

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

Reserved on: 30.04.2019

Pronounced on: 8.07.2019

+ **MAT.APP(F.C.) 130/2016 & CM APPL. 31965/2016**

V C

..... Appellant

Through: Ms. Sangeeta Sondhi, Advocate

versus

A C

..... Respondent

Through: Mr. Vikas Tiwari, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

J U D G M E N T

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JYOTI SINGH, J.

1. The present appeal has been filed by the appellant-wife seeking to set aside the judgment and decree dated 18.07.2016 passed by the learned Family Court, whereby the divorce petition filed by the husband, who is the respondent herein, has been allowed and the marriage between the parties has been dissolved on grounds of cruelty under Section 13(1)(ia) of the Hindu Marriage Act (hereinafter referred to as 'HMA').

2. The necessary facts are that the respondent is a senior officer in the Indian Air Force and got married to the appellant herein on 29.01.2006 according to Hindu rites and ceremonies at New Delhi. A daughter was born out of this wedlock on 19.11.2008. The respondent

had approached the Family Court by filing a petition seeking divorce on grounds of cruelty under Section 13(1)(ia) of the HMA.

3. The respondent had pleaded that the appellant herein was reluctant towards her household duties and careless in her dressing sense which was not expected from the wife of an Air Force Officer. He pleaded that the appellant was very arrogant, stubborn and a self-centered woman, who would get highly irritated on minor issues. According to him, she would abuse the respondent and his parents and would even get physically violent and had in fact hit him on a number of occasions even on account of minor disagreements. He pleaded that the appellant would do horrendous acts so as to cause embarrassment to him amongst his colleagues and staff members. The appellant would throw utensils and hurt herself by breaking glass panes of the doors and windows. It was pleaded that even the parents of the appellant did not intervene, despite requests to resolve the issues. The appellant even threatened the respondent to falsely implicate him and his parents in dowry cases in case he did not succumb to her illegitimate demands.

4. It was alleged by the respondent that the appellant would often fight with him till late hours in the night and not allow him to have proper sleep which effected the discharge of his tough and onerous duties, as he was a fighter Pilot with IAF. As per the respondent, the appellant even threatened to commit suicide if he did not pay heed to her demands. In fact on several occasions, the appellant would lock herself in a room or would leave the house in the late evenings, without informing him. The respondent claimed that on one occasion,

he was shocked when he discovered an undated “suicide note” written by the appellant and the contents of which blamed the respondent for the miseries in her life. This according to the respondent had immensely disturbed him and adversely effected the performance of his duties thereafter. The respondent also alleged that the appellant had even concealed from him that she had undergone a psychiatric treatment prior to the marriage and even after this revelation, the line of treatment was not disclosed.

5. The respondent further pleaded that all his efforts to normalize the relationship, more particularly, after the appellant conceived in February 2008, remained futile. In May 2008, the respondent left the appellant at her parental house as desired by her and thereafter, she refused to return to the matrimonial home when he and his parents went to bring her back. He pleaded that even when the child was born on 19.11.2008, he was not informed of the same. He thus prayed that the marriage be dissolved between the parties.

6. The appellant filed her written statement and denied all the allegations levelled against her. According to her pleadings, it was the respondent’s family, who was never happy with this alliance and they did not even celebrate any function or perform any customary ceremony, during the first year of the marriage. She never received any companionship, social or financial security and was ill-treated by the respondent and his parents.

7. According to the appellant, the respondent time and again threatened to divorce her and even asked her sisters to persuade her to agree for the divorce. The appellant claimed that even during her

pregnancy, she was ill-treated and after she left for her parents' home, he never contacted her or enquired about her well-being. After the birth of the child, the respondent never visited her and all her efforts to resolve the matter, by visiting the respondent at Hyderabad, failed.

8. The respondent filed his replication where he denied the averments of the written statement and reiterated the contents of the petition.

