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

+ **Date of Decision: 25.08.2021**

% **MAT.APP.(F.C.) 59/2021 and CM APPL. Nos. 17337-17338/2021**

PV Appellant
Through: Mr. K.C. Mittal, Mr. Yugansh Mittal
and Mr. Ashish Ranjan, Advs.

versus

PK Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

VIPIN SANGHI, J. (ORAL)

1. The names of the parties be redacted in the record as notified hereinabove. The present appeal is directed against the judgment dated 16.02.2021 rendered by the learned Principal Judge, Family Court, District Shahdara, Karkardooma, Delhi in HMA petition No. 687/2015. The Family Court has decreed the said divorce petition preferred by the respondent-husband against the appellant-wife finding that the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act has been made out by him against the appellant.

2. The parties were married on 06.05.2014. They hardly lived together and separated on 30.07.2014. Even during this period, they were not living together all the time, since the respondent went away to Australia after the marriage, and the appellant joined him later in Australia. The instances relied upon by the respondent-husband to establish perpetration of the cruelty have been set out in the impugned judgment. We may cull out the following paragraphs from the impugned judgment:

“110. Now, coming to the facts of the present case and after going through the evidence of parties and other witnesses, I am the considered view petitioner has duly proved on record that respondent has lodged the false complaint against the petitioner, before Australian Police, as no action has been taken against him by Australian Police, as is clear from email Ex. PW1/J. It is worth noting that respondent has not placed on record any material to show that Australian police has lodged any prosecution against the petitioner, on her complaint, after her return to India.

111. Further, the petitioner was terminated from his service by his employer, as is clear from the documents Ex. PW 1/K1 to PW 1/K3, PW 1/L and PW 1/M. It is worth noting that during trial Ld. Counsel for respondent has raised objections on the exhibition of these document on the ground of mode of proof. But, I am of the considered view that there is no merit in the objections because it is the own case of respondent that her spouse visa was cancelled by the Australian Govt., vide Ex. RW-1/7 after the termination of the service of petitioner, by his employer. It is worth noting that respondent was granted spouse visa on the basis of employment of petitioner in Australia. It is also worth noting in the document Ex. PW 1/K1 the petitioner has clearly mentioned that he had to tender his resignation, as his wife had filed multiple false Court cases in Delhi and due to his

matrimonial dispute his deputation was terminated from Wipro Suncrop Bank Project in Brisbane Australia. After his return to India, he was selected for Lloyds Bank Project of Wipro and his US visa was initiated in 2015. But due to his frequent visits in court, he could not join that project. Thereafter, he was allotted billable for US Bank project and was to work from Bangalore. But, after two months of back ground verification, he was released from that project also. Thereafter, he could not get any project in Delhi NCR, as per directions of Wipro HR and he had no other option other than to resign from Wipro. His resignation was accepted by his employer vide Ex. PW 1/K3.

112. Further, Ex. PW 1/L is the letter, alleged written by the sister of respondent, Pinky Verma herself, to the employer of petitioner, wherein she had made query about the status of the petitioner regarding his employment.

113. Further, petitioner has also duly proved on record that the respondent had lodged a false dowry case against him and his family members vide FIR 149/15 u/s 498-A/406/34 IPC PS Farsh Bazar, as the petitioner and his family members and relatives have already been discharged from the case by the court of Ld. MM vide order dated 17.3.2020.

114. Further, the petitioner has duly proved on record that respondent also wanted divorce from him as she had filed a Judicial Separation Petition against him and also wrote to the Australian Police vide Ex. PW 1/AC that she was going to file a divorce case against the petitioner, in India.” (emphasis supplied)

3. The submission of Mr. Mittal, learned counsel for the appellant is that the Family Court failed to take into consideration Section 14 of the Family Court’s Act, which states that the Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be

otherwise relevant or admissible under the Indian Evidence Act, 1872. Mr. Mittal submits that the Family Court had rejected some of the evidence produced by the appellant on the ground that they were compact discs containing the statements of the appellant recorded before the police authorities and medical doctors in Australia, on the ground that the appellant had failed to place on record transcripts of the said compact discs and that the doctors before whom the statements were recorded were all private medical practitioners in Australia. Mr. Mittal submits that the statements recorded in the said compact discs could not have been rejected at the threshold, and should have been considered under Section 14 of the Family Court's Act. In support of his submissions, he has sought to place reliance on **Deepali v. Santosh** [2018 (1) Mh. L.J 944] and in particular on paragraph 7 thereof, the relevant part thereof reads as follows:

