



2024:DHC:2597-DB



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

% ***Reserved on: September 05, 2023***

Pronounced on: April 02, 2024

+ **MAT.APP.(F.C.) 321/2018 & CM APPL.26716/2019, 21206/2021 & 3642/2023**

KUNAL KAPUR

..... Appellant

Through: In person with Ms.Geeta Luthra,
Senior Advocate with Ms.Kamakshi
Gupta, Ms.Apoorva Maheshwari &
Ms.Anushka Khaitan, Advocates

versus

EKTA KAPUR

.....Respondent

Through: In person with Mr.Sunil Mittal,
Senior Advocate with Ms.Zeba Khair
& Ms.Ananya Garg, Advts. with
respondent in person, 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 has been filed under section 19 of Family Courts Act, 1984 whereby the petition of appellant filed under the provisions of Section 13(1) (ia), Hindu Marriage Act, 1955 (*herein after referred to as 'the act of 1955'*) has been dismissed by the learned Family Court vide impugned judgment dated 01.10.2018.



2. The brief facts of the case, as narrated in the present appeal, are that the marriage between the parties was solemnised on 20.04.2008 as per the Hindu Rites and Ceremonies and one son was born-out of this wedlock on 26.02.2012.

3. The appellant claims to be highly educated Chef, who met the respondent through a matrimonial website. Prior to their marriage, the appellant claims to set a pre-condition before the respondent that he would stay with his parents to take care of them, to which she had agreed. The respondent claimed that she was holding a Master's degree *i.e.* MA.

4. According to the appellant, his father owned a small hatchback car Maruti Zen, in which the appellant used to commute to his office. However, the respondent pressurised him to buy a luxury car, knowing quite well that the appellant was struggling to meet his expenses as well as expenses of the household and his parents. The appellant is aggrieved that he had to bear taunts from the respondent for not being able to make her live a luxurious life though the factum of the appellant's job was very well within her knowledge prior to their marriage. The appellant is also aggrieved that the respondent taunted him in front of his friends by calling him a man of limited means, who could not afford a big house and in the fit of rage, she would throw crockery and other household articles at the appellant and even at his parents.

5. The appellant has averred that the respondent never respected his parents and used utter disrespectful language by calling names. One such incident narrated by the appellant is that in November, 2008, late at night around 11 p.m. while he was out for work, the respondent craved for pizza and demanded his father to get one and when his father showed his inability,



she wearing all gold jewellery, chose to go out all by herself late at night which caused tension and worry for the whole family. Since the day of their marriage, the respondent wanted to maintain her own locker so that she could keep her jewellery with herself and so they opened a joint locker. However, the locker was solely operated by the respondent.

6. The appellant has alleged that in March, 2009, his father got severely ill while his mother was alone at home, who called him up but since he was at a distance of more than one hour, he expected the respondent, who was in Connaught Place with her brother and sister, to reach home and take his father to the hospital. To the utter shock of the appellant, even though she said 'okay' she did not reach home and the appellant, who was at a distance of more than one hour reached home to find out that she had not turned up. When the appellant confronted her, she confessed that she was having dinner with her brother and sister and so took time.

7. The appellant has alleged that in April, 2010, the respondent, without even discussing, quit her job stating that it was the appellant's duty to maintain her. The respondent would sit idle at home, and would not share any household chores with his mother and rather would sleep till late hours and get up late and when the appellant requested her to mend her ways, she triggered and shouted upon him in an aggressive manner. After quitting the job, the respondent's behaviour turned too indifferent, asking the maid to cook food only for her, sitting in isolation in her bedroom and misbehaving with family members and maid/servants.

8. The appellant has averred that he had made all his efforts to keep the respondent happy by taking her out on trips and vacations, both domestic and international, while doing his shoots or even otherwise, which included



places like USA, Seychelles, Singapore, Macau, New Zealand and Switzerland and also Goa, Jaipur, Shimla, Nainital, Mumbai, Kolkata and Jim Corbett within India. However, on each of the trip, she behaved in such a way which would sour the entire trip.

