



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

% **Reserved on: August 29, 2023**

Pronounced on: December 20, 2023

+ **MAT.APP.(F.C.) 2/2015 & CM APPL. 15516/2019**

ANITA MEHRA

..... Appellant

Through: Mr. Arunima Dwivedi, Ms. Pinky
Pawar and Mr. Aakash Pathak,
Advocates

Versus

SATISH MEHRA

..... Respondents

Through: Mr. Aditya S., 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 has been filed by the appellant under Section 19 of the Hindu Marriage Act, 1955 against the judgment and decree dated 04.07.2014 passed by learned Family Court in HMA No.370/20211 whereby respondent's petition under Section 12(1)(a), 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 seeking annulment and dissolution of marriage on account of cruelty and desertion, has been allowed.
2. Parties to the present appeal got married on 18.02.1980 in Delhi, however, since the marriage was not registered, the parties got their marriage registered on 19.05.1982 in New York, USA. Three children were born out of this wedlock.



3. The factual background of the appeal, as spelt out by the appellant-wife in the present appeal is that since the day of their marriage, the respondent was an acute alcoholic, used to assault and beat her repeatedly while she was pregnant, threw liquor on her face and hit her by pulling her hair from roots and kicked her by his footwear and slapped her and thereby committed assault upon her. The respondent never allowed her to meet his friends nor to make her own friends.

4. She has further averred that she made several efforts to make the marriage work but to no avail. The physical violence at the hands of respondent made her life miserable. The appellant has alleged that in August, 1986, she gave birth to a still born baby, which was painful for her but respondent never stood by her side. On 19.02.1987, she suffered a miscarriage and on 02.04.1988, the first girl child of the parties was born. During her pregnancy, the appellant was made to suffer physical and mental trauma at the hands of the respondent. Thereafter, the parties were blessed with twin children in the year 1989. The appellant has alleged that with the dominance and abusive nature of the respondent, their children were deprived of basic necessities.

5. In October, 1992, due to respondent's physical assault, the appellant claims to have been forced to flee from her home with her children after 13 years of their marriage and sought help of USA Police. The New York police informed the Child Protective Services (CPS) of the child abuse by the respondent, and the children were sent to the shelter home in their safety.

6. On 06.11.1992, the appellant was granted interim custody of the children from the Family Court at New York and three children of the parties were granted an order of protection whereby respondent could



neither come near their premises nor inflict violence on them. The US police 'founded' the charge of abuse by the respondent however closed the criminal case as the matter was pending before the Family Court and child was only 04 years of age whereas the youngest age of the child to indict a man in New York Criminal Court was required to be 08 years and hence, the child would not be able to testify in the criminal court.

7. The respondent in his counter petition filed before the learned trial court filed on 14.01.1993 claimed custody of the children, however it was not granted and the custody remained with the appellant.

8. The appellant has further averred that due to constant threats of the respondent and his violation of the Order of Protection granted to the appellant by US Courts, and finding her life and liberty at stake, the appellant came back to India on 07.03.1993 with her three children, then aged 3, 3 and 4 years to the safety of her homeland and for emotional support and security of her family. She claims to have informed the US Embassy about her whereabouts and her reasons for departure from USA.

9. The appellant requested that her paper work shall be handed over to Shelter Attorney, however, it was not done till September, 1994. The appellant also filed a petition seeking custody of her children in the Guardianship Court in India. She filed a complaint with regard to molestation of her elder daughter in the year 1992 by the respondent and also filed a complaint before Crime Against Women Cell, Greater Kailash on 19.03.1993, against the respondent, which culminated into registration of FIR No.197/1993 for the offences under Sections 354/376/498-A IPC, at police station Greater Kailash, New Delhi. The learned Sessions Court framed charges under Sections 354/376 Cr.P.C. against the respondent.



Vide order dated 06.04.1993, the appellant was granted custody of her three children by the Guardianship Court.

10. After approximately two years i.e. in March, 1995, the respondent preferred Special Leave Petition being SLP (Crl.) 2178/1995 before the Hon'ble Supreme Court, wherein the FIR in question was quashed by observing that the child would be subjected to questioning and that would have an impact on the child in case the matter is pursued.

11. During pendency of petitions with regard to custody of the children, in February, 1997 the respondent filed a complaint for divorce in Kings County, Brooklyn, New York and obtained a judgment of divorce in his favour from Supreme Court of State of New York, country of Brooklyn; where the parties had never lived. However, in November, 1997 the appellant claims to have appeared in the matter through referral of the Shelter Attorney, pursuant to which the divorce was dismissed observing that the respondent had obtained divorce by "misrepresentation of facts". Even respondent's appeal was dismissed vide order dated 01.05.1998.