“7. When Section 14 stipulates and says that the Family Court can receive a document in evidence irrespective of the same being relevant or admissible in evidence under the Evidence Act, it signifies two important facets namely that the Family Court at the threshold cannot reject a document on the ground that the document is not legally admissible in evidence and secondly the test and rigor of relevancy and admissibility of the document can be dispensed with by the Family Court if the Family Court is of the opinion that any evidence would assist it to deal effectively with the dispute. It cannot be disputed that admissibility presupposes relevancy as admissibility is founded on law whereas relevancy is determined by Court using judicial skills, logic and experience. Admissibility does not signify that a particular fact stands proved but merely that such a fact is received by the Court for the purpose of being weighed. The learned Judge overlooked that merely because the documents are marked as Exhibits and the same also becoming available

for cross-examination, is neither an admission as to documents nor can be treated as an admission of its contents.”

4. He has also placed reliance on decision of Delhi High Court titled ***Deepti Kapur v. Kunal Julka***, CM(M) 40/2019 [AIR 2020 Del 156] and in particular para 34 thereof which reads as follows:

“34. The sequitur to the aforesaid constitutional and legal landscape is that:

(a) The settled rule, purely from the standpoint of the law of evidence, is that evidence is admissible so long as it is relevant, regardless of how it is collected. Digressing from this settled position would have wide ramifications and consequences; and would be a serious hindrance to judicial proceedings across the board, in several foreseeable and unforeseeable ways. On the other hand, the possible misuse of this rule of evidence, particularly in the context of the right to privacy, can be addressed by prudent exercise of judicial discretion by a court not at the time of receiving evidence but at the time of using evidence at the stage of adjudication ;

(b) Merely admitting evidence on the record is not proof of a fact-in-issue or a relevant fact ; admitting evidence is not even reliance by the court on such evidence ; admitting evidence is mere inclusion of evidence in the record, to be assessed on a comprehensive set of factors, parameters and aspects, in the discretion of the court ;

(c) The limited threshold test of ‘relevance’ ensures that the right of a party to bring evidence to court, and thereby to a fair trial, is not defeated. What weight is to be given to evidence so brought-in, and whether or not the court ultimately relies upon such evidence for proof of a fact-in-issue or a relevant fact, is always in the discretion of the court. This, a court may do on other considerations, including considerations of justice and fair play. We must be clear that the test of admissibility is only a ‘threshold test’,

which opens the doors of the court, as it were, so that relevant evidence brought by a litigating party is permitted entry into the court records. It does not bind the court to treat such evidence as proof of a fact-in-issue or relevant fact. Section 14 of the Family Courts Act makes this threshold test even less stringent, in that the Family Court may receive evidence, whether or not it would otherwise be relevant or admissible under the Evidence Act, provided in its opinion such evidence would assist it in effectively dealing with the dispute;

(d) It appears that a crucial facet of the above rule of evidence has so far been ignored, namely the consequences that may follow if evidence is collected illegally by violation of someone's rights. Merely because a court allows evidence to be admitted, does not mean that the person who has illegally collected such evidence is absolved of liability that may arise, whether in civil or criminal law or both ;

(e) Although MP Sharma (supra) and Pooran Mal (supra) were decided before the right to privacy was authoritatively recognised as a fundamental right in Puttaswamy (supra), the challenge in those two cases also arose from allegations of violation of fundamental rights inter alia under Articles 20(3) and 14 of the Constitution. Also, the decision in Puttaswamy does not allude to any change in the principles of admissibility of evidence by reason of recognition of privacy as a fundamental right ; and in fact the principle of Pooran Mal has been followed by the Supreme Court even as recently as 2019 in Yashwant Sinha (supra), which is a post-Puttaswamy judgment, though in the context of documents procured illegally from a ministry and not in breach of any fundamental right;