9. The appellant has claimed that he tried his level best to make their marriage work and also enrolled in a three day inter-personal development course conducted by the Landmark Forum in the year 2009. However, the respondent did not mend her ways and continued with her antics at home.

10. The appellant has alleged that the respondent never realised his work commitments, she would take his car for personal purpose of going to Mall and shopping while the appellant was forced to commute by public transport. Knowing well that the appellant had to work during late hours, she would ask him to get groceries.

11. According to the appellant in July, 2010, he was selected for the Television Show 'Master Chef', which was a start of his career but the respondent could not handle his fame and picked up fights on menial reasons. She was a constant source of humiliation and public embarrassment to the appellant, who called the police not only at the matrimonial home but also barged into Yash Raj Studios when he was shooting for 'Master Chef' in Mumbai.

12. The appellant has alleged that since he had started gaining public attention, the respondent threatened him to spread false humour to the media and register false criminal complaint against him and his parents and on one such occasion she even slapped the appellant just before he was to leave for his shoot.



13. The appellant has claimed that when he was out for shoot for 2-3 days, he took the respondent alongwith him, who chose to throw tantrums every time he left for shoots and spoke ill about her in-laws in front of public. According to the appellant, the respondent was in the habit of creating scenes in front of the appellant's neighbours and society members.

14. The appellant has also alleged that in July, 2011 when he was shooting for Master Chef Season 2, the respondent got pregnant, and she was advised not to travel. However, she always insisted upon him to accompany him to Mumbai and in case, he refused, she threw fits upon him. The appellant has pleaded that despite knowing about the respondent's continued tantrums and fights, he tried to adjust with her. However, the respondent faked threats by pretending to make call to the police against him and his family and later disclosing that she was trying to set him straight.

15. The appellant has averred that sometimes the respondent realised her conduct and even apologised to him and also assured him that she would never threaten him or his family again, however, her conduct changed with time.

16. In another incident of October, 2011, one day the respondent entered into kitchen and asked the appellant's father to go out while he was working in the kitchen, and insisted that she was very hungry and could not control and went to cook right away and forcibly removed him outside the kitchen and started cooking. The appellant is aggrieved that he could not tolerate tears in his father's eyes and when he confronted the respondent, she again threatened him to implicate him in false case even if he thought of wriggling out of the marriage.



17. The appellant has alleged that even after birth of his son on 20.02.2012, her behaviour did not change. She did not even much cared about the newly born child and blamed the appellant that he was not giving time to the child so that she could be free to have some time for herself. The respondent would occasionally leave for the Mall for the whole day leaving behind newly born child with the appellant's parents. She was also in the habit of leaving the house without informing the parents of the appellant and would come back late at night without having any concern for the child.

18. The appellant has alleged that the respondent would emotionally blackmail everyone in the family to make her way to meet her demands and was an uncaring mother, who left her child at the mercy of the maids to enjoy her life.

19. According to the appellant, on 20.12.2013, while he was putting their son to sleep, she picked up an argument with him and started to scream in front of the child. She abused the appellant and his parents and made a call to PCR at No. 100. She misrepresented to the police that there was a family fight even though she had hit the appellant. The entire incident was caught in the camera by the appellant's father and in the fit of anger, the respondent tried to snatch his phone and even picked up a stick to hit him. She stormed out of the house and returned only after a while when the PCR reached. In front of the PCR, the respondent admitted that the PCR was called in a fit of anger and also said that the appellant had never beaten her. The police left without registering a case against the appellant and his family but it was the most humiliating event which the appellant and his family had to face because after this incident they had lost their respect in the society. The appellant, however, was a famous TV personality and public image; his



parents were well respected and dignified members of the society, who had to suffer loss of reputation due to the conduct of the respondent. The appellant and his family tried to reach to the father of the respondent to resolve the issue. However they refused on one pretext or another.

20. In another such incident of Delhi in 2014, the respondent, in a fit of anger, threw plastic chair on the appellant's father and this was the breaking time for the appellant to not accept the respondent's behaviour, who then wanted the respondent to mend her ways.

21. The appellant, in order to save his parents from continuous humiliation from the respondent, took a 3 BHK apartment on rent in Gurgaon. However, even then on petty issues, she would call PCR in a fit of anger and once the police came, she pretended as if nothing had happened.

