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Acj vs. Rj

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Court : Delhi

Decided On : May-23-2016

Judge : Vipin Sanghi

Appeal No. : MAT. APP. 30 of 2008

Appellant : ACJ

Respondent : RJ

Judgement :

Vipin Sanghi, J.

1. The present appeal under Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred as HMA) has been preferred to assail the judgment and decree dated 17.10.2007 passed in HMA No.89/2006 by the Additional District Judge (ADJ), Delhi, whereby the learned ADJ dismissed the petition preferred by the appellant/husband under Section 13(1)(ia) of the HMA, seeking a decree of dissolution of marriage against the respondent/wife on the ground of cruelty.

2. The facts as delineated in the petition are that the marriage between the parties was solemnized on 19.05.1997 at Girdi, Bihar, according to Hindu rites and ceremonies. After the customary performance of the Gauna Ceremony on 10.12.1997, she was brought to the matrimonial home and the marriage was consummated. No issue was born out of the wedlock.

3. The appellant asserted three specific instances of insult and injury against the respondent. Firstly, the appellant asserts that shortly after the respondent s arrival to Delhi, she started pressurizing him to move out of the matrimonial home and live separately from his parents, but the appellant was not agreeable. After that, her behaviour changed towards the appellant and his family members. It is alleged that on 20.12.1997, at around 11.00 p.m. while the parties were sleeping, the respondent, without any provocation hit him on his eye and told him that she wants to make him blind. He informed his parents about the incident the very next morning. Secondly, he asserts that on 02.02.1998, one Sh. Bhim Singh Paswan a family friend, visited their house and the appellant asked her to prepare tea; on this, she slapped him and told him that he deserves a slap, not tea. He felt humiliated and remained mentally upset for days. Thirdly, the appellant claims that on 10.02.1998, one of his relatives, Sh. Gangadhar visited the home of the parties. The father of the appellant requested her to get a glass of water; upon this, she told him that she is not a maid and started misbehaving/using abusive language. He claims that because of such erratic behaviour of the respondent, he could not sleep for nights and suffered mental trauma. He further claims that the appellant and his family members tried their best to keep the respondent happy, but she was adamant on living separately from his parents. The father of the respondent visited the appellant on 15.04.1998, and informed him that the respondent did not wish to live in Delhi and wanted a divorce. The respondent left the matrimonial home on 16.04.1998. He asserts that the respondent and her parents did not provide him with their address; therefore, he could not bring her back to the matrimonial home. Thereafter, there has been no correspondence between the parties.

4. In the written statement filed by the respondent-wife, she denied all the allegations. She claimed that the appellant and his family members were making dowry demands. She stated that at the time of marriage, the father of the respondent had given an amount of Rs. 3,00,000/- as dowry. After the marriage, she was left at her parental home with an assurance that she would soon be called to Delhi to join her matrimonial home. In the month of November 1997, the appellant asked her to bring an amount of Rs. 2,00,000/- if she wanted to join the matrimonial home, since the father of the respondent had not provided sufficient dowry at the time of the marriage. The father of the respondent paid the amount of

Rs. 2,00,000/- to the father of the appellant and, thereafter, on 10.12.1997, she was taken by the appellant to the matrimonial home. In the month of January 1998, the father of the appellant asked her to bring an amount of Rs.50,000/-, but she refused. Thereafter, the behaviour of the appellant and his family members changed drastically. The family members of the appellant started torturing her mentally. The appellant refused to perform his conjugal duties. It is stated that on many occasions, she was physically abused by the mother and sister of the appellant. She stated that the appellant misappropriated her Stridhan, due to which, she filed a complaint with the CAW Cell. She further stated that in the month of April, the father of the respondent visited Delhi. He saw her poor health condition, and requested the appellant and his family members to allow her to accompany him to Bihar. Thereafter, she left for Bihar with her father. In the month of July 1998, the respondent requested the appellant to take her back to the matrimonial home, upon which, he asked her to bring a sum of Rs.50,000/-, if she wanted to come back. On 10.12.1998, the respondent came back to the matrimonial home along with her father and cousin brother. She was refused entry and since then she has been residing with her uncle in Delhi. The incidents dated 20.12.1997, 02.02.1998 and 10.02.1998 were denied. She stated that the same are concocted.

5. In the replication filed by the appellant, he reiterated and reaffirmed his stand. The appellant categorically denied the allegations with regard to the dowry demands. He stated that previous complaints filed by the respondent are false and were withdrawn by her. Thereafter, she again filed a complaint with the CAW Cell.

6. After the issues were framed, both the parties led evidence in support of their case. The Trial Court after assessing the evidence placed on record dismissed the petition.

7. The Trial Court came to the conclusion that the version of the petitioner/appellant regarding the first incident dated 20.12.1997 aforesaid was not believable, as there are contradictions in the testimonies with regard to the date of incident, and with regard to whether the petitioner was taken to hospital for the treatment.

