondent/wife. At this stage we are noting the plea taken in the written statement by respondent/wife that after giving birth to a daughter she was taunted, humiliated and made to compel the daughter either to give in some Orphanage or to someone else. Both the parties are well educated and gainfully employed in respectable position. After their marriage was solemnised on October 19, 1991, they were blessed with their first child on May 11, 1993. We can see from the affidavit of RW-2 Shikha Sharma (sister of the respondent/wife) that their father expired on October 02, 1991 just a week before the marriage of the parties. Ms.Shikha Sharma – the elder sister of the respondent/wife was admittedly issueless. Consent of husband to his wife to give their first child in adoption to Ms.Shikha Sharma and Anil Sharma – her husband was a big sacrifice by him showing utmost concern and respect for the elder sister of the respondent/wife and to bring happiness in her life. In para 6 of the reply/written statement to the divorce petition she has made the averments to the following effect:-

‘...It is even further pertinent to mention here that after the birth of the baby daughter, the respondent was informed by the petitioner that his family members did not want a daughter and that the respondent should give up the daughter to somebody or else he would become and drunkard. That the family of the

petitioner only accepted the respondent back after the baby daughter i.e. Jasmine was adopted by the sister and JIJA of the respondent. The copy of the letter dated 10.06.1993 written by the petitioner wherein he threatened the respondent by saying that “TUM JASMINE OF UNKI JHOLI ME DAAL DOGI, MUJHE YE UMEED HAI NAHI TO MUJHE SHARABI PAOGI’ is annexed herewith as Annexure R-3.’

(emphasis supplied by the respondent/wife in the written statement)

13. In the rejoinder, the appellant/husband replied the above averments as under:-

‘...It is submitted that the adoption papers of the daughter Jasmine clearly mentions that the sister of the respondent are adopting the daughter Jasmine as they are issueless even after many years of their marriage. It is further submitted that the respondent used to wash mind of the petitioner according to her wish which resulted the petitioner to write letters as guided and instructed by the respondent. The respondent always enforced the petitioner to do according to the will and wishes of the respondent.’

14. This plea of the respondent/wife has been negated by the documents placed on record by her though with a different purpose. The writing in the diary maintained by the appellant/husband have been exhibited as Ex.RW1/A (collectively).

15. Contents of Ex.RW1/A (collectively) have not been disputed in the rejoinder filed by the appellant/husband while replying Para 6 of the written statement.

16. While writing the diary on June 10, 1993 the appellant/husband records his feeling, his efforts to make the life of elder sister of his wife happy by giving his daughter in adoption to her. He writes that on June 11, 1993 the new born should be put in the *Jholi* of *Didi* (Shikha Sharma). It also records the efforts being made by him to indirectly take consent of his family to ensure that the new born is given in adoption to *Didi* and *Jijaji* of

his wife. He records that (being father) it was his duty to perform her '*Kanyadan*' but henceforth he had given this right to *Didi* and *Jijaji* by stepping down from that position. He further records that *Didi* and *Jijaji* have already performed her (respondent/wife) '*Kanyadan*' and how it was his (appellant's) duty to take care of her (respondent/wife) in all respects. Ex.RW1/A (Colly.) records that when his daughter became one month old he brought '*Kalakand*' (sweets) from Meerut which was of the choice of his wife and on his daughter becoming one month old he was determined to taste sweets as pre-decided. It also records that even before the birth of first child his wife asked him to give in adoption their first child to her sister to which he agreed. Even he could manage to seek the consent of his family by asking from them that in case he takes any decision in respect of their first child keeping in mind her welfare and a secured future, would they, mind to which he was informed that they had no objection.

17. The appellant/husband further records in the diary that one day when he asked his father whether he ever missed 'J' (baby girl) his father responded that since she had never lived with them, he did not miss her.

18. The writings in the diary by the appellant/husband rather show that he had taken an unusual step to please his wife and to bring happiness in the life of his sister-in-law (his wife's elder sister) who unfortunately stood against him as RW-2 deposing that since they were giving the female child in Orphanage she took the child to save her from being sent to Orphanage. This is falsified by the documents placed on record by respondent/wife with an attempt to paint his dark picture and referring one sentence i.e. '*Sharabi*' out of context.

19. We are of the considered view that birth of a female child was never an issue either with the appellant/husband or with his family especially when

both of them were not dependent on the parents of the appellant/husband and had enough resources to bring up their daughters. The birth of second child almost after a period of eight years and she being not given in adoption and both the parties bringing her up till they separated, is ample proof of the fact that dispute was not over birth of daughters.

20. In the complaint under Section 498-A IPC made by the respondent/wife against the family of her husband they were discharged by the learned MM vide order dated April 30, 2010. The order on discharge by learned MM records the following reason:

‘As regards father in law and husband there is not even an iota of allegation that the aforesaid accused had either harassed or ill-treated her at any point of time. As such, even the ingredient of bad conduct towards complainant is not satisfied.

Accordingly, in view of the aforesaid discussion, the accused persons are discharged under Section 498-A IPC. Their Bail Bonds are cancelled. Sureties are discharged.’

