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

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Decided on: 04.05.2018

+ MAT.APP.(F.C.) 74/2018, CM APPL. 13974/2018 (Stay) and CM
APPL. 13975/2018 (exemption)

R @ R

..... Appellant

Through: Mr K. Sunil, Adv.

versus

M.S.C.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

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1. The appellant/wife has assailed the order dated 05.03.2018 passed by the Principal Judge, Family Court Central District, Tis Hazari, Delhi whereby the divorce petition of the respondent/husband on the ground of cruelty was allowed and the marriage between the appellant and the respondent was dissolved. In the petition for divorce, the respondent/husband had also sought the dissolution of marriage on the ground of desertion which was rejected.

2. The admitted facts of the case are that the marriage between them was solemnized on 22.11.1982 as per Hindu rites and ceremonies. They were blessed with four children and all have attained the age of majority.

3. The appellant failed to file any written statement to the divorce petition filed by the respondent/husband within the period granted to her from time to time. Her defence was struck off vide order dated 03.12.2015 passed by the learned Single Judge of this Court in CM No.910/2015. On a petition under Article 227 of the Constitution of India, filed by the respondent/husband as he was apparently aggrieved by the act of the appellant/wife of not filing her written statement. Against the said order, the appellant filed a Special Leave Petition (Civil) before the Hon'ble Supreme Court of India. It was also dismissed vide order dated 16.08.2016 as a result there is no challenge to the averments made by the respondent/husband in his divorce petition.

4. In the said petition, the respondent/husband had disclosed the acts of cruelty committed by his wife/appellant. Following were his allegations:-

(i) that she was in the habit of quarrelling on trivial matters and without any rhyme and reasons and also levelled the allegations that the appellant

used to demand money for rendering financial help to her parents and other family members;

(ii) that he had also contributed Rs.6000/- in the marriage of her younger sister;

(iii) that in 1990, he developed asthma, but she did not take care of him and even neglected him during his illness. On the advice of the doctor, he along with his wife and children, shifted to Panchkula, Haryana in the year 1997 and stayed in a rented accommodation, but the behaviour of the wife became more harsh, rude and indifferent;

(iv) that he had purchased a property bearing No. J-77, Saket, New Delhi measuring about 125 square yards (hereinafter referred to as 'the said property') from DDA and the same was rented out when they had moved to Panchkula, Haryana. His wife started pressurizing him to transfer the said property in her name and even refused to part with the original lease deed and the other documents which he had entrusted with her with the sole purpose to grab the said property. She along with her brothers, namely, Sunil Sethi and Raj Kumar Sethi (now deceased) along with Naresh Kumar Gupta tried to coerce him to transfer the said property in the name of his wife and when he resisted, he was beaten up and forced out of the house and

consequently, he reported the matter to the police. In these circumstances, he returned to Delhi and started living at the *Barsati* floor of the said property and then shifted to ground floor on a portion which was vacated by the tenant. She also wrote a letter to DDA, wherein she alleged that her husband had become “*a person of unsound mind*” and called the DDA not to issue any duplicate paper in respect of the said property to him. When he learnt about the said letter, he issued a public notice in the newspaper ‘The Hindustan Times’ in its edition dated 29.09.1999 declaring to the general public that the property belonged to him and none should deal with the said property;

(v) that in April-May, 2000, the wife along with children returned to Delhi and thereafter started residing at her parental home at Geeta Colony, Delhi. On the requests of her father and without condoning her previous acts of cruelty and torture, they started living together with children in the said property at Saket. This, however, did not bring peace to his life and subsequently, his wife filed a petition bearing HMA No.395A/2000 (old No.656/1999) under Section 10 of the Act seeking judicial separation which was dismissed in default on her non-appearance on 21.01.2003;

(vi) that she did not allow him to reside with her at the ground portion of his house and forced him to live on the *Barsati* floor in a tin shed construction without facility of latrine and bathroom;

(vii) that after 18 years of marriage, she instituted a false complaint against him with CAW Cell, Nanakpura as a result on 10.08.2000, on which FIR No.767/2000 under Section 498A/406 IPC, PS Malviya Nagar, New Delhi was registered on 01.09.2000 and he was taken into custody on 13.09.2000 and was produced before learned MM, Patiala House Courts on 14.09.2000 and was released on interim bail for amicable settlement with the complainant, i.e., his wife and as no settlement could be arrived at, he was sent to judicial custody on 28.09.2000 and had to remain into custody for two days as he was released on bail on 30.09.2000;