8. In relation to the second incident dated 02.02.1998, the Trial Court concluded that there is inconsistency and contradiction in the testimonies of the witnesses with regard to the presence of mother and father of the appellant at the time of the incident. The Trial Court also concluded that Sh. Bhim Singh Paswan (PW-4) is a tutored and an interested witness. It was further observed that the version of the petitioner/appellant is improbable, as no one would again ask a daughter-in-law to prepare tea, if she is already misbehaving in the manner alleged.

9. The Trial Court, in respect of the third incident dated 10.02.1998, observed that the petitioner/appellant, in his testimony, stated that he asked the respondent to bring a glass of water, whereas the other witness claimed that the father of the appellant asked the respondent to get a glass of water. It was also observed that Gangadhar (PW-5) stated that at the time of the incident, the appellant s sister was also present, but none of the other witnesses stated so. The court further concluded that there are contradictions in the statement of the petitioner/appellant with regard to the respondent raising her hand to slap, as none of the witnesses stated the same. Therefore, incident dated 10.02.1998 was also disbelieved.

10. The Trial Court further concluded that the letter dated 30.08.1998 (Ex. PW1/2) written by the respondent to the father of the petitioner appears to be a letter written out of frustration. The parties had lived together for a period of four months, which is very less to conclude that the marriage has in any manner broken down. The Trial Court also concluded that the dismissal of the petition filed by the respondent for restitution of conjugal rights under section 9 of the HMA, does not entitle the petitioner/appellant to get his petition under section 13 (1)(ia) of HMA allowed, as the same does not establish the ground of cruelty. The Trial Court further concluded that the CAW Cell complaint filed by the respondent cannot be considered as a ground for divorce, as the same is still pending. Consequently, the petition was dismissed. Hence, the present appeal.

11. Learned counsel for the appellant submits that since the very beginning of the matrimonial relationship, the respondent started misbehaving with the family of the appellant. The respondent started making unreasonable demands to live separately from the parents of the appellant. The appellant refused to live

separately from his parents, expressing that he is their only son and the only support system for his old age parents. Thereafter, the behaviour of the respondent changed drastically towards him and she started behaving erratically. He submits that the specific incidents mentioned in the petition were proved by the testimonies of the witnesses. They clearly establish that the appellant was subjected to mental and physical cruelty by the respondent repeatedly.

12. Learned counsel submits that the Trial Court failed to appreciate and discuss the testimony of the independent witness, i.e. Sh. Chiranjee Lal Raghav (PW-3), the President of the Residence Welfare Association, Paschim Vihar, New Delhi. He asserts that Sh. Chiranjee Lal Raghav has known the appellant and his family for over 20 years. Sh. Chiranjee Lal Raghav, in his evidence by way of affidavit, clearly stated that the present matrimonial dispute was never about dowry demand and harassment. He also deposed that he was present at the Police Station, Paschim Vihar on 05.08.1999, when the negotiation between the families of the parties were undertaken, and the father of the respondent demanded a separate residence for the respondent. Learned counsel submits that the testimony of Sh. Chiranjee Lal Raghav has gone unchallenged and proves the case of the appellant.

13. Regarding the incident dated 02.02.1998, learned counsel submits that the testimony of the Sh. Bhim Singh Paswan (PW-4), was disbelieved by the Trial Court merely on the ground that he stated that his children had taken coaching from the appellant. Therefore, he was assumed to be a tutored and an interested witness. He submits that the Trial Court erred in concluding that he is an interested witness. This finding is without any basis. He further submits that in matrimonial disputes, family members, friends and neighbours are the most relevant and natural witnesses. Therefore, Sh. Bhim Singh Paswan (PW-4) is a credible witness. It would be inappropriate to expect an outsider to come and depose. Reliance is placed on Vishwanath Agrawal v. Sarla Vishwanath Agrawal, (2012) 7 SCC 288.

14. Regarding the incident of 10.02.1998, learned counsel submits that the testimony of Sh. Gangadhar (PW-5) was disbelieved on the ground that he

claimed that his sister was present at the time of the incident, whereas none of the other witnesses, who were examined, claimed so. He submits that Sh. Gangadhar is an independent witness and his testimony has gone unchallenged, and the same clearly establishes the allegation of cruelty made by the appellant in the petition.

15. Learned counsel submits that the Trial Court has dismissed the petition on the ground that there are contradictions and inconsistency in the statements of the appellants/petitioners witnesses. He argued that the contradictions are minor, and that the deposition should be looked at as a whole. Minor contradiction in the testimony of witnesses, which do not go to the root of their testimonies, and minor discrepancies are natural.

