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

% ***Reserved on: September 21, 2023***

Pronounced on: March 01, 2024

\+ MAT.APP.(F.C.) 63/2021

..... Appellant

Through: In person with Mr. Jatiin Mongia & Mr. Anatesh Bannon, Advocates

Versus

.....Respondent

Through: In person with Mr. Hemant Kumar Srivastava & Mr. Amit Kumar, Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present petition has been filed by the appellant/husband under Section 28 of the Hindu Marriage Act, 1955 read with Section 19 of the Family Courts Act, 1984 in HMA No. 371/ 17, against Judgment dated 25.11.2019, whereby his petition under Section 13(1) (ia) of the HMA, 1955, seeking dissolution of marriage with respondent-wife on the grounds of cruelty, was dismissed.

2. The circumstances, as spelt out in the present appeal, which led the appellant to file petition for divorce before the learned Family Court, are that appellant/husband married with the respondent/wife on 10.03.2007 in

accordance with Hindu Rites and Ceremonies and one son was born from the said wedlock on 08.02.2008.

3. According to appellant, his marriage has been tumultuous since the beginning due to the quarrelsome and uncompromising conduct of the respondent towards him and his family members at every juncture of life. It is claimed that the respondents' non-contribution in household chores, threats of suicide and false implication followed by recurring abandonment of matrimonial home, has been a chord of contention and was pleaded as a grounds for dissolution of marriage in his petition before the learned Family Court.

4. The appellant has averred that ever since he moved to Orissa for his training with CISF on 16.04.2007, the relationship between the respondent and his parents turned sour due to which the respondent briefly moved back to her maternal home with their new born son, only to return after much persuasion. However, due to continued disturbances, the appellant took a separate accommodation to live with respondent in December of 2008 at the place of his posting at Jharkhand.

5. The appellant claims that despite living separately, the respondent's resistance to household chores and unruly behavior towards him persisted. Ultimately, he was constrained to send her back to her matrimonial home in February, 2009 due to her threats to tarnish his image at his work place, from where the respondent went back to her parents house.

6. The appellant has alleged that the respondent, along with his family members, approached his Superior Officer and filed a complaint against him, due to which he had to take leave for 20-25 days to arrange for a separate accommodation at the insistence of respondent. However, the said

accommodation too was abandoned by the respondent soon after the appellant left to Jharkhand to resume his duties.

7. The appellant has alleged that on 21.12.2010, at a family gathering (Bhandara ceremony for the brother of the petitioner), the respondent got into a quarrel with him and made a phone call to her parents. On 24.12.2010, her parents came to their matrimonial home along-with 10-12 persons and assaulted the appellant and his family members. The appellant was constrained to file a complaint bearing No. 4999051/2016, under Section 156(3) Cr.P.C against the respondent and her family members.

8. The appellant has alleged that respondent-wife thereafter deserted him and started living with her parents. As a counter blast, the respondent on 28.02.2011 filed a complaint under Section 498A IPC, which culminated into registration of FIR No. 46/2011 at police station against him and his family members wherein allegations of dowry demand and physical abuse were raised by the respondent.

9. The appellant has averred that in order to save his matrimonial life, he preferred a petition under Section 9 of the Hindu Marriage Act, 1955, on 03.03.2011 however, the same withdrawn by him on resistance by respondent.

10. Before the learned Family Court, respondent-wife in her written statement pleaded that she was constantly tortured at her matrimonial home on account of dowry demand and was beaten mercilessly. She pleaded that their marriage was solemnized with pomp and show and her father had spent a lot of money beyond his capacity and gave all necessary utensils, articles and jewelry etc. The respondent denied the allegation that she was reluctant

to do house hold chores and instead stated that she always performed her social and matrimonial obligations with responsibility.

