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

% *Date of Decision: September 01, 2016*

+ **MAT.APP.(F.C.) 143/2015**

JAGWATI

..... Appellant

Represented by: Mr.Vikas Tomar, Mr.Saman
Yadav and Mr.Simarpal Singh,
Advocates.

versus

GAJENDER KUMAR

..... Respondent

Represented by: Mr.Vinod Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

MAT.APP.(F.C.) 143/2015

1. The appellant/wife is aggrieved by the judgment dated August 21, 2016 whereby a decree has been passed in favour of the respondent/husband dissolving their marriage on the ground of cruelty and desertion by her.

2. In brief, the admitted facts are that the appellant/wife got married to the respondent/husband on May 15, 1998. No issue was born out of this wedlock. The appellant/wife was the only child of her parents. She not only used to visit her parents very frequently but also stay there for about 15-20 days every month. On her visit to her parental home on the death of her father on April 16, 2000, she lived there for about eleven-twelve months.

3. Since the appellant/wife was not performing the matrimonial obligation by staying away from her matrimonial home and often living at her parental home for years together, a petition under Section 9 of Hindu Marriage Act, 1955 was filed in the year 2003 by the respondent/husband seeking restitution of conjugal rights. The appellant/wife agreed to resume

cohabitation and returned to matrimonial home on March 10, 2005. The joy was short lived as admittedly she left after four days and is staying at her parental home since March 14, 2005. The circumstances under which she has gone to parental home on March 14, 2005 were intimidated by the respondent/husband to the local Police Station at Kapashera on the same day.

4. After a long wait for almost five years, in the year 2010 the respondent/husband filed a petition seeking divorce on the grounds specified under Section 13(1)(ia) & (ib) of Hindu Marriage Act, 1955.

5. The divorce petition was contested by the appellant/wife levelling allegations of cruelty and harassment on account of dowry which she had been tolerating in the hope that better sense would prevail upon her husband. She was forced by her husband and in-laws to live at her parental home. She also filed a complaint before the Women Cell. She claimed that she had no intention to bring an end to cohabitation or break the matrimonial ties which can be gathered from the fact that from the Court she accompanied her husband on March 10, 2005 when he filed a petition under Section 9 of Hindu Marriage Act, 1955. She also pleaded that on March 14, 2005 she did not leave the matrimonial home on her own but after treating her with cruelty she was left at the outskirts of her parental Village Daulatabad by her husband on the pretext that he was going to Madras for 15 days on official work. Thereafter her husband never came to take her back. This compelled her to continue staying at her parent's house. Even now she is ready and willing to return to matrimonial home and live with respondent/husband as his wife.

6. Learned Judge, Family Court after examining the testimony of the appellant/wife and respondent/husband, was of the view that appellant/wife

had caused mental cruelty to respondent/husband and his family members and also deserted him on March 14, 2005 with *animus deserendi*. The Family Court took notice of the facts in the Criminal Case No. 116/2005 under Sections 498-A/406/506/34 IPC filed in the Court at Gurgaon by the appellant/wife, even married sister and unmarried sisters were not spared. The proceedings against the two sisters were quashed by Punjab & Haryana High Court. This was considered to be sufficient to prove mental cruelty being caused by the appellant/wife.

7. On behalf of appellant/wife, Mr. Vikas Kumar, Advocate has submitted that the respondent/husband is in Delhi police. He had used his influence in getting favourable orders. It was the respondent/husband who had been treating the appellant/wife with cruelty so much so that he even did not attend the funeral of his father-in-law. On the contrary, it was the appellant/wife who agreed to return to the matrimonial home on March 10, 2005 during hearing of petition under Section 9 of Hindu Marriage Act, 1955. It has been urged by learned counsel for the appellant/wife that the petition under Section 9 of Hindu Marriage Act, 1955 was nothing but a ploy to get rid of the appellant/wife. Learned counsel for the appellant/wife has further submitted that on March 14, 2005 it was the respondent/husband who left the appellant/wife at the outskirts of her parental Village Daulatabad on the pretext that he was going to Madras for 15 days. Believing her husband, the appellant/wife went to her parental home and thereafter her husband never came to take her back. Thus, it was the respondent/husband who had deserted the appellant/wife. Not disputing that a criminal complaint case under Section 498-A/406/506/34 IPC was filed by the appellant/wife, it has been contended that filing of a criminal complaints or an acquittal in the criminal cases do not amount to cruelty.

