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

% ***Date of decision: 04th October, 2023***

+ **MAT.APP.(F.C.) 95/2023 & CM APPLs. 18685/2023, 30879/2023**

LALITA @ GEETA

..... Appellant

Through: Mr. Karanpreet Singh, Advocate.

versus

ANIL KUMAR

..... Respondent

Through: Mr. Joby P. Varghese, Advocate 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 (oral)

1. An Appeal under Section 19 of the Family Courts Act, 1984 has been filed against the judgment dated 15.02.2023 granting divorce to the respondent/ husband on the grounds of cruelty under Section 13 (1)(ia) of the Hindu Marriage Act, 1955.

2. The **admitted facts** are that a case vide FIR No.269/2014 under Section 328/376/376(2)(n)/313/506 IPC was registered against the respondent/ husband on the allegations of having committed rape on the appellant/ wife. However, the matter was compromised pursuant to which the appellant/ wife turned hostile in the criminal proceedings and parties got married according to Hindu customs and rites on 26.04.2014 at Arya Samaj Vedic Sanskar Trust, Tis Hazari, Delhi. According to the respondent/ husband, no child was born from their wedlock. He alleged that the behaviour of the appellant/ wife was insulting, humiliating and she refused



to do the household work and when the respondent/ husband approached her, she threatened to hang herself from a fan. The respondent further claimed that the appellant was a sex maniac and her need for sexual gratification was so excessive and obsessive that it started impacting his health. In fact, when he was unable to meet her demands, she taunted him as “impotent”. Further, because of the aggressive, humiliating and violent conduct of the appellant/ wife, his parents disowned him. In November, 2016 she made false allegations against him and his brother Pawan Kumar, but the matter was later compromised at Police Station Geeta Colony. It was further alleged that she being dissatisfied with the sexual life, left the matrimonial home on 29.11.2016, hence the petition for divorce was filed.

3. The **appellant/ wife contested the petition and claimed** that their marriage was a result of the criminal act committed by the respondent/ husband. He had raped her and thereafter pressurized her to turn hostile during the trial and thereafter had married her. She got pregnant but he administered her some medicine leading to the abortion of the child. She further claimed that she had been tortured, insulted and harassed by the respondent and his family members. No food was given to her and demand for Rs.10 lakhs was made with a rider that in case she was unable to meet the demand, she must divorce the respondent/ husband. She further alleged that on 22.11.2016 she had gone to the house of Shri Pawan Kumar, brother of the respondent, since the respondent had failed to respond to her calls. She asked him about the whereabouts of the respondent, but instead of giving her any reply, he tore her clothes and told that “*Bhag Ja Yaha Se Nahi to Nanga Kar Dunga Yahi, Mere Bhai ka Pichha Chhod de*”. She then called the PCR, but Shri Pawan Kumar left the home by then. She got her medical done in Swami Dayanand Hospital, but under the pressure of



relatives of both the sides, she reconciled the matter and went back to the rented accommodation. She also claimed that on 28.11.2016 the respondent forced her to have physical relationship to which she refused. Then he had sex with her forcibly and also did unnatural sex, because of which she suffered injury which led to severe pain and bleeding. She was deserted by the respondent on 28.11.2016 and all her *istriddhan* was retained by the respondent/ husband and his family members.

4. **Issues** on the pleadings were framed on 14.08.2018 as under :

“(i.) Whether the petitioner was treated with cruelty by the respondent after solemnization of marriage? *OPP.*

(ii) *Relief.*”

5. The parties appeared as witnesses in support of their respective case.

6. The **learned Judge, Family Court observed** that there were false allegations of rape made against the respondent/ husband and also of molestation against his brother. The appellant/ wife also called the respondent “impotent” which was again held to be an act of cruelty. It was observed that there were various complaints made by the appellant against the respondent which were not substantiated. Also, their marriage had completely broken down with no possibility of reconciliation since 2016. Hence, the divorce was granted on the ground of cruelty.

7. Aggrieved, the present appeal has been preferred.

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

9. This is a case where the initiation of the parties into a matrimonial life itself was coloured by a preceeding criminal case under Section 376 and other sections of IPC. According to the appellant, the respondent had committed rape upon her and during the trial she was coerced on a promise of marriage, to turn hostile and consequently the case ended in an acquittal. Thereafter, admittedly they both got married in Arya Samaj Vedic Sanskar



Trust, Tis Hazari, Delhi on 26.04.2014. However, it has emerged in the evidence that since the day of the marriage the parties could not develop a healthy matrimonial life based on trust, compatibility and co-ordiality. According to the respondent the behaviour of the appellant/ wife was aggressive, violent and humiliating.

