



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

% *Reserved on: 21st September, 2023*
Pronounced on: 5th February, 2024

+ **MAT.APP.(F.C.) 229/2023, CM APPL. 4721/2015**

NIKHIL WADHAWAN Appellant
Through: Mr. Manish Goswami, Advocate.

versus

PRITI WADHAWAN Respondent
Through: Mr. Shivam Bharara, 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.

1. The present Appeal under Section 28 of the Hindu Marriage Act, 1955 (*hereinafter referred to as "HMA, 1955"*) has been filed on behalf of the appellant/husband against the Judgment and Decree dated 29.05.2009 whereby the divorce petition filed by the respondent/husband on the ground of cruelty under Section 13(1)(ia) of HMA, 1955, has been dismissed.
2. Briefly stated that parties got married according to Hindu customs and rites on 14.10.1999 and one son was born from their wedlock on 28.12.2000.
3. The appellant/husband had asserted in his *Divorce Petition* that after the marriage, he and his family member gave due regard, respect, love and affection to the respondent/wife despite which she did not reciprocate the same sentiments towards him and his family members. Immediately after the



marriage on 16.10.1999, the *respondent started inquiring about the assets and business of the family of the appellant* which caused a mental alarm in his mind. He assured her that he would take care of all the basic needs, but she remained adamant. It is further asserted that the respondent had asked for a partition and share in the business of the father of the appellant on 01.03.2000 and on his refusal she had threatened to implicate him and his family members in false cases.

4. It was further alleged that the *respondent failed to discharge the regular household work*, so much so, that many a times he had to go to his office without food. The respondent even refused to take care of him when he was sick and told him that she did not care whether he lived or died. She had a habit of sleeping for long hours.

5. The appellant also claimed that *there was a constant parental interference of the respondent/wife* and she would tell everything that transpired in the matrimonial home to her parents, who in turn would confront him with the incidents. When the appellant asked the respondent to reduce the interference of her parents in their matrimonial life, she again misbehaved and extended threats to the appellant. She would frequently go to her parental home without informing while he went to his office. On her asking, her parents used to misbehave with the parents of the appellant.

6. The appellant had further claimed that on 21.06.2000 since he had a heavy schedule in his office, he left the respondent at her parental home. In the evening the respondent called him to pick her up from her parental house, but when he expressed his inability to take her back after returning from the office at 8 P.M., the father and maternal uncle of respondent came to their matrimonial home and misbehaved with the parents.



7. The appellant asserted that the *respondent demanded a separate accommodation* from the parents and when he refused, she misbehaved with him. On 29.08.2001, the respondent called the Police after he had left for his office and the parents and maternal uncle of the respondent in collusion with the Police arranged for the arrest of him and his parents. *The respondent also made a false complaint against them.* He was compelled by the Police to sign some blank papers and to take the respondent to a separate accommodation. They immediately shifted with the grandparents of the appellant at Kirti Nagar, Delhi from 30.08.2001. Thereafter, on 19.09.2001 they shifted to a rented accommodation in Janakpuri. On 05.10.2001 the respondent along with her parents and uncle came to his office and started quarrelling with him as to why he was not residing in the parental home.

8. It was further alleged that on 10.11.2001 when the parents of the appellant returned back home from Haridwar and tried to open the lock of their house, they found that the lock had been changed. They broke open the lock and on going inside, they found that their house had been completely ransacked and their valuable articles along with the jewellery of the mother, had been taken away. After sometime, respondent along with her father came to their house and admitted that they had visited the house behind them and broken all the locks. They threatened to lodge a false complaint against the appellant and his family members and to face the consequences. On 05.11.2001, the SHO again pressurized the appellant to stay at Kirti Nagar along with the respondent. He refused on account of the cruel acts of the respondent and his family members. On this, he was threatened by the SHO that he shall be put behind bars.



