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

% *Date of decision: 22nd August, 2023*

+ **MAT.APP.(F.C.) 173/2022 & CM APPLs. 47886/2022, 47888/2022**

..... Appellant

Through: Mr. Pradeep Kumar, Advocate.
versus

..... Respondent

Through: 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 (oral)

SURESH KUMAR KAIT, J

1. The appeal has been preferred on behalf of the appellant/wife against the judgment dated 11.11.2021 passed by the Ld. Principal Judge, Family Courts, South West District, New Delhi vide which respondent/ husband's petition u/s 13 (1)(i -a) of Hindu Marriage Act, 1955 for divorce on the ground of cruelty has been allowed and marriage between the appellant and respondent dissolved.
2. The *facts in brief* are that parties to the present Appeal got married on 24.11.2012 according Hindu rites & customs. There is no child from the said wedlock. The appellant left the matrimonial home on 19.02.2014 and is residing separately since then.
3. The respondent/husband in his petition for divorce asserted that the Appellant herein subjected him and his family members to various acts of cruelty elucidated as under:



- (i) On the first night of marriage, the appellant bolted the respondent inside the room and she remained out throughout the night. The appellant was not interested in establishing sexual relations with him.
- (ii) The appellant refused to prepare food and do household work and raised quarrels in the evening when the respondent returned home.
- (iii) She frequently visited her parental home without informing the respondent and his family members.
- (iv) She threatened to commit suicide and implicate the respondent and his family in false cases. On 21.02.2014, she falsely implicated the respondent and his brother in a rape case vide FIR No. 114/14 at P.S. Dabri, in which they have been acquitted. She had filed another case of Domestic Violence to further harass the respondent and his family.
- (v) The behaviour of the appellant towards the respondent was very cruel and she harassed him often, picked up fights and physically abused him. She further threatened to mix poison in the food and kill the respondent and his family members.

4. In her **Reply/Written Statement**, the appellant/wife alleged that the respondent and his family were greedy in nature and harassed her for insufficient dowry and subjected her to cruelty. She further stated that her mother in law took all her jewellery on the pretext of keeping them in safe custody.

5. The appellant alleged various acts of cruelty, namely:

- (i) The appellant despite being handicapped was made to do all household work, and was treated like a servant of the house by the respondent and his family members;



- (ii) The respondent never performed his matrimonial obligation towards the appellant and did not give her the status of his legally wedded wife;
- (iii) That on 17.02.2014, the brother in law of the Appellant entered into her room at around 7:30 am and committed rape on her. Thereafter, she was locked in the room and threatened with dire consequences upon disclosure of the said incident to anyone;
- (iv) The appellant/wife asserted that the respondent and his family members used to taunt the respondent for being handicapped and for bringing insufficient dowry which caused her mental, physical and emotional cruelty.
- (v) The appellant was subjected to merciless beatings on account of non- fulfilment of demands, by the respondent and other family members. On 19.02.2014, the Appellant suffered fractures in her lower jaw for which she underwent prolonged treatment at various Government Hospitals.
- (vi) On the night of 04.06.2013, the appellant was beaten up by the respondent mercilessly with fist blows and kicks, and an attempt was made to forcefully make her drink urine. On the next morning, when the father of Appellant came to take her back to her parental home, he was also abused and misbehaved with. A Panchayat was called on 15.12.2013 by the father of appellant, but they got no proper response from the respondent and his family members. In the month of January, a Notice was sent by the respondent and on 02.02.2014, a meeting was organised in the house of appellant where the respondent and his family members apologized for his misconduct



and acts of cruelty and the respondent withdrew the Notice of January 2014 containing false and frivolous allegations. The respondent also assured to take the Appellant back and keep her happy. However, the situation in the matrimonial home did not improve and again on 15.02 .2014, Panchayat was called wherein the father of the respondent offered money to the father of the appellant to cover the marriage expenses, as the mental state of the respondent was not stable but the same was denied by the father of the appellant.

(vii) Because of the above incidents of cruelty, she was compelled to lodge FIR No.114/2014,U/s 498-A/323/376/341/34 IPC against the respondent, which was decided vide judgment dated 22.11.2014 by the Ld. ASJ (Special fast Track Court), South West District, Delhi acquitting the accused persons. An appeal against the said judgment is pending adjudication before this Court.

