



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

% **Reserved on: 8th August, 2023**
Pronounced on: 13th September, 2023

+ **MAT.APP.(F.C.) 236/2018 & CM APPL. 38556/2018**

SUSHILA

.... Appellant

Through: Mr.R.K.Bali, Advocate with
 Ms.Pragya Verma and Ms.Meghna
 Bali, Advocates with appellant in
 person.

Versus

JOGINDER

.... Respondent

Through: Mr.Sahil Malik, Advocate with
 Mr.Abhishek Kumar, Mr.Jitender,
 Advocates with respondent in
 person.

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 19 of the Family Court Act, 1984 read with Section 96 of Code of Civil Procedure, 1908** has been filed by the appellant-wife (*respondent in the divorce petition hereinafter referred to as 'appellant-wife'*) challenging the Judgment dated 30.07.2018 granting divorce on the ground of 'Cruelty' under Section 13(1)(ia) the Hindu Marriage Act, 1955 (*hereinafter referred to as "the Act, 1955"*) to the petitioner (*hereinafter referred to as 'respondent-*



husband’).

2. **The facts in brief** are that the parties got married on 03.12.2003 according to Hindu customs and rites and no child was born from the said wedlock. The respondent-husband asserted that their marriage was simple and dowryless. The appellant-wife came to reside in the matrimonial home on 04.12.2003 but merely two days after the marriage, she started complaining that she felt suffocated in the joint family which comprised of respondent-husband, his parents and brother. She insisted that separate residence from the family members be set up. She also insisted to take premises at Mia Wali Peera Garhi, New Delhi where her brother-in-law Mr.Devender was residing. The efforts of the respondent-husband to dissuade the appellant-wife from setting up a separate residence did not meet any success.

3. The respondent-husband further claimed that the appellant-wife was a lady of arrogant nature and haughty temperament who used to pick quarrels without any justifiable cause or reason. She would frequently go to her parental home as well as to the house of her sister Laxmi, wife of Devender who was residing in Peera Garhi, New Delhi without informing or seeking permission from the family of the respondent-husband. On questioning, she retorted and told the respondent-husband not to interfere in her personal affairs.

4. The respondent-husband has further asserted that the appellant-wife neglected the household works and even refused to prepare the food for the respondent-husband. She had a non-cooperative attitude and has been most of times being lying on the bed thereby causing humiliation and mental torture to the respondent-husband impacting his health. She even



refused to show respect to the relatives of the respondent-husband visiting the matrimonial home and one such incident happened on 15.05.2004 when she retorted that she was not a servant of the relatives of the respondent-husband and thereby insulted the relatives who had visited their home.

5. The respondent-husband has further asserted that the appellant-wife refused to have physical relationship and has always refused to his advances by calling him impotent. In February 2004, she became pregnant and was being taken care of by the respondent-husband and all medical check ups were being done by qualified Doctor at Sanchet Hospital, Paschim Vihar, Delhi. She however, insisted that she had no desire to have the child and went back to her parental home along with her brother Chander Prakash, on 10.07.2004 and took away all her jewellery and clothes. There she took some herbs and suffered abortion on 28.08.2004. She was eventually brought back to the matrimonial home on 29.08.2004. She however, again went to her parental home on 05.09.2004 where she stayed till 23.06.2005 i.e. for about 9 months. It was with the intervention of the relatives and the respectable family members that she rejoined the matrimonial home on 23.06.2005. However, she occupied a separate room in the same premises and did not permit the respondent-husband to have conjugal relationship. She also extended threat that in case the respondent-husband touched her, she would commit suicide.

6. On 09.10.2005, her brothers Mr.Krishan and Mr.Karamvir came to the matrimonial home at about 1 p.m. with Hockey etc. and assaulted the respondent-husband physically due to which, he suffered injuries and was given treatment vide MLC No. 3504 dated 09.10.2005 at Sanjay Gandhi



Hospital, Delhi. However, the police did not register any case against the appellant-wife and her brothers. The respondent-husband thus, claimed that he had been subjected to immense physical and mental cruelty and sought divorce.

