

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

% *Judgment Reserved on : January 25, 2017*
Judgment Delivered on : February 01, 2017

+ **MAT.A.(F.C.) 54/2016**

ARCHANAAppellant

Represented by: Ms.Jaya Tomar, Advocate with
Appellant in person

versus

HIMANSHU BAHLRespondent

Represented by: Mr.Sharad Chandra, Advocate with
Mr.Sanjay Agarwal, Advocate and
Respondent in person

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

PRADEEP NANDRAJOG, J.

1. The parties were married on December 14, 2006. Regretfully, the marriage lasted for only one year. Archana left the matrimonial house on January 21, 2008. Petition seeking annulment of the marriage was filed on March 26, 2008 by Himanshu alleging mental cruelty.

2. As per Himanshu, attitude of Archana from the beginning of the marriage was not congenial for a good matrimonial living. Notwithstanding marriage being consummated there were issues and issues raised by Archana. Himanshu lays the foundation for the cruelty alleging that when the couple were on honeymoon at Mauritius from December 21, 2006 to December 26, 2006, Archana picked up a stuffed toy at a shopping mall, wanting to be photographed. The security guard

objected. He i.e. Himanshu told Archana politely to comply with the request of the security guard. She flared up, threw the toy and ran shouting and crying. That night she kept on poking him and threatened to cut her wrist. He claims that on January 13, 2007, when his mother gave the customary money gift to the sister-in-law of his sister on the occasion of Lohri, Archana raised an issue. He claims that on February 03, 2007 when they went to congratulate Archana's sister on birth of a son, Archana raised an issue of not reminding her to purchase a gift. He claims that on February 11, 2007 Archana fought with him on the salary issue notwithstanding she being unemployed as on that date; having left her job after marriage. He claims Archana having created a bad scene in the house on the day of Deepawali, being November 09, 2007. He claims Archana creating a problem when the couple celebrated their wedding anniversary on December 14, 2007. He claims that on January 21, 2008 Archana created a very tense atmosphere in the matrimonial house requiring his parents calling Archana's parents. She suddenly rushed to the kitchen and brought out a knife and tried to cut her forearm nerve. Her parents took her with them to their house. Himanshu claims that on January 23, 2008, Archana sent an offensive e-mail from mobile No.9810448799 on his mobile No.9810405775 in which she threatened to commit suicide. Interspaced in these pleadings, with reference to dates and material particulars, are the pleadings that Archana was not showing respect to him or his parents and was not discharging her matrimonial obligations as is expected in a middle class Hindu family.

3. In the written statement filed by her, Archana denied all the allegations leveled against her. Regarding her parents visiting her matrimonial house and she accompanying them to their house and never returning thereafter, she admitted that on January 21, 2008 her parents

came to her matrimonial house, but alleged that the reason was she being tormented by her in-laws. She was badly beaten and her wrist was cut with a knife. As per her, she was thrown out of the matrimonial house on account of lack of dowry.

4. Soon after Himanshu filed the petition seeking divorce, Archana filed a series of complaints and initiated proceedings against Himanshu. She filed a petition under Section 9 of the Hindu Marriage Act, 1955. She lodged a criminal complaint with the police at Faridabad resulting in FIR No.125/2008 for offences punishable under Sections 406/498-A IPC being registered against her in-laws, her husband and an uncle of her husband. She initiated proceedings under Section 125 Cr.P.C.

5. In the replication filed by Himanshu, he pleaded said facts alleging that the allegations of cruelty leveled against him, his parents and his uncle by Archana constituted further acts of cruelty.

6. Before trial could take place in the petition filed by Himanshu, proceedings initiated by Archana came to an end. Concerning her complaint resulting in FIR No.125/2008 being registered orders dated September 09, 2008, September 10, 2008 and September 13, 2008, proved at the trial by Himanshu as Ex.PW-1/1, Ex.PW-1/2 and Ex.PW-1/3 came to be passed. The orders show that Himanshu remained in judicial custody for three days. Notwithstanding Archana identifying 43 articles apart from others being her dowry items when the Investigating Officer visited the matrimonial home, in Court she denied the same to be hers. Order dated August 19, 2013 passed in CrI.Rev.No.2/2013 discharging Himanshu's father and uncle in FIR No.125/2008 on account of non-actionable allegations against him. Order dated September 30, 2014 acquitting Himanshu and his mother from the charge of having committed an offence punishable under Section 498A/406 IPC. Certified

copies of these two orders were tendered in evidence by Himanshu in the instant case.

