



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 06th September, 2023

Pronounced on: 09th January, 2024

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MAT.APP.(F.C.) 37/2022 & CM APPL.16702/2022

MS. PAYAL SETHI

..... Appellant

Through: Mr.Kunal Rawat with Ms.Dolly
Verma, Advs. with appellant in
person.

Versus

SH. ROHIT SETHI

..... Respondent

Through: Mr.Shayuk Kumar & Mr.Rohit Saroj,
Advs.

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. An Appeal under Section 19 of Family Court Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955, (*hereinafter referred to as "HMA, 1955"*) has been filed on behalf of the appellant/wife (*Respondent in the Divorce Petition*) against the Judgment dated 08.12.2021 of the learned Addl. Principal Judge, Family Court, granting divorce on the ground of cruelty in a petition filed by the respondent/husband (*Petitioner in the Divorce Petition*) under Sections 13(1)(ia) of HMA, 1955.

2. The **facts in** brief as narrated in the pleadings before the learned Addl. Principal Judge, Family Court are that the parties had a dowry less marriage



on 08.03.2007, according to Hindu customs and rites. One daughter was born from their wedlock on 12.11.2007.

3. The respondent had asserted that barely after four months of the marriage, in July, 2007 the appellant deserted the matrimonial home. She filed a false criminal complaint alleging not only that a huge dowry was given but also that exorbitant demands were being made by the parents of the respondent. However, she subsequently went to the Police Station and gave a statement in favour of the respondent. Her uncle Shri Rakesh Pankaj also filed a false criminal case under Section 379 IPC for theft of the car in which the respondent had to seek anticipatory bail.

4. The appellant/ wife thereafter filed a petition under Section 11 of HMA bearing No.1468/2007, wherein serious allegations were leveled against the respondent that he was already married at the time of his marriage to the appellant and sought annulment of their marriage. Subsequently, the matter was compromised and the Petition was withdrawn by the appellant vide her statement dated 17.08.2009 whereby she submitted that she had filed the petition for nullity of marriage on the misinformation she got against the respondent/husband. After the withdrawal of the petition, the parties cohabited in their matrimonial home at WZ-82-A, Krishna Park, Delhi from 17.08.2009. Pursuant to the compromise the complaint filed by her before the CAW Cell, was also withdrawn on 30.10.2009.

5. The parties thereafter continued to reside together upto 02.12.2009. According to the respondent/husband during her stay at the matrimonial home, she refused to change her past conduct and continued to indulge in



the acts of cruelty. In the circumstances, the parties decided to live in rented accommodation and shifted to C-111/1, Krishna Park on 02.12.2009.

6. The respondent claimed that on 05.12.2009 appellant tried to commit suicide by consuming Allout liquid mosquito repellent in the noon time, while he was at his place of work. The Police as well as respondent was informed by a neighbour residing on the Second Floor of the same property. The respondent rushed and took the unconscious appellant to Deen Dayal Upadhyay Hospital, where she was given stomach wash. The Police reached and recorded the statement of the appellant who absolved the respondent and his family members of all the responsibility for her suicidal act.

7. In order to change the environment and to sooth the appellant, they immediately thereafter along with their daughter went to Nainital on 08.12.2009, where they stayed at the house of respondent's sister. However, there too the conduct of the appellant remained stubborn and she refused to mend her ways. They returned back to Delhi on 15.12.2009 and on the same day she left the house to stay with her step father/uncle Mr. Rakesh Pankaj. She thereafter, refused to join the company of the respondent, despite his repeated efforts. The respondent immediately reported her leaving of the matrimonial home to the Police on 15.12.2009. The respondent claimed that he has been subjected to cruelty and thereby sought divorce.

8. The **petition was contested by the appellant** who took a *preliminary objection* as to the maintainability of the divorce petition on the grounds that he was taking advantage of his own wrong. He has concealed that he had solemnized marriage with the appellant during the subsistence of his first



marriage with one Suman. She had taken legal recourse and filed the criminal complaints, but she was prevailed upon and influenced by the respondent to withdraw her cases. She had also filed a petition under Section 11 of HMA for nullity of their marriage, but that too was withdrawn by her on the false assurances of the respondent that he had no relation with his first wife and that they would lead a happy and normal married life.

