



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

*Reserved on: 09th August, 2023
Pronounced on: 18th December, 2023*

MAT.APP.(F.C.) 38/2021
&
CM APPL. 9509/2021

SAPNA PAUL

..... Appellant

Through: Ms. Koplin K. Kandhari, Adv. with
appellant in person.

versus

ROBIN DEV PAUL

..... Respondent

Through: Ms. Deepika V. Marwaha, Sr. Adv.
with Ms. Worthing Kasar &
Ms. Raunika Johar, Advs. with
respondent in person.

CORAM:

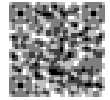
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

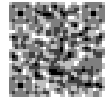
NEENA BANSAL KRISHNA, J.

1. The present **Appeal under Section 19(1) of the Family Courts Act, 1984** has been filed on behalf of the appellant/wife against the impugned Judgment and decree dated 10.12.2020 passed by the learned Judge, Family Court, (South-East) Saket, Delhi granting divorce on the ground of cruelty and desertion in a petition filed by the respondent/husband under Sections 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955 (*hereinafter referred to as "HMA, 1955"*).



2. **Briefly stated**, the parties got married on 10.02.1991 according to the Hindu rites and customs at Arya Samaj Mandir, Karol Bagh, Delhi. The marriage of the parties did not have the approval of the mother of the respondent/husband (*petitioner in the divorce proceedings, hereinafter referred to as the 'respondent'*) who asked the parties to leave the family home and reside separately after the marriage. Consequently, the parties started residing together in one bedroom at G-9, Masjid Moth, New Delhi and one son namely, Udai Paul was born from their wedlock on 28.12.1991.

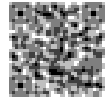
3. **The respondent-husband in his petition claimed that** he was working as an Account Executive with Maadhyam Advertising while the appellant/wife (*respondent in the divorce proceedings, hereinafter referred to as the 'appellant'*) was working with the Times of India but she left her job when she became pregnant. The respondent asserted that appellant was highly qualified being a Master in English and had been a Voice and Accent Trainer for various multinational companies. After the birth of the son, sometime in May or June, 1992, the appellant-wife started abusing the respondent and insisted on shifting to a bigger three-bedroom house. In order to avoid daily fights, despite his meager income and being the only earning member, he shifted to a bigger three-bedroom house.



4. The respondent claimed that appellant refused to do household jobs and frequently ordered food from the outside, even though she was not working. Further, the appellant had a quarrelsome nature and would get hyper for no rhyme and reason and she was uncontrollable when she got angry. One such episode happened in the year 1994, when the appellant in her fit of anger broke the household items, ran out of the house in her night clothes, screaming and shouting. Despite his requests, the appellant did not pay heed and continued to behave in that manner.

5. He claimed that as his job profile required him to travel across the country, the appellant started accusing him of having an affair with a female colleague unmindful of the disrespect to his married and unmarried female colleagues. Because of this he was unable to perform well in his job.

6. The respondent asserted that their relationship was deteriorating and becoming worse with the passage of time due to the tendency of the appellant to pick fights. The appellant started avoiding his company and refused to cohabit with him from mid, 2001 onwards. His request to the appellant to spend more time and to accompany him to various places fell on her deaf ears. In 2001, she left the house along with the child and took all the household items and went to her parents' house. She informed him that

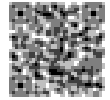


she was consulting a lawyer for divorce.

7. The respondent further asserted that the appellant/wife developed an affair with one Christopher Lornie, relative of respondent's friend living in Chandigarh about which he came to know when he saw various emails exchanged between the appellant and Christopher Lornie. Christopher Lornie used to visit Delhi only to meet the appellant which also created disturbances even in the matrimonial life of Christopher Lornie.

8. The parties eventually agreed for a mutual divorce by mutual consent in 2003 and again in 2007 but every time, the appellant backed out.