9. Based on the pleadings of the parties, following issues were framed by the Family Court on 03.08.2011:

*“(1) Whether the petitioner was treated with cruelty by the respondent as referred to in the petition?
(OPP)*

(2) Relief.”

10. The respondent examined himself as PW-1 and the appellant stepped into the witness box as RW-1.

11. The Family Court, after examining the pleadings and the evidence, came to a conclusion that the respondent had been able to substantiate the grounds of cruelty and thus allowed the petition. The Family Court found favour with the stand of the respondent that the appellant had falsely denied having taken any treatment from a psychiatrist prior to the marriage. The contention of the appellant that she never locked herself in a room was also found by the Family Court to be belied on account of her own suggestion in the cross-examination that she did lock herself in the room because of the physical abuse by the respondent. The Family Court found that the

respondent was right in his allegation that the appellant used to often threaten him to commit suicide. What also weighed with the Family Court was the undisputed fact that there used to be arguments between the parties at night which prevented the respondent from having a proper sleep. This fact, heavily weighed with the Family Court, since the respondent is a fighter pilot in the Air Force and his flying hours commenced early in the morning around 5.30 a.m. These repeated fights and sleepless nights led to a very disturbed state of mind which not only endangered the respondent's life but was serious professional hazard, risking the aircraft and the security of the nation.

12. The Family Court has also given due credence to the suicide note (Exhibit PW-1/6). We extract hereinbelow the said note for ready reference:

“By the time you receive this letter I would be dead.

I am responsible for this suicidal attempt. I had a word with my God. He told me not to hold anyone responsible for what you intend to do because its your decision.

Everyone knows, this whole world knows why I did this and resorted to committing suicide. I do not have a choice. My married life (throughout) was very painful. I tried really hard to make this relationship work but could not succeed. Tell Nirupama and Tony' in laws that my last wish is that their relationship with my sister should not get affected after this incidence. They both are very innocent girls. I know that Lal Duggal, Aunt, Bikram and Ramjeet are very mature people and so do Raman and his parents. Please forgive me for what I have done but had &

decided to stay alive also. I would not have been able to stay without Aakash. I really love him. Unfortunately it was getting difficult for us to stay together. All I want to say is that please get Lashu Tony married at the earliest. Make sure that Bablu gets good education and please always stay happy. Both of you please take care of each other and I love you for everything that you gave me.

Daddy, you take care of Mummy and Mummy you take care of Daddy.

Take care.

I love you all (Mummy, Daddy, Sonu, Priya Aunt, Lashu, Tony, Bablu, Tazo, Aakash, Ramjeet and Raman)

Only yours

Bindu”

13. According to the Family Court, the contents of the note were such that in case any untoward incident would have occurred, the respondent could have been implicated for abetment to suicide.

14. The Family Court has also accepted the stand of the respondent that the appellant was no longer interested in this matrimony and the marriage was dead for all purposes. The Court has taken note of the fact that the appellant had put her profile for matrimonial purposes on various matrimonial sites apart from the fact that she had even interacted with some persons who had responded to her profile. In fact, what is also noticed is that the profiles mentioned the marital status of the appellant as “Divorced”, “Awaiting Divorce” or “Separated”. The appellant has not denied this in her cross-

examination and rather stated that she did not bother about them as she was not interested in getting married.

15. Looking at the totality of the facts, which included the repeated fights between the parties, the 'suicide note', the profiles put by the appellant on matrimonial sites portraying her marital status as that of a single woman, the Family Court reached a conclusion that there was an irreparable wedge in the marriage. The conduct of the appellant clearly indicated that she had moved on in life and wanted to resettle. Her conduct during the marital life amounted to cruelty according to the Family Court and thus the Family Court allowed the petition of the husband and dissolved the marriage by a decree of divorce under Section 13(1)(ia) of the HMA.

16. Learned counsel for the appellant submits that the respondent had failed to make out a case of cruelty against the appellant. The allegations made in the divorce petition were general and vague. In order to succeed in his evil designs, the respondent had hacked the gmail account of the appellant and on account of which, even a complaint was filed with the Police authorities and an FIR was thereafter registered bearing No. 0961 of 2015.

