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

Reserved on: 13.01.2026
Pronounced on: 13.04.2026

\+ **MAT.APP. 6/2012, CM APPL. 3834/2020, CM APPL. 2452/2021, CM APPL. 3722/2021, CM APPL. 23260/2017**

.....Appellant

Through: Mr. S.C. Singhal and Mr. Parth Mahajan, Advs.

Versus

.....Respondent

Through: Mr. Archit Mishra, Mr. Ayush Anand, Mr. Giriraj Singhal, Advs.

CORAM:
HON'BLE MR. JUSTICE VIVEK CHAUDHARY
HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

1. The present appeal has been filed under Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred to as "HMA") against the judgment and decree dated 28.11.2011 passed by the learned Judge-01, Family Courts, Rohini Courts, Delhi (hereinafter referred to as "Family Court") in HMA No. 147/2010 and HMA No. 390/2010, whereby, the petition filed by the respondent-husband under Section 13(1)(ia) was allowed and the petition filed by the appellant-wife under Section 9 of the HMA was dismissed.

2. In the present appeal, the appellant has only sought to set aside the impugned judgment only *qua* the grant of divorce decree, claiming

the following relief:

> *"In the circumstances it is therefore prayed that judgment and decree dated 28.11.2011 passed by the Court of Shri Dilbagh Singh Judge Family Courts, Rohini Courts, Delhi in H.M.A. No. 147/2010 (Old No. 57/2006) and H.M.A. No. 390/2010 (old No. 109/2008) be set aside & the present appeal be allowed and the petition filed by the respondent for divorce be dismissed with cost. Any other order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the appellant and against the Respondent."*

3. The brief facts necessary for disposal of the appeal are that the marriage between the parties was solemnized on 11.11.1997. Out of the said wedlock, a girl child was born to the parties on 10.11.1998, however, on the same date, she was declared dead. Thereafter, the parties were blessed with two children who were born on 14.08.2000 and 14.08.2002, respectively. However, owing to various differences and acrimonies between the parties, the couple started residing separately from 11.04.2004. As a result, thereof, the respondent/husband, while raising certain allegations of cruelty, filed a petition on 19.01.2006 under Section 13(1)(ia) of the HMA seeking a divorce. Subsequently on 08.08.2008, the appellant/wife preferred an application under Section 9 of the HMA seeking restitution of conjugal rights.

4. After hearing the parties at length, the issues were framed by the learned Family Court and *vide* common judgment dated 28.11.2011, the divorce petition filed by the respondent was allowed while the application seeking restitution of conjugal rights filed by the

appellant was dismissed.

5. Being aggrieved thereof, the present appeal has been filed by the appellant, seeking setting aside of the impugned judgment.

6. It is the plea of the appellant before us that the impugned judgment passed by the learned Family Court suffers from various conjectures and surmises as the respondent has failed to prove the instances of cruelty suffered by him and thus, it is submitted that the impugned judgment is liable to be set aside.

7. To substantiate his arguments, the learned counsel for the appellant referred to the incident dated 05.07.2005 which, according to the appellant, has been falsely narrated by the respondent. He submitted that the learned Family Court has erroneously relied upon the medical documents being RW1/4 i.e., the MLC and causality slip of the mother of the respondent to arrive at its finding that the respondent was beaten up by the family members of the appellant, however, neither any witnesses from AIIMS were summoned nor any police report was ever produced on record to corroborate the allegations of the aforesaid incident.

8. It is argued that the aforesaid MLC does not indicate that there were any fractures suffered by the respondent. Further, the ECG does not show that the respondent's mother suffered from any bodily disorder. It is therefore submitted that the incidents of physical cruelty committed upon the respondent is nothing but his own twisted narration of facts as neither the medical documents prove the incidents nor did he produce his parents in the witness box to state as to how they reached AIIMS and why.

9. It is further submitted that the learned Family Court failed to take into consideration that the X-Ray report of the private clinic namely Anand X-Ray Clinic, has never been proved on record and no word has been stated by the respondent as to whether he took treatment from any other hospital other than AIIMS. It is submitted that allegedly, the respondent also remained hospitalized for one week, however, no records of such hospital has been placed on record to show that he was admitted.

10. It is submitted that due to this manipulation of data and records, the learned Family Court erred in holding that the respondent was subjected to cruelty at the hands of the family members of the appellant whereas, the incidents were not proved in accordance with the law of evidence and no witnesses were called to prove the documents relied upon by the respondent.

