

**N. Vs.m.s.**

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**Court :** Delhi

**Decided On :** May-04-2018

**Appellant :** N.

**Respondent :** m.s.

**Advocate for Pet/Ap. :** Mr. D.S. Paweriya, Mr. Amrish Kumar, Ms. Namita

**Judgement :**

\$-35 \* % + MAT.APP (F.C.) 52/2018 N. IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

04. 05 .2018 ..Appellant Through: Mr. D.S. Paweriya, Advocate with Mr. Amrish Kumar, Advocate. Ms. Namita, person. appellant in Versus Respondent Through: None. M.S. CORAM: HON'BLE MR. JUSTICE SIDDHARTH MRIDUL HON'BLE MS. JUSTICE DEEPA SHARMA HON'BLE MS. JUSTICE DEEPA SHARMA1 The wife/appellant has impugned the order dated 29.01.2018 whereby the marriage between her and her husband/respondent was dissolved by the Family Court vide order dated 29.01.2018, in a divorce petition filed by the Mat App. 52/2018 Page 1 husband against her on the ground of cruelty under Section 13 (1) (ia) of Hindu Marriage Act, 1955.

2. The admitted facts are that the marriage was solemnized on 22.02.2007 as per Hindu rites and ceremonies and was duly consummated and a son was born from the wedlock on 22.03.2008.

3. The case of the husband is that due to the conduct of his wife, the marriage could not be consummated for about two months. On the first night of their life together, the wife informed him that he was not her first choice, because of his dark complexion; and because he was much older than her and was not attractive; and refused to establish the relationship of husband and wife with him; and that this act of her caused him a great mental agony and pain. It was only after continuous efforts for two months by him, his mother and other relatives as well as parents of the wife; that she agreed to consummate the marriage. The Husband alleged that she is a short tempered lady of adamant nature and was in the habit of picking up quarrel on petty matters and had never showed any respect towards him and his mother despite the fact that she was given due respect in the matrimonial home. She had even slapped his old aged mother in anger and, on his intervention, slapped him as well. She used to call his mother as Jamadarni Mat App. 52/2018 Page 2 and never showed any interest in the household chores. She also used to complain of being uncomfortable and feeling suffocation in living in the matrimonial home in the village as she was used to the city life.

4. In order to save his marriage, he got a government quarter allotted at Jail Colony, Karnal, Haryana and shifted there along with his wife and mother. Despite this, the wife continued to behave in the same manner. She was also in the habit of leaving the matrimonial home and staying at her parental home against his wishes. During her pregnancy, she shifted to her parental home against his wishes. In 2008, under the influence of her mother, she put pressure on him to send her to parental home for attending the marriage of the son of her mothers friend in Village Turakpur. On refusal, she threatened to commit suicide and even her parents supported her in this endeavor and thereafter she left her matrimonial home against his consent and returned to matrimonial home only after 7-8 days. After about two months of this incident in 2008 when he was away on duty, she after having a fight with his mother and after beating her, turned her out of the house. When he returned from duty, she was audacious enough to tell him that she had thrown his mother out of the house and thereafter threatened him that she would kill his mother if he brought her home. In these Mat App. 52/2018 Page 3 circumstances, his mother remained in the house of Mrs. Savitri for three days. He thereafter, complained to his father-in-law. Father-in-law came to his house but

instead of telling anything to his daughter, he threatened him with dire consequences and asked him to leave his mother at the village house.

5. The Husband further alleged that, in the year 2008, on the occasion of Bhai Duj, he had gone to his sister Santra Devis house in Delhi and when he returned in the evening, he learnt that his wife had treated his mother badly and had not given her any tea since morning. When he confronted her, she started abusing him and said Teri Maa hai tuhi iske liye khana Bana and further stated khud to subah se pata nahi kis aurat ke paas tha, aur is budhiya ko meri chhati par chhod gaya, pata nahi is budhiya se kab chhutkara milega. She even went to the extent of saying that Apni us behan ko hi apni aurat Banakar rakh; aur aaj se tera mera koi rishta nahi, aur tu mere liye mar gaya hai. Thereafter, she broke her bangles. This act of the appellant/wife had caused him mental agony and humiliation.