16. Reliance is placed on Ramesh Chand v. Suresh Chand, 188 (2012) DLT 538, wherein it was observed:

8. ....A civil case is decided on balance of probabilities. In every case, there may appear inconsistencies in the depositions of witnesses however, the depositions have to be taken as a whole. Minor inconsistencies which do not affect the main substance of the case, are to be taken in correct perspective along with the other evidences, including documentary evidence which is led in the case. Assuming that a witness is not stating correctly in some places does not mean that he is to be held lying generally and hence an unreliable witness. This is so because it has been repeatedly said by the Supreme Court that the doctrine Falsus in Uno, Falsus in Omnibus does not apply in India.

17. Learned counsel submits that in the written statement filed by the respondent, in Para 16, she stated that the mistakes committed by the respondent during her stay at the matrimonial home were condoned by the appellant. He submits that the acts of cruelty committed by the respondent were never condoned, as the parties never cohabited after she left the matrimonial home, i.e. on 16.04.1998. She was never reinstated to her original status.

18. He further submits that the Trial Court failed to take into consideration the events subsequent to the filing of divorce petition. The respondent filed a petition

under section 9 of HMA for restitution of conjugal rights in 2001, which was dismissed vide order dated 01.05.2003. He submits that the learned ADJ, while dismissing the said petition, made observations against the respondent in the order, that the respondent had put a condition, that appellant herein be directed to live and maintain her in a separate house from his parents. The learned ADJ came to a conclusion that in view of serious allegations, it would not be possible for the parties to live together happily.

19. Learned counsel further submits that the Trial Court has failed to appreciate the contents of the letter dated 30.08.1998 (Ex.PW-1/2) written by the respondent to the father of the appellant, wherein, she has levelled various bald and serious allegations against the family members of the appellant. She threatened to insult the appellant and his family in public, i.e. in front of neighbours and relatives. She also threatened to get them arrested. In the said letter, she also stated that she has no desire to stay in the matrimonial home.

20. Learned Counsel submits that the said conduct of the respondent also demonstrates that she has lost respect for the appellant and the same amounts to mental cruelty. Reliance is placed on Ravi Kumar v. Jumlidevi, JT 2010 (2) SC 213, wherein, it was observed:

18. It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, some time it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty. Therefore, cruelty in matrimonial, behaviour defies any definition and its category can never be closed. Whether husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any pre-determined rigid formula. Cruelty in matrimonial cases can be of infinite variety - it may be subtle or even brutal and may be by gestures and words. That possibly

explains why Lord Denning in Sheldon v. Sheldon (1966) 2 All E.R. 257 held that categories of cruelty in matrimonial cases are never closed.

21. He further submits that the respondent, with an intention to harass the appellant, embroiled him in malicious litigation by moving an application under section 12 of Domestic Violence Act, 2005 on 24.07.2010 and filed a petition under section 125 Cr.P.C. on 13.04.2011. Both the cases filed by the respondent were dismissed in default for non prosecution on 19.02.2015 and 24.11.2014, respectively. In these petitions, the respondent made serious baseless allegations against the appellant. He further submits that even the present appeal had been adjourned for more than 5 year, on one pretext or the other, by the respondent. The said approach and subsequent conduct of the respondent clearly tantamount to mental cruelty. Reliance was placed on Vishwanath Agrawal (Supra), wherein, the Supreme Court has held that events subsequent to filing of the divorce petition can be taken into consideration.

22. Learned counsel submits that the facts of the present case demonstrate the mental pain and agony suffered by the appellant due to the conduct of the respondent during her stay at the matrimonial home, and after she left the matrimonial home. Reliance is placed on Samar Gosh v. Jaya Gosh (2007) 4 SCC 511, wherein the Supreme Court, while dealing with mental cruelty, laid down the following guidelines:

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.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) 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.

23. Learned counsel submits that admittedly, the parties have been living separately for more than 17 years. It is fair to conclude that the matrimonial bond between the parties is beyond repair. He submits that since the marriage between the parties have become fictional, therefore, it would be wrong to support it with a legal tie. The same has led to mental cruelty to the appellant.

24. On the other hand, learned counsel for the respondent supports the judgment of the Trial Court. He submits that the judgment is based on correct appreciation of evidence, and does not suffer from any infirmity, much less any perversity.

25. I have carefully considered the submissions of learned counsel for the appellant and perused the record laid in the case, including the impugned judgment.

26. The submissions of the learned counsel for the appellant are threefold. Firstly, the minor inconsistency and contradictions in the deposition of the witnesses does not change the substance of the case. Secondly, the subsequent event and

conduct of the respondent after the filing of the divorce petition has amounted to mental cruelty. Thirdly, the matrimonial bond between the parties is beyond repair and that itself has caused, and continues to cause mental cruelty to the appellant. Therefore, it would be wrong to support it with a legal tie.