11. The respondent further averred that at the time of selection of the petitioner in CISF, appellant's father demand Rs. 2,00,000/- from her father, which amount was given to him on 14.05.2007. However, their behavior towards her did not change and her father-in-law asked her to go to her parents house on the assurance that after completion of appellant's training, she would be brought back to her matrimonial home.

12. The respondent in her written statement denied the allegation of appellant of having left for her parents house directly from the hospital after birth of their son in February, 2008 and pleaded that she had accompanied her in-laws to the matrimonial home, where the appellant and his family raised further demands of dowry as gifts of one car and gold ornaments for all their family members in Pilia. However, her family was unable to fulfill these demands, and so, she was shunted out from her matrimonial house along with her child.

13. The respondent averred in her written statement that appellant's father again demanded Rs. 1,00,000/- from her father at the time of selection of the appellant's younger brother in Delhi Police and same was given on 29.04.2009.

14. The respondent stated that in an effort to reconcile the differences, she along with her family members went to Jharkhand on 06.03.2010 where appellant was posted and they met his Commanding Officer, who assured to send him on leave to resolve their conflicts. Thereafter, a *panchayat* was called by both sides at her village and it was resolved that respondent would accompany her husband to her matrimonial home but since her mother-in-

law refused to live with her, the appellant arranged a separate accommodation in his native village Gangdwa, where he kept the basic required house hold things but he continued to reside with his parents.

15. The respondent alleged that appellant's family had hosted a Bhandara ceremony on 21.12.2010 after appointment of his younger brother in Delhi Police, however, her parents were not invited and instead demand of one car and plot was raised from respondent's father. However, since the demand were not fulfilled, she was confined and locked in a room and so, on 24.12.2010 she made a complaint calling police from her brother in law's mobile and also called her parents. Her father, mother and elder brother came to her rescue at around 1.30 PM but they were beaten by appellant and his family members with the help of other persons of the locality. Respondent's brother made a call on 100 number and DDR No. 17 A was lodged at police station Baba Haridas Nagar. The respondent and her family members were taken to hospital and their MLC was conducted.

16. The respondent pleaded before the learned Family Court that the appellant and his family had committed cruelty upon her and she was forced to live at her parents' house with the child of the parties and his petition seeking divorce on the grounds of cruelty deserved dismissal.

17. On the pleading of the parties, the learned Family Court framed the following Issues:-

"i. Whether the petitioner is entitled to divorce on the ground of cruelty? (OPP).

i. Relief."

18. In order to prove his case, the appellant/ husband examined himself as PW-1 and the respondent examined herself as RW-1. Besides, respondent also got examined her father as RW-2 and her *Fufa Ji* as RW-3.

19. The learned Family Court in the light of testimony of the witnesses recorded and other material placed before it, observed that the appellant had failed to point out any specific instance against the respondent-wife which could be termed as cruel treatment on her part and that the allegations levelled by the appellant were vague, non-specific and general in nature.

20. Aggrieved against the impugned judgment dated 25.11.2019 passed by the learned Family Court. the appellant has filed the present appeal.

21. During the course of hearing learned counsel appearing on behalf of appellant submitted that the impugned judgment is contrary to the settled principles of law and deserves to be set aside. Learned Family Court has failed to appreciate that appellant and his family members were forced to fight a false charge of dowry demand for more than six years, in which they were acquitted, however, they were forces to suffer ample agony and loss of reputation. The Family Court erred in holding that appellant could not prove that respondent was not willing to do household work and also that respondent after discharge from the hospital, had gone to her parental home instead of returning to matrimonial home. The respondent and her family members had committed physical assault on appellant and the allegations levelled by the respondents are based upon oral testimony and no evidence in support thereof has been placed on record.

22. Further submitted that the appellant and his family members have been acquitted by the learned Appellate Court of the allegations under

Section 498A IPC and so, allegations of dowry demand and cruelty at their hand are not meted out. Hence, setting aside of impugned judgment is sought by the appellant.

