



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 27th September, 2023

Pronounced on: 12th February, 2024

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MAT.APP.(F.C.) 101/2019

SMT. PARVINDER KAUR

..... Appellant

Through: Ms. Indu Kaul, Advocate with
appellant in person.

versus

SHRI VIPAN KUMAR

..... Respondent

Through: Mr. Hari Krishan, Advocate with
respondent in person.

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 present **Appeal under Section 19 of the Family Courts Act, 1984** has been filed on behalf of the appellant/wife (*respondent in the Divorce Petition*) against the impugned Judgment dated 31.07.2018 of Principal Judge, Family Court, New Delhi granting divorce on the ground of cruelty and desertion in a petition filed by the respondent/husband under Sections 13(1)(ia) and 13(1)(ib) of Hindu Marriage Act, 1955 (*hereinafter referred to as "HMA, 1955"*).

2. **Briefly stated**, the parties got married on 24.02.1995 according to Hindu rights and ceremonies against the wishes of their parents. Admittedly, the family of the respondent accepted their marriage, but the family of the appellant disillusioned by the marriage of the appellant against



their wishes, disassociated themselves completely from the appellant and her in-laws. One son was born on 17.12.1995, from their marriage.

3. The **respondent/husband had asserted in his Divorce Petition** that the behavior and attitude of the appellant/wife was cordial for first few days of their marriage, but thereafter she turned hostile and would quarrel with the respondent on trivial issues. She refused to take interest in the household work or show any respect towards the respondent or his family members. She was in a habit of leaving the house without informing the respondent and his family members. The appellant also abused him for not having agreed to live separately.

4. The respondent has further submitted that since 1996 the appellant has been working in Taneja Dental Clinic which shifted to Greater Kailash, New Delhi and was earning about Rs.10,000/- to Rs.15,000/- per month. She would leave the house at 09:00 A.M and return late in the night at about 09:00/09:30 P.M. She neglected the child and it was he, along with his mother and sister-in-law, left to take care of the minor. The respondent requested the appellant time and again to leave the job and to take care of the son, but to no avail. Instead, the appellant left the matrimonial home in July, 2004 in a fit of anger and thereafter, despite his repeated sincere efforts she refused to return to the matrimonial home.

5. It was further asserted that the appellant not only threatened to implicate the respondent and his family members in false cases, but even resorted to filing a complaint before the CAW Cell, Nanakpura, in July, 2004, leveling false and frivolous allegations. However, she subsequently withdrew her complaint. The appellant had also filed a petition under Domestic Violence Act, 2005 wherein again frivolous allegations were



made against him and his family members solely with an intent to extort money from him. Instead of returning, the appellant continued to cause mental stress to the respondent because of which he suffered a paralytic attack in the year 2007 and thereafter twice in September and December, 2010. He was, therefore, unable to attend his service regularly and remained absent from his service. *Vide* letter dated 08.09.2010 his Department initiated disciplinary proceedings against him and an amount of Rs.61,902/- per month is being deducted from his salary for not attending the office.

6. It is further submitted that on 02.08.2012, their son came to the house of the respondent on the occasion of Raksha Bandhan who informed the respondent of being ill-treated by the appellant/mother and that no proper education was being provided to him. The appellant also did not permit him to make a call to the respondent. On 16.08.2012, the appellant talked to the son on telephone, but he refused to return to his mother. Again, on 24.08.2012 the appellant threatened the child, the respondent and his family members. On 31.08.2012, she came to his residence and started quarreling and extending threats. The Police was called and she forcibly took away the son with her.

7. The respondent thus, asserted that he has been deprived of his conjugal relationship and there has been no co-habitation since July, 2004, when the appellant deserted him without any cause. He thus, filed a petition seeking divorce on the grounds of cruelty and desertion.

8. The **Appellant/ wife in her Written Statement** asserted that all the averments made in the petition were a bundle of lie and the respondent had not approached the Court with clean hands. He was trying to reap the benefits of his own wrongs of having committed cruelty towards the



respondent. She asserted that the respondent was habitual alcoholic and remained essentially in a state of inebriation and would beat her mercilessly. She further submitted that the respondent was even admitted to a De-addiction Centre. She, however, in an endeavour to continue in her matrimonial relationship never made any complaint to the Police or to any other Authority in the fond hope that eventually the respondent would mend his ways. It is asserted that because the respondent used to remain absent from his duty because of his habit of alcoholism, several Memos were issued to him and Departmental action including deduction of his salary, was taken.

