

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

% **Date of decision: 30th July, 2018.**

+ **MAT.APP. 15/2011**

DAULAT RAM GUPTA **.... Appellant**

Through: Ms. Pariksha & Ms. Swati, Advs.

Versus

USHA GUPTA **..... Respondent**

Through: Mr. Yudhvir Singh Chauhan, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This appeal under Section 28 of the Hindu Marriage Act, 1955 impugns the judgment [dated 13th October, 2010 in HMA No. R 176/2006 of the Court of Additional District Judge-01 (West), Delhi] of dismissal of a petition for dissolution of marriage by a decree of divorce under Section 13(1)(ia) and (ib) of the Act filed by the appellant / husband.

2. The appeal came up first before this Court on 4th March, 2011 when notice thereof was ordered to be issued. The counsel for the respondent / wife has been appearing. On the last date of hearing i.e. 16th May, 2018, parties were referred to Mediation Cell of this Court. Mediation has been unsuccessful. The counsels for the parties have been heard.

3. The counsel for the appellant / husband argues, that one of the grounds pleaded by the appellant / husband as an instance of cruelty meted out by the respondent / wife to the appellant / husband was the filing of complaints by the respondent / wife against the appellant / husband of the offence of criminal breach of trust under Section 406 of Indian Penal Code,

1860 (IPC) and of the offence under Section 498A of the IPC. It is argued, that on the basis of the said complaint, an FIR was registered against the appellant / husband as well as his family members and they were prosecuted; while the appellant / husband and his family members have been acquitted of the offence under Section 406 IPC, the family members of the appellant / husband were also discharged of offence under Section 498A of the IPC but the appellant / husband during the pendency of this appeal has been acquitted in the FIR insofar as under Section 498A of the IPC and no appeal, has been preferred by the respondent / wife against the said discharge or acquittal of the appellant / husband. Attention is drawn to para no.7 of the judgment dated 19th December, 2012 of the Court of Metropolitan Magistrate-02, Dwarka Courts, New Delhi as under:

“7. In the absence of even a single allegation of demand of dowry or any entrustment of istridhan or refusal to return the same (however the charge was framed u/s 498A IPC only against the accused) or documentary proof, the accused cannot be convicted for the alleged offence. In the absence of any cogent evidence against the accused, he is acquitted of the offence U/s 498A IPC.”

4. On enquiry as to how the action of false prosecution constitutes ‘cruelty’ within the meaning of Section 13(1)(ia), attention is invited to ***Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal*** (2012) 7 SCC 288, relying on ***Shobha Rani Vs. Madhukar Reddi*** 1988 (1) SCC 105, holding that if the wife lodges complaint against the husband and other relatives under Section 498A of the IPC and they are acquitted in the case and no appeal is filed by the wife against the said acquittal, it means that the allegations made were incorrect and untruthful and such act of the wife creates mental trauma in the mind of the husband as no one would like to

face a criminal proceeding of this nature on baseless and untruthful allegations and such act constitutes 'cruelty' within the meaning of Section 13(1)(ia) of the Hindu Marriage Act.

5. The counsel for the respondent / wife, per contra relies on ***Durga Bai Vs. Narayan Sinha*** 2017 SCC OnLine Chh 1246 (DB) wherein a Division Bench of the Chhattisgarh High Court, relying on ***Raj Talreja Vs. Kavita Talreja*** 2017 SCC OnLine SC 462, held that mere filing of complaints is no cruelty if there are justifiable reasons to file the complaints and merely because no action is taken on the complaint or after trial the accused is acquitted, may not be a ground to treat such accusations of the wife as 'cruelty' within the meaning of Section 13(1)(ia) of the Act; however, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of the spouse levelling false accusations against the other spouse would be an act of cruelty. In the facts of that case, it was held that since the acquittal in that case was on the ground of delay in lodging FIR, it could not be said that the other allegations in the complaint and the FIR were false and the same did not constitute cruelty.

6. The counsel for the respondent / wife states that in fact the respondent / wife did not make any allegations qua offences under Sections 406 and 498A of IPC in the complaint and it is the police which on its own converted the complaint into an FIR under Sections 406 and 498A of IPC.