6. On the pleadings of the parties, following issues were framed:-

- i. Whether the respondent after solemnization of marriage, has treated the petitioner with cruelty? OPP*
- ii Whether the petitioner is entitled to a decree of divorce as prayed for? OPP*

7. The Learned Principal Judge on appreciation of the evidence led by both the parties observed that the respondent and his brother were charged u/S 498-A/323/376/341/34 IPC by the appellant, though were acquitted by the Ld. ASJ, (Special Fast Track Court), Dwarka Courts, New Delhi vide judgment dated 22.11.2014 with the observations that the allegations seemed “patently apocryphal”. Such implication of the respondent/husband and his



brother for an offence u/S 376 D IPC, on proven false allegations, was held to amount to cruelty.

8. The respondent had stated in his deposition before the Ld. Principal Judge, Family Court that appellant did not allow consummation of marriage on 25.11.2012 and thereafter never cooperated in cohabitation and slapped and kicked the husband whenever he sought to establish sexual relations. Learned Principal Judge, Family Court recorded that no specific denial was made by the appellant herein to the testimony of the respondent in her written statement, deposition or cross examination of the respondent herein. It was concluded that though the plea of the respondent regarding non-consummation of marriage was decimated, however the plea that appellant did not allow him to have sexual intercourse remained unshaken and stood proved. Learned Principal Judge, Family Court in view of the absence of specific denial in terms of Order VIII Rule 5, CPC held that denial of sex by one spouse to the other without any justification, amounts to cruelty.

9. Further, the Ld. Principal Judge in view of the hostility and acrimonious relationship between the parties, coupled with the fact that they are living separately since February 2014, and had previously stayed for merely two months together (from 24.11.2012 to 21.02.2014), held the marriage to have broken down irretrievably. Learned Principal Judge thus concluded that the respondent was entitled to a decree of divorce under section 13 (1)(i -a) of Hindu Marriage Act, 1955 on the ground of cruelty.

10. Aggrieved by the said judgment, the present appeal has been preferred.

11. Submissions heard.



12. Admittedly, the parties had got married on 24.11.2012 according to Hindu Customs and Rites and for the various reasons claimed by either party, the appellant wife left the matrimonial home on 19.02.2014. The respondent had deposed that appellant had not allowed the consummation of marriage on 25.11.2012 and thereafter she never cooperated in cohabitation and slapped and kicked him whenever he sought to establish sexual relationship. Though the respondent had asserted that there was no consummation of marriage but his own subsequent pleadings reflected that the appellant used to resist his endeavour for sexual intercourse and was always reluctant. Moreover, the respondent himself had deposed that he had asked appellant to accompany him to the doctor since they were not having a child. The learned Principal Judge has rightly referred to the respective testimony of the parties to conclude that there was no evidence to show that the marriage was not consummated but there was sufficient evidence to prove that there was reluctance on the part of the appellant who was never forthcoming for cohabitation.

13. In Mrs. Rita Nijhawan vs. Mr. Bal Kishan Nijhawan, AIR 1973 Del 200 it has been observed that cohabitation is a necessary element for sustenance of marriage. This observation was endorsed by the Apex Court in case of Vinita Saxena vs Pankaj Pandit (2006) 3 SCC 778 which observed as under :-

“Marriage without sex is an anathema. Sex is the foundation of marriage and without a vigorous and harmonious sexual activity it would be impossible for any marriage to continue for long. It cannot be denied that the sexual activity in marriage has an extremely favorable influence on a woman's mind and body the result being that if she does not get proper sexual satisfaction it will lead to depression and



frustration. It has been said that the sexual relations when happy and harmonious vivifies woman's brain. develops her character and trebles her vitality. It must be recognised that nothing is more fatal to marriage than disappointments in sexual intercourse”.

14. The parties herein have barely been able to live together for about thirteen months and have not been able to sustain their matrimonial relationship. For a couple to be deprived of each others company and conjugal relationship is an extreme act of cruelty as has also been endorsed by the Apex Court. It needs no reiteration that the bed rock of any matrimonial relationship is cohabitation and conjugal 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.

15. Further, it is not denied that the FIR No. 114/2014 under Section 498-A /323/376/341/34 IPC had been filed against respondent and his brother with the rape allegations. However, the FIR ended in acquittal vide judgment dated 22.11.2014 by the learned ASJ, South-West District, Dwarka Courts, New Delhi which exonerated the respondent and his brother of all the allegations made therein. The appellant has pursued her allegations by filing an Appeal against the Order of acquittal which is pending in this Court. Even though an appeal has been preferred, but this does not wash out the observations of the learned ASJ that the allegations were manipulative and false. Significantly, it has also emerged in the evidence that the appellant had consulted the lawyer before making the complaint on which FIR was registered. It cannot be overlooked that making serious allegations of not only dowry harassment but of rape against the family members of the



respondent which are found to be false, is an act of extreme cruelty for which there can be no condonation.

