



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

*Reserved on: 03rd August, 2023
Pronounced on: 20th December, 2023*

+ **MAT.APP.(F.C.) 107/2017**

RITU SETHI

..... Appellant

Through: Mr. Raman Kapur, Sr. Advocate &
Mr. Varun Kapur, Adv.

Versus

VIVEK SETHI

..... Respondent

Through: Mr. Amarjit Singh Bedi & Mr. Varun
Chandiok, Advocates.

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 under Section 19 of the Family Courts Act, 1984 has been filed on behalf of the appellant/wife against the impugned Decree/Judgment dated 20.03.2017 allowing divorce on the ground of cruelty, passed by the learned Principal Judge, Family Court, Delhi 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 "HMA, 1955"*).
2. **The facts in brief** are that the parties came to know each other and became friends while they were working together. They got married on 10.12.2001, however, their marriage barely survived for about 13 months as they separated on 19.01.2003.



3. **The respondent/husband, who was the petitioner in the Divorce Petition, had asserted in his petition** that soon after the marriage, the appellant/wife created a ruckus in the family. After marriage they went to reside on the second floor of House No. S-83, Greater Kailash-I, New Delhi which belonged to his maternal grandmother till a suitable accommodation was arranged by the respondent.

4. The respondent/ husband asserted that the appellant/wife, however, did not settle in the matrimonial life. They had planned a honeymoon at Bangkok in third week of December, 2001 and reserved tickets for the same; however, on account of priority list in bookings, his reservation was cancelled and the trip had to be postponed by two or three months which irked the appellant/wife. In response to this incident the appellant/wife berated the respondent/husband for being *good for nothing*. Later, the appellant/wife wanted to buy a Mangalsutra. When the respondent/husband expressed his financial constraint, she once again berated him.

5. It was claimed that the appellant/wife had a fetish for cleanliness and she cleaned the house, including furniture, several times with a wet cloth. On being stopped, she became hysterical and used abusive language against the respondent/husband.

6. It was also asserted that the appellant/wife failed to discharge the matrimonial obligations. In April, 2002, the appellant/wife insisted on having a child and when the respondent/husband expressed his reluctance as he wanted more time to settle in the matrimonial relationship, she threatened him that she would conceive from some other person.

7. Further, the appellant/wife paid no respect to his friends. When his friends, Anil Batra and his wife Poonam Batra visited them in January,



2002, the appellant/wife insulted them which left the respondent/husband embarrassed.

8. The respondent/husband also claimed that the appellant/wife was disrespectful to his maternal grandmother who was aged about 86 years. This was elaborated by stating that appellant/wife did not let the connecting door in the stairs to be shut, which not only created threat to the grandmother's security but also let the cold breeze enter through the door to the grandmother's portion of the house. Likewise, on 14/15.04.2002, when there was a shortage of water supply, the mother of the respondent/husband took a bucket of water for the appellant/wife, which she threw in total disrespect of the respondent/husband's mother.

9. To top it all, the appellant/wife abused the sister of the respondent/husband in front of her father who also threatened the respondent/husband and his mother of involving them in court proceedings.

10. Further, the appellant/wife made several calls to the respondent's office to malign him. She even visited the office and met his boss Mr. Navaid Desai which caused great embarrassment to the respondent/husband in his office because of the concocted stories narrated by the appellant/wife to them.

11. It is also claimed that the appellant/wife insisted on perusing the title documents of the property of the respondent's maternal grandmother to ascertain the ownership.

12. On 05.08.2003, the appellant/wife filed a complaint in CAW Cell implicating the respondent/husband and his family members. The complaint was converted into an FIR No. 36/2003 under Sections 498A/406 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC, 1860"*). However,



the respondent/husband was able to secure an anticipatory bail after making payment of Rs. 5,00,000/- to the appellant/wife. The entire family had to run from pillar to post in order to defend themselves in these criminal proceedings. Eventually, the appellant/wife made a demand of Rs. 35,00,000/- for vacating the second floor of the property that belonged to the respondent's grandmother.

13. The respondent/husband thus claimed that he had been subjected to various acts of cruelty and sought the divorce under Section 13(1)(ia) of HMA, 1955.

14. **The appellant/wife in her Written Statement** denied all the allegations made in the divorce petition by the respondent/husband.