(viii) that she also filed a frivolous suit bearing CS(OS) No.2269/2000 dated 12.09.2000 seeking permanent injunction against her forcible dispossession from the said property and obtained an interim order dated 18.12.2000 and did not allow him to have an access to the said house and to live in his own house. He, thereafter, under this situation, filed Civil Suit bearing No.37/2002/2000 seeking possession from his tenant, namely, Praveen Goel on second floor of the said property, but his wife colluded

with the tenant to thwart his attempts to have an access in the said property. He was beaten up at her behest and was medically treated at AIIMS and thereafter, a case under Section 107/111 Cr.P.C. was also registered. Ultimately, the tenant vacated the premises on 09.07.2002. Despite that, the wife did not allow him the peaceful use and occupation of the second floor of the said premises. On 11.07.2002, she along with her children, brothers and other associates attacked him with a cricket bat and caused serious injuries and the matter was reported to the police and he was again taken to AIIMS for medical treatment. Since police did not take cognizance of the offence, he filed a complaint with ACMM, Patiala House Courts, Delhi, wherein his wife and others were summoned for facing trial under Section 325/356/506(II) IPC vide order dated 13.07.2004;

(ix) that she was also in the habit of dialing 100 number and calling PCR to harass him, which resulted in a series of Kalandra proceedings under Section 107/111 Cr.P.C. and she had made it very difficult for him to reside in his own house;

(x) that she against his wishes and contrary to the directions of the Court inducted Praveen Goel as tenant on the second floor and one Vijay Singh as a tenant on the ground floor and started collecting rent from them. On

28.01.2004 and later on 05.02.2004 before the Court of Shri R.S. Arya, the then ADJ, she delivered the possession of the ground floor to him and shifted to *Barsati* floor and gave undertaking in the Court to get the remaining ground floor vacated from Vijay Singh by end of March or latest by the end of April, 2004. Despite that, she unlawfully inducted another tenant Ms Smita in a rear room on the ground floor. The Court took serious note of the said conduct of the wife. Pursuant to the order dated 27.07.2006 of this Court, he was able to get the ground portion of the said house vacated on 03.08.2006;

(xi) that she had filed numerous false and frivolous cases and forced him to face various Court proceedings depriving him to enjoy his property. She also filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short PWDV Act) which was a false case and ultimately her complaint was dismissed vide order dated 20.01.2010; and

(xii) that she had caused tremendous mental cruelty to him and had never allowed him to lead a peaceful life.

5. Since there was no written statement filed by the appellant/wife, these allegations of the husband have gone uncontroverted. The husband

examined himself in support of his case. Despite the fact that she has not put up any defence, the Court has given an opportunity to the appellant/wife to cross-examine the husband, which she has however, declined. Before the learned Trial Court, there was the uncontroverted testimony of the respondent/husband. On the basis of this uncontroverted testimony, the learned Trial Court reached to the conclusion that the respondent/husband has been able to prove the factum of mental cruelty and thereby dissolved the marriage, rejecting the another ground of dissolution of marriage, i.e., desertion.

6. The said order has been assailed by the appellant on the grounds that the findings of the Family Court Judge in the impugned judgment are based on conjectures and surmises; that the findings are not based on correct facts and correct proposition of law; that the impugned judgment is liable to be quashed since the written synopsis filed by the appellant/petitioner was not considered; that no cruelty was committed by the appellant/wife on the respondent and no decree could have been granted in view of the findings of this Court in Mat.App.(FC) 161/2017 titled as '**D v. P@R**', decided on 15.12.2017.

7. It is contended that the learned Family Court has taken the view on his own and there were no averments of cruelty pleaded by the respondent/husband. It is further contended and argued that the registration of FIR under Section 498A, 406 IPC cannot be termed as 'cruelty' and, therefore, the findings are contrary to the pleadings. It is submitted that there was no evidence before the learned Family Court Judge that the allegations in the proceedings under Section 498A and 406 IPC were false or that the matter was under said provisions were dropped and, therefore, the findings that the said act had caused cruelty is a finding which needs to be reversed. It is further contended that this was the fourth petition for divorce which had been filed by the respondent/husband and so on the principles of *res judicata*, the petition ought to have been dismissed in terms of Order VII Rule 11 of Civil Procedure Code (CPC) and under Sections 11 and 12 of CPC. On these contentions, it is prayed that the impugned order be set aside.