9. On 18.12.2001 the respondent came to the office of the appellant to pressurize him to live with her in Kirti Nagar and when he refused, she called some unsocial elements to damage his motorcycle and his office. They also went to the parental home of the appellant and threw stones and bricks on the doors and window panes and the cousin of the appellant called the Police. *On 25.12.2001 the respondent and her parents again started threatening the appellant for which he made a complaint to the Police.*

10. It is also asserted that after the birth of the son on 28.12.2000 the respondent misbehaved with his parents, when they went to the hospital to see the child. She even neglected to take care of the child to feed him properly or to change his clothes. All this was left for the appellant to take care. The appellant thus, sought divorce on the ground of cruelty.

11. The **respondent in the Written Statement** denied all the allegations made in the petition.

12. The **issues on the pleadings were framed** as under:

- (i) *Whether the Respondent has treated the petitioner with cruelty? OPP*
- (ii) *Relief.”*

13. The **appellant examined himself as PW1** while the **respondent appeared** in support of her case **as RW1**.

14. The **learned Additional District Judge** on appreciation of the evidence, **concluded** that though the appellant had deposed about all the incidents and cruelties as were asserted in his petition, but none of those incidents were suggested to the respondent in the cross-examination. Even though the respondent had not made a single averment against the appellant and had simply denied the allegations made by the appellant, it was for the



appellant to prove the acts of cruelty which he has failed to prove; therefore, the divorce petition was dismissed.

15. Aggrieved by the dismissal of the divorce petition, the present appeal has been preferred.

16. **Submissions heard and record perused.**

17. The parties admittedly got married on 14.10.1999 and one son was born from the wedlock on 28.12.2000. The parties separated on 19.09.2001 i.e. within two years of their marriage. The cruelty as alleged by both the parties thus, spans over a period of about two years.

18. At the outset, it is pertinent to observe that in the matrimonial cases essentially the parties are the witness to the events that happen in their life. In most of the cases it is their sole testimony of one party against that of the other and the difficult task of separating the truth like chaff from the grain falls upon the Courts. Essentially, it is the totality of the circumstances and the probabilities that need to be weighed on the anvil of probabilities, in arriving at a conclusion of truthfulness of the events as deposed by the parties.

19. In the present case as well, it is only the word of the appellant against the respondent about the alleged incidents. The first set of allegations made by the appellant/husband against the respondent/wife are that she refused to do the household work and failed to give any respect, regard, love and affection to the appellant. The respondent was in a habit of sleeping for long hours and would not even serve him with breakfast and many a times he had to go to his office without breakfast or his packed lunch. He narrated the specific incident of 28.08.2001, the appellant had requested the respondent to help his mother with washing of clothes since she was not well, but the



respondent instead of coming forth, started screaming and yelling at him in abusive language. The appellant deposed that on 25.09.2000 the appellant had fallen sick and requested the respondent for a glass of water to which she retorted that he would not die, if no water was served. The appellant has deposed that on 02.10.2000 the parents of the respondent came to their house and misbehaved. On 20.11.2000 the request to the respondent to prepare breakfast for him did it not meet her approval.

20. These incidents as narrated by the appellant may seem innocuous and subjective but the impact of such acts is to be assessed not from the standard of whether a reasonable person with normal sensibility would find the conduct to be cruel, but whether the conduct would be cruel to the aggrieved spouse in question as held in the case of *Dastane v Dastane* AIR 1975 SC 1534. It cannot be overlooked that the spouses who enter into a matrimonial relationship, do so with some expectation of mutual care, affection and camaraderie. The small incidents as narrated by the appellant in his testimony, may appear to be initial hiccups and adjustment issues but definitely create a roadblock in development of mutual trust and confidence on which the marriage ultimately survives. From the testimony of the appellant it is evident that much to his chagrin, he felt neglected and disrespected by the respondent.

21. The appellant has further deposed that the respondent used to frequently visit her parental home while he went to his office without giving any prior intimation to him. She was under immense parental influence who interfered in their matrimonial life. The father of the respondent wanted the appellant's parents to invest their money in the chit fund/committee business of the parents of the respondent. The father of the appellant, however, had



expressed his reluctance on account of not having enough money, which was not liked by the parents of the respondent. The respondent in her testimony had essentially been evasive and there was no counter by her.