17. The learned counsel contends that the appellant never initiated any proceedings, civil or criminal, against the respondent or his family except for the FIR of hacking her email account and therefore, it was wrong for him to allege the appellant threatened him or his family to implicate them in false criminal cases. She further submits that the trial court has erred in laying over emphasis on the so-called 'suicide note' (Exhibit PW-1/6) and has wrongly made it as one of the grounds

for cruelty. The argument is that a bare perusal of the note reveals that this was undated and was written by her to her parents and nobody including the respondent was made accountable for anything. In fact, the contents of the note, if read carefully, only reveal that the appellant was trying to save her marriage and was expressing her love for the respondent. The appellant had never attempted to commit suicide, post the writing of the said note. The Trial Court failed to appreciate that this was a private note which was never written with the intention to deliver the same to anyone. In fact the respondent has himself admitted that one day he had just found the note. The note had been written by the appellant during those phases when she was depressed and only to vent out her frustration. The note cannot be read in isolation but has to be seen in the circumstances in which it was written. If the appellant wanted to harm the respondent, she would have attempted to commit suicide or would have at least sent the note to someone, so as to implicate the respondent. The learned counsel argues that in any case, the act of the appellant in writing the said note stood condoned as the said undated note was written in October, 2007 but the parties lived together thereafter, had physical relations and the appellant even conceived in February, 2008. The respondent in his written statement in para 21 has admitted that he had condoned all the alleged cruel behavior of the appellant and started taking care of her to keep the relationship intact.

18. The next contention of the learned counsel for the appellant is that in fact it was the respondent who failed to take care of her. Even when she was pregnant, he had virtually deserted her. He was absent even at the critical juncture when the child was born. All her efforts to

reach out to the respondent, to come back and take care of the child went in vain.

19. It is contended that the respondent did not even examine his family members to substantiate the allegations of misbehavior with them, as they were material witnesses. He knew that he will not be able to prove the allegations and the truth in favour of the appellant would be repealed.

20. It is argued that the respondent has levelled false allegations that the appellant did not allow him to meet the child. In fact, the respondent himself never wanted to meet the child. He did not visit the appellant or the child post the delivery and did not even come for the puja in December 2008, which was organized for the well-being of the newly born. The appellant in fact, took the child to Hyderabad, to resolve the disputes in May 2009 but the respondent even refused to see the child. The respondent during his cross-examination contradicted himself as on one hand, he stated that he met the child for the first time during mediation in December, 2009, while at another place he stated that he met the child earlier in May 2009, in Hyderabad.

21. It is submitted that the respondent had made a wrong averment that the appellant was undergoing psychiatric treatment before marriage and this was done only to cook up a ground for the purpose of divorce. The appellant in fact, performed all her household duties, supported her in-laws financially and paid most of the bills. Learned counsel submitted that the allegation that the appellant had a careless dressing sense was per se unbelievable because in the Air Force, there

is a dress code and nobody can afford to dress carelessly in any formal function. It was falsely alleged by the respondent that the appellant locked herself in the room. The counsel further submitted that the appellant always attended all the family functions in the family of the respondent, including the wedding of the cousins, for which she had taken long leaves from her work. On the contrary, the respondent did not even attend the wedding of her two sisters. She further submits that most of the allegations of the respondent have, in fact, been disbelieved by the learned Trial Court.

22. On the issue of matrimonial sites, learned counsel has vehemently denied that the appellant had or has any desire to resettle in life. She submits that even today the appellant is struggling to save the marriage and is therefore, prosecuting the present appeal. She submits that the Family Court has erroneously held that the appellant had placed her profile on the matrimonial site with a desire to enter into matrimony and had concealed her true marital status. Learned counsel submits that the documents on the sites were erroneously relied upon by the Trial Court, as firstly, these were never a part of the divorce petition and secondly, these profiles were created by her parents and siblings who were concerned about her future. She vehemently even argued that in fact, there is a possibility that some of her pictures may have been uploaded on the website by the respondent himself as actually her email had been hacked. She was a victim of a cybercrime. She submits that the appellant is totally focused in raising her child and further studies and had no intent whatsoever to remarry and thus there was no reason why the appellant would have created these profiles.

