



* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

*Reserved on: 5th January, 2024
Pronounced on: 22nd April, 2024*

+ **MAT. APP. (F.C.) 118/2022 & CM APPL. 34637/2022**
(Condonation of delay)



..... Appellant

Through: Ms. Juhi Arora and Ms. Saral Arora,
Advocates with appellant in person.

versus



..... Respondent

Through: Mr. Karmanya Singh Choudhary,
Advocate.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



Marriage is a relationship which flourishes when nurtured with absolute trust and compassion and a healthy relationship never demands sacrifice of one's dignity. Inevitably, it whittles down when sprinkled with accusations on character, fidelity and chastity of the spouse and becomes beyond redemption when the devastating effects of this one-sided barrage of accusations is topped with rejection of paternity and legitimacy of the innocent children, by their own father.

1. The present Appeal under Section 19 of the Family Courts Act, 1984, has been preferred by the appellant/petitioner, to challenge the impugned Judgment dated 31.10.2017 passed by the learned Judge, Family Court, Delhi *dismissing* the Petition bearing *HMA No. 623/17* (OLD NO. 162/10) under Section 13(1)(ia) of the Hindu Marriage Act, 1955, (*hereinafter referred to as the "Act, 1955"*), for divorce on the ground of cruelty.

2. The *petitioner (hereinafter referred to as appellant)*, a divorcee while working on deputation in Central Reserve Police Force in the year 2004, was contacted by the respondent and they both started having telephonic conversations. She met the appellant in September, 2004 at ISBT, Delhi, where they remained together for about 3-4 hours. After about one week of this meeting, the respondent expressed her affection for him. The appellant visited the respondent at her residence bearing House No. 96, MC Colony, Bhiwani, Haryana, where he found one "Mr. T" present, who was introduced as her brother-in-law.

3. The appellant claimed that while he was under the influence of alcohol, the respondent established physical relationship with him. Subsequently, in the month of November, 2004, she informed him that she



was pregnant and pressurised him to marry her. They got married on 01.01.2005, according to Hindu Rites and Customs at Arya Samaj Mandir, Najafgarh. Thereafter, the respondent revealed that she was not pregnant and had merely made false claims about her pregnancy to coerce him into marriage.

4. The appellant had further averred that the respondent, who was working in Government Department and was initially posted at Bhiwani, got transferred to Delhi on deputation in the year 2006 and was allotted Government accommodation. Since the day of transfer, the respondent started inducing the appellant, to resign from the Government Service and to do business at Delhi and also told him to claim his share in the properties of his parents. As a result of the inducement, the appellant resigned from his job and when he asked for his share in the ancestral property, his parents denied the same, as they were annoyed because the marriage was against their wishes.

5. The appellant has further averred that after the birth of the son on 24.01.2008, the parents of the appellant, accepted the respondent and asked the appellant and the respondent, to join them in their home, but the respondent flatly refused to meet the parents and asserted that until and unless half of the share in their properties was transferred in the name of her son, she would not meet them. She also threatened that if the appellant would meet his parents, she would insult them.

6. The appellant further asserted that the respondent had married him with the sole objective of grabbing his property. She neglected and abused the appellant and even threatened to commit suicide and implicate him and his family members in dowry death case.



7. The appellant has further asserted that since the time, he started residing with the respondent, the unethical conduct of the respondent created a suspicion in his mind and subsequently, was even confirmed from reliable sources that the respondent was a woman of dubious character and was having illicit relationship with many men. When the appellant tried to seek an explanation from the respondent in November, 2009, he was given merciless beatings and was threatened with dire consequences by some *gunda* type men at the instance of the respondent.

8. The appellant further averred that the respondent used to go to Ludhiana, Punjab, to meet Mr. Tribhuvan which became the cause of depression to the appellant. On his way to meet his brother in Ambala, he met with an accident on 17.03.2010, despite which the respondent failed to come to meet him. She came only on the next day i.e. 18.03.2010 and refused to contribute anything for his treatment. She, soon thereafter, left the hospital without caring for the plight of the appellant.