22. The appellant had further deposed that under her parental influence, on 01.03.2000, the respondent had asked the appellant to seek partition and his share in the business and immovable properties of his father. When he refused to do so, she threatened to implicate him in false cases and also to ruin life and liberty of the appellant and his family members. When he approached the parents of the respondent, they supported her conduct. Disturbed by the constant parental interference of the respondent in his matrimonial, the appellant requested the respondent on 10.03.2002 to request her parents to reduce their interference in their life but the respondent reacted by misbehaving.

23. The appellant further deposed that on 02.05.2000 maternal aunt of the respondent came to their house and started asking the appellant about the arrangements made by him for the social security of the child. He was also warned by the father of the respondent on 15.05.2000 that in case any complaint was received from the respondent, the entire family would face dire consequences.

24. The respondent aside from simplicitor denying all the allegations made in the petition did not give any counter explanation. Even her testimony was essentially silent and gave no explanation to the incidents deposed by the appellant. With such stoic silence of the respondent in neither giving any explanations or putting counter explanations, the only inference that can be drawn is that the testimony of the appellant is truthful. It is, therefore, established that there was a parental interference in the



matrimonial life of the parties which obviously created immense mental stress and harassment for the appellant and also hampered their relationship to blossom.

25. The appellant has further deposed that the respondent demanded a separate residence for themselves from the parents of the appellant on 25.07.2000 and his refusal to separate was responded by the respondent by misbehaviour. The appellant further deposed that as he left for his office on 29.08.2001 the respondent called the Police in collusion with her parents and maternal uncle and even arranged for the arrest of the appellant and his parents and even gave a false Report. The Police at the behest of the respondent, took signatures of the appellant on blank papers and compelled him to take a separate residence from his parents. Consequently, on 30.08.2001 the appellant and respondent shifted to the house of the grand parents of the appellant in Kirti Nagar, New Delhi. About twenty days hence, on 19.09.2001 he took rented accommodation and shifted with his bag and baggage. However, the respondent refused to shift to the rented accommodation and from the house of grandparents went to her parental home. Since then the respondent is residing with her parents.

26. The respondent has admitted in her cross-examination dated 26.11.2008 that, she has been living separately from her husband since past seven years and she remained with her parents for approximately five and a half years. Thereafter, she came sometime either in the year 2006 or 2007, to her matrimonial home. She has further deposed the time was about 12:00 noon, and her mother-in-law, father-in-law and brother-in-law, were present in the house. On her arrival, all three left the house. She deposed that her parents had not accompanied her and also denied that there were four-five



ladies social workers, who had entered into the house, with her. She stated that she could not say whether the articles were lying in the house or not because all the rooms were locked except one room and the kitchen. She admitted that since then, she is living in the matrimonial home and thereafter, her in-laws have not visited the matrimonial home. It all leads to the inevitable conclusion that after about seven years of separation, the respondent returned to the matrimonial home not as an endeavour to restore and mend the matrimonial relationship with appellant but essentially to assert her right of residence. While her assertion of legal rights cannot be faulted or held against her, but it clearly strengthens the depositions of the appellant that she was under her parental influence and was unable to **wean** away from her parents and forge relationship with the appellant. Clearly, there was rejection of matrimony and the obligations that it brings with it. Such conduct of the respondent can only be termed as mental cruelty towards the appellant.

27. The appellant has further deposed that at the time of delivery of the new born on 28.12.2000 the parents of the respondent misbehaved with him. The mother of the respondent visited on 26.01.2001 and abused the appellant. He further deposed that the respondent neglected the child and failed to take care of his food and other requirements. When the appellant intervened, she became angry and threw the glass of water on him and also beat the child mercilessly. On 25.05.2001 the respondent in anger threw the child on the floor. On 10.07.2001 while the child was weeping, the respondent slapped him. The appellant then took over the task of taking care of the milk and other requirements of the child on himself.



