



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 1st September, 2023

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Pronounced on: 8th January, 2024

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MAT. APP. (F.C.) 71/2020

PRAHLAD KUMAR

..... Appellant

Through: Mr.U.M.Tripathi, Ms.Harshita Niga,
Adv. with appellant in person.

Versus

DEEPA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The appeal under Section 19 of the Family Courts Act, 1984 has been filed against the judgment and decree dated 22.01.2020, passed by the Learned Judge Family Courts, Dwarka, New Delhi in *HMA No.566/17 (OLD No. 124/13)* titled as '*Prahlad Kumar versus Deepa*', dismissing the divorce petition filed by the petitioner/husband, on the ground of cruelty under Section 13(1) (ia) of the Hindu Marriage Act, 1955 (*hereinafter referred to as 'HMA, 1955'*).

2. Briefly stated the parties got married on 30.11.2011 and no child was born from their wedlock.

3. **The petitioner/appellant claimed** that soon after coming back from their honeymoon on 18.12.2011, the respondent started putting pressure upon him to take her to her parental home and extended threats that in case



she was not taken, she would commit suicide and falsely get the appellant and his family members implicated in frivolous cases. The appellant was thus, compelled to take the respondent to her parental home on 24.12.2011.

4. Thereafter, he persistently tried to persuade her and even visited the parental home of the respondent on 08.01.2012 to bring her back. Though, she remained adamant but was persuaded by her family members to return to the matrimonial home. The appellant in order to counsel the respondent to remain in the matrimonial home, called her father and brother to his house on 02.02.2012 and 29.02.2012, but they started blaming the appellant himself. Because of the pressure, the appellant again took her to the parental home on 15.04.2012, however, despite the humiliation and insults, the appellant brought her back to the matrimonial home. Eventually, the respondent left the matrimonial home on 15.06.2012 along with all her belongings and valuables, in the absence of the appellant. All his efforts to bring her back did not heed any positive result. A Panchayat was also held on 21.06.2012 but the respondent remained adamant in not returning to the matrimonial home.

5. Faced with this adamant attitude, the appellant got served a Legal Notice dated 07.02.2013, calling upon the respondent to join the matrimonial home. A reply was given by the respondent making false allegations of dowry demand.

6. The respondent made a complaint against the appellant in Aichik Bureau. The appellant along with his uncle, appeared before the Aichik Bureau on 06.06.2013 where they were abused and beaten up by the respondent and her family. The family members of the respondent also tried to malign the reputation of the appellant and his family members by making



a telephonic call to PW-4 Sh. Shiv Kumar, father-in-law of the brother of the appellant.

7. After filing of the petition, FIR under Sections 498A, 323, 506 of the Indian Penal Code, 1908 was also registered against the appellant, his brother, his father and two other family members, on the complaint of the father of the respondent. The appellant thus, sought divorce on the ground of cruelty under Section 13(1) (ia) of the HMA, 1955.

8. **The respondent in her Written Statement** denied all the allegations made by the petitioner/appellant. She claimed that since the beginning of their marriage, she was always treated with cruelty and also harassed by making illegal dowry demands to bring Rs.5,00,000/- for purchasing a plot. When the respondent requested the appellant and his family members to desist from harassing her and making illegal dowry demands, the appellant and his family members forcibly put her in a car and left her at her parental home in wearing apparels on 15.06.2012. Father of the respondent requested the appellant many a times to take her back to the matrimonial home but he and his family members refused to do so.

9. The respondent further claimed that on 28.04.2013, at about 02:30 p.m, the appellant along with his parents, uncle and brothers forcibly entered into the parental home of the respondent and started abusing them in filthy language. They attempted to strangle the respondent with a *chunni* and also pressurised her to sign some blank papers on which the respondent raised an alarm which led to them fleeing after extending the threats to meet dowry demands.

10. The respondent further alleged that on 06.06.2013, at about 6:30 p.m, she along with her father, was going on a motorcycle near Village Bhainsi



when the appellant and his family members came in a Car and hit the motorcycle of the father of the respondent. They attempted to kill her by pulling her hair and strangulating her with her *Chunni*.

11. She, therefore, asserted that she was harassed for dowry demands and was forcibly moved at her parental home. She, therefore, claimed that the divorce petition was liable to be dismissed.

12. **On the basis of the pleadings, following issues** were framed on 22.10.2013:-

- “1. *Whether the petitioner is entitled to divorce on the ground of cruelty, as prayed for? (OPP)*
2. *Relief.*”

13. In support of his case, the appellant appeared as PW-1. He also examined PW-2, SI Seema Sharma and PW-3 Constable Inder Raj. PW-4, Sh. Shiv Kumar, the father-in-law of the brother of the appellant exhibited the CD, its transcription along with certificate under Section 65B of the Indian Evidence Act 1872 as Ex-PW-4/1 (colly.), which was in regard to the conversation between him and the father of the respondent. The respondent appeared as RW-1 in support of all her averments.

