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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 04th October, 2023

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MAT.APP.(F.C.) 179/2023 & CM APPL. 31521/2023

REENA DEVI

..... Appellant

Through: Mr. Anil Hooda, Ms. Anju & Mr.
Sunny Chauhan, Advocates with
appellant in person.

versus

LAL DEV SINGH

..... Respondent

Through: Ms. Poonam Mendirata & Ms.
Somyashree, Advocates 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 03.05.2023 granting divorce in a petition filed by the respondent/ husband under Section 13 (1)(ia) of the Hindu Marriage Act, 1955 (*hereinafter referred to as the "the Act, 1955"*).
2. **The facts in brief** are that the marriage between the parties was solemnized on 06.06.2010 and one daughter, Tamanna, was born from the said wedlock on 11.04.2011 who is in the custody of the appellant/ wife (*Respondent in the Divorce Petition and the appellant in the appeal hereinafter referred to as the "appellant"*). However, after their marriage disputes arose between the parties due to which the respondent was forced to leave the company of the appellant on 24.10.2014. He was, thus constrained to file a petition for divorce on the ground of cruelty under Section 13 (1)(ia) of the Act, 1955 on 13.04.2018.



3. According to respondent, after marriage, the respondent noticed that the appellant was spending most of the time with her younger sister Meena and when she came back to him in the bed room rather than talking to him and spending quality time with him, she would talk to her parents for hours together with scant regard for the respondent who would wait to spend time and talk to her. She made the respondent talk to her parents almost every day. He tried to explain to the appellant/ wife that these were the golden days of their marital life and they should spend maximum time together, but he noticed a visible sadness on the face of appellant because of which he stopped saying anything to her on the subject. He gave her all the love, care and affection but the attitude of the appellant did not change as she continued to spend time chatting with her sister.

4. Over a period of time the respondent realized a great deal of dependency of the appellant on her younger sister as she would do everything in the household only after discussing and with the approval of the sister. Her interactions with her parents and sister increased after she conceived the child in the month of August-September, 2010 and she hardly had any physical intimacy with him, thereafter. The suggestions of the respondent to arrange separate rented accommodation for the sister did not meet with any approval on the pretext that it was not safe for a girl to live alone and she told him that the sister would always live with them.

5. The respondent further stated that his suggestion to bring his mother to Delhi to take care of the appellant during the pregnancy did not find favour and she informed that her mother would come for the delivery. Over a period of time, the respondent felt that the appellant was full of hatred for his mother and family members and wanted the respondent to sever all his



ties from his family members. She would make faces and throw tantrums at the respondent to somehow avoid going to any function or marriage in the family.

6. The respondent further asserted that he met all the expenses of the delivery of the child. In addition to paying Rs.50,000/- towards the delivery charges, he also reimbursed the appellant for Rs.15,000/- which were paid by him from her card for purchase of medicines since at that time the debit card of the respondent was not working. He stated that the appellant went to stay with her parents after the delivery with an assurance that she would come back in a month, but returned only after five months.

7. The respondent contended that after the birth of the child, the behaviour of the appellant worsened. He brought a maid Savitri from his home town in Himachal Pradesh in August, 2011 to take care of the minor child and help in household chores. Initially the appellant was very happy to have the assistance of the maid, but she over a period of time started finding fault in her. The said lady was sent back but the appellant kept insisting about engaging another help for the child. Accordingly, the respondent brought another maid from his native place on 18.04.2012, however, she was also treated cruelly by the appellant. In August, 2013, when the respondent came back from work, he saw the swollen face of the nanny and on asking she cried and told him that she had been beaten up brutally by the appellant for not feeding the child and that the respondent was in a fit of rage since morning due to some unknown reason and hit her. He maintained his composure and sent back this nanny as well to the native village. The respondent brought the third maid, but the appellant did not get along well with the third maid as well and somewhere around September,



2014 she started to complain about the character of the maid. When the respondent tried to defend her, the appellant started shouting and cast aspersions on the character of the respondent by claiming that he was probably having illicit relationship with the said maid. Such frivolous allegations came as a great shock and left him with no option but to leave the maid back to the native village in September, 2014.

8. In August 2013, the appellant said that she found the surname of the respondent i.e. “Jariyal” extremely weird and wanted to remove his surname from the Birth Certificate of the child, Tamanna. She compelled the respondent to sign the requisite document dated 04.09.2013 for changing the name, and the surname “Jariyal” was deleted from the Birth Certificate of Tamanna.

