



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

% **Reserved on: 18th August, 2023**
Pronounced on: 05th September, 2023

+ **MAT.APP.(F.C.) 12/2021 & CM APPL. 2746/2021**

MAMTA Appellant
 Through: Ms.Renu Gupta and Ms.Pratiksha
 Jalan, Advocates.

Versus

PRADEEP KUMAR Respondent
 Through: Ms.Meera Kaura Patel and
 Mr.Saket, Advocates.

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 appellant/wife has filed the present appeal against the Judgment dated 25.02.2020 vide which the Divorce Petition filed by the respondent/husband (*petitioner in the divorce petition*) has been allowed on the ground of 'cruelty' under Section 13(1) (ia) of the Hindu Marriage Act, 1955 (*hereinafter referred to as 'the Act, 1955'*).

2. The **facts in brief** are that the appellant got married to the respondent according to the Hindu Rites and Customs on 30.04.2006 and one son namely master Ashwin Kumar was born from the said wedlock on 18.01.2007. The respondent/husband had claimed that the appellant was



aggressive, quarrelsome and violent in nature towards him and his family members. She used to frequently leave the matrimonial home without informing him or the family members and whenever they sought an explanation, she used to quarrel. On 09.08.2008, one Sh. Om Prakash, a close relative of the respondent/husband had come to their house where the appellant misbehaved with the relative. She did so with the other relatives who used to visit their house. It was further claimed that the appellant/wife did not mend her ways despite repeated requests and remained adamant and refused to do household work. She went to her parental home after quarrelling with the respondent on 08.12.2008. In the morning of 09.12.2008, the parents and the brother of the appellant along with three other unknown persons came to the house of the respondent and took away her jewellery and other valuable articles after manhandling the respondent and his family members for which they made a complaint to the police vide DD No. 42B dated 09.12.2008 at PS Palam Village and thereafter vide DD No. 47 dated 09.12.2008, however, ASI Mohinder Singh forced them to compromise the matter and obtained their signatures forcibly. Again, a written complaint regarding this incident was given by the respondent to the police on 23.12.2008 and 27.04.2010. He also received medical treatment at Safdarjung Hospital vide MLC No. 242161 dated 09.12.2008.

3. In retaliation, the appellant filed a complaint in CAW Cell against the respondent and his family members but subsequently withdrew the same. She thereafter, filed a complaint case under the Protection of Women from Domestic Violence Act, 2005 (*hereinafter referred to as 'D.V. Act'*) on 16.11.2010 before the MM, Saket Court, which also was



withdrawn by her on 23.05.2011. Additionally, the appellant filed a petition under Section 125 CrPC wherein the respondent has been directed to pay Rs.3000/- per month as interim which he has been regularly paying and the said petition is still pending trial. Thereafter, the respondent/husband filed a complaint under Section 156(3) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C'*) against the appellant/wife and her family members but the same was withdrawn on 27.06.2011 following a compromise between the parties.

4. Again, a complaint in CAW Cell was filed by the appellant/wife thus, the respondent was constrained to seek divorce by way of the Divorce petition on the ground of 'cruelty'.

5. **The appellant wife contested the Divorce petition** by asserting that she was harassed on account of dowry and was given merciless beatings. On 08.12.2008, the appellant was thrown out of the matrimonial house and since then she has been living at the mercy of her parents. She lodged a complaint against the respondent/husband at PS Palam village on 16.12.2008 and also at CAW Cell, Srinivas Puri on 09.04.2010. She withdrew her D.V. Petition on 23.05.2011 following a compromise with the respondent. It was claimed that the divorce petition was frivolous and the decree granted is liable to be rejected.

6. The parties examined themselves in support of their respective assertion. The learned Principal Judge, Family Court observed that the parties admittedly are residing separately since 08.12.2008 pursuant to a quarrel which is reflected in DD No. 42B dated 09.12.2008 and even the MLC of the respondent husband was prepared at Safdarjung Hospital. Furthermore, the appellant had again filed a complaint in CAW Cell and



also FIR no. 01/2016 under Section 498A/406/34 of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*) was registered against the respondent and his family members. The learned Judge, Family Court observed that though as per the testimony of the respondent/petitioner, their marriage was very good in the beginning, but he has proved various incidents in his testimony which clearly reflect that he was subjected to cruelty by the appellant/wife. It was also observed by the Learned Judge, Family Court that no adverse inference can be drawn against the respondent/husband and his family members merely because of registration of case under Section 498A IPC. It was also observed that the entire facts have to be seen as a whole and each incident cannot be considered separately. There was sustained cruelty committed by the appellant/wife upon the respondent/husband over a period of time and thus, it was concluded that the respondent was entitled to divorce under Section 13 (1) (ia) of the Act, 1955 on the ground of '*cruelty*', the petition was accordingly allowed.