6. He further alleged that, in the month of June/July 2009, the parents of the respondent along with one person namely Mr. Malkhan Singh of Village Jaat Joshi (Sonepat) came at his house and his father-in-law demanded Rs. Mat App. 52/2018 Page 4 10 lacs and also threatened to send him to jail if the demand was not fulfilled and further stated Meri Lakdi ki umar bahut kam hai, mein iski dobara shadi kar dunga, waise bhi madan tu meri beti ke layak nahi hai. At that time, his cousin Mr. Suresh Kumar was also present and on his refusal to shell out the money and upon expression of intention to call Panchayat, the parents of his wife took her away to maternal house and also threatened to implicate him in false case.

7. On the persuasion of common relatives and respectables of the Society, the appellant joined the matrimonial home but there was no change in her behavior. On 26.09.2010, she again left for the parental home without his permission and against his wishes and without even caring for her health as she was pregnant at that time and was under treatment of Dr. Nidhi Sadana of Shri Sanatan Dharam Mahabir Dal. (Redg.) at Karnal. When he went to her parental home to bring her back, he learnt that she terminated her pregnancy without even informing him. On his objection to such an act, her parents told him that 2-2 Bachcho Ko Kaun Palega, aur Namita ko naukri karni hai aur Pvt. Naukri mein sarir ki sundarta bhi

chahye. His wife also stated that Bachche paida karne se sarir ki banawat/sunderta kharab hoti hai, mein dusra bachcha nahi karungi. She returned to the Mat App. 52/2018 Page 5 matrimonial home but her behavior continued to be the same, with full support of her parents.

8. When on 16.08.2011, his wife received a telephone call, his mother asked from her about the caller, this enraged her and she started abusing his mother. Thereafter, she left the matrimonial home along with their son P. and taking all her belongings and jewellery in a bag. On his return from job, when his mother told him about it, he made a telephonic call to his father-in-law and enquired about her and to his surprise, his father-in-law informed that she had not come to her parental house, and threatened him with dire consequences. This worried him and he sent his nephew, Mr. Vikas, to his wifes parental home at Narela and he learnt that his wife and the minor son had not reached there. He made all efforts along with her relatives to trace his wife and son but of no avail. Finally, on 17.08.2013, he lodged the missing report at Police Station Sadar, Karnal. Thereafter also, he continued his search for her and the minor son.

9. On 18.08.2011, the respondent/husband along with his mother, relatives namely, Mr. Ram Chander (Mediator), Mr. Rajender Singh, Mr. Bhim Singh, Mr. Attar Singh, Mr. Anil Kumar and Mr. Karan Singh as well as neighbours Mr. Sanjeev and Mr. Balvinder again visited the parental home Mat App. 52/2018 Page 6 of his wife at Narela, and they found them there. She however flatly refused to return to the matrimonial home and live with him and told him that her father had arranged a job for her and showed her intention to continue living in her parents home. He along with his relatives and Mediator as well as Pradhan of Village Chulkana again visited her parental home. She refused to come with him instead asked him to stay with her without his mother because she was working with Reliance Company at Kundli, Haryana and earning a good salary and the son was also studying in a school at Narela. He was not only thrown out of the house by her father but his relatives were also abused with filthy language. In order to bring her back, he went to her office in Kundli and cajoled her to return to the matrimonial home but not only did she flatly refuse, but also humiliated him and threatened him. He was not allowed to meet his son at his School at Narela. She also stopped picking his

phone. Even the Principal of the School of his son was instructed by her and her parents, to not allow him to meet his son and thereby she had deprived him the love and affection of his son which has also caused great trauma and mental agony to him. His efforts to bring his wife back to the matrimonial home failed. Mat App. 52/2018 Page 7 10. In the year 2012, he wanted to call Panchayat for the settlement of the matter but her father did not agree for that. On 30.01.2013, 12.02.2013, 13.02.2013, 20.02.2013 and 23.02.2013, his wife abused his mother on the telephone and also send messages and said that Budhiya tu kab maregi, kutiya etc. She tortured his mother by calling her on telephone in this manner for about 22 times. She had also called him on several occasions as Budha, Kala, Badsurat, Anpad etc. She always used to call his mother as Kutiya and Jamadarni.

