



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

% **Reserved on: August 10, 2023**

Pronounced on: October 19, 2023

+ **MAT.APP.(F.C.) 146/2022 & CM APPL. 40883-85/2022 &
CM.APPL.25821/2023**

RASHMI SHARMA

..... Appellant

Through: In person with Mr.Narender Baisoya,
Advocate

Versus

DEEPAK SHARMA

.....Respondent

Through: In person with Mr.N.K.Sharma,
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 under Section 19 of the Family Court Act, 1984 read with Section 28(4) of the Hindu Marriage Act, 1955 and Section 151 CPC, 1908 has been preferred by the appellant-wife seeking setting aside of the judgment and decree dated 12.05.2022 passed by learned Family Court in HMA No.1030/2012, whereby marriage between the parties has been dissolved under the provisions of Section 13(1) (ia) of the Hindu Marriage Act, 1955.

2. The facts as narrated in the present appeal by the appellant-wife are that her marriage with respondent-husband was solemnized on 18.11.2010 as per Hindu rites and ceremonies.



3. However, she was subjected to cruelty by the respondent, therefore, she filed a complaint before Crime Against Women Cell, Srinivaspuri, New Delhi on 21.10.2011 and another complaint was filed on 15.11.2011 at Police Station Sangam Vihar. According to appellant, on 05.03.2012, she was mercilessly beaten by respondent and his family members and was thrown near her parents' house threatening her to never come back. The appellant claims that at the relevant time, she was in the family way and on 03.10.2012, she gave birth to a female child.

4. The respondent filed a petition under Section 13(1) (ia) of the Act seeking dissolution of marriage, wherein he stated that after solemnization of marriage parties cohabitated together, however, no child was born out of this wedlock.

5. The learned Family Court upon completion of pleadings, the learned trial court vide orders dated 30.07.2013 and 11.03.2015, framed the following issues:-

- “i. Whether the respondent, after solemnization of marriage, has treated the petitioner with cruelty? OPP*
- ii. Whether the petitioner is entitled to decree of divorce as prayed for? ”*
OPP
- iii Relief”*

6. During the pendency of the aforesaid petition, the appellant filed another petition under the provisions of Section 12 of Protection of Women from Domestic Violence Act, 2005 against respondent and his family members.

7. In support of their case, the parties examined themselves before the learned Family Court, appellant-wife as RW-1 and respondent-husband as



PW-7. Learned Family Court based upon the averments of the parties and testimony recorded during evidence, made the following observations on the issues framed:-

“ISSUE NO. 1

8.4 Petitioner has also given various instances in his affidavit along with the dates of the same. Respondent though has denied the same in her written statement as well as in her affidavit but nothing concrete has come out of the cross examination of the petitioner. Counsel for the respondent argued that petitioner in replication has denied that the child belongs to him. It may be mentioned that in para no. 3 of the replication, petitioner has denied the whole facts as stated in para no 3 of the preliminary objections of the written statement and though he has stated that the child does not belong to him but during his cross examination his has clearly admitted that the child belongs to him and he is the father of the child. So, to say that it is the petitioner who committed cruelty upon the respondent will be a wrong fact. Respondent has stated in her cross examination that after 1 and half months of the marriage, the petitioner demanded motorcycle and thereafter again demanded Rs.50,000/-cash She has further stated that she gave a complaint in the CAW Cell, Sri Niwas Puri, Delhi. She has stated this fact regarding the beatings given by the petitioner and his family members. She has not filed any medical documents on record. She has also admitted about the filing of the DV Act petition and its dismissal. She has not filed any appeal against that order till date. Respondent has further stated that on 05.03 2012 she sustained injury on her head, eye and hand but she has not filed any medical documents to substantiate her allegations. She herself has admitted that she did not get herself medically examined. It seems that all these pleas which have



been taken by her in her written statement or in her cross examination are just an afterthought in order to create a false defence to the petition of the petitioner. As such petitioner has been able to prove that he was treated with cruelty by the respondent.

Accordingly, this Issue No. 1 is decided in favour of the petitioner and against the respondent.

