



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 24th August, 2023

Pronounced on: 14th December, 2023

MAT.APP.(F.C.) 46/2023 & CM APPL. 516/2020

SHRI NIWAS

..... Appellant

Through: Mr. K.G. Bhagat & Ms. Archana
Midha, Advocates.

versus

MRS RAJNI

..... Respondent

Through: Mr. Prem Chand Ganganiya & Mr.
Dinesh Singh Bachgoti, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Appeal has been filed on behalf of the appellant/husband against the impugned Judgment dated 25.10.2013 dismissing divorce petition seeking divorce on the ground of cruelty and desertion in a petition filed by the appellant/husband under Sections 13(1)(ia) and 13(1)(ib) of Hindu Marriage Act, 1955 (*hereinafter referred to as "HMA, 1955"*), passed by the learned Additional District Judge, Delhi.

2. Briefly stated, the parties got married on 02.02.2003 and one son, namely, Master Divanshu was born from their wedlock on 04.11.2003. The appellant/husband in his Divorce petition had claimed that the respondent/wife created unhealthy and uncongenial atmosphere and never cooperated with the appellant/husband for happy married life. The



respondent/wife failed to perform her matrimonial obligations and to discharge household chores. The respondent/wife was extravagant by nature and despite all the love and affection, she used abusive language with the appellant/husband.

3. The appellant/husband claimed that in August, 2003, her father took her to Allahabad on the pretext for some work in Allahabad University, but on return, she went straight away to the parental home and it is after much request and persuasion by the appellant/husband and the family members and some neighbours, that she eventually returned to the matrimonial home.

4. It is further claimed that on 06.02.2004, she in conspiracy with her mother took jewellery, cash and household articles and returned to her parental home. The appellant/husband lodged a complaint with the Police reporting the incident. On the next day i.e. 07.02.2004, appellant/husband along with uncle, brother and friends went to the house of the respondent/wife, but they were humiliated by the respondent's parents.

5. The appellant/husband then filed the Petition under *Section 9 of the Hindu Marriage Act, 1955 for Restitution of Conjugal Rights* on 02.04.2004. As a counterblast, the respondent/wife filed the Petition under Section 125 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC, 1860"*) before the Court of ACJM, Ghaziabad claiming maintenance. A sum of Rs. 5,000/- per month w.e.f. 04.06.2004 was directed to be paid to the respondent/wife and the son.

6. Further, on 26.07.2004, the father of the respondent/wife visited the appellant/husband's office where he abused and threatened him and the complaint of the incident was made by the appellant/husband to Public Analyst, Food Laboratory, Department of PFA, Government of Delhi on



02.08.2004.

7. Thereafter, a false FIR under Sections 498-A/323/504 of I.P.C. and 3 and 4 of the Dowry Prohibition Act was registered against the appellant/husband and seven of his relatives.

8. The appellant/husband has asserted that while the Petition under Section 9 of HMA, 1955 was pending, the respondent/wife agreed to give Divorce by Mutual Consent and, therefore, the appellant/husband withdrew his petition. Pursuant to this Settlement, the respondent/wife also filed an affidavit before the ACJM, Ghaziabad in the criminal proceedings that all her allegations were false and fabricated and the complaint had been made by her under pressure and that she does not want to pursue the matter further. However, the respondent/wife thereafter did not come forth to file the petition for divorce.

9. The appellant/husband thereafter filed the Petition under *Section 13(1)(ia) and 13(1)(ib) of the HMA, 1995* seeking divorce on the ground of cruelty and desertion, however the same was dismissed vide the Impugned Order.

10. The respondent/wife contested the divorce petition and denied all the allegations in her **Written Statement**. She asserted that she was treated with cruelty and a demand of Maruti Zen Car VXI in lieu of Alto LXI Car and Rs. 2,00,000/- was made. The respondent/wife was turned out from the matrimonial home in July, 2003 and was asked to return only with a cash amount of Rs. 2,00,000/- and Maruti Zen VXI Car. Her father arranged for Rs. 2,00,000/- which amount was given to the appellant/husband in September, 2003, after which she was permitted to return to the matrimonial home and she was kept well for some time. However, at the time of



Choochak ceremony, after the birth of the child on 04.11.2003, a demand for Maruti Zen VXi Car was again made.