9. The appellant asserted that she was a victim of dowry demands. Since her marriage was a love marriage and she did not bring any dowry, the parents of the respondent subsequently started harassing, quarrelling, torturing and maltreating her for not having brought the dowry. Because of the physical abuse by the respondent, the appellant sustained injury in her right ear which still pains and at times even puss would ooze out. She was mercilessly beaten even during her pregnancy, because of which her son is a patient of *neuro symptomatic epilepsy*.

10. The appellant further asserted that she was thrown out of her matrimonial home on 19.06.2004 and denied that she had deserted the respondent. She was, therefore, compelled to lodge a complaint in CAW Cell and since then has been residing in a rented accommodation with her son and is also bearing all his expenses including of school and his day to day needs. Because she had got married against the wishes of her parents, they have not come forth to support her. The appellant asserted that the appellant failed to take care of the minor and did not ever enquire about his educational progress. So much so, he did not even enter her name and of the



son in his service record etc and did not get the CGHS Card prepared for them.

11. The appellant had further explained that within two-three days of her marriage, her parents-in-law expected her to give her entire salary to them which became a point of contention between them. It was also asserted that she was not taken care of during her pregnancy and even a bed was not provided. She used to do a part time job from 10:00 A.M to 01:00 P.M and would leave the son in the crèche during this time. The respondent on the other hand, spends most of his salary on liquor and drugs. The de-addiction medicine was given to him by Doctor Mohd. Shoib Khan on 30.12.1999. She further asserted that because of excessive consumption of drugs and alcohol, the respondent suffered paralytic attack and remained under depression and tension.

12. She, therefore, asserted that she is a victim of cruelty at the hands of the respondent and the petition is liable to be dismissed.

13. **Issues on the pleadings were framed** on 08.03.2013 as under :

- ”(i) Whether the respondent has committed cruelty upon the petitioner? OPP
- (ii) Whether the respondent has deserted the petitioner? OPP
- (iii) Whether the petitioner is entitled to relief claimed?”

14. **The petitioner/husband appeared as PW1.** He also examined **PW2, Sh. Jitender Jumar, Constable from the office of DCP,** to prove his record.

15. **The appellant/wife appeared as RW1** and examined **RW2 Sardar Mehar Singh Thind** her father and **RW3, Aman Preet Singh** the son.

16. **The learned Principal Judge, Family Court** on appreciation of the



evidence as produced by both the parties **concluded** that the respondent and their son Amanpreet admitted during their cross-examination that they had been treated well by the respondent and his family members. The ultrasound of the appellant during her pregnancy also defied her claim of having been beaten up by the respondent or that consequent to the beatings the son developed neuro symptomatic epilepsy. On the overall apprehension of evidence it was concluded that acts of the appellant towards her husband amounted to cruelty. It was also held that a withdrawal from the matrimonial home since June, 2004 has been without any cogent explanation. It was thus, held that the respondent/husband had been treated with cruelty and the appellant had deserted him and thus, granted divorce on the grounds of cruelty and desertion under Section 13(1)(ia) & (ib) of HMA, 1955.

17. Aggrieved by the Impugned Judgment of granting of divorce, the appellant/wife has filed the present appeal.

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

19. Admittedly, the parties had a love marriage and the family of the appellant refused to accept her, while the family of the respondent/husband accepted their marriage and she started residing in her matrimonial home.

20. The respondent/husband had claimed that the appellant/wife used to frequently leave the matrimonial home and avoid doing the household work. She even neglected to take care of the minor son. However, none of these assertions are supported by any independent cogent evidence.

21. The son RW3 Amanpreet in his testimony has neither complained against the conduct of the father/respondent or mother/appellant. Since 2004, he has been in exclusive custody of his mother and has been visiting



the father from time to time. The assertions of the respondent about there being a neglect of the household work or of the child is not supported by any cogent evidence.

22. Another significant fact rebutting the allegations of cruel behaviour can be made out from the circumstance that admittedly, the son came to reside with the respondent on the occasion of Raksha bandhan on 02.08.2012 and thereafter stayed with the respondent. A complaint was made which was registered vide Diary No.70B dated 24.08.2012, P.S. Madhu Vihar, on the basis of which DD No.41-A was registered, wherein it was recorded that Master Amanpreet had no inclination to accompany his mother as he wanted to be in the company of his father and grandmother. She in her complaint had made allegations of the child having been kidnapped by the father and mother-in-law, but admitted that she and her son had been living separately from the husband for the last 7-8 years and that they were not inclined to join him and that there was no matter of kidnapping of the son by the respondent.

