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

% ***Date of decision: 20th September, 2023***

+ **MAT.APP. (FC.) 102/2019 & CM APPLs. 15890/2019,
15892/2019, 9391/2021, 48630/2023**

SMT.ANURADHA JAIN

..... Appellant

Through: Mr. Anil Sharma & Mr. Arpit
Sharma, Advocates with appellant in
person.

versus

DR. RAJESH KUMAR JAIN

..... Respondent

Through: Respondent in person through video
conferencing.

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. The present Appeal **under Section 19 of the Family Court Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955** (*hereinafter referred to as 'the Act, 1955'*) has been filed by the appellant-wife challenging the Judgment dated 03.10.2018 of the learned Judge, Family Court granting divorce on the grounds of 'Cruelty' and 'Desertion' under Sections 13(1)(ia) and 13(1)(ib) of the Act, 1955.
2. The parties got married on 07.02.1993 according to Hindu rites and customs. One son Anurag @ Anmoll was born from their wedlock on 02.08.1994. The parties after living together for about 2½ years separated on 02.07.1995 since then they are living separately.
3. The respondent-husband had alleged that his wife-appellant was a quarrelsome, rude and cantankerous woman and used unparliamentary



language against him and his family members. She had no control over her temper and she had no interest in the matrimonial affairs but only in the bank balance, cars and gold jewellery etc. There was no mental understanding between him and the appellant-wife. Despite the best efforts of the respondent-husband, she failed to take any interest in the household chores and whenever respondent tried to reason with her, she created a scene and humiliated him whereas, the appellant had also alleged that the respondent and his parents were insulting her and did not let her participate in the family matters or interact with the relatives so much so, she was not permitted to attend the last rites of her grandfather. She claimed that respondent and his father had a habit of hurling abuses at her and her parents in order to press their demands for additional dowry.

4. The appellant had asserted that the son was intentionally named as Anurag and his nick name was Anu which also was her own nickname. She claimed that this was done only to humiliate her.

5. It was alleged by the respondent that on 03.03.1993, he went to the parental home of the appellant to bring her back to the matrimonial home but she refused and insisted that an accommodation separate from his parents, may be arranged. The respondent expressed his inability considering that his old and retired parents could not be left at the mercy of God, but the appellant refused to return. Her parents then persuaded her by saying that she may come back again to her parental home on Holi festival which was falling on 07.03.1993. It is only on their persuasion, she returned back to the matrimonial home. However, on 07.03.1993, she went back to her parental home for celebrating Holi and stayed there for two days. On 09.03.1993, the respondent again went to house of the parents of the



appellant to bring her back to the matrimonial home but she refused and created a scene at her parental home and humiliated him. **Because of her disinterest in discharging her household obligations**, it became difficult for the respondent to complete his Post-Graduation in Orthopaedics which he was pursuing from Sir Ganga Ram Hospital.

6. The respondent-husband further asserted that his parents had full trust, faith, love and affection for the appellant and gave her the keys to operate their locker independently. In addition, they also entrusted their valuable jewellery, securities and documents lying in her locker in good faith but the same were misappropriated by her.

7. She also refused to join the family celebrations on the occasions of Raksha Bandhan on 02.08.1993. In January, 1994, she became depressed when she came to know about pregnancy and expressed her intention to terminate the pregnancy which caused mental shock to the respondent-husband. She consulted Dr. Rita Gupta i.e. sister of the respondent, a Gynaecologist about her abortion but was advised that it would be highly unsafe on which she started shouting at the respondent in the presence of his sister. It was claimed that the appellant was not happy with the birth of the child and refused to take care of him. She created a scene at the time of *Mundan* ceremony of their son in the presence of relatives and friends.

8. The respondent further asserted that her conduct had a devastating impact on his career as she started demanding divorce for which he was not ready and willing because of the welfare of the child. **On 02.07.1995**, the police was called by the appellant at 100 number on false allegations. She refused to undergo medical examination and the police left without registration of a case. However, on 19.07.1995, she filed a criminal



complaint before CAW Cell, Nanakpura which led to the registration of FIR against the respondent and his family members. An illegal raid was conducted at his house and he and his family members remained in police custody for two days.