23. To the contrary learned counsel appearing on behalf of respondent submitted that the judgment passed by the Learned Family Court is well merited and no interference is required by this Court. Hence dismissal of the present appeal is sought.

24. Submissions advanced by learned counsel representing both the sides were heard at length and the testimony of the witnesses, impugned judgment and other material placed on record has been perused.

25. The parties to the present petition got married on 30.03.2007 and on 08.02.2008, a child was born out of this wedlock. There is no dispute to the position that soon after their marriage, certain differences arose between the parties. The appellant has alleged that respondent was reluctant to perform household chores and was not willing to take responsibility, which is denied by the respondent, who claimed to have performed all household chores but appellant and his family were not satisfied. On this aspect, learned Family Court has held that appellant has not led any evidence to substantiate his allegation.

26. We find that when the parties enter into a wedlock, their intent is to share the responsibilities of future life. In a catena of decisions, it has already been held that if a married woman is asked to do household work, the same cannot be equated to the work of a maid servant and shall be counted as her love and affection for her family. In certain strata, the husband takes over the financial obligations and wife accepts house hold

responsibility. Such is the present case. Even if appellant expected the respondent to do household chores, it cannot be termed as cruelty.

27. What is Cruelty has been spelt out in a catena of decisions. The Hon'ble Supreme Court in ***Savitri Pandey Vs. Prem Chandra Pandey*** (2002) 2 SCC 73 has recited "Cruelty" in married life in the following words:-

> *"6. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from* ***the ordinary wear and tear of family life.*** *It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other."*

28. The Hon'ble Supreme Court in ***Roopa Soni Vs. Kamalnarayan Soni 2023*** SCC OnLine SC 1127 has observed *"the word 'cruelty under Section 13(1)(ia) of the Act of 1955 has got no fixed meaning, and therefore, gives a very wide discretion to the Court to apply it liberally and contextually. What is cruelty in one case may not be the same for another. As stated, it has to be applied from person to person while taking note of the attending circumstances."* The Hon'ble Supreme Court further held *"on the question of burden in a petition for divorce, burden of proof lies on the petitioner. However, the degree of probability is not one beyond reasonable doubt, but of preponderance."*

29. It is the case of both the sides that while the appellant was away for his duty, there were discords between respondent and his family members. So, the respondent most of the time chose to stay at her parents' house. The appellant has alleged that respondent and his family had put a condition to live separately from his family. Pursuant to intervention of the *Panchayat* and appellant's Commanding Officer, the appellant took a separate accommodation in Gangwda.

30. 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.

31. Even in the present case, the appellant bowed to the desires of respondent and arranged for a separate accommodation to save his matrimonial life. Even though respondent has alleged that while she lived in

the said accommodation at Gangwda, the appellant stayed away most of the time and so, she was constrained to live with her parents.

32. Relevantly, the appellant is a member of Force i.e. CISF and he has to be away on duty. The respondent on one pretext or the other abandoned her matrimonial home and lived with her parents. On one hand respondent denied to live with her in-laws and over it, she chose to frequently live with her parents. To nurture the matrimonial bond, it is of high significance that parties live together and avoid leaving each other's company frequently. Temporary separation gives a sense of insecurity in the mind of a spouse that the other is not willing to continue the matrimonial bond.

33. The marital discord between the parties sparked when both the sides entered into an altercation on 24.12.2010 which resulted into cross complaints with the police against the other. On the complaint of appellant in respect of alleged incident of 24.12.2010, the Magistrate took cognizance under Section 156(3) Cr.P.C. and summoned the family members of respondents under Section 451 and 323 IPC.

34. Similarly the respondent's brother had called PCR on the same day, on the basis of which DDR No. 17 A was lodged at police station Baba Haridas Nagar, however, outcome of the same has neither been mentioned in the impugned judgment nor in the present appeal.

35. The impugned judgment notes that trial in the complaint under Section 156(3) Cr.P.C. was at the stage of defence evidence when hearing in divorce proceedings was going on. However, in the present appeal no document has been placed on record to show the outcome of the said complaint.