12. In proceedings under the Guardianship Act was granted permanent custody of the children in March, 2002. However again, respondent preferred a petition seeking divorce, but this time in Hudson County, Jersey City, New Jersey with a *mala fide* intention to obtain *ex parte* divorce. However, he withdrew the said petition on the plea that he wished to pursue the custody issue in India, whereas it had already been decided two years prior thereto. Respondent once again filed a petition seeking legal separation and child support in New York Courts, USA.

13. The respondent on 26.05.2008 filed a petition [HMA 527/2005] seeking divorce from appellant before Tis Hazari Courts, Delhi, however,



the same was dismissed in default for non-appearance on 12.01.2006. The appellant also filed an application under Order VII Rule 11 CPC in the said petition on 08.11.2005.

14. According to appellant, the court directed the parties to explore settlement vide order dated 04.10.2007. However, respondent left the country to avoid settlement talks. Instead, he preferred CM(M) 424/2008 before this Court and obtained *ex parte* order for expeditious hearing in divorce petition and conclusion in 06 months. The appellant also preferred a petition bearing No.216/2009, under Section 125 Cr.P.C. seeking maintenance from respondent as well as an application under the provisions of Section 24 of the Hindu Marriage Act, 1955 seeking interim maintenance from respondent, wherein she was granted monthly maintenance of Rs.50,000/- w.e.f. 21.12.2009. The respondent challenged the order dated 21.12.2009 passed by the Court of Sessions before this Court [in CM (M) 1292/2011], wherein he was directed to disclose his income and assets.

15. During pendency of in CM (M) 1292/2011 before this Court, the parties entered into a Memorandum of Understanding dated 24.09.2013 full and final settlement of their disputes, in terms whereof parties amicably settled to withdraw all the pending cases against each other. According to appellant, the aforesaid settlement did not incorporate the properties of the parties at USA. When the parties reached the Hon'ble Supreme Court by filing Special Leave Petition being SLP (C) No. 10925/2013 seeking divorce, however, vide order dated 19.11.2013 it was observed that the parties still had unresolved issues and so, they were remitted back for mediation. The SLP was finally dismissed on 31.01.2014 with direction to the trial court to expeditiously dispose of the petition. The Review Petition



filed by the respondent was dismissed by the Supreme Court on 27.03.2014.

16. During mediation proceedings, the respondent disclosed that the parties at USA were mortgaged and in case appellant wanted to get it transferred in her name, she would have to pay off the loans which were taken without her knowledge.

17. The respondent preferred an application in disposed of petition being CM (M) 516/2011 before this Court and obtained directions to the trial court to dispose of the divorce petition within six weeks. The learned trial court vide order dated 19.05.2014 dismissed appellant's application under Section 24 of the Act on the ground that the MOU was not set aside. To the dismay of appellant, her counsel could not appear before the court on 03.06.2014 due to illness and so, her right to address arguments was closed. Due to summer vacations, her counsel was not available and immediately on opening i.e. 01.07.2014 she moved an application seeking time to file written arguments, which was turned down by the learned court citing that it was time bound case and this Court had directed its disposal within six weeks.

18. The learned Family Court vide judgment dated 04.07.2014 allowed respondent's petition and granted decree of divorce on the ground of cruelty and desertion under Section 13 (1) (ia) & (ib) of the Hindu Marriage Act, which is challenged before this Court.

19. In his petition filed before the learned Family Court, the respondent alleged that he was treated with utmost cruelty, utter humiliation and was subjected to mental torture by her, who deserted him without any reasonable cause or excuse at New York (United States) w.e.f. 31-10-1992 for a continuous period of more than 13 years. He alleged that appellant due to



her suspicious movement and unreasonable, harsh abnormal and unbecoming behavior; in presence of the business associates and his friends, used to curse him with words like “bastard” and “idiot” for no rhyme and reason and accused him of infidelity. She would even call the clients of the respondent whose business cards she found in his pocket. The respondent alleged that in the year 1981, the appellant terminated her pregnancy without his knowledge which caused him mental agony.

20. The respondent alleged before the Family Court that in order to keep her busy, he let her join his office and being the President of the Company, offered her salary of \$30,000 after reducing his salary from \$65000 to \$35000 and even in her fixed deposit accounts in India, he included her name but her behavior did not change. In September, 1992, she asked the respondent to lend some money to her father, however, since he had already given loan of \$15,000 to her father and was unable to give more; she filed false complaint before the New York Police Department (NYPD), New York Child Protective Services (CPS) and New York Family Court alleging that he had been sexually molesting minor daughter Nikita since she was 16 months old. However, report of Dr Gordon appointed by NYPD confirmed that the child was not sexually abused. In February, 1993 the appellant once again made a similar complaint, but upon examination of child Nikita, Dr Dominguez reconfirmed that Nikita had not been sexually abused.

