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

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

+ **MAT.APP. (F.C.) 199/2022 & CM APPL.54053/2022**

SMT. SONIA SINGH Appellant
Through: Mr. Vivek Agarwal, Advocate with
appellant in person.

versus

SH. HARPAL SINGH Respondent
Through: Mr. Rohit Krishan Naagpal, Advocate
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. The present Appeal under Section 19 of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955 (*hereinafter referred to as "HMA, 1955"*) has been filed on behalf of the appellant against the Judgment and Decree dated 17.09.2022 passed by the learned Additional Principal Judge, Family Court, Shahdara, Karkardooma Courts, Delhi, whereby the Petition under Section 13(1)(ia) of HMA, 1955 filed by the respondent/husband was allowed and the granted divorce to the respondent/husband on the ground of cruelty.

2. The parties got married on 21.11.2008 according to the Hindu customs and rites and no child was born from their wedlock. From 21.11.2008 till 10.12.2008 i.e., twenty days, the parties resided together at



D-239, Jhilmil Colony, Delhi.

3. **It is asserted by the respondent** that on 10.12.2008, on the request of the appellant/wife (*respondent in the divorce petition hereinafter referred to as the “appellant”*), the respondent/husband (*petitioner in the divorce petition hereinafter referred to as the “respondent”*), took the appellant to her parental home, but she never returned thereafter.

4. The appellant had filed a number of cases against the respondent/husband just after the date of separation. She made a complaint of false allegations of dowry demands, and that the respondent had made a demand of Honda City Car. Even though, the same had already been given at the time of marriage.

5. The appellant also filed a false complaint against the respondent and his family members under Section 498A/406 of the Indian Penal Code, 1860 (*hereinafter referred to as “IPC, 1860”*) in which the respondent had to seek anticipatory bail from the Court of learned Additional Sessions Judge. She further made several applications seeking cancellation of the anticipatory bail granted.

6. A Petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 levelling allegations of mental and physical torture, hitting, slapping etc. was filed wherein, the appellant/wife was granted a maintenance in the sum of Rs. 15,000/- per month.

7. The appellant also made a complaint under Sections 190/200 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as “Cr.P.C., 1973”*) for the alleged offences under Sections 392/376/511/120-B/354/323/499/506/509/34 of IPC, 1860 read with Arms Act against the close relatives of the respondent/husband. The Status Report under Section



156(3) of Cr.P.C., 1973 was submitted by the police and thereafter, better sense prevailed and the appellant withdrew her complaint from the concerned Court on 20.04.2010.

8. The respondent thus, submitted that he had been subjected to cruelty and desertion by the appellant without any reason and therefore, he sought a divorce on the ground of cruelty under Section 13(1)(ia) of HMA, 1955.

9. **The appellant/wife in her Written Statement** asserted that she and the respondent had gone for honeymoon to Darjeeling and Gangtok and that the respondent/husband had taken an LTC and all the hotel facilities and all the expenditure of travelling as well as hotel charges was borne by the Company of the respondent/husband. During the honeymoon, the respondent did not behave properly and abuses her and even gave her beatings, pulled her hair and kicked her. The respondent also harassed her for bringing dowry less than his expectations.

10. Furthermore, the mother-in-law restricted her entry to the first floor where the mother-in-law was residing and where the only kitchen of the house was located. Since, the appellant was left with no space to cook for herself, she returned to her parental home.

11. The appellant denied that she had expressed a desire on 10.12.2008 to go to her parental home or that she never returned thereafter.

It was explained that in the evening of 11.12.2008 at about 09:30 P.M., the respondent and his father took her to parental home along with Wagon R Car and told her father that they would not take the appellant back in the matrimonial home unless they were given a Honda City Car. The threats were also extended to the appellant's father that if he made any complaint about the demands, they would never take back the appellant.



12. The appellant claimed that she tried many a times to return to her matrimonial home. She went along with her parents to the respondent's house on 03.02.2009 as is admitted by the respondent in his Complaint dated 28.06.2009 and by the father of the respondent in his Complaint dated 16.03.2009, but they did not open the gates and the incident was witnessed by all the neighbours.

13. Similarly, on 25.03.2009, the appellant again made an endeavour to return to her matrimonial home, but again, she was not permitted to enter the house. Rather, the police was called by her father by dialing No. 100, thereafter, the respondent/husband and his family fled away from the house after locking it.