7. I have however enquired from the counsel for the respondent / wife, whether not the respondent / wife participated in the prosecution and deposed therein.

8. The counsel for the respondent / wife states that though the respondent / wife appeared as a witness but in her deposition also did not make any allegations.

9. I have perused the judgment dated 19th November, 2012 of acquittal and the same, in para no.2 thereof, records as under:

“(ii) PW2 Usha Gupta (complainant) deposed before the court that she was married to Daulat Ram Gupta on 09.12.1986 and sufficient dowry and stridhan articles were given at the time of marriage. The list of articles is Ex.PW2/A which is placed on record. She has stated that she could not conceive and due to that reason she was regularly tortured physically and mentally and beaten up by the husband and in laws several times. She was even given Danda blow on her forehead and her hand was also broken by the husband but she did not tell anybody and every time compromise took place with the intervention of the elder persons of the society but there was no change in the behaviour of the accused. She has further stated that her husband even stopped providing food to her and whenever she asked for maintenance and expenditure she was beaten up. Her husband was earning Rs.50,000/- to Rs.60,000/- per month from cloth shop and was having shares and property in his name. One house which was RZ-214 was in the name of complainant / PW2 and the same was purchased by the money given to her by her father also became a point of dispute as all the accused persons used to beat her stating that she should transfer that house in the name of the husband Daulat Ram Gupta. Her jewellery was also taken away by her husband. Her husband, jeth, jethani, devar, devarani took the 50 to 60 tollas of gold and did not return her the same even after demand. On 02.09.2004 she was abused by her husband and she made call at 100 number and police complaint was made. Exactly after two days she was given beatings and when she raised alarm the neighbours also came. The sister in law and Bhanja of PW2 were called and the matter was reported to the police. A quarrel took place and the husband of PW2 gave teeth bite on the arm of her Bhanja. All three were taken to DDU hospital where their

medical examination was done. Again a compromise was brought about by police and the husband promised that he would start paying expenses to PW2 but after few days husband disappeared from the house and when she went to lodge the missing complaint, he was found sitting in PS Palam with other family members. Again a compromise was brought about between parties. She was finally thrown out from matrimonial house in September 2004 when she lodged the present complaint.

In her cross examination by Id. Defence counsel it is stated by witness that immediately after the marriage quarrel between her and her husband had started. She has further stated that at the time of marriage her husband was living alone in Delhi and she had shifted to Delhi with accused after the marriage. The quarrel started when food cooked by her was not liked by husband and he used to fight on petty issues. She has also admitted that she did not make any complaint till 18 years of marriage. She did not ever write any letter to her parents or inform them regarding the harassment. She did not even complaint to anyone or police when her hand was broken by the accused but when the beatings became too bad that there were visible marks on the person of complainant, the neighbours called the brother of the complainant from Rajasthan. One neighbour namely Urmila had called brother of the complainant when complainant gave her number to Urmila. The complainant has further admitted that her father had given approximately 25/30 gold tolas at the time of marriage. She has further admitted that her father had given Rs.90,000/- at the time of marriage but she did not know to whom the same had been given. She denied that no gold was given at the time of marriage. In her cross examination witness failed to produce any receipt. She has not filed any divorce case against her husband in 18 years of her marriage but the quashing petition was pending in the Hon'ble High Court. She has further admitted that four coins and one silver glass were recovered from her possession by the police. She has denied that the house in which she was residing was purchased by her husband. She has further denied that the dispute on 02.09.2004 had taken place due to the plaster in the shop of Rakesh Gupta (brother of the complainant). She has further denied that she and her sister ever threatened

the accused. She further denied that she had any interest in the property of the husband.

In her cross examination it is stated by complainant that a STD shop in the name of Usha Communication being run by her brother and the daily expenses were being borne by her brother. She has also admitted that out of 174 sq yards property, 30 sq yards is in the name of her husband. She has also admitted that lands on which shops had been erected were purchased few days after her marriage. She has denied that main dispute between her and her husband was property and she wanted to extort money from her husband.

