



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

% **Reserved on: August 24, 2023**

Pronounced on: December 12, 2023

+ **MAT.APP.(F.C.) 277/2018 & CM APPL. 10737/2023**

KAVITA @ MEENA

..... Appellant

Through: **Mr.Amrendra Kumar Jha & Mr.S.N. Shukla, Advocates**

Versus

VIJAY

.....Respondent

Through: **Mr.Ravindra Narayan, 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 Courts Act, 1984 has been filed by the appellant against the judgment and order dated 01.07.2018 passed by the learned Family Court in HMA No. 1008/2011 (Old No. 743/2009) whereby respondent's petition under the provisions of Section 13(1) (ia) of the Hindu Marriage Act, 1955 has been allowed and marriage between the appellant and the respondent has been dissolved by awarding a decree of divorce.

2. The parties to the present petition got engaged on 28.11.2003 and entered into the bonds of marriage on 28.11.2005, adhering to Hindu rites
MAT.APP.(F.C.) 277/2018



and ceremonies. On this significant day, the appellant's sister, Urmila, and the real brother of the respondent, namely, Prem Prakash, also married. Their marriage, orchestrated by the Maternal Uncle (Mama) of the respondent and the parents of the appellant, endured for more than two and a half years without the blessing of children.

3. The appellant in the present appeal has averred that respondent started mistreating her almost immediately after marriage, employing foul language, frequent screaming and occasional physical abuse even on trivial matters. The appellant has alleged that the respondent subjected her to humiliation at the instigation of her mother-in-law. The appellant has averred that since she hailed from a financially disadvantaged background and fearing that her parents would be unable to provide support chose silence in the face of the sustained abuse and with the hope that the situation might improve.

4. The appellant has alleged that the respondent cruelly taunted her about her alleged infertility, consistently rejected her pleas to undergo a medical examination and despite her medical fitness to bear children, he remained obstinate.

5. The peak of cruelty occurred on 02.06.2008 when the respondent and his family, without provocation, violently assaulted and beat the appellant. To her utter shock, the respondent prohibited her from seeking medical attention for the severe injuries sustained.

6. The gravity of the situation unfolded on 03.06.2008 when the appellant's mother discovered her plight and she wanted to visit her but the respondent obstructed her mother, prompting the intervention of law



enforcement. However, the respondent continued physically assaulting the appellant until the police arrived and with the police assistance, she was eventually taken to Jai Prakash Narain Apex Trauma Centre at AIIMS for urgent medical treatment. Driven by concern for her well-being and left with no alternative, the appellant lodged a police complaint on 03.06.2008 and sought assistance from the Crime Against Women (CAW) cell on 05.06.2008.

7. On 17.07.2008, a Sub-divisional Executive Magistrate (SEM) counselled both the parties, the appellant and the respondent, advising them to coexist peacefully. Despite appellant's readiness to return to her matrimonial home, the Respondent, in a shocking turn of events, abandoned her at the office of the SEM in Amar Colony, Lajpat Nagar, New Delhi. Notably, the Appellant had to seek police intervention to regain entry into her matrimonial home. Post this incident at the SEM's office, the respondent initiated a scheme to rid himself of the appellant. The appellant, having raised her voice against the abuse and approached the authorities, became a target of the respondent's ego-driven plot.

8. The narrative of cruelty took another turn on 17.04.2009. While the appellant was at her paternal uncle's house to attend a family event, the respondent, along with his parents and other family members, locked their house and vacated the premises. Upon her return, appellant found her house deserted, with all her in-laws, including the respondent, who went missing. This strategic move was aimed at projecting that the family had been compelled to abandon their home due to the appellant and her sister (married to the respondent's younger brother). With no other refuge, the appellant



sought police assistance, enabling her re-entry into her matrimonial home.

9. Further complicating matters, the respondent's parents disowned him by issuing a public notice of disownment on 25.04.2009. Taking the scheme to the next level, the Respondent, having moved out of the house on 22.05.2009, initiated a divorce suit (HMA SUIT NO. 1008/2011, OLD NO. 743/2009) in the Family Court at Saket, New Delhi, on the grounds of cruelty.

10. In the divorce petition, the respondent levelled various allegations against the appellant, including creating issues within days of the marriage, being caught in a compromising position with a person named Dilip on 31.12.2005; family knowledge of the affair with Dilip, appellant's refusal of physical relations, her quarrelsome nature, extravagant spending, filing false complaints, improper observance of Karwa Chauth, self-harm, causing the respondent to leave the matrimonial home and the absence of peace during their three and a half years of marriage.

11. According to appellant, no such allegation was ever raised by the respondent prior to filing of the divorce petition and no complaint was made with the allegation that she was having affair with Dilip. Accordingly, the appellant has claimed that respondent's allegations deserve to be considered as vague and legally unsustainable.

12. Additionally, respondent's father filed a civil suit against the appellant to evict her from her matrimonial home. The appellant, pleading financial constraint, also filed a petition seeking maintenance from the court and she was granted maintenance at Rs.3000 per month. Further responding to continuous threats and intimidation from the Respondent and his family, the MAT.APP.(F.C.) 277/2018



appellant filed a case under Sections 498A/406 of the Indian Penal Code against the respondent and his family members.

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

- “(i) Whether the petitioner is treated with cruelty by the respondent, as per the events mentioned in the petition? OPP*
- (ii) Relief.”*

14. In support of their pleadings, the appellant and respondent got themselves examined as RW-1 and PW-1 respectively. The learned Family Court, after adducing the testimony of the parties and other material placed on record, vide impugned judgment held that the appellant’s conduct was cruel towards him and allowed the petition filed by the respondent, thereby dissolving the marriage of the parties.

