



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

% *Judgment delivered on: 29th November, 2023*

+ **MAT.APP.(F.C.) 18/2018**

INDU

..... Appellant

versus

SUNIL BABU

.....Respondent

Advocates who appeared in this case:

For the Appellant: Mr. Siddharth Mittal, Ms. Shilpa G. Mittal, Mr. Kshitiz Chauhan & Mr. Rishav Vats, Advocates

For the Respondent: Mr. Vikas Sharma, Mr. Surya Singh and Mr. Yash Kumar, Advocates

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The appellant by way of present appeal impugns the judgment dated 20.11.2017, whereby the petition filed by the respondent-husband under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act') seeking dissolution of marriage on the ground of cruelty has been allowed and a decree of divorce has been passed.

2. The relevant facts necessary for deciding the present appeal are that the appellant-wife and the respondent-husband got married on 16.04.2006, as per Hindu Rites and Ceremonies at Gurgaon, Haryana.



After their marriage, the parties co-habited as husband and wife at Bijwasan, New Delhi. Out of the wedlock, a female child namely, Diti was born on 24.01.2007.

3. On account of certain disputes and differences that arose between the parties, the respondent-husband filed a divorce petition for dissolution of marriage against the appellant-wife in the Family Court, Tis Hazari Court, Delhi on 19.08.2008 on the ground of cruelty.

4. As per the respondent-husband, the instances of cruelty stated to have been committed by the appellant-wife, and as pleaded in the divorce petition are enumerated as follows - (i) the appellant-wife compelled and forced the respondent-husband to shift to Delhi from Farukhnagar away from his parents, accordingly, the parties started residing at a rented accommodation at Bijwasan, Delhi, and yet, the appellant-wife wanted the respondent-husband to sever his relationship with his family members; (ii) she would taunt the respondent-husband and would feel contrite about not having married his ex-fiancé, namely, Rahul, (iii) the appellant refused to perform her day to day household chores and other matrimonial obligations when proposal of her younger sisters' marriage with the younger brother of the respondent was not acceded to by the family of the respondent; (iv) the appellant would often leave the matrimonial home without the permission of the respondent; (v) on 13.07.2008, the respondent left the matrimonial home and took away all her jewellery and when an attempt made by the respondent to bring her back to the matrimonial home failed, a report was lodged with the police by the respondent on



03.08.2008 in respect of her conduct; (vi) On 05.08.2008, the appellant-wife came back and stayed overnight and again left the next day after quarrelling with the respondent, however, on the same day at 10:30 p.m, she came back along with her parents, brother and few musclemen at the native place of the respondent and gave severe beatings to the old mother of the respondent and threatened to eliminate the entire family, in respect of which a report was lodged with the SHO, PS, Farukhnagar but he did not take any action, therefore, a complaint was made to DCP, Gurgaon and only thereafter, a report was lodged.

5. The appellant-wife contested the divorce petition and in her written statement, it was *inter alia* pleaded that - (i) the respondent and his family members were not satisfied with dowry and thus, they harassed the appellant-wife physically and mentally; (ii) on 06.08.2008, when the appellant had come to her matrimonial home at Farukhnagar with her daughter and insisted on staying there, she was severely beaten and somehow she managed to run out of the matrimonial home and went to the Police Station at about 12:30 am (night) and lodged DDR No.26 dated 07.08.2008, subsequently on the basis of which, the FIR No.130/2008 came to be registered under Sections 498A/406/323/506 IPC against the respondent and his family members viz., Shakuntala Devi (mother-in-law), Raj Kumar @ Tinku (*Devar*), Sunita (Sister-in-law) and her husband Raj Kumar (SDO, Electricity Board); (iii) the respondent himself treated the appellant with cruelty.