ISSUE NO.2

9. Both the parties are living separately for the last more than 10 to 11 years. Though, petitioner has stated that they are living separately since December 2011 but as per the respondent they are living separately since March 2012. Though the irretrievable break down of marriage is not a ground for dissolution of the marriage under the Hindu Marriage Act but this fact cannot be ignored by the court that both the parties are living separately since last more than 10 years of marriage and there is an irretrievable break down of marriage.

9.1 In the case in hand the petitioner has been able to establish that respondent has treated the petitioner with cruelty and the fact that both the parties are living separately for more than 10 years also cannot be ignored by the court.”

8. Having observed above, the learned Family Court dissolved the marriage between the parties vide judgment dated 12.05.2022 holding as under:-

ISSUE NO.3

“10. In view of my findings on the aforesaid issues, it is held that petitioner has successfully proved his case under Section 13 (1) (a) of the Hindu



Marriage Act. Accordingly, the petition is allowed under Section 15 (1) (a) of the Hindu Marriage Act. Consequently, the marriage dated 18.11.2010 between petitioner Shri Deepak Sharma and respondent Smt. Rashmi Sharma is dissolved with effect from today, 12.05.2022, under the provisions of Section 13 (1) (ia) of the Hindu Marriage Act, 1955. No order as to costs."

9. The appellant has challenged the impugned judgment on the ground that the learned Family Court has ignored the settled principles of law and procedure and has not appreciated and considered documents available on record. Learned Family Court has ignored the fact that the appellant has never deserted or neglected or treated the respondent with cruelty and in fact, she herself was subjected to cruelty at the hands of respondent and his family members and was thrown out of her matrimonial home.

10. Also submitted that the extent of cruelty meted out to the appellant is clear from the fact that in the divorce petition preferred by the respondent before the learned Family Court, he stated that the parties had cohabited together after solemnization of marriage, however, no child was born out of this wedlock. It was submitted that the appellant in her written statement denied the allegation and stated that a female child was born out of this wedlock. However, when respondent was subjected to cross-examination, he admitted before the Court that a female child was born out of this wedlock. The appellant has also alleged that the respondent and his family members had told her that if a female child is born, they will not accept it.

11. Learned counsel for the appellant submitted that the respondent has utterly failed in maintaining his wife, i.e. the appellant herein, as well as the



child of the parties and mere trivial quarrels between husband and wife do not amount to cruelty and in fact, no cogent proof of cruelty at the hands of appellant has been placed on record by the respondent. Thus, setting aside of impugned judgment and decree dated 12.05.2022 passed by the learned Family Court in HMA No.1030/2012 is sought by the appellant.

12. To the contrary, learned counsel appearing on behalf of respondent submitted that if appellant was tortured or was subjected to cruelty at the hands of respondent, why no complaint was ever lodged against her. Learned counsel submitted that the judgment passed by the learned Family Court is well merited and does not call for any interference by this Court.

13. We have gone through the contents of the petition under Section 13 (1)(ia) of the Hindu Marriage Act, 1955 preferred by the respondent before learned trial court wherein the following allegations have been made against the appellant herein:-

- i. After solemnisation of marriage, the appellant and respondent cohabited together as husband and wife and no child was born.
- ii. For a few days the appellant lived peacefully, however, thereafter she started showing her abnormal behaviour of being a quarrelsome and ill-tampered lady, who used to pick up petty matters for quarrels with the respondent and his family members.
- iii. Appellant used filthy, abusive and insulting language against the respondent and his family members.
- iv. Appellant was not willing to live with respondent in her matrimonial home and wanted him to take separate accommodation immediately after marriage.



- v. On 01.03.2011, he requested the appellant to bring a cup of tea for him and his friends, however, appellant turned infuriated and stated that she was not a servant and threw a *chappal* on him by calling bad names.
- vi. Another incident stated by respondent is that on 05.05.2011, appellant picked up a quarrel with him and her parents, using filthy language and when father of respondent asked her to mend her behaviour, she extended threats that if separate accommodation is not arranged, she will implicate all of them in dowry case.
- vii. In yet another incident of 10.07.2011, appellant in the presence of relatives of respondent used ugly and taunting remarks against him and his family members bringing defame to the reputation of respondent.
- viii. Again on 12.08.2011, the appellant demanded costly clothes/suit, however, when respondent denied she became furious and picked up quarrel with him.
- ix. On 22.08.2011, on the day of Janmashtami also, the appellant picked up quarrel with respondent and his family members and when respondent asked her parents to advise appellant to not create nuisance, on this, the appellant left the matrimonial home with her parents.
- x. Several efforts for reconciliation to bring appellant back to the matrimonial house were made, however, the appellant lodged a complaint against respondent and his family members in October, 2011 before Crime Against Women Cell, New Delhi.



