

Delhi High Court

Shiv Nath Thakur vs Nutan Thakur on 2 November, 2023

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 24th A

% Pronounced on: 2nd Novem

+ MAT.APP.(F.C.) 2/2021

&

CM APPLs. 134/2021, 42985/2021, 42986/2021

SHIV NATH THAKUR

Through: Mr. Amit Chadha, Mr. Ati  
Ms. Munisha Chadha, Ms.  
Chawla, Ms. Smriti Shriv  
Ms. Aeshana Singh, Advoc

versus

NUTAN THAKUR

Through: Ms. Indu Kaul & Ms. M  
Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M

E N T

NEENA BANSAL KRISHNA, J.

1. An Appeal under Section 19 of the Family Courts Act, 1984 has been filed against the judgment dated 10.02.2020, whereby the learned Principal Judge, Family Court has dismissed the petition of the appellant/ husband, seeking divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act, 1955").

2. The parties had got married on 19.04.1998 and two sons were Signature Not Verified DigitallySigned By:SAHIL SHARMA Signing Date:04.11.2023 04:11:09 born from their wedlock on 26.05.2002 and 17.11.2003 respectively.

3. The appellant/husband has alleged that the behaviour of the respondent was rude and abnormal towards him and she picked quarrels regularly on petty matters. She used to insult the appellant and his family members and friends and refused to discharge her matrimonial obligations. In the year 1999, she left the matrimonial home on the occasion of Deepawali and returned only after eleven months. In 2001 she came to Delhi and made a false complaint to the police alleging sexual harassment by the father-in-law and attempt to rape against the brother-in-law. Subsequently in the year 2006, she also attempted to commit suicide by pouring kerosene over herself, with the sole objective of falsely implicating the appellant and his family members. It has been further claimed that they have been living separately since October, 2006. Thus, the appellant sought divorce on the ground of cruelty under Section 13(1)(ia) of the Act, 1955, which has been denied by the learned Family Court vide impugned judgment dated 10.02.2020.

4. The respondent/ wife in her written statement took preliminary objection that the appellant was taking advantage of his own wrong by concocting false story for divorce. She admitted making a complaint under Protection of Women from Domestic Violence Act, 2005, (hereinafter referred to as "D.V. Act"), but asserted that the contents of the complaint were true. She further alleged that the appellant/ husband had forcibly separated the children from the mother and that he was guilty of cruelty towards the respondent/wife. Thus, she sought dismissal of the divorce petition.

Signature Not Verified DigitallySigned By:SAHIL SHARMA Signing Date:04.11.2023 04:11:09

5. Issues on the pleadings were framed on 24.01.2012 as under: -

"(i) Whether the petitioner was treated with cruelty as per the incidents mentioned in the petition? OPP

(ii) Relief."

6. The appellant appeared as PW1 and examined his brother-in-law Shri Nand Kishor Chaudhary as PW2.

7. The respondent appeared in her evidence as RW1 and tendered various complaints, FIRs and other documents in support of her assertions. She examined her brother, Sh. Mukesh Kumar as RW2.

8. Learned Principal Judge, Family Court in the impugned judgment observed that all the allegations of misconduct of the respondent were general in nature, vague and non-specific. Moreover, there was contradiction in the testimony of the appellant as to whether the allegations of attempt to rape and sexual harassment were made against his father or his brother. Therefore, the assertions of the appellant of making false allegations were disbelieved by the learned Principal Judge. Thus, it was concluded that the appellant had failed to prove the acts of cruelty by the respondent/ wife and the divorce petition was dismissed.

9. Submissions heard of both the counsels of the parties and record perused.

10. The parties got married way back on 19.04.1998 and were blessed with two sons. The testimony of the appellant, however, shows that their marriage was on the rocks since beginning as, according to the Signature Not Verified DigitallySigned By:SAHIL SHARMA Signing Date:04.11.2023 04:11:09 appellant's testimony, the attitude of the respondent was rude, insulting and derogatory towards his family members. There is no denial that the respondent/ wife had left the matrimonial home in 1999 and she came back after eleven months. It is also not denied that in the year 2001 the respondent/ wife had come to Delhi and had made allegations of sexual harassment and attempt to rape by the brother-in-law. It was also deposed by the appellant that in the year 2006, she attempted to commit suicide by pouring kerosene only with an intent to implicate the appellant and his family members.

