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**Darshana Devi Vs. Anil Kumar Saini**

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**SooperKanoon Citation** : sooperkanoon.com/713333

**Court** : Delhi

**Decided On :** Jun-13-2007

**Reported in** : II(2007)DMC191

**Judge** : S. Muralidhar, J.

**Acts** : Code of Criminal Procedure (CrPC) - Sections 107 and 151; Indian Penal Code (IPC) - Sections 34, 231, 313, 324, 341 and 498A; Hindu Marriage Act, 1955 - Sections 13(1)

**Appeal No.** : FAO 142/1998 and CM 1189 of 1998

**Appellant** : Darshana Devi

**Respondent** : Anil Kumar Saini

**Advocate for Def.** : Lalit Bhardwaj, Adv.

**Advocate for Pet/Ap.** : Vivek Kumar, Adv

**Disposition** : Appeal dismissed

**Judgement** :

**S. Muralidhar, J.**

1. This appeal by the wife is directed against the judgment and order dated 12.2.1998 passed by the Additional District Judge (ADJ) Delhi in HMA No. 532 of

1989 by which the ADJ dissolved the marriage between the parties on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955 ('Act'). While the trial Court accepted the plea of the petitioner (respondent herein) that the appellant had treated him with cruelty, the Court negatived the plea for divorce on the ground of desertion. Aggrieved by the dissolution of the marriage on the ground of cruelty, the wife is in appeal.

2. The marriage between the parties was solemnized at Delhi on 18.10.1985. A son was born to the parties on 8.2.1987. The narration of facts in the petition for divorce pertaining to the ground of cruelty cites three incidents of cruelty. The first incident is of 11.10.1987. It is stated that the appellant came to the house of the respondent and raised a hue and cry outside the house falsely alleging that the respondent and his family members wanted to burn her and had demanded Rs. 5000 from her parents. The second incident is of 31.10.1987 at around 10 p.m. at night as a result of which the respondent and his family members were booked under a criminal case registered under Sections 107 and 151, Cr.P.C. It is stated that the respondent and his family members were taken by the police to the police station, kept in police lockup till the next day when they were handcuffed and made to walk barefoot to the police station at Seelampur in full public view. It is stated that ultimately in this case the respondent and his family members were discharged on 7.3.1988 when the Special Executive Magistrate noted that the complainant was absent in spite of being summoned three times. The third incident is of 9.4.1989. It is stated that the appellant along with her father, mother and brother came to the respondent's house at 88 Saini Enclave, broke the window pane of the house, and in the melee that ensued a criminal case was registered against the respondent and his family members under Sections 498A, 313,341,324 read with 34, IPC. The respondent and his family members were taken to Police Station, Vivek Vihar where the respondent was beaten up at the behest of the appellant's father and then taken to Central Jail Tihar. While the respondent and his mother were granted bail on 11.4.1989 the father was granted bail only on 16.5.1989.

3. At the trial, the appellant examined herself and her father as witnesses. On behalf of the respondent he examined himself, his father, his brother, the police

officer from the Vigilance Cell, a record clerk from the Central Jail and a police constable from Police Station, Anand Vihar as witnesses.

4. The conclusions reached by the trial Court were as under:

(a) As regards the incident of 11.10.1987, the version of the respondent was corroborated by his father PW2. The trial Court noted that the father had not been cross-examined about this incident. The fact that the appellant here did visit the matrimonial home on 11.10.1987 along with her mother was in fact admitted by her in her statement. The story about the respondent having demanded a refrigerator and a Colour TV for letting her into the house was an improvement made by her during her statement in the Court.

(b) As regards the incident of 31.10.1987 the Trial Court found that the evidence on record did suggest again that the police were present when the respondent visited the matrimonial home along with her father, her brother and one Amar Singh. The registering of a case under Sections 101 and 151, Cr.P.C was admitted. The fact that the respondents were arrested, handcuffed and taken to the police station was not denied. Also the fact that the case stood dismissed on 7.3.1988 on account of nonappearance of the complainant (the appellant herein) was also not denied. The precise finding of the trial Court in this behalf after noticing the version of the appellant herein at the trial was as under-

This version of the respondent also shows that she had gone to the house of the petitioner along with the police personnel with pre-planned motive to involve the petitioner in false case unless the petitioner's family would have agreed to keep her. This supports the case of the petitioner that respondent was taking advantage of the position of her father being employed as Inspector in Delhi Police to involve the petitioner and his family members in false criminal cases.