11. On these contentions, the respondent/ husband has stated that he has been subjected to so much of mental cruelty that it was not safe for him to continue to live with the appellant/wife and therefore, sought dissolution of marriage.

12. The divorce petition was contested by the wife. She had denied all the contentions of the respondent as false and frivolous. It was her case that the divorce petition filed by the respondent was a counter blast to the notice dated 20.02.2013 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights; that her husband had been acting under the influence of his brother - in- law (Jija) and sister namely Mrs. Santra who wanted him to marry a girl in their relation; that she is a loving wife and always Mat App. 52/2018 Page 8 wanted to live with him and that is why she had not filed any complaint against him. She had submitted that, on 16.08.2011, the respondent had slapped her and kicked her out of the matrimonial home without any fault of her, with their minor son, at the instance of his mother. Since then, she has been staying at her parental house. She had made at her level best all the sincere efforts for the restitution of conjugal rights but her husband/respondent was not willing to keep her.

13. It was submitted by the appellant that the marriage was consummated on the very first night. It was further submitted that she was always tortured in the matrimonial home for bringing insufficient dowry. She gave full respect to him, his mother and his relatives. She was however treated as maid in the house and was

never given respect of a daughter-in-law. She had denied that she had ever called names to her mother-in-law or beat her or slapped her or turned her out of the house or did not give her food or did not take care of her. She admits that they had shifted to government quarter in Karnal, Haryana but it was on his own accord and not in order to save the marriage.

14. It is submitted that during the pregnancy, she had stayed at her parental home with the permission of the husband/respondent who had told Mat App. 52/2018 Page 9 her that it was better for her to stay in her parental home for the purpose of delivery since he was working and his mother, an old aged lady and that there was no one to take care of her. It is also submitted that from the date of the marriage there was too much indulgence of her sister-in-law and her husband in their personal and matrimonial affairs.

15. The appellant further submitted that son P. was born on 22.03.2008 and she returned to her matrimonial home after about one month of her delivery and thereafter she had never visited her parental home in the year 2008. The incident regarding her mother-in-law being turned out by her and taking shelter in the house of one Mrs. Savitri was denied. It was submitted that it was the respondent who had abused his mother under the influence of liquor and then she returned after he apologized to her. It is denied that on the occasion of Bhai Duj in the year 2008, her husband had gone to her sister's house. It is submitted that it was her sister who had come to her matrimonial house and found her husband under the influence of liquor and went on abusing her the whole day. Regarding the incident of date 16.08.2011, it was submitted that she was mercilessly beaten by the respondent and his mother and was forced to leave the matrimonial home with the threat that she will not be allowed to enter her matrimonial home Mat App. 52/2018 Page 10 unless she brings Rs. 10 lacs. The entire jewellery and other articles and even the clothes of the respondent and her son were left in the matrimonial home. She had denied that she used to call the respondent Kala, Budha, Badsurat and anpad.

16. On the pleadings of the parties, the Learned Additional Principal Judge, Family Court, framed the following issues:-

"1. Whether after solemnization of marriage, the respondent has treated the petitioner with cruelty?. OPP.

2. Whether the petitioner is entitled to the decree of divorce as prayed?. OPP.

3. Relief. Both the parties had examined themselves and support all their contentions.

17. After hearing the arguments of both the parties and relying upon the evidence on record which include inter alia the documents, photocopies of the complaint dated 17.08.2011 (mark B) and complaint dated 19.08.2011 (Mark C), the learned Family Court dissolved the marriage on the ground of cruelty committed by the appellant. Mat App. 52/2018 Page 11 18. The impugned order is challenged by the appellant/wife on the grounds that there was no material before the Family Court to arrive at the conclusion that the appellant had treated the respondent with cruelty and the findings are based on surmises and conjectures. That the Family Court has adopted two different parameters while appreciating the evidences of the respondent and the appellant. It is submitted that the Court has failed to appreciate the fact that the divorce petition was a counter blast to a legal notice of restitution of conjugal rights dated 20.02.2013 of the appellant, the receipt of which is not denied by the respondent in his cross-examination. Instead of replying the same and restituting the conjugal rights, he filed the petition for divorce. By not replying the notice, he had not controverted the desire of the appellant to live with him, reliance placed on Smt. Shimla Devi Vs. Kuldeep Sharma 1(2001) DMC8B and Metropolis Travels & Resorts (I) Pvt Ltd. Vs. Sumit Kalra & Anr 98 (2002) DLT573(BD). He cannot be allowed to take benefit of his own wrong, since it was the respondent who had subjected the appellant to cruelty. Reliance is placed on Surender Kumar Vs. Laxmi Devi 1 (1999) DMC618DB P&H and Sushma Kohli Vs. Shyam Sunder Kohli 1 (2003) DMC52DB Delhi. Mat App. 52/2018 Page 12 19. It is further submitted that the Trial Court had ignored the law laid down by this Court wherein the Court has held that when a wife makes an effort to come back but the husband did not give any response, the husband was not entitled to a decree of divorce. It is further contended that merely because she had visited her parental house on some occasions to take care of her parents, even if without the

