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

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..... Appellant

Through: Mr. Chirag Khurana, Advocate

versus

..... Respondent

Through: Mr. Nikhil Bhardwaj, Advocate
with respondent in person
Ms. Rushali Agarwal, Mr. Harshit
Goel and Mr. Yashwanth Singh,
Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The petitioner/appellant (*petitioner in the divorce petition hereinafter referred to as the 'appellant'*) has filed the present appeal against the judgment dated 07.02.2019 vide which his petition for divorce under Section 13 (1) (ia) & 13 (1) (ib) on the ground of cruelty and desertion has been dismissed.

2. The *facts in brief* are that the appellant got married to the respondent on 29.05.2001 according to the Hindu Custom and Rites. According to him within four months of marriage, the behavior of the respondent/wife became aggressive and within six months she informed



him that she was not willing to live with the appellant. Her family came and took her back to Delhi in February, 2002. The petitioner/appellant made sincere efforts in March, 2002 to convince her to join back the matrimonial home, but she refused as she and her family members wanted him to shift from Gujrat to Delhi and stay in their house as *ghar-jamai* to which he did not agree since he had aged parents to take care of.

3. It is further asserted that from their wedlock one daughter was born on 22.06.2002, but he was not informed about the birth of the child. He made an endeavor to meet the child on 06.04.2004 but was not permitted. He even approached the Gujrat Samaj Panchayat for resolution of their differences, but the respondent failed to appear before the Panchayat.

4. The appellant finding no way to bring her back filed a petition for divorce before the learned Civil Judge, Anand, Gujrat, but after the Notice was served, the respondent and the family members assured him that they would reconcile the differences and the respondent would join back the matrimonial home. Consequently, he did not pursue the Divorce petition which got dismissed in default on 06.04.2005.

5. The respondent thereafter, filed a criminal case under Section 498A/406 IPC making false allegations against the petitioner, but they have been acquitted in the said FIR No.85/2007 on 25.04.2016. A petition under Domestic Violence Act was also filed against the appellant after ten years of their marriage.

6. It is asserted that all his endeavours to reside as a family did not



yield any result. The respondent has been living away from the appellant since February, 2002. The appellant thus, sought divorce on the ground of cruelty and desertion.

7. **The respondent in her written statement** asserted that soon after the marriage, and she was harassed on account of dowry and demand for jewelry, clothes etc. Despite about Rs.8 lakhs having been spent on the marriage, the appellant and his family members did not like the dowry articles and refused to accept the same. It is with great persuasion that they accepted the gift articles after taking cash of Rs.50,000/-. It is further asserted that petitioner is a drunkard and treated her with cruelty. He used to beat her and not even provide her with the meals. She overheard the appellant and his family making a scheme to kill her. Faced with such adversity and cruel behavior, she left the matrimonial home on 17.03.2002.

8. The respondent had further asserted that when she was two month pregnant, she was forced to abort the first child. She thereafter, had a daughter despite which no efforts whatsoever was made by the appellant or his family members to ever come and visit the child or enquire about her well being. The respondent submitted that it was because of the cruel conduct and behavior of the appellant that she was forced to leave the matrimonial home. She denied having committed any cruelty towards the appellant.

9. **Submissions heard.**

10. Admittedly, the respondent and the appellant were unable to live in a conjugal relationship and the respondent went to her parental home



in February, 2002. Their daughter was born in the parental home of the respondent. According to the appellant he went to see the daughter in April, 2004, but was not permitted to meet her.

11. The appellant had made allegations of being subjected to cruelty and claimed that there existed no conjugal relationship. Moreover, there was insistence on part of the respondent and her family members that the appellant should shift to Delhi and live as *ghar jamai*.

12. In the case of Narendra vs K. Meena (2016) 9 SCC 455, it has been observed by the Supreme Court that asking a son to separate from his family amount to cruelty. It was stated that, for a Hindu son in India, it is not a common practise or desirable culture to get separated from his family after marriage. A son has a moral and legal obligation to take care of his parents when they become old and have negligible or no income.