27. In relation to the incident dated 20.12.1997 (when the respondent allegedly slapped the appellant on his eye), the appellant (PW-1), in his cross examination deposed that he did not consult any doctor after the incident as there was no visible injury on his eye. The father of the appellant (PW-2), in his cross examination, deposed that the appellant did visit the doctor after being hit on his eye. He also deposed that his eye had swollen and healed after three days. The mother of the appellant (PW-6), in her cross examination, deposed that eye of the appellant had swollen and she took him to the nearby hospital. The contradictions in the testimonies of the witnesses with regards to the incident dated 20.12.1997, do not inspire confidence and cannot prove the aforesaid alleged incident. Thus, I find no reason to interfere with the finding of the learned ADJ.

28. In relation to the incident of 02.02.1998, the Trial Court, in paragraph 24 of the judgment observed that:

24. The petitioner does not say that any other person were present at the time of said incident. The father and mother of petitioner does not say in their affidavit that they were present in the house at the time of incident. When father was asked he stated that he was present but mother stated that apart from herself, her son, her husband and Sh. Paswan were present. Bhim Singh Paswan is a tutored witness. He stated that his children had taken coaching from petitioner. There are contradictions in the testimonies of the witnesses. Sh. Paswan stated that after the incident he immediately left the home. There are inconsistency and contradiction in the testimony of witness. The version is also improbable as no one would ask a daughter-in-law to prepare tea if she is already misbehaving in the manner alleged. Therefore, the petitioner failed to prove this incident also.

(emphasis supplied)

29. The appellant (PW-1), in his examination in chief stated that:

On 2.2.98, one Bhim Singh Paswan had visited our house and asked the respondent to prepare tea for him, at this she slapped me, on account of which I felt humiliated. ... ...

30. In his cross examination, he deposed that the incident of 02.02.1998 had indeed, occurred. The father of appellant (PW-2), in his evidence by way of affidavit stated that:

10. That on 02.02.1998 when Sh. Bhim Singh Paswan, a family friend who has known the family from past 15 years visited the house of the petitioner, petitioner asked the respondent to prepare a cup of tea for Sh. Paswan, at this respondent gave a tight slap to the petitioner right across his face... ... .

31. In his cross examination, PW-2 confirmed that he was present at the time of the aforesaid incident. The mother of the appellant (PW-6), in her evidence by way of affidavit stated on the same lines. In her cross examination, she deposed that she was present when the aforesaid incident took place.

32. Bhim Singh Paswan (PW-4), in his evidence by way of affidavit narrated the incident on the same lines as other witnesses. In his cross examination, he deposed that Petr. had asked the respt. to prepare a cup of tea. When the respt. slapped the petr... ... .

33. Perusal of the aforementioned testimonies reveals that the finding returned by the Trial Court with respect to the incident of 02.02.1998, is completely erroneous. There is no contradiction in the testimonies of the witnesses with respect to the presence of each of the witnesses at the time when the incident occurred. It is correct that the appellant (PW-1), PW-2 and PW-4 did not state in their respective evidence by way of affidavit, with respect to their own presence. However, in their cross examination, they all have stated that they were present at the time of incident. It cannot be appreciated how Bhim Singh Paswan (PW-4) could be construed to be a tutored and interested witness, merely because his children took coaching from the appellant. Obviously, it is acquaintances of the family, and family members who would be present in the house, and if any incident takes place, it is they who would witness the same. In Vishwanath Agrawal (supra), the

Supreme Court, inter alia, observed:

39. ... ... At this juncture, we may unhesitatingly state that the trial court as well as the first appellate court have disbelieved the evidence of most of the witnesses cited on behalf of the husband on the ground that they are interested witnesses. In a matrimonial dispute, it would be inappropriate to expect outsiders to come and depose. The family members and sometimes the relatives, friends and neighbours are the most natural witnesses. The veracity of the testimony is to be tested on objective parameters and not to be thrown overboard on the ground that the witnesses are related to either of the spouse. ...

34. Upon perusal of the testimony of PW-4, it is clear that the same is unimpeached. No evidence has been brought on record to show that PW- 4 was an interested witness. The respondent did not even suggest to the witness (PW-4) that he was under the control of functionally or psychologically, or indebted to the appellant financially, emotionally, or morally, to depose falsely in his favour. He was not obliged to depose falsely on oath for any particular reason. His testimony is corroborated that of the other witnesses, viz. PW-1, PW-2, PW-6.

35. The said incident has been held to be improbable in view of the respondent already misbehaving in a similar manner. However, it was not the case of the appellant, that a similar incident had taken place earlier. The earlier incident related to the alleged injury caused to the eye of the appellant, which had been disbelieved. Even otherwise, merely because a family member may have misbehaved on an earlier occasion(s), is no reason to conclude, that such member would never be called upon to discharge the obligation that the person can reasonably be expected to discharge as a member of the family. Being the daughter-in-law and a housewife it would not have been unusual for the appellant and his family members to ask the respondent to prepare tea for a guest/acquaintance who has visited the family.