The appellant/wife is ready and willing to return to the matrimonial home hence the impugned judgment and decree may be set aside. Learned counsel for the appellant/wife has relied upon (2010) 4 SCC 476 Ravi Kumar vs. Julmi Devi, (2010) 14 SCC 301 Gurbux Singh vs. Harinder Kaur & 2015 SCC online SC 182 Ramchander vs. Ananta in support of his contentions.

8. Mr. Vinod Kumar, Advocate for the respondent/husband has submitted that the respondent/husband is merely a Head Constable in Delhi Police unable to exert any kind of influence on Courts in Haryana. He and his family had suffered at the hands of appellant/wife on all fronts. Even his sister who was married ten years prior to the marriage of appellant/wife and his younger unmarried sister who was studying Dentistry (BDS) were made accused. However, finding the allegations against the two sisters to be baseless, the proceedings against them were quashed by Punjab & Haryana High Court. In the criminal case he and his mother have been acquitted on January 28, 2014 after suffering humiliation and agony of trial for nine years. Since the parties had been living separately since 2005, after facing all kind of social stigma as well fighting legal battle, there is no scope of reunion.

9. A perusal of the affidavit Ex. RW-1/A filed by the appellant/wife before the Family Court shows that in the said affidavit she has stated that she was pressurized to bring ₹60,000 from her parents for purchase of Bullet Motorcycle and was harassed and taunted for poor quality of the articles given in the marriage. She was also compelled to at least have a plot from her parents as she was the only child. She admits that she used to stay at her parental home but justifies that circumstances at her in-laws were not conducive and that after the death of her father she was taking care of her mother. She admits leaving the matrimonial home just after four days on

March 14, 2005 after joining the company of her husband on March 10, 2005. During hearing of petition under Section 9 of the Hindu Marriage Act, 1955 the different versions emerging on record about the circumstances in which the appellant/wife left the matrimonial home to stay at her parental house are as under:

(i) Written Statement – Para 4 – Preliminary Objection – During stay of four days she was subjected to indignity and abuses by her husband and family members. In order to get rid of her, on the excuse that he was proceeding to Madras for 15 days in connection with his duties and did not want to leave her alone in the house, left her at the outskirts of the village Daultabad and never came to take her back.

(ii) In reply para 9 wherein the husband has pleaded about the petition under Section 9 of the Hindu Marriage Act, 1955 and his wife agreeing of joining him on March 10, 2005 in the Court at Gurgaon, pleaded that once at the matrimonial home she again started threatening and forcing him to leave at her parental home. Ultimately on March 14, 2005 he left her at her parental home and intimation was also given to Police Station Kapashera on the same day vide DD No. 43B. It was further pleaded that she had filed multiple cases against him and his family as ulterior motives.

(iii) In reply to above para 9 she denied extending any threat or insisting to return to parental house. She pleaded that the cases filed by her were based on true facts. Though not pleaded in para 9 as to in what manner she was left at parental home in para 7 she pleaded that she was forced to live at her parental home by the petitioner and in para 4 of the preliminary objections she has taken the plea that on the pretext of going to Madras for 15 days on official work she was left by the husband at the outskirts of village Daultabad and did not come back to take her.

10. In para 7 of the affidavit she stated as under:

“The petitioner left the deponent at the outskirts of village Daulatabad. Thereafter the petitioner never came back to take the deponent. In the above said circumstances the deponent is living at her parental home. The deponent has never deserted the petitioner and never committed any cruelties with the petitioner. Being a Hindu devoted wife the deponent is still ready to live with the petitioner if undertakes not to repeat the acts of cruelties in the future.”