28. It is further significant to refer to the testimony of the appellant, who had deposed that on 29.08.2001, the respondent had come with the police, after he had left for his office, in collusion with her parents and maternal Uncle and local police, she had arranged for the arrest of the parents and of the petitioner. This fact is admitted by the respondent in her cross-examination that she had lodged a complaint on 29.08.2001, and that on her complaint, her in-laws were arrested on the same day. Moreover, she admitted that she had visited the Police Station but stated that she did not wish to say anything about the incident dated 29.08.2001 and was not even willing to comment whether an FIR was got registered. She further deposed that her in-laws were released on the same date. It was for the respondent to explain the circumstances which prompted her to call the police leading to the arrest of his parents. By choosing to remain silent, there can only be an adverse presumption of there being no basis for making the police complaint and getting the parents of the respondent arrested. What more can be the mental trauma for the appellant than to see his parents being subjected to the extreme ignominy of arrest for no explicable reason.

29. The appellant has explained the circumstances that led to registration of FIR No. 672/2001 under Sections 323, 325 and 34 of the Indian Penal Code, on 18.12.2001 against the appellant and his family members, on the allegations of beating up of the respondent and his family members outside the CAW Cell. The appellant has deposed that the correct sequence of events was that on 18.12.2001, when he reached his office at 12:15 p.m, he found the respondent/wife present, who started pressurising him to live in her company at Kirti Nagar but the appellant expressed his reluctance because of the cruel callous conduct and humiliation and degradation caused



by the respondent/wife making it impossible for him to live in her company. On hearing this, the respondent/wife became angry and started shouting and screaming at him and even used abusive and filthy language against him and his family members. She also started banging the doors and windows of the office and created a scene. She also has given a threat to the appellant to show her *Jalwa* in 10 minutes. Thereafter, she left the office and came again. Within 10 minutes or so of her arrival, three cars full of *gundas* and anti-social elements, her parents, her brother, Mr. Gaurav Anand, Maternal Uncle Mr. Ashok, Maternal aunt Smt. Ramesh Bharara and Mr. Chander Bharara and cousins Mr. Rajan Bharara, Mr. Jaidev Bharara and Mr. Vikas Bharara, came to the office of the appellant and started thrashing the doors and the window panes. These persons also badly thrashed the motor-cycle of the appellant and damaged it completely.

30. All these people then came to the parental home of the appellant/husband and started throwing stones and bricks on the doors and window panes and caused damaged to them. On seeing this, the cousin brother Mr. Vishal Talwar of the appellant, called the Police at No. 100. Mr. Rajan Bharara somehow managed to open the gate of the house and they all came inside and caught hold of Mr. Vishal Talwar, the cousin brother of the appellant and tried to throw him from the balcony of the floor. But because of the warning given by the neighbours, they were not able to achieve their illegal designs. Mr. Vishal Talwar was beaten by these persons and damage was caused to the doors and windows of the first floor premises at E-45, Kirti Nagar, New Delhi. The house was ransacked and the articles were damaged. The photographs of the damaged motor-cycle are exhibited as Ex.PW-1/10 to PW-1/12 and of the damage to the house are exhibited as Ex-



PW-1/13 to Ex.PW-1/21. The medical record of Mr. Vishal Talwar is exhibited as Ex.PW-1/22 and Ex.PW-1/23.

31. No action was taken by the police against the respondent and her family members but the FIR No. 672/2001 was registered against them. A protest letter was given by the father of the appellant against the registration of FIR after two days but no action was taken by the police. Thereafter, a complaint case under Section 190 of the Code of Criminal Procedure read with Sections 307, 325, 379, 383, 425, 426, 441, 447, 503 and 506 of the Indian Penal Code, was filed against the respondent/wife and six other accused persons in the Court of learned Metropolitan Magistrate, Delhi. However, the said complaint was withdrawn since the respondent/wife also withdrew her case.

32. It is, therefore, not in dispute that an incident had happened on 18.12.2001, about which the FIR was registered against the appellant and his family members. He had made a cross-complaint though he withdrew as the respondent also withdrew the FIR. Admittedly, the respondent in her cross-examination, when questioned about the incident, refused to make any comment about the incident or the registration of FIR. Therefore, it can be safely concluded that, an unsavoury incident happened on 18.12.2001, wherein the appellant suffered and had to face not only the criminal trial in the FIR that was registered but also had been driven to file the criminal complaint.