permission of the husband, it does not amount to cruelty by relying upon Sandeep Kumar vs. Smt. Sonila Kumar AIR2008 Raj 75.

20. It is further submitted that although the respondent has alleged that his mother was harassed, tortured and insulted by appellant, yet she has not been examined as a witness to prove these contentions and withholding is intentional. Reliance has been placed upon Nabakumar Banik Vs. Smt Amita Datta AIR2009 Gau 103.

21. It is further contended that the Learned Family Court on arriving at the conclusion, that if the appellant wanted to return to the matrimonial house, there was nothing to stop her, has failed to appreciate her contention in the written statement and her statement, that she was slapped and kicked out of the matrimonial home by the respondent and his mother on 16.08.2011 and this version has not been controverted by the respondent and Mat App. 52/2018 Page 13 therefore without an assurance from him, it was not feasible for her to return to the matrimonial home.

22. She also contends that the Learned Family Court has also unnecessarily laid much emphasis on the fact that the appellant had not filed any police complaint or any complaint to any authority against the respondent, although she had duly explained the reason for that, yet it was not considered by the Learned Family Court. She had always been ready and willing to join the company of the husband and this fact had been ignored by the learned Family Court.

23. It is further contended that the social structure of India is such that girls continue to live in matrimonial home despite the torture they are subjected to and that is the reason that she is still willing to live with him, although she was harassed, beaten and dowry demands were raised and Rs. 10 lacs were also demanded from the appellant. On these contentions, it is submitted by the appellant that the impugned order be set aside.

24. We have heard the arguments and have perused the relevant record.

25. One or two incidents of torture or harassment or misbehavior does not constitute cruelty. It is the consistent and continuous conduct of a spouse, Mat

App. 52/2018 Page 14 during the existence of the marriage which needs to be considered to its totality, to judge if the conduct was such that it amounts to cruelty. It is the contemporaneous conduct of the spouse which is material. Normal wear and tear of a family life is not sufficient to constitute cruelty. The cruelty should be of such nature which makes it difficult for the other spouse to live in the matrimonial home. Continuous and sustained behaviour of a spouse is what makes a ground for divorce under Section 13 (1) (ia) of Hindu Marriage Act. The allegations of cruelty should be specific and duly supported by the evidence on record. Unlike criminal cases, in these matters, it is the preponderance of evidence which has to be considered. Any act of cruelty need not be proved beyond reasonable doubt, but if the attending circumstances shows that such an act has been committed, which has caused tremendous harassment, and the act constitutes mental cruelty of such a nature which warrants dissolution of marriage.

26. The evidence on record clearly show that the husband/respondent in his evidence has narrated the incidents, alleged by him in his divorce petition and he has been duly cross examined. While he has supported his contentions and has denied any suggestion in his cross-examination contrary to it, the appellant has also in her affidavit in support of her evidence Mat App. 52/2018 Page 15 supported all her contentions in her written statement. In her cross- examination by respondent, although she has denied all the contentions stated by the husband, but had given different version of the incident which took place on 16.08.2011.