11. It is also submitted that one of the grounds of cruelty considered by the learned Family Court is that the appellant remained uninterested in sexual activities with the respondent and purposely kept taking anti-pregnancy tablets. To refute this particular allegation, it is submitted that the respondent, in his cross-examination, was unable to name the alleged pills, and admittedly, the parties share two children from the consummation of their marriage which makes this allegation untenable, impractical and baseless.

12. It is further submitted that the respondent has failed to make out a case of physical or mental cruelty in the absence of any incidents of aggressive or dominating behavior of the appellant. Learned counsel for the appellant submitted that that the learned Family Court has

erroneously placed reliance on mere narration of the respondent's false stories who has failed to lead any other evidence by bringing on record relatives of the parties in the witness box to prove his case.

13. It is submitted that no one can be a master of his own case, and the learned Family Court has committed a grave error in believing the testimonies of the respondent with regard to the incidents without it being corroborated by any other substantial evidences like testimonies of the AIIMS staff, the common relatives, or by bringing on record any police call recordings of his complaints.

14. It is also submitted that the learned Family Court erroneously shifted the burden of proof on the appellant and has arrived at an adverse inference against her on the basis of the fact that the appellant failed to produce any neighbors or witnesses to disprove the incident of 05.07.2005, whereas, it is the respondent who bore the burden of proving his claims of cruelty. Furthermore, it is submitted that the learned Family Court failed to acknowledge that it was the respondent who visited the appellant's residence on the evening of 05.07.2005, after separation of almost one year and two months and therefore, the conclusion arrived at by the learned Family Court with regard to cruelty committed on 05.07.2005 is misconceived.

15. It is further stated that the allegations of the respondent that the appellant tried to burn him and the children is also unsubstantiated by any cogent proof as there is no iota of evidence to prove that incident including no medical evidence, police call records, investigation reports, or neighbor's testimonies.

16. In view of the foregoing submissions, it is stated that the

impugned judgment passed by the learned Family Court granting divorce to the respondent be set aside and the present appeal be allowed.

17. *Per Contra,* learned counsel appearing on behalf of the respondent submitted to the effect that the learned Family Court has meticulously perused the facts and circumstances as well as the evidences placed on record before passing the well-reasoned impugned judgment.

18. It is submitted that the respondent was successful in proving all the instances of cruelty inflicted upon him by the appellant and it is the settled position of law that even one instance of cruelty is sufficient to dissolve a marriage between the parties.

19. Learned counsel for the respondent submitted that the learned Family Court has carefully dealt with the evidence placed before it including the medical records issued by AIIMS which could not have been manipulated by the respondent. The learned Family Court has also taken into consideration the incident whereby, the appellant tried to burn the respondent and his children which duly prove that the respondent was subjected to mental and physical cruelty.

20. It is contended that the learned Family Court has rightfully drawn an adverse inference against the appellant for not providing the medical records of her brother and father who allegedly sustained injuries. It is submitted that the appellant purposely concealed such evidence as her version is concocted and the said medical documents would have gone against her.

21. It is further submitted that another crucial piece of evidence

showing cruelty which has been taken into consideration by the learned Family Court is Ex. RW1/1 which is a paper/slip containing hand written conditions imposed by the appellant upon the respondent. It is submitted that the learned Family Court, in exercise of its powers vested under Section 73 of the Indian Evidence Act, 1872, (hereinafter referred to as "Evidence Act") asked the appellant to write some lines for proper comparison of the handwriting in the aforesaid alleged slip and after categorically perusing both the documents, the learned Family Court arrived at its findings that the paper/slip containing illegal demands were written by none other than the appellant herself.

22. It is argued that keeping in view of the appellant's hesitant conduct in handing over her handwriting to be matched with the handwriting in the alleged slip containing demands, the learned Family Court also derived at the conclusive proof that the testimony of the appellant as a witness was not trust-worthy.

23. It is the plea of the respondent that the learned Family Court carefully dealt with all incidents of cruelty separately while meticulously examining the evidence before it and thus, found force in the claims of the respondent who has proved the cruelty inflicted upon him beyond reasonable doubt.

24. Learned counsel for the respondent further stated that after the expiry of statutory period of limitation of 30 days in filing an appeal under Section 19 of the Family Courts Act, 1984, which gave the divorce decree in favour of the respondent finality, the respondent re-married on 22.01.2012, and out of his second wedlock, he has also been blessed with a child on 13.11.2013. In view of the same, it is

submitted that the present appeal may be dismissed as being devoid of merit and for being infructuous.