9. The appellant has further averred that on 10.06.2010, while he was totally confined to bed and was at the mercy of his old aged parents, the respondent apologised and the appellant went to reside in her house. However, on the same night i.e. 10.06.2010, the respondent bolted herself inside a room along with Mr. T, which caused him grave mental agony. On 11.06.2010, he was forcibly made to sign and put his thumb impressions on some blank papers and when he resisted, he was beaten up severely by the brother-in-law of the respondent. When he tried to protest and raise hue and cry, the respondent and her brother-in-law tied his mouth with a cloth and confined him to a room. On 13.06.2010 i.e. after three days, his parents came with medicine and medical papers but the respondent did not allow



them inside the house. It is only when his parents threatened to call the Police that he could be rescued from the illegal confinement of the respondent.

10. Again, on 16.07.2010, the respondent along with some anti social elements barged into the appellant's house and abused the appellant's aged parents. They could be saved only due to the intervention of some neighbours.

11. The appellant thus, claimed that he had been treated with cruelty and sought divorce on the ground of cruelty under Section 13 (1)(ia) of the Act, 1955.

12. **The respondent in her Written Statement** had a completely different story to tell. She admitted that they got married on 01.01.2005 at Arya Samaj Mandir, Najafgarh, but asserted that father and brother of the appellant, were the witnesses to said marriage.

13. The respondent has claimed that the interest of the appellant and his family members was only in extracting money from her. Immediately after the marriage, she paid a sum of Rs.2,55,000/- Rs.55,000/- and Rs.55,000/-, by way of three Demand Drafts dated 04.01.2005 and 06.01.2005, which was used to purchase a plot in the name of the sister of the appellant.

14. It is further averred that she was physically beaten and tortured as she was not able to bare the children and was made to undergo extensive tests without her consent. She was given taunts for not being able to bear the children. Subsequently, in the summer month of 2005, she was beaten by the appellant's father as he wanted money for construction of his shops in Gurgaon and she had to arrange a sum of Rs.50,000/-.

15. She asserted that she was posted at Bhiwani at the time of her



marriage, but was thereafter transferred to Chandigarh and then to Delhi. She remained in her parents-in-laws house in 2006 where she was abused in the most unparliamentary language and was permitted to stay only for about three weeks after she paid a sum of Rs.11,000/- to her mother-in-law. She was also subjected to physical and mental torture for having brought insufficient dowry. She thereafter, shifted to the Government house because of its proximity to her office. Even though she was earning only Rs.12,000/- per month, she was being subjected to severe torture to shell out money to the appellant. It is also claimed that the appellant had habit of consuming alcohol for which he used to demand money from the respondent.

16. The respondent had admitted that the appellant left his Government job in June, 2007 but asserted that the reason for his resignation was that his father wanted him to take care of the shops that he had in Gurgaon and to do the business.

17. The respondent has also submitted that at the time of birth of their son on 24.01.2008, the appellant was insensitive and made a demand of cash in the sum of Rs.10,000/- and when she was unable to meet his demands, he hit her in the hospital itself and created a public scene and abused her and also made allegations against her character. Again, on the occasion of 'Kuan Pujan' in March, 2008, further demands were made by the parents-in-law to pay Rs.10,000/- each totalling to Rs.1,50,000/- to all the relatives. When she refused to comply, she was again physically assaulted by her husband. She even made a complaint to the Police but subsequently resolved it in the interest of the family.

18. Further, hell broke loose when the daughter was born on 01.01.2010 as the girl child was not acceptable to the appellant and his family members.



She was made to pay for her own hospital bills and to get herself discharged with the help of her mother. On her return to official quarters, she was not permitted entry into the house but when she insisted, she was pulled inside the house and given severe beatings by the appellant. The Police was called again but on their intervention and the assurances given by the appellant, she did not pursue her complaint.

19. The respondent has further explained that on 06.03.2010, the appellant poured hot oil on her body and she suffered minor injuries and consulted Doctor Mrs. Gupta, who gave her medicine for application.

20. The respondent has admitted that she got the information on 17.03.2010 about the accident of her husband/appellant but according to her, the accident had occurred because he was driving his vehicle in an inebriated state. She immediately reached the hospital and thereafter, got him admitted at Sonipat and thereafter at ISBT Trauma Hospital. When the husband was discharged from the hospital, the mother-in-law made it clear that she cannot meet the appellant *henceforth*. All her efforts to meet the appellant including Police complaints and opposition met with failure. In September, 2010, the Divorce Petition had been filed by the appellant.