36. The mere omission on the part of the witnesses to mention as to who all were present at the time of the incident, cannot be treated as a contradiction. It is not that while one witness states that a particular person was present, the other witness(es) deny that position. Pertinently, in their cross-examination, none of the

witnesses to the incident of 02.02.1998 were asked as to who all were present. In fact, (PW-6) the mother of the appellant had deposed that Apart from myself and the petitioner Bhimsen Paswan and my husband were present at that time in the house. Thus, the finding of the learned ADJ on the incident of 02.02.1998 is patently laconic as it is premised on a misplaced approach.

37. With respect to the incident of 10.02.1998, the Trial Court, in paragraph 30 of the judgment observed that:

30. Petitioner claimed that he had asked respondent to bring glass of water. Whereas other witness claimed that father of petitioner had asked respondent to bring water. PW5 claimed that sister of petitioner was also present at time of incident whereas none of the other witnesses examined claimed so. Further petitioner stated that respondent had raised hand to slap him but this is not stated by any other witness who claimed to be present at time incident. Therefore, there are inconsistency in the testimony of witnesses on material point. Their (sic.) version is also not probable and believable. Therefore, petitioner has failed to prove this incident.

38. The appellant (PW-1) in his examination in chief stated that:

On 10.2.98, one Ganga Dhar had visited my house, who is my cousin brother. In his presence I asked to the respdt. To serve me a (sic.) glass of water, at this she humiliated me by showing her hand to slap (sic.) me. She (sic.) also used filthy language for myself and my parents.

39. In his cross examination, he deposed that It is incorrect to suggest that no incident dated 10/2/98 as deposed by me in my chief examination dated 12/7/02 took place.

40. The father of the appellant (PW-2), in his evidence by way of affidavit stated that:

11. That again on 10.02.1998 when Sh. Gangadhar one of the relative of the petitioner had visited the house of the petitioner the deponent requested the respondent to bring a glass of water for Mr. Gangadhar as she was around, but

respondent gave a very rude reply to the deponent that respondent is not deponent s servant and abused petitioner, deponent and his family members in filthy language in presence of Sh. Gangadhar, just in order to humiliate them.

41. In his cross examination, he deposed that:

Sh. Ganga Dhar is my wife s sister s son. I was present at the time when Sh. Ganga Dhar visited on 10.2.98. As only I had requested the respondent to get a glass of water for Sh. Ganga Dhar. It is wrong to suggest that after the incident of 2.2.98, I would not have asked the respondent for a glass of water on 10.2.98. At the time of incident of 10.2.98, besides me, petitioner was also present. It is wrong to suggest that no such incident as narrated by me in my affidavit happened on 10.2.98.

42. The mother of the appellant (PW-6), in her evidence by way of affidavit stated on the same lines as that of PW-2. In her cross examination, he deposed that:

I was present in my house on 10.2.98 when Sh. Gangadhar visited our (sic.) house. At that time besides me, my husband and my son too were present. Gangadhar is son of my sister. It is correct that despite the fact we knew the background and character of respondent my husband asked the respondent to bring a glass of water for him. It is incorrect to suggest that no such incidence as narrated by me in para 12 of the affidavit had happened on 10.2.98.

43. Gangadhar (PW-5), in his evidence by way of affidavit stated that:

3. That on 10.2.1998 when the deponent visited the house of the Petitioner, Petitioner s father requested the respondent to get a glass of water for the deponent but the respondent gave a very rude reply to him that she is not his servant and abused Petitioner and all his family members in filthy language in presence of the deponent.

44. In his cross examination, he deposed that:

In the month of February 1998, date I do not remember. I went to the house of my Mausaji. At the time, besides me, my Mausaji, my Mausi, my sister were present in

the house. ... . By sister I mean my Mausi s daughter. ... . The incident which I have narrated in para 3 of my affidavit took place soon after we reached the house. ... . It is incorrect to suggest that no incident has narrated by me in para 3 of the affidavit took place within my presence ... .