7. In the proceedings under Section 125 Cr.P.C. Archana claimed that she was unemployed. Himanshu summoned the record from DAV Institute of Management, Faridabad. Umed Singh, an Accounts Clerk from the Institute appeared in said proceedings and proved that Archana was employed by the Institute, and relevant would it be to highlight that the application submitted by Archana while seeking employment with the Institute mentioned two telephone numbers one of which bears the number 9810448799. Further relevant would it be to note that Archana claimed to be unemployed. Certified copy of said record has been filed in the instant proceedings before the learned Family Court by Himanshu.

8. Order dated July 27, 2012 passed by the learned District Judge Faridabad dismissing Archana's petition filed under Section 9 of the Hindu Marriage Act, 1955, certified copy whereof has been filed in the instant proceedings by Himanshu before the learned Family Court.

9. At the trial in the petition filed by Himanshu he examined himself as PW-1 and summoned a Nodal Officer from Bharti Airtel Ltd. who appearing as PW-2 inter-alia proved that mobile telephone bearing No.9810448799 was in the name of Archana's real brother.

10. It would be no use to note the testimony of the couple because each of them on oath has stated their respective version and thus we concentrate on said aspects of the matter which would be helpful to decide whether Himanshu has to be believed or Archana has to be believed.

11. Whereas Himanshu has simply been given suggestions that what he has deposed is untrue, as regards Archana, we find that she has tried to

hide the truth and has also deposed falsely on oath, and thus Himanshu has rightly been believed by the learned Judge Family Court.

12. We highlight said aspects. The first is Archana admitting leaving her matrimonial house on January 21, 2008, and her parents being called by Himanshu's parents to her matrimonial house. She gives the reason that her in-laws cut her wrist and then out of panic called her parents. As per Himanshu Archana threatened to cut her wrist and the atmosphere became very tense. His parents had to call Archana's parents.

13. Archana has not proved any medical treatment availed of by her. Her version cannot be believed because if her wrist was cut there would have been enough bleeding and her parents would have noticed the same.

14. Besides we find that in the judgment dated September 30, 2014 passed by the learned CJM Faridabad acquitting Himanshu and his mother of the charge framed for having committed offences punishable under Section 498A/406 IPC the learned Judge has noted that Roshan Lal, father of Archana appeared as PW-2 and had not deposed a word regarding the incident dated January 21, 2008. The learned Judge has discussed qua the incident of January 21, 2008 as under:-

“Admittedly on 21.1.2008 Roshan Lal was called by parents-in-law of the complainant at her matrimonial home. It is impossible to believe that Roshan Lal did not come to know about any incident of cutting of wrist of her daughter just before his arrival at her matrimonial home. If, the wrist of the complainant was cut then it could not have been possible for Roshan Lal to not notice the same. There must have been some bleeding or some kind of bandage present on the hand of the complainant but Roshan Lal did not mention about any such fact in his testimony before the Court. Thus, the version of complainant regarding incident on 21.1.2008 is unsupported by any other ocular or medical evidence on record.”

15. We fully agree.

16. The judgment dated September 30, 2014 referred to hereinabove by us has found complaint lodged by Archana as being totally unproved. It is trite that false allegations of dowry demand and cruelty by the in-laws would itself constitute cruelty against the husband.

17. The SMS Ex.RW-1/PX sent from the Mobile No.9810448799 on January 23, 2008 has a story to tell. It was received on Himanshu's Mobile No.9810405775. It reads:-

“Tune kal aur aaj jo phone na utha ke dady ki insult ki hai ab sari umar jail mein sad kynki main to marne ja rahi hu with a suicide note that u r responsible for my death. N for ur attention I am upstairs with nobody around. Tere baap ko bhi yahi msg karungi.”