36. In the impugned judgment, even though learned Family Court has observed upon the MLC of respondent's family and also that no MLC of appellant and his family members was conducted, yet the final outcome of both the cross-complaints has neither been discussed in the judgment nor any document has been placed by either side before this Court.

37. It is relevant to note here that subsequent to the incident of 24.12.2010, the respondent lodged a complaint against the appellant and his family members for dowry demand, which culminated into registration of FIR No. 46/2011, under Sections 498A, 323 & 406 IPC against them and they were put to trial for the said offences. Even though appellant was first held guilty of the offences in the said FIR, however, in the appeal they were acquitted vide judgment dated 04.05.2019, *inter alia* holding as under:-

> *"17.....A perusal of testimony of PW11 Umesh Devi (complainant) & PW2 Om Parkash (father of the complainant) reflect that both the witnesses have alleged that the appellants/accused have raised illegal demand of dowry and tortured and maltreated the complainant and thereafter, turned her from her matrimonial house but needless to say that no specific date and time has been mentioned by the complainant when appellants-accused demanded from him in the shape of Rs.2 lacs & Rs.1 lac, respectively. Moreover, there is no specific time has been mentioned when the alleged demand of plot was made by the appellants. Suffice to say, that marriage of appellant Parmod was solemnized with the complainant in the year 2007 but the case was registered in the year 2011 and therefore, it was incumbent upon the prosecution to prove specifically the time and period when the alleged demand was raised by acc used. The complainant*

as well as her father and Umed Singh (PW I) has stated that payment of Rs. 1 lac & Rs.2 lacs was made to the appellants but again the fact remains that no specific documentary evidence has been produced on record when the alleged payment of aforesaid amount was made to the appellants/accused and who received the same . Suffice to say, that PW3 Ram Bhagat has stated that appellants/accused started demanding plot and a vehicle from the complainant but such demand of car when was raised by appellants/accused was also not mentioned specifically by the complainant. Needless to say, that all the witnesses Umed Singh (PW 1), Om Parkash (PW2), Ram Bhagat (PW3), Rajwanti (PW4), Rajender Panch (PW5) are interested and related witnesses and several contradictions appearing in their testimony regarding the time of demand of car and a plot and the allegations of torturing the complainant makes them the interested witnesses and could not be relied upon. In the present case while convicting the appellants /accused the learned trial court has held that the demand of dowry and misappropriation of dowry articles by the appellants have been duly proved by the oral testimony of PW1 to PW6 and complainant herself as PW 11 but since none of the witness has specifically mentioned about the time, date and year and even the complainant fails to prove the payment of Rs.2 lac and Rs. 1 lac to the appellants then merely on the oral testimony of the aforesaid witnesses it could not be held that appellants have treated the complainant with cruelty and she was beaten severally to attract Section 498A I.P.C. Accordingly, it is held that merely on the one instance of scuffle took place on 24.12.20 I0, the charge under Section 498A LP.C. does not prove against the appellants/accused up

to the hilt in the present case.

18. Further, the appellant s/accused have also charge-sheeted under section 406 I.P.C. In the present case but again the fact remains that there is no iota of evidence on much prima facie on record to prove that to which of the accused either husband, father-in-law and mother-in-law the istridhan of the complainant was entrusted and from whom the demand was made and there was a refusal on the part of accused. A perusal of the file shows that prosecution has placed on record the copy of the alleged dowry articles given to the appellants/accused and same were received by the complainant vide recovery memo (Ex.PW8/A) and thus, in these circumstances, no offence under Section 406 I.P.C. was made out.