7. Aggrieved by the said judgment, the appellant/wife has filed the present Appeal.

8. **The main grounds agitated** in the present Appeal are that it is appellant who was subjected to cruelty by the respondent as she was not only harassed for dowry despite which she made all the efforts to settle the disputes which proved futile, compelling her to get the FIR registered under Section 498A/406/34 IPC against her husband and his family. It is claimed that the registration of the FIR was not on account of any false averments but on the basis of the cruelty committed by the respondent and his family members upon her. It is further argued that she was willing



always to live peacefully with the respondent but it is the respondent who is in fact guilty of cruelty and he cannot be allowed to make a premium of his own wrong. It is therefore, stated that the decree of divorce is liable to be set aside.

9. **The respondent husband in his reply to the present Appeal** has stated that he has been a victim of both physical as well as mental cruelty. The appellant on 04.07.2006 had beaten her mother-in-law Sarla Devi and left the matrimonial home without informing anyone about her whereabouts. Subsequent to the fight on 08.12.2008, numerous false complaints were filed against him and his family by the appellant to harass them. The Trial Court in FIR No. 01/2016 has framed the charge only under Section 498A IPC and not under Section 406 IPC and the matter is still pending.

10. **Submissions heard.**

11. The marriage is not simply a union between the two individuals but is a social institution having legal, economic, cultural and religious ramifications. Functionally, marriages are seen as an institution that propagates of social and cultural capital as they help in identifying kinship ties, regulating sexual behaviour and consolidating property and social prestige as has been held in the case of Sivasankaran vs. Santhimeenal 2021 SCC OnLine SC 702.

12. Marriages under old Hindu Law are considered as a sacrament and did not recognize the concept of divorce. Once this union of marriage was established, the ties were for the entire life of the spouses which could not be severed under any circumstances. Complete shift of paradigm from the social ethos happened with the enactment of the Act, 1955 which not only



introduced the concept of ‘monogamy’ but also defined certain grounds on which alone divorce could be granted. Despite this phenomenal change in the social ethos, the Act, 1955 recognises the ground of divorce only on “*Fault Theory*”. Unless the opposite party was shown to be at fault, whether it was for ‘Adultery’, ‘Cruelty’, ‘Desertion’ or other grounds as specified under Section 13 of the Act, 1955, no divorce can be granted. With the passage of time, experience has shown that many a times, the marriages do not work because of incompatibility and temperamental differences, for which neither party can be blamed. However, since only Fault Theory prevails, these parties end up warring with each other for years to come only because they have no way of exiting this relationship. While many debates have been held to introduce “*Irretrievable Breakdown of Marriage*” as a ground, it has not met the approval and consent of the legislation. We are bound by limits as defined under the Act, 1955 and unless the fault of the other spouse is shown, the parties are left to suffer acrimonious relationship with no way to exit. In this backdrop, the facts of the present case may be considered.

13. In order to be successful in getting divorce, the appellant has to establish circumstances which can be termed as ‘cruelty’ by the respondent so as to dissolve the bond of marriage. Admittedly, the parties got married on 30.04.2006 but barely after a little more than 2½ years, they got separated on 08.12.2008. It has come in the evidence of the parties that on the fateful day i.e. 08.12.2008, a fight took place between the parties in which the respondent/husband suffered injuries and was treated at Safdarjung Hospital vide MLC No. 242161 dated 09.12.2008. The version of the appellant was that on the said date, she was thrown out



of the matrimonial home and since then, has been living at the mercy of her parents. However, the incident of 08.12.2008 is not denied. The testimony of the respondent/husband that the injuries were inflicted by the appellant has also not been seriously repelled. While the sole incident of fight may not be a ground as envisaged under Section 13(1)(ia) of the Act, 1955 but this one incident gives credibility to the testimony of the respondent that the appellant used to frequently quarrelled and misbehaved with the appellant and his relatives.

14. In this context, it is also pertinent to appreciate the testimony of the respondent/husband that after the fight on 08.12.2008, her parents and brother came to their house in the morning of next day i.e. 09.12.2008 and took her away along with the jewellery and other valuable articles from their house and also manhandled the respondent and his family members. The respondent made a complaint to the police vide DD No. 42B dated 09.12.2008 at Police Station Palam Village and thereafter, vide another DD No. 47 of the same date. He was compelled to compromise with the appellant forcibly. However, a written complaint was again given by the respondent/husband to the police about the same incident on 23.12.2008 and 27.04.2010. The testimony of the respondent shows that not everything was fine in the matrimonial nest and that he was suffering harassment at the hands of the appellant/wife.

