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

+ **MAT.APP.(F.C.) 83/2017 and CM APPL. 17830-32/2017**

RITA

..... Appellant

Through: Mr. Arvind Vashistha, Advocate with
appellant in person.

versus

JAI SOLANKI

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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05.07.2017

1. The appellant is aggrieved by the judgment dated 14.09.2016 passed by the learned Principal Judge, Family Court, North-West District, Rohini Court, Delhi, allowing a petition filed by her husband, the respondent seeking dissolution of their marriage on the ground of cruelty.
2. Briefly stated, the facts of the case are that the parties got married at Delhi as per the Hindu rites and ceremonies on 24.02.2012. There is no issue from the marriage. As per the averments made by the respondent in his petition, the appellant was welcomed in the family but her behaviour towards him and his family member was cruel; that she ill-treated and humiliated the respondent and his family members; that whenever he visited the house of his in-laws, he was humiliated and ill-treated by them;

that the appellant did not do any household chores; that she kept nagging the respondent and kept pressuring him to live independently and not in joint family, causing him mental tension and agony. The appellant had even threatened to commit suicide and implicate the family members of the respondent in a false dowry case.

3. In the third week of August, 2012, when the respondent went to Rajasthan for office work, the appellant took away all her jewellery and valuables and also his certificates and personal documents in his absence, and left the matrimonial home. In October, 2012, when the respondent was in Rajasthan, he received a telephonic call from the CAW Cell, Dwarka, Delhi informing him that a complaint had been filed by the appellant against him. The respondent joined the proceedings and with the intervention of the relatives and well-wishers, both the parties decided to shift to some other place, other than the matrimonial home where the respondent was residing with his parents. However, the appellant resided with the respondent at the alternate residential accommodation arranged by him at Najafgarh only for one day and again left.

4. On 25.10.2012, the appellant yet again filed a complaint against the respondent before the CAW Cell, wherein she alleged that Ms. Monika, her sister-in-law (Jethani) and Ms. Jyoti (Nanad) were involved in prostitution. The respondent averred in the pleadings that copies of the said complaint were distributed by the appellant in the locality and she alongwith her mother and brother had visited his workplace and insulted him before his superior officer. The respondent then filed a petition for seeking dissolution of his marriage with the appellant on the ground of cruelty.

5. The divorce petition was contested by the appellant. She filed the written statement wherein it was pleaded that despite the fact that an amount of Rs.66 lakhs was spent in the marriage and a huge amount was given in dowry, she was harassed, tortured and beaten by the respondent on one pretext or the other; that the respondent suffered from venereal disease, which he had communicated to her; that in the last month of her stay with the respondent at the matrimonial home, she was subjected to intense cruelty by him and his family members and her Chacha Sasur, namely, Randhir and Tau Sasur, namely, Balwant had attempted to outrage her modesty. It was averred that finally, on 02.11.2012, the respondent had assaulted the appellant and thrown her out of the matrimonial home.

6. After the pleadings were completed in the petition and issues were framed, the parties were called upon to lead the evidence. To substantiate his case, the respondent/husband had examined three witnesses, whereas the appellant had examined herself as the sole witness. In his affidavit by way of evidence, the respondent, who appeared as PW-1, reiterated the averments made by him in the divorce petition and specifically stated in para 23 thereof as follows:-

“23. That the respondent has again filed a false vague and wrong complaint against the deponent before the CAW cell, Rohini only to blackmail and pressurize him to knee down to settle the matter on her terms. She has alleged the allegation in her complaint that “MERI NAND JYOTI, MERA PATI JAI SOLANKI AND MONIKA MERE KO GALAT KAM KARWANE (PROSTITUTION) KE LIYE LE JANE KA DABAB DALTE HAI. MERI NAND JYOTI AUR JETHANI MONIKA GALT KAM KARTE HAI AUR MUJHE BHI KISHI KI GADDI MAI BAITHANE KI KAUSHIS KI”. Copies of this complaint has also distribute in the locality of deponent and due to allegation

the life of deponent has become hell. Copy of complaint filed by respondent in CAW Cell Rohini is Exhibited as Mark-A.”