25. We have heard the learned counsels for the parties and perused the material placed on record.

26. At the outset, this Court deems it appropriate to refer to the definition of cruelty. As per the provision of Section 13(1)(ia) of the HMA, cruelty can be physical or mental. It is further opined that instances of cruelty, as per settled position of law, is to be considered in a cumulative effect rather than in isolation. The Supreme Court has time and again justified as to what attributes as cruelty in a number of decisions such as in ***Dr. N. G. Dastane v. Mrs. S. Dastane***, (1975) 2 SCC 326; ***V. Bhagat v. D. Bhagat***, (1994) 1 SCC 337; ***Parveen Mehta v. Inderjit Mehta***, (2002) 5 SCC 706 and in ***A. Jayachandra v. Aneel Kaur***, (2005) 2 SCC 22.

27. In ***A. Jayachandra v. Aneel Kaur*** (Supra), the Supreme Court held as follows:

> *"12. To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to*

give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

13. The court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent."

28. In the case of ***Gurbax Singh v. Harminder Kaur*** 2010 SCC OnLine SC 1162, the Supreme Court clarified that for establishing a case of cruelty, the married life of a party is required to be assessed as whole wherein ill conduct of a spouse has persisted for a fairly lengthy period making the relationship so sour, to an extent that the other spouse finds it impossible to reside together.

29. The above referred judicial *dicta* culminate in the fact that though there is no single definition of cruelty, the limits of cruelty should be at such an extent that it makes it fairly impossible for the aggrieved spouse to live with the offending spouse. The ambit of cruelty covers such ill-conduct which is constant and must be present for a lengthy amount of period.

30. The facts alleging cruelty hinges upon three incidents mainly. First incident is dated 11.05.2003, second is dated 11.04.2004 and the third incident is dated 05.07.2005. A bare perusal of the impugned judgment indicates that the learned Family Court has taken a note of the incident dated 11.05.2003 and had given much credence to this incident on the ground that the same took place when the parties had not filed any case against each other. On the said date of incident, it has been alleged that the appellant tried to set the house ablaze by burning the respondent along with the children with the help of cooking gas. It is contented in the respondent's version that the appellant was prevented from doing the same by the respondent with the help of neighbors. It is also noted that the respondent suffered injuries on his right hand in the aforesaid process of preventing the mishap.

31. We find that the respondent failed to examine those neighbors nor there is any medical records to substantiate his claims of the incident dated 11.05.2003, nor there is any complaint regarding the alleged serious allegations. Except his self serving statement, there is no material to corroborate the statement of the respondent *qua* that incident. The respondent withheld the independent best evidence of neighbors available with him to prove his allegations of cruelty. Therefore, in the absence of relevant testimonies and medical data on record, this Court is not influenced by the reasoning extended by the learned Court below *qua* this particular incident.

32. Another incident taken into consideration by the learned Family Court is dated 11.04.2004. It is recorded in the impugned judgment that the appellant had allegedly thrown a paper/slip in the matrimonial house which contained a list of whimsical demands that she had asked from the respondent. The appellant has categorically denied writing of any such letter.

33. As indicated from the Trial Court Record, the learned Family Court, in order to compare the handwriting of the appellant on the said document, directed both the parties to write a few lines on a piece of paper and then on the basis of his own comparison on the said paper with the said lines, the learned Family Court inferred that the handwritten list of conditions was written by the appellant. From the judgment, it seems that the learned Family Court is swayed against the appellant in view of her reluctance to give her handwriting which is revealed from the following observations in the impugned judgment, the relevant paragraph is reproduced hereinbelow:

> *"211. On 19.11.11, I had asked Smt. Urvashi to write some lines. She gave about 8 lines in her hand. I have exercised my powers of comparision u/s 73 of Evidence Act, and have compared the writing dated 19.11.11 and Ex. RW1/1 (filed on 27.08.10). I have no hitch to observe that Ex. RW1/1 and writing dated 19.11.11 have been written by one and the same person. I deem it pertinent to mention that when the final arguments were concluded, I became of the opinion that comparison of Ex RW1/1 with the admitted handwriting of Smt Urvashi will give an additional ground about truthfulness/falseness of respective stands. So that the parties do not come to know about the real intention of mine,* ***I asked the parties to give some lines in writing about children. Sh. Inder Paul gave in writing without any hesitation. Smt. Urvashi on the other hand gave it very hesitatingly. She even demanded it back on the ground that she had consulted some senior Advocate of the Supreme Court and she can not be asked to give anything in writing. during the course of proceedings also, Srñt. Urvashi has avoided giving anything in writing in Hindi."***
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> ***(emphasis supplied)***

