



\$~9

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

% ***Date of decision: 5th October, 2023***

+ **MAT.APP.(F.C.) 75/2022, CM APPLN. 29017/2023, CM APPLN. 25392/2022 & CM APPL. 25276/2022**

PRAGGYA WALKE

..... Petitioner

Through: Mr. Amit Bhatnagar and Mr. Ananta Prasad Mishra, Advocates.

Versus

RAM CHANDRA RAO WALKE @SIDHARTH

..... Respondents

Through: Mr. Siddharth Yadav, Senior Advocate along with Mr. P.K. Malik, Advocate.

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 appeal under Section 19 of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955, has been filed against the judgment and decree dated 28.02.2022, of the Principal Judge, Family Courts, South West District, Dwarka, New Delhi in HMA No. 357/2020, dissolving the marriage of the parties by granting divorce on the ground of cruelty, in a petition filed by the petitioner husband under Section 13(1)(ia) of the Hindu Marriage Act, 1955.



2. Briefly stated, the parties got married on 05.03.1999 and one son was born on 07.11.2003. The parties started residing together in the house, which according to the respondent, was owned by his father. The trouble started in the year 2006, when the respondent's sister came to reside with them because of her marital discord with her husband, which was not acceptable to the appellant. Therefore, the sister was compelled to shift to the flat allotted to her by Air Force School, Subroto Park, New Delhi, where she was working as a primary teacher. It is claimed that because of the attitude of the appellant, the parents of the respondent also shifted with the sister.

3. The respondent claimed that the health of his father deteriorated in the year 2011 and he remained admitted in the hospital in the year 2015. However, the appellant did not allow him to keep his father with him in his house even though it belonged to him; instead she pressurised the respondent to get the house transferred in her name and also to transfer their property at Noida Extension in the name of their son.

4. The appellant's father was an Ex. RAW Officer, who used his influence and at his instigation, a false complaint was made on 14.12.2018 in CAW Cell. During the counselling proceedings, police pressurised him to execute the transfer documents pertaining to the property at Vikaspuri, Delhi and also to commence payment of Rs.1.5 Lakhs as maintenance to the respondent, who also filed a case under Section 125 of the Code of Criminal Procedure, 1973. Another case under Section 12 of Protection of Women from Domestic Violence Act was against him, his sister and mother.

5. The respondent further asserted that the appellant made frivolous allegations of him having an affair with one Lakshmi Ben, who was residing in Saudi Arabia and she also alleged that he intended to marry a Bangladeshi



woman and also that the respondent had illicit relationship with one Ms. Poonam Kurmi, who was an employee with him in his Company. The respondent thus sought divorce on the ground of cruelty and same has been granted vide impugned order.

6. The appellant/wife in her **Written Statement** filed before the Family Court, controverted all the allegations made in the petition. She asserted that the respondent husband and his family members, on many occasions scolded, abused, man-handled, beat and insulted her. The harmony in the matrimonial home was further disturbed on demise of the father of the respondent/husband. She was not taken care of by the respondent, who called her a parasite and failed to take care of her, even during pregnancy. She was last beaten up by the respondent in December 2017, without any reason. She affirmed the averments that the respondent husband was having illicit relationship and that he intended to marry a Bangladeshi woman as had been asserted by the respondent himself. She explained that she had engaged a detective for unveiling the truth and had collected evidence about his illicit relationship with Ms. Poonam Kurmi. It was, therefore, submitted that she has been subjected to cruelty and the respondent husband was not entitled to any divorce.

7. **Issues** were framed on 17.03.2021, as under:-

- (i) *Whether the respondent has exercised cruelty upon the petitioner after solemnization of the marriage between the parties? OPP*
- (ii) *Whether the petitioner is entitled to decree of divorce as per prayer clause of the petition? OPP*
- (iii) *Relief*

8. The respective parties i.e. the petitioner and respondent examined themselves in support of their respective assertions made in the pleadings.



9. The *learned Judge, Family Court*, made a reference to the Criminal Complaint dated 14.12.2018, Ex-PW-1/2, made in CAW Cell, but no FIR was registered. Notice was also taken of the proceedings under Section 125 of the Code of Criminal Procedure, 1973 and under Domestic Violence Act, and it was observed that *simplicitor* resorting to legal remedies cannot be termed as cruelty. However, it was held that the allegations of extra marital relationship were unsubstantiated which amounted to cruelty towards the respondent/husband and divorce was granted under Section 13(1)(ia) of Hindu Marriage Act, 1955.

10. Aggrieved by the grant of divorce, the appellant wife has filed the present Appeal under Section 28 of the Hindu Marriage Act, 1955.

11. Submissions heard and the record perused.

12. It is an unfortunate case where the parties got married on 05.03.1999 and tried to settle and stabilise their matrimonial relationship over a period of about of more than 18 years but eventually, they failed in their endeavour and separated in September, 2018. The disruptions in the matrimonial relationship were on two accounts; *firstly*, incompatibility with the family members especially the sister, who got separated from her husband and *secondly*, the suspicion of having an illicit relationship against the respondent husband.

