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

% *Date of decision: 14th September, 2023*

+ **FAO 28/2013**

RATNA CHOUDHARY Appellant

Through: Ms. Sanya Panjwani, Advocate with
appellant in person.

versus

DIPANKAR MAHTO Respondent

Through: Mr. Keshav V Hegde, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. An appeal under Section 19 of the Family Courts Act, 1984 has been filed against the judgment dated 21.09.2012 granting divorce to the respondent/ husband on the ground of cruelty in his petition under Section 13 (1)(ia) of the Hindu Marriage Act, 1955.
2. The **facts brief** are that the appellant and respondent who are Class I Officers of Government of India, met during their Foundation Joining Programme at Lal Bahadur Shastri National Academy of Administration, Mussorie, where they developed a liking for each other. They subsequently got married at Arya Samaj Mandir, Baba Kharak Singh Marg, New Delhi on



15.01.1999. The marriage which started on mutual liking, however, did not turn out to be a relationship of mutuality and cordiality. The appellant claimed that the respondent was caste conscious and tried to compel the respondent/ husband to follow the practices as followed by Brahmins like making him wear a “*gamchha*” while going to the toilet and such other practices, despite the fact that both belonged to OBC category. The appellant found the respondent as a “*junglee*” and called him rustic, uncultured and uncivilized. Their food habits were also different since the appellant preferred food with onion and garlic, which was not to the liking of respondent/ husband. According to the respondent, she was a quarrelsome lady who did not do the household work and many a times respondent was compelled to eat at “*Dhabas*”. He on account of such conduct suffered from typhoid, but was not taken care of by the appellant. The appellant also failed to show any respect to his parents of his family members. She had a habit of imposing herself and ridiculed the husband/ respondent for the jewellery and the gifts given to her at the time of marriage by claiming them to be traditional. The respondent further asserted that the appellant refused to contribute financially for the household expenses and even at time when respondent requested her to contribute on account of sudden expenditure on account of ailment of the father of the respondent, she took an adamant stand and refused to give him any financial support.

3. The respondent/ husband also asserted that after marriage, the appellant was diagnosed with Tuber Culosis which was reported to be an old infection. These facts were never disclosed to the respondent, which he



came to know eventually. She threatened him to lodge a complaint with police and even called the police on 19.02.2002, who left as they found no merit in the complaint of the appellant. She even made a complaint in CAW Cell which according to the respondent/ husband, was false and frivolous. He, however, had to appear twice along with his father at the Police Station which caused great humiliation.

4. The respondent/husband further asserted that he was transferred to Ranchi in May, 2003, but he applied for retention of his Government accommodation so that the appellant/ wife could continue to stay there. However, without any intimation she left the house and shifted to her own accommodation in August, 2003. Subsequently, he came to know that she had applied for the accommodation in her name in March, 2002, which clearly reflected her intention to not continue to reside with the respondent/ husband.

5. The respondent further stated that when he was transferred back to Delhi in December, 2003 he then came to know that the appellant has shifted to her own Government Accommodation. He repeatedly visited her to persuade her to return, but all his efforts failed. In August, 2004 he approached Legal Services Committee for Mediation and Conciliation at Delhi High Court, but appellant despite service of Notice thrice, failed to appear even once. All these acts on behalf of the appellant reflected that she had no intention to continue in the matrimonial relationship. *The respondent thus, sought divorce on the ground of cruelty* and the same was allowed by the impugned judgment.

6. The **appellant/ wife** contested the divorce petition and alleged that in



fact the respondent used to send his entire salary on his parents and sister while she spent her entire salary to meet the household expenses. When she stopped giving her salary after she was diagnosed with an ailment, the respondent planned to leave her and remarry for a hefty dowry. She claimed that she always gave due respect and also discharged all the household duties. However, respondent never liked her and his attitude was always hostile. The respondent and his parents never bothered to give her food or medicines when she was seriously ill but made her do entire household work.