(f) Drawing from the observations of the Supreme Court in Tukaram S. Digole (supra), a word of caution would be in place here. The Family Court must bear in mind that tape recordings are more susceptible to tampering and alteration by transposition, excision etc., which may be

difficult to detect; and therefore such evidence must be received and treated with caution and circumspection ; and, to rule-out the possibility of any kind of tampering, the standard of proof applied by a court for the authenticity and accuracy of a tape recording should be more stringent as compared to other documentary evidence;

(g) In the context of section 50 of the NDPS Act, in Baldev Singh (supra) the Supreme Court has said that while considering the aspect of fair trial, the nature of evidence obtained and the nature of the safeguard violated are both relevant factors. If therefore, evidence has been collected in a search conducted in violation of the statutory mandate of section 50 of the NDPS Act, the admission of such evidence would make the trial unfair ; and in that circumstance, the evidence must be excluded. Under the Family Courts Act, on the other hand, the statutory mandate of section 14 is to relax the rules of admissibility of evidence, which relaxation must therefore guide the Family Court.”

5. The key words in Section 14 are “.... documents... that may, in its opinion, assist it to deal effectually with a dispute...”. Therefore, even if any report, statement, documents, information or matter, which does not satisfy the test of relevance or admissibility under the Indian Evidence Act, is of such a nature as would assist the Family Court to deal effectually with a dispute before it, the Family Court is empowered to receive the same as evidence.

6. In the present case, the CDs sought to be relied upon by the appellant-wife contained her own self serving statements against the respondent-husband, made to the Sydney Police on 09.08.2014 and 13.08.2014. The said documents, in any event, do not relate to the specific allegations of cruelty levelled against the appellant-wife by the respondent-husband.

Moreover, the Family Court is bound to receive as evidence, any and every document sought to be tendered by a party as evidence, and it would be necessary for Family Court to evaluate whether, or not, to receive any document as evidence. In our view, no fault can be found with the approach of the Family Court in not receiving the compact discs containing the statements of the appellant – made to the police, against the respondent as evidence, since they were her self-serving statements which, in any event, it was open to her to independently make and establish before the Family Court. Moreover, these statements do not absolve/answer the charge of cruelty levelled against her, by reference to the specific instances of cruelty alleged by the respondent-husband against the appellant-wife.

7. The decisions relied upon by Mr. Mittal are, therefore, of no avail.

8. Pertinently, there is no argument advanced by Mr. Mittal to dispute the finding returned by the Family Court, that in the cross examination of the respondent, which had proceeded at length and spread over several days, nothing contrary to what had been deposed by him came on record. The submission of Mr. Mittal is that the respondent had not lost his job, but had only relocated from Australia to India, and in this regard he placed reliance on an order passed by the Magistrate in proceedings under the DV Act. However, Family Court has taken into account the evidence in the form of Ex. PW 1/K1 to Ex. PW 1/K3, Ex. PW 1/L and Ex. PW 1/M to return the finding that the services of the respondent were terminated by his employer. Pertinently, on account of termination of respondent's service, the appellant also lost her spouse visa.

9. It was further established that the Australian Police did not take any action on the complaint of the appellant, since she did not file any evidence against him. In this regard the email Ex. PW 1/J was relied upon by the respondent, and we have also perused the same, which shows that the Australian police, admittedly, did not find material to take any action against the respondent. The same reads as follows:

“Puneet,

*Just to confirm this is not about me believing you or not. **You are not getting charged at this time due to lack of evidence.** That is not to say that more evidence won't come to light and you could be charged in the future.*

I am not able to provide you with a copy of the complaint. You would have to go through right to information to obtain a copy.

Regards,

Kimberley NUNN

Detective Senior Constable 18456

Brisbane City Criminal Investigation Branch

Level 2/46 Charlotte Street Brisbane, Queensland, 4000

P: (07) 3258 2526 / F: (07) 3258 2517

E: nunn.kimberleym@police.qld.gov.au” (emphasis supplied.)

10. The aforesaid is an email addressed to the respondent by the Brisbane City Criminal Investigation Branch.

11. Learned counsel for the appellant has sought to place reliance on a subsequent email dated 10.12.2014 Ex. PW-1/AK, which is an email communication from the same police department to the appellant. The same reads follows:

“Hello Priyanka,

I previously went and saw Puneet at his home address in Spring Hill in September to see if he wanted to take part in an interview. Puneet advised that he wanted to speak with a lawyer which is his right. Puneet later called me and advised that he had spoken to a lawyer and who had advised him not to take part in an interview with police. This again is his right to remain silent.

