

25

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 09.05.2018

**MAT.APP.(F.C.) 95/2018, CM APPL.19097/2018, 19098/2018,
19099/2018 & 19100/2018**

A V Appellant

versus

P Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Amit Verma, Advocate

For the Respondent : Mr. P. Dhawan and Mr. Naveen Lohia, Advocates

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present appeal under Section 19 of the Family Courts Act, 1984 arises out of the judgment and decree dated 10.11.2017, passed by the learned Family Court, Saket Courts, New Delhi in HMA No.269/2012,

whereby the divorce petition instituted on behalf of the respondent (hereinafter referred to as the 'wife') against the appellant (hereinafter referred to as the 'husband'), on the grounds of cruelty, was allowed and the marriage between the parties was dissolved under Section 13(1)(ia) of the Hindu Marriage Act, 1955 with immediate effect.

2. The solitary submission made on behalf of the husband is that the wife has been unable to establish her case that the husband had treated her with cruelty, as is evident from the circumstance that the husband has been discharged by the concerned Metropolitan Magistrate in FIR No.161/2012 on 28.03.2016 for offences under Sections 498A/406/354/34 of the Indian Penal Code, 1860, instituted on behalf of the wife.

3. Although learned counsel appearing on behalf of the wife states that the said order dated 28.03.2016 has been carried in appeal by the State, which is pending adjudication, in our view the said circumstance may not be relevant, inasmuch as, in the present proceeding the impugned judgment and decree has been rendered on a finding that the husband treated the wife with extreme cruelty.

4. A perusal of the impugned judgment and order clearly and unequivocally reflects that, the wife from her pleadings and evidence, which

have gone un rebutted, been able to establish that the husband under the influence of liquor, sexually harassed and abused her and further that the latter encouraged his brother and brother-in-law to sexually harass and abuse the wife. The specific incidents pleaded and deposed by the wife have remained unchallenged. Furthermore, the wife's testimony that she was forced to consume liquor and that husband performed sexual intercourse with one Ms. Neha in her presence has also remained un rebutted. It is in this view of the matter, that the learned Family Court while considering the issue whether the wife was treated with cruelty by the husband observed as follows:-

“12.1 The testimonies, on record, which are complete and can be read are that of petitioner (PW-1), ASI Satya Vir (PW-2) and HC Sandeep (PW-3). As noticed above, PW-2 and PW-3 have only proved FIRs u/sec.-498-A/406 IPC r/w/sec.-34 IPC lodged by the petitioner against the respondent and his family and the FIR by estranged wife of the respondent's brother Anurag against Anurag and other family members. PW-1 in her affidavit Ex.PW-1/1 has reproduced the contents of her petition, alleging demand of dowry to the extent of Rs.25 Lakhs for purchase of flat. She has also deposed about fraud committed upon her regarding concealment of material facts of marriage, at the time of solemnization of marriage. She has next deposed about the routine consumption of liquor by the respondent with his brother Anurag and brother-in-law Chander Prakash in the matrimonial home. **It has also been deposed by her that under the influence of liquor, respondent's brother and brother-in-law attempted to rape the petitioner and also molested her, which was to the knowledge of the respondent. Instead of discouraging**

or challenging his brother and brother-in-law, he encouraged them to carry on with their nefarious activities and on petitioner's refusal for the same, he would beat her. Petitioner's complaint to her mother-in-law and sister-in-law about these incidents brought no fruitful results. It is also her case that respondent performed sexual intercourse with one Neha in her presence.

12.2 Petitioner's affidavit also contains averments about she having been cheated at the time of marriage by concealment of material facts. She has also proved her complaints dated 06.06.2011 and 27.03.2012 to the Police about the cruelties committed by the respondent and his family members. She has also proved DD No.641/B dated 21.06.2011, as Ex.PW-1/F. During the cross-examination which was conducted on 2 dates of hearings, the main complaints on the major incidents of cruelty, pleaded and deposed by the petitioner were not touched by respondent's counsel. The petitioner's case regarding the respondent, his brother, his brother-in-law consuming liquor and sexually harassing and abusing the petitioner have gone un rebutted. She was confronted with her statement Ex.PW-1/D-1 & Ex.PW-1/D-2, whereby, she had closed her complaint before CAW Cell, stating that her relations with respondent had improved and she had reconciled. On the remaining aspects, the cross-examination was not conducted, despite opportunities.

13. From the pleadings and evidence, as noticed above, petitioner's case that respondent, his brother and brother-in-law, under influence of liquor sexually harassed and abused her have remained un-assailed and unchallenged. Petitioner's further case that respondent encouraged his brother and his brother-in-law to sexually harass and abuse the petitioner have also remained unchallenged. The specific incidents pleaded and deposed by the petitioner, when respondent's brother Anurag tried to impose himself upon her and similarly, Chander Prakash respondent's brother-in-law tried to force himself upon the petitioner have remained unchallenged. Petitioner's

case that respondent performed sexual intercourse with one Neha in her presence; has also remained unchallenged. In such circumstances, the court is left with a clear case, where, the petitioner was subjected to extreme cruelty at the hand of her husband, who instead of saving her honour and coming to her rescue, pushed her into situations, which exposed her to a possible sexual assault. This Court is, therefore, of the opinion that there can not be a worst scenario for a wife, than the present. Though, the allegations seemed to be too bizarre but since the same have remained unassailed, the same shall have to be accepted to be true and established. The other allegations regarding demand of dowry or concealment of material facts fade into insignificance, when such glaring incidents of cruelty have gone unchallenged. The court has, therefore, no hesitation in holding that the conduct of respondent was of extreme cruelty upon the petitioner. Thus, issue no.-1 is established in favour of the petitioner and against the respondent.

(2) Relief

14. The petitioner has, thus, proved all the essential ingredients of sec.-13(1)(i-a) of the HMA successfully and is, therefore, entitled to the relief prayed for, by her. The petition is accordingly, allowed. The marriage between the petitioner/wife and respondent/husband AV is, hereby, dissolved u/sec.-13(1)(i-a) of the HMA, with immediate effect.”

नित्यमेव जयते (Emphasis Supplied)

5. Nothing to the contrary has been brought to our attention from the material on record by the learned counsel appearing on behalf of the husband. No other issue apart from the one first mentioned has been raised in the present appeal before us.

6. In view of the foregoing discussion, we are of the considered view that

the un rebutted and unchallenged testimony of the wife is credible and leads to but one inescapable conclusion that by his admitted conduct as established by her unchallenged and un rebutted testimony, the husband inflicted extreme cruelty and trauma upon her. Resultantly, we see no reason to interfere with the finding arrived at by the learned Family Court, in the present appeal.

7. The appeal is accordingly dismissed. The pending applications also stand disposed of.

SIDDHARTH MRIDUL
(JUDGE)

DEEPA SHARMA
(JUDGE)

MAY 09, 2018

dn