21. The appellant stated that New York Family Court, to verify whether she was making these allegations out of vengeance or due to some psychological problems, ordered her to undergo psychiatric evaluations and directed her not to remove children from New York but apprehending adverse orders, she rushed to India on 7-03-1993 without the permission of



the New York Family Court, who vide order dated 15-04-1993 reversed the interim order of the custody given to her and directed that custody of the children be given to him and warrants of arrest against her.

22. The appellant pleaded before the learned Family Court that being unaware of her whereabouts and apprehending that appellant would have come back to India, he preferred Writ of Habeas Corpus before the Hon'ble Delhi High Court, when he got to know that she had filed a false complaint against him at CAW Cell, New Delhi on 19-03-1993, alleging sexual abuse upon their daughter, however, the said complaint was closed due to jurisdiction of the CAW Cell to investigate into what happened in United States. The respondent alleged that after coming to India, the appellant in connivance with her father, siphoned off whopping sum of US \$ 1,00,000/- from the petitioner's deposits lying in the Vaisya Bank, Punjab & Sindh Bank and Canara Bank at New Delhi, against which he had registered a FIR No. 110/94 at police station Connaught Place, New Delhi. As a counter blast, appellant's father got FIR No. 197/93 registered against the respondent for the offences under Sections 498A, 354 & 511 IPC and on the statement of appellant, charges under Section 498A were dropped but charge under Section 376 IPC & 354 IPC read with section 511 IPC was framed against him and he was not allowed to go back to USA, against which respondent preferred Writ Petition No. 215/1994 before the Hon'ble High Court for quashing the FIR no. 197/93, which was dismissed on 14.03.1995 on the grounds that the FIR could not be quashed at the later stage of trial when the charge sheet was already been filed against him. The respondent thereafter, moved the Hon'ble Supreme Court by filing S.L.P. (Crl.)1385/1995 against the order dated 14.03.1995 passed by this Court.



The Supreme Court advertent to the fact that the Memorandum of Understanding reached between the parties was conditional to the effect that the respondent shall give up all his claims on the large amounts in bank deposits and further agreed to have the divorce; but stood firm that on no account custody of the children could go to the appellant but if made to, subject to his rights of visitation, the Hon'ble Supreme held that there was no sufficient grounds to proceed with the trial and quashed the proceedings and discharged the petitioner vide judgment dated 31-07-1996.

23. The respondent averred before the learned Family Court that the two properties were purchased by him in the joint name of appellant and he had been paying mortgages, taxes and monthly building management for these properties. The respondent averred that notice of his petitions seeking divorce before the Superior Court of New Jersey, were served upon her counsel Mr. Mahendra Singh, Advocate practicing in Delhi High Court and her attorney Ms Rita Parekh in New York, however, later she appeared and falsely alleged that there is no Advocate by the name of Mr. Mahendra Singh, practicing in Delhi High Court and he had to withdraw his petition with liberty to pursue the divorce in India.

24. The respondent alleged that he was not allowed to meet his children and the baseless and false allegations leveled against him, had amounted to cruelty at the hands of appellant and so, prayed that the marriage between the parties be dissolved by a decree of divorce as provided under section 13 (1) (ia) & (ib) of the Act.

25. The appellant in her **written statement** filed before the learned Family Court took the objection that there was undue delay of 13 years in filing the petition and the petition is not liable to be maintained in India on



the ground of jurisdiction and instead she had been treated with mental and physical cruelty, due to which she was forced to leave her matrimonial home and their marriage had broken down because of conduct of respondent and he had never contributed to the maintenance and upbringing of the children.

