



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

% **Reserved on: August 23, 2023**

Pronounced on: December 12, 2023

+ **MAT.APP (F.C.) 144/2020 & CM APPL. 27586/2023**

GAJENDER SINGH NEGI Appellant

Through: **Mr. N.K. Aggarwal, Ms. Sanjana
Antil and Ms. Amanpreet Kaur,
Advocates**

Versus

SMT. ANJU NEGIRespondent

Through: **Mr. J.S. Rawat, Advocate**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present appeal is preferred under the provisions of Section 28 of the Hindu Marriage Act, 1955 against the judgment and order dated 24.07.2020 in HMA No. 1567/2017, whereby his petition filed under the provisions of Section 13(1) (ia) and (ib) of the Hindu Marriage Act, 1955 has been dismissed by the learned Principal Judge, Family Court.

2. The parties to the present appeal got married 05.05.2007 as per Hindu Rites and Customs. According to appellant, the respondent-wife was working as Computer Operator in a private Company and prior to their marriage, it was agreed between both of them that she would continue to

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work even after marriage. The appellant has alleged that the respondent used to leave for office at 08:30 in the morning; his mother and sister used to do the household chores; respondent only sometimes on weekend helped his mother and sister but most of the time she used to visit his parents' house either with their permission or without telling them and whenever he and his family expected her to do household chores, she used to abuse and quarrel with them. Even parents of respondent threatened the appellant and his family members to implicate in false cases and they will face the consequences.

3. The appellant has alleged that on 09.11.2007, he and his family celebrated respondent's birthday at home which was attended by family members of both the sides and on the next day, i.e. 10.11.2007 on the issue of visiting respondent's parents' house, an argument took place between the parties and respondent cut her veins with scissors and injured her wrist. According to appellant, he called respondent's brother, who along with his relatives scolded him and his family members and threatened to implicate them in false and frivolous cases. According to appellant, on 22.02.2008 on the issue of attending appellant's cousin's birthday party, a quarrel took place between them and during midnight respondent suffered some breathing problem and she was got admitted to hospital. On the next day, i.e. 23.02.2008 the relatives of respondent abused, threatened and scolded him and thereafter, her behaviour turned even more cruel towards him and his family members.

4. On 24.03.2008, the respondent went to her office in the morning and did not come back till late evening and so, appellant lodged a complaint



with police station Dwarka, New Delhi, however, when respondent got to know about lodging of the complaint, she came back home and started quarrelling with the appellant. The appellant has alleged that respondent started harassing him that despite their marriage of 9-10 months, she had not conceived, as the appellant was incapable which caused great mental agony to him, even though he had caught her taking contraceptive medicines. As per appellant, the respondent humiliated him by saying that she wanted to humiliate him in front of family and relatives by showing that he is impotent.

5. On 24.05.2008, the appellant's mother gifted some gold ornament to respondent, who stated that she should be given some expensive ornament and on the next day the respondent made hue and cry of it and called her brother, who called PCR at No.100. On the next day i.e. 25.08.2008 the respondent's sister forcibly entered their house and took all jewellery and clothes of respondent and since then, respondent is staying with her mother and brother. On respondent's complaint, FIR No. 12/2009, under Sections 406/498A/34 was registered at police station Dwarka, New Delhi and also a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 was also filed in Court against the appellant and his family members.

6. The appellant has alleged that respondent sent frivolous and false complaint in the office of his sister i.e. Supreme Court of India and due to humiliation; she had to quit her job. Subsequently, respondent sent another complaint in office of his sister i.e. District Court, Saket as well as his office because of which he and his sister felt humiliated.



7. In her written statement, filed before the learned Family Court, the respondent averred that after her marriage with the appellant, her mother-in-law taunted her for bringing 22 carat gold ornaments and not 23 carat and they were not satisfied with the dowry articles given in the marriage of the parties. The respondent stated that she used to leave in the morning at 07:30 for work and return at 07:30 PM and was made to do all household chores. The appellant consumed liquor frequently and whenever she advised him to not take liquor, he used to reprimand her under the influence of liquor. She was compelled to have forceful sex and if she ever denied due to ill health or under the effect of medicine, the appellant used to allege that she was a lady of easy virtue and was having affair with many men and also that her brothers were impotent.