22. The respondent created scenes before the police at Gurgaon in order to humiliate the appellant. On one such occasion, the respondent in a fit of rage went outside the house in her night clothes and sat outside the gate in front of the guards and neighbours, making it humiliating for the appellant due to which the appellant was forced to leave the said house in the second or third week of May, 2015. The appellant has pleaded that he could not continue to live with the respondent, who had been cruel to him and his family since very beginning.

23. Being aggrieved, the appellant filed a petition under section 13 (1) (ia) of the Hindu Marriage Act, 1955 before the learned Trial Court seeking divorce from the respondent/wife.

24. To rebut the contentions raised by the appellant, the respondent, in her written statement filed before the learned Family Court, averred that the appellant has raised false allegations to mislead the court, who has lack of



respect for the institution of marriage and has also been dishonest as a parent.

25. The respondent has altogether denied the allegations by stating that he, in a collusion with his parents, has enacted sordid drama to get rid of daughter-in-law by either forcing her to commit suicide or by taking divorce. The respondent claimed that she belonged to a respected family and the factum of her pursuing M.A. was told to the appellant and his family members before marriage. She asserted that she had completed three semesters out of the four semester course and after her marriage, it became difficult for her to complete the course and she could not complete it. Ever since her marriage with the appellant, she was a devoted wife, who sacrificed her career and opted for a small job in a nearby school so that she could devote more time and attention to the appellant and his family requirements. The respondent averred that within few weeks of marriage between the parties, she was made to feel an outsider, who could not fit into the expectations of the appellant's parents. They showed displeasure in respect of her job hours, however, since she considered her family as the first priority, she quit her job.

26. The respondent claimed that she always tried to communicate with appellant like a loving spouse and was always loyal towards him. However, the appellant, with ill intentions, kept her in dark and concocted fabricated stories to obtain divorce from her.

27. The respondent has alleged that she was tricked into situations hoping for a targeted response and she was ignorant that those incidents were being video recorded by the appellant and his family members to use at a later stage.



28. The respondent asserted that she met the appellant on a matrimonial website, who used to message her “*you have a very photogenic face*” and “*you have a great smile*” on her matrimonial profile and later he connected with her on her registered mobile number, showing his interest in her and persuaded to meet him. The respondent asserted that she was reluctant to meet him, however, for the first time, she met the appellant with her sister, Thereafter, within two days, the appellant convinced her that he wanted to meet her alone and then proposed to marry her.

29. The respondent asserted that from the very beginning, the appellant had persuaded that he was an independent person and lived in Goa, Chennai, Dubai and Kuwait and also during his employment in MBD Radisson, Noida, he stayed at Noida with his friends even though his parents were staying in Raja Garden; and in fact, the appellant had never attached any significance to living with his parents. The respondent alleged that the hypocrite template of the appellant portraying to live with his parents, is false.

30. The respondent claimed that her parents had assured the appellant’s family that the marriage would be organized with grandeur and the demanded dowry would be given. The marriage ceremony was arranged by her parents, which was not a simple affair. The appellant himself surveyed the wedding venue.

31. The respondent also alleged that the appellant had visited Kirti Nagar Furniture Market to choose his favourite furniture and furnishings to be gifted in the marriage by the father of the respondent. He had also raised a demand for a fridge (350 Ltr., brand Whirlpool), which was given by her father besides a thick gold chain and a *Gucci* watch, which was also



demanded by him and given in the marriage. The respondent asserted that sarees and suit pieces were also given to the appellant's family in the Sagan Ceremony, as was demanded.

32. The respondent alleged that appellant used to make demands from her in such a manner that he could have luxurious articles in his hand at the cost of the respondent's income i.e. he said that the diamond ring given in the engagement was not stylish so she purchased a heavy gold ring for him and he also indirectly asked her parents to gift him an I-phone, however, since her parents could not afford I-phone, a touch-screen Nokia phone was gifted to him.