11. However, in cross-examination of PW-1 respondent/husband the suggestion given on behalf of the wife/appellant is to the following effect:

*“It is incorrect to suggest that the respondent never treated me or my family members with cruelty or that she never deserted me. It is incorrect to suggest that the contents of my affidavit as evidence Ex. PW-1/A are false and fabricated. It is incorrect to suggest that the respondent was harassed by me, my mother and other family members for bringing insufficient dowry. **It is incorrect to suggest that due to the continuous harassment and beating the respondent was forced to leave the matrimonial home.**”*

12. DD No.43B recorded as ‘peshbandi’ though earlier exhibited but later on de-exhibited records that on March 14, 2005 at 3:50 pm the respondent/husband reported that in the case pending since April 23, 2003, as per direction of the Court he brought his wife on March 10, 2005 to his home directly from the Court. On that date i.e. March 14, 2005 at her instance she has been dropped at her parental home as she was extending threat and that after leaving her there he had come to give this information.

13. The suggestion given to the respondent/husband by the appellant/wife clearly suggests that it is not a case where she was made

to leave the matrimonial home and left at the outskirts of village by her husband on the pretext that he was going to Madras. Rather she has suggested that she was forced to leave the matrimonial home which again is a version in conflict with the pleas taken in the written statement as well in the affidavit.

14. In her cross-examination she has admitted that after the death of her father on April 16, 2000 she remained at her parental home for about 11-12 months. Again she left the matrimonial home in the year 2003 and thereafter filed a complaint with the Women Cell, Gurgaon. Then in the year 2003 when the respondent/husband filed a petition under Section 9 of the Hindu Marriage Act, 1955 she joined him on March 10, 2005 remained there till March 14, 2005 and since then she is residing at her parental home. She has admitted that in the case filed by her under Section 498-A/406/506/34 IPC against her husband and family, they have been acquitted. Since she has justified her stay on the ground that she was taking care of her mother, she was questioned about the age of her mother she informed her date of birth to be April 10, 1959 meaning thereby that her mother was 41-42 years at that time and did not require any medical care especially when after the death of the father in the year 2000 she had stayed with her for about one year. This gave enough time to her mother to bear the loss of her husband as well to the appellant/wife to come to the terms on loss of her father.

15. What compelled her to again leave the matrimonial home which led her husband to file petition under Section 9 of the Hindu Marriage Act, 1955 in the year 2003 has not emerged on record.

16. It is admitted fact by the appellant/wife that after a short union and leaving on March 14, 2005 she never returned to the matrimonial home.

Rather she was busy in prosecuting her criminal case under Section 498-A/406/506/34 IPC instituted on April 08, 2005 which has been finally decided on January 28, 2014. Even the petition under Section 9 of the Hindu Marriage Act, 1955 was filed in 2003 wherein she agreed to join her husband after two years on March 10, 2005. After leaving the matrimonial home on March 14, 2005, she was fiercely prosecuting the Criminal Complaint No. 116/2005 (date of institution is April 08, 2005) and had it been a case of she being left on some pretext, the matrimonial relations having become normal between the two between 10th to 14th March, 2005 and she would not have prosecuted with her complaint.

17. The appellant/wife is breathing hot and cold in the same breath. On the one hand she is projecting herself to be victim of harassment on account of dowry demand, being treated with cruelty by her husband and in-laws on account of dowry demands not being fulfilled, on the other hand even today she claims that she was/is ready and willing to join her husband and that she had never any intention to bring an end to cohabitation or that she was waiting for her husband to take her back.

18. A perusal of certified copies of the judgment Ex. PW-1/2 in Criminal Case No. 116 under Section 498/406/506 IPC reveals that the testimony of the appellant/wife who was the sole witness in the said case was not considered trustworthy especially highlighting that she had not even examined her mother to substantiate the accusations made in the criminal complaint case.