6. On the basis of the pleadings of the parties, the following issues were framed by the Family Court on 10.09.2009:

(a) *Whether the petitioner has been treated with cruelty by the respondent as alleged?*OPP

(b) *Whether the petition is not maintainable?* ...OPR

(c) *Whether this Court has no territorial jurisdiction to entertain the present petition?* ...OPR

(d) *Whether the petitioner has suppressed material facts and has not approached this Court with clean hands?* ...OPR

(e) *Relief*

7. The respondent-husband examined himself as PW1 and tendered his detailed affidavit in evidence [Annexure A-5 (colly.)] wherein, apart from reiterating the allegations made in the divorce petition, he deposed in paragraph 24 thereof that a false case of dowry demand was registered by the appellant on account of which he had to remain in judicial custody. For ready reference, para 24 of the respondent's affidavit reads as under:

“24. That the deponent implicated the deponent and his other family members in a false case of dowry demand being FIR No. 130/2008 u/s 498/406/323/506/34 IPG registered at P.S. Farooq Nagar, Gurgaon in acting connivance and instigation of her family members and due to the said false case the deponent had to remain in judicial custody for a substantial period. The Respondent showered all possible immense cruelties upon the deponent and his other family members for no valid and cogent reason. (Copy of FIR No. 130/2008 is annexed herewith and marked as Exh. PW-1/C.)”

(emphasis supplied)



8. The respondent/PW1 was cross-examined by the advocate of the appellant and in response to the specific suggestions/questions put to the respondent, he stated as under:-

“...It is correct that one FIR bearing No.130/08/13/08/08 U/s 498A, 406, 323, 506, 34 IPC was registered police station Farukh Nagar at the insistence of my wife against me, my mother, my brother, my sister and my sister’s husband and the trial arising out of said FIR is pending in the Court of Gurgaon. I do not know whether my wife was medico legally examined or not/, I remained in police/judicial custody for 3 days in the said case.”....

(emphasis supplied)

9. The appellant examined herself as RW-1 and also examined her father namely, Hukum Singh as RW-2.

10. The Family Court after perusing the evidence and pleadings recorded a finding that the assertion that the appellant-wife wanted the respondent-husband to sever his relation with his family at her instance and for this reason they started residing at a rented accommodation at Bijwasan, Delhi has not been substantiated and it is belied from the statement of PW-1, who admitted that travelling back and forth from Farukhnagar, Haryana to Rajdhani College, Raja Garden, Delhi University, New Delhi was very long and time consuming exercise. It is also recorded by the learned Family Court that testimony of respondent as PW-1 suggests that respondent was perhaps over sensitive about his wife having an affair prior to their marriage and the respondent was piqued by the fact that appellant would leave the matrimonial home without his consent and thereby



visit her parental home near Farrukhnagar. All these allegations of cruelty have been discarded by the Family Court observing that till about April 2008, there was no major cause for marital discord between the parties and they were sailing through martial life without much turbulence except for normal wear and tear of their married relationship.

11. With regard to the alleged incident that took place in the night of 06.08.2008 at Farukhnagar, the Family Court observed that the appellant/RW1 testified that the respondent did not come to Farukhnagar on the said night and had no role to play in incident of 6th August, 2008. The appellant although in the complaint (Mark C) made to the DCP Gurgaon, did not attribute any role to the respondent, yet he was later on implicated in the complaint made to the police which culminated into an FIR No.130/2008 under Sections 498A/406/323/506 IPC. It is also observed by the Family Court that the appellant also testified that while residing at Bijwasan, the respondent would call her parents and abuse them, which version is not supported by the appellant's father, who was examined as RW2.

12. The Family Court also noted that the FIR was registered not only against the respondent-husband but also against his mother, sister, brother-in-law, brother and one uncle Mohar Singh, who faced the trial and were eventually acquitted *vide* judgment dated 16.08.2016 passed by the Court of Ms. Neelam, Sub-Divisional Judicial Magistrate, Pataudi, Haryana. Further, the respondent remained in judicial custody for a while and other accused persons had



to obtain anticipatory bail. In this backdrop the Family Court observed that the appellant by leveling false allegations of her ill-treatment in connection with dowry demand and then resorting to criminal proceedings against the respondent and his family members, that resulted in their acquittal, has caused unbearable pain, misery and discomfort to the respondent. The Family Court further observed that the sustained course of unjustifiable conduct and behavior on part of the appellant-wife inflicted great degree of physical and mental cruelty upon the respondent-husband.