14. It is further claimed that the address that had been given by the respondent was found locked since 25.03.2009 for which reason the appellant filed various Complaints dated 25.03.2009 and 19.08.2009 before the SHO, Police Station Vivek Vihar and also the Complaint dated 09.07.2010 was made before the DCP.

15. It was asserted by the appellant/wife that she was compelled to resort to litigation to address the wrongs that were committed upon her by the respondent/husband. It was asserted that the respondent in his Statement dated 28.06.2009 made before the CAW Cell admitted that the appellant was harassed on account of dowry demands for Honda City Car and he had created a scene at the time of *vidai* and sent back the musical band alleging that father of the respondent said that his son was working as a Deputy Finance Manager in Indian Oil Corporation, Noida and he deserved a luxurious car as owned by his colleagues. A sum of Rs. 21,000/- and a gold ring were also demanded and left with no alternative, the father of the



appellant/wife fulfilled all those demands and only then, the *doli* was taken by the respondent/husband. However, the family of the respondent continued to have a grudge against the appellant/wife for not bringing the Honda City Car. Eventually on the complaint of appellant/wife, an FIR No. 1/2010 dated 02.01.2010 under Sections 498-A/406/34 of IPC, 1860 was registered at Police Station, North Rohini.

16. The appellant/wife further asserted that in fact, since the respondent/husband was earning a handsome salary, his parents wanted to get re-married to a girl who could bring good amount of dowry matching their standards.

17. The appellant/wife denied that she had implicated the respondent/husband in false and frivolous criminal cases.

18. The appellant/wife also admitted the filing of case titled Sonia Singh vs. Raj Kumar & Ors. under various Sections 392/376/511/120-B/354/323/499/506/509/34 and Arms Act and also the Application under Section 156(3) of Cr.P.C., 1973 but she asserted that the said case and the said complaint were not made against the respondent/husband but his family members and that the case was also withdrawn.

19. The appellant/wife thereafter, filed a petition for restitution of conjugal rights under Section 9 of HMA, 1955.

20. **The issues on the basis of pleadings** were framed on 02.05.2011 which read as under: -

“1. Whether the respondent has treated the petitioner with cruelty after solemnization of marriage? OPP.

2. Relief.”

21. **The respondent appeared as PW1** in support of his case. The



respondent examined as himself as PW1. **He also produced PW2/Raj Kumar** and PW3/Satbir Singh who were partly cross-examined but thereafter, dropped by the respondent/husband.

22. **The appellant/wife appeared as RW1** in support of her case.

23. **The learned Additional Principal Judge, Family Court** referred to the various criminal complaint, namely, FIR under Section 498A/406 of Cr.P.C., 1973 and complaint under Section 156(3) of the Cr.P.C., 1973 and under various Sections making false allegation of rape against the nephew of the respondent/husband and his family members, including the RTI applications made before the employer of the respondent/husband to conclude that by making such false allegations, the appellant/wife committed acts of cruelty and thereby granting divorce under Section 13(1)(ia) of HMA, 1955.

24. **Aggrieved by the Judgment** dated 17.09.2022 thereby granting divorce to the respondent/husband, the present Appeal has been preferred by the appellant/wife.

25. **Submissions heard from counsels for the parties and the documents as well as the evidence perused.**

26. The most significant fact that emerges in this case is that the parties got married on 21.11.2008, but the marriage did not survive for even 20 days and the parties got separated on after 10.12.2008. Just after the separation, multiple criminal litigations were initiated by the appellant against the respondent and his family members.

27. Admittedly, the FIR under Sections 498A/406 of IPC, 1860 was registered against the respondent in which, he was driven to take anticipatory bail on 12.05.2010. However, the appellant/wife aggrieved by



the release of the respondent/husband on anticipatory bail, moved the application twice for cancellation of the anticipatory bail though both the applications for cancellation of the anticipatory bail, were dismissed. A Status report was also filed by the police wherein it was stated that the allegations made by the appellant in the applications were unsubstantiated.

