

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

% **Decided on: 04.08.2017**

+ **MAT.APP.(F.C.) 95/2017, CM No. 19921/2017, CM No. 19923/2017**

**SANTOSH**

..... Appellant

Through: Mr. Gaurav Choudhary, Advocate  
along with Mr. Jaswinder Singh,  
Advocate along with appellant in  
person.

versus

**HORI LAL**

..... Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE HIMA KOHLI**

**HON'BLE MS. JUSTICE DEEPA SHARMA**

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1. Vide the present appeal, the appellant has challenged the order dated 31.03.2017 passed by Principal Judge (Family Court), Tis Hazari, Delhi whereby her marriage with the respondent was dissolved under Section 13 (1) (ia) & (ib) of Hindu Marriage Act, 1955 (hereinafter referred to as "HMA").

2. As per the admitted facts, the marriage between the appellant and the respondent was solemnized in Delhi on 29.06.1993, according to the Hindu

rites and ceremonies. The marriage was consummated and two children, one female and one male child were born from out of this wedlock. The respondent has been working with the Border Road Organization and at all times, has remained posted at different border areas of the country.

3. The petition for divorce was filed by the respondent (hereinafter referred to as “respondent/husband”). The case of the husband was that the marriage was very simple and after the marriage, he took the appellant to the matrimonial home at Village Bhopal Garhi Post Kurhar Distt, Etah, UP and stayed there for about 40 days. When he left for his duty, he left the appellant at her parental home on her request. After some time, the appellant joined him at his place of posting at Arunachal Pradesh where they stayed happily. She became pregnant and insisted upon the respondent/husband that she will deliver the first child at her parental home at Delhi and so, he brought her to Delhi and left her at her parental home. A female child was born on 29.03.1994. After about two months i.e. in May 1994, he took the appellant to his place of posting i.e. Arunachal Pradesh along with the minor daughter. The second child was born on 04.05.2002.

4. The contention of the husband was that the appellant was in the habit of quarrelling with him on petty issues without any cause and reason and had even refused to prepare food for him and do the household chores. She also humiliated him in the presence of his friends on several occasions by refusing to serve them tea. The appellant never wanted to stay with him or his parents at the village and always used to force him to drop her at her parental home; she did not have any love and affection for him and his parents; that the appellant had also pressurised him to leave the job and settle down in Delhi; he bought a land in Burari and constructed two storey house from his savings but the appellant preferred staying in her parental home at Gulabi Bagh, Delhi and used to come to their newly constructed house once a week. The husband had all along supported the appellant and their children financially as well as morally. When the construction of the house was completed, the appellant had refused to live with him at the place of his posting. She also forced her mother-in-law to leave the house who thereafter started living in her native village. She used to say that *“yeh log hamare status kay neie hain.”*

5. The husband had referred to the incidents that took place in February 2006, which ultimately culminated in their separation. He alleged that on

26.02.2006, he had informed the appellant, on telephone, at around 8 p.m. that his father was unwell and that he was taking leave to visit him and asked her to accompany him to the village. However, once he reached Delhi, the appellant refused to accompany him to the village. She also refused to join him at his place of posting along with the children. She and her parents beat him on his visit to her parental home. He visited his house at Burari on 04.03.2006 where the appellant and her parents quarrelled with him and registered a false case against him under Section 107/150 of CrPC. He left for his village on 05.03.2006 and returned to Delhi on 07.03.2006 and went to his house at Burari and found that the appellant had removed all the household goods and had filed a false complaint under Section 498A/406/34 of IPC before Crime against Women Cell after 13 years of their marriage, alleging *inter alia* that he had demanded dowry of Rs. 35.00 lakhs. The respondent/husband was arrested in the FIR No. 61/2006 on 04.04.2006 and remained in judicial custody for about 20 days. With the help of police, the appellant removed the remaining articles from his house at Burari. She also removed all the jewellery lying in the locker at State Bank of India, Pratap Nagar, Delhi on 06.03.2006. She also filed several civil and criminal cases against him and his relatives on false and frivolous

grounds, just to harass and torture the husband. The appellant did all this with the intention of extracting more money from him and his relatives. Details in this respect have been furnished by the husband in para No. 15 of his petition. It was also averred that she had filed various complaints against the husband in different departments and authorities, which on investigation, were found to be false and baseless and that she had been making defamatory complaints against him and his family members.