15. Learned counsel appearing on behalf of appellant while challenging the impugned judgment dated 11.07.2018 submitted that it is a classic case of non application of judicial mind and it has been erroneously held that marriage between the parties took place in hurry whereas their engagement was solemnized two years prior thereto. Also submitted that the learned Family Court did not appreciate that the allegations of illicit relations were false and baseless and the same were unbelievable and also that whenever appellant sought police assistance or complained at CAW Cell, it was because she was subjected to cruelty at the hands of the respondent.

16. Learned counsel for appellant submitted that the burden to prove the issue of appellant treating the respondent with cruelty, was upon the

MAT.APP.(F.C.) 277/2018



respondent himself and even though he could not prove his case, yet his petition was allowed by the learned Family Court vide impugned judgment, which deserves to be set aside.

17. Learned counsel appearing on behalf of respondent on the other hand submitted that appellant and her real sister are married to respondent and his brother respectively, on whose complaints FIR Nos. 46/2010 and 45/2010 for the offences under Sections 406/498A/34 IPC was registered against the respondent, his brother and other family members, wherein they have been acquitted of the offences charged with by holding that the complainants have not been able to prove their case beyond reasonable doubt.

18. Learned counsel for respondent submitted that the appellant, in conspiracy with her sister, has been in occupation of two houses of the parents of the respondent, even though they have been living on rent. The parents of respondent were left with no option but to file suit for possession in respect of two properties, which was decreed in their favour and still, appellant and her sister have not vacated the premises and instead have filed appeals before this Court.

19. Learned counsel for respondent submitted that the impugned judgment rightly notes the cruelty meted out to him at the hands of appellant and so, the present appeal deserves to be dismissed.

20. We have gone through the impugned judgment dated 01.07.2018 passed by the learned Family Court, testimony of parties recorded before the learned Family Court and the other material placed on record and we find that the undisputed fact of the present case is that the appellant and her sister, got married to respondent and his brother respectively on the same MAT.APP.(F.C.) 277/2018



day and venue. Soon after their marriage, disputes arose between the parties. The respondent preferred petition seeking divorce from appellant before the learned Family Court under the provisions of Section 13 (i) and (ia) of the Hindu Marriage Act, 1955.

21. Respondent, who deposed as PW-1 before the learned Family Court, in his cross-examination replied that his Mama Ji did not tell him that the appellant was having an affair with a married man living in the neighbourhood and that he had condoned the act of respondent about her illicit relationship so that their marriage could sustain. Even though appellant has denied the allegation of adultery, however, in the light of afore-noted cross-examination of respondent on this aspect and his reply thereto, this Court finds that having an illicit relationship outside marriage tantamount to committing cruelty upon the spouse and so, the learned Family Court has rightly held that appellant's conduct of maintaining a love affair with her neighbour even after marriage with the respondent is definitely a cruelty committed by her upon her husband. In **Harjit Kaur Vs. Surinder Singh**, 2016 SCC OnLine Del 6063 this Court has observed that having an affair during the subsistence of marriage by either of the spouse amounts to cruelty to the other.

22. 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. To further adjudge the cruelties, if committed by appellant upon respondent, this Court finds that it is undisputed that the appellant and her sister filed two complaints against respondent, his brother and family members which were closed by final report dated 12.09.2008. Even thereafter, appellant made another complaint against the respondent and made him face agony of process of law. Also, FIR Nos. 46/2010 and 45/2010 registered at their instance of appellant and her sister against the respondent, his brother and family members for the offences under Sections 406/498A/34 IPC, stood dismissed on the ground that allegations could not be proved beyond reasonable doubt. In our opinion, the learned family court



rightly held that there was no specific demand for dowry

24. 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.

25. On the failure to prove allegations of dowry demand, the Hon’ble Supreme Court in **Kahkashan Kausar Vs. State of Bihar**, (2022) 6 SCC 599 has held as under:-

“21. Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the appellant-accused, it would be unjust if the appellants are forced to go through the tribulations of a trial i.e. general and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by this Court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must, therefore, be discouraged.”



26. The appellant along with respondent and her sister with her husband, who happens to be respondent's brother, lived in a separate accommodation than her parents-in-laws and thus, allegations of respondent's mother ill-treating them could not be substantiated. Moreover, the appellant in her testimony acknowledged that her father-in-law had filed a suit for possession against her in respect of the property i.e. House No. A-372 wherein she was living with her sister and voluntarily stated that she had filed an appeal against the decision whereby she has been directed to evict the said house.

27. The afore-noted facts and circumstances of this case, clearly depict that the respondent filed the petition under Section 13(i) and (ia) of the Act before the learned Family Court on the premise that it would have become difficult for him to continue in this matrimonial bond. In **Samar Ghosh (Supra)**, the Hon'ble Supreme Court has further held that "*when there has been a long period of continuous separation, it may be fairly 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 the marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties, it may lead to mental cruelty.*"

28. In the present case, the parties have completely lost faith in each other. The conduct of appellant has devastated the matrimonial bond to extent which is irreversible. For these reasons, the appeal is dismissed and the impugned judgment dated 01.07.2018 passed by the learned Family Court in HMA No. 1008/2011 (Old No. 743/2009) allowing respondent's



petition under the provisions of Section 13(1) (ia) of the Hindu Marriage Act, 1955 is hereby upheld.

29. With observations, as aforesaid, the present appeal and pending application, if any, are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 12, 2023

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