8. We have heard the arguments of learned counsel for the appellant and perused the relevant records.

9. The first argument of learned counsel for the appellant/wife was that the divorce petition needs to be dismissed by the Courts under Order VII Rule 11 CPC since it was barred by the principle of *res judicata* as it was the

fourth divorce petition which he had filed. The same arguments have been raised by the appellant/wife before the learned Family Court Judge who has given findings as under:

“4. In fact, this petition is the fourth one for seeking divorce filed by the petitioner husband. The first petition for divorce bearing HMA No. 33/2000 was filed by the petitioner husband on 11.09.2000 u/s 13(1)(ia) of the Act which was permitted to be withdrawn with liberty to file a fresh petition on the same cause of action by the then Ld. ADJ, THC, Delhi vide order dated 10.04.2002. Thereafter, the petitioner filed another petition seeking a “decree of nullity” bearing HMA No.903/2001 u/s 12(1)(b) of the Act which was dismissed as withdrawn vide order dated 10.04.2002. The petitioner then filed third petition bearing HMA No.737/2003 new No.132/2006 u/s 13(1)(ia) and (ib) of the Act, which was dismissed by then Ld. ADJ, THC vide order dated 14.05.2007, primarily on the ground that the petitioner husband had failed to disclose the previous petitions filed by him as per the Delhi High Court Rules.”

10. Learned counsel has not been able to explain if the order dated 16.08.2016 passed by the learned Family Court Judge wherein the application of the appellant/wife under Order VII Rule 11 of CPC on the ground that the petition was barred by principle of *res judicata* was dismissed, was challenged before any authority. If the order rejecting the application of the appellant/wife under Order VII Rule 11 of CPC was not set aside by any superior Court or if it has not been challenged by the appellant before any superior Court, then this order has attained finality that

the petition was maintainable and the said issue has not been rightly revisited by the learned Family Court while disposing of the divorce petition by the impugned judgment. This argument, therefore, is not open to the appellant.

11. The appellant has relied on the findings of this Court decided on 15.12.2017 in Mat.App.(FC) 161/2017 tiled as '**D vs. P @ R**' and alleged that the grounds of cruelty has not been made out by the respondent. The Court has observed in the said case as under:-

“14. The settled proposition of law is that the normal behaviour and conduct of a spouse is not sufficient to constitute cruelty. It must be something more than that. The behavior and conduct of the spouse is guided by their social status, educational qualifications, physical and mental condition and the cultural and social background. The behavior of a spouse might cause anguish, disappointment, frustration or agitation to the wronged spouse, but that by itself, is not sufficient. The party who approaches the court is expected to furnish the particular facts which according to him/her are of such a nature that would have caused mental cruelty of such an intensity that it is impossible for him/her to continue to live with the other spouse. It is legal cruelty which is required to be proved in order to succeed. The behavior and conduct of response should be so acute and of such a grave nature and magnitude that would make it difficult for the wronged spouse to continue in the relationship. The court should be able to deduce therefrom that it is not in his/her welfare to continue with such a relationship. The wronged spouse needs to prove all these facts which creates such a apprehension in his/her mind. An inference must be drawn by the court from the attending

facts and circumstances which need to be pleaded elaborately and specifically in the petition.”

12. As per the principle enunciated by this Court in the judgment relied upon by the appellant, it is the grave and weighty conduct which makes it impossible for the spouse to live with the delinquent spouse which is needed to be considered by the Court on the basis of facts which are proved on record. It is also apparent that under the Family Courts Act, the principle of proof of fact is different than what is generally followed.

13. The Supreme Court in the case of ***Deb Narayan Halder vs. Anushree Halder*** reported as (2003) 11 SCC 303 has held 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 reveals 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.**”*

14. 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

parties are not required to prove their cases beyond a reasonable doubt. Where the evidence on record points out to the existence of a particular fact, then the said fact can be accepted as having been proved. The expression ‘cruelty’ has not been defined anywhere under the Hindu Marriage Act, but it has assumed its meaning on the basis of the numerous pronouncements of the Courts.

15. In ***Samar Ghosh vs. Jaya Ghosh*** reported as (2007) 4 SCC 511, the Hon’ble Supreme Court has clearly held that 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. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The Apex Court in the said judgment has held 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 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.