33. The respondent asserted that the claim of the appellant that he took her out for high life, free lunches and dinners is obvious because he had a friend named Sanjeev, who was working in hotel Hyatt, another friend Sagar, who was working in hotel Imperial and he himself was working in Hotel Claridges and so, free lunches and dinners were quite obvious.

34. In respect of the appellant's allegations that the respondent was interested only in branded clothes and branded lifestyle, the respondent asserted that wearing new clothes after marriage is usual for a newly-wedded lady and she used to get gifts from her parents. Also, since she was working, she would buy clothes from her income, to which the appellant never contributed. The respondent alleged that she was never a burden upon the appellant.

35. With regard to the allegations of the appellant that respondent never liked the car, Model Zen and she forced him to buy luxury car even though he was struggling to meet the household expenses, the respondent averred that she herself belonged to a middle class family and the appellant is



owning a BMW Car and a Honda City Car, which of course were not purchased because she pressurized him.

36. The respondent also alleged that in March, 2009 appellant finalized a house in Ansal Buildwell Silver Crest Apartment, Sector 57 Gurgaon and paid booking amount of Rs.1,00,000/-and rest of the amount was to be paid in instalments. But thereafter, he pressurized the respondent to bring money from her father, despite the fact that her father had already spent huge amount of money on their marriage. Her father had to save for her sister's marriage, therefore she refused to demand money from him, upon which appellant showed his annoyance and cancelled the booking.

37. The respondent claimed that they both used to reach home back from the work almost on the same time and the story of November, 2008 asking her father-in-law to order pizza is a concocted one. The respondent has asserted that she could have easily ordered the pizza on phone and bought one on her way back from work and was not required to go out wearing jewellery, etc.

38. The respondent has accepted that there was a joint account of the parties, however averred that its cheque book or passbook or card were withheld by the appellant and she had no access to it. She also stated that the locker was in joint operation of both of them where the jewellery was kept and whenever she opened, it was on the instructions of the appellant.

39. With regard to the allegation of the appellant that the respondent was not willing to participate in the household chores and was confined to her room, the respondent stated that she used to prepare breakfast for everyone in the family thereafter used to leave for work and after 4-5 months of their marriage, she has even prepared lunch for her in-laws. However, they were



not satisfied and they treated her with disrespect. Due to such circumstances, the respondent had to leave her job in the April, 2010 and not in the year 2008 immediately after their marriage, as has been asserted by the appellant.

40. The respondent, in her written submissions, has asserted that she sacrificed her ambitions upon the selection of the appellant as a 'Judge' in the show 'Master Chef'. They had to shift to Mumbai in July, 2010 till November, 2010 for shooting of the said show. The appellant never asked the respondent regarding her professional ambitions but he picked up fights on petty issues.

41. The occurrence of October 2011, when respondent/wife supposedly pushed appellant/husband's father out of the kitchen and began her own cooking or that she was a non-caring mother, has been denied by the respondent.

42. Even though respondent has not denied that PCR call was made, but alleged that she was provoked to do so. The respondent has asserted that the parties had shifted to Gurgaon in December, 2013 and so the incident of assault, punch, dangers or tossing of plastic seat and requesting that appellant/husband's father to leave, are wrong.

43. After considering the pleadings of the parties, the learned Family Court framed following issues:-

"1. Whether the respondent after solemnization of the marriage has treated the petitioner with cruelty, within the meaning of section 13 (1) (i-a) of Hindu Marriage Act?"

OPP

2. Whether the petition has not been duly verified and, therefore, not maintainable?"

OPR

3. Whether the petitioner has concealed the material facts?"

OPR



4. Whether the petitioner is entitled to decree of divorce, as prayed for?
OPP

5. Relief”

44. To substantiate their case, the appellant/husband examined himself as PW-1 and got examined his father as (PW-2) and two neighbours as PW-3 & PW-4. The, respondent/wife examined herself as RW-1 and her sister as RW-2 and her mother as RW-3.