45. Perusal of the aforementioned testimonies reveals that the finding returned by the Trial Court with respect to the incident of 10.02.1998, is also completely erroneous. PW-2, PW-6 and PW-5 all state that it was PW-2 who asked the respondent to bring a glass of water for PW-5. When a relative or guest visits a household, it is customary in our country to offer him/ her a glass of water to begin with, soon after the arrival. On the arrival of the guest, that is the normal reaction and expected behaviour of the host. Thus, it is not unusual that more than one of the family elders may ask for a glass of water for a guest. Thus, whether, only PW-2 asked for the glass of water, or both PW-1 and PW-2 asked for it (for the guest PW-5) is immaterial. The fact that the respondent was asked for a glass of water for the guest Gangadhar on 10.02.1998, and the respondent behaved in the manner narrated by these witnesses, stands established from the aforementioned testimonies. Gangadhar (PW-5) deposed that apart from the appellant, PW-2, and PW-6, the sister of the appellant was also present. All the other witnesses did not state with regard to the presence of the sister of the appellant. Perusal of the testimonies of PW-1, PW-2, PW-6 reveals that no question was put to the witnesses in their cross examination with respect to the presence of other family members at the time of the incident. Therefore, the same cannot be construed as a contradiction. The appellant (PW-1) had deposed that the respondent had raised her hand to slap him, and abused in filthy language. PW-2, PW-5 and PW-6 deposed that the respondent abused in filthy language when asked for a glass of water. However, they did not depose that the respondent raised her hand to slap the appellant. In my view, the same is not a contradiction, and at the highest, may be an exaggeration. No specific question was put to PW-2, PW-5 and PW-6 with respect to the respondent raising her hand to slap the appellant. They did not have the opportunity to deny or affirm the same. Therefore, the aforesaid ambiguities in the testimonies of the witnesses do not render the testimonies unreliable. In any event, even if it were to be accepted that the respondent did not raise her hand to hit the appellant, but only reacted by hurling filthy abuses and not getting the

water, that by itself, constitutes a matrimonial offence.

46. It may also be noted that the testimonies of PW-2, PW-4, PW-5 and PW-6 were recorded between 2005 to 2007, i.e. after 7-9 years of the said incidents. It is natural for certain discrepancies to occur in the testimonies of witnesses when their testimonies are recorded after a lapse of several years due to fading memories. It is also a settled position that minor discrepancies in the testimonies of witnesses, which do not strike to the root of the case, can be ignored. Reference may be made to Ramesh Chand (supra). Thus, the findings of the learned ADJ regarding the incidents of 02.02.1998 and 10.02.1998 are completely erroneous and cannot be sustained. The same are, accordingly, reversed. This Court is of the view that these matrimonial offences are sufficiently proved.

47. In the written statement filed by the respondent, there is no mention of any specific incident of physical abuse by the appellant or his family member during her stay at the matrimonial home. It is pertinent to note that the respondent did not file any complaint with respect to alleged dowry demand or ill treatment, to any authority, during her stay at the matrimonial home.

48. The respondent wrote a letter to the father of the appellant dated 30.08.1998 (Ex.PW-1/2). The relevant portion of the said letter is as under:

... ... mera rehne ka mood nahi hai? Agar main wahan rehna chahu to kisi ki himmat nahi hai ki mujhe rok de. Mere rehne ke layak to aapka ghar hai bhi nahi. ... ... Mein fridge lock karke aagayi toh sabko khalbali maach gayi, aur choti choti baaton per jab maazi mere saaman ko bhar kar room mein tala laga deti thi. Mein jab fridge mein kutch rakhti thi, toh fridge off kar kitchen ki khidki ke paas khiska kaar rakh diya zata tha. Mein kamre mein light, fan on nahi kar sakti thi. Mere liye uss ghar mein goodnight nahi tha, tab kissi ko kutch bura nahi lagta tha. Haar kissi se meri shikayat karke aur mujhe badnaam karke aap kya ghava aur saboot ikatha karna chahte hain? Koi saath nahi dega aapka. Aapne aap ko aap zayada hoshiyaar aur chalak mat samajhiye. Jab mein mooh kholungi toh jante hai ki kya hoga? Dhajjiyan udd jayengi app logo ki. Apne bete ka durgun aur kamzoori choopa kaar shaadi karwa diya, taaki koi yeah na keh sakey ki ladka kuwara reh gaya. Abb bahu ko rakhne se ghabrate hain aur bahane banate hai ki, mein apke

bete ko marti hu. Ek darje ke neech aadmi hain aap log. Jo suntan hai wahi hasta hain... ... .

Meri himat ki kya baat karte hai aap? Mein toh aap logo ko hatkadiya bhi lagwa sakti thi. Aap yeh mat samjhiye ki aap logo ki mein mohtaj hun.... ... .

Main to sirf ek baar aapke bete ke muh se sun lena chahti hun ki vo kya chahte hain? Mujhe rakhna chahte hain ya nahi. Fir to mai sabko dhool chatva dungi. ... .

Aap logon ne kabhi mujhe bahu ka darza nahi diya. Apne bete ko jaanbujkar mujse dur dur rakhte the. Aap logon ki chaal mai khub samajti thi. Isi baat par ghaseet dungi aap logo ko. Aapka beta to apne demag se apni patni ke liye na kuch soch sakta hai, na kuch kar sakta hai. Unke paas to nah dil hai, nah demag hai, na mardangi. ... .

Agar aap log aisi hi harkat karte rahe to aisi hi chitthi mai apke padosi ko bhi likh sakti hun aur apke jitne jaan pehchaan wale hain, jinhe mai bhi jaanti hun, unke naam se bhi likhungi. .. .. ."