A few days later Puneet contacted me to tell me that he left Australia and had returned to India. He provided me with his version of events in relation to your marriage and living in Australia.

I checked with immigration which confirmed that Puneet had left Australia.

Puneet contacted me again and advised me that he is not returning to Australia and that against he does not wish to be interviewed by police.

At this stage I have two different version of events, no physical evidence and no witnesses. Because of this the complaint has been filed pending further information/evidence. What this means is that the complaint is still on the police system and has not been closed but I have done all that I can do at the moment so until something else comes to police attention it will remain this way. I have advised Puneet of this.

If you need any clarification please let me know.

Kind regards,

Kimberley NUNN

Detective Senior Constable 18456

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E: nunn.kimberleym@police.qld.gov.au” (emphasis supplied.)

12. In respect of the email dated 10.12.2014 PW-1/AK, learned counsel for the appellant submits that the charges against the respondent could not be established since he had fled from Australia.

13. We do not find any merit in this submission. In fact, a perusal of the email dated 10.12.2014 shows that there were two different versions of events before the police, and no physical evidence and no witnesses was forthcoming. It also shows that the complaint made by the appellant had been filed pending further information/evidence, and it was also clarified that the matter would rest and remain that way until and unless something else comes to the attention of the police. Obviously, since the appellant was the complainant, it was for her to produce physical evidence and witnesses in support of her allegations against the respondent, which she failed to do. The respondent, in any event, was not even expected to produce any evidence against himself. Pertinently, it is not the appellant’s case that any summons were issued against the respondent by the Australian Police, which he failed to honour, or that any look out notice was issued against him

by the Australian Police in relation to any offence. We therefore, reject the submission of Mr. Mittal.

14. Mr. Mittal has also placed reliance on Ex. RW-1/6 (Annexure A-3 of the appeal paper book) and, in particular, on page 2 of 5 which determines the eligibility of the appellant to receive financial assistance as a victim of domestic violence. Mr. Mittal submits that the following extract would show that findings were returned in favour of the appellant, that she was subjected to violence. The relevant paragraphs in the said exhibit reads as follows:

“Eligibility

I have determined that you are eligible for assistance under section 37 of the Act. Your eligibility is based on the following:

- 1. The acts of violence occurred between 8 June 2014 and 30 July 2014, which is after the commencement of the Act on 1 December 2009;*
- 2. The acts of violence were committed at Spring Hill, Queensland and directly resulted in injury to yourself. This satisfies the act of violence and injury requirements under sections 25 and 27 of the Act;*
- 3. The acts of violence were reported to police on 7 August 2014 and I have determined that you provided reasonable assistance in the police investigation. This satisfies the reporting requirements under sections 21(3), 81 and 82 of the Act;*
- 4. Under section 25 of the Act, two or more acts of violence can be said to be a series of related crimes resulting in the acts being decided together as one act of violence. I have determined that the acts of violence committed against you*

over a period of time by the same person constitute a series of related crimes;

5. I am satisfied that you did not commit or conspire to commit the act of violence, or engage in criminal activity that resulted in the act of violence being committed against you. This satisfied sections 21(2) and 80 of the Act; and

6. Your application is in the approved form, pursuant to section 52 of the Act and has been made within the time limit prescribed by section 54 of the Act.

Category of Violence

Based on information provided in your application and by the Queensland Police Service and the Queensland Courts, I have determined on the balance of probabilities, that the act of violence constituted Rape and Sexual assault for the purpose of assessing your application to Victim Assist Queensland.

Rape is classed a Category A act of violence under Schedule 2 of the Act.

Sexual assault is classified a Category B act of violence under Schedule 2 of the Act.

Under section 1 (2) of Schedule 2 of the Act, special assistance is determined and paid in relation to the crime in the series that is of the highest category.”

