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

% *Date of decision: 15th September, 2023*

+ [REDACTED] **MAT.APP.(F.C.) 80/2019** Appellant
 Through: Mr.Sahil Garg, Mr.Shikhar Singhal,
 Mr.Prageet, Advocates.
 Versus
[REDACTED] Respondent
 Through: Mr. Rachit, Advocate.

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. An appeal under Section 19 of the Family Courts Act, 1984 has been filed by the appellant/ wife against the judgment dated 18.01.2019 granting divorce under Section 13 (1)(ia) of the Hindu Marriage Act, 1955.
2. The parties got married on 24.11.2012 according to Hindu customs and rites at Palwal, Haryana and no child was born from the wedlock. According to the respondent/ husband, there was no dowry demand made either before or after the marriage. After the solemnization of marriage, the appellant came to reside with the respondent and his parents, while his elder brothers were living separately. The respondent has submitted that after one month of marriage in December, 2012 the appellant claimed that she cannot do the household work including cooking, washing clothes, sweeping and cleaning and was also unable to take care of the parents of the respondent. She also insisted on having a separate residence, but the respondent was not willing to separate from his parents. All efforts by respondent and his



parents to make the appellant understand, did not succeed.

3. The parents and relatives of the appellant were also called in January, 2013, but instead of trying to make the appellant understand, they took her side. They also laid a condition that the parents of the respondent should provide separate residence to the appellant and the respondent to ensure that they can live peacefully. When the respondent and his parents refused to do so, they threatened to implicate them in a false dowry case. In February, 2013 again the appellant threatened the mother-in-law and told that she would not do the household work. The respondent apprehensive of any allegations that may be made against him, made a complaint to the higher authorities of Police in May, 2013, though no action was taken.

4. On 23.09.2013 the appellant locked herself in a room and attempted suicide. The mother of the respondent called the PCR and the police officials broke open the door and saved the life of the appellant. Thereafter, the appellant got registered an FIR under Section 498-A/406/506 IPC and also filed a petition under Domestic Violence Act.

5. In an effort to compromise the respondent even approached the Delhi Government Mediation Centre, but in vain. The respondent asserted that he had been subjected to cruelty and the appellant has deserted him, consequently, sought divorce on the ground of cruelty and desertion.

6. The **appellant in her response** denied all the allegations made against her that she refused to do the household work or wanted division of property or separate residence. On the contrary, it was her claim that she was harassed for dowry demands despite her family having spent Rs.20 Lakhs on her marriage. It was further alleged that the articles that were brought in dowry were not to the satisfaction of the family members of the



respondent who started putting pressure on her to claim a share in her father's property. The appellant further asserted that she had no intention to initiate any criminal litigation against the respondent and his family members, but was compelled to do so because of the cruelty to which she was subjected by them.

7. The appellant further stated that a Civil Suit No. 1019/2013 for restraining the appellant from joining the matrimonial home was also filed by the respondent's father. She further claimed that the respondent had written a complaint to the police on 29.05.2013 which was full of lies and no incident as stated therein ever happened.

8. In regard to the incident of 23.09.2013 it has been explained by her that the respondent had abused her in a filthy language and misbehaved with her on the previous night i.e. 22.09.2013. Her two *jethanis* also slapped her and the two brothers of the respondent had kicked her and it is only in order to save herself that she had locked herself in the room. It was claimed that the respondent was not entitled to divorce.

9. The learned Principal Judge in the impugned judgment made a reference to the alleged cruel acts of harassment by way of refusing to do the household work or showing respect to the parents of the respondent and other family members, but termed them as an ordinary wear and tear of marital life. The learned Principal Judge, Family Court essentially relied on the incident of 23.09.2013 wherein the appellant had locked herself in a room in an attempt to commit suicide and had concluded that such threat and conduct of the appellant was sufficient to instill fear in the mind of the respondent and his family members, which amounted to cruelty. It was concluded that the conduct of the appellant was within the scope of cruelty



entitling the respondent to divorce under Section 13 (1)(ia) of HMA and the divorce petition was allowed. Being aggrieved the present appeal has been filed by the appellant.

10. **The submissions heard** in length advance by the learned counsel for the parties.

11. Admittedly, the parties had got married on 24.11.2012 and they had no child from the wedlock. It is also not disputed that the appellant has been residing separately from the respondent since 23.09.2013. The marriage of the parties, therefore, did not survive for even about ten months.

