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S. Vs.m.k.

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Court : Delhi

Decided On : Feb-23-2018

Appellant : S.

Respondent : m.k.

Advocate for Pet/Ap. : Mr. Imran Ali, Mr. Johar Adeeb

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + MAT.APP.(F.C.) 2/2018, CM Nos. 64/2018 (stay), 65/2018 (Exemption) Decided on:

23. 02.2018 and CM No.66/2018 (Condonation of delay in filing the appeal) S. M.K. ..... Appellant Through: Mr Imran Ali and Mr Johar Adeeb, versus Through: Advs. None. ..... Respondent CORAM: HON'BLE MR. JUSTICE SIDDHARTH MRIDUL HON'BLE MS. JUSTICE DEEPA SHARMA HON'BLE MS. JUSTICE DEEPA SHARMA (Oral) 1. The present appeal has been filed under Section 19 of the Family Courts Act, 1984, impugning the judgment dated 31.10.2017, whereby the marriage between the parties was dissolved on the ground of cruelty being committed by the appellant/wife.

2. The admitted facts of the case are that the marriage between the appellant/wife and the respondent/husband was solemnized on 11.07.2008 at Delhi according to Hindu rites and ceremonies. After consummation of the marriage, a male child, namely, Samesth was born out of the wedlock on 10.03.2010.

3. The petition for divorce on the ground of cruelty was filed by the husband against the wife. His contentions were that her behaviour MA. APP.(F.C.) 2/2018 Page 1 was cruel, she never paid attention to the household chores and refused to perform any work; that she also used to pick up quarrels with him and his mother and sister-in-law (Bhabhi) although she was always treated with love and affection by them and his brother. She wanted him to turn out his family members from the house on the ground that the house belonged to her husband. He had also contended that she had threatened to commit suicide and used to go to her parental home without informing him; that she always used to say that mai tumahri naukrani nahi hoon; that she had also abused him and his family members with filthy language and also used to threaten him and his family members to implicate them in a false dowry case.

4. He further contended that she was in the habit of picking up quarrel without any rhyme and reason and on 15.09.2009, she quarreled with him and when he tried to pacify her, she threatened to commit suicide also threatening that she had already written a suicide note in which she had implicated him and his family members, as persons responsible for her suicide. He has averred that on 25.04.2010, in the birthday party of their child, despite the invitation extended to the family of the wife, only her brothers, namely, Tarun MA. APP.(F.C.) 2/2018 Page 2 and Pramod attended the birthday party and even in their presence, she had quarreled with him and threatened to teach a lesson to him and his family members. In its petition, the husband contended that he wanted to go on spiritual tour to Madhya Pradesh on 14.07.2010, but she created a scene and did not allow him to go and threatened to divorce him if he dares to go. On 15.10.2010, when his mother and Bhabhi had gone to attend a Jagran, she quarreled and manhandled him and he had to call the PCR at 11.15 PM. The Police reached at the house and even in their presence, she threatened to get a false dowry case registered against him and his family members. She went to her parental home and on 06.11.2010 when she wanted to return to matrimonial home, she called him asking to take her back to the matrimonial home from her parental home; and she refused to consider his request to ask her brother to drop her. Upon this, she got furious and levelled false allegations of theft on his mother and brother and claiming that they had removed certain articles from her house. She had again

picked up quarrel on 02.01.2011 on a small issue of taking care of the child and locked herself in a room and threatened to commit suicide. When despite repeated requests, she MA. APP.(F.C.) 2/2018 Page 3 refused to open the door, he called the Police. It was Police, who got the door opened and took them to Police Station. Thereafter, from that day, i.e., 02.01.2011, she started residing in a separate room and refused to perform the marital obligations. The husband, on these contentions, had sought divorce on the ground of cruelty.

5. In the written statement, the appellant/wife has denied all the averments in the petition for divorce. She had alleged that she was not treated with love and affection and abuses were hurled on her for no reason. She had also averred that petitioner had illicit relations. She had further contended that the husband and his family members had treated her badly and tried to get excuses for their illicit relations and misdeeds. Since she had objected to her husbands illicit relationship with his Bhabhi they had all joined hands to get rid of her. She averred that she is a well-educated lady, knows her dignity, self- respect and is also aware of her duties towards her husband and family members, but she was treated as a maid servant. She had denied that she often threatened to commit suicide or file false cases against the husband or his family members. She has specifically denied the incident of 20.04.2009, 15.09.2009 and 25.04.2010. She had further MA. APP.(F.C.) 2/2018 Page 4 averred that on 15.10.2010, it was she who had called the Police and the Police had settled the matter by counseling the husband and advising him to take care of his wife and minor son instead of taking side of Bhabhi and elder brother, etc. She contends that it was on that day that she came to know for the first time about the illicit relations of her husband with his Bhabhi.