7. **The appellant-wife on the other hand**, denied all the allegations of cruelty made against her. She asserted that they had a lavish wedding and aside from valuable jewellery, household articles, a Santro Car was also given. Despite this, she was not treated properly. Her sister-in-law (*Nanad*) Rekha was not satisfied with the clothes given to her for which she was given Rs.5000/-. Also, a gold ring was given to the elder brother of the respondent-husband on their demand. The respondent-husband and his family members were also unhappy with the Santro car as it did not match their status.

8. The appellant-wife has further asserted that respondent-husband wanted to set up a factory for which he demanded Rs.30 lakhs which he intended to construct on the plot of land owned by her parents and he demanded a part of land from the parents of the appellant-wife. Unfortunately, the Santro car got stolen and thereafter, a demand was made for purchase of a bigger car. The appellant-wife and her family members in the hope that better sense would prevail over the respondent-husband, contributed Rs.7 lakhs as was demanded but the atrocities on the appellant-wife did not stop.

9. The appellant-wife also asserted that her mother-in-law gave her some *desi* medicine with an assurance that a son would be born, but, in fact, it was intended to abort her pregnancy and immediately thereafter, she fell ill and was taken to the hospital where she suffered an abortion.



The Doctor advised her complete bed rest to recover fully but she was made to do all the domestic chores because of which she developed other problems. On her becoming ill, the respondent-husband and their family members sent her with her brothers to her parental home with assurance that they would bring her back but failed to do so. It was evident that there was no intention to take her back to the matrimonial home. She ultimately went back to her matrimonial home on 23.06.2005 at about 4 p.m. but was not allowed inside the house and a quarrel followed. The police had to be called and an undertaking was given by the respondent-husband to the SHO, Police Station Nangloi that he would not commit any cruelty. Since then, the appellant-wife started residing in her matrimonial home despite all odds. It was asserted that she on many occasions was subjected to merciless beatings and abuses.

10. The appellant-wife further admitted that a MLC was prepared on 09.10.2005 but it is asserted that the same was prepared falsely. The appellant-wife thus denied all the allegations of cruelty as were made by the respondent-husband. On the contrary, it was asserted that it is she who was subjected to cruelty.

11. The Divorce Petition was filed in the year 2007. After the Divorce Petition was filed, the appellant-wife got registered an FIR bearing No. 106/2008 under Sections 498A/406/34 I.P.C. at P.S.Nangloi against the respondent-husband and his family members though they have been acquitted vide the judgment dated 16.03.2023. The appellant-wife had also filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (*hereinafter referred to as 'D.V. Act'*) against the respondent-husband but the same was also disposed of on



30.09.2022. A complaint case under Section 156(3) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C'*) titled *Sushila Vs. Joginder* was filed which is pending adjudication before the Malhila Court, Rohini. Further, a complaint case titled *Sushila Devi Vs. Sehnoor Khan & Ors.* was also filed which is pending trial before the learned M.M., Tis Hazari Courts.

12. Also, father of the respondent-husband had filed a complaint case being C.C.No.513526/2016 titled *Satyapal Vs. Sushila* for having threatened him in which the appellant-wife has been convicted under Section 506(II) I.P.C. vide judgment dated 14.12.2018.

13. **The issues** in the pleadings were framed on **12.05.2009** as under:-

“(i) Whether the respondent has treated the petitioner with cruelty, after solemnization of the marriage? OPP.

(ii) Whether the petitioner is entitled to a decree of divorce on the ground as prayed for? OPP.

(iii) Relief.”

14. The respondent-husband appeared as PW-1 in support of his assertions and also examined two other witnesses i.e. PW-2 Dr. Suneeta Agarwal and PW-3 Rakesh Kumar, UDC, SGM Hospital, Mangolpuri to prove the medical records.

15. The appellant-wife had appeared as RW-1 and tendered her evidence by way of affidavit Ex. RW1/1 in support of her case.

16. **The learned Judge, Family Courts** considered various acts of cruelty, physical abuse and mental torture along with the threats and the criminal cases filed by the appellant-wife against the respondent-husband and also the long period of separation. It was also observed that there was



no co-habitation between the parties and thus concluded that the respondent-husband has successfully proved that he had been subjected to cruelty and thereby granted divorce on the ground of cruelty under Section 13(1)(ia) the Act, 1955.