9. The respondent had further alleged that the appellant then demanded a three BHK house in South Delhi in her name for having conjugal relationship with him. She gave him time till Diwali, 2014 but when he was not able to fulfil her demand, she threatened that if he did not leave the matrimonial home, she would call the Police and would implicate him in false cases of dowry and harassment. The respondent was thus compelled to leave the matrimonial home on 24.10.2014 and he took shelter in the house of his friend. Thereafter, the appellant blocked him from most of the social networking sites like Facebook etc. When he made an attempt to get in touch with her to at least take his clothes, all his calls and SMSs remained unanswered and his belongings were never returned.

10. In February 2015, on receiving a call from the appellant, he joined her for the interview of the child for admission in Father Agnel’s School. When he tried to hold the child, to his shock and surprise, the appellant



immediately snatched the child from his lap and went away. She refused to return till he would not buy a three BHK house in her name in South Delhi. The respondent realized that she does not want to settle the issue and her sole agenda was to treat him as a golden goose who would obey her instructions and run according to her whims and fancies.

11. His miseries did not end there as he got a call from the Women Cell (Rural) Jalandhar, Punjab in regard to complaint dated 04.01.2017 lodged by the appellant making false, baseless and scandalous allegations against him. While this complaint was pending, she gave another complaint 30.01.2017 to SSP Rural, Jalandhar and after thorough investigations by DSP (HQ), Jalandhar, they were closed vide Order dated 02.03.2017 and the final Report was sent by SSP Jalandhar to DIG Jalandhar Range on 04.04.2017.

12. Again, to arm twist and harass the respondent around 18.03.2017 she along with her father barged into his office at Saket Prosecution Branch, Saket Courts Complex and met his seniors and levelled false and frivolous allegations of adultery and dowry. Fortunately, he was not in his office, but later when he came to his office, he was apprised by his colleagues about the nuisance created by the appellant at his office. The appellant did not stop there and after 2-3 days, went to the Head Office at Tis Hazari Court complex and again created the same ruckus.

13. Even after the dismissal of the above complaints, further complaint was made by the appellant on 26.04.2017 to SSP, Jalandhar which was marked to SP Investigation. During its pendency, she made another complaint dated 05.07.2017 before Women Commission, Delhi and one complaint to CAW Cell, Saket on 19.07.2017 levelling similar set of allegations, but she did not mention about the pendency of complaints in



Jalandhar or the dismissal of her earlier complaints therein. The SP called both the sides and thereafter, closed the complaints vide Order dated 31.07.2017 by observing that no case was made out against the respondent and his family members.

14. The appellant on 22.02.2018 along with her elder brother and father came to the residence of the respondent and man handled and tried to kill him. Seeing their volatile behaviour, he ran away to save himself. However, to add insult to injury, the appellant and her family members made a false and frivolous complaint at P.S. Mehrauli.

15. It was asserted that the respondent had suffered immensely at the hands of the appellant who had been blackmailing him and it was dangerous for him to stay with the respondent. The appellant was inclined to never settle in the married life with him as was clear from the fact that she chose not to mention the name of the respondent as her husband in any of the Government documents including but not limited to Aadhar Card, Medical Health Care Card, Rent Agreements and such other documents. He thus, sought for dissolution of marriage under Section 13 (1)(ia) of the HMA on the ground of cruelty.

16. The **appellant/wife contested the divorce petition** and filed a Written Statement wherein she denied that she ever committed any torture upon the respondent/husband.

17. The appellant asserted that she was subjected to extreme physical and mental torture by the respondent who is working as Assistant Public Prosecutor, whereas the appellant is working as Assistant Professor (Economics) at Kamla Nehru College, Delhi University. The appellant alleged that before they got married, the respondent disclosed to her that he



would like to bring his widowed mother to Delhi to live with them to which the appellant readily agreed. After marriage, the respondent intended to shift in the rented accommodation of the appellant where she was residing with her sister who was working as Assistant Professor (Political Science) in Kamla Nehru College. She had requested the respondent to have separate accommodation in Gautam Nagar since they would need privacy being a newly wedded couple, but he expressed his inability to take a separate accommodation. She further claimed that she and her sister were both working and had little time to talk to each other. During her pregnancy, at times the respondent did not feel like talking to anyone. It was denied that there was any kind of constant interference of her parents. She asserted that the respondent had an objection about her sister residing with them, but she got married in the year 2017 and has been living separately in a rented accommodation. If the grudge of the respondent was only of appellant not giving him time and remaining involved with her sister, then he should not now have a grudge since the sister has now married and shifted out.

18. Further, the respondent never spent any amount on the rented accommodation or the household expenses and they were all borne by her. Even the expenditure on the delivery of the child was borne by her and the payment was made by her through her ATM card.

19. It was alleged that after the birth of daughter on 11.04.2011 the respondent and his family members started torturing her for having given birth to a girl child.