26. The learned Family Court, on the pleading of the parties, framed the following issues:-

“1. Whether the petition is barred on account of delay and laches? (OPR)

2. Whether this court has no jurisdiction to entertain the present petition? (OPR)

3. Whether the respondent has treated the petitioner with cruelty? (OPP)

4. Whether the respondent has deserted the petitioner without a reasonable cause? (OPP)

5. Relief.”

27. In support of their claims, the appellant examined herself as RW-1 and respondent got himself examined as PW-1.

28. The learned Family Court vide impugned judgment dated 04.07.2014, **on the first issue whether the petition was hit by delay and laches**, held as under:-

“Petitioner claims that he filed subsequently a divorce application while living in New Jersey in April, 2003 with Superior Court of New Jersey on 21-03-2004 but he was allowed to withdraw the same without prejudice to his rights as he wished to pursue the matter in India. He also claims that he had then developed serious problems and underwent quintuple by-pass surgery at New York Hospital. The contention of the respondent is that the petitioner withdrew the petition as he was aware that under Law he was to cough out hefty alimony



and maintenance for the children. The reason for withdrawal of such divorce petition cannot be looked into at this stage as admittedly, the petitioner was permitted to withdraw the divorce petition by the Court of Law for reasons stated in his application. The respondent could have herself objected to such withdrawal or could have filed a divorce petition to reap the benefit of law on marital divorce. She has filed a petition for separation but she is not aware of the present status of her application. In the obtaining facts and circumstances, petition having been filed on 26-05-2005, it cannot be held that there is unnecessary delay in filing the petition. As such, issue no. 1 is decided in favour of the petitioner and against the respondent.

29. With regard to **second issue, whether the court had jurisdiction to entertain the petition**, the learned Family Court held as under:-

“Since earlier divorce petition filed by the petitioner in the United States was not disposed off on merits and subsequent divorce petition was also withdrawn by him without prejudice to his rights on the ground that he wanted to pursue his claim in India, as he had then developed serious heart problems and underwent quintuple by-pass surgery at New York, in my considered view, in the given facts and circumstances, this court is vested with the jurisdiction as none of the divorce petition was disposed off on merits. Moreover, marriage of the couple was solemnized in Delhi, the respondent was residing in Delhi and petitioner was also restrained from leaving the jurisdiction of India in the criminal matter, as such, this issue is also decided in favour of the petitioner and against the respondent.”

30. On the **third issue, whether the appellant herein had treated him**



with cruelty, the learned Family Court observed and held as under:-

“..... From the facts led on record, two issues emerge in the context of alleged cruelty attributed to the respondent. Firstly, the respondent levelled charges of incestuous sexual abuse against the petitioner and secondly the respondent in collusion with her father appropriated and siphoned off whopping sum of US \$1,00,000/- from the petitioner's deposits lying in the Vaisya Bank, Punjab & Sind Bank and Canara Bank at New Delhi by forging documents / letters in regard to which FIR No. 110/94 PS Connaught Place is pending against them on the complaint of the petitioner.

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Since Hon'ble Apex Court has quashed the FIR against the petitioner on the allegations of incestuous sexual abuse, the respondent should have led the evidence of Ms Mary MaoConnel (From USA) and Akash Dharamraj from India to rebutt the presumption as to whatever child Nikita told to both was the tutored version. It is also to be noted that on medical examination abroad of child Nikita, her hymen was found intact and after due investigation the petitioner was informed by the quarter concerned about the complaint of the respondent on incestuous sexual abuse was found "unfounded" and case was recommended to be closed. In the given facts and circumstances, pitched against the medical report mentioning hymen of child Nikita being intact, the allegations of putting bottle into her vagina falls to ground. It is noted that off late there are email exchanges between the petitioner and the children including Nikita on record which are mostly for facilitating the children in pursuing further studies in USA. Daughter Riva has even wished him for "Father's Day".



As regards the allegations of the petitioner with regard to siphoning off his funds in India, the matter is subject matter of criminal trial and cannot enure for the benefit of the petitioner. However, the conduct of the respondent on record

implies that she is no more inclined to stay in the present marital relationship and is only inclined to secure her financial interest as also referred in para 19 of the Hon'ble Apex Court Judgment quashing the FIR against the petitioner

wherein the respondent expressed that for settlement, the petitioner should withdraw his claims on bank deposits.

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The respondent has alleged that the petitioner is living with a lady at Caribbean Island as he has remarried. The same has been categorically denied by the petitioner in his cross-examination. The leveling of unfounded allegations by the respondent of second marriage by the petitioner also amounts to mental cruelty.

The respondent has alleged that the petitioner is living with a lady at Caribbean Island as he has remarried. The same has been categorically denied by the petitioner in his cross-examination. The leveling of unfounded allegations by the respondent of second marriage by the petitioner also amounts to mental cruelty..... RW1 and RW-2 have not been able to make a dent on the petitioner's case on mental cruelty caused by the respondent due to leveling of incestuous sexual abuse of own daughter of the petitioner which allegations she could not prove.



In view of the foregoing discussion, issue no. 3 is also decided in favour of the petitioner and against the respondent.”