11. On 05/06.02.2004, the respondent/wife was severely beaten in the night by the appellant/husband and his family members and the demand for car was reiterated and she was threatened to leave the matrimonial home on the next day or else, she would be killed. She thus, left the matrimonial home on 06.02.2004.

12. The respondent/wife asserted that on 20.02.2005 at about 01:00 P.M., the appellant/husband, his three sisters, brother, Bhabhi, Phoofa Shanti Lal and uncle Tara Chand went to the respondent/wife's parental house and again proposed that all the disputes can be settled if Maruti Zen VXi Car was given and the cases were withdrawn and the Divorce Deed may be signed. The respondent/wife was dragged by her hair by the appellant/husband and his family members. Consequently, the respondent/wife got an FIR registered under Sections 498A/323/504/506 of IPC, 1860 and Sections 3 and 4 of the Dowry Prohibition Act at Police Station, Vijay Nagar on 21.02.2005 at Ghaziabad, Uttar Pradesh.

13. The respondent/wife thus, asserted that the appellant/husband never intended to stay with her. It is the appellant/husband who treated her with cruelty and was instrumental in desertion.

14. On the basis of pleadings, the issues were framed on 04.01.2010 as under: -

“1. Whether the respondent has treated the petitioner with cruelty after solemnization of marriage? OPP.

2. Whether the respondent has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition? OPP.



(3) Petitioner is entitled to a decree of divorce on the ground as prayed for? OPP.

(4) Relief”

15. The appellant/husband examined himself as PW1, PW2 Shri Om Prakash Chanchal, his elder brother and PW3 Shri Mahinder Singh, his neighbour.

16. The respondent/wife appeared as RW1 and examined her RW2, Shri G.R. Singh, her father and RW3 Harbans Singh, her uncle in support of her assertions.

17. The learned Additional District Judge considered the entire evidence and observed that all the allegations of the respondent/wife being quarrelsome, temperamental and not doing household chores and also her going to Allahabad with her father to get her certificates, degree etc., were general which essentially amounted to normal wear and tear of the family and not acts of cruelty.

18. Essentially, both the parties in their evidence had admitted that the respondent/wife left the matrimonial home on 06.02.2004, though the respondent/wife claimed that she was compelled to leave the matrimonial home after being severely beaten up and threatened. The incident dated 20.02.2005 when the appellant and his family members went to the house of respondent, led to the registration of FIR under Sections 498A/323/504/506 of IPC, 1860 and Sections 3 and 4 of the Dowry Prohibition Act which ultimately resulted in conviction of the appellant/husband and his sister.

19. Ld. ADJ thus, concluded that it was established that it is the appellant/husband who had treated the respondent/wife with cruelty and subjected her to harassment and thus, he was not entitled to divorce on the



ground of cruelty and desertion. Accordingly, the Divorce petition was dismissed.

20. Aggrieved by the dismissal of the Divorce Petition, the present Appeal has been preferred.

21. **Submissions heard from the learned counsels for the parties and the evidence as well as the documents perused.**

22. The parties got married on 02.02.2003 and a son, Master Divanshu was born on 04.11.2003 from their wedlock. It is not denied that the respondent/wife separated from the appellant/husband on 06.02.2004, since when they have been living separately. The marriage between the parties survived for barely one year and thereafter, unfortunately, for the last almost 20 years, they are entangled in multiple litigations and have not been able to bring a quietus to their marital discord.

23. The appellant/husband has made various claims of respondent/wife being quarrelsome and temperamental and was not cooperative towards him and that in August, 2003, she had once gone with her father to Allahabad University for getting her certificates and degree. Thereafter she went to her parental home, only to return to matrimonial home upon persuasion by relatives and neighbours etc. The learned Additional District Judge has rightly observed that aforesaid allegations were general and surfaced as the normal wear and tear of the matrimonial bond and did not constitute cruelty.

24. The respondent/wife as well as her father who had appeared as RW2, had alleged that soon after the marriage, the appellant/husband and his parents were not happy with the Alto Car given in dowry and they started making a demand for Rs. 2,00,000/- and also claimed that the said Alto car be changed with a bigger car i.e., Maruti Zen VXi Car.