20. Further allegations were made that mother of the respondent had demanded Rs.50,000/- on the occasion of marriage of Ms. Baby cousin sister of respondent, whom she was informed was residing in Khalala,



Himachal Pradesh. They asserted that since she was residing with the family of the respondent at Khalala on account of her pregnancy, she would not be incurring any day to day expenses which she would have otherwise incurred had she been residing in Gautam Nagar and thus, asked for money for gifting a car. It was asserted that the marriage of the parties was not without dowry and all her jewellery has been retained by her mother-in-law.

21. The appellant claimed that Paramjeet, elder brother of the respondent had kept a wrong eye on her and used to touch her inappropriately whenever she was alone in her matrimonial home at village Khalala, Himachal Pradesh. When she reported this incident to the respondent, he disbelieved her by claiming that he had more faith in his elder brother.

22. She further asserted that in June, 2015 a meeting had been arranged at the residence of the uncle of the respondent, wherein his maternal uncle and aunt and Naveen Kumar were present. The appellant/ wife asserted that she was willing to settle all the disputes, but the respondent and his family were not forthcoming. After 3-4 days of this meeting, the matter was compromised.

23. The appellant did not challenge that the respondent had left the home on 24.10.2014. The respondent and his mother had informed the villagers that respondent had a decree of divorce and the appellant was no longer the legally wedded wife of the respondent. Moreover, she was informed by the villagers during her visit in May, 2018 that the mother-in-law used to say that the appellant was a lady of loose character and she would not take her back in the matrimonial home.

24. The appellant admitted that the respondent had brought three maids one after the other. The first maid left because her grandson suffered



amputation of both the arms on account of electrocution. The second maid was barely fourteen years old. In respect of the third maid, she claimed that respondent had illicit relationship with the girl. The maid Anjana @ Monu had informed her that respondent used to force and have physical relationship with her and he was not a man of good character. She wanted her medical check-up to be done but the respondent got angry and took medical leave and took her back to their native village. He did not permit the maid to get her medical check-up done.

25. The appellant denied having ever demanded any 3 BHK house in South Delhi.

26. She explained that the surname of the child was never mentioned in the Birth Certificate since the birth of the child and that respondent himself had dropped his surname "Jariyal".

27. She claimed that she had to plead with the respondent many a times to come to the school for admission of the child as interview of both the parents was required. The Aadhar card was a mandatory document for which reason she got the same prepared in her name by giving her father's name. Since her efforts for conciliation did not bear any fruit, she had no option but to make the complaints against the respondent which were all true.

28. She explained that she had visited the office of the respondent for the sole reason of compromise. Finding that he was not in his office, she had gone to the seniors and had informed them that she had approached for the talks for settlement.

29. **Issues** on the pleadings were framed on 28.05.2019 as under:

- 1) Whether the respondent after the solemnization of the marriage



has treated the petitioner with cruelty within the meaning of Sec-13(1)(ia) of the Hindu Marriage Act? OPP

2) Whether the petitioner is entitled to decree of divorce, as prayed for? OPP

3) Relief.

30. The respondent/husband appeared as PW1 in support of his assertions made in the petition.

31. The appellant appeared as DW1 and deposed in support of her defence.

32. **The learned Principal Judge, Family Courts** referred to the testimony of the respondent that he was neglected by the appellant and there was hardly any physical intimacy between them and other acts as stated above and held that the matrimonial life of the respondent became difficult and was fractured due to the conduct and behaviour of the appellant/ wife. Further, the allegations of extramarital affair of the respondent with the maid could not be substantiated with cogent evidence and levelling such allegations led to his character assassination amounting to cruelty.

33. It was also observed that the appellant had made several complaints the truthfulness of which could not be established. She even went to the office of the respondent and created embarrassment for him. The claim of the appellant that she still wanted to reside with the respondent did not have any iota of sincerity. It was thus, concluded that the respondent had been subjected to cruelty and the divorce was granted under Section 13 (1)(ia) of Hindu Marriage Act.

34. Aggrieved the present appeal has been filed by the appellant/wife.

35. **Submissions heard from counsels for both the parties and record**



perused.

36. Admittedly, the parties had got married on 06.06.2010 and one daughter was born from the wed-lock on 11.04.2011. The relationship between the parties since marriage was not cordial and had differences since the younger sister of the appellant was residing with them and appellant had greater sense of responsibility for the sister and spent much more time with the sister. She neglected the respondent; did not spend enough time with him and also withdrew from physical intimacy as well. The depositions of the respondent that they had their differences bring forth that the parties had difficulty in adjusting to each other and there were constant bickering between them. Their differences led the respondent to leave the matrimonial home on 24.10.2014 since when they have been living separately.