6. On these facts, the respondent/husband had alleged that he had suffered severe mental agony, tension, harassment and distress and that the behaviour of the appellant had caused him great anguish and amounted to cruelty. He had alleged that the appellant had also deserted him since she had refused to live with him. He had also averred that they had been living separately since March 2006 and it was not possible for him to continue living with her since there was a danger to his life and limb.

7. The suit was contested by the appellant who filed her written statement wherein she had denied all the averments in the plaint, being false. She had further averred that she was forced to withdraw the FIR and other proceedings filed by her under compelling circumstances and since she did not want to take divorce from the husband, she did not file any suit

for divorce and that the respondent was taking undue advantage of his own wrong doings and that of his parents, sisters and brother-in-law. Her contention was that it was she, who had been treated with utmost cruelty by the husband and his family members. Her husband failed to maintain her and their two children and they were at the mercy of her father for day-to-day necessities and their school fees was also paid by her father. As per her version, their marriage was solemnised with great pomp and show and her parents had spent lakhs of rupees on their marriage and dowry articles, gifts and cash was given in the marriage which did not satisfy the husband and his family members who kept on raising demands and started harassing and treating her with cruelty, forcing her to fulfil their demands for bringing additional dowry and cash amounts.

8. The appellant claimed that the respondent/husband demanded a Santro car on 28.02.2006 which her parents failed to provide. This refusal enraged the husband. He and his brother asked her to sign on certain blank papers and on her refusal to do so, and in view of the inability of her parents to provide a new Santro car, the respondent/husband got so infuriated that he did not allow her to enter the house. She was beaten by him and his other relatives and sustained injuries. She admitted that she

had filed a complaint under Section 107/150 of the CrPC against him and his family members on 04.03.2006. It was also contended that she was forced to live in Delhi with her parents because husband refused to keep her at the place of his posting for the reason best known to him.

9. It was further averred by the appellant that she had been fulfilling all the obligations as a devoted wife and had always remained faithful to the respondent; she was always ready and willing to accompany the respondent/husband to his native village to look after her ailing father-in-law but he had refused to take her along with him to the village. On 04.03.2006 when she was beaten up, she had been medically examined. It was contended that it was her father who had purchased plot no. 55, Block A, Gali No. 8/1, Kaushik Enclave Swaroop Nagar Road, Burari, Delhi measuring 100 square yards in her name and constructed double storeyed house over it; that the husband had fraudulently procured her signatures on a General Power of Attorney executed in his favour and sold the house first to his brother, Sh. Bhopal Singh on 08.03.2006 and thereafter, to Mr. Satish Sisodia for a sum of Rs. 6,25,000/- and mis-appropriated the sale proceeds. The appellant urged that the respondent/husband could not be allowed to

take advantage of his own wrong and thus, was not entitled for a decree of divorce.

10. On the basis of the pleadings of the parties, on 26.08.2009, the learned Trial Court had framed the following issues:-

- “(1) Whether the respondent has treated the petitioner with cruelty? (OPP)*
- “(2) Whether the respondent has deserted the petitioner for a period of more than two years before the filing of the present petition? (OPP)*
- “(3) Relief.”*

11. Both the parties had led their evidence. The respondent/husband had examined five witnesses in support of his case. In his statement, the petitioner/husband proved on record, the complaints filed by the appellant against him and marked as A to E. He also summoned a witness from the bank to prove that locker bearing no. 192 in the joint name of the parties was lastly operated by the appellant on 06.03.2006. The said record was exhibited by the witness as Ex.PW 2/1 to Ex. PW 2/5. The appellant, however, examined herself alone in support of her case. After hearing the parties at length and considering the evidences on record, the learned Trial Court reached the conclusion that the appellant had treated the respondent

with cruelty and that she had deserted him without any just cause and resultantly, dissolved their marriage. Hence the present appeal.