(emphasis supplied)

49. The trial court overlooked this letter by concluding that:

This letter if read in totality appears to be a letter written under frustration .

50. A perusal of letter Ex.PW-1/2, no doubt, shows that the same was written by the respondent to the father of the appellant out of frustration. The same clearly shows that there were differences and bickering between the respondent on the one hand, and the appellant and his family members on the other hand, while the respondent was residing with the appellant at her matrimonial home. This letter also shows that the respondent was keen to restore cohabitation with the appellant.

51. At the same time, this letter also shows that the respondent had little or no respect either for the appellant or his parents, and she did not hesitate to express her disrespect for them on their face. She did not mince her words while conveying

that she holds the appellant and his family members in very low esteem. A spouse who is keen to restore the matrimonial relationship and more so when that spouse is the female in the Indian context, cannot be reasonably expected to write a letter full of condemnation and threats to her father-in-law, of the kind Ex.PW-1/2 is. The letter Ex.PW-1/2 betrays the pent up anger and frustration of the respondent. It also shows that the respondent had revolted against the appellant and his family members. No doubt, in a given situation such a revolt by a spouse may even be justified. However, unfortunately for the respondent, she has not led any evidence to show as to what were the circumstances that she had to face, while residing with the appellant in the matrimonial home, which gave rise to the issuance of the letter Ex.PW-1/2.

52. The kind of threats conveyed and expressions used in relation to the appellant and his father by the respondent in this communication cannot be justified, and would have caused considerable pain, agony and suffering to the appellant and vitiated the matrimonial bond between the parties. To address her father-in-law as one who considers himself hoshiyaar aur chalak , i.e. clever and cunning, is not done. Similarly, it is not done for a daughter-in-law to issue a threat that when she will speak, Dhajjiyan udd jayengi app logo ki . To call the appellant and his family members Ek darje ke neech , tantamount to use of highly insulting and derogatory language. She also conveyed the threat that she could even embroil the appellant and his family members in a criminal case and get them imprisoned. This is evident from her statement when she says Mein toh aap logo ko hatkadiya bhi lagwa sakti thi . She again repeats the threat that she would take the appellant and his family members to task, by stating Fir to mai sabko dhool chatva dungi and Isi baat par ghaseet dungi aap logo ko . The respondent clearly held the appellant in very low esteem. In relation to the appellant, she stated Unke paas to nah dil hai, nah demag hai, na mardangi . In fact, she challenged the manhood of the appellant.

53. Ultimately, she even threatened to write a similar letter as Ex.PW- 1/2 to the neighbours and acquaintances of the appellant and his family members so as to run down the appellant and his family members, if they continued to conduct themselves in the same way.

54. The communication Ex.PW-1/2, in my view, cannot be passed off as one written out of frustration and nothing more. The respondent repeatedly issued threats in this communication to the appellant and his family members, apart from insulting them and running them down. In the face of such a communication, the appellant would have been justified in entertaining a serious apprehension that it would not be safe for him to cohabit with the respondent. The said communication, i.e. Ex.PW-1/2 would have caused acute mental pain, agony and suffering to him, and the appellant could not be reasonably asked to put up with such conduct and live with the respondent. The parties lived together under one roof for a very short duration, i.e. for about four months, and within that period itself, at least two matrimonial offences (taken note of herein above on 02.02.1998 and 10.02.1998) occurred, which clearly stand established on record. When the letter Ex.PW-1/2 is viewed in the light of the incidents dated 02.02.1998 and 10.02.1998, in my view, what emerges is that the respondents conduct was such that the parties could not have lived peacefully and happily on a sustained basis. The conduct of the respondent would have reasonably given rise to acute mental pain, agony and suffering to the appellant and his family members on a sustained basis, and the appellant cannot reasonably be asked to put up with such conduct and live with the respondent. Pertinently, even though in her defence the respondent stated that the appellant and his family demanded dowry, there is not a whisper in the communication Ex.PW-1/2 in that respect.

55. The allegations made by the respondent in the petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (preferred in July 2010, i.e. after the institution of the divorce petition), insofar as they are relevant, read as follows:

3. That the behaviour of the respondent and his family members towards the petitioner was abhorrent and she was taunted on account of bringing less dowry. The respondent also joined hands with his parents in causing mental harassment to her and he with a view to hurt the petitioner s feelings refused to perform conjugal duties. The respondent at the behest of his parents used to lock her up in dark room without providing any food. The respondent had misappropriated the jewelry and other items of the petitioner due to which the petitioner had filed the

complaint against the respondents and his family members with CAW Cell, Nanakpura, Delhi, which ultimately resulted into registration of FIR bearing No.695/99 u/s 406/498-A IPC at P.S. Paschim Vihar.

x x x x x x x x x

5. That in the month of July, 1998, when the petitioner requested the respondent to take her to Delhi, the respondent told her not to come back and also stated that if the petitioner wants to come back, she will have to bring Rs.50,000/- as demanded by his father. Instead of taking her back to matrimonial house, the respondent had filed a false and frivolous divorce case against the petitioner which was ultimately dismissed on merits.