13. There is no challenge that the sister of respondent had matrimonial dispute with her husband and came to reside with them in the matrimonial home but because of the incompatibility, the sister along with the parents shifted to a flat that was allotted to her by the School where she was working as the primary school teacher. The respondent had deposed that his parents also had separated on account of behaviour of the appellant. Such was the



situation prevailing of indifference and intolerance by the appellant towards his family members that despite his father being unwell since 2011 till he died in 2017, he was unable to bring him to his house. It became a factor of disquiet and lingered in his mind even though he continued to reside in his house with the appellant and his son only to make their marriage work. Though, it may have been a regret of the respondent that his parents had separated and gone to live with their daughter in the year 2006, but he trudged in their matrimonial life till about 2018, which reflects that the respondent accepted and adjusted to this situation, for the marriage to work. The appellant herself has deposed that they were able to manage their relationship till the demise of the father-in-law in 2017, who was a stabilising factor in their lives. The testimony of the respondent in this regard does reflect the unhappiness of the respondent in not being able to reside with his parents but as observed, it was a situation to which he adjusted and cannot be termed as an act of cruelty on behalf of the appellant.

14. The major allegations made by the appellant against the respondent over a period of time, were of having illicit relationship with different women. The appellant did not deny that she had made allegations against the respondent husband of he intended to marry Ms. Lakshmi Ben, who was residing in Saudi Arabia. When confronted with this in the cross-examination, she explained that she had made such allegations on the basis of what was disclosed to her by the respondent himself. From her own admissions, it is evident that the allegations of affair were intention of the respondent to marry one Lakshmi Ben, resident of Saudi Arabia, was nothing but her own figment of imagination, which is not supported by any cogent evidence.



15. The appellant further admitted in her cross-examination stated that the respondent intended to marry a Bangladeshi woman based in U.K. for a contractual period of two years. Her explanation was that this was also disclosed to her by the respondent husband, who had claimed that he needs to marry her as he was scared of losing his job. This again is a bald allegation which obviously reflects the mistrust of the appellant in the respondent husband who suspected him of having illicit relationship.

16. The final allegation of illicit relationship of respondent is with one Ms. Poonam Kurmi, a co-employee in his Company. As per her own admission, she even engaged a detective to collect evidence of the illicit relationship of the respondent with this woman. In her testimony, she had produced 12 photographs collectively exhibited as Ex-RW-1/2 and also six e-mails collectively exhibited as Ex-RW-1/3. However, the learned Principal Judge, Family Courts, South-West District, Dwarka, New Delhi, rejected this evidence and rightly so as no Certificate of Section 65B was produced. Moreover, the photographs merely depicted the respondent allegedly entering into the house of Ms. Poonam Kurmi, or coming out but from these photographs, it could not be inferred that he was having illicit relationship with Ms. Poonam Kurmi. The learned Principal Judge, Family Courts, rightly observed that even if these photographs were considered, they did not in any manner corroborate the allegations of illicit relationship.

17. The respondent /husband had explained that his father and father of Ms. Poonam Kurmi were friends and that he knew Ms. Poonam Kurmi since a long time and they were on visiting terms. He had tried to make the appellant understand not to spoil their matrimonial relationship but unfortunately did not succeed.



18. Further allegations were made by the appellant that Ms. Poonam Kurmi was pregnant as is established from the Ultrasound Report dated 04.12.2018 Mark RW-A wherein she was shown to be 6.3 weeks pregnant. She claimed that she was pregnant from the respondent. Making such irresponsible and serious allegations about the character of the husband without being able to substantiate it, is clearly a source of great mental cruelty. The allegations made by the appellant were largely in the realm of her own imagination with no basis and therefore, it has been rightly concluded by the learned Principal Judge, that such acts amounted to mental cruelty.

19. For this, reference may be made to Vijay Kumar Ramachandra Bhate vs. Neela Vijay Kumar Bhate (2003) 6 SCC 334, wherein it was observed that levelling disgusting accusations of unchastity and indecent familiarity with a person outside the wedlock and the allegations of extra marital relationship is a grave assault on the character, reputation, status, as well as, the health of the wife. Placing reliance on this judgement, the Supreme Court, in the case of Nagendra vs K. Meena (2016) 9 SCC 455, observed that unsubstantiated allegations of the extra-marital affair with the maid levelled by the wife against the husband, amount to cruelty. When there is a complete lack of evidence to suggest such an affair, the baseless and reckless allegations are serious actions which can be a cause for mental cruelty warranting a decree of divorce.

20. It is also significant to note that soon after their separation, the appellant after almost 21 years of marriage life made a complaint in CAW Cell, making allegations of dowry, harassment and cruelty under Sections 406, 498A and 34 of the Indian Penal Code. Not only were the allegations



made against the respondents but also his mother and sister, who had been living separately. Pertinently, no FIR got registered on the basis of this complaint.

21. The appellant did not withhold herself thence but went ahead to file a complaint under Protection of Women from the Domestic Violence Act, wherein, again she reiterated her allegations of the respondent being in an adulterous relationship. The appellant has been unrepentant and insistent on making allegations of dowry, adultery, harassment and cruelty, without being able to substantiate any of her allegations.

22. The Apex Court in the case of Samar Ghosh vs. Jaya Ghosh (2007) 4 SCC 511, had reaffirmed this aspect of mental cruelty and further explained that making unfounded defamatory allegations against the husband or his relatives even in pleadings and filing repeated false complaints, amounted to mental cruelty.

23. We, therefore, conclude that the respondent was subjected to mental harassment and cruelty by the appellant. The learned Principal Judge, Family Court has rightly granted the divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955. The Appeal is accordingly dismissed along with the pending applications, if any.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 05, 2023/RS
(Corrected and released on 10.01.2024)