

Kiran Devi vs.kapil

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Court : Delhi

Decided On : Jul-29-2019

Appellant : Kiran Devi

Respondent : Kapil

Advocate for Pet/Ap. : Mr. Umesh Chandra Mishra

Judgement :

\$~18 * + MAT.APP.(F.C.) 200/2019, CM No.33858/2019 (delay of 19 days in IN THE HIGH COURT OF DELHI AT NEW DELHI filing the appeal) & CM No.33859/2019 (exemption).

1. KIRAN DEVI KAPIL Through: Mr. Umesh Chandra Mishra, Appellant Advocate. versus Through None. Respondent CORAM: HON'BLE MS. JUSTICE HIMA KOHLI HON'BLE MS. JUSTICE ASHA MENON % This appeal has been preferred by the appellant/wife Smt. Kiran Devi

ORDER

2907.2019 against the judgment and decree dated 14.05.2019 passed by the Family Court, East District, Karkardooma Courts, Delhi dissolving her marriage with the respondent/husband, Mr. Kapil.

2. The facts as borne out from the impugned judgment are that the respondent/husband had filed a petition for divorce under Section 13(i)(ia) of the Hindu Marriage Act, 1955 (in short, HMA) on the grounds of cruelty. There is no

dispute that the parties had got married on 28.06.2005, as per Hindu rites and customs at Kalyan Vihar, Delhi and were blessed with two children, a son and a daughter. There is also no dispute that the parties have been living separately since December, 2010.

3. The respondent/husband has alleged in his petition that since the MAT.APP.(F.C.)200/2019 Page 1 of 8 marriage, the behaviour of the appellant/wife was not good, she was very abusive to his sister and parents, did not help in the household work and quarrelled with the respondent/husband and his other family members over trivial issues. This behaviour was aggravated with the birth of the son of the parties. She also demanded that the property in the name of the father of the respondent/husband be transferred in her name and when the respondent/husband expressed his inability to do so, she threatened to implicate him and his family members in false criminal cases.

4. The respondent/husband further alleged that on 20.01.2007, the appellant/wife and their son went to her parental home when she took away her jewellery items and on 02.02.2007, lodged a false complaint with the Crime Against Women Cell implicating the respondent/husband and his family members. It was falsely alleged in that complaint that the father of the appellant/wife had given the respondent/husband a plot of 100 sq.yards and cash amount in dowry.

5. The respondent/husband filed an application under Section 9 of the HMA, 1955, in response to which the appellant/wife filed a petition under Section 125 Cr.P.C. During the pendency of both these petitions, the parties entered into a settlement through the Mediation Centre, Karkardooma Courts, Delhi on 25.03.2009. The parties agreed to live together and the respondent/husband brought back the appellant/wife to the matrimonial home. Despite having agreed to do so, the appellant/wife did not withdraw her complaint lodged under Section 498A of the Indian Penal Code, 1860. It was further alleged by the respondent/husband that the appellant/wife again started harassing him and demanded transfer of properties in her name a few days after the settlement was effected. MAT.APP.(F.C.)200/2019 Page 2 of 8 6. On 07.12.2009, when the respondent/husband did not hand over his salary to the appellant/wife as

demanded by him, she quarrelled with him, went to the police chowki and filed a complaint against him. The respondent/husband, in order to save his married life, agreed before the police officials that he would give his salary to the appellant/wife, who would then give him Rs.50/- every day.

7. According to the respondent/husband, on the occasion of the birthday of his son on 07.02.2010, the appellant/wife quarrelled with his sister who had come to see him, poured kerosene oil on herself and filed a complaint against him and his family members that they had tried to kill her. Again, the matter was compromised on the condition that the parents of the respondent/husband would leave their house at Khora Colony. In May, 2010, the respondent/husband brought his parents back to their own house. The respondent/husband also alleged that in June, 2010, the appellant/wife had refused to take care of his brother, who had undergone a surgery and once again started demanding transfer of properties in her name. The further allegation is that on 24.08.2010, when the respondent/husband had sought some time to arrange money to fulfil the demand of the appellant/wife for new ornaments, she had gone to the police post and filed a complaint against him and his family members. This kind of harassment continued in the shape of complaints dated 06.12.2009, 03.07.2010, 24.08.2010 and 10.12.2010. The appellant/wife also file a case under the Protection of Women from Domestic Violence Act, 2005 against him.

8. The respondent/husband claimed that in an attempt to settle all issues, he shifted alongwith the appellant/wife to a rented accommodation despite which, she kept on filing complaints against him and his family members. MAT.APP.(F.C.)200/2019 Page 3 of 8 Thus according to him, the appellant/wife had ruined his life because of her desire to own his fathers properties.

9. The contents of the written statement filed by appellant/wife have been referred to in the impugned judgment where it is noted that she has in turn alleged that it was the respondent/husband and his family members who had inflicted cruelties on her. She claimed that despite the fact that at the time of her marriage, her parents had given dowry articles worth Rs.2,50,000/- and a plot measuring 100 sq. Yards at Bhalaswa, Delhi to the respondent/husband, his mother and sister had

taunted and ill treated her on the ground that her parents had not given a motorcycle or an amount for carrying out construction on the plot for which a specific demand of Rs.2 Lakhs was raised by them and her health started to deteriorate. She alleged that the respondent/husband and his family members had even tried to kill her when their demands were not fulfilled.

