



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 29th August, 2023
Pronounced on: 31st October, 2023

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MAT. APP. (F.C.) 251/2023

SAROJ

..... Appellant

Through: Mr. Alok Kumar, Ms. Rachana Dalal
& Ms. Sweta Kadyan, Advocates

versus

SURAJ MAL

..... Respondent

Through: Mr. Aditya & Mr. Kailash Kumar Jha,
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

NEENA BANSAL KRISHNA, J.

1. The present appeal has been filed under Section 28 of the Hindu Marriage Act, 1955 (*hereinafter referred to as 'the Act, 1955'*) for setting aside the Decree and Judgment dated 16.07.2005 granting a decree of divorce in a petition filed by the respondent/husband under Section 13(1)(ia) of the Act, 1955 by the learned Additional District Judge.

2. The appellant/wife (*respondent in the divorce petition hereinafter referred to as 'appellant'*) got married to the respondent/husband (*petitioner in the divorce petition hereinafter referred to as 'respondent'*) according to the Hindu Rites and Customs on 03.05.1984 at Village Sondhi in District



Jhajjar, Haryana. The parties lived together at their matrimonial house in Village Routa, Delhi and one male child, Ashok was born on 26.04.1990 from their wedlock in Army Base Hospital. The appellant cheated the Government by showing herself to be the wife of her brother, Ramdan while getting herself admitted in Base Hospital Delhi for delivery of her child. He had planned to make the payment for the delivery on which she got frightened and called her brother, who beat him and asked him to desist from making any payment.

3. The appellant tried to implicate the respondent and his family members in false cases and just after 2 years of marriage a case under Section 107/151 Cr.P.C. was registered vide DD No. 10A dated 11.04.1996. She also tried to commit suicide by pouring kerosene on her body and a Panchayat was called on 26.06.1994 where the appellant admitted her guilt. The matter was resolved, however, her behaviour and conduct remained the same.

4. On 14.04.1994 the appellant with the help of her family members, tried to steal from the respondent but the matter was resolved subsequently. However, such act was again committed by the appellant on 16.08.1998 when she took Rs10,000/- and other gold ornaments from the respondent's box. This matter was also subsequently resolved by the Panchayat but thereafter the respondent was beaten by appellant and her brother. Somehow, he managed to escape and as such a police complaint was lodged on 19.08.1998.

5. Such acts of the appellant were alleged to have caused great mental pain and agony to the respondent and he sought divorce on the ground of cruelty.



6. **The appellant in her Written Statement**, not only denied the allegations of the respondent but also raised a number of objections. She asserted that the respondent had illicit relations with the wife of his brother and when she objected to such a relationship, she was beaten by the respondent.

7. The respondent also demanded Rs 12,000/- from her though she had already bought a buffalo for him. Therefore, a complaint against the respondent/husband was filed by her before the CAW Cell Jhajjar. On 28.09.1999, the matter was resolved in the Panchayat of villages Sondhi and Routa where the respondent admitted his guilt and agreed to take the appellant back to the matrimonial house.

8. She further claimed that the respondent was trying to take advantage of his own wrongs and it was the respondent who had thrown her out of the matrimonial home which is why she was compelled to make a complaint before Mahila Mandal Adhikari, District Jhajjar. She claimed that the divorce petition was liable to be dismissed.

9. On the basis of pleadings, the issues were framed on 10.09.2002 which read as under: -

“i. Whether the respondent has treated the petitioner with cruelty if so its effect?

ii. Relif.”

10. **The Respondent himself appeared as PW3** and led evidence of two other witnesses namely, **PW1 Ranbir and PW2 Kali Ram** in support of his assertions.

11. **The appellant appeared as RW-1** and examined **RW-2 Mukhtar Singh and RW-3 Ram Dhan** in support of her assertions.