15. The appellant/wife claimed that false allegations have been made by the respondent/husband only to wriggle out of the criminal cases. It is the respondent/husband who had deserted her and shifted to a rented accommodation in January, 2003. The respondent/husband and his family locked and blocked the appellant/wife from entering the second floor of the property which she eventually vacated in November, 2003.

16. The appellant/wife also claimed that she had been harassed by the maternal grandmother and the sister of the respondent/husband and she was tortured for more dowry. The respondent/husband and his family also harassed her by stopping the supply of water or by disconnecting the electricity only to her portion of the house.

17. The appellant/wife denied that she was in occupation of the second floor of the property as the permissive user and she claimed that she was paying the rent @ Rs. 6,000/- to 7,000/- per month for living in the matrimonial home.



18. The appellant/wife denied having berated the respondent/husband for not taking to her honeymoon and also for not buying the Mangalsutra. Insofar as the insult to friends of the respondent/husband was concerned, the appellant/wife explained that on the day of Lohri, the parents of the appellant/wife had come with the ceremonial sweets. She suggested a dinner to be hosted for close relations and friends, which was declined by the respondent/husband. However, she was shocked to know that the respondent/husband along with his relatives and friends had been invited for dinner on the ground floor, but she was not invited. Later, when the respondent/husband brought his friends to their house on the second floor, she was upset and told them to go down stairs to have their coffee.

19. The appellant/wife further explained that the respondent/husband used to spend time with his lady friends, namely, Roona Bannerjee, Pratha Sayal, Suman Batra and Saloni Ahluwalia and used to take them to expensive restaurants and stayed overnight with them. It was alleged that at the end of May, 2002, the respondent/husband left the house on the pretext of a conference, but went with the girlfriend.

20. The appellant/wife thus, denied all the allegations and asserted that she was ill-treated by the respondent/husband and the family members.

21. Issues on the pleadings were framed on 06.01.2005 which are as under: -

“1. Whether respondent has treated the petitioner with cruelty as claimed in the petition? OPP

2. Whether petitioner has not come to this court with clean hands and has concealed material facts, if so to what effect? OPR.

3. Whether the petition has not been filed/framed according to



*the provisions of the Hindu Marriage Act, if so to what effect?
OPR.*

4. Relief.”

22. The respondent/husband before the learned Judge, Family Court examined himself as PW1 and his mother as PW2.

23. Appellant wife appeared as RW1 and examined herself.

24. The respondent/husband and his mother were cross-examined extensively by the counsel for the appellant.

25. **The learned Principal Judge, Family Court** referred to the major incident of registration of FIR No. 36/2003 under Sections 498A/406 of IPC, 1860 not only against the respondent/husband but even against his grandmother aged about 86, mother and sister. The proceedings against the grandmother stood abated as she died, while, the mother and sister of the respondent/husband were discharged by the Court. Subsequently, even the respondent was acquitted of all charges. It was thus, held that making such false complaints which translated into criminal proceedings against the respondent and his family, amounted to cruelty.

26. It was also observed that the appellant/wife had made various allegations of the respondent/husband of having adulterous relationship with various friends which have not been able to prove.

27. Moreover, the appellant/wife had agreed to take divorce by Mutual Consent and in part execution of the settlement, a demand draft of Rs. 5,00,000/- was accepted which she subsequently returned. It was thus, held that the respondent/husband was further subjected to cruelty for withdrawing from a divorce by Mutual Consent. The petition for divorce filed by the respondent was allowed and divorce was granted on the ground of cruelty



under Section 13 (1)(ia) of HMA, 1955.

28. **Aggrieved by the Judgment dated 20.03.2017**, granting divorce on the ground of cruelty, the present Appeal has been preferred by the appellant/wife.

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

30. Admittedly, the parties who became friendly in their place of work, got married on 10.12.2001, but unfortunately, their marriage did not survive even for 13 months as they separated in January, 2003.

31. From the beginning, the appellant/wife was unable to settle and repeatedly had adjustment issues in the house. It all started with the cancellation of their tickets to Bangkok for honeymoon. The respondent/husband had explained that he had arranged the tickets for their honeymoon from his employer, but they got cancelled at the last minute because the preference was being given to the revenue generating tickets. The appellant insulted the respondent as no suggestions denying the same were made by the counsel for appellant while cross examining the respondent.