12. The respondent had claimed that within a month of marriage, the appellant refused to do the household work or to give respect to his parents or family members. This led to a discord which found its manifestation when the family members of the respondent were called in January, 2013, February, 2013, April, 2013 and May, 2013 to sort out the differences. It is quite evident from the evidence on record that there were differences and every month efforts were being made between the families of the parties to reconcile the differences. The issues may apparently appear to be normal wear and tear of marital life, but the fact remains that the appellant was unable to adjust in matrimonial life, leading to day to day differences and thereby creating an element of dissatisfaction and apprehension in the mind of the respondent. So much was the apprehension of false implication that the respondent made a complaint to the senior Officers of the Police on 29.05.2013 apprehending false implication at the hands of the appellant. All these facts have not been denied by the appellant.

13. It is also pertinent to mention that various efforts were made for creasing out the differences as admittedly, a *Panchayat* was held within 3-4



month of their marriage i.e. on 06.04.2013, though it did not result in any fruitful solution. Not only this, the parties even approached the Delhi Government Mediation Centre wherein they arrived at a Settlement on 15.06.2013 agreeing to sort out their differences in an endeavour to live happily. In the said Settlement there is also a mention of a compromise between them before the Police on 14.06.2013.

14. The differences between the parties may have been on small issues, but it is clearly evident that they continued to persist and could not be resolved despite all efforts. These incidents when considered individually may be termed as ordinary wear and tear of matrimonial life but their consistent persistence for months with no solution despite efforts can only be termed as creating mistrust, unhappiness and uncertainty in the matrimonial relationship leading to mental trauma.

15. Every marriage rests on mutual trust, affection, compatibility, congeniality and consanguinity. The respondent, whether at home or place of work was constantly apprehensive if things would be alright at house, or would he face some adverse incident. Such lingering disquiet in the mind of person not only deprives person of mental peace but is a constant source of mental agony and trauma. Furthermore, such were the differences that they were led to the inevitable separation since 23.09.2013 and despite ten years having elapsed, there is no possibility of reconciliation.

16. The very fact that the parties were able to live together barely for ten months and since 23.09.2013, 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 and of conjugal relationship, is an act of extreme cruelty.



17. 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 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.

18. While referring to the case of Samar Ghosh (supra) the Apex Court in the case of Gurbux Singh vs Harminder Kaur (2010) 14 SCC 301, observed 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; however, continuing and subsisting unjustifiable and reprehensible conduct which affects the physical and mental health of the other spouse may lead to mental cruelty.

19. In the present case from the facts which are not seriously disputed, we find that there could not be any trust developed between the parties who continued to have persistent differences which clearly reflected not only in incompatibility but also created an apprehension of false implication in criminal cases in the mind of the respondent. So much was the trauma of false implication which may even lead to incarceration that in order to save himself, he made a complaint dated 29.05.2013 to the Police. However, his fear of being embroiled in false implications turned into a reality when admittedly after about 4 months on 23.09.2013, the appellant was found locked in the room in an unconscious condition. The mother-in-law PW-2



Smt. Jaiwanti Bhardwaj, who was present in the house at that time has narrated the entire incident. She deposed that the appellant had locked herself into the room and was not opening the same despite all efforts. She ultimately called the PCR at Number 100 and it is only with the help and assistance of the Police that the door was broken open and the appellant was found in an unconscious state. She was immediately rushed to Holy Family Hospital, New Delhi where she was given the necessary treatment.

20. The medical papers Ex.RW-4/1 give the history of the appellant being found locked in her room and brought in a “mute and non-responsive state”.

21. There is no averment or alleged history of her having been beaten but what is stated is that there was “some quarrel with her husband”.

22. The appellant in her statement in the FIR dated 01.04.2014 asserted that because of the cruel behavior and taunts of the in-laws, she suffered mental trauma because of which she fainted on 23.09.2013. In the same complaint, she had further stated that on the next day of the incident, she had given her statement to the SDM, Defence Colony wherein she had stated that because of taunts of her husband, in-laws, brothers-in-law and their wives for not bringing sufficient dowry, she suffered mental trauma and was not able to eat her food properly because of which, she had fainted. Interestingly, in her Written Statement the appellant has claimed that on the previous night i.e. 22.09.2013 she had been beaten not only by the respondent, but his brothers and their wives and she had locked herself in the room to save herself. It is on this account that she had fainted on the next day i.e. 23.09.2013.

23. We find that there are contrary stands taken by the appellant according to her convenience in her statements made at different times.