14. **The learned Judge, Family Court** referred to the rival assertions of both the parties and concluded that the appellant was unable to prove any act of cruelty and observed that the disputes between the two spouses were normal wear and tear of married life, which could be condoned. **The divorce petition was therefore, dismissed.**

15. Aggrieved by the dismissal of the divorce petition, the present appeal has been preferred.

16. **Submissions heard of both the counsels of the parties and record**



perused.

17. The appellant has deposed that soon after the marriage, the respondent insisted on going to her parental home and he was compelled to leave her on 24.12.2011 and was brought back home on 08.01.2012. Again, on her persistence, she was taken back to her parental home on 15.04.2012, wherein again she threatened to commit suicide and implicate the appellant and his family members. However, she was again brought back with great difficulty. The petitioner/appellant deposed that she was largely involved with her own family members with whom she remained engaged on her phone and frequently threatened the appellant and his family members with false implication in multiple cases. She was supported in her threats by her father and brother, who instead of counselling the respondent, always blamed the appellant and his family members.

18. In this context, it is significant to observe that though the respondent was asserting that she was not being taken back to the matrimonial home, it has come on record that the appellant had served a Legal Notice, dated 07.02.2013, requesting the respondent to join the matrimonial home to which she reverted by sending a reply making allegations of dowry demands.

19. He further deposed that she finally left the matrimonial home on 15.06.2012 along with her brother and *Bhabhi*, in his absence and took all her valuables and belongings with her.

20. From the testimony of the appellant, it is quite evident that in about six months when the parties resided together, the respondent wife found it difficult to adjust in the matrimonial home and insisted on being sent back to her parental home.



21. The respondent has tried to explain her conduct by alleging that there were illegal dowry demands being made and she was asked to bring Rs.5,00,000/- for the purchase of the plot. Similar was the response given by her to the Legal Notice sent by the appellant. Though these allegations of dowry demands had been made by her but no cogent evidence has been led in support thereof.

22. According to the respondent, when she was not being taken back to the matrimonial home despite the repeated requests, she made a complaint dated 03.05.2013 to the police and their file was referred to Aichik Bureau for proceedings. The appellant refused to take the respondent back before the Bureau as the appellant and his uncle were abused and beaten by the appellant and his family members. The respondent made a complaint NCR bearing No. 71/2013 at Civil Lines Police Station. A separate complaint was made by her to the District Magistrate.

23. The proceedings before the Bureau were closed *vide* order dated 06.06.2013, by observing that the matter was pending in the Court and there was no possibility of settlement before the Bureau.

24. The respondent had averred that when she expressed the inability of meeting the illegal demands of Rs.5,00,000/- made by the appellant and his family members, she was abused and beaten in March 2012 and was eventually turned out on 15.06.2012. However, there are no medical records proved on record to support her allegations of having been beaten up. FIR No. 108/2013 under section 498A, 323, 506 IPC was registered and a Criminal Complaint under Section 200 of Code of Criminal Procedure, 1973 was made in the year 2019, after the filing of the divorce petition.

25. Pertinently, the complaint does not make any averment of dowry



harassment but only submits that after the lapse of six months of marriage, her husband started troubling the respondent and threw her out from the matrimonial house. No dowry allegations were made in the complaint which became the basis of registration of FIR. Moreover, the initial complaint was against appellant and his father and also his family members namely, Dhurav Kumar, Ram Mehar and Ram Karan though after investigations, the Charge Sheet was filed only against the appellant and his father while allegations made against all the other persons were found to be not substantiated.

26. Pertinently, the respondent who was supported by her family, had made allegations of dowry harassment against the family members which were found unsubstantiated during the investigations. Making such allegations against the family members who also had to suffer on account of appellant would naturally be a source of great mental harassment for the appellant. It also reflects the vindictive attitude of the respondent who merely to arm twist and to settle score with the appellant, made such unsubstantiated allegations against appellant and his family members.

27. Though the charge-sheet has been filed under Sections 498A, 323 and 506 of the Indian Penal Code, 1908, but the onus was on the respondent to prove in the present proceedings, her allegations of dowry harassment which aside from the bald allegations is not supported by any cogent evidence. Rather, the complaint dated 08.06.2013 made by the father of the respondent itself records that for about six months, the respondent was kept well by the appellant and his family members. The assertions of their being harassment and beatings of the respondent is not supported by any cogent independent evidence in this regard.



28. It is also pertinent to refer to the incident of 28.04.2013 on which date, according to the respondent, the appellant and his family members had visited her parental home where they attempted to strangle her and also pressurised her to sign on some blank papers and when the respondent shouted, the appellant and his family members extended threats of meeting their dowry demands and ran away. The respondent thus made serious allegations of an attempt to kill her and to obtain the blank signatures.

29. According to the respondent, again on 06.06.2013, while she was travelling on the motorcycle with her father, the appellant and his parents had again hit the motorcycle and tried to strangle her with her *Chunni*. The respondent had made a complaint of this alleged incident on 06.06.2013 itself and had also got herself medically examined but neither the said complaint nor the medical examination has been proved by the respondent.