9. It was alleged that the appellant denied conjugal rights and deserted him without any sufficient cause by leaving him on 02.07.1995. Accordingly, divorce petition has been allowed on the ground of Cruelty and Desertion which is impugned in the present Appeal.

10. **The appellant-wife had contested the Divorce Petition** filed by the respondent-husband wherein she alleged that it was the respondent who had committed cruelty on her during her stay in the matrimonial home. She claimed that while they were in Manali on their Honeymoon trip, the respondent disclosed that he was in love with a Manipuri girl namely; Roshni whom he wanted to marry but his parents were not agreeable. She claimed that the respondent's parents and sisters insulted her for not bringing sufficient dowry and claimed that they had been cheated of their expectations and rights. It was further alleged that they all pressurized her to ask her parents to arrange a new Car and on refusal, she was subjected to cruelties. The respondent also threatened that being a Doctor, he knew a spot on human body where piercing a small nail, could paralyse a person for life. He also threatened her that there is a poison which if injected could kill a person and cannot be detected in post-mortem. He even tried to suffocate her by putting a pillow on her face. She however was able to save herself and when she got free, he claimed that he was only joking. It was asserted by the appellant that all her jewellery, valuables etc. were misappropriated by the respondent and his parents. She claimed that addition of her name in



the bank account permitting her to operate the bank locker in the name of the parents of the respondents, was a conspiracy *inter se* the respondent and his family members. It was further asserted that indeed the respondent who was not interested to have a child and tried to get the child aborted. He tried to give her a pain killer medicine but she refused. On 20.12.1993, the respondent made the appellant fall from his scooter causing dislocation of right elbow of the appellant. Her X-Ray was done without shielding her abdomen with a hope that the Gynaecologist would advise her to get the baby aborted. **On 02.07.1995**, she requested the respondent and his parents to allow her to go to her parental home for a few days but she was brutally slapped by the respondent and was beaten by kicks and blows and her head hit against a door. The respondent thus created compelling circumstances which forced her to leave the matrimonial home on 02.07.1995 since then she is residing in her parental home. The appellant further alleged that in order to defame her, the respondent had sent a Legal Notice to her office making false and defamatory allegations of being quarrelsome and unmindful woman and of having committed theft. The appellant denied that she had made a false complaint in CAW cell.

11. Issues on the pleadings were framed by the Family Court vide Order dated 06.11.2000 as under:

- (i) Whether the respondent has treated the petitioner with cruelty as alleged? OPP.*
- (ii) Whether the respondent has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the present petition? OPP.*
- (iii) Relief.*

12. An Order under Section 24 of the Act, 1955 directing the respondent



to pay a sum of Rs.3000/- per month for the maintenance of the child was made on 06.09.2004. However, no maintenance was awarded to the appellant since she was working. This order of interim maintenance under Section 24 of the Act, 1955 was upheld by this Court *vide* Order dated 24.11.2004 in CM(M) 1549/2004. The SLP preferred against the Order of this Court was dismissed *vide* Order dated 06.01.2006 by the Apex Court. A Review Petition filed by the respondent before the Apex Court was also dismissed on 28.02.2006. However, since the respondent chose not to comply with the Order of maintenance, the petition was adjourned *sine die* by the learned Judge, Family Court *vide* Order dated 28.02.2005. It was revived in the year 2017 i.e., after 12 years, after the respondent discharged his liability of paying the maintenance in terms of the Order dated 06.09.2004.

13. **The respondent-husband appeared as PW-1** and examined the two other witnesses in support of his case. **The appellant-wife appeared as RW-1** and also examined the witness from State Bank of India as RW-2 in support of the operation of the bank locker.