45. The learned Family Court in respect of Issue No.1 and 3 held the incident of November, 2008 in respect of respondent ordering pizza while wearing *chooda* and jewellery, held that respondent being a working woman, who used to come home late by 10:30 PM or so, even if desired to order pizza for herself, has in no manner committed cruelty upon the appellant or his family by doing so. The Family Court held that appellant has not been able to prove that respondent had projected herself as M.A. pass, as the resume sent on e-mail is dated 14.05.2008 i.e. after the marriage of the parties. The two witnesses PW-3 and PW-4 who have deposed that respondent did not attend them while they visited their house and was thus not respectful, the learned Family Court has held that by not attending to the uninvited guests of parents in law, whose visit is not in the knowledge of daughter-in-law, who herself is working from 10:00 AM till 10:00 PM, does not amount to cruelty.

46. With regard to the incident of March, 2009, when respondent did not return home being irresponsible and insensitive towards health condition of appellant's father, the learned Family Court held that the appellant has not denied that the respondent reached home soon after he reached and that appellant has not been able to prove the timings of such incident and also



that his father had only mild fever and so, it could not said that respondent had committed any cruelty.

47. On the incident of October, 2011, when allegedly respondent misbehaved with her father-in-law, the Family Court has observed that respondent has established that she was not at her matrimonial home.

48. So far as reliance placed by appellant on the video contained in CD Ex.PW-I/G of an incident wherein respondent is seen hitting the appellant, the learned Family Court has held that respondent was driven to the stage of losing temper.

49. The learned Family Court thus held that the appellant had failed to bring the acts of the respondent within the ambit of Cruelty.

50. This Court now proceeds to examine whether in the facts of the present case, the learned Family Court was justified in dismissing the appellant petition for dissolution of marriage while dismissing his plea of Cruelty within the scope of Section 13 (1) (ia) of the Act.

51. The Hon'ble Supreme Court, while illustrating the scope of 'Cruelty' in **Samar Ghosh Vs. Jaya Ghosh** (2007) 4 SCC 511 held:-

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 strait jacket 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.***

52. The parties to the present appeal got married on 20.04.2008 and a son was born on 26.02.12 out of this wedlock

53. The respondent in her written statement has averred that their marriage was celebrated in grandeur, with an amount of 40 lakhs being spent on their wedding ceremonies. She has averred that as per the demands of the appellant and his parents before marriage, dowry was given by her father in cash as well as articles. Further, she claims that even after marriage she has purchased articles on insistence of appellant and was often coerced him to seek monetary aid from her parents during his struggling stage in career. All allegations of dowry and extravagant wedding have been vehemently denied by the appellant in his pleadings.

54. Relevantly, the respondent's father was an Income Tax Inspector and she was from a humble financial background. In her cross-examination, the respondent remained clueless about the salary drawn by her father and failed to provide any Income Tax receipts/bills regarding the expenses incurred for the wedding or the articles claimed to have been purchased for the appellant by the respondent or her father. Though in her written statement, the



respondent claimed that she was not given any access to the joint locker opened to safeguard her belongings, however, she retracted her statement and admitted in her cross-examination that she had access to the joint locker. It is relevant to note here that no complaint was lodged by the respondent, culminating into proceedings under Section 498-A against the appellant or his family.

55. The Supreme Court in the case of ***K.Srinivas Vs. K. Sunita*** (2014) SLT 126 has categorically held that unsubstantiated allegations of dowry demand against the husband and his family members which have the potential to impact the reputation of the parties, when made without any sense of accountability or care for its consequences, amounts to cruelty. The same principle was reiterated in by The Supreme Court in ***Ravi Kumar Vs. Julmidevi*** (2010) 4 SCC 476 with similar observations being drawn by the Coordinate Bench of this court in ***Rita Vs. Jai Solanki*** (2017)SCC OnLine Del 9078 and ***Nishi Vs. Jagdish Ram*** 233 (2016) DLT 50.

56. It is relevant to mention here that within 2 years of marriage, the appellant has established himself as a Celebrity Chef which is a reflection of his hard work and determination which would not have been possible had he been one who was dependent on his spouse or in-laws for his necessities. Considering the aforesaid facts, it is only prudent to observe that these are mere allegations made by the respondent to disrepute the appellant in the eyes of the Court and such unsubstantiated claims have the effect on one's reputation and therefore, amounts to cruelty.