23. Per contra, learned counsel for the respondent opposes the appeal and supports the judgment of the Family Court. He submits that there is no error in the judgment and the Family court has allowed the petition after carefully looking through the entire pleadings and evidence. He submits that the Family Court has rightly allowed the petition on the ground of cruelty. The appellant had written a 'suicide note' which clearly implicated the respondent for her depressed and distressed condition. He submits that if the appellant would have actually committed any overt act post this note, he would have been implicated in a criminal case. The learned counsel submits that the respondent is a fighter pilot in the Indian Air Force. The nature of his duties is such that he needs complete peace of mind, and a life without stress or worries and adequate rest and sleep. The appellant by her behavior, always created an atmosphere in the house by which the respondent remained under tremendous stress and worries. His mind was never at peace and despite his long working hours and onerous duties, he could hardly get to sleep in the night. The learned counsel argues that this kind of lifestyle in the matrimonial home had started having adverse effect on the work profile of the respondent and this was not conducive to his health besides being detrimental to the Aircraft's safety and which could impact the security of the nation.

24. Learned counsel further submits that in the Air Force, a particular lifestyle is expected from the spouse and any odd behavior can cause lot of embarrassment in the social circle and could also result in the seniors reprimanding the respondent. He submits that the appellant would deliberately violate the dress codes and attend formal

functions dressed in a most casual manner. She would often lock herself in the room for long hours or leave the house unannounced.

25. It is argued by the counsel for the respondent that the respondent had specifically pleaded about the suicide note but there was no specific denial to the same by the appellant and on the contrary, in her cross-examination, she had accepted having authored the suicide note. The Family Court, according to him, thus rightly found that the writing of such a note was cruelty inasmuch as firstly, such notes are not written without any threat to commit suicide and secondly, the contents were such that in case of an untoward incident, the respondent would have been implicated.

26. Learned counsel further contends that the appellant had made serious allegations against the respondent in the written statement but none were put to the respondent during cross-examination. Learned counsel submits that making unfounded allegations against spouse, which may have adverse impact on his mental condition or health or a job prospect is cruelty as held by the Apex Court in the case reported as of ***K. SrinivasRao v. D.A. Deepa (2013) 5 SCC 226***, and the relevant portion reads as under:-

“27. We need to now see the effect of the above events. In our opinion, the first instance of mental cruelty is seen in the scurrilous, vulgar and defamatory statement made by the respondent wife in her complaint dated 4-10-1999 addressed to the Superintendent of Police, Women Protection Cell. The statement that the mother of the appellant husband asked her to sleep with his father is bound to anger him. It is his case that this humiliation of his parents caused great anguish to him. He and his family were traumatised by the false and indecent statement made in the complaint. His grievance appears to us to be justified. This complaint is a part of the record. It is a part of the pleadings. That this statement is false is evident from the evidence of the mother of

the respondent wife, which we have already quoted. This statement cannot be explained away by stating that it was made because the respondent wife was anxious to go back to the appellant husband. This is not the way to win the husband back. It is well settled that such statements cause mental cruelty. By sending this complaint the respondent wife has caused mental cruelty to the appellant husband.