31. On the **fourth issue, whether the appellant herein had deserted the respondent without a reasonable cause**, the learned Family Court held as under:-

“After October 1992, there has been no sexual or marital bonding between the parties. The respondent also brought the children to India without informing the petitioner. It is on record that the petitioner was for long not even aware of as to where his children were studying. The respondent also lodged criminal complaint u/s498A/ 354/511 IPC and subsequently 376/511 was added which FIR was quashed by Hon'ble Apex Court. The relations between both the parties are quite bitter and both cannot stand each other in any manner face to face as has been observed during the court proceedings held after February, 2014 as a family judge. The respondent is only inclined to have financial security from the petitioner. Otherwise, she is also inclined for divorce as is also referred in the judgment of Hon'ble Apex Court quashing the FIR and in the settlement dated 24-09-2013 before Hon'ble High Court. The respondent has referred to the petition filed through her attorney in US Court for living in separation but she is not aware of the status of that case. From the foregoing, it can be safely inferred that the respondent has brought the cohabitation to end permanently.

32. With afore-noted findings, the learned Family Court allowed the petition filed by the respondent seeking divorce from appellant under the provisions of Section 13(i) (ia) and (ib) of the Act, which is assailed in the



present appeal.

33. The appellant has averred that the respondent deliberately visited the psychiatrist Dr. Ravi Goklaney in Vasant Vihar, New Delhi and falsely obtained a letter from him stating that the appellant suffered from hallucinations and needed to have psychiatric evaluation. Whereas the fact is that due to sexual assault by the father, the child was facing significant speech delay, withdrawal symptoms, trauma requiring detailed therapeutic program.

34. Further averred that the respondent filed second petition for custody of the children in the learned Family Court of Nassau County misrepresenting that he was unaware of appellant's and children's whereabouts and alleging that the appellant was mental and that the police in USA was not cooperating with him. The respondent fraudulently did not produce before the Court the medical reports of the daughter, the Counsellor Report, the police report and even the Attorney of the appellant who was supposed to appear before the Court did not appear. In such circumstances, the respondent has received a temporary *ex parte* custody order

35. The appellant has asserted that her allegations of sexual harassment on their daughter at the hands of respondent were acknowledged by the US Court and the police investigation and supplementary report revealed the complaint as 'founded' and supported by medical examination of the daughter at Nassau. The appellant asserted that due to financial crunch, she had withdrawn her Attorney in US Court and requested that her paper work be handed over to Shelter Attorney vide FAX dated 15.03.1993, however, till September, 1994, it was not done. During the said period, the respondent filed second petition for custody wherein he misrepresented the facts



obtained temporary custody *ex parte* order. The appellant asserted that the respondent always knew that she along with her children was in India which she had also informed to the American Embassy. Till July, 1993, the respondent did not make any effort to locate her or children and simply watched the guardianship proceedings.

36. The appellant has denied that the bank deposits made by the respondent were ever illegally withdrawn by her and stated that the bank account was not a joint account and it was either or survivor and in this view of the matter, this Court had stayed the closure report filed by the IO in the protest petition.

37. The appellant has averred that the joint property for US \$ 1,65,000/- was purchased in joint name of the parties for which down payment of US \$ 50,000/- was made from the joint account of the parties and the balance mortgage amount was also paid back from their joint accounts. She has also averred that the balance mortgaged fund was transferred from joint account to single name i.e. the respondent herein and respondent had obtained loan without consent and signature of the appellant. Since then, the respondent has taken 50% share of the rent from the said premises and now, he cannot be permitted to deprive her to have her share out of sale proceeds of the said property by falsely exaggerating the facts. On the aspect of withdrawing divorce petition by her in the USA Court, she stated that he had avoided paying hefty alimony and also that he had secretly married another lady. Thus, setting aside of impugned judgment dated 04.07.2014 is sought by the appellant.

38. This Court has gone through the impugned judgment, testimony of witnesses recorded and other material placed on record of the learned