57. Though marital discords are an inevitable part and parcel of every marriage, however, when such conflicts take the form of disrespect and inconsideration towards their spouse, the marriage itself loses its sanctity.



58. In the present case, though the appellant has alleged that the respondent was averse to residing in the same house of his parents and the respondent claimed to have submitted to every request of the appellant, but the fact remains that after their marriage on 20.04.2008, the parties moved in to the house of appellants' in Dwarka consensually. It is admitted that at the time of marriage, the appellant was struggling to make his mark professionally and was in a financial constraint; while the respondent was employed at Hewitt Associates, Gurgaon.

59. The appellant has pleaded that the primary reason for their troubled marriage is the consistent demeaning conduct of the respondent towards his parents at every instance to an extent where on certain occasion the respondent even physically assaulted his father, which required his intervention. This fact is refuted by the respondent. She stated that her in-laws regularly taunted her for having a job rather than doing the house-hold work and repeatedly humiliated her for petty reasons as she did not fit into their conservative definition of an ideal daughter-in-law.

60. On the other hand, the respondent vide e-mail dated 30.09.2015 to the appellant, stated that *"It doesn't feel like I have got married and come to a new house but it feels it's my own home and my parents in law love me more than my own parents"*. The afore-noted words of the respondent shows that she had remorse for her behavior towards her in-laws where she has categorically stated that both of them were always considerate towards her; however, retracted these statements in her cross-examination.

61. The appellant, to substantiate his claim that respondent used to misbehave with him and his parents, got examined his neighbors as PW-3 and PW-4 who categorically disposed about the unruly behavior of the



respondent towards her in-laws. These witnesses stated that hearing loud voices from their house was a regular ordeal. PW-4 has categorically disposed that in December, 2013 he received a call from the appellant's mother and he also illustrated instances where they even had to intervene at times to ensure their safety. In view of the above, our considered opinion is that the learned Family Court has erred in not appreciating the statements of these witnesses on the whole.

62. Though the respondent has denied being disrespectful to her in-laws, however it is an admitted position that parties had shifted to Gurgaon in December, 2013 but there is no explanation as to why after living together for 5 years, the parties decided to move out of parents' home i.e. the matrimonial home.

63. The appellant has alleged that shortly after marriage, the respondent quit her job and was completely dependent on him. Whereas, appellant stated that respondents demand for a lavish lifestyle while not working to financially support the family, had caused him great financial and mental distress. He further claimed that the respondent would make expensive demands and ask to accompany him in unsponsored work trips which he had to oblige to owing to her conduct. These allegations were denied by the respondent in her written statements where she averred that she compromised on her professional career at the behest of the appellant and his parents, to be able to assist her family and her husband.

64. Though in a marriage, a woman cannot be expected to work for the whole house-hold, however, when a woman takes up the responsibilities of the house out of her free will, she does so out of sheer love for her family and no price can be put on it. It is often a natural consequence of mother-



hood that after the birth of a child, there is an increased sense of responsibilities which disrupts the work life balance of any woman for which husband cannot be blamed. However, in the present case, blaming the spouse for her personal failure is only perceived as a tactic to guilt the husband into fulfilling her unreasonable monetary demands, causing him great mental agony. Therefore, this Court is of the opinion that such conduct of the respondent amounts to Cruelty.

65. The appellant averred that even after quitting her job, the respondent failed to take responsibility of the house-hold work as a member of the family and despite his multiple requests, the respondent remained adamant in her own ways. These claims were denied by the respondent in her written statement.

66. It is not in dispute that the respondent has not been working since March, 2011, even after the appellant was selected for the Master Chef Show in July, 2010. Vide e-mail dated 23.09.2015, the respondent is seen showing regret for not taking charge of her own career wherein she states “*I was unhappy because of what I don’t know. Was it loneliness, was it too much of responsibility, not taking actions for my career. I am totally dependent on you for everything. I made myself so.*”

67. During recording of her testimony as RW-1, she accepted that her mother-in-law even cooked for her and assisted in the house-hold chores. It is also stated by her in the e-mail dated 30.09.2015 that she was grateful for to her mother-in law for preparing dinner for her. Self-admittedly, the respondent was provided house-help and assistance from her family despite which she failed to take initiative to maintain her own house being a burden on other members of the family.