14. **The learned Judge, Family Court** observed that the allegations of the appellant being quarrelsome and cantankerous of having devastated the career of the respondent and of having been denied conjugal relationship were vague, lacking in material particulars and even if accepted, only constituted the normal wear and tear of a married life due to different perceptions of the spouses. However, admittedly, the appellant has got registered a FIR under Sections 498A/406 IPC pursuant to which, not only the respondent but his parents also remained in police custody for a night and they were granted bail on the next day. The trial of the respondent, his



parents and married sisters continued for two decades. One of the sister was a practising Gynaecologist living in her matrimonial home at Jind, Haryana. The other sister was a qualified Chartered Accountant and was living at her matrimonial home at Ghaziabad, U.P. The sisters were settled in their matrimonial homes and there was no reason for them to instigate the respondent or their parents to claim dowry. Even if the sisters of the respondent were coming to their parental home, it was held that the allegations of harassment and instigation against the married sisters were untenable. The learned Judge, Family Courts observed that father of the respondent had retired as a Professor of Economics from Manipur University in the year 1982 and there was nothing in the evidence to prove the allegations of cruelty on account of alleged demand of dowry made against the respondent and his parents.

15. The learned Judge, Family Courts also found that the addition of the name of the appellant-wife in locker account rather reflected the faith that they had in the appellant and no harassment in the matrimonial home by the parents of the respondent-husband could be proved. Her allegations that she was not allowed to step out of the matrimonial home or was treated as an outcast was also disbelieved considering that she was working and had a place of work at ITO. The learned Judge, Family Court found that there could be no motive imputed to the respondent or his parents for naming their son as Anurag. Her allegations about the respondent-husband not being keen to have the child or that he tried to cause harm, was also disbelieved. It was thus, **held** that the respondent was able to prove that the appellant had treated him with cruelty **and granted divorce under Section 13(1)(ia) of the Act, 1955**. The learned Judge, Family Court also observed that the



evidence on record established that the appellant-wife had deserted the respondent-husband two years before filing of the petition and thus, allowed **the divorce on the ground of desertion under Section 13(1)(ib) of the Act, 1955.**

16. Aggrieved by the Decree of Divorce, the appellant-wife has preferred the present Appeal.

17. **Submissions heard of both the Counsel for the parties and record perused.**

18. Before coming into the merits, it is necessary to ponder on the nature of burden of proof which rests on the petitioner in a matrimonial petition under the Act, 1955. Doubtless, the burden lies on the petitioner to establish his or her case, ordinarily, the burden lies on the party which affirms a fact and not on the party which denies it.

19. The next aspect for consideration is the “*standard of proof*” to be applied while ascertaining the allegations made in the petition. The normal rule in the civil proceedings is that the fact has to be established “*on preponderance of probabilities*”. A prudent man faced with conflicting probabilities concerning a fact situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. The Court applies this test for deciding whether a fact in issue can be said to be proved.

20. In the case of Dr.N.G.Dastane Vs. Mrs. S.Dastane (1975) 2 SCC 326, the Apex Court succinctly explained that in establishing the preponderance of probabilities, *the first step* is to fix the probabilities, *the second* to weigh them, though the two may often intermingle. *The impossible is weeded out at the first stage, the improbable at the second.* Within the wide range of



probabilities, the Court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies.

21. Thus, within the wide range of probabilities in a matrimonial relationship and in the conundrum of conflicting claims, it is a difficult choice to make like separating the grain from the chaff, but it is this choice which ultimately determines where the preponderance of probabilities lies. A reference was made in Dastane (supra) to the observations of Lord Reid in Gollins vs. Gollins (1963) 2 ALL ER 966, 970 wherein it was observed that,

“in matrimonial cases, we are not concerned with the reasonable man, as we are in cases of negligence. We are dealing with this man and this woman and the fewer a priori assumptions we make about them the better. In cruelty cases one can hardly ever even start with a presumption that the parties are reasonable people, because it is hard to imagine any cruelty case ever arising if both the spouses think and behave as reasonable people”.

It was thus held that the Court while dealing with the matrimonial disputes is not concerned with an ideal husband or an ideal wife (assuming any such exist) *but with the particular man and woman before it.*

22. In the case of Vinita Saxena vs. Pankaj Dixit (2006) 3 SCC 778, the Apex Court has guided as to how one may proceed. It was observed that while considering the two sides of the parties, the question to be answered from the appellant side is *whether the appellant ought to be called up on to endure the conduct?* From the respondent's side, the question to be



answered is *was this conduct excusable?* The Court then has to decide whether the sum total of the reprehensible conduct was cruel. That depends on whether the cumulative conduct was sufficiently serious to say that from a reasonable person's point of view after a consideration of any excuse which the respondent might have in the circumstances, the conduct is such that the petitioner ought to be called upon to endure.