13. The Family Court thus, held that the treatment the appellant meted out to the respondent while residing separately at Bijwasan and the events that unfolded on 06.08.2008 pose danger or apprehension in the mind of the respondent that it is not safe to reside and co-habit with the appellant.

14. Resultantly, the divorce petition of the respondent was allowed by the Family Court and the marriage between the parties was dissolved in terms of section 13(1)(ia) of the Act.

15. Mr. Siddharth Mittal, the learned counsel for the appellant submits that the only ground on which the learned Family Court has allowed the divorce petition of the respondent is that the respondent has been able to prove that the appellant initiated criminal proceedings by leveling false allegations as such proceedings resulted into the acquittal of the respondent, which amounts to cruelty.



16. He submits that the complaint was filed by the appellant prior to the institution of the divorce petition but no ground of filing a false complaint has been pleaded by the respondent in the petition. Therefore, the finding of cruelty by the learned Family Court on the ground that the allegations made in the criminal complaint filed by the appellant were false, is beyond the pleadings. He submits that even the order of acquittal came to be passed after the evidence had been closed by the learned Family Court, therefore, same ought not have been considered by the Family Court. To buttress his contention, the learned counsel placed reliance on the decision of Supreme Court in *Mangayakarasi vs. M. Yuvaraj*, (2020) 3 SCC 786.

17. Further, placing reliance on the decisions of this Court in *Kavita vs. Rakesh Raman*, MAT.APP. 52/2009 and in “*Sheo Nath Singh vs. Sujata*” II (2007) DMC 601, the learned counsel contends that discharge/acquittal in a criminal case by itself does not constitute cruelty.

18. He submits that mere filing of complaint or acquittal of accused is not cruelty, if there are justifiable reasons to file the complaint. In support of his contention, reliance is placed on the decision of this Court in *Raj Talreja vs. Kavita Talreja*, (2017) 14 SCC 194.

19. He further submits that judgment of acquittal is under challenge before the learned ASJ, Gurgaon and since the appeal is pending for consideration before the first Appellate Court, the judgment of acquittal should not be read in evidence in the absence of any other grounds being made out.



20. He contends that the fact that the respondent had to suffer incarceration will also not furnish a ground for dissolution of marriage when the ground of false implication was not pleaded.

21. *Per contra*, the learned counsel for the respondent-husband invites the attention of the Court to the evidence filed by way of an affidavit by the respondent/PW-1, to submit that in the said affidavit the respondent has specifically alleged that a false case of dowry demand was filed against the respondent and his family members and in the said false case the respondent had to remain in judicial custody for some period. He submits that this part of the testimony of the respondent/PW-1 has gone unrebutted.

22. He submits it has also come on record through cross-examination of PW-1, in response to the question put by the appellant's counsel, that the respondent remained in police/judicial custody for three days, which fact also remained uncontroverted.

23. He submits that it is not in dispute that the respondent and his other family members were acquitted *vide* judgment dated 16.08.2016 passed by the Court of Ms. Neelam, Sub-Divisional Judicial Magistrate, Pataudi, Haryana. He further submits that it has also been recorded by the learned Family Court that during the course of arguments it was admitted by the appellant's counsel that the respondent remained in judicial custody for a while and other accused persons were admitted to anticipatory bail at the initial stage of the case.



