

\$~

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

Reserved on : 18th November, 2019

%

Pronounced on : 20 November, 2019

+ MAT. APP. (F.C.) 239/2018

RAJNI

..... Petitioner

Through: Mr. Bharat Bhushan Kaushik, Mr.
Himanshu Kaushik, Advocates

versus

VIJAY

..... Respondent

Through: Mr. Ratan Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J.

1. The present appeal has been filed challenging the judgment dated 10.08.2018 passed by the Family Court in HMA No. 92/18 whereby the petition under Section 13 (1) (ia) and (ib) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'HMA') filed by the respondent/husband for the dissolution of marriage has been allowed and the marriage has been dissolved by a decree of divorce.
2. The necessary facts required to be noticed for disposal of this appeal are that marriage between the parties was solemnized on 28.11.2010 at Delhi, according to Hindu rites and customs. Marriage was consummated but no child was born from the said wedlock.
3. Disputes and differences having arisen between the parties, the respondent/husband filed a petition under Section 13 (1) (ia) and (ib) of HMA seeking dissolution of marriage by passing a decree of divorce on the ground of 'cruelty' and 'desertion'.

4. The grounds on which the divorce petition was filed was that the marriage between the parties was solemnized with simplicity, however, the petitioner started quarreling with the respondent from December, 2010 itself and levelled false and baseless allegations on the character of the respondent. It is pleaded by the respondent that since the very beginning, the petitioner did not participate in the domestic affairs in the matrimonial home. She forced the respondent to eat outside as she did not prepare food at home. Due to this reason, the father of the respondent shifted the parties to the second floor of the matrimonial home which had a separate kitchen. There was no change in the behavior of the petitioner and she left the matrimonial home on 08.05.2011, without informing anyone, and returned on 15.06.2011.
5. Further, the case of the respondent was that the petitioner left the matrimonial home again on 28.08.2011 without informing the petitioner and started residing at her parental home. The father of the respondent filed a suit for permanent injunction bearing no. 326/2011 in October, 2011 in order to restrain the petitioner and the respondent from entering his property bearing no. WZ- 92B, Harijan Colony, Tilak Nagar, Delhi. The petitioner filed a false petition under Section 12 of Protection of Women from Domestic Violence, 2015 bearing no.262/12 against the respondent and his family members, which was dismissed in default on 24.11.2014. The petitioner is also stated to have made a complaint before Crime against Women Cell.
6. The petitioner herein contested the divorce petition, by filing her written statement. It was pleaded therein that the respondent cannot be allowed to take advantage of his own wrongs. On merits, the petitioner

denied the allegation of cruelty and desertion mentioned in the petition. It was claimed by the petitioner that the respondent and his family members have in fact subjected the respondent to grave cruelty on account of insufficient dowry and left the petitioner at her parental home to pressurize her father for dowry demands.

7. In her preliminary submissions, the petitioner while admitting the marriage between the parties submitted that the respondent has caused grave cruelty to the petitioner by refusing sexual intercourse, on some occasions after marriage. It was submitted that the respondent developed extra marital relations with one lady namely Rupa, who was living in the area of Chaukhandi, and when the petitioner objected to the relationship, she was beaten up by the respondent. Further, it is stated that the respondent dropped the petitioner at her parental home in the month of May, 2011 but subsequently, upon reassurance by her father-in-law that the respondent would not have any relations with Rupa, the petitioner returned to her matrimonial home.
8. It was submitted by the petitioner that she was beaten up on 27.08.2011 by the respondent and his family members. She went to Tilak Vihar Police Post on 28.08.2011, however no action was taken by the police. The petitioner came to her parental home on 28.08.2011. Thereafter, her father sent her to her matrimonial home on 19.10.2011, but, the petitioner and his family refused to take her back.
9. In the replication filed by the respondent, he reiterated the averments made in the petition and denied those in the written statements which were contrary to his case.
10. On 18.02.2016, the following issues were framed by the Family Court;

“1. Whether the petitioner is entitled for the decree of divorce on the grounds of cruelty and desertion as per Section 13 (1) (ia) and (ib) of HMA? OPP
2. Relief.”

11. In support of his case, the respondent examined himself as PW-1 and tendered his affidavit as evidence as Exhibit PW-1/A and relied upon documents viz. Exhibit PW-1/1 i.e. a photocopy of his election ID card, Exhibit PW-1/2 being one photograph of marriage and Exhibit PW-1/3 being a certified copy application under Section 12 of Protection of Women from Domestic Violence, 2015 along with order dated 24.11.2014.
12. In support of her case, the petitioner examined herself as RW-1 and relied upon the documents which were marked as Mark A to Mark C; Mark A being photocopy of the police complaint dated 28.08.2011; Mark B being photocopy of MLC no. 21683 and Mark C photocopy of police complaint dated 20.10.2011.
13. The Family Court after examining the pleadings and evidence on record, noticed that respondent in affidavit Ex. PW-1/A deposed that the petitioner was found to be quarrelsome in nature soon after the marriage; she did not participate in the daily domestic chores at the matrimonial home and she left the matrimonial home without informing the respondent or his family on 08.05.2011. However, it was found that the said allegations are not sufficient to constitute cruelty on the part of the respondent as the assertions made by the respondent were without any specific details and were vague. Respondent was held disentitled for the decree of divorce on the ground of cruelty as he did not lead

reliable or cogent evidence to prove allegations of cruelty against the petitioner.