12. The appellant has challenged the impugned order on the grounds that the learned Family Court has not properly appreciated the evidence on record and did not take into consideration the torture and the harassment she was subjected to; that reliance on the evidence of the respondent and rejection of the testimony of the appellant is unfounded; that the learned Family Court failed to consider the contradictions in the testimony of the respondent and the fact that the husband has not been able to produce any corroborative evidence to prove the allegations levelled by him against the appellant; that the Family Court failed to take into account the fact that it was the respondent who had treated the appellant with cruelty and, therefore, he cannot be permitted to take advantage of his own wrong in view of the provisions of Section 23 of HMA. It was also contended by Mr. Chaudhary, learned counsel for the appellant that the learned Family Court has wrongly granted divorce on the ground that the marriage between them has broken down because no such ground is available for divorce under the HMA. It is therefore prayed that the impugned judgment being illegal, perverse and contrary to law, is liable to be set aside.

13. We have heard the arguments addressed by learned counsel for the appellant and gone through the LCR which includes the pleadings and evidence of the parties.

14. The first contention of the appellant is that the learned Family Court has given undue weightage to the evidence of the respondent and has discarded the evidence of the appellant. However, this contention has no merit. On the contrary, the evidence on record (including that of the appellant) was duly considered and distinguished and elaborately discussed in the impugned judgment and only thereafter the conclusion was drawn. Record shows that the appellant had examined herself alone in support of her pleas but here is no corroboration to her testimony. Several contradictions in her testimony have been discussed in the impugned judgment. Even otherwise, the burden to prove that the respondent/husband was subjected to cruelty by the appellant, was upon him and it was for him to discharge the same by leading cogent evidence.

15. The settled proposition of law in civil proceedings is that the principle of proof of a fact is established on a preponderance of possibility and the respondent/husband is not required to prove his case beyond a reasonable doubt. If the evidences on record points out to the existence of

a particular fact, then the said fact can be accepted as having been proved.

We may note that the expression “cruelty” has not been defined under the HMA. Cruelty can be mental or physical. It is easy for a party to prove physical cruelty, but mental cruelty depends on various factors.

16. In ***Samar Ghosh vs. Jaya Ghosh*** reported at (2007) 4 SCC 511 while dealing with the concept of mental cruelty, the Apex Court has observed as under:

*“99. The human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound; therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in the other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.*

*100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances....”*

*(emphasis supplied)*

17. Further, in *Ravi Kumar vs. Julmidevi* reported at (2010) 4 SCC 476, the Supreme Court held that cruelty is to be judged from the behavior, taking into account the entire facts and circumstances of the case and observed that:-

***“20. Therefore, cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in matrimonial cases can be of infinite variety—it may be subtle or even brutal and may be by gestures and words...”***  
(emphasis supplied)

18. Therefore, there is no mathematical formula to assess cruelty. If the consistent behaviour of a spouse is of such a nature as to causes pain, discomfort or it brings disrespect or disrepute to the other spouse, such behavior would constitute cruelty. Trust, mutual respect, understanding and commitment sustain a marriage. When two persons live together in matrimony, it is expected that they will be tolerant towards each other's attitude, behaviours, moods etc. and not be over sensitive towards innocent and natural behaviour/attitude or stray mood swings of the spouse. Spouses are expected to be supportive of each others' needs and

requirements which includes extending due respect to the family members of the spouse.