9. The respondent also asserted that during the period when they were living together, the appellant frequently left the child alone at home and was absolutely reckless in regard to the security and safety of the child. She frequently changed the school of the child who was forced to shift from Delhi to Kodaikanal, Tamil Nadu, in the year 2007 where he was made to reside in a hostel even though the appellant was living there in a rented accommodation. The child was again shifted to Pune in 2009 only because she decided to shift having got a job with 'Infosys'. The respondent despite such conduct of the appellant, who without informing him shifted the child from one place to the other, did not default at his responsibility and always

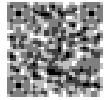


supported the appellant in the educational and other expenses of the child.

10. The respondent further asserted that a false complaint was made against him, firstly in the year 2009 before Shakti Shalini, Bhogal, Jungpura and the complaint was not proceeded after his reply was filed. Thereafter, a complaint dated 23.11.2009 under Section 498A was lodged before CAW Cell, Srinivaspuri, South-East District in which the respondent was summoned by the police. However, after making the inquiries, the allegations of the appellant were found to be forged and fabricated and no action was taken on the complaint. The spate of the litigation and complaints, however, did not end and as the appellant then filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005, (*hereinafter referred to as "D.V. Act"*) wherein she made several allegations.

11. The respondent asserted that he suffered two heart attacks and in the year 2005 when he was at Max Hospital, the appellant came to meet him only once but thereafter neither did she came herself nor let the son visit.

12. The disputes between the parties reached in Mediation Centre, South-East, Saket where the parties arrived at a settlement on 25.09.2014. After the settlement, she agreed to withdraw her complaint under the Domestic

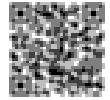


Violence Act but contrary to her settlement, she obtained an *ex-parte* order dated 16.11.2016 from the learned MM (Mahila Court) wherein she was granted maintenance amounting to Rs.1 lakh per month from 2009 till date. In the Appeal preferred by the respondent against said Order, he was directed by learned ASJ to deposit 50% of the arrears of maintenance as a condition precedent for hearing his Appeal. However, the said Order was challenged in Crl. Rev. P. No. 22/2018 before this Court.

13. The respondent further asserted that the parties are living separately since 2001 and he has been deserted by her. **The respondent thus, sought divorce on the ground of cruelty and desertion.**

14. **The appellant-wife in her Written Statement** denied the allegations made in the petition claiming them to be false and frivolous. She asserted that the Divorce Petition was a pressure tactic adopted by the respondent to discourage her from pursuing the recovery of arrears of maintenance before other courts. Despite the order of the learned MM, not a penny has been paid by the respondent-husband.

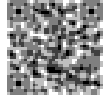
15. While she did not deny that the parties agreed twice to take divorce by mutual consent but claimed that she agreed to do so under the undue influence of her counsel who wrongly advised her. It was claimed that she



had been agitating for maintenance for 9 years but was unable to get any money from the respondent. She denied that she was a highly qualified lady holding professional degree or skill but asserted that due to age factor, she was not able to work or to get job presently. She also claimed that the respondent is a businessman and is leading a luxurious life which is reflected from his ITRs.

16. The appellant further claimed that the allegations made in the divorce petition were defamatory and the respondent was trying to raise a finger on her character by concocting false story. The appellant alleged that she was subjected to harassment, ill-treatment and cruelty and was thrown out of the matrimonial home by the respondent. In the year 2003, she was left with no option but to take shelter in the portion of her house which was left for her by her father. Her dowry articles, cash, jewellery, etc. have been retained by the respondent.

17. The respondent not only failed to take the responsibility of the child but on one occasion, he thrashed his son in such a way that he lost his hearing ability. Presently, he has 80% hearing loss in his left ear and is facing difficulty in his professional life. She has no money for proper treatment or to purchase a hearing aid for the son. The appellant thus,



claimed that the divorce petition was liable to be dismissed.

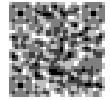
18. **Issues** on the pleadings were framed by the Family Court vide order dated 21.08.2018 which are as under:

- “1. Whether the respondent after solemnization of the marriage, has treated the petitioner with cruelty? OPP*
- 2. Whether after the solemnization of marriage, respondent has deserted the petitioner for the continuous period of two years, immediately preceding the presentation of present petition? OPP*
- 3. Whether petitioner is entitled for the decree of divorce on the above said grounds? OPP*
- 4. Relief.”*

19. **The parties examined themselves** as their witnesses in support of their respective assertions.