23. The appellant/wife is a qualified Chartered Accountant working with the Institute of Chartered Accountants of India and got married to an equally educated and well placed respondent who was a MBBS Doctor and had completed his DNB Training Course from Sir Ganga Ram Hospital in September, 1994 and thereafter, pursued Post-Graduation from the said Hospital itself. The parties got married on 07.02.1993 and they were similarly placed in their educational backgrounds, belonging to respectable families. It is but natural for them to hope and expect that they have met their soul mates and would have a blissful happy married life, but unfortunately, the things were not as expected from the marriage of the two educated people.

24. According to the appellant-wife, while they were on their Honeymoon trip to Manali, the respondent disclosed that he was in love with a Manipuri girl which brought her world crashing down. The honesty of the respondent-husband in disclosing about his past cannot be termed as a shocking revelation which should have upset the appellant. Rather than viewing it as an act of developing confidence and sharing of their personal information, the appellant had tried to project as if the respondent was in an adulterous relationship, which was not so. Therefore, there can be no act of cruelty attributed on the part of the respondent merely because he chose to



be honest in revealing about his past.

25. The main allegations levelled by the respondent-husband were that the appellant-wife was a quarrelsome, , rude and cantankerous lady who did not mingle with the relatives of the husband and give due respect to them and shirked from household works. Further, she displayed complete disinterest in discharging her household obligations making it difficult for him to complete his Post-Graduation.

26. The appellant-wife on the other hand claimed that she used to serve food to the respondent at odd hours because he was working in different shifts while doing the P.G.Diploma.

27. In any matrimonial relationship, it is expected that both husband and wife, especially, when they are educated would support each other more so in initial years while they are pursuing their further studies to get established in their respective careers. The appellant being in full time employment could not have been expected by the husband to do small household chores. Likewise, the appellant-wife could not have exaggerated expectations from her husband when it came to discharge of their routine *inter se* obligations. Being educated and not being confined only to the house, the parties were obviously involved in their career/job and had to adjust their matrimonial obligations within their job requirements. The assertion of the respondent-husband that the appellant failed to discharge the household chores, was as misplaced as the claim of the appellant that she was being harassed by the family of the respondent on the day to day basis.

28. In this context, it would be pertinent to mention that admittedly, soon after the marriage, the parents-in-law of the appellant added her name in the Bank Locker account permitting her to operate the said Locker in the name



of the parents of the respondent. No parents-in-law who had any suspicion or animosity towards her daughter-in-law, would do so and that too, soon after the marriage. This conduct only reflects the faith and respect that the parents-in-law of the appellant had reposed in their daughter-in-law and also depicted their intention of willingness to make her part of the family. The plea of the appellant that this was pursuant to a conspiracy *inter se* the respondent and his parents, is absolutely not understandable. What could possibly have been the conspiracy if the appellant had been allowed to access the bank locker account of the respondent's parents, is hard to guess for anyone. Rather, this reflects the intention of the family of the respondent to accept the appellant as a part of their family.

29. The respondent had asserted in his testimony that the appellant was not inclined to have a child and had even consulted his sister who was a Gynaecologist to get the baby aborted. On the other hand, the appellant had claimed that it was the respondent-husband who was having no interest in the child and tried to get baby aborted by giving medicine in the name of pain killer but she refused.

30. Interestingly, she deposed that on 20.12.1993, the respondent made the appellant fall from his scooter causing dislocation of right elbow of the appellant. Her X-Ray was done without shielding her abdomen in fond hope that the Gynaecologist would advise her to get the baby aborted. The child was born on 02.08.1994 i.e. about 8 months after this incident. There is no evidence on record to show that the appellant was even aware of her pregnancy at that time. To claim that her X-Ray was done to expose her is totally a wild assertion, especially, because the X-Ray was to be done on the right elbow and not of the abdomen. Furthermore, if appellant was aware of



her pregnancy, there was nothing which stopped her from disclosing this fact to the Doctor and to ensure that necessary directions were taken to cover her abdomen. The appellant is an educated woman and for her to put the blame on the respondent, is not only an act of recklessness but merely an attempt to create false allegations against the respondent.