37. In the case of Parveen Mehta vs. Inderjeet Mehta (2002) 5 SCC 706, the Apex Court had observed that a feeling of anguish, disappointment and frustration in one spouse caused by the conduct of other can only be appreciated on assessing the attending facts and circumstances in which the two partners have been living in their matrimonial life. The inference has to be drawn from the attending facts and circumstances taken cumulatively. It is not a correct approach to pick incidents in isolation and consider them separately to assess if they amounted to mental cruelty. The correct approach is to take the cumulative effect of all the facts and circumstances and then draw a fair inference whether the petitioner has been subjected to mental cruelty to the conduct of the other.

38. The incidents has detailed by the respondent, therefore, created a backdrop where subsequent events if considered individually may not be significant but because of the mistrust and maladjustment between the



parties, they all added up to assume larger proportions.

39. Admittedly, the respondent had brought a maid thrice for taking care of their infant child since both appellant and respondent were working. The first maid left on account of her family exigency. The second maid left as she was a small child of fourteen years. However, the circumstances surrounding the leaving of the third maid Anjana @ Monu aged about 18-19 years became a bone of contention.

40. In the Written Statement, the appellant has levelled serious allegations of respondent establishing forced physical relationship with the maid despite her resistance. The appellant had asserted that she came to know about the misconduct of the respondent when the maid herself informed her about the conduct of the respondent. When she confronted the respondent, she was abused and he got angry at the maid and told her that he would leave her back in the native village. According to her, the mother and cousin sister Baby of the respondent came to their house in Delhi on 06-07.09.2014 and the mother assured the maid that she would get her married on her own expenses and that the maid must not disclose this to any person. She also threatened the appellant that if she reported about this incident to anyone she would tell her son to divorce the appellant. She would also destroy her image in her native place and the brother and sister of the appellant would not be able to get married. The mother and the cousin sister took back the maid to the native village.

41. However, the appellant was unable to establish or prove any of these allegations of extramarital affair of respondent with the maid by way of any cogent evidence. Admittedly, in her complaints to Women Cell, Jalandhar this adulterous relationship between respondent and Anjana @ Monu was



not mentioned. Moreover, neither the appellant nor Anjana @ Monu ever made any complaint of adulterous relationship; and the allegations so made against the character of the respondent could not be proved or substantiated. Likewise, her allegations against Paramjeet elder brother of the respondent keeping a wrong eye on her and also touching her inappropriately were wild or without any evidence.

42. Such assertions of illicit relationship made by a spouse have been held to be acts of cruelty by the Supreme Court in the case of Vijay Kumar Ramchndra Bhate vs Neela Vijaykumar Bhate (2003) 6 SCC 334. While deliberating on the accusations of unchastity and extra-marital relationships levelled by the husband, the Court observed that such allegations constitute grave assault on the character, honour and reputation and health of the accused and amount to the worst form of cruelty. Such assertions made in the Written Statement or suggested in the course of cross-examination, being of a quality which cause mental pain, agony and suffering are sufficient by itself to amount to the reformulated concept of cruelty in matrimonial law.

43. Placing reliance on this judgement, the Supreme Court, in the case of Nagendra vs K. Meena (2016) 9 SCC 455, observed that unsubstantiated allegations of the extra-marital affair with the maid levelled by the wife against the husband, amount to cruelty. When there is a complete lack of evidence to suggest such an affair, the baseless and reckless allegations are serious actions which can be a cause for mental cruelty warranting a decree of divorce.

44. We observe that the learned Principal Judge has rightly held that making of such false and such false allegations of extramarital relationship amounted to cruelty.



45. The appellant on the other hand, has claimed that her marriage was not dowry less and that all her jewellery had been retained by the mother-in-law. She even deposed that a car was demanded while she was staying in her matrimonial home during her pregnancy.

46. Pertinently, it is admitted by the appellant that the appellant had made several complaints to different Authorities and that all have been closed. The onus was on the appellant to prove some substance of truth in the various complaints which she has miserably failed to support by any cogent evidence. Making such reckless allegations which have not been substantiated clearly establish a backdrop of mistrust and suspicion amongst the parties. No matrimonial relationship can survive without both the parties having faith in each other.

47. Not only this, it is not denied by the appellant that she had visited the place of work of the respondent in Saket as well as Tis Hazari Courts. According to the testimony of the respondent, she had created ruckus and had maligned his reputation amongst his colleagues. The overall conduct of the appellant has been concluded to be cruel towards the respondent.

48. 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.

49. 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.

50. 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.

51. We on appreciation of the evidence, find that the conclusion of the learned Principal Judge, Family Court that respondent was subjected to cruelty is based on cogent evidence and reasons and there is no ground of interference with the decree of divorce granted to the respondent under Section 13 (1)(ia) of HMA.

52. The appeal, along with pending application, is accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 04, 2023/va