



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

% ***Reserved on: September 20, 2023***

Pronounced on: March 07, 2024

+ MAT.APP. (F.C) 63/2019

SUMIT GUPTA

..... Appellant

Through: In person through VC with Mr.
Rohan Gupta & Mr. Vaibhav Grover,
Advocates

Versus

TRAPTI GUPTA

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The appellant/husband has filed the present appeal under Section 19 of the Family Court Act, 1984 against the judgment dated 03.12.2018 passed by the learned Family Court in HMA No. 1563/2018 whereby, his petition seeking divorce from respondent-wife on ground of cruelty under Section 13 (1) (ia) of Hindu Marriage Act, 1955, has been dismissed.

2. The brief facts of the case, as narrated by the appellant in the present appeal and impugned judgment, are that the parties to the present appeal got married on February 13, 2005, as per Hindu customs and Rites and out of this wedlock, a girl child was born on 05.06.2006.



3. The appellant in his petition before the learned Family Court averred that after his marriage with the respondent they were residing at a house in Laxmi Nagar, Delhi which was owned by his mother and they lived there till 10.12.2010. The appellant claimed to have given all basic necessities and amenities to the respondent and he even took respondent-wife and their children to various trips and they were living happy and peaceful life. The appellant also averred that his parents were living in Rajasthan and occasionally visited them and their interference was very limited.

4. According to appellant, their marriage came under constrain when he along with his wife and cousins, went to the Saket Mall in September 2005, where respondent unexpectedly asked that she wanted to drink alcohol, which surprised and embarrassed the appellant in front of his cousins.

5. The appellant also averred before the learned Family Court that in May, 2007, they had gone to Hyderabad from where he returned home, however, respondent chose to stay back, where without his consent, she aborted herself. The respondent gave birth to the second child of the parties on 06.11.2008 but in order to harass the appellant, the respondent used to say that he is not the biological father of the children.

6. According to appellant/husband, there was no interference by his parents in their married life as they were living in Chirawa, Rajasthan and only made short visits to their matrimonial home, which lasted only for one or two days. Their married life was going quite well, although the respondent's actions caused tension between the parties up to January 30, 2010.

7. The appellant has averred that he met with near fatal train accident on 30.01.2010 and had to spend 35 days in the hospital and undergo seven



surgeries. As a result, his right leg was partially severed, and a steel rod was inserted at Apollo Hospital, Delhi and his left leg was amputated. The appellant was on bed rest for over seven months and during this period appellant's parents stayed with the parties in Delhi to give them the support and take care of their needs. At this time, respondent and her parents started mistreating, disregarding, and inflicted various forms of cruelty on the appellant and his family members.

8. The appellant has alleged that during the month of March- June 2010, when he was in most need of rest due to his limited mobility following the accident, in order to satiate her sexual desire, respondent/wife would wake up the appellant at strange hours and force him to sleep with her and on one such occasion, when he denied she threw the *Mangal Sutra* by saying that what is the purpose of *Mangal Sutra* when appellant/husband cannot fulfil the sexual desire of respondent/wife.

9. Appellant claimed that on 03.06.2010, respondent's father sought his permission to take the respondent to Hyderabad for enjoyment in summer vacation, as the sisters of the respondent, had also come there. The respondent ignoring the welfare of the appellant left him to the dependence of his old mother. The appellant, due to support extended by his parents, recovered within six months. According to appellant, the respondent was under influence of her parents and so, the father of the appellant asked the respondent to surrender mobile phone to avoid outside interference but the parents of the respondent gifted her new mobile on 02.08.2010 and thereafter, his parents left Delhi in August, 2010.

10. The appellant alleged that despite his health condition, the respondent continued to quarrel, abuse and disobey him. Furthermore, respondent/wife



and her relatives began pressurizing her the appellant/husband to transfer the matrimonial home to her name to ensure her financial security. The respondent also threatened the appellant that she would commit suicide by consuming poison and also to implicate the appellant in false dowry cases.