12. **The learned Addl. District Judge in the impugned judgment** dated 16.07.2005, considered the evidence led by the parties and observed that the allegations of bad behaviour and conduct of the appellant towards the respondent and his family members such as the acts of abusing and beating the respondent and the registration of a case under Sections 107/151 CrPC *vide* DD No.10A dated 11.04.1994 were proved by the evidence of the three witnesses examined on behalf of the respondent and the admissions of RW1. Moreover, the appellant herself admitted about the beating of the respondent by her brother in her cross-examination. The attempt by the appellant to implicate the respondent and his family members in a criminal case by attempting to commit suicide by pouring kerosene on herself was corroborated by the photocopy of the decision of the Panchayat dated 24.06.1995 wherein the appellant admitted her fault. It was also observed that the allegations of illicit relations between the respondent and his brother's wife in the Written Statement of the Appellant were not proved on record and hence, amounted to cruelty. It was concluded by the learned ADJ that such acts could not be termed as "*mere wear and tear*" of married life and thus, the divorce was granted to the respondent on the ground of cruelty under Section 13(1)(ia) of the Act, 1955.

13. **Aggrieved by the impugned judgement** dated 16.07.2005, the present appeal has been preferred by the appellant.

14. **Submissions heard.**

15. Admittedly, the parties got married on 03.05.1984 at Village Sondhi in District Jhajjar, Haryana. They lived together at their matrimonial house in Village Routa, Delhi and one male child, Ashok was born on 26.04.1990 from this wedlock. After the marriage, disputes arose between the parties



and the respondent filed for divorce in 1999, on the ground of cruelty.

16. While "physical cruelty" is visible and easy to comprehend and determine, the more challenging aspect is "mental agony" which has been recognized as part of "cruelty" which once established, is a valid ground of divorce.

17. The respondent had asserted that the behaviour of the appellant/wife and her family members remained uncooperative, abnormal and indifferent as she used to abuse, insult and even beat the respondent/husband.

18. Admittedly, the Kalandara under Section 107/151 of the Code of Criminal Procedure, 1973 was registered *vide* DD No. 10A dated 11.04.1996 i.e., about two years after their marriage.

19. The respondent/husband had deposed that the appellant/wife had tried to implicate him and his family members by pouring kerosene oil on her body for which a Panchayat was held on 24.06.1995, where the appellant/wife had admitted her guilt. The evidence of the respondent/husband was corroborated by the other two witnesses examined by him. No material cross-examination on this aspect was forthcoming. Further, admittedly, Kalandara under Section 107/151 of the Code of Criminal Procedure, 1973 was registered *vide* DD No. 10A dated 11.04.1996.

20. Furthermore, the respondent/husband had deposed that on 16.06.1998, the appellant along with her mother, brother and nephew took out Rs. 10,000/- from respondent's box along with other gold ornaments, but this matter was also settled with the intervention of the Panchayat.

21. All these incidents as proved by the respondent/husband happened after two years of the marriage. It can be easily inferred that the



appellant/wife abused, insulted and beaten the respondent/husband which amounts to not only physical but also mental cruelty.

22. The final act of cruelty was her making allegations of illicit relationship between the respondent/husband and his Bhabhi (wife of the brother of the respondent) which could not be substantiated or proved in the evidence by the appellant/wife.

23. 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 Ramchandra 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 Apex Court observed that such allegations constitute grave assault on the character, honour and reputation and health of the wife 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.

24. 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.

25. Making such serious allegations against the respondent/husband again amounts to cruelty as has been held in the case of Jayachandra vs. Aneel Kaur (2005) SCCR 65 and Harminder Kaur vs. Major M.S. Brar II (1992)



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26. In view of above discussion and settled position of law, we are of the considered opinion that the learned Additional District Judge in its well-reasoned Judgment dated 16.07.2005 has rightly concluded that the appellant/wife had treated the respondent/husband with physical and mental cruelty entitling him to divorce under Section 13(1)(ia) of the HMA, 1955.

27. Accordingly, we find no ground to interfere with the impugned Judgment dated 16.07.2005 granting divorce to the respondent/husband.

28. The present Appeal along with pending application, if any, is hereby dismissed.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

OCTOBER 31, 2023

S.Sharma/Nk