7. The respondent's father had entered the witness box as PW-2 and his employer had appeared as PW-3. Both the said witnesses had supported his case. On her part, the appellant filed her affidavit by way of evidence, wherein she had reiterated the averments made by her in the written statement to the effect that she was threatened by her mother-in-law and sisters-in-law and that her Chacha Sasur and Tau Sasur, Shri Randhir and Shri Balwan had tried to rape her.

8. On examining the entire evidence, both ocular and documentary, the learned Principal Judge, Family Court had observed that serious allegations were levelled by the appellant against the brothers of her father-in-law as she had deposed that both of them had tried to rape her in the presence of her mother-in-law and sister-in-law. In her complaint dated 20.01.2014 (Ex.PW2/1) addressed to the learned MM, the appellant had made similar allegations and thereafter failed to pursue the said complaint and had made a statement to the said effect before the learned MM on 19.03.2014, withdrawing her allegations of receiving beatings and the attempt allegedly made to rape her. The appellant also sought pardon from the Court and stated that she would lodge a separate FIR in respect of the aforesaid allegations. It has been particularly observed in the impugned judgment that no such FIR was placed on record by the appellant levelling the aforesaid allegations against the respondent and his family members.

9. Given the aforesaid facts and circumstances, the documents brought on record and the testimony of PW-1, PW-2 and PW-3, which had remained

unassailed during their cross-examination conducted on behalf of the appellant, the learned Principal Judge, Family Court concluded that the conduct of the appellant was cruel towards the respondent and his family members as she had levelled false and scandalous allegations against them, which were not taken to a logical conclusion and instead, they were withdrawn midway. The above clearly indicated that the appellant was not serious about the said allegations and had made them in an irresponsible fashion, solely to defame the respondent and his family members.

10. In view of the above, the issue framed with regard to the entitlement of the respondent herein to the relief of a decree of divorce was decided in his favour and it was held in the impugned judgment that the appellant had treated her husband with cruelty. As a result, the marriage of the parties was dissolved and a decree of divorce was granted in favour of the respondent under Section 13(1)(i-a) of the HMA Act. Aggrieved by the aforesaid decision, the appellant has filed the present appeal.

11. The *leitmotif* of the arguments addressed by learned counsel for the appellant to assail the impugned judgment is that the learned Principal Judge, Family Court had grossly erred in taking into consideration the appellant's complaint before the CAW Cell, Dwarka, Delhi, as it has all along been her stand that the said complaint was never filed by her and it did not bear her signatures.

12. We may note that in her cross-examination, the appellant as RW-1, had categorically stated that she had filed the complaint alongwith her petition under Section 125 Cr.PC (Ex.RW-1/DA) and then gone on to state that she did not remember if the said complaint (Ex.RW-1/DB) is the same

complaint, which she had filed with her petition under Section 125 Cr.PC. In other words, the appellant did not deny having filed a complaint alongwith her petition under Section 125 Cr.PC but she had only stated that she did not recall if the said complaint was the same that was enclosed with the said petition. Not only did the said complaint refer to allegations of sexual assault on the appellant by her father-in-law's brothers, even the petition filed by her under Section 125 Cr.PC contained a specific averment to the effect that the respondent and his family members had tried to push her into the profession of prostitution.

13. Learned counsel for the appellant does not deny that the appellant did not produce any material evidence to prove that the complaint marked as Ex.RW-1/DB was not the same complaint that she had filed alongwith her petition under Section 125 Cr.PC and that in the complaint she had actually filed, she did not level any such allegations of attempt to rape. For learned counsel to assert that the complaint (Ex.RW-1/DB) does not form a part of the CAW record which fact has been discovered very recently, would not be of any assistance now as no efforts were made by the appellant to summon a witness from the CAW Cell to produce the said records during the course of the evidence.