20. **The learned Judge, Family Court** after assessing the respective testimony of both the parties, concluded and observed that the various emails Ex.PW1/2 reflected more than normal interaction between the appellant and Christopher Lornie. Though no inference could be drawn that they were having an affair, however, the same was sufficient to cause anxiety or disturbance in the mind of the spouse.

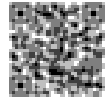
21. Reference was made to the complaint made in CAW Cell on 23.11.2009 made after seven years of separation and it was observed that admittedly no action was taken over the complaint as it was found to be



false and fabricated. Making false complaints and making an effort to see that the spouse is arrested is a clear act of cruelty. Moreover, various allegations were made in the complaint under Domestic Violence Act after seven years of separation which again were held to be acts which would result in humiliation and lower the reputation of the respondent in the community.

22. **Learned Judge, Family Court** also observed that absolutely false averment of loss of hearing on account of the child being beaten by the respondent had been made as the appellant herself admitted in her cross-examination that the child developed sudden deafness at the age of 14-15 years and the parties had together consulted the doctor for his treatment. Patently, false allegations of ill treatment of the child were found to have been made which made in this regard in the Written Statement which was held to be an act of cruelty.

23. Also, a reference was made to the indifferent conduct of the appellant in not showing even minimal concern for the respondent when he suffered from heart attacks. It was observed that such indifferent and nonchalant feelings of the wife sans normal conjugal kindness came within the ambit and scope of cruelty. *It was, thus concluded that the respondent was*

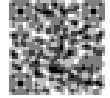


subjected with cruelty and was entitled to divorce.

24. Learned Judge, Family Court further observed that the conduct of the appellant clearly reflected her intention to permanently abandon the respondent. Though appellant has asserted that she had left her matrimonial house in 2001 but her own claim was that she was thrown out in the year 2003. Parties admittedly agreed to divorce by Mutual Consent once in 2003 and the second time in 2007. The circumstances clearly prove the animus of the appellant to desert the respondent; *hence, divorce was also granted on the ground of desertion.*

25. **Aggrieved by the grant of divorce**, the present appeal has been filed by the appellant wife.

26. **The appellant in her appeal** reiterated her claims made in the Written Statement before the learned Judge, Family Court. She has contended that the husband had affairs with his colleagues. The respondent in his cross-examination had admitted that he and lady Sarah and minor had stayed in one room in a hotel in Goa. It was claimed that it was in response to the son having disclosed about the factum of the respondent's illicit affair with Sarah to his School Psychologist that the respondent got so infuriated that he came to her house at 9 p.m. and when her son opened the door, he



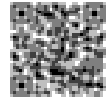
slapped him thrice. Consequently, two days later she found that her son had lost 80% of his hearing in left ear after which the parties took him to the doctor for treatment.

27. It was alleged that the school of the child was shifted however, the same was in the best interest of the child. It was submitted that the respondent had made vague allegations of cruelty against the appellant without specifying any time or date of the incidents and such incidents could not have been relied on to grant divorce on grounds of cruelty. Further, the Divorce has been filed by the husband 18 years after such isolated incidents and cannot constitute a subsisting cause of action giving rise to the Divorce proceedings.

28. It was further submitted that she was compelled to live out of the matrimonial house due to the cruel acts of the husband and she did not desert the respondent.

29. **The appellant in her Written Submissions** reiterated her assertions as stated in the Appeal. Reliance was placed on the case of Suman Singh vs Sanjay Singh (2017) 4 SCC 85.

30. **The Respondent in his Written Submissions** contended that there was no infirmity in the judgment of the learned Judge, Family Court and the



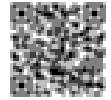
same is liable to be upheld.

31. Reliance was placed on the case of Nagendra vs K Meena (2016) 9 SCC 455, A vs BS 249 (2018) DLT 544 (DB), Harpreet Kaur vs Amarjeet Singh 266 (2020) DLT 597 (DB), Ritesh Babber bs Kiran Babbar 2022 SCC OnLine Del 726, Jyoti Yadav vs Neeraj Yadav 2022 SCC OnLine Del 795.