25. The respondent/wife had further stated that the demands persisted and her father arranged for Rs. 2,00,000/- and handed over the money which she gave to the appellant/husband in September, 2003. However, there are inherent contradictions about giving of Rs. 2,00,000/- to the appellant/husband. The respondent/wife in her testimony asserts that it is she who got the money from her father and handed over the same to the appellant/husband whereas, the father of the respondent/wife in his testimony has asserted that the money was given by him. The respondent/wife has not been able to prove by giving any cogent evidence led in this case that there was either a demand for cash made or the same was satisfied.

26. It is also pertinent to note that according to the respondent/wife, the displeasure was for having given a smaller car in lieu of which a bigger car was being demanded. This got magnified to a demand of Rs. 2,00,000/- and a bigger car. Once again, there seems to be an apparent exaggeration in alleging the dowry demands which from exchange of Alto car with the bigger car, became a demand for another car by the appellant/husband and his family members. Therefore, there are material contradictions in the assertions of the respondent/wife that she was being harassed for dowry which create a doubt about she being subjected to cruelty on account of dowry demands.

27. In this backdrop of unsubstantiated assertions of routine harassment of dowry, on 06.02.2004, the respondent/wife along with the child left the matrimonial home on the allegation that she was severely beaten by the appellant/husband and his family members in the night of 05.02.2004 and was threatened that either she should leave the matrimonial home next day



or else, she would be killed. The respondent/wife however, in her cross-examination stated that she has no medical record to corroborate her allegations of beating. We find it difficult to believe that a person who has been beaten up in the night would not call the Police or atleast her family members, but would leave the matrimonial home in the afternoon of next day i.e. 06.02.2004 in the presence of *Nanad* and *Jethani* as admitted by the respondent/wife in her cross-examination. Such conduct of the respondent raises serious doubt about her being subjected to physical cruelty as claimed by her.

28. After the respondent/wife admittedly left the matrimonial home on 06.02.2004, the appellant/husband tried for reconciliation and even filed the Petition under Section 9 of HMA, 1955 for Restitution of Conjugal Rights.

29. According to the respondent/wife, the appellant/husband, his three sisters, brother, Bhabhi, Phoofa, and Uncle came to her parental house for a settlement on 20.02.2005 and they claimed that all pending cases be withdrawn, a Maruti Zen VXi be given and the Divorce Deed be signed, upon refusal of which they were subjected to beatings. She further asserted that she was dragged by her hair and suffered injuries, therefore, the FIR under Sections 498A/323/504/506 of IPC, 1860 and Sections 3 and 4 of the Dowry Prohibition Act was registered on the next day i.e., 21.02.2005.

30. The learned Additional District Judge while dismissing the Divorce Petition, was persuaded by the conviction of the appellant/husband and his sister under Sections 498A/323/504/506 of IPC, 1860 and Sections 3 and 4 of the Dowry Prohibition Act, by believing the testimony of the respondent/wife and other prosecution witnesses of having been beaten up by the appellant/husband and his family members on 20.02.2005.



31. The Appeal against the conviction was preferred before the Additional Sessions Judge, Ghaziabad who *vide* Judgment dated 07.08.2019 in detail considered the evidence and noted the inconsistencies in the testimony of the complainant/respondent/wife and her father, who was cross-examined as RW2 in the Divorce petition, and concluded that there were inherent contradictions in respect of the demand and payment of Rs. 2,00,000/-.

32. Further, it was observed that there were contradictions in their testimony about when the medical examination of the complainant/respondent/wife and at whose request, it was done. Moreover, while the complainant/respondent/wife herein had asserted that she had bleeding injuries, this was not supported by the medical report that was produced before the criminal court.

33. The Additional Sessions Judge, Ghaziabad observed that entire incident of 20.02.2005 as was claimed by the respondent/wife was a “mockery”. It was also noted that it was not believable that eight family members of the appellant/husband’s family including the sister, would go to talk for a compromise. It appears that these eight persons were named only for the purpose of getting the FIR registered under Sections 498A/323/504/506 of IPC, 1860 and Sections 3 and 4 of the Dowry Prohibition Act on 21.02.2005 because the respondent/wife had left the matrimonial home a year before and needed some basis for making this complaint. The learned Additional Sessions Judge, Ghaziabad concluded that all the allegations of dowry demand or of harassment and beating on account of dowry demand was not sustainable and thereby acquitted the appellant/husband and his sister.