8. Further stated that on 22.02.2008, after returning from birthday party of appellant's cousin, the appellant wanted to have physical relations with her, however, when she politely refused, he got annoyed and pressed pillow on her face, pulled her hair and physically assaulted her, due to which she became unconscious and when she was brought to hospital, she narrated the incident to the doctor, who informed the police. The respondent thereafter went to her parents' house and when on 01.03.2008, the appellant tendered his apology before the police, however, for the sake of their married life, the respondent came back to her matrimonial house.

9. The respondent also stated that she always visited her parents' house with prior intimation and permission of appellant. She denied that on 10.11.2007 she attempted to commit suicide by cutting her veins or she took any medicine as she did not want a child from appellant or her sister took



away all her jewellery and clothes from her house on 25.05.2008 or that she made false complaints in the office of appellant's sister. The appellant stated that after her marriage with the appellant, his mother used to take her entire salary. The respondent alleged that appellant was in relation with a lady named Kusum and was having a child from the said relationship. The respondent refused that she had deserted the appellant, instead the appellant had instigated her to leave her matrimonial home.

10. On the pleadings of the parties, the learned Family Court framed the following issues:-

“(1) Whether the respondent has exercised cruelty upon the petitioner after solemnization of marriage between the parties? (OPP)

(2) Whether the respondent has deserted the company of the petitioner without any justifiable ground for not less than two years from the date of filing of the petition?

(OPP)

(3) Whether the petitioner is entitled for decree of divorce as against the respondent as prayed for?

(OPP)”

11. In support of their case, the appellant examined himself as PW-1 and his sister as PW-2. The respondent got herself examined as RW-1 and Record Clerk of Medical Department of Safdarjung Hospital as RW-2. The learned Family Court after considering the testimony of witnesses examined, held that the appellant had failed to prove the issue if the respondent had committed any cruelty upon the appellant and so, Issue No.1 was decided against the appellant.

12. With regard to Issue No.2, the learned Family Court held that it stood



established that respondent was forcibly made to leave the matrimonial home as she was subjected to cruelty and dowry demand and therefore, the allegation of desertion failed and the appellant could not prove his case. With aforesaid observations, Issues No. 3 & 4, were decided against the appellant.

13. Aggrieved against the judgment dated 24.07.2020, the present appeal has been filed. The appellant in the present appeal has averred that the learned Family Court has failed to appreciate that his marriage with respondent had irretrievably broken down and therefore, it is a fit case for grant of decree of divorce. The appellant has averred that respondent did not get herself examined before the learned Family Court and rather prayed that her examination-in-chief recorded on 26.11.2018 be not read in evidence and therefore, allegations appellant living with another lady, named, Kusum, has not been proved.

14. The appellant has further averred that since the day of marriage, respondent's behaviour was not good towards him and his family members and she has deserted him without any cogent reason or ground. However, the learned Family Court has failed to appreciate that there cannot be proof of incidents of cruelty and even threat or attempt to commit suicide amounts to cruelty.

15. The submissions advanced by learned counsel appearing on behalf of both the sides were heard at length and the impugned judgment as well as trial court record has been perused by this Court.

16. Indisputably, parties to the present appeal got married 05.05.2007 as per Hindu Rites and Customs and they have been living separately since MAT.APP (F.C.) 144/2020



May, 2008. The marital discord between the parties led to accusations against each other and resulted in filing criminal complaints and divorce petition by one of them against the other. In support of their pleadings filed before the learned Family Court, the appellant examined himself as PW-1 and got his sister examined as PW-2. With regard to testimony of appellant (PW-1), the respondent raised an objection before the learned Family Court that his examination as well as cross-examination was recorded by the learned court on 21.07.2018 whereas the issues were framed on 13.08.2018, which has been considered as mere irregularity by the Family Court and it is held that on this ground alone, testimony of appellant cannot be ignored.