9. On **merits**, the appellant contended that at the time of their marriage the family members of the respondent had told that respondent is an eligible bachelor, earning handsomely with cloth business under the name and style of Grover Tailor at Tilak Nagar. It was also claimed that he was the owner of property bearing No. WZ-82A, Krishna Park, New Delhi. It was also asserted that though their marriage was arranged, but huge dowry demands were made at the time of marriage. The demand for TATA Indica car was also made, which could not be fulfilled, but the parents of the appellant gave a Maruti 800 car in dowry. The Maruti car was, however, stolen within a week of their marriage and FIR No.160/2007 was got registered by Sh. Rakesh Pankaj, the stepfather of the appellant. Thereafter, the family members of the respondent resumed their demand for TATA Indica car and immense pressure was put on her to ask her parents to fulfil their demand.

10. The appellant had asserted that she was treated with utmost cruelty and was made to do the entire household work without providing her with proper food. She was also taunted and abused for not having brought sufficient dowry.

11. The appellant further asserted that she lived under the constant threat and fear of her life because of the abuses and mental torture to which she was subjected by the respondent and his family members. She was locked



in the house and was not allowed to talk to anyone or to make phone calls. She was also threatened by the respondent and his family members that if their demands were not met, she would be killed and her family would suffer from adverse consequences. Ultimately, she escaped from the matrimonial home to save her life. She was also left with no option but to withdraw her petition under Section 11 of HMA and also other complaints that had been filed by her.

12. Despite all her efforts to settle in the matrimonial home, the attitude of the respondent and his family members did not change. The appellant further asserted that she was shifted to the rented accommodation pursuant to a pre-planned conspiracy hatched by the respondent along with his parents, to escape their liability under Section 498A/406 IPC. This is evident from the fact that the rent for the rented accommodation was being paid for by the mother of the respondent. Her life even in the rented accommodation, continued to be a living hell as she was compelled to bring up the infant child on her own without being fed properly. The respondent, however, continued to live in his parental home most of the times.

13. In respect of the incident of poisoning, the appellant had asserted that since she was not being provided with the proper diet, she was administered Allout liquid by the respondent on the pretext of it being a nutritious tonic. She was merely unconscious after drinking the liquid. The respondent tried to make up a false case of suicide only to save himself. She, therefore, claimed that it was she who was subjected to cruelty and the respondent is not entitled to divorce.

14. The **issues were framed** by the learned Additional Principal Judge, Family Court on 06.04.2016 as under:



(i) Whether the petitioner is entitled to a decree of divorce on this ground of cruelty under Section 13(1)(ia) of HMA? OPP

(ii) Relief.

15. The **respondent** in support of his case **appeared as PW1**, while the **appellant appeared as RW1**.

16. Learned Addl. Principal Judge, Family Court considered the evidence of the parties and observed that the petition under Section 11 was withdrawn by the appellant pursuant to a mutual settlement. Though, the appellant had alleged that the respondent was already married to one Suman at the time of their marriage, but she had failed to adduce any evidence to corroborate her contentions. Reference was also made to the affidavit Ex.PW1/1 that was submitted by the Appellant, wherein she stated that the parents of the respondent had been treating her well and she had not complained against them. It was also observed that the Maruti Car that was given in dowry to the appellant was stolen within a week in which FIR No.160/2007 was registered in which the respondent was compelled to take anticipatory bail. Not only this, the appellant in her testimony had admitted that she had consumed the poison i.e. Allout liquid on her own and at the relevant time the respondent was at his place of work. She also admitted having written the suicide note Ex.PW1/3. The learned Family Judge, therefore, concluded that the respondent had been treated with cruelty and the divorce was granted.

17. Aggrieved by the grant of divorce to the respondent, the present appeal has been preferred.

18. **Submissions heard and the record perused.**



19. The parties admittedly got married on 08.03.2007 and one daughter was born from their wedlock on 12.11.2007. As is evident from the narration of the facts above, their marriage was on the rocks right from the beginning. It has been brought out in the evidence that the mother of the appellant had an acrimonious relationship with the biological father of the appellant and even before they got divorced, her mother got married to Mr. Rakesh Pankaj, brother of her biological father. Because of the tumultuous relationship between them, the appellant suffered trauma in her childhood, which she carried to her matrimonial life.

20. The appellant soon after her marriage, admittedly filed a petition under Section 11 of HMA for declaring the marriage as a nullity on the ground that the respondent was already married to one Suman at the time of their marriage. Not only this, she also filed a complaint before the CAW Cell and a complaint under 190(1)(a) Cr.P.C. for the offences under Section 323/406/495/506/120B and 34 IPC. The appellant subsequently withdrew her cases as well as the nullity petition vide Statement dated 17.08.2009. In her statement made at the time of withdrawal, she stated that her misinformation of their marriage being bigamous had been clarified, that the respondent was not married at the time of their marriage. She also stated that all their disputes, whatsoever, have been settled amicably.