11. On 10.12.2010, when the appellant came back home from office, he found that the respondent had already packed all household valuables in six bags/suitcases. The appellant on suspicion, asked the respondent to hand over cash, Bank debit/ATM Cards, Credit Cards etc. Then the respondent raised hue and cry and shouted to gain sympathy of neighbors. The respondent thereafter, left the house with the children and went to her parents' house at Hyderabad. The respondent took away all jewelry and belongings and informed the relatives of the appellant about going back to her parental home at Hyderabad, only to malign the image of the appellant. The respondent also wrote a letter on 09.02.2011 making false and frivolous allegations against the appellant and his family members.

12. The respondent thereafter filed a false petition against the appellant under the Protection of Women from Domestic Violence Act, 2005 in the court of learned Metropolitan Magistrate, Hyderabad.

13. The appellant alleged that the respondent after accident of the appellant on 30.01.2010, had abandoned all her responsibilities towards him and treated him with physical and mental cruelty, making it impossible for him to live with the her. The appellant, thus, filed petition for grant of divorce on the ground of cruelty under Section 13(1) (i-a) of the Hindu Marriage Act, 1955.

14. **The respondent-wife in her written statement** filed before the learned Family Court averred that even though parents of the appellant were



employed at Chirawa (Rajasthan), but they frequently visited them at Delhi. After the accident of appellant, the parents of the appellant stayed with him together for months.

15. The respondent averred that she never expressed desire to consume liquor, as is alleged by the appellant and rather, never consumed liquor in her life. The appellant himself used to consume liquor frequently and was a chain smoker.

16. The respondent also averred that on the advice of the appellant, she aborted on 20.03.2007 at Delhi and only the remaining tissues were operated in Hyderabad on 10.05.2007. The respondent gave birth to a male child on 06.11.2008 at Delhi and the appellant alleged that he is not biological father of the children and tried to defame the respondent, which amounted to grave mental cruelty to her.

17. According to respondent, her father never asked the appellant to send her to Hyderabad. Instead, the appellant snatched away her mobile as he did not want the respondent to remain in contact with her parents. The respondent alleged that she never forced the appellant for her future financial security.

18. The respondent further stated that after his accident, she served the appellant as a dutiful wife and visited the hospital when appellant was hospitalised but most of the time her mother-in-law did not allow her to visit the hospital citing that children were small. Even after discharge from hospital, she looked after him in all possible ways. However, on the instigation of his mother, the appellant started neglecting her. The respondent alleged that appellant's mother created trouble and ruined their matrimonial life. She also alleged that after the accident, the appellant



treated her as a maid servant and even did not provide her basic necessities of life. Moreover, the appellant joined the duty on 23.08.2010 before expiry of his medical leaves only to avoid the respondent.

19. The Respondent with regard to the allegation of *mangal sutra* incident, asserted that she never coerced the appellant into having sex and that the *mangal sutra* was never thrown by her as alleged. Also, she never threatened the appellant with consuming poison to end her life and implicate him and his family members in a fabricated case.

20. The respondent further alleged that she had not willfully left her matrimonial home but in the mid night of 10.12.2010 after an altercation, the appellant pushed her out of the home with the children and she called one of appellant's Uncle, where she stayed overnight. On 11.12.2010, her parents came and took them to Hyderabad, where she is still living with her children.

21. The respondent denied taking any valuable including jewelry, as alleged by the appellant. The respondent further stated that she was forced to file petition under Prevention of Women from Domestic Violence Act, 2005, as the appellant and his family members treated her with cruelty and raised dowry demands.

22. Based upon the pleading of the parties, the learned Family Court, vide order dated 24.05.2016, framed the following issues:

“1. Whether the appellant was treated with cruelty by the respondent after the solemnization of the marriage? OPP

2. Relief.”

23. To substantiate their case, the appellant got himself examined as PW-



1 and the respondent examined herself as DW-1.

24. The learned Family Court, after adducing the testimony of the witnesses held that the appellant has miserably failed to establish that he was subjected to cruelty by the respondent and consequentially dismissed his petition vide impugned judgment dated 03.12.2018, which is assailed in the present appeal.