16. The learned Family Court Judge has on the basis of evidence produced by the respondent/husband reached to the conclusion that he has been able to prove the following facts:-

- (i) that the wife wrote a letter Ex.PW-1/6 to DDA suggesting that her husband had become “a person of unsound mind” and further making request not to issue any duplicate papers to him;
- (ii) that the respondent/husband is the owner of the property No.J-77, Saket by virtue of the Conveyance Deed Ex.PW-1/1 dated 18.04.1977 executed in his favour by DDA;
- (iii) that she had let out the ground floor of the second portion of the said property without his consent and started taking rental income;
- (iv) that the proceedings under Section 107/111 Cr.P.C. were initiated by the wife;
- (v) that she filed a complaint with the CAW Cell, Nanakpura, Delhi upon which FIR No.767/2000 under Section 498A/406 IPC was registered and he remained in judicial custody for almost three days. He finally was discharged by the Court of Ms Navita Kumar, learned MM, New Delhi vide order dated 10.04.2007;

(vi) that she had also filed an application under Section 12 of the PWDV Act and had failed to lead any evidence in the matter and the same was also dismissed by the Court of Ms Veena Rani, learned MM, Patiala House Courts, South, New Delhi vide judgment dated 20.01.2010.

17. After recording these proved facts, the learned Family Court Judge held as under:-

“21. At the cost of sounding repetitive, although the respondent wife had every legal right in the book to seek protection order including residence order for herself, the fact that criminal complaint was instituted after 18 years of marriage u/s 498A/406 IPC and under the PWDV Act, which lacked any substance, and it clearly smacks a kind of vendetta unleashed by her upon the petitioner husband in order to not only harass and teach a lesson to him but also to defame him in the society. A bare perusal of the contents of her complaint and the order of discharge dated 10.04.2007 would demonstrate that the respondent wife chose to level false allegations of cruelty by the husband for and on account of dowry after 18 years of marriage.

25. In view of the said aspect of the law on subject of ‘mental cruelty’, the sum result of the foregoing discussion is that though the petitioner husband was failing in his moral and legal duty to maintain the respondent wife and their children, the respondent wife had instead of seeking appropriate legal remedies to claim maintenance for herself and her children from the petitioner husband, did not choose to do so, and instead involved the petitioner husband in a frivolous criminal proceedings, that resulted in the petitioner husband facing the ignominy of remaining in jail for almost three days. The act of filing a criminal complaint by the respondent wife based on reckless and concocted

allegations after 18 years of marriage was nothing but an abuse of the process of law so as to harass and torment the petitioner husband.”

18. Making such observations, the learned Family Court Judge dissolved the marriage of the parties under Section 13(1)(ia) of the Hindu Marriage Act, 1955 on the ground of cruelty. Learned counsel for the appellant has failed to point out that these findings of fact on which the learned Family Court Judge has rested its conclusion are incorrect. Even in appeal, the appellant has not stated that in FIR No.767/2000, the appellant was not discharged or that her complaint under Section 12 of PWDV Act was not dismissed. It only states that there were no material facts before the learned Family Court Judge to reach to such conclusion.

19. The respondent in his petition for divorce, which remains uncontroverted and is duly supported by his evidence, which has not been controverted by the appellant, despite the fact that she was given an opportunity for the purpose, has clearly stated that he suffered loss of reputation and standing in the society due to the false complaints filed by the appellant.

20. In the case of ***G.V.N. Kameswara Rao vs. G. Jabilli*** reported as (2002) 2 SCC 296, the Supreme Court has held that false police complaints

filed by one of the spouses against the other amounts to mental cruelty as it leads to a loss of reputation and standing in the society.

21. The Supreme Court in a recent judgment in ***Raj Talreja vs. Kavita Talreja*** reported as AIR 2017 SC 2138, has held as under:-

“10. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made 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 his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. 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 the Hindu Marriage Act 1955 (for short '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 a spouse levelling false accusations against the other spouse would be an act of cruelty. In the present case, all the allegations were found to be false. Later, she filed another complaint alleging that her husband along with some other persons had trespassed into her house and assaulted her. The police found, on investigation, that not only was the complaint false but also the injuries were self inflicted by the wife. Thereafter, proceedings were launched against the wife Under Section 182 of Indian Penal Code.

22. The proved facts on record clearly show that the appellant/wife had filed a case of demand of dowry and cruelty under Section 498A IPC after about 18 years of marriage. The uncontradicted facts proved on record

clearly show that the appellant had subjected the respondent to cruelty. Learned counsel for the appellant has failed to point out any illegality, infirmity in the impugned judgment. In view of the above discussion, we find no reason to interfere with the findings of the learned Family Court Judge which is accordingly upheld. As a result, the appeal has no merit and the same is dismissed *in limini* along with the pending applications. No orders as to costs.

**DEEPA SHARMA
(JUDGE)**

**SIDDHARTH MRIDUL
(JUDGE)**

MAY 04, 2018
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