Family Court and we find that parties to the present appeal got married in India and USA in 1980 and 1982 respectively. They were blessed with three children while living in USA. In October, 1992, the appellant for the first time raised allegation of physical assault against the respondent before the US police and sexual abuse upon the eldest girl child of the parties. The recourse to law against physical assault of appellant at the hands of respondent as well as custody of children was undergoing in USA, however during pendency thereof, the appellant came to India on 07.03.1993. On one hand, the appellant preferred legal battle against the respondent in India by filing complaint under Section 498A/506 IPC, which resulted into registration of FIR No.197/1993 for the offences under Sections 354/376/498-A IPC, at police station Greater Kailash, New Delhi, however, charges were framed under Sections 354/376 Cr.P.C.; on the other hand, the respondent initiated divorce proceedings in Kings County, Brooklyn, New York, which though was allowed at the first instance but was later dismissed. Thereafter, respondent preferred another divorce petition in Hudson County, Jersey City, New Jersey, which was withdrawn by him on the plea of taking recourse to law in India. The parties filed multiple proceedings against each other and reached upto Hon'ble Supreme Court. The parties entered into a Memorandum of Understanding dated 24.09.2013 in CM (M) 1292/20 towards full and final settlement of their disputes but vide order dated 19.11.2013 passed by the Hon'ble Supreme Court in SLP (C) No. 10925/2013, the divorce between the parties was declined and parties were remitted back to the court to resolve issues pertaining to their properties in USA.

39. Finding no amicable resolution of marital disputes, the respondent



preferred the divorce petition before the learned Family Court. The appellant has approached this Court against the judgment dated 04.07.2014 passed by learned Family Court whereby the petition preferred by the respondent seeking divorce from appellant under the provisions of 13 B (1) (ia) (ib) of the Hindu Marriage Act, 1955 has been allowed.

40. Relevantly, even though respondent-husband had preferred petitions seeking divorce from appellant-wife in United States, however, he had withdrawn the same, as he wanted to pursue his remedies before the Indian Court. Since the judicial process seeking divorce has been undertaken before one court of law and country, we find that the learned Family Court has rightly entertained the petition filed by the respondent being within its jurisdiction.

41. To adjudicate the claims of respondent made before the learned Family Court, it is worth to note provisions of Section 13 B(1) (ia) and (ib) of the Hindu Marriage Act, 1955, which read as under:-

“Section 13 in The Hindu Marriage Act, 1955

13 Divorce. —

(1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

(i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or]

(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or]

(ib) has deserted the petitioner for a continuous period of not less than two years immediately



preceding the presentation of the petition; or]”

42. In order to find out whether any cruelty was meted out by the appellant herein upon the respondent and whether the appellant had deserted the respondent, this Court has gone through the examination and cross-examination of parties recorded before the learned Family Court, as well as copies of various orders passed by the Supreme Court, this Court as well as courts below.

43. The undisputed position is that pursuant to order dated 19.11.2013 passed by the Hon'ble Supreme Court, whereby the parties were relegated to resolve the left over issues, especially with regard to properties at USA, the appellant reagitated her claims under Section 24 of the Act, however the same was dismissed vide order dated 19.05.2014 in view of directions of the Supreme Court to dispose of the divorce petition within six weeks.

44. It is undisputed that FIR No. 197/1993, registered on the complaint of appellant against respondent for the offences under Sections 498A/354/376/511 IPC however, charge was framed for the offences under Sections 354/376 Cr.P.C., which was quashed by the Supreme Court in ***Satish Mehra Vs. Delhi Administration And Another*** (1996) 9 SCC 766 holding as under:-

“17. The complaint made by her with the New York police that her husband committed sexual offences against her 18 months' old female child was investigated by the New York police who found the complaint bereft of truth hook, line and sinker. The present charge is that the appellant committed such offences against the same child at East Kailash, New Delhi sometime during March to July 1991. There is now no case of what



happened in United States. The Sessions Judge should have noted that appellant's wife has not even remotely alleged in the complaint filed by her on 19-3-1993 before CAW Cell, New Delhi that the appellant has done anything like that while he was in India. Even the other complaint petition (on which basis the FIR was prepared) is totally silent about a case that the appellant did anything against his daughter anywhere in India. When we perused the statement of Anita Mehra (second respondent) we felt no doubt that she has been brimming with acerbity towards the petitioner on account of other causes. She describes her marital life with petitioner as "extremely painful and unhappy from the very inception". She complains that petitioner has "a history of irrational outbursts of temper and violence". She accused him of being alcoholic and prone to inflicting severe physical violence on her from 1980 onwards.

18. Thus her attitude to the petitioner, even dehors the allegation involving the child, was vengeful. We take into account the assertion of the petitioner that the present story involving Nikita was concocted by the second respondent to wreak her vengeance by embroiling him in serious criminal cases in India so that he could be nailed down here and prevent him from going back to USA.

19. While hearing the arguments we ascertained whether the spouses could settle their differences. Second respondent, who too was present in court, made an offer through her counsel that she would agree for annulling the criminal proceedings against the petitioner on the condition that he should withdraw his claims on the bank deposits and would also relinquish his claim for custody of the children, and further he should concede for a divorce. In response to the said conditional offer, petitioner agreed to give up all his claims on the large amounts in bank deposits, and further agreed to have the divorce. But he stood firm that on no account custody of



the children could go to the second respondent but if made to, subject to his rights of visitation. This, he said, is because he is convinced that second respondent is unsuitable to be entrusted with the care of the children.