14. In any event, even if we overlook the complaint in question, the appellant cannot be permitted to wriggle out of the averments made by her in her written statement, the relevant portion whereof has been referred to hereinabove. A similar allegation has been levelled by the appellant against the brothers of her father-in-law in the affidavit by way of evidence filed by

her as RW-1. The relevant extract of the allegations levelled by the appellant against the respondent and his family members in her written statement are reproduced hereinbelow for ready reference:-

“15. Moreover, in the last month of the stay of the respondent at her matrimonial home the respondent was subjected with immense cruelties by the petitioner and his family members as the respondent was suffering from illness but the uncle in laws i.e. Chacha Sasur namely Randhir and Tau Sasur namely Balwan of the respondent made a attempt to outrage the modesty of the respondent.”

In her affidavit by way of evidence, the appellant had stated as follows:-

“8 I say that on 02.11.2012 the deponent was again beaten up by her mother-in-law, sister-in-law, Sh. Randhir and Sh. Balwan tried to rape me. I say that because of the severe beatings the deponent got unconscious. Someone from the neighbourhood called the police at No.100 and thereafter the PCR van came, and admitted me in DDU Hospital where the deponent was treated upon by the doctors and MLC was also prepared. I say that because of undue pressure created by her father-in-law on the doctors, the doctors discharged the deponent on the same day after given medical treatment to the deponent. The MLC dated 02.11.2012 is Ext. PW1/10 and the summary about the treatment given to the deponent is Ext. PW1/11 (colly) (total 3 in No.) her statement before PS Palam Village dated 03.11.2012 is Ext. PW1/12”.

15. We may note that the expression ‘cruelty’ has not been defined under the Hindu Marriage Act. It however, has to be ascertained from the attending circumstances and the life which the parties have led before approaching the Court. Cruelty, no doubt is of two types, physical cruelty and mental cruelty. If the conduct of one spouse against his/her spouse is

such that the latter undergoes immense mental pain and suffering, making it impossible for him/her to continue living with the other spouse, then they cannot be expected to continue the marriage and if the wronged spouse is able to demonstrate that the conduct of the other spouse had caused him/her extreme mental pain, agony and suffering, then he/she is well entitled for divorce on the ground of cruelty.

16. 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)

17. In para 8 of the captioned judgment, the Supreme Court has added a word of caution that the courts must first ascertain if the allegations levelled by a spouse is as a result of a sudden outburst of anger. For constituting cruelty what has to be noticed is the nature of the persistent reproaches, accusations and taunts which would entitle the wronged party to seek divorce.

18. 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 an earlier decision in the case of Ravi Kumar vs. Julmidevi reported as **2010 (4) SCC 476**, 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” amounts to cruelty. In the case entitled 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.

19. Being mindful of the aforesaid proposition of law enunciated by the Supreme Court in several decisions, we now proceed to consider the submission made by learned counsel for the appellant having regard to the pleadings of the parties and the evidence brought on record. On going through the allegations levelled by the appellant against her husband and his family members in the written statement and the affidavit by way of evidence as also the petition filed by her under Section 125 Cr.PC, and keeping aside for a moment the allegations contained in her complaint, which she now denies that she had ever filed before the CAW Cell, though no evidence was led by her on that aspect, we are of the opinion that the findings recorded by the Family Court are valid and justified. Each of the allegations levelled by the appellant against the respondent and his family members to the effect that her in-laws had attempted to push her into prostitution and the brothers of her father-in-law had attempted to ravish her are of grave nature and attended with serious consequences that would have caused immense mental pain and agony to her husband, the respondent herein, who could not be expected to tolerate the same and continue the matrimonial relationship with his wife. The said allegations are also not of a nature that can be treated as those made as a result of a sudden spurt of anger that the appellant may have felt for her husband for the reason that the same have been consistently repeated by her at every stage of the litigation, starting from the complaint lodged by her with the CAW Cell, right upto the date when she had filed her affidavit by way of evidence in the divorce petition. All this can lead the court only to one conclusion which is that the appellant had kept on persisting in humiliating her husband and had left no stone unturned to make his life miserable.

20. In the given facts and circumstances, we are of the opinion that there is no perversity, illegality or infirmity in the impugned judgment that deserves interference in appeal. Accordingly, the impugned judgment is upheld and the present appeal is dismissed in *limine*, alongwith the pending applications.

HIMA KOHLI, J

DEEPA SHARMA, J

JULY 05, 2017

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