(emphasis supplied)

56. As noticed above, the respondent let the said proceedings be dismissed for want of prosecution. She did not make good the aforesaid allegations against the appellant, and his family members. A party, who makes serious allegations in legal proceedings against the opposite party, and drags the opposite party to face such legal proceedings, must take responsibility for the same and such a party cannot be permitted to walk away by subsequently allowing the proceedings to be dismissed in default, or for want of prosecution. No party can be permitted to abuse the process of law by filing proceedings on the basis of allegations, to establish which, no effort has been made when the time comes. The implication of such conduct of the respondent is that the allegations, when made, were known to the respondent to be concocted, and were made to harass the appellant and exploit the provisions of law. When she made the allegations and dragged the appellant to Court (as threatened by her in Ex PW1/2), she must have been conscious about the pain, agony and suffering to which the appellant would be subjected.

57. Thus, I am of the view that the aforesaid proceedings under the Protection of Women from Domestic Violence Act, 2005 was a contrived afterthought, and was completely ill advised . The same was a false complaint filed by the respondent-wife knowingly and intentionally calculated to embarass the appellant and his

family members. The filing of such a false and frivolous complaint tantamount to causing mental cruelty to the appellant and putting him in fear of his well being, if he restored conjugal relationship with the respondent.

58. It is well-settled that filling of false criminal complaints against a spouse amounts to cruelty as postulated in section 13(1)(ia) of HMA. Reference can be made to the case of K. Srinivas v. K. Sunita, (2014) 16 SCC 34, wherein the court has observed as follows:

4. In the case in hand, the learned counsel for the respondent wife has vehemently contended that it is not possible to label the wife s criminal complaint detailed above as a false or vindictive action. In other words, the acquittal of the appellant and his family members in the criminal complaint does not by itself, automatically and justifiably lead to the conclusion that the complaint was false; that only one complaint was preferred by the respondent wife, whereas in contradiction, in K. Srinivas Rao a series of complaints by the wife had been preferred. The argument was premised on the averment that the investigation may have been faulty or the prosecution may have been so careless as to lead to the acquittal, but the acquittal would not always indicate that the complainant had intentionally filed a false case. What should be kept in perspective, it is reasonably, that the complainant is not the controlling conductor in this orchestra, but only one of the musicians who must deliver her rendition as and when she is called upon to do. Secondly, according to the learned counsel, the position would have been appreciably different if a specific finding regarding the falsity of the criminal complaint was returned, or if the complaint or a witness on her behalf had committed perjury or had recorded a contradictory or incredible testimony. The learned counsel for the respondent wife states that neither possibility has manifested itself here and, therefore, it would be unfair to respondent wife to conclude that she had exhibited such cruelty towards the appellant and her in-laws that would justify the dissolution of her marriage.

5. The respondent wife has admitted in her cross-examination that she did not mention all the incidents on which her complaint is predicated in her statement under Section 161 Cr PC. It is not her case that she had actually narrated all these

facts to the investigating officer, but that he had neglected to mention them. This, it seems to us, is clearly indicative of the fact that the criminal complaint was a contrived afterthought. We affirm the view of the High Court that the criminal complaint was ill advised . Adding thereto is the factor that the High Court had been informed of the acquittal of the appellant husband and members of his family. In these circumstances, the High Court ought to have concluded that the respondent wife knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the appellant and seven members of his family and that such conduct unquestionably constitutes cruelty as postulated in Section 13(1)(ia) of the Hindu Marriage Act.

6. Another argument which has been articulated on behalf of the learned counsel for the respondent is that the filling of criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filling of the husband s divorce petition, and being subsequent events could be looked into by the court. In any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was led, as also when arguments were addressed, objection had not been raised on behalf of the respondent wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf.

7. In these circumstance, we find that the appeal is well founded and deserves to be allowed. We unequivocally find that the respondent wife had filed a false criminal complaint, and even one such complaint is sufficient to constitute matrimonial cruelty.

(emphasis supplied)

59. Though the proceedings under the Domestic Violence Act, 2005 are not criminal proceedings, in my view, the principle laid down by the Supreme Court in K. Srinivas (supra) is equally applicable to such proceedings. What is relevant is that the appellant was subjected to legal proceedings on the basis of false and unsubstantiated allegations, which would have caused embarrassment to the appellant and his family members.

60. In view of the aforesaid discussion, I am of the view that the respondent has treated the appellant with cruelty entitling him to a decree of divorce under Section 13(1)(ia) of the HMA. Accordingly, the appeal is allowed and the marriage between the parties stands dissolved. Parties to bear their own costs.

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