21. She denied that she was ever subjected the husband to any cruelty rather she has been subjected to cruelty, dowry harassment, physical assault and also to false allegations of illicit relationship and denial of parentage of both the children. She submitted that the Divorce Petition was liable to be dismissed.

22. **The appellant in his Replication**, reaffirmed his assertions as made in the plaint.

23. On the basis of the pleadings, the issues were framed on 18.12.2012,



which are as under:-

- “1. *Whether the petitioner is entitled to the decree of divorce on the ground of cruelty? OPP*
2. *Relief.*”

24. The appellant examined himself as PW-1 while the respondent appeared as RW-1, in support of their respective case.

25. **The learned Judge, Family Court** extensively considered the evidence of both the parties and concluded that the appellant had made serious allegations against the character of the respondent; so much so, he even declined the parentage of his two children and admitted in his evidence that he did not want to reside with the children. The appellant made false claim of adultery, which was not supported by any evidence whatsoever.

26. Moreover, his allegations of alleged acts of cruelty by the respondent, were vague, non-specific and general in nature. It was thus, concluded that it was the appellant, who has subjected the respondent to cruelty and that he was not entitled to divorce.

27. Aggrieved by the dismissal of the Divorce Petition, the present Appeal has been preferred by the appellant.

28. **Submissions heard and the evidence, record as well as Written Submissions perused.**

29. It is not in dispute that the appellant/petitioner was in Government service and was a divorcee, as he had taken divorce from his first wife *vide* Divorce Decree dated 04.03.2004, Ex-PW-1/R1. It is also not in serious dispute that the respondent contacted him through phone in the year 2004 and they continued to have regular telephonic conversations. Eventually they met physically for the first time in September, 2004, in Delhi when they



remained together for about 3-4 hours.

30. According to the appellant (*though denied by the respondent*), he also went to meet her in Bhiwani where he got intoxicated by the respondent. Subsequently, she made a false claim that the appellant had taken advantage of her and coerced him into marriage by claiming that she was pregnant, though she subsequently denied her pregnancy. Eventually, they both got married on 01.01.2005, according to the Hindu Customs and Rites at Arya Samaj Mandir, Najafgarh. Though the appellant had asserted that they both got married against the wishes of their family and that the wedding was attended only by his elder brother Mr. Ramvir Singh, but the Marriage Certificate Ex- PW-1/R-3 bears the signatures of the father as well as the brother of the appellant as witnesses, thereby reflecting that the family of the appellant was not against the marriage of the parties. Also, the appellant has not been able to prove his alleged visit to Bhiwani or being coerced into marriage.

31. The appellant has asserted that the respondent did not care for him as her sole intention was to grab the property of the appellant. From a perusal of the record, it is evident that that when the parties got married, they both were in Government job. The respondent was posted in Bhiwani at the time of the marriage and the appellant would go to stay with her whenever he had leaves from his job. The respondent finally shifted to Delhi in 2006 and took a Government accommodation where the appellant also started residing. Thus, the appellant stayed in the accommodation of the respondent for a substantial period of time.

32. Further, admittedly, in the year 2007, the appellant resigned from his job. It is also significant to observe that though the appellant had asserted



that he had been coerced and compelled by the respondent, to resign from the job as she wanted him to start some business but it does not appeal for the simple reason that there is no evidence that she had any business avenues in which she could get the appellant inducted. The respondent's assertion that the appellant left the job to take up the business/shops of his father, seems more reasonable an explanation as it is not in dispute that the father of the appellant had three shops in Gurgaon.

33. It is also pertinent to note that the appellant in his cross-examination, has admitted that after resigning from his job, he used to remain at home and take care of the household work.

34. The assertions of the appellant that he was not taken care of by the respondent, is not borne out from the evidence on the record. Rather, what emerges is that after leaving his job in 2007, he did not take up any gainful employment or had no reasonable source of income to take care of the household expenses. The appellant has admitted in his cross-examination that it was the respondent, who was taking care of all the household expenses and that he never contributed anything towards the maintenance of the children. It is evident that the appellant after having left his service, failed to take responsibility of the family and the respondent was left to not only suffer the financial burden, but had to struggle to take care of the children and the household responsibilities. Such neglect of the appellant without any reason, clearly reflects his indifferent conduct amounting to cruelty towards the respondent.