16. 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.

17. 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. This Court in the case of *Nishi vs. Jagdish Ram* 233 (2016) DLT 50 made similar observations.

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

19. The respondent has also claimed that since the day of marriage, the appellant failed to discharge the household duties and frequently visited her parental home without informing the respondent and his family members. She even threatened to commit suicide and implicate the respondent and his family members in false cases. Her behaviour was cruel and she would often pick fights with him and physically abused him. She even threatened to mix poison in the food and kill the respondent and his family members.

20. The appellant in her Written Statement had made counter allegations that she was being harassed by her mother-in-law who treated her as a servant and she was harassed, humiliated and tortured physically, mentally



and emotionally. On the evening of 13.01.2013, the mother-in-law asked appellant to massage her legs but the appellant was not willing to, given her inability on account of ill health. She was given beatings and was locked in the room and on the morning of the next date, the appellant was left at her parental home.

21. It is an admitted fact that a Panchayat was called on 05.04.2013 and with their intervention, the matter was amicably settled and she went back to her matrimonial home. However, she returned to her parental home after one month. Two Panchayats were set up to resolve their disputes. The appellant herself admitted that she gave her written apology dated 15.12.2013 “Ex. RW-1/X1”. In the said apology letter it was indicated by her that she was very happy in her matrimonial home but after 5-6 months, she had altercations with the respondent on some matter, the respondent slapped her on which she gave him a kick. Their fight got conveyed to her parents who brought her back and in anger she told them that she was not willing to return to her matrimonial home. She was counselled by her family members and she realised her mistake.

22. The apology letter Ex.RW1/X-1 clearly reflects that there was no harassment as was being claimed by her and that she, upon realising her mistake, joined back the matrimonial home. However, the parties could not still reconcile and she admittedly came back to her parental home on 19.02.2014 and made a complaint under Section 498A/323/376/341/34 IPC on the basis of which the FIR was registered on 21.02.2014.

23. The testimony of the appellant reflects that she had an adjustment issue in the family of the respondent and there were disputes on trivial issues. In the case of *Samar Ghosh Vs. Jaya Ghosh* (2007) 4 SCC 511,



significant guidelines as to what must be the approach of the court to determine cruelty under Section 13(1)(ia) of the Act were defined. It was observed that what has to be examined is the entire matrimonial relationship as cruelty has to be gathered from injurious reproaches, complaints, accusations, taunts etc. During the entire matrimonial relationship, the individual instances or categorization of the acts as cruel is incapable of any straight definition. It is the effect of the conduct rather than its nature which is of paramount importance in assessing the complaint of cruelty. The Court must bear in mind the physical and the mental conditions of the parties as well as their social status and should consider the impact of the personality and the conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view and such conduct must be examined in the light of the capacity and endurance of the complainant and to what extent such capacity was known to the other spouse. Malevolent intention is not essential to cruelty but it is an important element where it exists.

24. The Apex Court in *Samar Ghosh* (supra), further observed with respect to Section 13(1)(i-a) of the Hindu Marriage Act that in a marriage where there has been a long period of continuous separation 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.

25. While referring to the case of *Samar Ghosh vs Jaya Ghosh* (2007) 4 SCC 511 the Apex Court in the case of *Gurbux Singh vs Harminder Kaur*



(2010) 14 SCC 301, observed by that while trivial irritations, quarrels, normal wear and tear of married life which happens in day to day life in all families would not entitle a party to a decree of divorce on the ground of cruelty; continuing and subsisting unjustifiable and reprehensible conduct which affects the physical and mental health of the other spouse may lead to mental cruelty.

26. In the present case, indisputably parties are residing separately since 2014 which proves that they are unable to sustain matrimonial relationship thereby depriving each other from mutual companionship and conjugal relationship. Such separation of almost 9 years is an instance of utmost mental cruelty, asking for immediate severance of matrimonial relationship on the ground of cruelty u/S 13(1)(ia) of the Act.

27. Learned Principal Judge, Family Court has therefore rightly concluded that the respondent was entitled to divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

28. We find that the impugned Order does not suffer from any infirmity and the appeal along with the pending applications is hereby dismissed.

**(SURESH KUMAR KAIT)
JUDGE**

**(NEENA BANSAL KRISHNA)
JUDGE**

AUGUST 22, 2023

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