19. Legal position is well settled that leveling false allegation and getting the respondent/husband and in-laws arrested in false cases in itself is an act of cruelty. Here the two sister-in-laws – one married ten years prior to the marriage of the appellant/wife and another still

unmarried and studying Dentistry were also implicated thereby jeopardizing the matrimonial life of the elder nanad and destroying the marriage prospects of the younger one. This itself is sufficient to prove mental cruelty caused to the husband and his family. The other two accused i.e. husband and his mother have earned honourable acquittal in the criminal cases is proved from certified copy of judgment Ex. PW-1/2.

20. We have gone through the reports cited by the learned counsel for the appellant/wife.

(i) In the decision reported as (2010) 4 SCC 476 Ravi Kumar Vs. Julmidevi relied upon by the learned counsel for the appellant/wife, it was held that the parties alleging desertion must not only prove the other spouse was living separately but also animus deserendi on its part, and spouse claiming desertion must prove that it has not conducted itself in a manner which furnishes reasonable cause for the other spouse to stay away from matrimonial home.

(ii) In decision reported as (2010) 14 SCC 301 Gurbux Singh Vs. Harminder Kaur relied upon by the learned counsel for the appellant/wife, it was held that even a single act of violence which is of grievous and inexcusable nature satisfies test of cruelty, married life should be assessed as a whole – A few isolated instances over certain period do not amount to cruelty.

(iii) In decision reported as (2015) SCC Online SC 182 Ramchander vs. Ananta it was held that instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record.

21. There cannot be any quarrel about the legal proposition laid down in the above reports cited by the learned counsel for the appellant/wife. The question is the applicability of those legal principles in the facts of the instant case. We have already discussed the evidence adduced by the parties as well the admission extracted from the appellant/wife in her cross-examination as to how she left the matrimonial home on March 14, 2005 and never returned thereafter.

22. By placing reliance on the decisions in Ravi Kumar vs. Julmi Devi (Supra), Gurbux Singh vs. Harminder Kaur (Supra) & Ramchander vs. Ananta (Supra), the appellant can hardly get any support in the facts of her case rather the ratio of above judgments support the case of the respondent/husband for the reason that there is admission by the appellant/wife about deserting respondent/husband on March 14, 2005 with *animus deserendi*. Since 2005 till 2015 for nine years she had been prosecuting her husband and mother-in-law.

23. For the purpose of seeking divorce on the ground of desertion, the meaning of 'desertion' as well what constitutes 'desertion' has been dealt with by the Supreme Court in various decisions. In the case reported as (2002) 2 SCC 73 Savitri Pandey V. Prem Chandra Pandey the wife claimed divorce on ground of desertion. The Apex Court held that the wife cannot be permitted to take advantage of her own wrong after marriage. Desertion has been held to mean the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. The relevant discussion is extracted as under:

'8. "Desertion", for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the

obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations, i.e., not permitting of allowing and facilitating the cohabitation between the parties. The proof desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. After referring to host of authorities and the views of various authors, this Court in Bipinchandra Jaisinghbhai Shah v. Prabhavati MANU/SC/0058/1956 : [1956]1SCR838 held that if a spouse abandons the other in a state of temporary passions, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion.’

24. In the backdrop of the instances of cruelty being committed on the respondent/husband and his family and the *animus deserendi* being proved by the respondent/husband to seek a decree of divorce on the ground of desertion, the only logical conclusion that could have been arrived at was to dissolve the marriage.

25. We do not find any ground to interfere with the impugned order. Accordingly the appeal is dismissed.

26. No costs.

CM No.29321/2015

Dismissed as infructuous.

PRATIBHA RANI
(JUDGE)

PRADEEP NANDRAJOG
(JUDGE)

SEPTEMBER 01, 2016/‘st’