The said complaint was compromised on 24.11.2011 and the appellant promised to live peacefully with the respondent and his family members and she came back to her matrimonial home.

- xi. On 25.12.2011 at about 2:30 pm, the father of appellant along with his wife and son came to their house and raised hand on respondent and took the appellant with them alongwith her belongings, costly clothes and jewellery etc. extending threats that they will implicate him and his family members in criminal case.

14. On the other hand, appellant in her written statement filed before the learned trial Court, has denied the allegations levelled against her and she raised preliminary objections that the respondent did not come to the Court with clean hands as he had stated that no child was born out of this wedlock whereas on 05.03.2013 appellant had left the matrimonial home, she was in family way and had given birth to a female child on 03.10.2012

15. The appellant in her written statement pleaded that the marriage between the parties was performed with pomp and show wherein an amount of Rs.5 lakhs was spent by her parents and sufficient *istridhan* including gold and silver ornaments were given. However, respondent and his family members were not happy with the amount of dowry brought by her in the marriage and they even in the initial days of marriage started taunting her.

16. The appellant alleged that she was maltreated with abusive language at the hands of respondent and his family members and that the respondent was a habitual drunker and despite earning huge income from property business,



but he did not fulfil her basic requirements. The appellant also pleaded before the learned trial Court that:-

- i. She was a cool minded lady and used to give full regard to her husband and his family members.
- ii. She used to perform her matrimonial obligations well and the allegation that she was unwilling to live with the respondent in her matrimonial home was false.
- iii. Appellant stated before the learned trial Court that incident of 01.03.2011 on the occasion of Holi festival pleaded by the respondent for having appellant thrown a chappal on him on the asking of bringing a cup of tea for him and his friends, had never occurred and it was a false and fabricated story by the respondent.
- iv. appellant denied that on 05.05.2011 and 10.07.2011, a quarrel had taken place with respondent or his family members.
- v. Appellant also denied that on 12.08.2011, she had put a demand for a costly dress or suit from the respondent, rather she has pleaded that respondent had shown his inability to bring any dress for her as he was earning a meagre income so appellant did not ever make any demand from him instead respondent had taunted her to bring clothes from her parents' house.
- vi. The appellant pleaded before the learned Family Court that she had filed a complaint before the Crime Against Women Cell, Srinivaspuri on 21.10.2011, however, when respondent and his family came to know about it, they peacefully compromised the



matter with the appellant and took her to the matrimonial home. However, even thereafter she was not allowed to leave peacefully and so, the appellant was forced to file a complaint on 14.11.2011.

- vii. The appellant pleaded that on 05.03.2012, respondent had given her merciless beatings and thrown her near the house of her parents, extending the threat that she should never come back to the matrimonial home and thereby the respondent has falsely alleged that on 25.12.2011 she along with her belongings was taken by her parents to their house, even though she was thrown out of her matrimonial home by the respondent and his family members.

17. On the aforesaid pleadings, both the sides examined themselves in evidence before the learned Family Court. The respondent was examined as PW1. In his affidavit evidence, the respondent (PW1) reiterated his stand made in the petition. During his cross-examination, the respondent stated that he never celebrated any festival like Holi, Diwali or Raksha Bandhan with appellant herein, as she was at her parental house during these festivals. In his cross-examination, respondent (PW1) admitted that from their marriage, one daughter was born who is in the custody of the appellant. He further stated that the appellant did not live with him after 2013.

18. The appellant in her examination-in-chief stated before the learned trial Court that she had withdrawn her complaint dated 24.11.2011 from CAW Cell, Srinivaspuri as respondent and his family members were treating her well at that time. She alleged that during her pregnancy she was not provided



with medical check-ups, diet and medicines and she was forced to bring the same from her parents. She has also raised allegations against the three sisters of the respondent and their husbands. In her cross-examination, appellant has also stated that she had left her matrimonial home on 05.03.2012. She also accepted that her complaint under Section 12 of Protection of Women from Domestic Violence Act, 2005 (Ex.RW1/A) was dismissed vide order dated 29.07.2016 by the learned Metropolitan Magistrate and she had not preferred any appeal against thereof. Appellant stated that pursuant to injuries sustained on 05.03.2012, she did not get herself medically examined.