34. At this stage, it is relevant to refer to Section 73 of the Indian Evidence Act, 1872 (hereinafter referred to as, 'Evidence Act'), which provides for comparison of the signature, writing or seal with others admitted or proved. The same is reproduced hereinbelow:

> *"**73. Comparison of signature, writing or seal with others admitted or proved.**—In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been*

> *produced or proved for any other purpose. The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. 1 [This section applies also, with any necessary modifications, to finger-impressions.]"*

35. On the aforementioned aspect, this Court finds that in the Order, the learned Family Court had nowhere mentioned to the parties before taking their handwriting that the order is being passed in exercise of powers conferred under Section 73 of the Evidence Act nor the learned Court below disclosed the reason behind asking the parties for their handwriting. In this scenario, we find that the hesitant behavior of the appellant in handing over her handwritten note is fairly natural and nor the said reluctance, in the absence of expert opinion, be sufficient to conclude that she had written the words in the paper/slip containing the list of demands.

36. In view of the same, we are of the view that the learned Family Court's approach was critically flawed and against the principles of natural justice. The exercise of this provision requires awareness of the parties as a pre-requisite for the reasons of procedural fairness. The comparison under Section 73 of the Evidence Act is required to be undertaken sparingly, especially since the document in this regard is of substantial consequence. Furthermore, the Court is always at liberty to supplement its finding on comparison with an expert opinion. In the present case, the learned Family Court overlooked these essential details which were crucial in proper adjudication of the claims of cruelty *qua* this particular incident.

37. Though we are conscious of the fact that a Family Court is empowered to devise its own procedure for doing justice between the parties but the procedure should always meet the principle of natural justice. Such power is to be exercised by the Court to fairly reach the truth, rather than to give support to the view taken by the Court. Moreover, in the present case, the respondent did not take any steps to prove said document by providing any expert report. Thus, the conduct of the Court, at the end of hearing, to exercise power under Section 73 of the Evidence Act, without informing the parties and giving them an opportunity of assistance of experts is more an attempt to support the view taken by the Court, instead of a fair procedure being adopted. Further, raising an adverse inference against a party, on account of her resistance for giving her handwriting, without informing her that the same will be used by the Court for comparison purposes, is against the principles of natural and fair justice and cannot be sustained.

38. The impugned judgment further indicates that the learned Family Court has placed significant reliance on the version of the respondent spouse based on his testimonies and medical records. With regard to the incident dated 05.07.2005, the learned Family Court, relying upon the medical documents such as the MLC of respondent and the ECG of the mother of the respondent, being Ex. RW1/4 and Ex. RW1/5, respectively, found that the injuries sustained by the respondent were at the hands of the family members of the appellant wherein the appellant had played an active role, thereby, finding force in the claims of cruelty upon him.

39. This Court has perused the aforementioned medical records which have been annexed as Annexure A-8 (Colly) in the present appeal. A perusal of the said medical records indicate that the respondent was found having chest pain in his left clavicle region and had a history of assault about one and a half hours before being examined.

40. In view of the aforesaid, this Court finds that the MLC issued by the AIIMS, is silent on how he was assaulted and by whom. The report fails to substantiate the claims of the respondent and there is no evidence to arrive at the conclusion that the injuries sustained by the respondent were due to assault inflicted upon him by the appellant or her family. The learned Family Court overlooked the relevance of any police call records/police reports of the incident. The alleged altercation, if any, on 05.07.2005 between the parties, does not prove the commission of assault by the appellant wife, especially in the backdrop of the fact that it was the respondent who visited her place of residence in evening after they had been living separately for almost more than a year.

41. This Court is of the view that the medical reports alone cannot act as definitive proof of cruelty being inflicted upon him by the appellant wife. The medical records at best, show that the respondent had suffered injuries due to an assault at a preceding period, but they fail to elaborate on who assaulted him and why. The only thing supporting his version of narration was his testimony. In the absence of any police investigation reports or police call records of the incident dated 05.07.2005, or independent witness, his statement alone cannot

be the sole reliance and this incident in isolation does not tantamount to cruelty under HMA.

42. The learned Family Court, in our opinion, failed to adjudicate upon these relevant factors and found the version of the respondent to be true and reliable solely on the basis of his testimony and the medical document placed on record. Therefore, this Court finds that the reasoning of the learned Family Court *qua* the aforementioned incident is improper and inadequate as the allegations are unattributed and unsupported by any other credible evidence.

43. Further perusal of the impugned judgment denotes that the learned Family Court has repeatedly derived at the conclusion that the appellant has failed to examine her family members and her neighbors. It is also stated that she has failed to produce relevant evidence on record including the medical records of her father and brother which indicates that her narration of the incident is tainted.