19. ……..it is apparent that Dr. A.S. Yadav, CM .O. at R.T.R.M. Hospital , Jaffarpur, New Delhi (PWl3) has proved on record M.L.R. of Om Parkash son of Juglal dated 24.12.20 10 (Ex.PWI3/A), M.L.R. of Dinesh son of Om Parkash dated 24.12.2010 (Ex.PWI3/B), M.L.R. of Umesh Devi wife of Pannod dated 24.12.2010 (Ex.PWI 3/C), M.L.R. of Rajwanti wife of Om Parkash dated 24.12.2010 (Ex.PWI3/D). During his cross-examination he has also proved the M.L.R. of Parmod son of Shiv Narayan dated 24. 12.2010 (Ex.D1), M.L.R. of Bharat son of Shiv Narayan dated 24.12.2010 (Ex.D2), M.L.R. of Savitri Devi dated 24.12.2010 (Ex.D3) and the M.L.R. of Shiv Narayan son of Mathura dated 24.10.2010 (Ex.D4) and thus, it can be safely concluded that the appellant's family and family of complainant were not having cordial relation to each other and both the parties had a fight with each other. However, as regard to the allegations under Section 323 I.P.C. is concerned it is held

that aforesaid incident had took place at Najafgarh, Delhi on 24.12.2010 and not at Jhajjar and thereafter, the F.I.R. was lodged in this case on 28.02.20 II and thus, the alleged incident took place much prior to the registration of F.I.R. and this, Section 323 I.P.C. is not attracted in the present case as alleged.

21. In view of my aforesaid discussions and observations, it is held that prosecution has miserably failed to bring home the guilt of appellants/accused for the commission of offence under Section 498A, 406 & 323 of I.P.C. in the present case and thus, the judgment of conviction dated 07.06.2017 and order of sentence dated 08.06.2017 passed by the learned trial court is not sustainable in the eyes of law and thus, liable to be set aside. Hence, appellants/accused, named Parmod, Shiv Narayan and Savini were acquitted of the charges levelled against them. Accordingly, the judgment of conviction dated 07.06.2017 and order of sentence dated 08.06.2017 passed by the learned trial court is hereby set aside. The appeal filed by the appellants/accused stands allowed. Lower court record be sent back along with the copy of judgment. Appeal file be consigned to the record room after due compliance."

38. Every aggrieved person has an absolute right to initiate appropriate legal action and approach the State machinery, however, such allegations have to be supported by cogent evidence. Though filing of a criminal complaint *per-se* does not amount to cruelty, however, grave and uncorroborated allegations amounts to cruelty.

39. 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 907. 45. Further, in the case of ***K. Srinivas Vs. K. Sunita*** (2014) SLT 126 the Hon'ble Supreme 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.

40. It is also worthy note here that parties to the present appeal have been living separately since August, 2010. During pendency of afore-noted FIR proceedings, the appellant had also filed an application under Section 9 of the Act on 03.03.2011 seeking Restitution of Conjugal Rights, which was withdrawn by him. However, respondent did not file any such application to join company of her husband.

41. It has already been held that instances of cruelty are not to be taken in isolation but cumulative effect of facts and circumstances emerging from evidence on record and then drawing a fair inference whether a spouse has been subjected to mental cruelty due to conduct of other spouse has to be culled out.

42. The facts of the present case clearly demonstrate that soon after their marriage, parties had marital conflicts. The respondent-wife had no intention to live in joint family and to make herself comfortable, left her matrimonial home very frequently to live with her parents. The appellant on the other hand by arranging separate accommodation tried his best to keep her happy, however, by choosing to stay with her parents, she has not only ignored her matrimonial obligations but also deprived the appellant of his fatherhood by keeping him away from his son.

43. In the light of aforesaid, this Court is of the considered opinion that appellant has been subjected to cruelty at the hands of respondent-wife. The impugned judgment dated 25.11.2019 is hereby set aside and appellant is granted divorce under Section 13(1) (ia) of the Hindu Marriage Act, 1955.

44. Decree sheet be prepared accordingly.

45. With directions, as aforesaid, the present appeal and pending application, if any, are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 01, 2024
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