33. In addition to this, it is admitted by the respondent that they had made a complaint in National Commission For Women, of which the Notice Ex.PW-1/35 was issued to the appellant to appear on 31.12.2002. An enquiry was conducted in the National Commission for Women, though the



complaint was dismissed. Furthermore, it is not denied by the respondent/wife that, she had also filed a complaint before the CAW Cell, Kirti Nagar in May, 2003, in which the appellant had sought anticipatory bail wherein the learned ASJ directed that two days notice be given to him before his arrest and the copy of the Order dated 14.05.2003 is exhibited as Ex.PW-1/36.

34. The respondent in her cross-examination had tried to give an explanation that these complaints were made only with an intent for reconciliation. However, this explanation is not tenable for the simple reason that it resulted in tremendous harassment of the appellant and his family members. Making such complaints before the National Commission for Women, CAW Cell and even the police solely with the intent of conciliation, cannot be held to be justifiable.

35. Every aggrieved person has the absolute right to initiate appropriate legal action and has every right to approach the state machinery. However, it was for her to establish that she was subjected to cruelty or dowry harassment by placing forth cogent evidence in support of her allegations. Though filing of a criminal complaint per-se cannot amount to cruelty, however, such grave and uncorroborated allegations of cruelty unsubstantiated during the divorce proceedings, are all acts of cruelty towards the appellant in addition to be a proof of intention of the respondent to reject the matrimonial relationship.

36. In the case of K. Srinivas Vs. K. Sunita X (2014) SLT 126, the Supreme Court held that filing of the false complaint against the husband and his family members constitutes mental cruelty for the purpose of Section 13(1)(ia) of the Act, 1955. The Supreme Court in the case of Ravi Kumar



Vs. Julmidevi (2010) 4 SCC 476 has categorically held that “reckless, false and defamatory allegations against the husband and family members would have an effect of lowering their reputation in the eyes of the society and it amounts to cruelty.” Similar observations were made by the Coordinate Bench of this Court in the case of *Rita Vs. Jai Solanki* (2017) SCC OnLine Del 9078 and *Nishi Vs. Jagdish Ram* 233 (2016) DLT 50.

37. From the evidence of the parties, it is evident that there was an unwarranted interference of the parents and the family members of the respondent in the matrimonial life of the appellant, as has been asserted by him. Such parental interference reached an extent of causing immense harassment to the appellant, who was even made to face multiple complaints before the different agencies. The parties are residing separately since 2001 i.e. for about 13 years, during which the appellant has been deprived of his conjugal relationship for no fault of his. It needs no reiteration that the bedrock of any matrimonial relationship is cohabitation and conjugal relationships. For a spouse to be deprived of his wife’s company proves that the marriage cannot survive, and such deprivation of conjugal relationships is an act of extreme cruelty. Such long separation with no effort by the wife to resume matrimonial relationship, is an act of cruelty as is held in the case of *Samar Ghosh v. Jaya Ghosh* (2007) 4 SCC 511.

38. We thus, conclude that the evidence on record proved that there is no chance of reconciliation between the parties and such long separation peppered with false allegations, Police reports and criminal trial can only be termed as mental cruelty. The marital discord between the parties has pinnacle to complete loss of faith, trust, understanding, love and affection between the parties. This dead relationship has become infested with



acrimony, irreconcilable differences and protracted litigations; any insistence to continue this relationship would only be perpetuating further cruelty upon both the parties.

39. We, therefore, conclude that the appellant has been able to successfully prove that he was subjected to cruelty by the respondent and is entitled to divorce. **We, thus, set-aside the impugned judgment dated 29.05.2009 and grant the divorce under Section 13 (i) (ia) of the HMA, 1955.**

40. The appeal is accordingly allowed.

41. Decree Sheet be prepared accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

FEBRUARY 05, 2024

JN/VA/RS/