14. Reliance was placed on *Gurbux Singh v Harinder Kaur* (2010) 14 SCC 301, wherein the Supreme Court observed that matrimonial life should be assessed as a whole, and not on a few isolated incidents. Irritation, quarrels and normal wear and tear are part and parcel of matrimonial life, which couples forgive and forget.
15. In addition to the above, the Family Court found that the petitioner had not led any corroborated or cogent evidence to prove that the respondent was having or developed an extra marital relationship. It was held that the respondent made a false allegation against the petitioner regarding the extra marital relationship. Further, the petitioner could not prove by leading evidence that during their cohabitation, respondent stopped cohabiting with the petitioner and also refused sexual intercourse.
16. Further, the Family Court concluded that the respondent had been able to substantiate the grounds of desertion. It was held that the petitioner had deserted the respondent since August, 2011 and as such had withdrawn from the conjugal society of the respondent without any reasonable excuse. The petitioner had failed to discharge the matrimonial duties and obligations towards the respondent. Petitioner has been residing at her parental home since 28.08.2011 without any reasonable excuse and was adamant not to join the matrimonial company of the respondent. It was held that the petitioner had deserted the respondent without sufficient cause. He had been deserted for a continuous period of not less than two years preceding the presentation

of the petition. The respondent was thus held entitled to divorce on the ground of desertion as per Section 13 (1) (ia) (ib) of HMA.

17. We have heard the learned counsels for the parties and examined their rival submissions together with the pleadings and the evidence on record.
18. A perusal of the pleadings and evidence exchanged between the parties indicates that the marriage between the parties was solemnized on 28.11.2010 and the petitioner has been living at her parental home since 28.08.2011. As per the unrebutted assertion of the respondent, there were marital discords between the parties right from the very next month. The parties never enjoyed the bliss of a normal married life. Petitioner instituted a petition against the respondent and his family under Section 12 of the Protection of Women from Domestic Violence Act, 2005 which was dismissed in default on 24.11.2014. She also filed a complaint before the Crime against Women Cell on 20.10.2011. Petitioner during her cross- examination also admitted that investigation was conducted on the said complaint, but it was closed as no response was shown. Petitioner admitted that she had voluntarily asked CAW cell to close her complaint. The petitioner initiated false and vexatious litigation and complains against the respondent and his family.
19. A perusal of the impugned judgment shows that what primarily weighed with the Family Court to conclude that the petitioner had deserted the respondent was that there was nothing in the evidence to prove that the respondent was instrumental or had forced the petitioner to leave the matrimonial home on 28.08.2011. It was also proved by the respondent that the petitioner never fulfilled the obligations of the

marriage and withdrew from the matrimonial cohabitation on her own accord. The petitioner deserted the respondent without sufficient cause

20. The first issue which arises for our consideration is whether the petitioner/ wife had left the matrimonial home for a continuous period of two years immediately preceding the institution of the petition seeking divorce. As per the respondent/husband, the petitioner had left the matrimonial home on 28.08.2011 without sufficient/ just/ reasonable cause. It is also the case of the respondent that the petitioner did not perform her marital duties.
21. In the pleadings, the petitioner took the stand that she was beaten up on 27.08.2011, by the respondent and his family members. She reported the matter to the police on 28.08.2011. The respondent and his father were called to the Police Post, however, no action was taken against them. Leaving of the matrimonial home is not in dispute. The Family Court has placed heavy reliance on the cross-examination of the respondent wherein he deposed that he did not beat the petitioner nor did the petitioner file any police complaint on 28.08.2011. Family Court noticed that there was no cross- examination of the respondent on his evidence that the petitioner left the house without any cause.
22. Further, the Family Court has also taken note of the fact that the petitioner did not call any witness from Police Post, Tilak Vihar to prove that the incident of alleged beating on 27.08.2011. Although we are conscious of the fact that in matrimonial disputes, not all incidents are reported to the police, however, in this case, producing a witness from Police Post, Tilak Vihar gains immense importance as the petitioner herself has alleged that the incident of 27.08.2011 was

reported to the police. The respondent and his father were called to the police post but no action was taken against them. Once having made a categorical assertion that the matter was reported to the police and the respondent and his father were called by the Police, in our view, in the absence of any copy of complaint having been filed and exhibited and in the absence of any witness from the police force, it cannot be said that the petitioner left the matrimonial home for justifiable reasons or on account of being beaten on 27.08.2011. The petitioner, in her cross-examination has also admitted that she had come to her parental home on 28.08.2011 for good.

23. The Apex Court in *Savitri Pandey vs Prem Chandra Pandey* reported at (2002) 2 SCC 73 held as under:

"Desertion", for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations, i.e., not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case.

24. In the case of *Bipin Chander Jaisinghbhai Shah vs Prabhawati* reported at 1957 AIR 176, the Apex Court held as under:

“...If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion.' For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there., namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively...”

25. Having traversed the law on the subject and analyzed the facts of the case and evidence on record, we are in agreement with the decision rendered by the Family Court that the petitioner has deserted the respondent. Desertion on the part of the petitioner/wife has been made out as firstly, she stayed away on her own accord, and secondly, she was not prevented from coming back. It is clear that this marriage is beyond salvage. In our view, the Family Court has rightly granted a decree of divorce in favor of the respondent. We find no infirmity in the order of the Family Court.
26. There is no merit in this appeal, and the same is accordingly dismissed.

G.S. SISTANI, J

JYOTI SINGH, J

NOVEMBER 20, 2019//