31. Another incident around which both the parties had tried to alleged cruelty is the *Mundan* ceremony of the baby. The appellant had explained that the *Mundan* could not be done on 07.10.1994 as the child was barely 2 months & 5 days old and the skull skin of the child was too soft for the *Mundan* to be performed. She also admitted that *Mundan* ceremony was performed on 09.04.1995. She claimed that while getting the *Mundan* done, the respondent did not wait for her as she was in the bathroom. This is also the averment of the respondent that for more than half an hour, she remained in bathroom and did not come out to attend the *Mundan* ceremony. The appellant if aware that the *Mundan* ceremony was being performed, could have requested or have come out in time for the performance of the *Mundan* ceremony. It may be observed that *Mundan* ceremony does not get completed in two or five minutes. It takes reasonable time and the admissions of the appellant herself show that she, despite being present in the house did not join the *Mundan* ceremony. She cannot attribute her own acts of abstinence to the respondent.

32. Another interesting incident claimed as an act of cruelty committed by the respondent is that her name is Anuradha and she is fondly addressed as “Anu” since her childhood. Despite this, her parents-in-law allegedly named the child as Anurag with nick name “Anu”, which was done purposely to create a confusion between her name and that of the child. Again, there



cannot be a more frivolous claim of cruelty that could have been made by the appellant, as it is difficult to comprehend, how keeping the name of child as Anurag with nick name “Anu” could have been an act of cruelty. It would be pertinent to note that the child was born on 02.08.1994 and the parties separated on 02.07.1995 i.e. when the child was not even 11 months old. Claiming that there was enough confusion in her family in these 11 months because of the name of the child, is too imaginative to be accepted.

33. The learned Judge, Family Courts has referred to these incidents and rightly concluded that they amounted to normal wear and tear in the family and cannot be termed as cruelty, as alleged by the appellant-wife.

34. Though these incidents have been termed as normal wear and tear of the married life of the parties of around 1½ years, but, they cannot be overlooked and ignored when happened routinely and created disruption in their *inter se* relationship and also prevented creation of any mutual trust, conjugality or cordiality in their relations. This aspect was aptly described in the case of Vinita Saxena (supra) that if the taunts, complaints and reproaches are of ordinary nature only, the Court perhaps need to consider the further question as to whether their continuance or persistence over a period of time render, what normally would, otherwise, not be so serious an act to be so injurious and painful as to make the spouse changed with them to genuinely and reasonably conclude that the maintenance of matrimonial home is not possible any longer. Similar observations have been made in the case of A.Jayachandra Vs. Aneel Kaur (2005) 2 SCC 22.

35. Such day to day incidents add heavily in the minds of either spouse and ultimately lead to a situation from where there is no return. This happened on 02.07.1995 when the appellant left the matrimonial home. The



appellant claimed that she was slapped and given kicks and blows and her head was hit against the door as she wanted to go to her parental home. On the other hand, the respondent-husband had claimed that she made false allegations and called the police at 100 number. She however refused to undergo any medical examination and left without any registration of any case.

36. It is admitted by both the parties that some fight took place between the two and even the police was called and the appellant left the matrimonial home. Her assertion that she was severely beaten up to the extent of her head being hit against the door, is not supported by any independent witness. It is the testimony of the appellant against the testimony of the respondent. Though it cannot be held as to who was at fault but it is an admitted fact that some fight happened on 02.07.1995 and the appellant left the matrimonial home. It was for the appellant to have explained the gravity of the situation which transpired on 02.07.1995 which was so overbearing that she was compelled to leave her matrimonial home.