(iii) PW3 Bimla Devi (sister of the complainant) deposed before the court that the marriage of her sister Usha Gupta was solemnized with accused about 22 years ago and there was no cordial relationship between them. It is further stated by witness that ***the main cause of dispute between them was that the accused Daulat Ram Gupta did not give any money or maintenance to Usha Gupta for daily routine matrimonial expenses.*** There were several quarrels and settlements due to intervention of the elder persons of the society. Five years prior to deposition there was a fight between them and when she reached along with her son she found that Daulat Ram Gupta was beaten her sister and when she tried to intervene her son was bitten by Daulat Ram Gupta on his hand. Police was called and they took Sanjay, Usha and Daulat Ram Gupta to the DDU Hospital and final compromise was brought about between them and it was agreed that Rs.3,000/- per month would be given to complainant by Daulat Ram Gupta. She stated that again accused Daulat Ram Gupta ill treated and subjected her sister to cruelty.

In her cross examination by Id. Defence counsel it is stated by witness that before her marriage she was residing in rented accommodation with her father. She stated that Usha Gupta came to Delhi prior to her. Their father was a businessman and Panch. She admitted that 17/18 tolas gold were given to her at the time of marriage. She denied that her son was doing business with Usha Gupta in the name of Usha Communication. She

admitted that Panchayat was held between parties but she denied that ancestral jewellery of Daulat Ram Gupta was in her custody. She further denied that the main dispute between the parties was property. She also denied that she was cause of dispute between husband and wife. She denied that she and her family members had ever beaten up the accused.”

10. During the hearing, it has also transpired that the appellant / husband had also lodged the complaint with the police against the respondent / wife of offence under Section 379 of IPC and in which a FIR was registered and the respondent / wife acquitted. Similarly, it has also come in evidence that the parties are involved in several other civil suits with respect to immovable properties. It is informed that some of the properties are in the name of the respondent / wife, which the appellant / husband is claiming to be his and other properties are in the name of the appellant / husband and in which the respondent / wife is claiming a right.

11. In fact, the counsel for the respondent / wife has during the hearing also stated that the respondent / wife is agreeable to dissolution of marriage by a decree of divorce but wants that all the other litigation aforesaid are also settled and to which the appellant / husband is not agreeing.

12. The counsel for the appellant / husband states that the claims of the respondent / wife with respect to properties are something which the appellant / husband cannot agree upon.

13. I am of the opinion that in the aforesaid state of affairs, the relationship between the parties is found to have completely broken down.

14. A reading of the passages of the judgment in the FIR lodged against the appellant/husband at the instance of the respondent/wife shows that the respondent/wife was unable to substantiate the charges which on her

complaint were levied against the appellant/husband. Axiomatically, the complaint on which the appellant/husband was prosecuted, was false. The same constitutes cruelty, as per judgments supra. The acquittal of the appellant/husband was not on technical grounds.

15. Though the counsel for the respondent / wife states that the same is the position qua the prosecution by the appellant / husband of the respondent / wife, but once the respondent / wife also has alleged cruelty by the appellant / husband, it is felt that the parties should get rid of at least one litigation i.e. with respect to dissolution of their marriage. The same will not affect the other battles with respect to the properties in which the parties are engaged and the parties will be free to pursue those.

16. No other argument has been urged.

17. In my opinion, the conduct of the respondent/wife, of using her consent to dissolution of marriage by a decree of divorce, to gain an advantage in other litigation, also constitutes cruelty. It shows that the respondent/wife also is not interested in matrimonial bond but is still wanting to keep the appellant/husband bound therewith, till he agrees to her other demands.

18. In the aforesaid state of affairs, the appeal is allowed.

19. A decree is passed, of dissolution of marriage of the parties under Section 13(1)(ia) of the Hindu Marriage Act.

20. The counsel for the appellant / husband assures that the appellant / husband will not prefer any appeal with respect to the acquittal of the

respondent / wife and her family members in the prosecution at his instance.

No costs.

Decree sheet be prepared.

Trial court record be returned forthwith.

Dasti.

JULY 30, 2018
'gsr'

RAJIV SAHAI ENDLAW, J