7. The appellant/wife further asserted that the mother of the respondent was extremely pleased when the Doctor informed that the appellant could not conceive. She further asserted that it was the respondent who did not want to stay with him and got a transfer to Ranchi with an ulterior motive. He thereafter, forced her to shift out of the Government accommodation and she thus, shifted to Government hostel on 07.08.2003. She claimed that no summons for Mediation was received from Legal Services Committee. Rather, she kept on contacting the respondent on mobile, but he avoided her.

8. The appellant further asserted that even though she had shifted to a Government hostel in August, 2003, the respondent continued to visit her in the Hostel till January, 2006 and they were cohabiting till then and had even celebrated their wedding anniversary together. It is claimed that the appellant's parents did not want them to reside together and consequently, it is the respondent who deserted her and also committed acts of cruelty towards her.

9. The issues on the pleadings were framed on 19.09.2007 as under :



“1. Whether respondent has subjected the petitioner to cruelty, as alleged, after the solemnization of their marriage? OPP

2. Whether the respondent has deserted the petitioner, without reasonable cause, for a period of two years immediately preceding presentation of the petition? OPP”

10. The appellant and respondent appeared as witnesses in support of their rival assertions. The respondent examined his sisters Madhumita Mahato and Dipanwita Mahato as well the brother-in-law Utpal Mahto; his cousin brother Tirthankar Mahato and his father Sh. K.P. Mahato in support of his assertions.

11. The learned Judge, Family Court considered the rival assertions of both the parties and the evidence adduced by them to conclude that the appellant not only had “*a sense of yours and mine*” but executed it in an uncalled manner. She did not respect the distinct choices and beliefs of the respondent/ husband, but imposed her own way of life on him. She expressed deep mistrust towards him without realizing that such a conduct would undermine their matrimonial bond for the life time. She even levelled false allegations against the respondent/ husband and his parents and relatives. It was thus concluded that the husband was treated with cruelty by the wife and **divorce was granted under Section 13 (1)(ia) of the Act**. Aggrieved by the grant of divorce, the present appeal has been preferred.

12. **Submissions heard and the record perused.**

13. Admittedly, the parties are a part of Government machinery holding senior positions in Government of India. Their journey of togetherness commenced at National Academy of Administration, Mussorie which



blossomed into a relationship which ultimately culminated in marriage at Arya Samaj Mandir, New Delhi on 15.01.1999. However, a relationship which should have been nurtured by both, came under bad weather and turned tumultuous when they apparently had adjustment issues and could not develop a relationship of trust, mutuality and cordiality. Though, they both belonged to OBC category, but their different cultural values became a major sour point between the two. It emerges from the testimony of both the parties that while the appellant preferred to have food with onion and garlic, the respondent/ husband had different food tastes and habit. It became a bone of contention between the two. The appellant also had a different way of life which he tried to inculcate in her husband. Small instances like making him wear a “*gamchha*” while going to the bathroom and take bath in cold water even during winters etc. because oppressive for the respondent. What may have appeared to the wife a way of life, became an imposition on the husband who felt suffocated and compelled to live in a cultural environment which was not appreciated by him. These acts individually may seem to be of little consequence and minor adjustment issues, but when imposed upon a person against his wishes obviously assume a larger proportion making the other person feel scuttled in his life style and create a mental trauma on a day to day basis.

14. Other incidents which have merged from the evidence of the parties are that the respondent felt that the appellant did not appreciate the jewellery given to her at the time of marriage as she found it traditional. She also found that the gifts that were given to her, as cheap. The expectations that she had of a certain standard of life did not get met by the respondent.



15. Another significant aspect which has emerged is that the appellant was not inclined to share the financial burden of the family and contribute for the day to day household expenditure. So much so, she was also not forthcoming to support the respondent financially when suddenly his father was ill and he required money for his treatment. When the parties unite in a matrimonial relationship, a vow is taken not only to mutually stand together in times of joy and happiness but also to share the burden whether financial or emotional, in testing times. Unfortunately, the appellant felt that the respondent was spending more money on his parents, sister and family and did not feel the necessity of standing by the respondent in trying times.

