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

+ **Date of Decision: 25.08.2021**

% MAT.APP.(F.C.) 82/2021 and CM APPLs. 28009-11/2021

SMT. BHUMIKA CHAWLA Appellant

Through: Ms. Deepali Gupta, Adv.

versus

SH. JASWANT RAI CHAWLARespondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

JASMEET SINGH, J. (ORAL)

1. The present appeal has been filed under Section 19(1) of the Family Courts Act, 1984 seeking setting aside of judgment and decree dated 01.10.2019 passed by the Family Court, East District, Karkardooma Court.

2. At the outset, we wish to record that this is a legal aid matter and the counsel for the legal aid Ms. Deepali Gupta has argued the matter well and to the best of her ability in an objective and fair manner.

3. The respondent had filed the petition against the appellant under Section 13(1)(ia) of the Hindu Marriage Act, 1955 to seek divorce on the grounds of cruelty against the appellant. The said petition was allowed by the impugned judgment dated 01.10.2019. The appellant has challenged the said order.

4. The marriage between the appellant and the respondent (husband)

was solemnized on 22.12.2004 as per Hindu rites and ceremonies. It was a second marriage for both parties, and the appellant had no child from her previous marriage. The respondent, on the other hand, was a widower having 3 children from his previous marriage. In the year 2006, a daughter was born from the wedlock. Earlier, the daughter was residing with the appellant but, during the pendency of the divorce petition, the appellant handed over the custody of the child to the respondent and the child is now residing with the respondent. The parties separated in November, 2011.

5. The respondent preferred the divorce petition on or about 01.12.2011. Upon service of summons, the Appellant filed her written statement. In her written statement, the Appellant denied the allegations made against her, and went on to make serious allegations against the Respondent and his brother, and his brother's wife. She stated that on 22/23.06.2009 in the night, the respondent (husband), her brother-in-law and sister-in-law (Devar and Devrani) tried to kill the appellant by poisoning her, by forcefully putting Baygon in her mouth. The appellant was admitted to Shanti Mukund Hospital and on deterioration of her health; she was shifted to Apollo Hospital, where she remained for 15 days. It was submitted that when the Police came for recording her statement, the Devar – Devrani and Nandoi of the appellant apologized and asked her for forgiveness, because of which and also to give her marriage another chance, the appellant did not give any statement to the police. The appellant has also submitted that she was forced to give an affidavit admitting her mistake of consuming poisonous Baygon, and she only agreed to do this to save her marriage and the future of her daughter.

6. The appellant claimed that the respondent husband and family

members had beaten the appellant and her family members on 24.08.2009, and a Kalandra was also registered against the respondent and his brother on 24.08.2009 at P.S. Geeta Colony, but the matter was subsequently compromised due to threats.

7. She stated that on 11.11.2011, the respondent (husband) and Devar-Devarani threatened to kill the appellant, in case she does not leave the matrimonial house, and even tried to strangulate her. She called her brother and mother, who informed the Police Control Room. A complaint was also given to CAW cell.

8. Learned Counsel for the appellant submits that the Family Court failed to appreciate the evidence on record and even though none of the allegations made by the Respondent in his divorce petition against the Appellant-wife have been duly proved by the respondent, yet a decree of divorce has been granted in favor of the Respondent and against the Appellant

9. Learned Counsel submits that the inference drawn by the Family Court, that the appellant on her own consumed the insecticide, is erroneous and contrary to evidence on record. She submits that the appellant would never take such an extreme step, more so when she has a minor daughter. In fact, none of the witnesses supported the case of the respondent and, in fact, the Family Court failed to appreciate that it was the appellant who was ill-treated by her husband and in-laws, and harassed for dowry.

10. We have heard the learned Counsel for the appellant and have gone through the impugned judgment and the documents before us.

11. It is the admitted case that the appellant and the respondent have been staying separately since 11.11.2011. In the impugned judgment, the Family Judge has adverted to the date of the marriage between the parties being 22.10.2004 or 22.12.2004. However, the same is neither relevant nor germane to the issue in controversy and need not detain us.