11. These facts have been denied by the respondent, however, she herself has relied on a complaint dated 12.04.2009, to SHO P.S. Sarita Vihar, wherein she claimed that the appellant was living with another woman for last four years while she had been kept in the house in Bihar. She also asserted that she was being harassed and beaten and subjected to physical and mental cruelty. Even the children were not allowed to meet her. Pertinently, from her own documents it is evident that she had made serious allegations of the appellant being in an illicit relationship with a woman. However, she had not been able to substantiate her allegations of illicit relationship by any evidence.

12. The respondent has also relied upon the police complaint made to SHO, P.S Sarita Vihar, registered vide DD No.29 B dated 02.08.2009, wherein again she had made serious allegations of being harassed on account of dowry, not only by the appellant/ husband but also by his family members. She further reiterated that she had been harassed, beaten and not provided with food for days together. She has also Signature Not Verified DigitallySigned By:SAHIL SHARMA Signing Date:04.11.2023 04:11:09 claimed that while she had been left in the matrimonial home in the native place, she was made to work like a maid for 24 hours and was subjected to humiliation and abuses. She was also given severe beatings and threatened to be turned out of the matrimonial home. It is reported that on 28.02.2001, that while she was residing with the appellant in the rented accommodation at Delhi, his brother who was residing with them, forced her to have illicit relationship with her and when she told him that the elder Bhabhi is like a mother and he should not spoil his relationship with his brother, the appellant's brother started molesting her. These averments have not only been made in the evidence led by her, but also to the police in the complaints dated 12.04.2009 and 02.08.2009 filed against the appellant and his family members, with an obvious intention of initiating criminal action. However, as per the record, though serious allegations of her brother-in-law having illicit relationship with her have been levelled on several occasions, she has blatantly failed to prove any of her allegations.

13. It has also come on record that the parties entered into a Settlement Agreement dated 26.11.2010, before the Delhi High Court Mediation and Conciliation Centre, whereby they agreed to amicably resolve the inter se disputes and withdraw the cases filed by them in relation to the matrimonial discord. However, as recorded in Order dated 11.04.2012, the Mediation Settlement had failed because the respondent refused to withdraw C.C. No. 337/2001, alleging that the appellant got FIR No. 332/2010 registered under Section 31 of the D.V. Act, fraudulently quashed by her and had stopped living with her. So much so, the respondent also filed two criminal complaints against the Signature Not Verified DigitallySigned By:SAHIL SHARMA Signing Date:04.11.2023 04:11:09 appellant in PS Sarita Vihar, dated 01.04.2012 and 02.04.2012. She also made a complaint dated 27.04.2012 under Section 156(3) Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") against the appellant, his brother, sister-in-law and father making serious allegations of committing various offences punishable under Section 307/498-A/406/503/509/506/34/120-B Indian Penal Code, 1860 and seeking registration of FIR. However, this application under Section 156(3) Cr.P.C was dismissed on 05.03.2018 as being without merit with the observations that "it is strange on the part of Complainant to allege that she was fraudulently asked to withdraw her complaints or to cooperate in the quashing of FIR as she has been reaping the benefits of that settlement till date which was made the basis of quashing of FIR by Hon'ble High Court of Delhi."

14. Thereafter, her complaint bearing CC No. 1026/2012 was also dismissed in default and for non-prosecution vide Order dated 31.03.2014. Subsequently, her complaint under Section 12 of D.V. Act filed on 06.08.2009 also was dismissed on 13.04.2017 and the appeal filed against the said judgment was also dismissed vide Order dated 19.02.2018.