16. The appellant had alleged that the respondent/ husband had financed the purchase of a house in the name of sister in Purulia, but the respondent had examined his brother-in-law Shri Utpal Mahato as well as his sister, who deposed that the house had been constructed by the brother-in-law by raising his own funds. The documents pertaining to the loan taken from LIC were also duly proved. The claim of the appellant that it was the respondent who had spent money by withdrawing it from his GPF again reflects the lack of faith and trust of wife in her husband.

17. It does not need any emphasis that the trust and faith are the bed rock of any matrimonial relationship and when the parties have a feeling of “*yours and mine*” as observed by the learned Judge, Family Court, there is bound to be discord and such discord which persists consistently during the matrimonial life, becomes a source of mental stress and trauma.

18. It has also emerged from the evidence that the appellant did not develop any affection for the parents and the family members of the



respondent and any visit by them was taken as an additional responsibility interfering with the life of the appellant.

19. The appellant had deposed that she used to do the washing of clothes and when she would return thereafter, she would find the respondent along with his *Chacha-Chachi* already having lunch with nothing left for her. However, the evidence revealed that the *Chacha-Chachi* had visited only once and she herself had stated that she and the respondent used to have their meals together on Saturdays. The averments of the respondent of alleged neglect and deprivation are, rebuffed by her own admissions in her evidence.

20. The appellant even filed a complaint in CAW Cell in July, 2002 not only against the respondent/ husband but also against parents and other relatives despite the fact that the respondent's parents had not visited him since last about two years i.e. April, 2000. Eventually, the name of the mother was struck off from the complaint. The respondent/ husband had to appear twice along with his father at the Police Station. It cannot be overlooked that the appellant has failed to prove by any cogent evidence that there were dowry demands made from her or that the parents and the relatives were also involved in any manner. Rather, her involving the parents and the relatives shows her vindictiveness towards the respondent and his family members. It cannot be over looked that respondent held a respectable position in Government of India and making such reckless allegations and complaint in a CAW Cell would obviously a cause of severe humiliation, as has been asserted by the respondent.

21. In this context, it is worthwhile to note that the respondent did not



retaliate by making counter allegations or initiating counter complaints, but still adopted a reconciliatory mode and approached the Legal Services Authority in August, 2004 but the appellant failed to come forth for any reconciliatory effort.

22. The appellant undeniably applied for separate Government accommodation in March, 2002 when both the parties were posted at the same place. The respondent in line with his responsibility, made a request for retention of Government accommodation for the appellant to continue to reside when he was transferred to Ranchi in May, 2003. The appellant admittedly shifted to Government hostel in August, 2003 despite the fact that respondent had taken retention of house till December, 2003. So much so, the appellant did not even bother to inform the respondent and he came to know about these true facts only through an RTI in March, 2009. It is all reflective of appellant being disenchanted and not interested in continuing her matrimonial relationship. She eventually had withdrawn from her matrimonial relationship for non-justiciable reason. Her conduct of shifting to her own Government accommodation in August, 2003 without informing the respondent, is again reflecting of her withdrawal from the relationship.

23. The appellant has claimed that though she had shifted to Government accommodation, the respondent continued to visit and cohabit with her till January, 2006 and they even celebrated their wedding anniversary. The respondent had clarified that his visits to the appellant from time to time were only in an endeavour to reconcile, though it did not materialize. He denied there been any cohabitation between the two after August, 2003.

24. The over whelming evidence on record, establishes that the appellant



never mentally and physically settled in this matrimonial relationship and had mistrust, lack of tolerance and indifference towards the respondent. Such repudiation of matrimonial relationship as reflected in evidence by various incidents as detailed above, clearly proves that the conduct of the respondent when considered holistically over the period of subsistence of marriage, was clearly within the definition of “*cruelty*”.

25. We, therefore, find no merit in the appeal against grant of divorce on the ground of cruelty under Section 13(1)(ia) of Hindu Marriage Act and the appeal along with pending application, if any, is hereby dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 14, 2023
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