17. The appellant before this Court has submitted that the impugned judgment holding that appellant has not been able to prove cruelty committed by the respondent deserves to be set aside as the respondent has not cross-examined PW-1 and PW-2 on the ground of cruelty. Having regard to the fact that the issues were framed after examination and cross-examination of PW-1 was already considered by the learned Family Court, therefore, this objection of appellant deserves to be rejected.

18. In a recent decision in ***Rakesh Raman Vs. Kavita*** (2023) SCC Online SC 497, the Hon'ble Supreme Court, in an appeal preferred by the husband, challenging the order passed by the High Court whereby his petition granting decree of divorce by the learned trial court was dismissed, observed that:-

“16. Matrimonial cases before the Courts pose a different challenge, quite unlike any other, as we are dealing with human relationships with its bundle of emotions, with all its faults and frailties. It is not



possible in every case to pin point to an act of “cruelty” or blameworthy conduct of the spouse. The nature of relationship, the general behaviour of the parties towards each other, or long separation between the two are relevant factors which a Court must take into consideration.”

19. On the allegation that respondent did not help his mother in house hold chores, the learned trial court has observed that a lady who is a home maker can give more time to house hold chores *vis-a-vis* the lady who works in a private Company and leaves home at 08:30 AM. The undisputed position is that the respondent prior to her marriage was already working and it was agreed between the parties that she shall continue to work. Her working hours were well within the knowledge of respondent and his family and so having expectation from her to do household chores every day, is highly unreasonable.

20. On the aspect that respondent attempted to commit suicide by cutting veins with scissor and injuring her wrist, no document has been placed on record by the appellant to show if some treatment was given to respondent by any doctor. We concur with the finding returned by the learned Family Court on this aspect.

21. With regard to incident of his quarrel after attending birthday party of his cousin, the trial court has held that these are normal wear and tear of married life. On the incident of respondent not returning home from her office on 24.03.20208 and only after respondent’s lodging the complaint with the police her returning home late evening, the learned Family Court has observed that copy of no such complaint was produced by the appellant.



In our opinion, in the absence of any documentary proof of filing of any complaint by the appellant, this allegation of appellant cannot stand and has rightly been rejected by the Family Court.

22. On the allegation of appellant that respondent had made complaints in the office of his sister due to which she had lost her jobs is concerned, the learned Family Court has noted that the complaint so made only informs filing of FIR against appellant's sister. Moreover, in the charge sheet filed in FIR No.12/2009, under Sections 498A/406/34 IPC, registered at police station Dwarka; the appellant, his mother and sister have been convicted, against which revision petitions were preferred by the appellant (Rev. P. 694/2016), which stood dismissed as withdrawn on 09.10.2018 by the appellant-husband on 09.10.2018.

23. As far as allegation of appellant that respondent had deliberately deserted him and is living with his mother and brother, the learned Family Court has observed that respondent in her written statement has taken the stand that she was subjected to forceful sex and was assaulted for dowry demand. As has been noted above, the appellant and his family members have been convicted by the learned trial court. The said conviction has attained finality. It cannot, thus, be ruled out that the respondent was subjected to cruelty at the hands of appellant and was thus, forced to leave her matrimonial home and live with her mother and brother.

24. The Hon'ble Supreme Court in **Bipinchandra Jaisinghbhai Shah Vs. Prabhavati** 1956 SCC OnLine SC 15 are as under:-

“Thus the quality of permanence is one of the essential elements which differentiates desertion from wilful separation. If a spouse abandons the



other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned : (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid.”