15. It is not in dispute that a complaint in CAW Cell against the respondent and his family members was filed by the appellant. The respondent had claimed that the complaint was made in retaliation since it was subsequently withdrawn. The appellant has neither been able to sustain or prove the allegations made by her in the complaint made to



CAW Cell or explain the circumstances for its withdrawal.

16. The appellant has not denied that she also filed a complaint case under D.V.Act on 16.11.2010 before the learned MM, Saket Courts which also was withdrawn by her on 23.05.2011. Additionally, she has filed a complaint in CAW Cell and also FIR No. 01/2016 under Sections 498A/406/34 IPC was registered against the respondent and his family members. The filing of the criminal complaints or seeking a redressal from the State machinery for a wrong committed upon an individual, can never be questioned or looked at with suspicion. However, for this, the onus was on the appellant to explain the reasons for making these complaints and their subsequent withdrawals. Also, it was for the appellant to prove the allegations of harassment and torture that were evidently made by her in the two complaints to CAW Cell and ultimately in the FIR.

17. It is significant to note that the parties were living separately since 08.12.2008. Apparently, the petition under D.V.Act was withdrawn by the appellant on 23.05.2011 because of the settlement between the parties in regard to which, a statement was made, copy of which is Mark P-1/R1. Admittedly, both the parties did not comply with the said Settlement. Moreover, the matter was again settled with the intervention of the Counsellor in the proceedings under Section 125 CrPC on 24.12.2018, wherein the parties agreed to have a separate residence but again the settlement was not acted upon by both the parties. It is evident that the differences had become so deeply entrenched between the parties and they have drifted apart from where, they have no coming back from there. The period of separation of 15 years has gone by and the difference between



them is irreconcilable.

18. The respondent in his testimony had deposed about the cruel acts of the appellant in as much as she showed no respect to his family members and had quarrels with the respondent which even resulted in the injuries to the respondent. The complaints were filed time and again by the appellant and even under Section 498A IPC. 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. No incident of cruelty towards her by the respondent/husband has been proved.

19. 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 also constitutes mental cruelty for the purpose of Section 13(1)(ia) of the Act, 1955.

20. 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.

21. 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.

22. The appellant 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.

23. 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 a few isolated incidents over a period of time will not 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.

Making certain statements on the spur of the moment and expressing certain displeasure about the behaviour of elders may not be characterized as cruelty. Mere trivial irritations, quarrels, normal wear and tear of married life which happens in a day-to-day life in all families would not be



adequate for grant of divorce on the ground of cruelty”.

24. 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, discommode 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”.

25. We find that in the present case as well, though the disputes emanating from disrespect to respondent and his family members, frequent quarrels resulting in various complaints may individually seem innocuous and day to day quibbles, but when they persist over a long period of time, it results in mental agony for which there is no solution. Such prolonged differences made the life of respondent bereft of peace and conjugal relationship which is the bedrock of any matrimonial relationship. Thus, as observed in above judgments, it is evident that this matrimonial relationship rest only on irritations and daily fighting and it can be held that this conduct of appellant became a source of cruelty towards the respondent.

26. Furthermore, both the spouses have been living separately since 08.12.2008 i.e. a period of almost 15 years. It has been already noted time and again in the judgments of the Supreme Court that continuous separation between the parties for a long period itself is a ground for divorce.

27. In one of the momentous decisions, the Apex Court in the case of Naveen Kohli vs. Neelu Kohli (2006) 4 SCC 558 has held that once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down.

28. The Apex Court in the case of Samar Ghosh (supra) laid down



certain guidelines with respect to Section 13(1)(ia) of the Act, 1955 and it has been held that in a marriage where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage. On the contrary, it shows scant regard for the feelings and emotions of the parties and can be termed as mental cruelty.

29. In a recent judgment in Rakesh Raman Vs. Kavita (2023) SCC Online SC 497, the Apex Court again reiterated as under: -

“20.....Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty”.

30. We conclude that in the present case the parties are living separately for 15 years now; there is no chance of reconciliation between the parties and such long separation peppered with false allegations, police reports and criminal trial has become a source of mental cruelty and any insistence either to continue this relationship or modifying the Family Court's order would only be inflicting further cruelty upon both the parties. Living together in a marriage is not an irreversible act. But marriage is a tie between two parties and if this tie is not working under any circumstances, we see no purpose in postponing the inevitability of



the situation.

31. We find no merit in the present Appeal and the same is hereby dismissed along with pending applications, if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

SEPTEMBER 05, 2023

akb