23. This again corroborates that appellant though claimed cruel behaviour of the respondent towards her, but it is again controverted by the son coming to live with the father and having no inclination to return to the mother. Had there been any cruel behaviour of the respondent towards the appellant or the child, he would not have expressed a desire to reside with the respondent, his father.

24. The appellant had further asserted that because of severe beatings given to her, she suffered injury in her ear which even now causes pain and even puss oozes out. However, she herself admits that there are no medical documents to support her assertions. She also claimed that in the fond of



that the marriage would survive, she did not make any complaints. She may not have made any complaints, but definitely if she had suffered such injury in the ear, there would have some medical documents to corroborate her testimony. No such record had been filed by the appellant.

25. Another act of cruelty alleged against the respondent was that she was beaten during her pregnancy by the respondent and his family members consequent to which their son suffers from *neuro symptomatic epilepsy*. However, she again in her cross-examination has admitted that her ultra sound report dated 12.02.2001 and x-ray report dated 15.03.2010 which are part of Ex.RW1/E (collectively), are "*normal*". She had alleged that the respondent on purpose had not got a CGHS Card issued in her name and of the son, but she admits in her cross-examination that the CGHS Card had been prepared.

26. The appellant made an allegation that she was being harassed for not having brought any dowry which compelled her to file a complaint in CAW Cell. She herself had deposed that she was not accepted by her parental family and since her separation from the respondent in 2004, she has been living in rented accommodation. Also, she has deposed that her parents have started giving her Rs. 2,000/- to Rs.5,000/- per month since 2016. There was no occasion or question of the respondent or his family making demands of dowry knowing full well that she had no parental support on account of her marriage with the respondent. It is evident that the allegations of dowry harassment are unsubstantiated and without any basis. So much so, that admittedly the complaint made by her in CAW Cell, was withdrawn by her.

27. Similarly, admittedly the appellant made a complaint in *Protection of*



Women against Domestic Violence Act, 2005 wherein she made allegations of Domestic Violence, but again neither any details of harassment have been given nor proven by her.

28. Making such unsubstantiated allegations of dowry harassment which is palpably not made out from the family circumstances of the parties is nothing but an act of mental trauma and cruelty as held in the case of K. Srinivas Vs. K. Sunita X (2014) SLT 126. 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.” 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.

29. **We, therefore, concur with the findings of the learned Principal Judge, Family Court and upheld the divorce on the ground of cruelty under Section 13(1)(ia) of HMA.**

Dessertion:

30. The respondent had also sought divorce on the grounds of desertion. The appellant admittedly left the matrimonial home in June, 2004. She has not been able to explain any reason which prompted her to separate from the respondent. There are no reconciliatory efforts ever made by her; instead she had made complaints in the CAW Cell and resorted to Domestic Violence Act, 2005. She had even made a complaint about the alleged kidnapping of the son by the respondent, though she admitted subsequently that the respondent had not kidnapped the child. Her conduct since 2004 clearly reflects that she had no intention to resume her matrimonial



relationship with the husband whom she had left in June, 2004, which is also reflected from the proceedings recorded before the CAW Cell , wherein the appellant wife has clearly stated that she was not inclined to rejoin the company of her husband and cohabit with him.

31. The Principal Judge, Family Court has, therefore, rightly concluded that both the ingredients i.e. *Factum Deserdendi* and *Animus Deserendi* have been proven against the appellant and has granted divorce on the ground of desertion.

32. **We, thereby uphold the grant of divorce on the ground of cruelty and desertion under Section 13(1)(ia) and (ib) of the Hindu Marriage Act and dismiss the appeal as without merit.**

33. An application bearing **C.M.No.15879/2019** has been filed on behalf of the appellant under Section 25 of HMA, 1955 on behalf of the appellant for grant of Permanent Alimony and Maintenance. The appellant herein is at liberty to approach the Principal Judge, Family Court for her Permanent Alimony and Maintenance.

34. The appeal is thereby disposed along with the pending application(s), if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

FEBRUARY 12, 2024
VA/JN