13. Thus, the insistence of the family of the Respondent for the Appellant to abandon his parents and become a 'Ghar Jamai' and live in their house amounts to cruelty.

14. The consistent testimony of the appellant is that after the respondent left in February, 2002, all his efforts to bring her back to the matrimonial home did not materialize. He even approached the Gujrat Samaj Panchayat for reconciliation, but the respondent did not come forth. The respondent also had similarly alleged that she had approached the Panchayat, but nothing fruitful came out. It is also admitted that the respondent had filed a criminal case under Section 498A/406/34 IPC in the year 2007. Admittedly, the appellant has been acquitted in the said



case. Likewise, the petition under Domestic Violence Act had been filed by the respondent. From the conduct of the respondent, who had made complaints against the petitioner, it can be inferred that she had no intention to resume her relationship with the petitioner.

15. The term "*conjugal*" as defined in Merriam Webster dictionary means "*of or relating to the married state or to married persons and their relations*" while cohabitation means "*to live together as or as if a married couple*".

16. "*Cohabitation*" and "*Conjugal relationship*" are the essence of a marriage was discussed in Law Commission 71st Report on the Hindu Marriage Act, 1955, "*Irretrievable Breakdown of Marriage as a Ground for Divorce*", where it was provided that:

"6.5 ...Moreover, the essence of marriage is a sharing of common life, a sharing of all the happiness that life has to offer and all the misery that has to be faced in life, an experience of the joy that comes from enjoying, in common, things of the matter and of the spirit and from showering love and affection on one's offspring. Living together is a symbol of such sharing in all its aspects. Living apart is a symbol indicating the negation of such sharing. It is indicative of a disruption of the essence of marriage — "breakdown"—and if it continues for a fairly long period, it would indicate destruction of the essence of marriage— "irretrievable breakdown"."

17. It needs no reiteration that the bed rock of any matrimonial relationship is cohabitation and conjugal relationship. The gravamen of any marriage is the succor and the peace that the couple derive from the company of each other. The very fact that the parties were able to live together barely for six months and since February, 2002, they have been



living separately proves that the parties were unable to sustain their matrimonial relationship. For a couple to be deprived of each other's company, proves that the marriage cannot survive, and such deprivation of conjugal relationship is an act of extreme cruelty.

18. The Apex Court in the case of Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511 laid down certain guidelines with respect to Section 13(1)(i-a) of the Hindu Marriage Act and observed that in a marriage where there has been a long period of continuous separation as it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties and can be termed as mental cruelty.

19. While referring to the case of Samar Ghosh (supra) the Apex Court in the case of Gurbux Singh vs Harinder Kaur (2010) 14 SCC 301, observed by that while trivial irritations, quarrels, normal wear and tear of married life which happens in day to day life in all families would entitle a party to a decree of divorce on the ground of cruelty; continuing and subsisting unjustifiable and reprehensible conduct which affects the physical and mental health of the other spouse may lead to mental cruelty.

20. Further, it has come in the evidence that the case under Section 498A/406 IPC has ended in acquittal of the appellant. The respondent had claimed that she was being beaten and subjected to acts of cruelty, but has not been able to substantiate it with any incident. The making of



false complaint in itself is an act of cruelty. Though the acquittal under Section 498A/406 IPC in itself may not be an act of cruelty, but the onus was on the respondent to establish that she was subjected to cruelty or had any cogent reason to live separately from the appellant/ husband.

21. This Court in the case of Nishi Vs. Jagdish Ram 233 (2016) DLT 50 held that the filing of false complaint against the husband and his family members constitutes mental cruelty. In the case of K. Srinivas Vs. K. Sunita (2014) 16 SCC 34, the Apex Court held that filing of the false complaint against the husband and his family members also constitutes mental cruelty for the purpose of Section 13 (1) (ia) of the Hindu Marriage Act.