28. Pursuant to this complaint, the police registered a case under Section 498-A IPC. The appellant husband and his parents had to apply for anticipatory bail, which was granted to them. Later, the respondent wife withdrew the complaint. Pursuant to the withdrawal, the police filed a closure report. Thereafter, the respondent wife filed a protest petition. The trial court took cognizance of the case against the appellant husband and his parents (CC No. 62 of 2002). What is pertinent to note is that the respondent wife filed criminal appeal in the High Court challenging the acquittal of the appellant husband and his parents of the offences under the Dowry Prohibition Act and also the acquittal of his parents of the offence punishable under Section 498-A IPC. She filed criminal revision seeking enhancement of the punishment awarded to the appellant husband for the offence under Section 498-A IPC in the High Court which is still pending. When the criminal appeal filed by the appellant husband challenging his conviction for the offence under Section 498-A IPC was allowed and he was acquitted, the respondent wife filed criminal appeal in the High Court challenging the said acquittal. During this period the respondent wife and members of her family have also filed complaints in the High Court complaining about the appellant husband so that he would be removed from the job. The conduct of the respondent wife in filing a complaint making unfounded, indecent and defamatory allegation against her mother-in-law, in filing revision seeking enhancement of the sentence awarded to the appellant husband, in filing appeal questioning the acquittal of the appellant husband and acquittal of his parents indicates that she made all attempts to ensure that he and his parents are put in jail and he is removed from his job. We have no manner of doubt that this conduct has caused mental cruelty to the appellant husband."

27. Learned counsel next contends that the intention of the appellant is clearly to remarry and in furtherance of this she had created profiles on the matrimonial sites. During her cross-examination, she had admitted that those were her profiles and has in fact, even narrated the complete procedure of activating these profiles.

He submits that the appellant admitted in her cross-examination, that the mobile number which is mentioned on the profile (Exhibit RW-1/PB) is actually her mobile number. She also admitted having received responses from two matrimonial sites and she made no efforts to get them removed or deactivated.

28. He, thus, submits that there is nothing remaining in the marriage as both parties cannot live with each other and have decided to move on in life. The marriage is practically dead and beyond repair. The job profile of the respondent is such that he cannot afford repeated fights, stressful days and nights and a disturbed state of mind. Learned counsel submits that the marriage has been rightly dissolved by the Family Court and there is no merit in the appeal which should be dismissed.

29. We have heard learned counsels for the parties and examined their rival contentions.

30. We have perused the petition filed by the respondent under Section 13 (1)(ia) of HMA. We find that the averments and the allegations made in the petition are neither vague nor general, as contended by the learned counsel for the appellant. The respondent has detailed the various incidents, which according to him amounted to cruelty on the part of the appellant. He has referred to months and years in which the specific incidents took place. In support of certain incidents, he has also relied upon certain documents. Therefore, in our opinion the petition is neither vague nor general. It is true that one cannot make vague allegations in a petition, but it is equally true that in matrimonial matters, the incidents cannot be narrated with

mathematical precision, day-by-day or minute-by-minute. In a marital relationship, there may be several incidents between the parties, which, as the time passes, may not remain in the memory with the minutest detail. Moreover, the incidents/acts on the part of the appellant, which have been relied upon by the Family Court to grant the divorce, have been narrated in detail, including the month and year in which they were stated to have occurred.

31. The respondent had made a serious allegation that the appellant had been taking treatment for some psychiatric treatment prior to the marriage, but the same was not disclosed to the respondent. The respondent had placed on record a prescription by one doctor Arvind Kumar, Senior Psychiatrist of RML Hospital and when confronted with the same in cross-examination, the respondent had stated that while she had not undergone any psychiatric treatment, but the prescription pertained to her. In our view, the Family Court has rightly held that this statement of the appellant belied her stand that she had not taken a psychiatric treatment prior to her marriage. On further analysis, the prescription in fact even mentioned certain medicines, which were for anxiety and depression.

32. With regard to the allegations of the respondent that the appellant used to lock her in the room, the family court had noted that in the written statement, though the appellant denied the allegation, but in the cross-examination, she had herself suggested to the respondent that she used to lock herself in the room because of physical abuse by the respondent. However, there was no allegation of physical abuse in the written statement. This exposed the falsehood of

the appellant. The respondent had categorically averred that the appellant used to leave the house when there were quarrels but, on her return, she never disclosed where she would go. In the written statement, the appellant never denied this allegation.