25. **Submissions heard.**

26. The parties are stated to have been living separately since 10.12.2010. In the present appeal, respondent was proceeded *ex parte* on 01.09.2022.

27. Relevantly, parties to the present appeal got married on 13.02.2005 and lived together till 10.12.2010. On 30.01.2010, the appellant met with an accident, wherein he suffered grave injuries and was confined to bed and remained under treatment until he joined his duties on 23.08.2010. The appellant has alleged that during the period of his treatment, his wife i.e. respondent instead of supporting him, committed all kinds of physical, mental and financial cruelties upon him and his parents and so, it had become difficult for him to live with her.

28. To adjudge whether behavior of one spouse towards the other falls within the definition of cruelty as has been enunciated under Section 13 (1)(ia) of the Hindu Marriage Act, 1955 and catena of decisions rendered by the Hon'ble Supreme Court and this Court. The Hon'ble Supreme Court in the case of *A. Jayachandra Vs. Aneel Kaur*, (2005) 2 SCC 22, the Supreme Court observed as under: -

“10...If from the conduct of the spouse, same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an



apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case..... Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other.

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*13.However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity..... Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. **Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.***

29. On the aspect of cruelty, the Hon'ble Supreme Court in the case of **V. Bhagat Vs. D. Bhagat** (1994) 1 SCC 337, has held that *mental cruelty under Section 13(1)(ia) of the Act, 1956 can broadly be defined as the conduct which inflicts upon the other party such mental pain and suffering as would make it impossible for that party to live with the other.* Further held, *mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put-up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the party. What is cruelty in one case*



may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case.

30. In the case in hand, after going through the testimony of the parties, this Court finds that the appellant (PW-1) in his deposition had though negated the factum of cash and gift items worth Rs.10,00,000/- given to him, his family and relatives in the marriage, as has been claimed by the respondent, the learned Family Court on this aspect held as under:-

“The respondent did not state that the petitioner demanded Rs. 10,00,000/- at the time of marriage. Mere allegation of giving Rs.10,00,000/- at the time of marriage by the parents of the respondent and his family members is not sufficient to cause mental cruelty to the petitioner. It is not a grave allegation which can cause reasonable apprehension in the mind of the petitioner that it is not safe to live with the respondent.”

31. Relevantly, the learned Family Court has though noted that the respondent never stated that Rs.10,00,000/- given in the marriage to the appellant and his family, was ever demanded but has only alleged that this amount was given at the time of marriage and so, this allegation cannot be taken as such grave which can cause reasonable apprehension in the mind of the appellant that it is not safe to live with the respondent. Even though learned Family Court has taken note of decisions in **Ravi Kumar Vs. Julmidevi** (2010) 4 SCC 476 and **K. Srinivas Vs. K. Sunita** (2014) SLT 126, wherein it has been held that unsubstantiated allegations if levelled, amounts to mental cruelty and is a ground for divorce under Section 13 (1) (ia) of the Act, yet erroneously held that allegation in the present case are not grave.

32. Furthermore, with regard to the three Fixed Deposit Receipts of



Rs.25,000/- each, the respondent in her cross-examination has admitted that the said FDRs were in joint name of herself and the appellant, and after maturity, she had re-invested the principal amount in FD in joint name of herself and her father. Meaning thereby, the appellant had no role in keeping the amount of those fixed deposits to his credit as has been alleged by the respondent.

33. The appellant has not been able to establish his allegation that respondent had demanded liquor in September, 2005 in Saket Mall in front of his cousins and similarly, the respondent has also not been able to establish her allegation that appellant was a habitual drunkard and smoker.

34. The parties in their respective testimony have accepted that they went on tour to Dalhousie, Guwahati and Shilong. Even though respondent has stated that these were appellant's official tours and he did not bear any expenses, but the fact remains that parties had gone together.