17. Aggrieved by the Decree of Divorce, the appellant-wife has preferred the present appeal.

18. **Submissions heard.**

19. The parties got married on 03.12.2003 but, instead of happiness, their marriage became a bed of rocks from the first day. According to the respondent-husband, the appellant-wife was a quarrelsome lady who did not show any respect to his visiting relatives and also shied from doing the household works. She also picked up quarrels on various occasions. Indisputably, on 23.06.2005, a fight ensued and the police was called. The matter was got resolved with the intervention of the police with the undertaking being given by the respondent-husband that some altercation had taken between them on some domestic matters and that the said mistakes would not be repeated in future. Both the parties amicably resolved their differences and that they did not want any police action and the matter was resolved. Another such incident being of 09.10.2005 when the brothers of the appellant-wife had assaulted the respondent-husband for which he had taken treatment at Sanjay Gandhi Hospital vide MLC No. 3504 dated 9.10.2005. This MLC Ex.PW-3/1 has also been proved by PW-2 and the testimony has remained unrebutted. In the MLC, the history of injury has been given as 'physical assault' and the respondent-husband had suffered CLW on his right eyebrow. No cogent explanation or rebuttal of this incident has been given by the appellant-wife.



20. The quarrelsome nature also got manifested during the Court proceedings on 19.12.2011 in FIR No. 106/2008 under Section 498-A IPC when the appellant-wife had threatened the respondent-husband and his family members that she would send him to jail and kill him. This incident has been admitted by the appellant-wife in her cross-examination recorded on 20.11.2012 in the said FIR/case.

21. Furthermore, a criminal case under Section 506(II) I.P.C. was registered against the appellant-wife and her family members in which they have been convicted vide Judgment dated 14.12.2018. It has been rightly argued that a person who does not shy in threatening and quarrelling with the respondent-husband and his family members in the open Court, her conduct as deposed by the appellant-wife at the matrimonial home can very well be accepted. These incidents clearly prove that the appellant-wife and her family members were quarrelsome and the appellant-wife had inflicted physical cruelty upon the respondent-husband.

22. The respondent-husband had also deposed that the appellant-wife would frequently go to her parental home. There is no denial that she went to her parental home on 05.09.2004 and returned only on 23.06.2005. While the respondent-husband had claimed that he had made sincere efforts to bring her back but the appellant-wife claimed that she had been deserted by the respondent-husband and she on her own had returned to the matrimonial home.

23. Significantly, according to the respondent-husband, though the parties started residing in the same house but they were living as strangers. The appellant-wife denied him conjugal relationship and



whenever he approached her, she threatened him to commit suicide. Again, there is no serious rebuttal of this testimony of the respondent-husband which again reflects that there was breakdown of conjugal relationship which is the bedrock of any matrimonial relationship.

24. It is further not in dispute that after the incident of fight between the respondent-husband and the brothers of the appellant on 09.10.2005 the appellant-wife had been residing in her matrimonial home. It is significant to note that the appellant-wife had made various allegations of dowry demand and has even claimed that a sum of Rs.7 lakhs has been paid to the respondent-husband and his family members for purchasing a bigger car. Pertinently, no complaint was made by the appellant-wife at that time but it was made subsequently after the Divorce Petition was filed in the year 2007 and the FIR under Section 498-A IPC was registered being FIR No. 106/2008 which is much after the parties separated in October, 2005. It is no doubt true that every person has a right to seek remedy by resorting to the State machinery and simpliciter filing a complaint under Section 498-A IPC would not amount to cruelty, but it cannot be overlooked that various allegations of cruelty had been made by the appellant-wife against the respondent-husband which have not been proved by her in the present proceedings. Even in the criminal trial, the respondent-husband and his family members have been acquitted. The appellant-wife though had claimed that she was subjected to harassment for dowry and to cruelty, but she has not been able to substantiate her assertions. Making such false allegations which she is not able to sustain or prove is clearly an act of cruelty. Though filing of a criminal complaint *per-se* cannot be termed as an act of cruelty yet, at the same time, the



allegations of cruelty as made in the criminal case(s), should have been substantiated in the divorce proceedings.

25. 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.