21. Thus it is a case where against the appellant/husband, no accusation was made. In that case where is the question of mental cruelty being caused to him merely because a complaint was made by his wife but without making allegation of harassment of dowry demand or being treated with cruelty on that count. Filing of a petition under Section 125 Cr.P.C. for seeking maintenance for the younger daughter who was born after about eight years of birth of first daughter given in adoption to the elder sister of the respondent/wife, may not be taken in good taste by the appellant/husband but cannot constitute mental cruelty of the level so as to dissolve the marriage of the parties on this ground.

22. In the decision reported as AIR 2005 SC 534 A.Jaychandra vs.Aneel Kumar the Apex Court has observed as under:

'The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of his spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.'

23. In another case reported as AIR 2006 SC 1675 Naveen Kohli vs. Neelu Kohli it was held as under:

'57. The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of

the petition for divorce. However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

58. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court.'

24. In this case the appellant/husband though intended to seek dissolution of marriage on account of mental cruelty being caused to him by respondent/wife, has not concocted accusations just to achieve the goal i.e. divorce. When the appellant/husband is approaching the Court with the accusations which he perceived to be sufficient to cause mental cruelty to the extent that it has not been possible for him to live with the respondent/wife for all these years, we can only note that in the absence of

any plea to seek divorce on the ground of desertion we have to examine the case of the appellant as projected in the pleadings.

25. If a husband wants to have a divorce on the ground of cruelty by his wife, he must specifically state in what way his wife treated him with cruelty. Merely because he is unable to cope with the conduct of his wife may cause mental disturbance to him but will not sufficient to snap the matrimonial bond.

26. The term 'cruelty' is a mixed question of law and fact. The term 'cruelty' for the purpose of Section 13(1)(ia) of Hindu Marriage Act, 1955 should be of such a nature that the parties cannot reasonably be expected to live together and situation must be so grave that the wronged spouse cannot be reasonably expected to put up with the wrong doer spouse. No doubt, intention to hurt is not essential to be proved but in the absence of mental cruelty being proved for the purpose of seeking divorce, it is not possible to dissolve the marriage within the legal parameters.

27. From the affidavit Ex.RW2/Y of Ms.Shikha Sharma (RW-2) we find that father of the respondent/wife had expired on October 02, 1991 and her marriage was solemnised on October 09, 1991 i.e. one week thereafter. It appears that in this backdrop in the diary Ex.RW1/A the appellant/husband had shown respect and concern for the elder sister of his wife who was issueless and performed '*Kanyadaan*' of her younger sister on the death of their father. Immense regard and respect shown by the appellant/husband towards the elder sister of his wife is crystallised in his diary. The thoughts penned in the diary shows that to bring happiness in the life of RW-2 Shikha Sharma and her husband Anil Sharma, when his wife got pregnant they decided to give their first child in adoption to RW-2 Shikha Sharma. At that stage nobody knew whether the child would be male or female. From what

he has written in the diary, we can sense that perhaps after the birth of their first child, his wife put some resistance but the appellant/husband wanted to fulfil his promise and not to live with the guilt of not honouring his commitment. In that backdrop, the appellant/husband writes:

*‘TUM JASMINE KO UNKI JHOLI MEIN DAAL DOGI,
MUJHE UMMEED HAI. NAHI TO MUJHE SHARABI
PAOGI.’*

28. The intention was not to get rid of the burden of a daughter but to see a smile on the face of elder sister of his wife and her. The two complaints made to the police on April 29, 2002 Ex.RW1/C and on April 30, 2002 Ex.RW1/B have been made to SHO, PS Mehrauli and SHO, PS Maidan Garhi respectively. These two complaints were made by the appellant/husband supporting his wife and daughter and to seek protection for them as well action against his own parents and brother. Though he has taken a plea that when he made these complaints, he was brainwashed by his wife, the hand written complaints written by him are ample proof of the fact that so far as two spouse were concerned till that date they were not having any difference inter se.

29. What actually led the wife to separate from her husband alongwith her daughter, is something within their personal knowledge. The reason given by the wife to live separately is falsified from the record produced by her in her defence i.e writings in the diary Ex.RW1/A (collectively) and she being harassed on account of dowry demand. It is a matter of record that all the accused persons have been discharged in the criminal case registered for the offence punishable under Section 498-A IPC.

30. Since it is the husband who had approached the Court earlier for restitution of conjugal rights which was dismissed as withdrawn and later for dissolution of marriage on account of mental cruelty, we have carefully

scrutinised the evidence led by him to prove mental cruelty. We have no hesitation to conclude that the instances given by him are nothing but normal wear-tear in a matrimonial life which cannot constitute mental cruelty grave and weighty enough to dissolve the marriage as held in AIR 2006 SC 1675 Naveen Kohli vs. Neelu Kohli.

31. We are conscious of the fact that parties have been living separately for the last about 10 years. Efforts made at different levels by the Family Court as also by the Mediator could not resolve the issue between the parties. Parties may claim that the marriage has broken down irretrievably as they could not reconcile themselves to live together but the question is whether irretrievable break down of marriage can be sufficient to grant divorce. The answer has to be in negative in view of the decision of the Apex Court in (2009) 6 SCC 379 Vishnu Dutt Sharma Vs. Manju Sharma.

32. In view of above discussion, the appeal deserves dismissal.

33. Accordingly, the appeal is hereby dismissed.

34. No costs.

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

**PRATIBHA RANI
(JUDGE)**

**PRADEEP NANDRAJOG
(JUDGE)**

SEPTEMBER 09, 2016
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