20. In the above context the petitioner drew our special notice to a medical report issued by Dr Prabha Kapoor (Children Medical Centre, Jorbagh, New Delhi) on 26-7-1993. It is stated in the report, that Nikita was brought to the doctor by the second respondent and on examination of the genitals of the child the doctor noticed "a wide vaginal opening — wider than would be expected of her age group". On the strength of the aforesaid medical report, petitioner made a frontal attack on second respondent, alleging that in order to concoct medical evidence against him the little child's genitals would have been badly manipulated by its mother. To substantiate this allegation he drew our attention to the US police report, in which there is mention of a medical examination conducted on Nikita by a US doctor (Dr Gordon) on 24-11-1992. That doctor pointed out that there was absolutely no indication of any sexual abuse when the child was physically examined. If the medical examination done on the child in November 1992 showed such normal condition, petitioner posed the question — who would have meddled with the child's genitals before 26-7-1993, to cause such a widening of the vaginal orifice? (We now remember again that, as per the present case, the last occasion when the petitioner should have abused the child was in July 1991). The aforesaid question, posed by the petitioner in the context of expressing grave concern over what the mother might do with the little female child for creating evidence of sex abuse, cannot be sidelined by us in considering whether the case should proceed to the trial stage.

21. Petitioner invited our attention to the answers which Mrs Veena Sharma (of CAWC) has elicited from Nikita,



a verbatim reproduction of which is given in the counter-affidavit filed by the second respondent. The said interrogation record reveals that Mrs Veena Sharma has practically put on the tongue of the little girl that her father had molested her. The following questions and answers can bring the point home. The questioner asked the child “what your daddy did with you” and the child answered that he put his finger (and showed her private part). Not being satisfied with the answer the next question put to the child was “Daddy puts what else”. Then Nikita answers “Daddy puts his bottle”. We noticed with disquiet that the questioner drew the picture of the petitioner — face to body and then asked certain questions such as “where is papa's bottle? Is it on the cupboard?” The child kept looking at the drawn sketch and pointed to the part between legs. Questioner then asked if anything was missing in the picture, to which Nikita answered ‘glasses’. After the child again pointed to the private parts between the legs, the questioner wanted the child to draw “papa's bottle”. But then the child told her “you do it”. The questioner at the stage had the temerity to draw the picture of the private parts of child's father. We are much disturbed at the manner in which the little child was interrogated by the said officer of CAW Cell. At any rate we have no doubt that the purpose of such questions was to lead the child unmistakably to the tutored answers.

22. Even overlooking all the inherent infirmities shrouding the testimony of a tiny tot speaking about what her father did when she was aged 3 and even ignoring the appellant's persistent submission that the little child was briskly tutored by her mother to speak to the present version, there is no reasonable prospect of the Sessions Court relying on such a testimony to reach the conclusion that the prosecution succeeded in proving the offence charged beyond all reasonable doubt.



23. Over and above that, what would be the consequence if this nebulous allegation is allowed to proceed to the trial stage. We foresee that Nikita, the child witness, now eight years and four months old, must necessarily be subjected to cross-questions involving sex and sex organs. The traumatic impact on the child when she would be confronted by volley of questions dealing with such a subject is a matter of concern to us. We cannot brush aside the submission of the appellant that such an ordeal would inflict devastating impairment on the development of child's personality. Of course, if such a course is of any use to the cause of justice, we may have to bear with it as an inevitable course of action to be resorted to. But in this case, when the trial is going to be nothing but a farce, such a course of action should not be allowed to take place on account of the impending consequences befalling an innocent child."

45. The afore-noted observations of the Hon'ble Supreme Court makes it abundantly clear that the allegations of sexual assault upon the girl child of the parties could not be substantiated and sniffed of personal vendetta against the respondent due to matrimonial discords.

46. So far as the allegation of cruelty levelled by the respondent upon the appellant to bring his case within the ambit of Section 13 B (ia) of the Act is concerned, this Bench has in a catena of decisions already held that marriage is a sacrosanct bond which is based upon trust and respect of one spouse against the other and if a spouse raises unfounded and fallacious allegations against the other, it shakes the foundation of marriage. If a spouse is made to suffer rigorous of criminal trial at the hands of the other, this not only causes irreparable damage to their relation but also amounts to committing cruelty.