15. In our view it was not sufficient for the appellant to simply rely upon Ex. RW-1/6 (Annexure A-3 of the paper book of appeal) and it was necessary for the appellant to establish the acts of violence complained of by her against the respondent, either before the police or before the Family Court directly. The documents on the basis of which the aforesaid findings

were returned are enlisted under the heading “*Evidence of the material considered*”, which reads as follows:

“In making a decision about your application for financial assistance, I considered the following material:

- 1. Victim Assist Queensland Financial Assistance Application;*
- 2. Victim Assist Queensland Medical Certification from Dr. Sujeeva Gunasinghe, Quakers Hill Family Practice dated 10 October 2014;*
- 3. Victim Assist Queensland file notes;*
- 4. Queensland Police Service Occurrence Reports;*
- 5. Victim Assist Queensland Guidelines;*
- 6. Psychology Headquarters Invoice DPHQ 01 dated 28 August 2014;*
- 7. Quakers Hill Family Practice Tax Invoice 51340 dated 31 July 2014;*
- 8. Quakers Hill Family Practice Tax Invoice 54667 dated 29 August 2014;*
- 9. Quakers Hill Family Practice Tax Invoice 52373 dated 9 August 2014;*
- 10. Quakers Hill Family Practice Tax Invoice 51741 dated 4 August 2014;*
- 11. Quakers Hill Family Practice Tax Invoice 52578 dated 11 August 2014;*
- 12. Western Sydney Local Health District Tax Invoice/Receipt 50675 dated 1 August 2014.*
- 13. Western Sydney Local Health District Tax Invoice/Receipt 51630 for Invoice N94295 for service on 1 August 2014;*

14. *Quakers Hill Discount Chemist Tax Invoice dated 23 September 2014;*

15. *Quakers Hill Discount Chemist Tax Invoice dated 22 September 2014;*

16. *Pathology West Blood Chemistry report for service on 1 August 2014;*

17. *Letter from Dr. Gunasinghe dated 8 January 2015;*

18. *Letter from Donna Joy Parakal, Registered Psychologist, Psychology Headquarters, dated 10 September 2014;*

19. *Letter from Ms Parakal dated 13 February 2015; and*

20. *Emails from you (various dates)."*

16. None of the said documents were led in evidence by the appellant. The aforesaid finds are *ex-parte i.e.* they were arrived at behind the back of the respondent. Therefore, in our view Ex. RW-1/6 (Annexure A-3 of the appeal) is of no avail. The appellant could not establish the allegations made by her against the respondent in her police complaint made to the Australian Police which, admittedly, stood filed.

17. The Family Court has also taken into account the fact that the dowry case filed by the appellant against the respondent and his family members vide FIR No. 149/2015, under Sections 498-A/406/34 IPC, P.S. Farsh Bazar had failed inasmuch, as, all the accused had been discharged by the learned MM vide order dated 17.03.2020.

18. The appellant has also assailed the order under Section 25 of the HMA on the ground that an amount of Rs. 5 lakhs was awarded to her towards permanent alimony. The submission of learned counsel for the appellant is that the respondent, who was earning Rs.70,000/- per month at the time of marriage, was receiving a salary of Rs. 1 lakh per month when the matter was argued before the Family Court. An amount of Rs. 5 lakhs is meager, considering the aforesaid position.

19. A perusal of the order under Section 25 of the HMA shows that the respondent had already paid approximately Rs. 11,21,500/- to the appellant towards her maintenance during trial. He had also paid a sum of Rs. 2,83,500/- towards the fees of Local Commissioner, who recorded the evidence of the parties, and he also returned the appellant's *stridhan* worth Rs. 5 lakhs. The appellant had already received a sum of Rs.5,40,000/- from the Australian Government. The appellant was also qualified and capable of doing a job in the private or Government sector, as she is an MA in Sociology, and had also undertaken a computer course in Web Designing. Considering the fact the parties were married for a very short while; no issue was born out of the wedlock; the appellant is also educated and capable of earning her own livelihood, and, the fact that substantial amount had been paid by the respondent towards interim maintenance, and also the fact that the entire fees of the Local Commissioner had been borne by the respondent, we are of the view that the impugned order dated 23.02.2021 passed under Section 25 of the HMA also does not call for interference, and appeal against the said order is also dismissed.

20. We are, therefore, of the considered view that the appeal has no merit.
The same is accordingly dismissed.

VIPIN SANGHI, J.

JASMEET SINGH, J.

AUGUST 25, 2021/sr