35. At this stage, it is relevant to note here that even though both sides have raised allegations with regard to gifts exchanged in marriage, amount of dowry given, demand of liquor etc. but have also admitted that until 30.01.2010, when the appellant met with near fatal train accident, their matrimonial life was smooth and they were happy in the company of each other.

36. Admittedly, in the train accident, the appellant had suffered serious injuries and had to not only undergo seven surgeries but also his one leg was amputated. The appellant became fully dependant on others and for this reason, appellant's parents had to come to stay with him to offer a helping hand. The respondent has alleged during this period, there were certain disputes with appellant's mother, which resulted into failure of their



marriage and on her instigation, the appellant threw her out of the matrimonial home.

37. It is not in dispute that appellants' parents were working and his mother had taken voluntary retirement but they were living in Rajasthan where his father was employed. However, after his accident, his mother came to stay with them. In the said circumstances, the differences arose between appellant's mother and respondent. It is an admitted position that no full time servant was engaged to take care of the appellant, however, a part time maid was engaged to do house hold chores such like cleaning and mopping etc. The mother of appellant had only come to extend a helping hand to respondent, which the respondent did not like.

38. The respondent in her cross-examination has admitted that even her parents used to come and stay with them. On one occasion, when her mother pursuant to her stomach operation, lived at her matrimonial home for 10 days and also when father had remained in Pushpawati Sighania Research Institute, he also stayed there for ten days.

39. In the considered opinion of this Court, stay of appellant's parents pursuant to his accident was need of the hour and respondent by raising an objection, has infact hurt the appellant who needed moral support from all corners to stand on his feet.

40. So far the allegation of appellant that respondent had threatened the appellant to provide some financial security after he met with an accident, is concerned, we find that respondent in her cross-examination could not satisfactorily reply with regard to entry of Rs.70,000/- in her PPF account on 04.09.2010, when the appellant was going through a hard health condition.

41. In what circumstances respondent's parents had already planned to



come to Delhi on 11.12.2010, when she was allegedly thrown out of the house on 10.12.2010, is not explained by her. What is graver is that immediately next day, i.e. 11.12.2010 the respondent operated the joint locker and in her cross-examination she stated that it was only for the purpose of taking out certain papers and nothing else, though she has not been able to show which important papers she wanted. Also, she withdrew amount of Rs.10,000/- using the ATM card from the joint account of the parties. Had the appellant thrown her out of the house, how could she plan to carry the locker keys and ATM cards with her, has remained unexplained. Accordingly, this creates a doubt in the mind of the Court that respondent was thrown out of the matrimonial home. Instead, it appears that the respondent had planned to exit, by securing all what she was required to, before leaving the matrimonial home.

42. In view of the facts discussed above, in our considered opinion, the learned Family Court has not appreciated that at the time appellant needed the respondent most to morally and emotionally stand for him, she was only focussed about securing money.

43. Even if it is taken that respondent was thrown out of her matrimonial home by the respondent, she was open to take recourse to law under Section 9 of the Act seeking Restitution of Conjugal Rights. Instead, she preferred to file complaint under Section 12 of the D.V.Act, that too in Hyderabad, which was later transferred to Delhi pursuant to directions of the Hon'ble Supreme Court.

44. It is also worthy to note here that the Hon'ble Supreme Court, in Transfer Petition (C) No. 18 of 2012, had made an effort to reconcile the disputes between the parties, however, the respondent chose to stay away



and did not settle the disputes.

45. In our considered opinion, the learned Family Court has erroneously held that from preponderance of probabilities arising out of the respective pleadings and evidence, it is proved that there was altercation between the appellant and the respondent on 10.12.2010 and she decided to leave the matrimonial home. In our opinion, the respondent has deserted the appellant in the times when he most required support of his wife, who has thus, committed cruelty upon him.

46. In the light of above, the present appeal is allowed and the impugned judgment dated 03.12.2018 passed by the learned Family Court in HMA No. 1563/2018 is hereby set aside. The appellant is granted divorce from respondent-wife under Section 13 (1) (ia) of Hindu Marriage Act, 1955.

47. Decree sheet be drawn accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 07, 2024

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