68. The respondent in her e-mail dated 22.09.2015, stated to the respondent that *"You gave me everything I ever wanted. Foreign trips, freedom, money, love, a house of our own, maids, big car. Still, I wasn't happy, wasn't satisfied."* Further, in her testimony as RW-1, the respondent admitted that though some trips were only sponsored for the petitioner, however, he did pay out of his own pocket to take her along. She also stated *"I did enjoy the name and fame of my husband"*.

69. The respondent in her written submission has made allegations of infidelity and extra-marital relations of the appellant after him coming to lime light. She has averred that once the appellant started getting public attention, he regularly engaged in flirtatious texts with his fans in addition to making unnatural sexual demands from her. However, in her testimony as RW-1, she failed to depose any specific instance showing that she was only insinuating. Nor did she provide any proof apart from photographs which are based on her presumption of illicit affairs as admitted by her in her cross-examination.

70. The Supreme Court in the case of **Vijaykumar Ramchandra Bhate Vs. Neela Vijaykumar Bhate**, (2003) 6 SCC334 while deciding that gross unsubstantiated allegation of infidelity in a marriage which potentially tarnish the reputation of a spouse constitutes cruelty, held that :-

"7..... The position of law in this regard has come to be well settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the



*context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law has also come to be firmly laid down by this Court..... **We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law** causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible."*

71. Accordingly, this court is of the opinion that the respondent has made such wild allegations without any sound basis purely with the intention to disrepute the appellant in the eyes of this Court to get a favorable outcome. Such baseless arguments when made about a person who is regularly in the public eye, it has long lasting effects on his reputation and tarnishes his image among his peers. Therefore, such an act amounts to cruelty.

72. The appellant has claimed that, during the course of their marriage the respondent was in the habit of making calls to the police to threaten him and his family. Once such incident narrated by the appellant is of 09.09.2016 while he was shooting at Yah Raj Studios, the respondent barged into the studio with their minor son and created a ruckus at his workplace. The appellant was constrained to get an FIR No.2210 registered under Sections 504 and 506 IPC at police station Aboli, Mumbai on the next day i.e.



10.09.2016 and sought a restraint order against the respondent, which was allowed by the court vide order dt. 30.01.2017. The respondent remained silent about the said incident in her submissions.

73. It is settled position of law that making reckless, defamatory, humiliating and unsubstantiated allegations in public against a spouse amounts to cruelty. In the circumstances of the present case, the appellant was left with no option but to take legal recourse to seek restraint order from the Court.

74. The appellant also alleged that he was subjected to physical abuse at the hands of the respondent. The respondent accepted in her cross-examination, that she had slapped the appellant, but only once which was a natural response to his repeated provocation. The learned Family Court while rejecting the video evidence produced by the appellant to substantiate his claims of physical assault, observed it to be orchestrated evidence. However, an updated version of the said evidence, with audio, is produced and perused by this court.

75. This Court has seen and heard the video and audio (EX. PW1/G) and we find that the parties were into an altercation into their room, however the door was open and all the other members of the family, including the small child of the parties, were witnessing it. The respondent is seen shouting and growling upon the husband without even bothering that the infant child of the parties is crying and is seeking their attention. The appellant is seen and heard asking the child to leave the room. In a fit of rage, the respondent is blaming the appellant and his family for their conduct and asking why her belonging have been touched without her permission. In a fit of anger she has used the foul language such like “*kutta*” and used slang word “*pagal*”.



She is heard threatening the appellant to leave her matrimonial home and once it came to her notice that appellant's father was recording the incident, she misbehaved with him and in anger hit the appellant and thereafter, hit herself also shouting "*pagal hum main*". She thereafter, called the PCR for assistance. All through the incident, the little child of the parties is seen moving in and out of the room saying "dadu- dadu".