10. The appellant/wife claimed that it was the father of the respondent/husband, who had left her at her parental home on 25.12.2006 on the assurance that after the marriage of his daughter, they would call her back to the matrimonial home. However on 18.01.2007, the respondent/husband had come to her parental home and had beaten up her father. She claimed that for safety, she filed a complaint at Police Station Kalyanpuri, Delhi on 20.01.2007 but later on, withdrew the same under the pressure of the parents of the respondent/husband. No reconciliation took place despite the efforts of the parents of the appellant/wife. Therefore, she filed a complaint with the Crime Against Women Cell on 02.02.2007, which led to the registration of the case FIR No.373/2007 U/S498/4

IPC at Police Station Kalyanpuri, Delhi. MAT.APP.(F.C.)200/2019 Page 4 of 8 11. The appellant/wife admitted that a petition for restitution of conjugal rights had been filed by the respondent/husband but she claimed that it was withdrawn as a maintenance order was passed in the said petition. The maintenance was also in arrears as a result of which she filed an execution petition. The appellant/wife admitted that on 25.03.2009, the execution petition was settled between the parties at the Mediation Cell, Karkardooma Courts, Delhi, pursuant to which the respondent/husband took her to his house at Khora Colony, Ghaziabad on 19.04.2019. After a month, the parties with their children shifted to J.J.

Colony at Chitra Vihar, Delhi where according to the appellant/wife, the respondent/husband again started harassing and humiliating her by coming late at night and abusing her. She alleged that she was kept as a maid to do all household work and was never provided proper food. Her ornaments and dowry articles were not returned despite the agreement to this effect at the Mediation Centre.

12. This made the appellant/wife file a complaint at Police Station Indirapuram, Ghaziabad that she was not provided maintenance and proper food. Pursuant to the said complaint, the respondent/husband agreed to give his full salary to her except for a sum of Rs.50 per day but he never actually gave her the salary and did not comply with the terms of the mediated settlement. She stated that she and her mother filed a complaint at Police Station Indirapuram, Ghaziabad when the mother of the respondent/husband threatened to burn herself by pouring kerosene oil on herself if she did not withdraw her cases. She admitted to having filed a case under Section 12 of the Protection of Women from Domestic Violence Act, 2005 in August, 2010.

13. The appellant/wife alleged that in December, 2010, the MAT.APP.(F.C.)200/2019 Page 5 of 8 respondent/husband and his family had sent her to her parental home for the treatment of her child and in her absence, her articles were stolen by him and his family members. Therefore, she filed another complaint at Police Station Indirapuram on 06.12.2010 and 09.12.2010. She also filed an application under the RTI Act, which led to the registration of FIR No.4 at Police Station Indirapuram, Ghaziabad.

14. The Family Court considered all the above allegations and counter allegations and tested them on the anvil of the evidence that was led by the parties and concluded that the respondent/husband who had examined himself as PW1 was able to substantiate all his allegations. His mother, Smt. Munni Devi who was examined as PW2 and his neighbour, Sh. Hari Ram Gupta who was examined as PW3, also supported the version of the respondent/husband that the conduct of the appellant/wife left much to be desired and was not good. The appellant/wife examined herself as RW1 and brought on record, copies of several complaints that she had made against the respondent/husband. The Family Court concluded that the conduct of the appellant/wife amounted to cruelty in view of the following facts : - (a) That despite the Settlement dated 28.04.2009 and the parties having started residing together in the matrimonial home the appellant/wife had continuously lodged complaints against the respondent/husband and his family members with the police including FIRs No.3

u/s 489A/406, IPC, PS Kalyanpuri and FIR No.4

u/s 406, IPC, PS Indirapuram, Ghaziabad, UP. (b) That the respondent/husband and his parents had remained in judicial custody for 28 days while other MAT.APP.(F.C.)200/2019 Page 6 of 8 family members including his brother and unmarried sister remained in custody for 7 days before they were released on bail. (c) That in FIR37307 u/s 489A/406, IPC, all the accused being the respondent/husband, his parents and his sister were finally acquitted after trial. (d) That the family of the respondent/husband had faced prosecution for 8 years even after the settlement, including in a fresh FIR No.4

u/s 406, IPC, PS Indirapuram, Ghaziabad, UP and a case filed by the appellant/wife under the Protection of Women from Domestic Violence Act, 2005. (e) That the plot at Bhalaswa, Delhi had remained all through in the name and possession of the mother of the appellant/wife and unsubstantiated allegations had been levelled by her against the respondent/husband and his family. (f) That the parties have been disputing for the last over 12 years and living separately for 8 years, without any attempt at reconciliation.

15. It has been argued before us that the police complaints made by the appellant/wife were on account of continuous harassment at the hands of the respondent/husband. However, we are not impressed. The admissions made before the Family Court in the written statement filed by the appellant/wife with regard to the constant filing of criminal complaints against the respondent/husband and his family members, the fact that she had forced the MAT.APP.(F.C.)200/2019 Page 7 of 8 respondent/husband to hand over all his salary to her except for a sum of Rs.50 per day, the fact that the respondent/husband and his family members were ultimately acquitted in the case of dowry harassment filed by her clearly establish that the respondent/husband had constantly remained under stress and fear for the welfare of his parents and himself as the appellant/wife had placed the sword of Damocles over his head in order to keep him under her thumb. She did succeed in doing so from 28.06.2005, when the parties had got married, till December, 2010 when according to the appellant/wife, she had returned to her parental home. The conclusion drawn by the Family Court is the only conclusion that can be drawn in the given facts and circumstances of the case. The marriage of the parties has been rightly dissolved by the impugned

judgment that is upheld.

16. There is no merit in the present appeal, which is accordingly dismissed in limine, along with the pending applications. ASHA MENON, J.

HIMA KOHLI, J.

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