35. The respondent has further deposed that because she was in service, she was compelled to give money to the appellant and his family members from time to time. It is not denied by the appellant that the respondent soon



after the marriage, had given three cheques of Rs.2,55,000/-, Rs.55,000/- and Rs.55,000/- to the appellant *vide* two Bank Drafts dated 04.01.2005 and 06.01.2005, which were used by the appellant, to buy a plot of land in the name of his sister. It is further her deposition that when she shifted to Delhi in her parents-in-law's house pursuant to her transfer on 17.11.2006, she was able to stay only for a month in the house of the parents-in-law, after payment of Rs.11,000/-. She was also made to pay Rs.50,000/- in the summer of 2005, for the construction of the shop in Gurgaon. Moreover, on the occasion of 'Kuan Pujan' of her son after his birth in 2008, she was compelled to pay the money to the relatives of the appellant, which added up to Rs.1,50,000/-.

36. Finally, it is pertinent to observe that the appellant has consistently and persistently, adamantly raised doubts about the character of the respondent and has made unsubstantiated and reprehensible allegations against the character of the respondent and has asserted that she was having illicit relationship not only with one Mr. T (whom he had at some places claimed to be the brother-in-law of the respondent) but also with many other persons. He, however, admits in his cross-examination that he had never seen the respondent with any person in an objectionable condition.

37. Significantly, he also had asserted that on 10.06.2010, when the appellant was residing in her house, she, in the night had bolted herself in a separate room with Mr. T, which caused him grave mental agony. However, there is not an iota of evidence in this respect.

38. These false and completely unsubstantiated accusations of the appellant did not stop him in even blatantly denying the parentage of his own son and daughter when he deposed in his cross-examination that "I



have no faith that the children belong to me”. Such deplorable allegations and repudiation of the matrimonial bond and refusal to accept the children, who are innocent victims in the vile allegations made by the appellant, is nothing but the act of mental cruelty of the gravest kind.

39. The Supreme Court in the case of Vijay Kumar Ramchandra Bhate vs Neela Vijaykumar Bhate (2003) 6 SCC 334 the Court observed that such allegations, which constitute grave assault on the character, honour and reputation and health of the accused, amount to the worst form of cruelty. Such unsubstantiated assertions, being of a quality which cause mental pain, agony and suffering are sufficient by itself to amount to the reformulated concept of cruelty in matrimonial law.

40. Similar observations were made by the Apex Court in the case of Nagendra vs K. Meena (2016) 9 SCC 455.

41. The learned Family Judge has rightly observed that levelling of disgusting allegations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationship, constitute grave assault on the character, honour, reputation, status as well as mental health of the spouse. Such scandalous, unsubstantiated aspersions of perfidiousness attributed to the spouse and not even sparing the children, would amount to worst form of insult and cruelty, sufficient by disentitle the appellant from seeking divorce. This is one case where the appellant has himself committed the wrong and cannot be granted the benefit of divorce.

42. The relentless and incessant nature of the volley of allegations made by the appellant is also evident for the fact that initially, he had filed a Petition under Section 13(1)(i) of the Act, 1955 on the ground of adultery and cruelty with Mr. T. having been impleaded as respondent No. 2. It is



subsequently during the pendency of the proceedings, that the divorce on the ground of adultery and the name of the respondent No. 2 was deleted and the appellant confined his divorce on the ground of cruelty. We find that the learned Judge, Family Court, has given cogent reasons while dismissing the Divorce Petition, which does not merit any interference.

43. It is observed that the appellant has not been able to prove any of his allegations made against the respondent. He has made vague and general allegations regarding threats to commit suicide and implication in criminal cases. As discussed above, it is the respondent who has been subjected to cruelty and not the appellant.

44. We hereby dismiss the Appeal against the judgement dated 31.01.2017 dismissing the Divorce Petition under Section 13 (1)(ia) of the Act, 1955 on the ground of cruelty filed by the appellant, as without merit. The pending application also stands disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

APRIL 22, 2024/RS