19. While appreciating the evidence in such matters, in **Deb Narayan Halder vs. Anushree Halder** reported at (2003) 11 SCC 303, the Supreme Court held that Courts should rely on evidence, which is contemporaneous and observed as under:-

*20.....In cases where there is a dispute between husband and wife it is very difficult to unravel the true reason for the dispute. After separation when the relationship turns sour, all sorts of allegations and counter allegations are made against each other. **Evidence of contemporaneous nature therefore plays an important role in such cases as it may reveal the thinking and attitude of the parties towards each other at the relevant time. Such evidence is usually found in the form of letters written by the parties to each other or to their friends and relatives or recorded in any other document of contemporaneous nature. If really the respondent was subjected to cruelty and harassment in the manner alleged by her, we have no doubt she would have written about such treatment to her friends and relatives with whom she may have corresponded...***

*(emphasis supplied)*

20. The evidence brought on record clearly reveals that the parties got married on 29.06.1993 and from the period from 1993 to 2001, the appellant had been staying with the husband at the place of his posting and she was visiting her parents in Delhi during this period. The husband was employed in the Border Road Organization and was posted to different

places outside Delhi including Arunachal Pradesh. The appellant had stayed with him at those places but she had not written any letter even to her parents, complaining about the misbehaviour of the respondent. There appears no dispute between them during their entire stay at the places of posting, as no complaint of any nature had been filed by the appellant before any authority in this regard. It is also evident that the appellant did not produce any document which could suggest that she had any complaint of any nature against the respondent during her stay with him.

21. During this entire period, till the filing of the complaint of demand of dowry under Section 498 A IPC, no complaint of any nature has been placed on record by the appellant against the respondent. The evidence also shows that the appellant started living in the Burari house since the year 2001 and during this period, the respondent had been visiting her in that house. The appellant has also failed to prove that it was her father who purchased the property in her name. No document has been produced on record by the appellant to prove that she was the registered owner of the property and it was sold by the respondent by fraudulently obtaining her signatures on a Power of Attorney. No document was also produced on record to prove that the construction undertaken over the plot was raised by

her father. During the existence of a marriage of about 13 years, no complaint of demand of dowry was ever lodged by the appellant against the respondent or his family members.

22. Apparently, the dispute between the parties arose sometime in March 2006. The appellant has not disputed that in March 2006, the respondent wanted to visit his ailing father at the village and he did visit him. While respondent/husband contends that it was the appellant who had refused to accompany him, the appellant took the plea that he did not take her along, which she had failed to substantiate by leading any evidence. The appellant has not produced any substantive evidence in support of her contention that she had been visiting her in-laws in the village. On the contrary, the evidence on record clearly shows that whenever she was in Delhi, she used to reside with her parents. Although she has contended that the respondent was not providing her money towards her maintenance and that of their children and it was her father who was bearing all the expenses during her stay in the Burari house, she has not produced any evidence to prove that the school fees of the children was being paid by her father. In fact, she has failed to examine her father. It is also a fact that the appellant never made any complaint to anyone including the respondent's department

to the effect that he was not giving them any money for their subsistence, nor had she filed any case claiming maintenance from him. There is no contemporaneous evidence on record which can even remotely suggest that the respondent had demanded dowry and that he and his family members had beaten the appellant or that he was not taking care of her and children and was not providing financial support to them.

23. The other plea of the appellant is that her husband and his family members used to demand dowry and harass her and had demanded a Santro car on 04.06.2006 and, on refusal, beaten her and turned her out of the house, thus compelling her to file a complaint under Section 498A. It turns out that the husband was discharged in the said case under Section 498A IPC, which only goes to show that there was no substance in the allegations made by the appellant in her complaint under Section 498A IPC. She has also contended that the respondent had forced her to abort their child against her wishes, but has failed to produce any evidence on record to prove the said allegations. During the cross-examination of Sh. Bhopal Singh (PW-4), the respondent's witness, a suggestion was made that the respondent had got married to another women but it remained a mere suggestion, without any proof. The appellant has also admitted in her

testimony that the respondent had visited her at her parental home at Gulabi Bagh, Delhi on 28.02.2006 and that after 28.02.2006, she had never visited Etah, UP, where her in-laws reside.