19. The matrimonial relation between two persons is a sacred bond which is based upon mutual trust, respect and love. When two persons in a matrimonial bond initiate and retaliate to raise allegations of cruelty against each other, it shakes the foundation of their bond, resulting in failure of marriage.

20. 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.”



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

22. On the aspect of cruelty, the Hon'ble Supreme Court in **Samar Ghosh Vs. Jaya Ghosh** (2007) 4 SCC 511, has observed as under:-

“99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status,



customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.”

23. In the light of afore-noted decisions, this Court finds that in cases of matrimonial disputes, where parties mention specific incidents alleging cruelty at the hand of the other, especially when there are no witnesses to such incidents, it becomes the duty of the Court to take note of overall facts, circumstances and kind of relationship shared between the parties to arrive at a just conclusion as to whether cruelty was meted out or not; even though there may not be any direct evidence before the Court to authenticate the incidents of alleged cruelty.

24. In the present case, parties got married on 18.11.2010 and a girl child was born on 3.10.2012 out of this wedlock. The parties lived together for less than two years, during which period also they temporarily lived apart from 18.10.2011 till 14.11.2011 when appellant lived at her parents' house and was brought back to her matrimonial home by the respondent. The appellant again left the matrimonial home on 25.12.2011 and the child of the parties was also born at her parents' house. At the time of birth of the child on



03.10.2012, the parties were living separately. The respondent in his petition seeking divorce 13(1) (ia) of the Hindu Marriage Act, 1955 mentioned that parties had no child, even though during his cross-examination he accepted that he has a daughter from this marriage.

25. With regard to birth of the child of parties, the appellant has claimed that in January 2012, she had conceived pregnancy and this fact was within the knowledge of respondent and his family members. They started pressurizing her to get a test done about the gender of the child as the mother of the petitioner told that they did not want girl and if any girl is born, she will be killed. On the other hand, respondent in his replication has stated that the appellant had left matrimonial home on 25.12.2011 and 15 days prior thereto, there was no physical relation between two of them and she gave birth to a child on 03.10.2012 and so, the child does not belong to him. The learned Family Court in the impugned judgment has held that though the respondent in his pleadings has stated that the child did not belong to him. However, during his cross examination he has clearly admitted that the child belongs to him and he is the father of the child. So to say that it is he who committed cruelty upon the appellant would be wrong, as held by the learned Family Court as the reason for stating so, is evident from the explanation given above.

26. On the aforesaid aspect, we find that it is a matter of record that a complaint was filed by the appellant before CAW Cell on 18.11.2011, during pendency of which a compromise entered and the appellant went back to her matrimonial home on 14.12.2011. It is also a matter of record that pursuant to a quarrel between the parties, parents of appellant came to their house and the



appellant went to her parent's house on 25.12.2011. The female child was born on 03.10.2012 and its intimation is stated to have been given to the respondent on the same day. We observe that his initial doubts got cleared and he admitted the paternity of the child. In the light of the explained circumstances, the conduct of the respondent cannot be termed as cruelty.

27. The learned Family Court, took note of various incidents claimed by the respondent and observed that though these incidents have been denied by the appellant in her written statement, however, nothing concrete could come out in the cross-examination against the respondent. A perusal of cross examination of respondent shows that during his cross-examination, the respondent stated that he never celebrated any festival like Holi, Diwali or Raksha Bandhan with appellant herein, as appellant used to go to her parents house one month prior to each festival. In such circumstances, the specific allegation of appellant throwing *chappal* on respondent on the Holi day, comes under cloud. The respondent has also raised allegation that conduct and behaviour of appellant brought defame and disrespect to him and his family members, as she behaved in an unpleasant manner before friends and relatives. However, no witness, from his relatives or neighbourhood, has been produced by the respondent to prove misbehaviour of appellant in public against respondent or his family member.