12. Having considered the submissions of Learned Counsel, we are not inclined to interfere with the impugned judgment

13. In the factual matrix, what weighs with us in the entire gamut, are two important incidents –

1) Even more than consuming of the insecticide incident, is that the appellant lodged a police complaint against the respondent and her brother. As a result of the complaint, the respondent, and his brother were arrested and had to spend a night in jail, and were only released on the next day by the Special Executive Magistrate. Subsequently, the complaint was withdrawn. It has been held that this act itself amounts to serious cruelty. After the incident, even though the appellant and the respondent continued to stay together, but the act of the appellant does not get effaced, and in the light of subsequent conduct of the Appellant, it revives, even if condoned earlier.

2) The act of attempting suicide by consuming insecticide is also a serious factor that weighs in our mind. Though, the appellant alleges that it was the respondent, his brother, and his wife who forcefully made her consume the insecticide, we are satisfied with the analysis of the Family Court. The Family Court holds that “*had the petitioner and his family members forced the respondent to*

consume the insecticide, there would be no occasion for the respondent to come back to her matrimonial home immediately after the treatment and reside with the petitioner. I am of the opinion that the material on record shows that the respondent of her volition consumed a household insecticide which caused serious threat to her life and she remained hospitalized for about fifteen days. Baygon has a strong pungent smell and a person cannot consume large quantities of such substance accidentally”.

- 3) The Appellant made serious allegations against the Respondent and his brother of them beating her up on 24.08.2009, and of threatening to kill her. However, she did not substantiate either of these serious charges. The making of such charges, which have remained completely unsubstantiated, would, undoubtedly cause mental cruelty to the Respondent, and would revive the earlier cruel conduct-even if condoned earlier. The very nature of these allegations would strain the relationship; cause an irretrievable breakdown of marriage; cause agony to the respondent, and; amount to mental cruelty.

14. The learned Family Court Judge has correctly relied on the following judgments in support of the impugned decision:

- The Supreme Court judgment in ***Samar Ghosh v. Jaya Ghosh***¹, which stated the following:

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

¹(2007) 4 SCC 511

- (i) *On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.*
- (ii) ***On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.***
- (iii) *Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.*
- (iv) *Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.*
- (v) *A sustained course of abusive and humiliating treatment calculated to torture, discomode or render miserable life of the spouse.*
- (vi) *Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.*
- (vii) *Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.*
- (viii) *The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.*
- (ix) *Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.*
- (x) *The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.*
- (xi) *If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.*

- (xii) *Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.*
- (xiii) *Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.*
- (xiv) *Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”*

- Then the Supreme Court judgment in ***K. Srinivas Rao v. D.A. Deepa***², which observe the following:

*“16. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh [(2007) 4 SCC 511] , we could add a few more. **Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.***

31. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree.”

²(2013) 5 SCC 226.

15. In the Supreme Court's Judgment in *Mangayakarasi v. M. Yuvaraj*³, the following was observed:

"14. It cannot be in doubt that in an appropriate case the unsubstantiated allegation of dowry demand or such other allegation has been made and the husband and his family members are exposed to criminal litigation and ultimately if it is found that such allegation is unwarranted and without basis and if that act of the wife itself forms the basis for the husband to allege that mental cruelty has been inflicted on him, certainly, in such circumstance, if a petition for dissolution of marriage is filed on that ground and evidence is tendered before the original court to allege mental cruelty it could well be appreciated for the purpose of dissolving the marriage on that ground....."

16. Hence, from the facts narrated above, and the nature of allegations which are of such a serious nature, it is established that:

- a) They tear the fabric of the matrimonial relationship between the husband and the wife, and;
- b) Amounts to cruelty, to such an extent, that is not condonable.

17. Hence, in this view of the matter, we are satisfied that the judgment dated 01.10.2019 passed by Family Court, East District, Karkardooma Court, Delhi is correct in law and on facts, and needs no interference. Appeal, consequently, is dismissed.

JASMEET SINGH, J.

VIPIN SANGHI, J.

AUGUST 25, 2021/dm

³(2020) 3 SCC 786.