22. Similarly, it has been held by the Supreme Court in Mangayakarasi v. M. Yuvaraj (2020) 3 SCC 786, that an unsubstantiated allegation of dowry demand or such other allegations made against the husband and his family members exposed them to criminal litigation. Ultimately, if it is found that such allegations were unwarranted and without basis, the husband can allege that mental cruelty has been inflicted on him and claim a divorce on such a ground.

23. Hence, the false complaints filed by the wife against the husband, constitute mental cruelty against the husband.

24. It is also pertinent to refer to the testimony of the appellant who has deposed that respondent is in a live-in relationship with one Anil Kumar with whom she has a joint bank account in HDFC, a fact which has been admitted by the respondent. She had tried to explain by asserting that Anil Kumar is a brother and since she did not have any



Identity Card or Voter's Card to get a bank account opened, she had used the identity of Anil Kumar for opening the bank account pursuant to the directions of the Court. This could have been best supported by examining Anil Kumar but no cogent evidence has been led by the respondent to rebut the testimony of the petitioner.

25. Likewise, the respondent had alleged that appellant has got married again during the subsistence of this marriage in the year 2015 and has a child from his second marriage. The appellant admitted having a child but claimed that he has not married the women, but is in a live-in relationship.

26. Learned Judge, Family Court has aptly observed :

“in case of long marital separation due to discord and protracted litigation, the parties are bound to feel depressed, lonely and deprived of sexual appetite. What would happen if during the pendency of the matrimonial proceedings, one or other party indulges in a relationship outside the wedlock?”

27. Here is the case where long separation has forced both the appellant and respondent, to apparently find companionship in a third person. Be that as it may, it is evident that the evidence on record sufficiently proves that the respondent had withdrawn from the company of the appellant for which she has not been able to give any cogent reason. Both petitioner and respondent may have got into a relationship during the pendency of the proceedings, but the fact remains that on the date of filing the petition, the respondent had withdrawn from the company of the petitioner for no cogent reason. Considering the entire evidence, it is proved that the parties had drifted away and that



respondent has deserted the petitioner/ appellant without any reasonable cause.

28. We hereby set aside the impugned judgment dated 07.02.2019 and allowed the petition under Section 13 (1) (ia) & 13 (1) (ib) grant the divorce on the ground of cruelty and desertion.

29. We may note that on 06.07.2023 it was submitted on behalf of the respondent that the appellant was drunkard and unemployed and unable to support the respondent and the daughter. The respondent further submitted that the appellant has remarried and is having two children from the second wife. The children from second wife have become the liability of the grand-father i.e. appellant's father, who is a pensioner. In addition to these liabilities, the appellant's father also has a wife and appellant's sister who is mentally challenged. It was the father of the appellant who is sustaining and maintaining the respondent and the daughter. Respondent with her daughter who were present, further informed this Court that for the last three months, they could not pay the rent of the accommodation which is Rs.8,500/- per month. A suggestion was mooted that the respondent may apply for allotment of a flat in EWS Category but for the same BPL Card was required.

30. We may mention that pursuant to the order dated 01.08.2023, the Food & Supply Officer was present in Court and informed this Court that he has not received any application for BPL Card from the respondent.

31. Learned counsel for the respondent has fairly conceded that they got the Income Tax Certificate issued from the concerned SDM,



however, they are collecting other documents which are required for applying for the BPL Card and thereafter, they shall move the said application.

32. The Food & Supply Officer has assured that the BPL Card shall be issued within 15 days as and when application is received from respondent.

33. Mr. Sunil Mittal, learned Sr. Advocate, who is present in Court, has come forward and voluntarily agreed to pay three months' rent total amount of Rs.25,500/- to the respondent.

34. We appreciate the magnanimous gesture of learned Senior Counsel for his support to a family who by the circumstances, have been pushed into a state of penury.

35. Accordingly, we allow the present appeal and grant divorce under Section 13(1)(ia) and Section 13(1)(ib) of HMA. The pending application is also disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 11, 2023/va