27. From the evidence on record, which includes denial of each others case by both the parties, certain facts, emerge which are that the appellant left the matrimonial home on 16.08.2011. While the case of husband is, that on 16.08.2011, the appellant had received a telephonic call when he was away on his job and when his mother made enquiries about the caller, she got infuriated and she abused his mother and left the matrimonial home with Son P. and taking away all her belongings, jewellery in her bag and she did not reach to her parents home till 17.08.2011 and he was forced to lodge a missing report at PS Sadar, Karnal and it was only when he visited the paternal house of the appellant on 18.08.2011 he found her there. On the other hand, the appellants case is that on 16.08.2011, her husband slapped her and kicked her out of the matrimonial home along with

their minor son at the instance of his mother and since then she had been living in her parental home. While in the evidence, respondent has duly supported his narration of the incident dated 16.08.2011, the appellant had made out a new Mat App. 52/2018 Page 16 story of the incident of 16.08.2011 in her cross examination. She has not supported her contention that she was beaten and thrown out by the husband at the instance of his mother rather she had stated that I was having typhoid and hence I was unable to take any jewellery with me on that day. I have not placed on record the medical documents in this regard. On that day the petitioner had sent his nephew Sh. Vikas with me and it was with him that I had returned. Not only this, she also in her cross-examination, stated that she had called the police on 16.08.2011 when she was beaten, although there is no such contention in the written statement. This demolishes the demeanor of the witness i.e. the appellant before us. It seems that she has apparently taken up the defence that she was beaten and turned out of the matrimonial home by the respondent, in her written statement, with the intention to defeat the claim of the husband i.e. the respondent. This conduct of witness is sufficient to create impression in the Courts mind if the version of such a witness can be believed in relation to the other facts. The burden is on the appellant to dispel the impression, which she has failed to dispel.

28. She left the matrimonial home on 16.08.2011, and reached her parental home on 17.08.2011 (as per her own version) and in her cross- Mat App. 52/2018 Page 17 examination, the appellant has admitted that she had offered no explanation as to where she had been during this period. If the appellant was keen to live with her husband, she gives no explanation also why she had not taken any steps towards reconciliation till she sent the notice under Section 9 of Hindu Marriage Act dated 20.02.2013. Concern of the respondent about her safety is evident from the fact that he searched for her, made enquiries and then lodged a missing report. Had he turned her out of the matrimonial home, there was no occasion for him to make enquiries and on finding that she had not reached her parental home, lodge a missing report. The contemporaneous conduct of respondent lends weight into the truthfulness of his testimony and inspires confidence. The appellant has failed to prove on record any such effort, while the respondent has contended and deposed about the efforts and attempts he made to bring her back to matrimonial home.

The last straw was when she without the respondents consent, aborted the child at her parental home, still he reconciled.

29. Appellant has admitted that she was in the family way when she left the matrimonial home in the year 2010 and lost the child on 26.09.2010. According to her it was a miscarriage, while the contention of the respondent was she had aborted the child without his consent. The appellant Mat App. 52/2018 Page 18 has not produced any document on record to prove that it was a miscarriage and not termination of the pregnancy. From the perusal of the cross- examination also, it is apparent that the respondent was not cross-examined on his statement that the appellant had got the pregnancy terminated without his consent. No suggestion to the contrary has been put to the respondent in his cross examination.

30. The evidence on records, by preponderance, prove the fact that the appellant had terminated the pregnancy at her parental home without the consent of her husband. The Supreme Court in Samar Ghosh vs. Jaya Ghosh, (2007) 4 SCC511 while dealing with the behavior that constitutes mental cruelty lays down the following instances:-

"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. Mat App. 52/2018 Page 19 frequent rudeness of (iii) Mere coldness or lack of affection cannot amount to cruelty, 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 relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely lengthy period, where the Mat App. 52/2018 Page 20 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. (emphasis supplied) 31. The fact that the

appellant aborted the child without respondents consent coupled with other incidents which have been proved by the respondent are cumulatively sufficient to prove the mental cruelty to which the respondent was subjected to. This cruelty is grave enough to make a spouse unable to continue to live in the relationship. The case law relied upon by the appellant are not applicable as per the proved facts and circumstances of this case. Mat App. 52/2018 Page 21 We find no merit in the appeal. The same is dismissed in limine with no order as to costs. DEEPA SHARMA (JUDGE) MAY04 2018 ss SIDDHARTH MRIDUL (JUDGE) Mat App. 52/2018 Page 22

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