34. We may observe that the contradictions as observed by the Ld. ASJ while acquitting the appellant and his family members, also emerge from the respective testimony of the respondent and her father recorded in the Divorce Petition before the Ld. ADJ, Delhi. The entire incident of 20.02.2005 as deposed by the respondent/wife is evidently a concocted story not supported by any cogent evidence.

35. To conclude, the respondent/wife has miserably failed to prove her allegations of having been subjected to cruelty, dowry demands or beatings in her evidence before the learned Additional District Judge in divorce proceedings and have also been trashed by the learned Additional Sessions Judge, Ghaziabad while acquitting the appellant/husband and his sister in the Appeal against the conviction under Sections 498A/323/504/506 of IPC, 1860 and Sections 3 and 4 of the Dowry Prohibition Act.

36. The falsity of the assertions of the respondent/wife is also brought forth from the fact that while the Petition under Section 9 of the HMA, 1955 for Restitution of Conjugal Rights filed by the appellant soon after she left the matrimonial home on 06.02.2004, was pending, the respondent/wife agreed for divorce by mutual consent and even filed the affidavit Ex.RW1/P1 dated 10.04.2007 in the criminal proceedings stating that she was compelled to make a false complaint and she does want to continue with the case against the appellant/husband. It is the assurance of the respondent/wife for Divorce by Mutual Consent that prompted the appellant/husband to withdraw his Petition under Section 9 of HMA, 1955 on 19.12.2005.

37. The respondent/wife has tried to wriggle out of this factual situation by asserting that she was prompted in filing that affidavit on the assurance of



the appellant/husband that he would permit her to join the matrimonial home which again is not a correct statement as at the time of withdrawal of Petition under Section 9 of HMA, 1955, it was categorically stated that since the parties have agreed to take divorce by mutual consent, the Petition under Section 9 of HMA, 1955 was being withdrawn. The respondent/wife again has tried to explain that her counsel was not present at the time when this statement was made but it can only be termed as a desperate attempt to explain the admitted situation.

38. The conduct of the respondent/wife clearly proves that she had made the false allegations and has been taking contradictory stands against the appellant/husband causing him the grave embarrassment and humiliation as he suffered in jail for four days pursuant to the registration of the FIR under Sections 498A/323/504/506 of IPC, 1860 and Sections 3 and 4 of the Dowry Prohibition Act and in which he suffered trial for about 14 years, in which he stands acquitted.

39. The Supreme Court in the case of **Ravi Kumar v. Julmidevi** (2010) 4 SCC 476 has categorically held that “reckless, false and defamatory allegations against the husband and family members would have an effect of lowering their reputation in the eyes of the society” and it amounts to ‘cruelty’. Also, in **K. Srinivas Rao v. D.A. Deepa** (2013) 5 SCC 226 the Supreme Court has held that *making unfounded allegations against the spouse or his family in the pleadings or filing false complaints, which has an adverse impact, amounts to causing mental cruelty*. Similar observations were made by the Coordinate Bench of this Court in the case of **Rita v. Jai Solanki** (2017) SCC OnLine Del 9078 and **Nishi v. Jagdish Ram** 233 (2016) DLT 50.



40. On the failure to prove allegations of dowry demand, the Hon'ble Supreme Court in ***Kahkashan Kausar v. State of Bihar, (2022) 6 SCC 599*** has held as under:-

“21. Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the appellant-accused, it would be unjust if the appellants are forced to go through the tribulations of a trial i.e. general and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by this Court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must, therefore, be discouraged.”

41. It is also established on record from the above discussed conduct of the respondent that she never had any intention to resume the matrimonial relationship and she without any reason had deserted the appellant/husband on 06.02.2004.

42. We conclude from the entire aforesaid discussion that the learned Additional District Judge fell in error in being swayed by the registration of the Sections 498A/323/504/506 of IPC, 1860 and Sections 3 and 4 of the Dowry Prohibition Act and consequent conviction and did not appreciate the evidence led herein which proved the acts of cruelty and desertion by the respondent/wife towards the appellant husband..

43. Consequently, we hereby set aside the impugned Judgment dated 25.10.2013 and grant divorce to the appellant/husband under Sections 13(1)(ia) and 13(1)(ib) of HMA, 1955 on the ground of cruelty and



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desertion.

44. The present Appeal is accordingly allowed and disposed of along with pending applications, if any.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 14, 2023
S.Sharma