18. On oath Archana said that she does not know to whom Mobile No.9810448799 belongs. We are surprised at her statement on oath to said effect because before she appeared as RW-1, Himanshu had tendered certified copy of the deposition of Umed Singh examined as AW-1 in proceedings initiated by Archana under Section 125 Cr.P.C. He had, amongst others proved Ex.AW-1/13, being Bio-data submitted by Archana when she sought appointment in DAV Institute of Management Faridabad, in which she gave the Mobile No.9810448799 as her contact number. Further, in the instant proceedings Himanshu had examined a Nodal Officer from Bharti Airtel Ltd. who had, amongst others, proved that the registered consumer of the mobile phone in question was Archana's brother.

19. It assumes importance to note that Archana admitted having left her matrimonial house on January 21, 2008 and being in her parents' house on January 23, 2008. The offensive SMS was obviously sent by

Archana because she could access the mobile phone of her brother. The threat contained therein is an act of cruelty.

20. Propensity of Archana to hide the truth and state incorrect facts, bordering on lies, is proved by at least three pieces of evidence in the instant case. The first is when she deposed falsely in proceedings under Section 125 Cr.P.C. that she is unemployed and truth emerged to the contrary through the record of DAV Institute of Management Faridabad. The second is her statement on oath that she does not know who is the registered consumer of Mobile No.9810448799. The truth being that her brother is the registered consumer of the mobile number. The third is regarding the incident dated January 21, 2008. She has lied on oath that her in-laws cut her wrist and in panic summoned her parents. It proves the version of her husband that she threatened to cut her wrist to falsely implicate her in-laws and this was the reason why they summoned her parents. In this view of the matter we have no reason to disbelieve Himanshu that Archana was a hot headed girl and would act in vengeance. Being well-educated she knew the law. She has blatantly misused the process of law. All criminal proceedings launched by her against her husband and in-laws have failed. Her vengeful attitude against Himanshu is proved by the fact that notwithstanding she identifying her dowry articles in the house she took a contrary stand in the Court and the result was Himanshu being in judicial custody for three days. This aspect has been discussed very well by the learned District Judge Family Court Faridabad in the decision dated July 27, 2012. Discussing the testimony of ASI Dalbir Singh who appeared as PW-2 the learned Judge has highlighted that when Dalbir Singh raided the matrimonial house of Archana, she and her father were present. Apart from others 43 articles which were recovered by him were identified by

Archana as her dowry, but later on in Court Archana said that these were not her dowry articles. The obvious intention was to somehow or the other keep Himanshu in judicial custody.

21. To cut the long story short. Himanshu has been able to prove the following acts of cruelty committed by Archana against him causing him extreme mental stress:-

- (i) Threatening to cut her wrist on January 21, 2008 uttering that this would ensure that her husband and her in-laws are sent to jail.
- (ii) Threatening to commit suicide as conveyed by the SMS on June 23, 2008, contents whereof show the threat by Archana to ensure that her in-laws are sent to jail.
- (iii) Archana's conduct before the Chief Judicial Magistrate in trying to ensure that Himanshu remains in jail for the maximum period and does not obtained bail evidenced by she identifying 43 pieces of goods recovered from her matrimonial house as her dowry articles and taking a summersault in the Court.
- (iv) Leveling false allegations of physical cruelty to compel her parents to meet the dowry demand of her in-laws. Her complaint in this regard being dismissed.

22. These are sufficient to sustain the impugned judgment and to these we add that on other allegations Himanshu has to be believed because his version is plausible and he has withstood the test of cross-examination. Archana has stood by her false allegations and has continued to deny the obvious truths, for example, the mobile phone number 9810448799 from which the offensive SMS was sent on January 23, 2008, and regarding the incident of January 21, 2008. In a matrimonial dispute where hardly any documentary evidence surfaces, the rival versions have to be weighed in the context of the conduct of a reasonable person and/or if some

documentary evidence, as in the instant case concerning the registered consumer of the mobile phone number 9810448799 emerges.

23. Having re-appreciated the evidence once again we concur with the view taken by the learned Judge Family Court and dismiss the appeal filed by Archana.

24. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(YOGESH KHANNA)
JUDGE

FEBRUARY 01, 2017
mamta/rk