25. In the present case, the appellant could not establish before the learned Family Court that the respondent had intentionally left her matrimonial home. On the other hand, appellant has already been held guilty for the offences under Sections 498A/406/34 IPC in of the in FIR No.12/2009, under registered at police station Dwarka, New Delhi and also has married another woman during subsistence of his marriage with respondent, which proves that she was subjected to mental cruelty and forced to leave her home. Even if it is taken that the parties have been living separately since May, 2008 but appellant has miserably failed to prove that the respondent had deliberately deserted him and left his company.

26. What has caught attention of this Court is that the respondent though filed her affidavit of examination-in-chief as RW-1, however, she did not get herself cross-examined before the learned Family Court and rather prayed that her examination-in-chief recorded on 26.11.2018 be not read in evidence. The appellant has contended before this Court that in the absence



of examination and cross-examination by respondent No.1, the allegations levelled in her written statement against him cannot be read by the Court. this Court finds that respondent in support of her case got examined Record Clerk of Safdarjung Hospital as RW-2 to prove that during subsistence of their marriage, the appellant had married one Kusum and the said record pertained to birth of a child of the parties who was born on 18.12.2017 at Safdarjung Hospital. The learned Family Court held as under:-

“28. Ex. PW1/5 is the application under Section 12(1) of the Protection of Women from Domestic Violence Act stated to be filed by respondent against the petitioner and his family members. It has names of Devishwari Devi as mother of petitioner and Mr. Kusum Lata as sister of petitioner. As already discussed, Ex.RW2/1 bears signatures of Kusum and Dinesheari Devi on the Consent Form for Operation. Below the name of Devishwari Devi, her relationship is mentioned as mother-in-law. Admittedly, the mobile number mentioned on the first page of Ex. RW2/1 is of the petitioner. All these instances pointed out by Ld. Counsel for respondent are just coincidence or as alleged by Ld. Counsel for the petitioner, all this record has been manipulated by the respondent against the petitioner to defame him? Petitioner has denied that he also writes his name as “G.S.Negi”. No doubt Gahjender Singh Negi and G.S.Negi may be two different persons or two different persons may have same name but the point to be considered is that how the mobile number and names of mother and sister of petitioner appears on Ex.RW2/1. As alleged by petitioner it is very difficult and unimaginable that respondent could have manipulated all these records of the hospital in 2017. Ld. Counsel for



respondent has further asked to compare signatures of petitioner in record of this Court as well as on Ex.Rw2/1. Page 4 of Ex.RW2/1 bears signatures of the husband of the patenent dated 17.12.2017. This petition, accompanying affidavit with the petitioner and testimony of petitioner as PW1 bears his signatures. On comparing all these signatures of petitioner with the signatures at page 4 of Ex. RW2/1, complete similarities are found. From the above discussions, it stands established that petitioner has illegally married with the lady named Kusum. Inspite of the existence of this marriage he has concealed this fact from this Court. “

27. The aforesaid finding returned by the learned Family Court on appellant's marriage with Kusum clearly shows that while filing the petition seeking divorce from the respondent, he did not approach the court with clean hands. It has consistently been held by the Hon'ble Supreme Court and the High Courts that under the provisions of the Hindu Marriage Act, a second marriage contracted while the first marriage is subsisting, is void. Divorce on the ground of irretrievable breakdown of marriage can be granted exclusively by the Supreme Court under Article 142 of the Constitution of India. As has been held by the Hon'ble Supreme Court in ***Shilpa Sailesh Versus Varun Sreenivasan*** 2023 SCC OnLine SC 544 the power to grant divorce on the ground of irretrievable breakdown of marriage is exercised by the Supreme Court under Article 142 of the Constitution of India to do complete justice to both the parties and such a power is not vested in the High Courts, leave alone the Family Courts.

28. The Hon'ble Supreme Court in ***Chetan Dass Vs. Kamla Devi*** (2001)

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4 SCC 250 has observed that:-

“14. Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of “irretrievably broken marriage” as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case.”

29. In the facts and circumstances of the present case and the settled position of law discussed above, finding no error in the impugned judgment dated 24.07.2020 passed by the learned Family Court, the present appeal against thereof, as well as pending application(s) stand dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

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