28. Further, the appellant has claimed that within one month of her marriage with the respondent, he demanded motor cycle and cash of Rs.50,000/- and therefore, she filed a complaint with the Crime Against Women Cell. However, she has admitted in her examination-in-chief that she had withdrawn her complaint dated 24.11.2011 filed before the Crime



Against Women Cell, as the disputes were reconciled, and so, she had joined company of her husband at her matrimonial home and the respondent and his family were treating her well at that time. It cannot be lost sight that the appellant not only raised allegations of dowry demand against the respondent and his parents, but also roped in his married sisters and their husbands. Even though she withdrew her complaint before the Crime Against Women Cell, yet the kind of humiliation respondent's sister have gone through, cannot be ignored. The appellant also admitted during her cross-examination that her petition filed under the provisions of Protection of Women from Domestic Violence Act, 2005 stood dismissed by the learned Metropolitan Magistrate.

29. 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’. Also, in **K. Srinivas Rao v. D.A. Deepa** (2013) 5 SCC 226 the Supreme Court has held that *making unfounded allegations against the spouse or his family in the pleadings or filing false complaints, which has an adverse impact, amounts to causing mental 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.

30. As discussed in the judgments mentioned above, repeated complaints with unexplained allegations to various agencies cannot be termed as anything but cruelty. The appellant-wife has not been able to justify the ground on which these complaints were being made.



31. Every marriage rests on mutual trust, compatibility, congeniality and consanguinity. However, such were the differences *inter se* the parties that they were led to an inevitable separation since the year 2012. Despite more than a decade having elapsed, there is no possibility of reconciliation. The very fact that the parties were able to live together barely for one and a half year and they have been living separately since then proves that the parties were unable to sustain their matrimonial relationship. Long separation and deprivation of conjugal relationship, with almost an impossible chance of reconciliation is extreme kind of cruelty.

32. We are supported in our conclusion by the Supreme Court in the case of *Samar Ghosh (Supra)*, which laid down that in a marriage where there has been a long period of continuous separation it may fairly be 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 marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties and **can be termed as mental cruelty**.

33. The appellant-wife, by **filing CM No. 25821/2023 under Section 107 CPC read with Order 41 Rule 27 CPC**, has sought permission of this Court to adduce additional evidence, first time alleging that respondent-husband has got married during subsistence of their marriage and from his second marriage, two children, namely, Sourav, aged 8 years and Pihu, aged 4 years, were born. In support thereof, appellant has placed on record copies of photographs posted by the respondent on social media platform *Instagram*, along with certificate under Section 65 B of the Indian Evidence Act, 1872.



34. In this application, the appellant has claimed that she came to know about respondent's second marriage during subsistence of their marriage, only after passing of the impugned judgment dissolving their marriage. This Court finds that the appellant has neither mentioned the date of alleged second marriage of respondent nor provided any other documentary proof to substantiate his second marriage.

35. Even if it is accepted that the respondent-husband has started living with another woman and has two children during the pendency of Divorce Petition, that in itself, cannot be termed as cruelty in the peculiar circumstances of this case when the parties have not been co-habiting since 2012. The prolonged differences and the conduct of the appellant, made the life of respondent-husband bereft of peace and conjugal relationship which is the bedrock of any matrimonial relationship. After such long years of separation with no possibility of re-union, the respondent-husband may have found his peace and comfort by living with another woman, but, that is a subsequent event during the pendency of the divorce petition which cannot disentitle the husband from divorce from the wife on the proven grounds of cruelty on account of acts as mentioned above. Moreover, the consequence of such liaison shall be borne by the respondent-husband, the woman and the children.

36. In the considered opinion of this Court, we find that the acts of the appellant, as discussed above, amounted to cruelty towards the respondent, which were of the kind that entitled him to divorce on the ground of 'Cruelty' under Section 13(1)(ia) of the Act, 1955.

37. With regard to appellant's prayer seeking permanent maintenance



under Section 25 of the Hindu Marriage Act, 1995 read with Section 151 CPC by filing CM No. 40883/2022 with respect to rights of the child born from their wedlock, liberty is granted to the appellant to have recourse under the appropriate provisions of law.

38. With aforesaid observations, the present appeal and pending applications are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 19, 2023
rk/r