24. He submits that lodging of false complaint and incarceration of the respondent in a case which has resulted in the acquittal of the respondent, amounts to mental cruelty. He places reliance on the decision of this Court in “*MS vs. SD*” in *MAC.APP.(F.C). 213/2017,(D.O.D. 23.04.2019)* and *Vinod Prajapati v. Dev Kumari @ Devki Prajapati of Madhya Pradesh High Court, First Appeal No. 306/2009 [DB]*

25. We have heard the learned counsel for the appellant, as well as, the learned counsel for the respondent and have perused the record.

26. The expression “cruelty” has not been defined in the Hindu Marriage Act but the Hon’ble Supreme Court had an occasion to examine the concept of “mental cruelty” in “*V. Bhagat v. D. Bhagat*”, [(1994) 1 SCC 337]. It was observed that “mental cruelty” is that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. The nature of mental cruelty should be such that the wronged party cannot reasonably be expected to live with the other party.

27. It is not in dispute that the respondent and his mother, sister, brother-in-law, brother and one uncle Mohar Singh were implicated in a criminal case registered at the instance of appellant vide FIR No.130/2008 under Sections 498A/406/323/506 IPC. All the above family members faced trial for eight long years and eventually they were acquitted *vide* judgment dated 16.08.2016 passed by the Court of Ms. Neelam, Sub-Divisional Judicial Magistrate, Pataudi, Haryana on detailed appreciation of evidence. A perusal of the judgment of



acquittal shows that the Court considered and appreciated the evidence on record in respect of each alleged offence and concluded that the prosecution has failed to prove the guilt of the accused beyond shadow of reasonable doubt in respect of the offences under Sections 323/498A/406/506 IPC.

28. It has also come in the evidence that the respondent remained in police/judicial custody for period of three days. Even other family members of the respondent had to obtain anticipatory bail. Undisputedly, the incarceration of the respondent happened during the pendency of the divorce petition.

29. It is no more *res integra* that if a false criminal complaint is preferred by either spouse, it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce.¹ The Hon'ble Supreme Court in *K. Srinivas Rao V. D.A. Deepa*, (2013) 5 SCC 226 and *Dr. (Mrs.) Malathi Ravi, M.D. V. B.V. Ravi M.D.* (2014) 7 SCC 640 also laid down the principle that lodging of false complaint amounts to cruelty.

30. The respondent was working as a Lecturer in the Delhi University and his incarceration could have affected his service and career. In any event, the incarceration adversely affects the reputation of any individual in the eyes of his employer, colleagues, family, friends and the society at large. The acquittal of the respondent and his family members not only reinforced the presumption of their

¹ *K. Srinivas vs. K. Sunita* : (2014) 16 SCC 34.



innocence but established the fact that the criminal complaint on account of which the respondent and his family members had to suffer the agony of trial for eight long years, was false.

31. We have no doubt in our mind that institution of false criminal case by the appellant against the respondent and his family, in which they were eventually acquitted, amounts to cruelty and in such a situation, the respondent, who suffered acute pain, agony and suffering on account of his incarceration and facing protracted trial for eight long years, cannot reasonably be expected to live with the appellant.

32. In so far as the submission that the ground of filing false criminal complaint has not been pleaded in the divorce petition, we notice that the appellant-wife in her written statement has specifically made a mention of FIR No.130/2008 under Sections 498A/406/323/506 IPC that was registered against the respondent and his family members. The respondent in his evidence by way of an affidavit, categorically deposed that he and his other family members have been implicated in a false case of dowry demand which has been registered *vide* FIR No.130/2008 and that he had to remain in judicial custody for some time. This part of the respondent's testimony has remained uncontroverted. Further, no objection was raised by the appellant's counsel that the respondent's (PW1's) testimony on this aspect of cruelty was beyond the pleadings. Furthermore, in response to the question put by the appellant's counsel, the respondent/PW1 in his cross-examination stated that he remained in police/judicial custody for three days, which fact also remained uncontroverted.