6. On these pleadings of the parties, on 03.08.2011, the learned Family Judge had framed the following issues:-

"1. Whether the respondent after the solemnization of marriage has treated the petitioner with cruelty?. OPP2 Relief. 7. The record shows that the husband has examined himself as PW-1 and exhibited marriage card as Ex.PW-1/1; photographs of marriage as EX.PW-1/2-4 (colly); copy of complaint made by him to SHO PS R.K. Puram as Ex.PW-1/5; copy of complaint dated 29.10.2010 as

Ex.PW-1/6; copy of newspaper publication as Ex.PW- 1/7; copy of complaint dated 24.02.2011 as Ex.PW-1/8; copy of complaint dated 16.06.2011 as Ex.PW-1/9.

8. The appellant/wife also examined herself as RW-1 and proved on record the marriage photographs, marriage card and copy of birth MA. APP.(F.C.) 2/2018 Page 5 certificate of minor son as Ex.RW-1/1, RW-
and RW-1/3, list of dowry articles/stridhan as Ex.RW-
(colly); copy of R.C. of car and photograph as Ex.RW-
(colly); copy of pension book of respondents mother as Ex.RW-1/6; leave record of respondent as Ex.RW-1/7; copy of RTI reply dated 03.06.2014 along with pay slip of April, 2014 and medical leave as Ex.RW-
(colly); photographs of respondents brother in-laws marriage as Ex.RW-
(colly); copy of complaint dated 23.03.2011 as Ex.RW-1/11 (colly); original bills pertaining to maintenance of car, BSES bill, Delhi Jal Board, school fee bills etc. as Ex.RW-1/12; medical bills during 2011-2012 is Ex.RW-1/13 (colly). She had also examined in support of her case, her uncle Shri Om Prakash as RW-2.

9. After examining the evidences on record, the Family Court, on the basis of evidences on record, concluded that the husband has successfully proved the incident of 02.01.2011. The relevant paragraphs are reproduced as under:-

"42. The petitioner has also pleaded and deposed that on 02.01.2011, respondent bolted herself inside the room and threatened the petitioner to commit suicide. The respondent did not open the room despite the requests of the petitioner, due to which police was called and police got opened the door. MA. APP.(F.C.) 2/2018 Page 6 44. The respondent has thus not disputed that she tried to commit suicide by handing herself with her chunni on 15.09.2009 and to implicate him. She has also not disputed that she bolted herself the room on 02.01.2011 and threatened the petitioner to commit suicide. The petitioner has thus duly proved on record these facts against the respondent. the petitioner threatened in 10. As regards the other contentions of the husband that on 15.10.2010, an altercation had occurred between him and the appellant in the absence of his mother and brother, during which she had also manhandled him and the Police was called and the wife threatened for getting false case registered against him, the learned Family Judge

has held as under:-

"46. The petitioner has reiterated the said plea in para 18 of his examination in chief. The respondent has thoroughly cross-examined the petitioner but his testimony regarding above plea has remained uncontroverted. The respondent has not carried out any cross-examination of PW-1 in this aspect. In the absence of any cross-examination, the respondent has deemed to have admitted the above plea. 11. The learned Family Judge also held as under:-

"47. The petitioner has also made various specific allegations of cruelty against the respondent in his petition. He also reiterated these allegations in his deposition. The respondent has extensively cross- examined and petitioner but his testimony has MA. APP.(F.C.) 2/2018 Page 7 remained unhampered and petitioner has successfully passed the acid test of cross-examination.

12. The learned Family Judge has also observed that the wife had taken the plea in her written statement that the husband and his family members were trying to get excuses for their illicit relations and deeds and misdeeds and had also noted the averments of the wife in para 4c of the written statement to the effect that they had connived with each other to get rid of the wife "who is objecting to illicit relations of the petitioner with his Bhabhi " and also her averment that "no wife shall ever allow her husband be shared by anyone else physically, socially and financially."

