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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision:- 10.02.2021

+ **MAT.APP.(F.C.) 22/2021**

MRS AKASH ALIAS ANJALI

..... Appellant

Through Mr. Ekansh Bansal, Mr. Parmanand
Gaur, Advs.
versus

VIJAY CHOUDHARY

..... Respondent

Through Mr.Sanyam Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J(ORAL)

CM APPL. 5204/2021 & CM APPL. 5205/2021

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

MAT.APP.(F.C.) 22/2021 & CM APPL. 5203/2021

3. The present appeal is directed against the judgment dated 17.03.2021 passed by the Principal Judge, Family Court, South East District, Saket, New Delhi in HMA No. 731/2011, whereby the learned Principal Judge has allowed the divorce petition preferred by the respondent/husband under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 ('the Act' for short). Though the petition was preferred on the grounds of both cruelty and desertion on the part of the appellant, the learned Principal Judge has allowed the petition solely on the ground of cruelty.

4. Before the learned Family Court, the two primary submissions of the respondent/husband in regard to the cruelty meted out to him were; firstly, that the appellant/wife had made a false allegation against him that he was in an illicit relationship with her own Bhabhi, i.e., her brother's wife during the period when the parties were staying at the parental home of the appellant/wife and, secondly; the appellant/wife had repeatedly threatened to commit suicide. Before the Family Court, the parties led their respective evidence and were also cross examined. The Family Court has, in its impugned judgment, discussed the evidence on both these aspects in the following manner:-

“.....According to the petitioner, after continuous pressure from the respondent he also lived at parental home of the respondent, but no suggestion has been given to the petitioner by the respondent that she never wanted the petitioner to live with her in her parental home. There are various allegations made by the petitioner not only in the petition but in his evidence affidavit also but he has not been cross examined on these allegations, with the result the testimony of the petitioner in this regard has gone unrebutted and unchallenged. Petitioner has further stated that he even went and lived at the parental home of the respondent on her insistence but in her parental house she alleged that he is having illicit relations with her bhabhi and also other women of the locality with the result it became very embarrassing and humiliating for him to live in the parental home of the respondent along with her. He has further stated that while living at Palwal one day respondent got entangled and quarreled with neighbours and when petitioner reached home she tried to commit suicide and started assigning the reason that petitioner does not love her and was cheating her. No suggestion has been given to the petitioner that respondent never tried to commit suicide or she did not make allegations against the

character-of the petitioner. Plea of the petitioner is that being in transport business he had to load the trucks to their respective destination which usually takes place in the night due to restrictions in the entry of the commercial vehicles in the city but respondent due to this reason used to have suspicion on his character and she further alleged that he wanted to remarry. She also used to come to the work place of the petitioner and create scene and drama there. She also used to hurl abuses on the petitioner like 'kutta kamina'. Respondent has also been cross examined at length. She has denied the suggestion that petitioner has no extra marital relations with his bhabhi. She again volunteered that though she has not seen them but everybody like family members talks about it. Thus, this admission on the part of the respondent corroborates the testimony of the petitioner that respondent is in a habit of making false allegations against him and keeps on doing character assassination of the petitioner. She herself denied the suggestion that he has no extra marital relationship which means that she in his cross examination has stated that petitioner has extra marital relationship. Though she has never seen petitioner or his bhabhi together but everybody in the family talks about it. She has neither given the name of any family member who told this fact to her. She has further volunteered that she has not seen them. It is very strange that despite being wife and also she herself has admitted in the court that she has not seen him with her bhabhi but she is making such type of allegations against the petitioner without verifying these facts and without seeing them together. In her cross examination also, she made these types of allegations. These types of allegations, made by the respondent, not only after marriage but during have caused great physical and mental cruelty upon the petitioner. She has again stated that it is incorrect that in order to defame the petitioner and his family members she is raising such type of false allegations. Again, she volunteered in the court that she has not seen them, but everybody talks about it. Thus, again and again respondent is saying that she has never seen the petitioner

with her bhabhi but since everybody talks about it therefore, she has made these allegations. She has further stated that it is wrong that she gave threats to the petitioner and his family members to commit suicide but again she volunteered that since cruelty was committed upon her therefore she gave these threats which clearly proves the case of the petitioner that respondent used to give threats to them to commit suicide. Regarding the cruelty committed upon the respondent except for the usual defence for demand of dowry, respondent has neither mentioned any specific incident nor any date when any such cruelty was committed upon her. Respondent has admitted that she filed a maintenance petition against the petitioner in Palwal. It is also an admitted case that various cases have been filed by both the parties against each other. The cases filed by both the parties against each other are still pending in District Palwal, Haryana and are yet to be decided.”

5. The Family Court has, by placing reliance on several decisions including those of the Supreme Court, come to the conclusion that unsubstantiated allegations made by a wife, which tantamount to character assassination of the husband, amount to causing mental cruelty to the husband.

6. We have heard the learned counsel and perused the impugned judgment.

7. Before us, the only submission of learned counsel for the appellant is that the appellant had made the allegations of the respondent having an illicit relationship with her Bhabhi, since that was a known thing in the family and others were also talking about the same. This submission of the appellant has no merit. We are of the view that the learned Principal Judge was justified in passing the decree for divorce after holding that such a serious allegation accusing the respondent of illicit intimacy with the appellant's

sister-in-law, which could not be established by the appellant by adducing any cogent or reliable evidence, would amount to mental cruelty. In fact, we also find that the factum of the appellant having made these allegations against the respondent is evident from her own admission during the cross-examination.

8. We are, therefore, of the view that the Family Court has correctly arrived at the conclusion with regard to cruelty meted out by the appellant to the respondent, and see no reason to interfere with the impugned judgment. The appeal is, accordingly, dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

FEBRUARY 10, 2021

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