37. It is pertinent to refer to the discharge summary dated 04.07.1995 of Deepak Memorial Hospital where she got herself admitted after she left the matrimonial home. She was kept under observation for 24 hours. The discharge summary stated that the appellant was admitted in the hospital with the history of *loss of appetite, nausea, vomiting, mild depression etc. for about 12 days and thus, was examined for possible hepatitis*. She was discharged on the next day. The medical documents itself reflect that there was no assault or injury on account of the alleged assault but had got admitted in the hospital after one day with the history of vomiting, nausea etc. and was kept under observation for about 24 hours. Another aspect of



the matter is that she did not go to the hospital on 02.07.1995 itself but she went there on 03.07.1995. Thus, her own medical documents disapprove her claim of having been beaten up by the respondent and his family members.

38. Soon after leaving the matrimonial home on 02.07.1995, the appellant filed a criminal complaint before CAW Cell on 19.07.1995 which ultimately led to the registration of FIR under Sections 498A/406 IPC against the respondent and his family members, which included his two married sisters. The respondent-husband and his family members even remained in police custody for two days after which they were granted bail.

39. The appellant had admitted in her cross-examination that at the time of her marriage, both the sisters of the respondent were already married and one was residing in Ghaziabad, U.P. and other in Jind, Haryana. The elder sister of the respondent was a Doctor by profession i.e. Gynaecologist and the younger sister was a Chartered Accountant. As noted above, the allegations of dowry harassment had been made not only against the respondent and his parents but against the two sisters of the respondent who had also faced the trial for about 20 years. The appellant had tried to justify her allegations of dowry harassment against the two married sisters by claiming that Dr.Rita Gupta, sister of the respondent used to visit their house frequently while the other sister at that time was residing in their house as she was pregnant. There is nothing concrete which has been brought on record by the appellant against the two sisters to show that they were, in any way, party to the acts of dowry harassment. Rather, Dr.Rita Gupta, sister of the respondent had been consulted by the appellant during her pregnancy. There is nothing in the testimony of the appellant to show that she was being



harassed on account of dowry by the two married sisters. Roping them in the criminal case can only be termed as an act of extreme cruelty to the brother (respondent) who became a reason for their harassment of facing the trial for almost 20 years.

40. The appellant had deposed that the respondent and his family members ridiculed her for having brought insufficient dowry and felt cheated. It was alleged by her that they pressurized her to ask her father to arrange a Maruti Car, a VCR and Rs.50,000/- in cash and when refused by the respondent, she was subjected to mental and physical cruelty. Though these allegations have been made by the appellant but she has failed to explain in detail when, where and by whom these demands were made which becomes significant as the allegations have also been made not only against the respondent and his parents but also against the two married sisters of the respondent.

41. If any person has been subjected to any crime, that person has an absolute right to seek the remedy by taking recourse to the State machinery. If in fact, the appellant was subjected to cruelty, she had every right to approach the police. However, it was for her to establish from the cogent evidence of being harassed and subjected to cruelty on account of insufficient dowry. But, unfortunately, her evidence is as vague as it could be. There is no evidence practically from where it could be concluded that she was being harassed for dowry demands. These facts and allegations have also been adjudicated in the criminal trial where the respondent and his family members have been acquitted vide the Judgment dated 21.04.2022.

42. Though filing of a criminal complaint *per-se* cannot be termed as an act of cruelty yet, at the same time, the allegations of cruelty as made in the



criminal case(s), should have been substantiated in the divorce proceedings.

43. In the case of K.Srinivas vs.K.Sunita X (2014) SLT 126, the Supreme Court held that filing of the false complaint against the husband and his family members constitutes mental cruelty for the purpose of Section 13(1)(ia) of the Act, 1955.

44. Similarly, it has been held by the Supreme Court in Mangayakarasi vs. M.Yuvaraj (2020) 3 SCC 786 that it cannot be doubted that in an appropriate case, the unsubstantiated allegation of dowry demands or such other allegations, made the husband and his family members exposed to criminal litigation. Ultimately, if it is found that such allegations were unwarranted and without basis and if that act of the wife itself forms the basis for the husband to allege the mental cruelty has been inflicted on him, certainly, in such circumstance, if a petition for dissolution of marriage is filed on that ground and evidence is tendered before the original Court to allege mental cruelty, it could well be appreciated for the purpose of dissolving the marriage on that ground.