33. As regards the “suicide note” much argument has been addressed by both sides. We have extracted the note above for a ready reference. We may note that the appellant has categorically admitted having authored the said note. While cross-examining the appellant, the respondent suggested to her that she had written the note because of the harassment and torture by the respondent and his parents. However, there is no such allegation of harassment in the written statement. The very fact that the appellant has chosen to author a suicide note, wherein she has directly pointed to the respondent as one responsible for her mental condition, etc., and also mentioned the distress in her married life, lends credence to the stand of the respondent that the appellant would often threaten to commit suicide. In our view, the Family Court has rightly noticed that frequent threats to commit suicide and writing a suicide note caused not only immense mental pain and agony to the respondent, but also affected his professional life, as he was an Air Force Pilot. This had in fact caused a constant fear in the mind of the respondent that the appellant may harm herself any time coupled with an apprehension of being implicated for abetment to suicide. Keeping a person on tenterhooks by threatening to commit suicide, is a very serious form of mental torture.

34. The Family Court has returned a finding based on the appellant's deposition that in fact there used to be repeated arguments between the parties at night and the appellant sometimes used to even physically prevent the respondent from sleeping. The averment of the respondent that on several occasions he had to take leave due to sleepless nights, has remained uncontroverted. The respondent had also pleaded that during the pendency of the proceedings before the Family Court, the appellant had started looking for another match as she had put her profile on some matrimonial sites and had even interacted with some prospective alliances. The appellant never disputed that her profile was actually put on several matrimonial sites. Her only defense was that it was her family which was responsible for doing this and may be her gmail account was hacked. However, the Family Court found that not only that she had admitted her matrimonial profile (**Ex.RW1/PB**) on websites like, simplymarry.com; jeevansathi.com; secondshadi.com, but that she has actually received mails from these websites. The fact that the matrimonial profile of the appellant was on the websites and she took no steps to have them removed and rather responded to the prospective alliances, only points to the fact that the appellant had decided to remarry and move on in life. In fact, we also find that in these profiles, the marital status of the appellant is shown as "divorced", "awaiting divorce" and "separated". The defence of the appellant that her gmail account had been hacked or her family had placed these profiles, can hardly be believed. Surely, even if the family had placed these profiles, it could not have been without her consent or knowledge. No evidence has led to prove the hacking. In

fact, the respondent had also placed on record the Emails exchanged between two alliances, namely, Bala Natrajan and Suraj Roshan. We, thus, find that the Family Court is right in observing that repeated quarrels between the parties was disturbing the state of mind of the respondent.

35. We also agree with the learned counsel for the respondent that being an Air Force Pilot, the stresses of the married life were leading to a situation where the respondent had to take undue leave and even otherwise, it was dangerous for him to carry out his onerous duties with the disturbed state of mind. The respondent is also right in stating that threats to commit suicide and writing a suicide note, was a very serious form of mental cruelty. The apprehensions in the mind of the respondent that the appellant may harm herself, particularly, keeping in mind her psychiatric treatment prior to marriage or else, in case of any overt act on her part, and the respondent would have been implicated are not unfounded or baseless. We thus, find that the appellant has committed acts, which amount to mental cruelty towards the respondent.

36. The matrimonial profiles lend credence to the stand of the respondent that the appellant has moved on in life. We find that both parties have no intent of continuing this marital relationship. The respondent rightly does not want to have any problems in his professional life in the Air Force, on account of his marital discord. There seems to be nothing remaining in this marriage and it is beyond salvage.

37. In our view, the Family Court has rightly granted a decree of divorce in favour of the respondent. We find no infirmity in the order of the Family Court.

38. There is no merit in this appeal and the same is accordingly dismissed, along with all pending applications.

JYOTI SINGH, J

G.S.SISTANI, J

JULY 8th, 2019
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