32. The appellant/wife had herself explained in her *Written Statement* that while a Mangalsutra was denied to her, the respondent/husband purchased a lipstick for his friend Roona Bannerji. The incident of the respondent/husband not being able to purchase the Mangalsutra on account of financial constraints which irritated the appellant/wife, was also proved from the evidence on record.

33. The appellant/wife had also admitted that on the day of Lohri, the respondent/husband had brought his friends to their house whom she had



turned out by saying that they can go down stairs and have their coffee, where the dinner had been organized by the family of the respondent/husband to which she was not invited, thus causing humiliation to the respondent. The appellant may have had reasons to be upset on not being asked to join the dinner, but the correct way of addressing her grievance was not by humiliating and turning out the friends who came to visit them in their house.

34. Another incident which needs mention is that the appellant/wife wanted to have a child for which the respondent/husband did not agree, to which she went to the extent of saying that she would have a child from another man. Such threats are bound to create a mental trauma in the mind of any husband.

35. In case of V. Bhagat vs. D. Bhagat (1994) 1 SCC 337, the Hon'ble Supreme Court held that mental cruelty in Section 13(1)(ia) of the Act, 1956 can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put-up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the party. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case.

36. In A. Jayachandra vs. Aneel Kaur, (2005) 2 SCC 22, the Supreme Court observed as under: -



“10...If from the conduct of the spouse, same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case..... Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other.

*13.However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity..... Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. **Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.**”*

37. The Supreme 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 while trivial irritations, quarrels, normal wear and tear of married life which happens in day to day life in all families would not entitle a party to a decree of divorce on the ground of cruelty; continuing and subsisting unjustifiable and reprehensible conduct which affects the physical and mental health of the other spouse may lead to mental cruelty. Further, the court should review the married life as a whole in order to see whether the conduct of the spouse amounts to cruelty deteriorated to an extent that because of the acts and



behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer. A few isolated instances over a period of years will not amount to cruelty.

38. **In light of the above discussion, these incidents, though may not be of much significance when viewed in isolation, but when viewed together clearly depicts a non adjusting attitude of the appellant/wife who had no maturity to sort out the differences with the husband without his public humiliation due to which the respondent suffered mental cruelty.**

39. Further, the appellant/wife had made **averments in the Written Statement, that the respondent/husband was friendly with many girls and had adulterous relationships.** Having made such serious allegations, the appellant in her cross examination admitted that she has no concrete proof of adultery by her husband with any of his female friends. She, as per her own admissions made irresponsible allegations against the fidelity and character of the respondent without any basis.

40. The Apex Court in the case of Vijay Kumar Ramchndra Bhate vs Neela Vijaykumar Bhate, (2003) 6 SCC 334 observed that such allegations, which constitute grave assault on the character, honour and reputation and health of the accused, amount to the worst form of cruelty. Such unsubstantiated assertions made in the Written Statement, being of a quality which cause mental pain, agony and suffering amount to cruelty in matrimonial law.

41. Further, in the case of Jayanti vs Rakesh Mediratta, 2016 SCC OnLine Del 5760, this Court held that bald allegations of adultery without any substantiation, amount to cruelty.



42. The learned Principal Judge had thus, rightly referred to all the incidents to conclude that the conduct of the appellant/wife was cruel towards the respondent/husband.

43. The appellant/wife filed the **civil litigation against the grandmother** for restraining her from getting the second floor of the house vacated from her where she had been living. However, the suit was not decreed in her favour. The litigation was taken to the highest level i.e. to the Apex Court in order to continue her possession. Such an act of dragging the aged grandmother of the respondent into a property litigation, is most certainly a cause of agony to the respondent.

44. The other significant aspect which requires consideration is the **complaint filed by the appellant/wife against the respondent/husband and his family which resulted in the registration of FIR No. 36/2003 under Sections 498A/406 of IPC, 1860**. Admittedly, the grandmother aged about 86 years of the respondent/husband died and the proceedings against her stood abated while the mother and the sister were discharged at the early stage. The respondent/husband faced the trial and eventually acquitted on 17.09.2016. However, the tribulations of the respondent did not end there as the appellant/wife filed the Appeals against his acquittal dragging him into a prolonged litigation of more than 14 years.