The trial Court also found that neither Amar Singh nor the brother of the appellant who were stated to be present at the incident on 31.10.1987 had been examined. thereforee the appellant's version of the incident could not be accepted as having been proved.

(c) As regards the third incident of 9.4.1989, here again the trial Court found that the statements made by the respondent and his father during the trial stood corroborated by the evidence on record and was not shaken durirtgcross-examination. If the brother of the petitioner was in fact present at the incident and had his hand injured, it was surprising that he had not been examined by the appellant. Further, if the version of the appellant that it was the respondent who attacked her with the knife, which resulted in her brother getting injured was true, then it was surprising that nojase was registered against the respondent under the Arms Act The trial Court noted that after the respondent and his parents 'ere taken away to the jail the appellant came back to the house of the respondent's father and stayed there. The finding in this regard by the trial Court reads as under -

This part of the statement of the respondent also shows that she entered the Saini Enclave hbuse which was not belonging to the petitioner but to his father, after getting the petitioner, and his parents arrested in a case under Sections 313/498A/ 231/324/34, IPC and thereafter she started living in the house at the back of petitioner and his parents. This also supports the case of the petitioner that the respondent was using influence of her father with a view to force him to accede to her demands of living in a house outside Ghonda.The trial Court then came to the positive conclusion as under:

For the reasons stated above, I have no hesitation in holding that the respondent along with her father cause mental cruelty upon the petitioner - firstly in deserting the matrimonial home, after birth of the child in March, 1987 and thereafter by involving the petitioner and his family in the proceedings under Sections 313/498-A/341/ 324/34, IPC on 9.4.1989.

5. As regards the version of the respondent that there was a demand of dowry of Rs. 20,000, this is what the trial Court found:

The respondent has failed to prove that there was demand of dowry of Rs. 20,000/-. She has also failed to prove that miscarriage had taken place because of the beatings given by the petitioner in respect of the first delivery, inasmuch as no medical record has been produced by her to show that miscarriage taken place because of beatings given to her. She has admitted that she was taken to the

hospital by the petitioner during her first miscarriage and also at the time of delivery. Her father admits that she used to be looked after by the mother of the petitioner in hospital.

6. In the memorandum of appeal one of the main grounds taken by the appellant is that the criminal case filed against the respondent by the appellant had in fact resulted in the framing of a charge. That the respondent had unsuccessfully tried to challenge the order framing charge and thereforee 'prima facie the respondent and his other family members are guilty of such offences and the trial of the said case is still pending and hence at this stage the said case cannot be treated as an illegal or false case.'

7. The respondent has produced a copy of the judgment delivered on 31.1.2005 by the trial Court acquitting the respondent and his parents of the offences under Sections 498A, 313,324 read with Section 34, IPC. Although the acquittal in the criminal case by itself cannot establish cruelty, in the light of the other circumstances of the case narrated herein above it does assume significance. Throughout the case of the respondent has been that he andliis parents have been falsely implicated in criminal cases by the appellant. The case under Sections 107 and 151, Cr PC also ended in a dismissal on 7.3.1988. For the respondent and his family members to be arrested twice, kept in police lockup and made to undergo jail terms for offences of which they were ultimately acquitted, cannot but be termed as cruelty.

8. It has been suggested by the Counsel for the appellant that the fact that the respondent's father was an Inspector of Police, helped him to manipulate the police records and that the police somehow tried to protect the respondents. However, the facts seem to indicate otherwise. It can be seen that it was in fact the appellant who managed to get the police on the spot time and again notwithstanding the fact that the respondent's father was a police officer.

9. The analysis and conclusions reached by the trial Court cannot be faulted with. This Court after examining the evidence in some detail, finds that the conclusions reached by the trial Court do not call for interference.

10. The appeal is without merits and it is dismissed as such, with no order as to costs. CM stands dismissed.

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