There is no such suggestion in regard to her being subjected to beatings given either to the respondent or to the mother-in-law in their respective cross-examinations. It is also pertinent to note that even in the medical record there is nothing to reflect that either she was beaten up or was malnourished. The conduct of the appellant of locking herself in the room on 23.09.2013 was the ultimate act to reinforce the apprehension of the respondent that she may by her conduct get him involved in false cases. In every matrimonial relationship, the parties look for companionship, sharing mutual confidence and cohesiveness, but such kind of life permeated by all pervasive fear of false implication cannot in any way nurture a matrimonial relationship; the acts of appellant would certainly amount to cruelty.

24. In the same vein, it is also pertinent to mention that the appellant since the said incident of 23.09.2013 has been living separately in her parental home. She immediately thereafter filed a petition under Protection of Women from Domestic Violence Act and also made a complaint in CAW Cell which resulted in registration of FIR No.176/2014 under Section 498A/406/506 IPC. In her FIR, though allegations of harassment on account of dowry were made by the appellant who claimed that Rs.20 Lakhs were spent on her marriage, but she admitted in her cross-examination that her father was working in Bharat Aluminum Company Ltd. (BALCO) and had retired since long and had expired before her marriage. She further admitted that he had got his retirement benefits during his life time which were divided into four shares between herself, her sister and mother, but was unable to give the details of the amounts so received. The respondent had asserted that Rs.20 Lakhs that were spent in her marriage, was arranged by taking loans from various relatives, though again she was not able to give



any proof or furnish any detail of the same. Pertinently, she admitted that since their father had died, their family before marriage was being supported by the sister who was earning Rs.3000-4000/- per month by taking tuition. She had also been working and taking tuition. Considering the financial background and lack of evidence, it has to be concluded that having spent lavish money on the marriage or subsequent dowry demands, cannot be believed.

25. The appellant was also unable to submit any proof of the expenditure allegedly incurred in the marriage. It was claimed that a motor car was given in her marriage but during the cross-examination RW2 Sh. Dalip Kumar, her uncle admitted that only cash was given towards purchase of motor car. Though, various allegations of dowry demand and harassment had been made by the appellant, but she herself had admitted that no demand of dowry was made before or at the time of marriage; according to her all the demands had been made subsequent to the marriage. The appellant had not been able to substantiate any of her claims of dowry harassment.

26. From the evidence on record, it is evident that the appellant and her family were struggling to make the two ends meet, it is difficult to believe that they should have been able to spend money or give the dowry as has been asserted by the appellant.

27. Making such allegations which she had not been able to substantiate either in her pleadings or in her evidence, is a clear act of cruelty as has been held in the case of Jyoti Yadav vs. Neeraj Yadav 2022 SCC OnLine Del 795.

28. Learned counsel for the appellant had relied upon Sakatar Singh & Ors. Vs. State of Haryana (2004) 11 SCC 291, wherein, it was observed that



the erroneous inferences drawn on unproved facts and placing reliance on the statements of interested witnesses whose evidence has not stood the test of cross-examination, should not be made the basis for holding the accused guilty. However, in the present case, the learned counsel for the appellant has not been able to highlight which aspects of the conclusion of the learned Family Judge were not based on facts or were erroneous.

29. Learned counsel for the appellant has also relied upon the cases of A.E.G. Carapiet vs A.Y. Derderian, AIR 1961 Calcutta 359, Ashis Sen and Ors. Vs. Arun Kumar Bose and Ors. 2006 SC OnLine Cal. 131 and Ravinder Singh Vs. State (NCT of Delhi) (2013) 197 DLT 99 for the proposition that wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in the cross-examination, it must follow that he believed that the testimony given, could not be disputed at all. To put it differently, if the opponent asks no question to the witness produced by the prosecution, then it must be taken that the version of the said witness has been accepted by him. Learned counsel has not been able to show how these judgments are applicable to the facts of the present case.

30. In the end, learned counsel for the appellant has relied upon the judgment of the Co-ordinate Bench of this Court in X Vs. Y. MAT. APPL.(F.C.) 127/2022 decided on 27.07.2023 wherein it was observed that the High Court does not have any power akin to Article 142 of the Constitution of India to grant divorce on the ground of irretrievable breakdown of marriage. Again, this judgment is of no assistance to the appellant for the simple reason that the evidence as discussed above clearly reflects cruelty having been committed upon the respondent. The divorce was granted and is being upheld on the ground of cruelty and not on the sole



ground of irretrievable breakdown of marriage. The judgments so relied upon are distinguishable on facts.

31. From the above discussion we find that the learned Principal Judge, Family Court has rightly held that the respondent was subjected to cruelty and has granted divorce under Section 13 (1)(ia) of the HMA, 1956. There is no infirmity in the impugned Judgment and we hereby, dismiss the Appeal.

32. The pending applications, if any, also stand disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 15, 2023/va