33. It is not in dispute that the events of respondent's incarceration for three days and the acquittal of the respondent and his family members, occurred after the filing of divorce petition, therefore, the same being un-disputed subsequent events could have been considered and looked into by the Family Court. No objection seems to have been raised by the appellant when arguments were addressed on the aspect of acquittal and effect thereof.

34. From the above narration of facts, it appears that both the parties were fully conscious of the allegations of false criminal case and incarceration of respondent as the facets of cruelty, being in issue in the present case, therefore, the appellant at this stage cannot take an objection that the said grounds were not pleaded in the divorce petition or that she has been taken by a surprise. It is trite law that taking note of subsequent events or changed circumstances help in shortening the litigation and enable complete justice being done to the parties.

35. The Hon'ble Supreme Court in case "*K. Srinivas vs. K .Sunita*"(*supra*) under somewhat similar facts and circumstances rejected the contention to not consider the order of acquittal arising out of a criminal complaint in respect of which no pleadings were made in the divorce petition, by observing as under:

"...6. Another argument which has been articulated on behalf of the learned counsel for the respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events



could have been looked into by the court. In any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was led, as also when arguments were addressed, objection had not been raised on behalf of the respondent wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf.”....

36. Reference in this regard may also be had to the decision in *Malathi Ravi, M.D (supra)*, wherein it was held by the Hon’ble Supreme Court that the subsequent events which are established on the basis of non-disputed material brought on record can be taken into consideration.

37. The reliance placed by the learned counsel for the appellant and in *Mangayakarasi (supra)* is misplaced, inasmuch as, the same is distinguishable on facts. In the said case, the learned Trial Court dismissed the divorce petition filed by the husband which judgment was affirmed by the first Appellate Court. The divorce petition was predicated on the allegation about the wife using filthy language in the presence of the relatives and friends and also using such language in the presence of the students of the husband. The learned Trial Court had referred to the evidence and the first Appellate Court, as the last court for re-appreciation of the evidence, had also undertaken the said exercise and arrived at a concurrent decision on the matter. The High Court in the second appeal had a limited scope for interference based on the substantial question of law. However, the High Court framed a substantial question of law premised on the judgment of acquittal, which the Supreme Court opined to be the question framed on facts



providing scope for re-appreciation of evidence and thus, held that it was not a substantial question of law. It was in that backdrop that the Hon'ble Supreme Court observed that *"the tenor of the substantial questions of law as framed in the instant case and decision taken on that basis, if approved, it would lead to a situation that in every case if a criminal case is filed by one of the parties to the marriage and the acquittal therein would have to be automatically treated as a ground for granting divorce which will be against the statutory provision."*

38. In regard to the contention of the appellant that an appeal has been preferred against the order of acquittal, therefore, the order of acquittal has not attained finality, suffice it to say that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, re-affirmed and strengthened by the learned Trial Court.² In any event, the order of acquittal has not been set aside nor the operation thereof has been stayed. Therefore, the contention of the learned counsel for the appellant deserves to be rejected.

39. Besides that, as noted above, the falsity in the allegations made in the complaint which became basis of the FIR has independently been established before the trial court from the testimony of the

² *Chandrappa and Ors. Vs. State of Karnataka* :(2007) 4 SCC 415, para 42(4)



appellant/RW-1, when she admitted that on 06.08.2008 the respondent had not come to the matrimonial house at Farukhnagar, which goes to show that the respondent had no role to play in the incident of 6th August, 2008, contrary to the allegation in the complaint/FIR that on the said date the respondent alongwith his other family members had given beatings to the appellant at her matrimonial home at Farukhnagar. Further, in the present case the cruelty is compounded by the filing of a false complaint which is coupled with incarceration of the respondent.

40. In view of the discussion in the preceding paragraphs, no ground for interference is made out and the present appeal deserves to be, and is, dismissed, leaving the parties to bear their own costs.

VIKAS MAHAJAN, J

SANJEEV SACHDEVA, J

NOVEMBER 29, 2023/dss