44. In matrimonial claims of cruelty, the settled position of law is that the burden of proof lies on the petitioner who has leveled allegations of cruelty and not on the party against whom the allegations are made.

45. At this stage, it is pertinent to mention the judgment of the Supreme Court in ***Roopa Soni v. Kamalnarayan Soni,*** (2023) 16 SCC 615 wherein, it was held as follows:

> *"10. On the question of burden in a petition for divorce, burden of proof lies on the petitioner. However, the degree of probability is not one beyond reasonable doubt, but of preponderance."*

46. Furthermore, this Court *vide* judgment dated 01.07.2025, delivered in ***Deepti Khatana v. Rahul Khatana,*** 2025 SCC OnLine Del 6336, categorically held that in matrimonial cases, the burden of proving allegations of cruelty lies upon the petitioner who alleges the same. Relevant extract of the aforesaid judicial *dictum* is reproduced hereinbelow:

> *"28. In cases of cruelty, the entire case of a petitioner hinges upon the allegations of cruelty and proof of the same.* ***The burden of proof undoubtedly lies on a petitioner who alleges the same and the standard of proof required is preponderance of probability****. It is imperative to appreciate the cumulative effect of the conduct of the parties and the happenings that occurred over a period of time in their matrimonial life to ascertain the ground of cruelty. It is required to be assessed that the conduct complained of must be serious and that it would be more tragic for the petitioner to live with the respondent. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status."*
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> ***(Emphasis Supplied)***

47. The duty of first proving the incidents undoubtedly was on the respondent herein which was required to be assessed cautiously. In the present case however, we find that the learned Family Court has, without any compelling reasons, placed this burden on the appellant wife and has drawn adverse inference against her on various accounts.

48. Insofar as the claim of the respondent that the appellant was disinterested in engaging in sexual activities with him is concerned, the learned Family Court chose not to delve into it holding that since

such allegation, even if true, could not have been proved by the respondent for it being a closed-door matter.

49. In the present case, the marriage between the parties was clearly consummated and within 11 months of their marriage, a child was born to them on 11.10.1998, who unfortunately passed away on the same date. The parties were thereafter, blessed with two children, one boy who was born on 14.10.2000 and a girl child who was born on 14.10.2002. Keeping in view the above-stated facts, this Court accedes to the argument made on behalf of the appellant that the allegation of cruelty alleging that the appellant kept avoiding sexual intercourse and kept anti-pregnancy pills with her, without naming the pills, is without any substance.

50. The learned Family Court has disregarded these material facts and legal principles. Accordingly, this Court is of the considered view that the impugned judgment fails to address several crucial aspects and the reasoning adopted by the learned Family Court also lacks support of other cogent evidence which ought to have been considered by it during the adjudication of the divorce petition.

51. As per the catena of judgments with regard to cruelty passed in ***Dr. N. G. Dastane v. Mrs. S. Dastane***, (Supra); ***V. Bhagat v. D. Bhagat***, (Supra); ***Parveen Mehta v. Inderjit Mehta***, (Supra) and in ***A. Jayachandra v. Aneel Kaur*** (Supra), we are of the opinion that instances of cruelty in terms of Section 13(1)(ia) of the Act, is required to be considered as a cumulative effect on the marriage as there is no straitjacket formula to consider the claims of cruelty. Mere small trivial irritations and small quarrels in a married life are normal

wear and tear of married life and the same cannot be considered adequate for grant of divorce under the HMA. We do not find any other grave allegations which led the Family Court to come to the conclusion that the appellant treated the respondent with such a cruelty that it becomes impossible for him to live with the appellant.

52. The learned counsel for the respondent has informed this Court during arguments that the respondent has re-married. However, as we have come to the conclusion that the impugned judgment has been passed erroneously, without correctly appreciating the evidence on record, the fact that the respondent has re-married would not deter us from passing an order in this appeal and setting aside the impugned judgment passed by the learned Family Court.

53. Accordingly, the present appeal is allowed. The impugned judgment and Decree of Divorce dated 28.11.2011 passed by the learned Judge-01, Family Courts, Rohini Courts, Delhi are hereby set aside.

54. Further, it is noted that no reliefs have been sought for setting aside of the findings *qua* the disposal of petition of the appellant filed under Section 9 of the HMA.

55. Pending applications, if any, also stands disposed of.

VIVEK CHAUDHARY, J.

RENU BHATNAGAR, J.

APRIL 13, 2026/*p/sm/kp*