28. However, the appellant/wife did not rest with the registration of the FIR to let the law take its course of action, but even filed RTI Application dated 08.07.2013 Ex.RW1/P51 to the Indian Oil Corporation, Noida, Uttar Pradesh i.e., the employer of the respondent/husband seeking information on the action taken by the employer against the respondent/husband on account of registration of FIR under Section 498A/406 of IPC, 1860. Thus, an attempt was also made to adversely impact his career by making RTI applications to his employer.

29. The appellant/wife further went on to file criminal complaint under Section 156(3) Cr.P.C., 1973 before the learned Metropolitan Magistrate making the allegations of attempt to rape and serious offences against the family members of the respondent/husband, including the nephew, Shri Satbir Singh. Though this complaint was withdrawn subsequently by the appellant/wife, but none of the allegations has been made by her in complaint were substantiated during the course of evidence.

30. Admittedly, the appellant/wife filed a Criminal Complaint dated 06.12.2019 on which *kalandara* under Section 107/150 Cr.P.C., 1973 was registered but the respondent/husband and his married sister were discharged *vide* Order dated 29.07.2010 passed by the SDM.

31. The appellant/wife also filed a Criminal Case No. 434/1/2009 Ex. RW1/P35 in which she used defamatory words against the



respondent/husband and asserted that he used to say that she had a tall height and was beautiful and, therefore, why does she not do such work by which she can make easy money. The appellant/wife clarified in her cross-examination that she had made such allegations against the respondent/husband as she meant *“I mean to say that petitioner had married me that I could earn for myself by illegal mean using beauty for the phrase “easy money”*”.

32. The making of allegations of rape against Shri Satbir Singh, nephew of the respondent/husband and filing the complaint with such serious allegations before the Court of learned Metropolitan Magistrate in itself were acts of cruelty which was compounded by the FIR under Section 498A/406 of IPC, 1860. The unsubstantiated allegations made by the appellant/wife against the respondent/husband, his real brother, nephew and brother-in-law were acts of extreme cruelty. Further, unsubstantiated allegations in the applications for cancellation of bail also amounted to cause mental agony to the respondent thereby, amounting to cruelty.

33. It is thus noted that several false and frivolous allegations against the respondent/husband were initiated not even sparing his family members.

34. In the case of K. Srinivas Vs. K. Sunita X (2014) SLT 126. the Hon'ble Supreme Court held that filing of the false complaint against the husband and his family members also constitutes mental cruelty for the purpose of Section 13 (1) (ia) of the Hindu Marriage Act.

35. Similarly, it has been held by the Supreme Court in Mangayakarasi v. M. Yuvaraj (2020) 3 SCC 786, that an unsubstantiated allegation of dowry demand or such other allegations made against the husband and his family members exposed them to criminal litigation. Ultimately, if it is found that



such allegations were unwarranted and without basis, the husband can allege that mental cruelty has been inflicted on him and claim a divorce on such a ground.

36. This Court in the case of Nishi Vs. Jagdish Ram 233 (2016) DLT 50 held that the filing of false complaint against the husband and his family members constitutes mental cruelty. Similar observations were made by a coordinate bench of this court in the case of Rita v. Jai Solanki 2017 SCC OnLine Del 9078. We find that filing a myriad of unsubstantiated complaints and criminal cases against the respondent and his family members constitutes cruelty which in itself are sufficient for grant of divorce on the ground of cruelty.

37. Further, the respondent/husband in his testimony had asserted that he had left the appellant/wife at her parental home on her request on 10.12.2008, but she failed to return to the matrimonial home thereafter. It is not denied by the appellant/wife that she left the matrimonial home, but she had given a specious explanation that she was not allowed access to the first floor where the kitchen was located and that she was not given any place where she could cook the food for her.

38. Essentially, the appellant/wife has not been able to prove that she had any justifiable reason for leaving the matrimonial home; rather her withdrawal without any reason within 20 days of marriage can only lead to inference of her having not accepted the matrimonial relationship and its complete rejection.

39. The Apex Court in the case of Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511 laid down certain guidelines with respect to Section 13(1)(i-a) of the Hindu Marriage Act and observed that in a marriage where there has



been a long period of continuous separation as 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.

40. Accordingly, we find that a marriage of 20 days was peppered with false allegations and the abandonment of matrimonial relations by the wife, was rightly held to entitle the divorce to the respondent/husband under Section 13(1)(ia) of HMA, 1955. We accordingly, hereby dismiss the present Appeal along with pending application.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 20, 2023

S.Sharma