47. The Hon'ble Supreme Court in ***Raj Talreja v. Kavita Talreja*** (2017)



14 SCC 194 has observed and held as under:-

“11. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act, 1955 (for short “the Act”). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty.

48. In the considered opinion of this Court, the appellant did not get examine Ms.Mary MaoConnel and Mr.Akash Dharamraj to corroborate allegations of incestuous abuse upon daughter of the parties by the respondent and has thereby failed to prove their medical opinions. In our considered view the learned Family Court has rightly held that in order to obtain orders from the Guardianship Court, the appellant had obtained false Certificates and letters from them.

49. The respondent before the learned Family Court alleged that the appellant had fraudulently siphoned off his funds in India. He asserted that after coming to India, the appellant in connivance with her father, siphoned off whopping sum of US \$ 1,00,000/- from his deposits lying in the Vaisya



Bank, Punjab & Sindh Bank and Canara Bank at New Delhi by forging documents, against which he had registered a FIR No. 110/94 at police station Connaught Place, New Delhi. The learned Family Court on this aspect has though noted respondent's contention but has not rightly returned a finding, it being subject matter of criminal trial in separate proceedings.

50. In the considered opinion of this Court, the appellant first launched criminal proceedings against him in USA, however, escaped herself from judicial process of USA Courts and availed her remedies before courts at Delhi. When respondent tried to launch divorce proceedings in USA, she intervened and did not let it go. Above all, when respondent knocked the doors of Delhi jurisdiction, she has challenged his claims on the grounds of jurisdiction. Significantly, by filing one petition or another application, the appellant has tried to demolish the claims of respondent and prolonged the proceedings for an extraordinary long time. It is only upon intervention of the Hon'ble Supreme Court and this Court that time bound directions have been given to the Family Court for expeditious conclusion of trial. What has caught attention of this Court is the fact that the appellant flee to India on 12.07.1993 with the children and respondent had to file habeas corpus to secure custody of his children and he is still battling to prove his affection for his children. Not only this, upon failure of Memorandum of Understanding dated 24.09.2013, the appellant did not try to meet the issues which were left to be resolved, which again left the respondent in the clutches of legal battle against the appellant.

51. Relevantly, in matrimonial relationship, "Mental Cruelty" cannot be defined under any strait jacket formula and it has to be ascertained based upon acts and behaviour of one spouse for the other. In ***K. Srinivas Rao Vs.***



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.*

52. In our considered opinion, the learned Family Court in the impugned judgment has rightly held that respondent has been made to suffer cruelty meted out by the appellant.

53. So far as the provision of Section 13 (1) (ib) of the Act are concerned, this Court finds that parties got married on 18.02.1980 in Delhi, however, since the marriage was not registered, the parties got their marriage registered on 19.05.1982 in New York, USA. The appellant along with children came to India on 12.07.1993 and since then, parties have been living separately. A perusal of letter dated 01.07.1993 written by the respondent to appellant shows that he is concerned for good health and well being of appellant and their children. Similarly, contents of letter dated 20.12 1992 also show that respondent is willing to bridge the gaps. The learned Family Court has noted that out of 34 years of their marriage, the parties have lived separately for more than 22 years. Even though appellant filed petitions under the provisions of Section 125 Cr.P.C. and Section 24 of the Hindu Marriage Act, however, she did not file any petition under Section 9 of the Hindu Marriage Act, 1955 seeking Restitution of Conjugal Rights.

54. With regard to Section 13(1) (ib) of the Hindu Marriage Act, 1955, the pertinent observations of 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.”

55. The Hon’ble Supreme Court in ***Bipinchandra Jaisinghbhai Shah(Supra)*** has further observed that *once it is found that one of the spouses has been in desertion, the presumption is that the desertion has continued and that is not necessary for the deserted spouse actually to take steps to bring the deserting spouse back to the matrimonial home.*

56. Also, 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.”

57. In the light of afore-noted facts and circumstances of the present case, this Court is of the considered opinion that appellant has wilfully deserted the respondent and so, respondent is entitled to get benefit of provision of Section 13(1) (ib) of the Hindu Marriage Act, 1955.

58. With aforesaid observations, the present appeal is accordingly dismissed and the impugned judgment dated 04.07.2014 passed by the learned Family Court is hereby upheld. The marriage between the parties is dissolved under the provisions of Section 13 (1)(ia) and (ib) of the Hindu Marriage Act, 1955. It is made clear that this Court has not touched upon the other pending issues with regard to properties of the parties or maintenance payable by the respondent.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 20, 2023

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