24. On the other hand, the respondent has produced on record the evidence to demonstrate that the appellant had removed all the items lying in the locker held in their joint names, without obtaining his consent. The witness from the Bank, PW-2 had duly proved the fact that the locker was operated lastly by the appellant on 06.03.2006. This fact clearly shows that after the alleged incident of 04.03.2006, the appellant had taken out all the articles lying in the locker without the consent of her husband. The respondent has also examined PW-3 who brought the records from the Border Roads Organisation which proves the fact appellant had filed that several complaints making various allegations against the respondent not only in his office, but also to several other authorities with a copy marked to his office. Enquires were made into the allegations in the complaints, but no substance was found therein and ultimately, the respondent was exonerated. The husband had taken a plea that this act of the wife had caused him grave distress, agony and had also lowered his reputation in the department, among his friends and colleagues and in the society.

25. In the case of **G.V.N. Kameswara Rao vs. G. Jabilli** reported at (2002) 2 SSC 296, the Supreme Court had observed that false police complaints would result in mental cruelty as it leads to loss of reputation and standing in the society at the instance of one's spouse. The act of leveling of unsubstantiated charges of adultery against the husband not only during the stay of the spouses together, but also during the divorce proceedings was treated as an act of cruelty on the part of the wife. In **R. Balasubramanian vs. Vijaylakshmi Balasubramanian (SMT)** reported at (1999) 7 SCC 311, the Supreme Court held that an unfounded allegation of adultery is a serious allegation amounting to cruel conduct, and found that these factors cumulatively proved cruelty on the part of the appellant therein for entitling the husband to dissolution of the marriage.

26. In the present case, the evidence clearly establishes the facts that the appellant had filed a false criminal complaint under Section 498 A of IPC, and Court had discharged the respondent. On her complaints, the department had also conducted enquiry against the respondent and thereafter, exonerated him, finding no truth in such complaints. Further, during the trial, the appellant had taken a stand that her husband had got remarried to

another woman by giving an suggestion of this nature to PW-4, but could not prove it.

27. In the case of **Vijaykumar Ramchandra Bhate vs. Neela Vijaykumar Bhate** reported as (2003) 6 SCC 334, the Supreme Court has settled the proposition of law by observing 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) (i-a) of the Act. The position of law in this regard has come to be well settled and declared that disgusting levelling accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital 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 exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence 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.”*  
(emphasis added)

28. Again, in a recent decision in the case of **Narendra vs. K. Meena** reported as *AIR 2016 SC 4599*, applying the ratio of its earlier decision in the case of **Vijaykumar (supra)** the Supreme Court has reiterated that unsubstantiated allegations if levelled, amounts to mental cruelty and is a ground for divorce under Section 13(1)(i-a) of the Act. In a very recent judgment in the case of **Raj Talreja vs. Kavita Talreja** reported as **AIR 2017 SC 2138**, relying on the ratio of an earlier decision in the case of **Ravi Kumar (supra)**, the Supreme Court has held that “reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of peers” amounting to cruelty. In the case titled **Santosh Sahay vs. Hanuman Sahay** reported as *2016 IX AD (Delhi) 1*, a Division Bench of this Court has held that false character assassination and allegations of such a nature made by a spouse amounts to mental cruelty and the wronged spouse is entitled to seek divorce on that ground.

29. To sum up, the allegations leveled by the appellant which she failed to substantiate even on the yardstick of preponderance of evidence, are of such a nature that would have lowered the image of the respondent in the

eyes of his superiors, subordinates and peers and this act would certainly constitute cruelty. It is an undisputed position that the parties have been living separately since 04.03.2006 and in all this duration, the appellant seems to have made no effort to join the company of the respondent. Rather, her act of 06.03.2006 of cleaning out the joint locker of the parties shows an *animus descendi*.

30. In view of the above discussion, we are of the opinion that the findings of the learned Trial Court are based on the evidence on record. The argument of learned counsel for the appellant that the learned Family Court had given more weightage to the evidence of the respondent is turned down as baseless. We find no reason to unsettle the impugned judgment which is accordingly upheld. As a result, the appeal is dismissed *in limine* with no order as to costs.

**DEEPA SHARMA  
(JUDGE)**

**HIMA KOHLI  
(JUDGE)**

**AUGUST 04, 2017/ss**