The Family Judge has also noted the averments made in para 4n of the written statement made by the appellant that on 15.10.2010, when the Police amicably settled the matter, she came to know that "it was the first day when the respondent came to know about the illicit relations of the petitioner with his Bhabhi". The learned Family Judge has observed that despite making such serious allegations in the written statement, the wife has not led any evidence to prove these allegations. The learned Family Judge has held as under:-

"53. The respondent though levelled these serious allegation against petitioner in her written statement. MA. APP.(F.C.) 2/2018 Page 8 But the respondent has not made even a whisper of above allegations in her deposition. The above

allegations levelled by the respondent regarding the illicit relations of petitioner and his sister-in-law (Bhabhi) in WS has not been substantiated by her as she has not made a single averment in her deposition in this regard nor she has led any other evidence to substantiate the said allegation. 13. Thereafter, relying on the findings of Vijaykumar Ramchandra Bhate vs. Neela Vijaykumar Bhate AIR 2003 SC2462 the learned Family Judge has held that such reckless and bald allegations without any cogent proof, itself amounts to gravest form of mental cruelty and held that the husband has succeeded in proving that the wife had committed cruelty upon him of such a nature which endangers his life and it was not possible for him to continue to live in the relationship and thereby dissolved their marriage.

14. The wife has impugned the said judgment on several grounds. It is argued that the learned Family Judge has erred in appreciating the evidence that the petition filed by the respondent/husband was based on false and concocted facts; that the learned Family Judge has failed to appreciate the evidences correctly and also failed to keep in mind that there is a seven year old son and the respondent cannot run away from his responsibility of a father. The appellant has further stated that MA. APP.(F.C.) 2/2018 Page 9 she is a housewife and has no means to maintain her. It is further contended that the impugned order is bad in law because the burden to prove the cruelty was upon the respondent which he had failed to discharge. On these contentions, it is submitted that the impugned order be set aside.

15. We have given thoughtful consideration to the contentions of the parties.

16. The respondent had filed the petition for divorce under Section 13(1)(ia) of Hindu Marriage Act, 1955 (hereinafter referred to as the said Act on the ground of cruelty. In the said Act, the expression cruelty is not defined. However, the expression of cruelty vis--vis the matrimonial obligations and duties has been elaborately discussed and defined.

17. In Shobha Rani v. Madhukar Reddi, (1988) 1 SCC105 the Supreme Court has held that the expression treated the petitioner with cruelty as used in Section 13(1)(ia) of the said Act is used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations.

The Supreme Court had further observed that cruelty may be mental or MA. APP.(F.C.) 2/2018 Page 10 physical, intentional or unintentional. It is not difficult to determine the physical cruelty. However, the determination of mental cruelty poses a difficulty. The Court observed as under:-

""4. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. 18. The Court also observed as under:-

"5. ..The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties"

19. In V. Bhagat v. D. Bhagat, (1994) 1 SCC337, the Apex Court has held that mental cruelty is result of "conducts which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. The Court had further observed as under:-

"16. .In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged MA. APP.(F.C.) 2/2018 Page 11 party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of

accusations and allegations, regard must also be had to the context in which they were made. 20. In Parveen Mehta v. Inderjit Mehta, (2002) 5 SCC706 the Supreme Court in para 21 of the judgment has again reiterated that the cruelty has to be ascertained from the behaviour of one spouse towards the other and where the behaviour is of such a nature which causes reasonable apprehension in the minds of the latter, about his or her safety to continue in the relationship with the other, such a behaviour constitutes cruelty. The Court further held that "mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other."

The Court has further observed that "it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the MA. APP.(F.C.) 2/2018 Page 12 conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other."

21. In another case tilted as Savitri Pandey v. Prem Chandra Pandey, (2002) 2 SCC73 the Apex Court in para 6 of the judgment has observed that normal wear and tear of the family life does not constitute cruelty. The Court further held that it cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other. MA. APP.(F.C.) 2/2018 Page 13 22. In A. Jayachandra v. Aneel Kaur, (2005) 2 SCC22 the Apex Court in para 10 has held that legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical

cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes. (emphasis supplied) 23. The Court has further held that to constitute cruelty, the conduct complained of should be of grave and weighty and something more than ordinary wear and tear of married life. The Apex Court in A. Jayachandra (supra), also observed in para 12 that mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party. MA. APP.(F.C.) 2/2018 Page 14 24. It is also settled law that while appreciating the evidences in these matters, it is the totality of the circumstances which are to be considered. The contemporaneous nature of evidences is important. The Family Court had arrived at the conclusion that the husband has succeeded in proving the facts that the appellant was abusive and was in the habit of picking up quarrel frequently and has also threatened to commit suicide and has implicated the husband and his family members in the suicide note. From her behaviour that she had bolted herself in a room and did not open the door of the room and then threatened to commit suicide also stands proved. The contemporaneous evidences which are in the form of complaints filed by the husband with the Police against such behaviour of the wife also support his case. The fact that the Police had visited the matrimonial house of the appellant on such complaints by her husband also stands proved on record. It is also noteworthy that while the husband had made complaints against her behaviour with the Police, the wife has not made any complaint during her stay with the respondent and his family members. The only complaint which she allegedly made is dated 23.03.2011, which has been apparently made after the MA. APP.(F.C.) 2/2018 Page 15 institution of the petition for divorce by the husband which was instituted on 02.02.2011. The said complaint seems to be a counter blast. Her contemporaneous conduct, as complained by the respondent, also gets validation by the fact that in her written statement, she had made allegations not only against her husband, but also against entire family of her husband by stating that they all were indulging into illicit relations. She has clearly averred in her written statement

in para 4b that they tried to get excuses for their illicit relations and deeds and misdeeds. Again in para 4c of her written statement, she had averred that the petitioner, i.e., the respondent and his family members connived with each other to get rid of the respondent, since she had objected to his illicit relations with his Bhabhi. She had again in para 4n of her written statement, alleged that on 15.10.2010, she came to know about the illicit relations of the respondent/husband with his Bhabhi. The learned counsel for the appellant has failed to point out any evidence produced by the appellant on record to substantiate these allegations. The learned Family Court has observed in the impugned judgment that "these are unsubstantiated charges and are bald allegations which has been MA. APP.(F.C.) 2/2018 Page 16 made recklessly". Such allegations about having illicit relations with Bhabhi certainly fall within the category of grave and weighty cruelty. These unsubstantiated allegations are of the nature to cause mental suffering to a person against whom such allegations are levelled. The appellant has not only levelled such bald allegations against her husband, but also against her sister-in-law (wife of elder brother of the respondent) and thereby maligning her reputation as well. She has in fact indulged into an act of character assassination of her husband and his Bhabhi.

25. In Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate, (2003) 6 SCC334 the Supreme Court has clearly held as under:-

"7. ..The position of law in this regard has come to be well settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. 26. Again in Vishwanath Agrawal v. Sarla Vishwanath Agrawal, (2012) 7 SCC288 the Apex Court has held as under:-

"46..Thus, we have no scintilla of doubt that the uncalled-for allegations are bound to create mental agony and anguish in the mind of the husband. MA. APP.(F.C.) 2/2018 Page 17 27. In a recent judgment in Narendra v. K. Meena, (2016) 9 SCC455 the Supreme Court has held as under:-

"for the appellant with 16. .Except the baseless and reckless allegations, there is not even the slightest evidence that would suggest that there was something like an affair of the respondent. We consider levelling of absolutely false allegations and that too, with regard to an extra- marital life to be quite serious and that can surely be a cause for mental cruelty. the maid named by 28. We find that leveling of false allegations of illicit relations of such nature and magnitude causes mental pain, agony and suffering to the husband. Such allegations causes profound and lasting disruptions in the relationships and also causes deep hurt and reasonable apprehension that it would be dangerous to live with a wife, especially when she is also threatening to commit suicide.

29. The Supreme Court in Narendra (supra) has clearly stated as under:-

"11..No husband would ever be comfortable with or tolerate such an act by his wife and if the wife succeeds in committing suicide, then one can imagine how a poor husband would get entangled into the clutches of law, which would virtually ruin his sanity, peace of mind, career and probably his entire life. The mere idea with regard to facing legal consequences would put a husband under tremendous stress. The thought itself is distressing. Such a mental cruelty could not have been taken lightly by the High Court. In our MA. APP.(F.C.) 2/2018 Page 18 opinion, only this one event was sufficient for the appellant husband to get a decree of divorce on the ground of cruelty. It is needless to add that such threats or acts constitute cruelty. Our aforesaid view is fortified by a decision of in Pankaj Mahajan v. Dimple, (2011) 12 SCC1wherein it has been held that giving repeated threats to commit suicide amounts to cruelty. this Court 30. We are of the opinion that conclusion of the learned Family Judge that the appellant had treated her husband with cruelty, cannot be faulted. We find no infirmity and illegality in the impugned judgment.

31. For the reasons stated hereinabove, the present appeal fails and is dismissed along with the pending applications, with no order as to costs. FEBRUARY23 2018 BG DEEPA SHARMA (JUDGE) SIDDHARTH MRIDUL, J (JUDGE) MA. APP.(F.C.) 2/2018 Page 19

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