45. Further, the Supreme Court in the case of Ravi Kumar vs. 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’. Similar observations were made by the Coordinate Bench of this Court in the case of Rita Vs. Jai Solanki (2017) SCC OnLine Del 9078 and Nishi Vs. Jagdish Ram 233 (2016) DLT 50.

46. The appellant-wife has not been able to justify the grounds on which the complaint was made which led to registration of FIR. As discussed in the judgments mentioned above, complaint with unexplained allegations to



various agencies, cannot be termed as anything but cruelty.

47. It is an admitted fact that the parties have not lived together since 1995 i.e. a period of almost 28 years. It has been already noted time and again in the judgments of the Supreme Court that continuous separation between the parties for a long period itself is a ground for divorce. The Apex Court in the case of Naveen Kohli v. Neelu Kohli (2006) 4 SCC 558 has held that once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective, are bound to be a source of greater misery for the parties.

48. In Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511, the Supreme Court held as under:

“no uniform standard can ever be laid down for guidance, yet it was deemed appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. When there has been a long period of continuous separation, it may be fairly concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of the marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties, it



may lead to mental cruelty.

*When a man and a woman get married, they do so with the intent of finding love; happiness; mental, physical and psychological satisfaction; progress; and procreation. The dream of the parties is to jointly face the challenges that life has to throw, and to grow and progress financially, socially, spiritually, etc. When the marriage sours, the vows that the couple takes at the time of marriage are a casualty. We take it that neither party enters into the matrimonial bond, only to break it later. For the said bond to breach, there are bound to be some underlying reasons. In some cases, those reasons may come to the surface and the court may be able to see them. In others, they may remain latent for myriad reasons. **Those reasons would, invariably, be attributable to both the parties, as it takes two to fight. And when the fight goes to the point of them filing cases against each other, the situation becomes messy and bitter for both of them.** Unless the situation is diffused early and the parties decide to reconcile and call a truce, with passage of time, the void between them only increases, and the feeling of love and warmth in their relationship begins to fade. **What is left is only a feeling of hurt, hatred, disrespect, disregard and bitterness for the other. These negative feelings and thoughts are bound to give rise to mental trauma, harassment and cause immense cruelty to one-if not both the parties.***



In such situations, continuation of the relationship between the warring spouses causes immense emotional and psychological trauma to the parties which would, in itself, tantamount to cruelty by both parties, upon the other.”

49. In view of above discussion and settled position of law, we conclude that in the present case; the parties are living separately for 28 years now; there is no chance of reconciliation between the parties and such long separation peppered with false allegations, Police reports and criminal trial has become a source of mental cruelty and any insistence to continue this relationship would only be inflicting further cruelty upon both the parties. The marital discord between the parties has pinnacle where there is a complete loss of faith, trust, understanding and love between the parties. The parties cannot be reasonably expected to live with each other anymore. The withdrawal of the wife/appellant without any explicable reason thereby depriving him of co-habitation and conjugal rights for 28 years followed by fake complaint and a criminal trial which lasted over 20 years, all proves that respondent has been subjected to cruelty, entitling him to divorce.

50. **We therefore, find that the learned Judge, Family Court rightly came to the conclusion** that the respondent-husband has been subjected to cruelty entitling him to divorce on this ground.

51. **Coming to the aspect of Desertion**, the appellant had admittedly left the matrimonial home on 02.07.1995. She had claimed that she was beaten up on that day. Left with no choice, she claimed that she had to leave her matrimonial home. As already discussed above, she had not been able to



prove that there were compelling circumstances created for her to leave the matrimonial home. Her own medical discharge summary belies her claim. The appellant has not been able to explain the reasons for leaving the matrimonial home. The learned Judge, Family Court was thus, right in holding that the appellant left the matrimonial home with an intent to desert the respondent, and thereby, entitling for divorce on the ground of desertion.

52. Accordingly, we concur with the findings of learned Judge, Family Court granting divorce on the ground of ‘Cruelty’ and ‘Desertion’ under Sections 13(1)(ia) and 13(1)(ib) of the Act, 1955. Consequently, we find no merit in the Appeal, which is hereby dismissed.

53. The pending applications, if any are also disposed of accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 20, 2023

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