15. The aforementioned complaints and litigations clearly indicate that the respondent had made scandalous allegations of illicit involvement of the appellant with a third woman. She had also alleged her sexual exploitation by the brother of the appellant. Besides this she had also made allegations of dowry harassment. However, none of these allegations could be substantiated by her by any cogent evidence. In Signature Not Verified DigitallySigned By:SAHIL SHARMA Signing Date:04.11.2023 04:11:09 fact, several complaints including complaint under Section 200 Cr.P.C as well as under D.V. Act have been dismissed.

16. Every aggrieved person has the absolute right to initiate appropriate legal action and has every right to approach the state machinery. However, it was for her to establish that she was subjected to cruelty by placing forth cogent evidence in support of her allegations. Though filing of a criminal complaint per-se cannot amount to cruelty, however, such grave and indecent allegations of cruelty should be substantiated during the divorce proceedings and in the present case, the respondent has neither substantiated her allegations nor justified her conduct.

17. In the case of K. Srinivas vs. K. Sunita X (2014) SLT 126, the Supreme Court held that filing of the false complaint against the husband and his family members constitutes mental cruelty for the purpose of Section 13(1)(ia) of the Act, 1955.

18. The Hon'ble Supreme Court in Raj Talreja vs. Kavita Talreja (2017) 14 SCC 194 has observed that :-

"Cruelty can never be defined with exactitude...it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act, 1955 (for short "the Act").

However, if it is found that the allegations are patently Signature Not Verified DigitallySigned By:SAHIL SHARMA Signing Date:04.11.2023 04:11:09 false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty."

19. Similarly, it has been held by the Supreme Court in Mangayakarasi vs. M. M. Yuvaraj (2020) 3 SCC 786 that indubitably in an appropriate case, the unsubstantiated allegation of dowry demands or such other allegations, made the husband and his family members exposed to criminal litigation.

Ultimately, if it is found that such allegations were unwarranted and without basis and if that act of the wife itself forms the basis for the husband to allege the mental cruelty has been inflicted on him, certainly, in such circumstance, if a petition for dissolution of marriage is filed on that ground and evidence is tendered before the original Court to allege mental cruelty, it could well be appreciated for the purpose of dissolving the marriage on that ground.

20. Further, the Supreme Court in the case of Ravi Kumar vs. Julmidevi (2010) 4 SCC 476 has categorically held that "reckless, false and defamatory allegations against the husband and family members would have an effect of lowering their reputation in the eyes of the society and it amounts to cruelty." Similar observations were made by the Coordinate Bench of this Court in the case of Rita vs. Jai Solanki (2017) SCC OnLine Del 9078 and Nishi vs. Jagdish Ram 233 (2016) DLT 50.

21. Making of such serious and unsubstantiated allegations and waging a legal war against the husband by implicating him and his family members, clearly show the vindictive nature of the respondent and amounts to extreme cruelty towards the appellant/ husband.

Signature Not Verified DigitallySigned By:SAHIL SHARMA Signing Date:04.11.2023 04:11:09  
Additionally, the attempted mediation settlement was also violated by the respondent, who only wanted to enjoy the monetary benefits arising out of the settlement but never wanted to fulfil her end of the bargain. Her conduct of resorting to filing other vexatious complaints against the husband and his family only reflected her keenness in not attempting to amicably resolve their differences.

22. We conclude that the learned Principal Judge, Family Court erred in ignoring the overwhelming evidence of false and defamatory accusations and the multifarious litigations initiated by the respondent/ wife against the appellant/ husband as well as his family members, clearly establish the acts cruelty by the respondent. We hereby set aside the judgment dated 10.02.2020 and grant divorce on the ground of cruelty under Section 13(1)(ia) of the Act, 1955.

23. The Decree sheet be prepared.

24. The Appeal is accordingly decided and the pending applications stand disposed of.

(NEENA BANSAL KRISHNA) JUDGE (SURESH KUMAR KAIT) JUDGE NOVEMBER 2, 2023 va/  
JN Signature Not Verified DigitallySigned By:SAHIL SHARMA Signing Date:04.11.2023 04:11:09