30. The respondent thus made the allegations against the appellant and his family members of attempting to kill her by strangulation. However, again there is no such evidence to substantiate her assertions; making such unsubstantiated serious allegations of attempt to murder can only be held to be an attempt to justify her own acts of not residing in the matrimonial home and of making allegations of dowry harassment.

31. Every aggrieved person has the absolute right to initiate appropriate legal action and has every right to approach the state machinery. *Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints* as has been observed by the Apex Court in the case of Raj Talreja vs. Kavita Talreja (2017) 14 SCC 194. However, it was for her to establish that she was subjected to cruelty by placing forth cogent evidence in support of her allegations. Making of such grave unsubstantiated



allegations of attempted murder and dowry harassment as a reason for not settling in her matrimonial home, amount to *reckless, false and defamatory allegations against the husband and family members which would have an effect of lowering their reputation in the eyes of the society and amounts to cruelty*, as has been held in the case of *Ravi Kumar vs. Julmi devi* (2010) 4 SCC 476. 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.

32. The Supreme Court in *Raj Talreja (supra)* observed that Cruelty can never be defined with exactitude. It is apparent that where the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, it would definitely have the effect of lowering his reputation in the eyes of his peers. If the allegations are found to be patently false, then the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty.

33. Similar sentiment has been echoed by the Supreme Court in the case of *Mangayakarasi vs. M. M. Yuvaraj* (2020) 3 SCC 786 wherein it was observed that indubitably in an appropriate case, the unsubstantiated allegation of dowry demands or such other allegations, made the husband and his family members exposed to criminal litigation. Ultimately, if it is found that such allegations were unwarranted and without basis and such act of the wife itself forms the basis for the husband to allege the mental cruelty has been inflicted on him, it could well be appreciated for the purpose of dissolving the marriage on that ground.

34. Making of such serious and unsubstantiated allegations without placing on record any evidence clearly reflects the vindictive nature of the



respondent. It only shows that she has taken this stand to cover her own wrongs as she had adjustments issues owing to which she left the matrimonial home on multiple occasions.

35. The marriage between the parties survived for barely six months and conciliatory efforts initiated by the appellant by sending a Legal Notice and requesting the respondent to return to the matrimonial home and also the proceedings before the Aichik Bureau did not help in their re-union. From the comprehensive reading of the entire evidence, it is established that the respondent was not able to adjust in the matrimonial home and there were adjustment issues between her and the appellant. The respondent, has not produced any evidence to show that any conciliatory efforts were made by her or she was willing to return to her matrimonial home. Her stand in the reply to the Legal Notice was that she can return only if the appellant and his family members stopped harassing her from the dowry demands. Though the charge-sheet had been filed under Section 498A of the Indian Penal Code, 1908 but there is no cogent evidence produced in this case to substantiate her allegations of dowry harassment or any attempt to kill her.

36. The parties are separated for about 11 years and the adjustment issues started mushrooming within the very first month of their marriage which were of such nature that the marriage could not even survive for more than 6 months. There is no chance of reconciliation between the parties and such long separation peppered with false allegations and complaints have become a source of mental cruelty and any insistence to continue this relationship would only be inflicting further cruelty upon both the parties. The marital discord between the parties has peaked as there is a complete loss of faith, trust, understanding and love between the parties. Such long



separation brings with it deprivation of conjugal relationship and co-habitation which is the basic foundation of any matrimonial relationship. The separation for more than eleven years for no fault of the appellant, in itself is an act of cruelty.

37. In one of the momentous decisions, the Apex Court in the case of Naveen Kohli v. Neelu Kohli (2006) 4 SCC 558 has held that once the parties have separated and the separation has continued for a sufficient length of time, the consequences of preservation of the unworkable marriage which has long ceased to be effective, is bound to be a source of greater misery for the parties.

38. The Apex Court in the case of Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511 observed that in a marriage where there has been a long period of continuous separation with no possibility of reconciliation, it can be termed as mental cruelty to continue such a dead marriage.

39. While referring to the case of Samar Ghosh (supra), the Apex Court in the case of Gurbux Singh vs Harminster Kaur (2010) 14 SCC 301, observed by that while trivial irritations, quarrels, normal wear and tear of married life which happens in day to day life in all families would not entitle a party to a decree of divorce on the ground of cruelty; continuing and subsisting unjustifiable and reprehensible conduct which affects the physical and mental health of the other spouse, may lead to mental cruelty.

40. Recently, the Apex court in the case of Rakesh Raman v. Kavita 2023 SCC OnLine SC 497, after relying upon the above referred observations of the Three Judge Bench in Samar Ghosh (supra), looking at the facts of the said case where parties were residing separately for almost 25 years; had no cohabitation during this period; no child was born from the



said wedlock; and repeated efforts for reconciliation for settlement resulted in failure, concluded that *this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1) (ia) of the 1955 Act.*

41. We therefore conclude from the evidence of the parties that the appellant was subjected to cruelty.

42. **The appeal is, therefore, allowed and the divorce is granted on the ground of cruelty under Section 13(1)(ia) of the HMA, 1955.**

43. The Decree Sheet be prepared accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

JANUARY 08, 2024

RS/JN