21. It has been rightly observed by the learned Addl. Principal Judge, Family Court that the appellant had not been able to bring on record any document or any cogent evidence to prove that the respondent was married at the time of his marriage with the appellant. Her allegations were based on misinformation as had been admitted by the appellant before the Family Court. The respondent for about two years was subjected to civil and



criminal litigation by the conduct of the appellant who had filed not only civil, but also criminal cases against him on unsubstantiated allegations arising from misinformation.

22. The trauma of the respondent did not stop there. The car given to the appellant at the time of marriage, was stolen within a week and an FIR No.160/2007 was registered on 12.03.2007. The respondent was driven to obtain anticipatory bail in the said FIR. Though subsequently the FIR may have been found to be unnamed and charge sheet not filed in the Court post investigation, but the fact remains that within ten days of their marriage, the respondent was accused of theft of a car given to the appellant in dowry, which obviously is an act of extreme trauma for the respondent. What more can be traumatic than being driven to seek protection from arrest on the unsubstantiated allegations. It reflects that from the beginning of their matrimonial life, there was no trust and faith, rather he was even suspected of committing theft of a car which had been gifted to them at the time of marriage.

23. The parties separated in July, 2007 after which the respondent/husband was driven to face multiple civil and criminal litigation. The same were settled on 17.08.2009 i.e. after about two years and as a relief the cases got withdrawn. Hoping that the matrimonial life would now flourish and be smooth, the parties went back to the matrimonial home, but there too they were not able to settle. Soon thereafter, on 02.12.2009 they shifted to a rented premises near the matrimonial home, but there also the things did not run smoothly. Admittedly, within three days after their shifting to the rented accommodation i.e. 05.12.2009, the appellant consumed Allout mosquito repellent liquid in an attempt to commit suicide.



She even wrote a suicide note Ex.PW1/3, wherein she stated that her husband and the in-laws were good people who had given her love and affection but she was unable to reciprocate the same sentiments and she completely exonerated them from her attempt to commit suicide.

24. The appellant, however, in her testimony tried to wriggle out of her own admissions and suicide note by claiming that she was compelled to write the suicide note. She, however, admitted in her cross-examination that at the time of her attempting suicide in the noon, her husband was not even present as he was at his place of work. Such conduct of the appellant in attempting suicide and then trying to put the blame on the husband and his family members is an act of extreme cruelty as the family remanded under constant threat of being implicated in false cases.

25. The repeated threats to commit suicide and the attempt to commit suicide was held to be an action amounting to cruelty by the Supreme court in the case of Pankaj Mahajan Vs. Dimple, (2011) 12 SCC 1. It was further observed that cruelty postulates a treatment of a spouse with such cruelty that it would be harmful or injurious to live with the other spouse. Similarly in Narendra Vs. K. Meena (2016) 9 SCC 455, it was observed that in case the wife succeeds in committing suicide, one can only imagine how the poor husband would get entangled into the clutches of law which would virtually ruin his sanity, peace of mind, career and probably his entire life. Such threat of attempting suicide amounts to cruelty.

26. In the present case as well, the conduct of the appellant is clearly is an act of cruelty towards the respondent/husband.

27. We may note further that on leaving the matrimonial home on 15.12.2009, the appellant lodged a complaint with Crime against Women



Cell, which became the basis of registration of FIR No. 508/2012 under Section 498A/406/34 IPC. The respondent was once again driven to take anticipatory bail. The appellant even made a claim of Rs.5 lakhs to settle all the disputes, but the respondent was not in a position to offer more than Rs.3 lakhs because of which the matter could not be settled.

28. Even thereafter another case under the Protection of Women Against Domestic Violence Act was filed in the year 2018 despite the separation of more than nine years. The appellant, no doubt has a legal right to take recourse for the wrong that may have been committed but making unsubstantiated allegations of having been subjected to dowry demands or acts of cruelty by the respondent or his family members, and getting criminal trials initiated against the respondent are clearly acts of cruelty.

29. In the case of K. Srinivas Vs. K. Sunita (2013) 5 SCC 226, the Hon'ble Supreme Court held that filing of false complaints 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.

30. 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.



31. We note that during the two years of their matrimonial life, the parties barely resided together for ten months in all and even during that time there were various acts of the cruelty of being subjected to false complaints and civil as well as criminal litigation, committed by the appellant towards the respondent. We therefore, conclude that the learned Addl. Principal Judge, Family Court has rightly held that the respondent was subjected to cruelty by the appellant and granted divorce under Section 13 (1)(ia) of the HMA.

32. We find no merit in the appeal, which along with the pending applications if any, is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

JANUARY 09, 2024
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