32. **Submissions heard of both the counsels of the parties and record as well as Written Submissions perused.**

33. From the pleadings of the parties, it is quite evident that both of them are educated, well-placed persons in the society. While the respondent has been in business and has a good financial background, appellant is an MBA having special skills and knowledge in Voice and Accent training with various Multi-National Companies. There is no denial by the appellant that she has been taking up jobs and accordingly shifting to different places where her job took her; two such places being Kodaikanal, Tamil Nadu and Pune. The spouses being educated, a certain minimum civility of conduct and behaviour is normally expected from them.

34. The respondent had asserted that the appellant had developed an affair with one Christopher Lornie which has been established through the emails Ex.PW1/2. From the contents of the emails, it was evident that these were

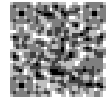


not the usual conversations exchanged between friends. The learned Judge, Family Court has observed that *“The contents of the Ex. PW1/2 e-mails shows that the communication indicates something more than normal social interaction which can cause anxiety or disturbance in the mind of the spouse. However, same cannot be considered as a proof of any affair between the respondent and the said Christopher Lamie.”*

35. The observations of the learned Judge succinctly put across the state of affairs that existed between the appellant and Christopher Lornie, which has been rightly held to have caused anxiety and disturbance in the mind of the respondent.

36. The respondent had also asserted that the appellant had a quarrelsome nature. She was cruel and harsh and had no respect for contribution towards household work. She also had no affection and concern for her husband which is clearly proved by the incident of her not visiting him when he suffered a heart attack in the year 2005, which leads to the conclusion of *“indifferent and nonchalant feelings of respondent towards the petitioner sans normal conjugal kindness”* which comes within the scope of cruelty.

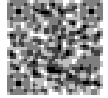
37. The Apex Court in the case of A. Jaychandra vs. Aneel Kaur 2005 (2) SCC 22, observed that cruelty is a course or conduct of one, which adversely



affects the other. If the cruelty is physical, it is easy to comprehend but the problem arises when the cruelty is claimed to be mental. It was explained that *first an inquiry* must be made about the nature of the cruel treatment, *secondly*, its impact on the mind of the spouse and whether it caused reasonable apprehension that it would be harmful or injurious to the spouse. *Ultimately*, inference has to be drawn of the effect on the complaining spouse. If the conduct complained of itself is bad, it is enough to conclude against the spouse and no further inquiry need to be held. The proof of conduct itself is sufficient to prove the conclusion of cruelty.

38. In the present case, applying the three pronged Test laid by the Apex Court in Jaychandra (supra), it can be easily inferred that the acts of indifference and having special friendship with third person is per se a conduct of causing disquiet in the minds of the respondent and their life leading to cruelty towards him.

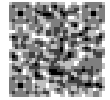
39. **The other significant acts of cruelty** are making of complaints at various forums. She made a complaint in CAW Cell on 23.11.2009 i.e. after 7 years of their separation and that too, was closed. It is apparent that an endeavor was made by the appellant to not only humiliate the respondent by making allegations which were not found to be correct and true, but it was



also a frail endeavor to get the respondent arrested. Such conduct and action must be necessarily held to be an act of cruelty.

40. Appellant then filed a petition under Section 12 of the Domestic Violence Act. She was well with her right to claim maintenance for herself and the child, but the problematic issue was making the false allegations in her petition. She averred that respondent had been cruel towards the child and had slapped him leading to his partial deafness of the left ear, but she admitted in her cross-examination that at the age of about 14-15 years, the child developed sudden deafness. The respondent accompanied her and the child to the doctor for prompt consultation and treatment. Making of false allegations in a complaint filed after seven years of separation, is again nothing but an act of vindictiveness to somehow not only harass the respondent, but also to cause embarrassment to him in public.

41. The Supreme Court in the case of Raj Talreja v. Kavita Talreja, (2017) 14 SCC 194 , while relying on 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. It was observed that filing mere complaints is not cruelty, if there

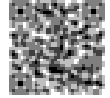


are justifiable reasons of filing them.