45. In the case of K. Srinivas Vs. K. Sunita (2013) 5 SCC 226, the Hon'ble 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 Hindu Marriage Act. It was further observed that filing appeals questioning the acquittal of the husband indicates the relentless attempts of the wife to somehow ensure that the husband and his family are



put in jail. Such acts, without a doubt, amount to cruelty.

46. The Supreme Court in Mangayakarasi v. M. Yuvaraj (2020) 3 SCC 786, observed 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.

47. While filings of complaints against the spouse and their family members is not cruelty in itself, however, all the allegations leveled against the respondent/husband and his family members had been found to be false. The appellant has miserably failed to prove any acts of cruelty as alleged, even in the present proceedings. The respondent and even his family members were made to suffer due to protracted litigation and also faced the prospect of arrest on patently unsubstantiated allegations which without any doubt, constitute cruelty against the respondent/husband.

48. **Thus, the acts of the appellant/wife of filing not only false criminal cases against the husband and his family but also, appealing against them in a vexatious manner, amounts to cruelty.**

49. The other significant factor for consideration is that the appellant/wife had agreed for **divorce by mutual consent** and a settlement was arrived at between the parties on 08.05.2014 in compliance of which a Demand Draft of Rs. 5 lakhs was given by the respondent/husband to the appellant/wife. However, even after this part payment, the **appellant unilaterally withdrew her consent for divorce by Mutual Consent** and returned the Demand Draft.

50. A Co-ordinate Bench of this Court in the case of Rajiv Chikkara vs



Sandhya Mathur 2016 SCC OnLine Del 6224, observed that where a Divorce by Mutual Consent was agreed to by both the parties, the subsequent unilateral withdrawal of consent by a spouse without any sufficient or just cause, would add to the cruelty meted out to the other spouse.

51. The Apex Court in the case of Rajib Kumar Roy vs Sushmita Saha 2023 SCC OnLine SC 1221, observed as under:-

“Continued bitterness, dead emotions and long separation, in the given facts and circumstances of a case, can be construed as a case of “irretrievable breakdown of marriage”, which is also a facet of “cruelty”. In Rakesh Raman v. Kavita reported in 2023 SCC OnLine SC 497, this is precisely what was held, that though in a given case cruelty as a fault, may not be attributable to one party alone and hence despite irretrievable breakdown of marriage keeping the parties together amounts to cruelty on both sides.”

52. The Kerala High Court in the case of Shreedharan vs. Asha in MAT Appeal No. 578 of 2015 decided on 18.09.2023, was confronted with the similar situation, whereby the offer of settlement failed on account of the wife refusing to accept the offer made by the husband. It was observed that the mutual consent for divorce failed in this matter as the bargaining could not meet the level of expectation. The idea of “No-Fault-Divorce” is to make the parties realize that there is a sensible way of parting on the agreed terms. Withholding mutual consent in a failed marriage, is nothing but cruelty.

53. In the case of Beena M.S. vs. Shino G. Babu (2022) (2) KHC 11, the Kerala High Court held that withholding of consent for mutual separation in itself would cause mental agony and cruelty to the spouse who demands separation.



54. Thus, such conduct of the appellant/wife in driving the respondent to believe that their disputes were about to be put to an end and then to withdraw from the attempted settlement can cause disquiet, cruelty, and uncertainty in the mind of the respondent. It is evident that the fight *inter se* the parties was not on any justifiable grounds, but was a war between the egos prompted by the desire to wreak vengeance against the spouse. Such unilateral withdrawal from divorce by mutual consent thus, amounted to cruelty.

55. Learned Principal Judge, Family Court has rightly observed that “*a matrimonial life which survived only for 13 months and has seen civil and criminal litigations running into more than 13 years, and the appellant’s conduct of pursuing Appeals, Revision in higher fora is evidently extremely cruel*”.

56. In view of the foregoing discussions, we conclude that there is no infirmity in the Judgment dated 20.03.2017 of the learned Principal Judge granting divorce on the ground of cruelty to the respondent/husband under Section 13(1)(ia) of HMA, 1955.

57. We find no merit in the present Appeal, which is hereby dismissed with the pending applications, if any.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 20, 2023
S.Sharma/Ek