10. The appellant on the other hand, had alleged that she was being treated with abusive language and was not even given food. She also claimed that she was threatened to either fulfill demand of Rs.10 lakhs or else to give divorce. Though, these allegations of dowry demand have been made, but the appellant has admitted in her cross-examination that though she had filed a petition under Section 125 Cr.PC and under the provisions of Domestic Violence Act, but she did not initiate any proceedings under Section 498-A IPC. Making such irresponsible allegations of demand of money without there being any evidence to substantiate the claim, is an act of cruelty. Moreover, she had alleged torture, insult and harassment and had even filed a complaint under Protection of Women from Domestic Violence Act, but again in her entire evidence she has not been able to substantiate her allegations with any specific incident.

11. Furthermore, she had alleged that on 22.11.2016 she had gone to the house of the brother of the respondent/ husband, who tore her clothes and used abusive language for which she even went to the police and her medical examination was done. According to her, the matter was compromised before the SHO, but neither has she been able to prove this incident by any evidence or by any medical record, which she had allegedly got done. Making such serious allegations of her clothes being torn and she being rebuked by the brother of the husband has again remained totally unsubstantiated.



12. While the husband had made allegations of appellant being a sex maniac, but has not been able to substantiate his assertions, as has also been observed by the learned Judge, Family Court, but he had deposed that the respondent used to call him 'impotent', which has not been rebutted by the appellant. Moreover, she herself has made an allegation that the respondent used to make sexual relationship in an awkward manner, which made her abstain from sexual relationship. She further claimed that on 28.11.2016 the respondent/ husband had forcible sex and also unnatural sex because of which she sustained injuries and she was deserted by the respondent on 28/29.11.2016 and had been living apart since then. However, again no cogent evidence could be produced by the appellant in this regard. Be as it may, it is established from the evidence of the parties that there were issues of sexual compatibility and according to respondent she would abstain from physical relationship.

13. In the case of Rajeev Chadha Vs. Shama Chadha Nee Shama Kapoor (2012) 188 DLT 313, this Court observed that the marriage without sex is an anathema and denial of sex in marriage has extremely unfavourable influence and there is nothing more fatal to marriage than disappointment in sexual relationship.

14. In Shakuntala Kumari Vs. Om Prakash Ghai AIR 1983 Delhi 53, it was observed that wilful denial of sexual relationship by a spouse amounts to cruelty, especially when the parties are newly married and this itself is a ground for grant of divorce.

15. In Samar Ghosh Vs. Jaya Ghosh (2007) 4 SCC 511, the Apex Court laid down various acts which may amount to mental cruelty and one such illustration was unilateral decision of refusal to have intercourse for considerable period of time without there being no physical incapacity or



valid reason.

16. During the pendency of this appeal, an application under Order XLI Rule 27 CPC has been filed wherein it is alleged that even though the divorce petition was filed, the respondent used to frequently visit her and have sexual contact and eventually from their relationship a son Tejasv was born on 28.07.2020. However, these facts could not be brought on record because of the ill advise of the learned counsel.

17. The appellant in support of her averments has filed the Birth Certificate of the child Tejasv. The respondent in his response has denied the averments made in this application. It is pertinent to note that the cross-examination of the appellant was concluded on 26.08.2022. She during the entire proceedings neither suggested to the respondent in his cross-examination nor did she depose a word about them having physical contact during the pendency of the divorce petition. There was also not a murmur about the birth of the son, even though the child was born in 2020 while the petition has been decided in February, 2023. So much so, this fact has not even been disclosed in the grounds of appeal. These submissions in the application assume grave significance. Clearly, this evidence is an afterthought and cannot be permitted. Rather, it reflects the conduct of the appellant which cannot be held conducive to the marriage being continued.

18. Learned Judge, Family Court has rightly observed that the allegations of police complaint, medical examination, injury or court cases should have been corroborated by some documentary evidence which would have been either in possession of the appellant or with the Authorities. However, admittedly, the appellant has not filed any corroborative document in support of her allegations.

19. The uncorroborated allegations of impotency, misconduct, dowry



demand, torture and sexual assault by the brother of the respondent together form acts of cruelty against the respondent. Furthermore, it has been observed in the impugned Order that since 2016 there have been no reconciliatory efforts and it seems impossible that the parties can live together. These aspects assume significance in the light of the averments made in the application under Order XLI Rule 27 CPC by the appellant.

20. We find that it is a case where various acts of cruelty have been committed by the parties which have been compounded by their prolonged separation since 2016. We find no ground to interfere in the impugned judgment dated 15.02.2023 of learned Judge, Family Court granting divorce on the ground of cruelty under Section 13(1)(ia) of the Act.

21. The Appeal along with the pending applications, is hereby dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 04, 2023

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