42. Thus, making of false allegations in a complaint filed after seven years of separation, amounts to cruelty.

43. The most significant fact is that according to the respondent, after they had separated in the year 2001, they both agreed for divorce by Mutual Consent in the year 2003. Learned Judge, Family Court in this regard observed that the claim of the appellant that they separated in the year 2003 may not be correct since the Mutual Consent Divorce petition mandates an essential period of separation of one year which could not have been filed had they separated in 2003.

44. The appellant admittedly withdrew her consent from divorce twice, in the year 2003 and again in the year 2007. What circumstance can cause turmoil and uncertainty in the mind of respondent than such acts where the appellant acquiesced to their discord but every time, she changed her mind. The explanation given by the appellant was that in the year 2003, she had agreed for Mutual Consent on the ill advice of her counsel. However, she again agreed for a divorce by Mutual Consent in 2007 and the first motion petition was filed though it could not proceed further as respondent backed out. Not only this, during the Domestic Violence proceedings, the parties



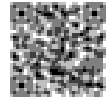
again were referred to mediation where they arrived at a settlement, but again the same was not adhered to by the appellant.

45. A Co-ordinate Bench of this Court in the case of Rajiv Chikkara vs Sandhya Mathur 2016 SCC OnLine Del 6224, observed that where a Divorce by Mutual Consent was agreed to by both the parties, the subsequent unilateral withdrawal of consent by a spouse without any sufficient or just cause, would add to the cruelty meted out to the other spouse.

46. The Apex Court in the case of Rajib Kumar Roy vs Sushmita Saha 2023 SCC OnLine SC 1221, observed as under:-

“Continued bitterness, dead emotions and long separation, in the given facts and circumstances of a case, can be construed as a case of “irretrievable breakdown of marriage”, which is also a facet of “cruelty”. In Rakesh Raman v. Kavita reported in 2023 SCC OnLine SC 497, this is precisely what was held, that though in a given case cruelty as a fault, may not be attributable to one party alone and hence despite irretrievable breakdown of marriage keeping the parties together amounts to cruelty on both sides.”

47. The Kerala High Court in the case of Shreedharan vs. Asha in MAT Appeal No. 578 of 2015 decided on 18.09.2023, was confronted with the similar situation, whereby the offer of settlement failed on account of the wife refusing to accept the offer made by the husband. It was observed that the mutual consent for divorce failed in this matter as the bargaining could



not meet the level of expectation. The idea of “No-Fault-Divorce” is to make the parties realize that there is a sensible way of parting on the agreed terms. Withholding mutual consent in a failed marriage, is nothing but cruelty.

48. In the case of Beena M.S. vs. Shino G. Babu (2022) (2) KHC 11, the Kerala High Court held that withholding of consent for mutual separation in itself would cause mental agony and cruelty to the spouse who demands separation.

49. Thus, such conduct of the appellant in driving the respondent to believe every time that their disputes were about to be put to an end and then to repeatedly withdraw from the attempted settlements can cause disquiet, cruelty, and uncertainty in the mind of the respondent. It is evident that when the matters could not be settled amicably, as is expected of any educated couple, she resorted to making false complaints in CAW cell. It is also evident that fight *inter se* the parties was not on any justifiable grounds, but was a war between the egos prompted by the desire to wreak vengeance against the spouse.

50. We, therefore, conclude that from the various afore-discussed actions and overall conduct of the appellant, it is established that the appellant left the matrimonial home in the year 2001 and thereafter, despite repeated



efforts of conciliation, she refused to return rather agreed for divorce by Mutual Consent on two occasions. Her intention of abandonment of matrimonial relationship is writ large. We, therefore, conclude that the various acts as proves established not only the acts of cruelty committed by the appellant wife but also that she had deserted the respondent.

51. Learned Judge, Family Court in a well-reasoned judgment has rightly granted divorce on the ground of Cruelty and Desertion under Section 13 (1) (ia) and (ib) of the HMA, 1955 respectively.

52. The Appeal has no merit and is hereby dismissed, along with the pending application.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 18, 2023

Ab/nk