76. Even if the plea of the respondent that she was instigated or provoked by the appellant to behave in such a manner and she did not expect that their altercation was being recorded, which further aggravated her temper, this Court finds that a prudent spouse, who is highly qualified would find out a way to resolve the differences. Screaming high and using filthy language, even if not directly abusing the spouse, is too harsh to expect for the spouse at the receiving end to accept it. What has hurt the conscience of this Court is that the small child of the parties is seen roaming here and there pointlessly and such incidents would not doubt leave a scary impression of his parents' behaviour in his memories. The respondent not only slapped the appellant but also threw the mobile phone of his father-in-law and a broken mirror is also seen in the video. What is vital to note here is that she herself called the PCR but did not lodge the complaint and rather sent the police back stating that it is an internal family matter. Had there actually been any grievance against the appellant or his family, she might have not sent the police back. This shows that she had remorse to her conduct and by then understood that she will not be able to prove against her misbehaviour.

77. This court is of the opinion that though there is no standard set for what amounts to a reasonable reaction to provocations in marital life, such acts of causing physical harm to a person is a reflection of one's inability to



be in control of their temperaments and amounts to cruelty. It is observed in the said evidence that despite requests by the appellant to not continue the fight in front of their son, the respondent remained unbothered by it and acted in the heat of the moment. This kind of conduct would no doubt subject a spouse to grave cruelty.

78. The respondent vide e-mail dated 13.05.2016 to respondent narrated specific instances of abuse witnessed in her childhood and stated that *“That was turbulent atmosphere I grew up in. All the above was my past, maybe it impacted me”*. Therefore, this is reflected in her behavior towards her spouse and in-laws.

79. It is relevant to note here that the e-mails relied upon were not before trial court and has been placed on record along with affidavit of appellant under section 65B of the Indian Evidence Act. The respondent in the present proceedings has not negated these e-mails.

80. It is relevant to note here that despite the appellant and his family were badly hurt and they suffered loss of respect in the society, yet the appellant made further efforts to stay with the respondent to save his matrimonial life.

81. It is an admitted fact by the respondent, that she was grateful for the appellants consistent support and his patience towards her behavior. Vide e-mails dated 24.09.2015, sent by her to the respondent, she stated that *“I never valued anything, I think. Be it money, your time and your love”*. It is observed that, though the appellant took care of all her needs, the respondent remained unsatisfied at every juncture of their marriage, under which circumstances there was nothing the appellant could have done to make his marriage sustain.



82. Also, the parties have been living apart since May, 2015 and their son is in the custody of the respondent. It is undisputed fact that even after separation, the appellant has been providing monetary support for education and well-being of their son as well as for maintaining the house-hold. On perusal of WhatsApp messages exchanged between the parties, it can be observed that the appellant has not been allowed to meet or talk to his son. Despite his repeated requests seeking an opportunity to meet his son, the respondent has evaded it one pretext or the other while at the simultaneously demanding payments from him.

83. In e-mail dated 30.11.2022 exchanged between the parties, it is noted that despite the appellant requesting not to bad mouth him in front of their child, the respondent is seen complaining showing least concern for the development of the child. Such deprivation of company of their son with the malicious intent to create a rift between the father and child, no doubt will put any parent to distress.

84. In the case of *Prabin Gopal Vs. Meghna* 2021 SCC OnLine Ker 2193, the Kerala High Court observed that relish the joys of fatherhood, it becomes a ground for cruelty. In our opinion, no doubt such deprivation of love and affection one's child due to the conduct of their spouse amounts to cruelty.

85. In the light of the afore-noted facts of the present case, we find that conduct of the respondent towards appellant has been such that it is devoid of dignity and empathy towards him. When such is the nature of one spouse towards the other, it brings disgrace to the very essence of marriage and there exist no possible reason as to why he should be compelled to live while enduring the agony of living together.



2024:DHC:2597-DB



86. In our considered opinion, the conduct of the respondent has been such which brings it into the ambit of Section 13 (1) (ia) of the Hindu Marriage Act, 1955 and the learned Family Court has gravely erred in disallowing the petition preferred by the appellant.

87. The present appeal is accordingly allowed and the impugned judgment dated 01.10.2018 is set aside. The appellant is granted divorce under Section 13(1) (ia) of the Hindu Marriage Act, 1955.

88. Decree sheet be drawn accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 02, 2024

r/sn