26. Similarly, it has been held by the Supreme Court in Mangayakarasi vs. M.Yuvaraj (2020) 3 SCC 786 that it cannot be doubted that in an appropriate case, the unsubstantiated allegation of dowry demands or such other allegations, made the husband and his family members exposed to criminal litigation. Ultimately, if it is found that such allegations were unwarranted and without basis and if that act of the wife itself forms the basis for the husband to allege the mental cruelty has been inflicted on him, certainly, in such circumstance, if a petition for dissolution of marriage is filed on that ground and evidence is tendered before the original Court to allege mental cruelty, it could well be appreciated for the purpose of dissolving the marriage on that ground.

27. Further, 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.

28. The appellant-wife has not been able to justify the ground on which these complaints were being made. As discussed in the judgments



mentioned above, repeated complaints with unexplained allegations to various agencies cannot be termed as anything but cruelty.

29. The term '*cruelty*' as used in Section 13(1)(ia) of the Act, 1955 cannot be defined in given parameters and there cannot be a comprehensive definition of '*cruelty*' within which all kinds of cases of cruelty can be covered and each case has to be considered depending upon its own unique factual circumstances. In *Gurbux Singh vs. Harminder Kaur*, (2010) 14 SCC 301, the Hon'ble Apex Court observed that the matrimonial life should be assessed as a whole and persistent ill conduct over a fairly long period of time would amount to cruelty. It was held as under: -

“The ill-conduct must be precedent for a fairly lengthy period where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, one party finds it extremely difficult to live with the other party no longer may amount to mental cruelty”.

30. Similarly, in *Samar Ghosh Vs. Jaya Ghosh* (2007) 4 SCC 511, the Apex Court held as under:-

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear



that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discomode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty”.

31. We find that in the present case as well, the disputes emanating from disrespect to respondent-husband and his family members, frequent quarrels resulting in various complaints which permeated the entire period while the parties were together even continued thereafter, persist over a long period of time resulted in mental agony for which there was no solution. Such prolonged differences and criminal complaints made the life of respondent-husband bereft of peace and conjugal relationship which is the bedrock of any matrimonial relationship. Thus, it can be held that this conduct of appellant-wife indisputably amount to cruelty, as



observed by the learned Judge, Family Courts.

32. The appellant-wife has further claimed in the Appeal for the first time that the respondent-husband has got married during the subsistence of their marriage and has two sons. In support thereof, she has placed on record copies of the complaint dated 24.04.2018 made to SHO, Police Station Sector 23, Dwarka, complaint dated 17.08.2018 made to SHO, Police Station Kanjhawala and the complaint dated 24.08.2018 addressed to CMM, Rohini Courts under Section 200 CrPC. She has also annexed the affidavits of four witnesses namely Anil, Sachin, Naresh and Mukesh in support of her averments.

33. The first complaint of alleged marriage of the respondent-husband to a second woman i.e. Pinki has been made in April, 2018 at the time when the Divorce Petition was pending before the learned Judge, Family Courts. No application was filed for leading additional evidence to prove the allegations made in the said complaint. Further, though a copy of the complaint under Section 200 CrPC has been filed but no details have been given if this complaint was ever filed before the Court and what was the fate of the said complaint.

34. Be that as it may, the allegations of appellant-wife are that the respondent-husband had got married. However, neither any specific details nor any proof whatsoever of the alleged second marriage has been tendered on record or given in the complaints mentioned above. Even if it is accepted that the respondent-husband has started living with another woman and has two sons during the pendency of Divorce Petition, that in itself, cannot be termed as cruelty in the peculiar circumstances of this case when the parties have not been co-habiting since 2005. After such



long years of separation with no possibility of re-union, the respondent-husband may have found his peace and comfort by living with another woman, but, that is a subsequent event during the pendency of the Divorce Petition and cannot disentitle the husband from divorce from the wife on the proven grounds of cruelty. Moreover, the consequence of such liaison shall be borne by the respondent-husband, the woman and the children. The appellant-wife has not been able to prove any other act of cruelty by the respondent-husband disentitling the respondent-husband from taking divorce.

35. We hereby conclude that the learned Judge, Family Courts has in detail considered all the incidents and has rightly concluded that the appellant-wife had subjected the respondent-husband to cruelty.

36. We find no merit in the present Appeal which is hereby dismissed.

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

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

SEPTEMBER 13, 2023

akb/jn