

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 30.10.2015

Date of Decision: 09.02.2016

+ FAO 228/1995

GURLEEN KAUR

..... Appellant

Through: Ms. Natasha Sahrawat, Adv.

versus

LAKHBIR SINGH

..... Respondent

Through: Mr. Manjeet Singh Ahluwalia, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

NAJMI WAZIRI, J.

1. This appeal impugns the order dated 4<sup>th</sup> August, 1995 passed in HMA NO.56/1992 whereby the learned Additional District Judge, Delhi dissolved the marriage between the parties on the ground of cruelty. The husband who is the respondent herein had petitioned for dissolution of marriage on the grounds of desertion, unsoundness of mind and cruelty. The trial court examined the two issues, i.e., i) whether the wife had continuously or intermittently suffered from mental disorder of such a kind and to such an extent that it was not possible for the husband to live with her and ii) whether the wife has treated the husband with cruelty.

2. On the first issue apropos whether the wife could be said to have suffered from mental disorder, the court reasoned that, the mere fact that the child was born two years after the marriage, would show that the husband has considered the wife to be in a fairly fit state of mind. The court reasoned that if immediately after the marriage the wife's conduct was such as to cast

doubt about her state of mind, the husband would not have fathered the child; that the husband left the country after seven years of wedlock and four years after the birth of their child, at a time when the child had started going to school. The court opined that the professional competence of the wife disproves the allegations of the husband which would cast any aspersions on the soundness of her state of mind. The court also reasoned that it was not specified as to who consumed the Eskazine antipsychotic tablets/pills as there was no prescription to show that the wife was consuming the same. The court was of the view that even if she was consuming the same, it would not show that she was suffering from any mental infirmity. Accordingly, the court returned this finding in favour of the wife and against the husband. This Court finds no reason to disagree with the findings.

3. On issue No.2, as to whether the wife had treated the husband with cruelty, the court returned a finding against the wife on the basis of a letter written by her on 3.6.1990. (Ex.P-1/2) Although, the wife had been denied the said letter in the written statement, it was subsequently admitted in her evidence. The letter reads as under:

*“Dearest Lakhbir,*

*Sat Siri Akal*

*I could not write to you earlier since I was busy.*

*I have something important to say to you about our marriage. I wish to divorce you. I am now certain about it. We can dissolve it through mutual consent or then I can use the rules of the Government of India. An affidavit made out by my lawyer will be posted to you shortly. Please do the requisite and send it back to me with proper stamps at flat 5, LSR. I have already met an old friend, a man by the name of Pardeep Singh Sethi who*

*wants to marry me soon enough. I hope you are not going to hurt by my bearing you to your fate in America. I will keep Guneeta. Large amount was given by me/or the VasantKunj place and the Van I have cheque Nos. for this return later.*

*SD/-*

*(GURLEEN SINGH)”*

4. The explanation of the wife apropos the above letter was that her husband, who was living in the USA since 1987, had not sent either flight tickets or money for the tickets so that she and the child could travel to the USA. She claimed that she did not know any man named Pardeep Singh Sethi and that she made up a fictitious name to shock the husband out of his complacency; she claimed that she was constrained to write the said letter, as a threat, so that the husband would be jolted out of his indifference and lack of responsibility towards his wife. She had hoped that better sense would prevail upon him and he would not allow the marriage to suffer any further and instead goad him to resume cohabitation with her. The court examined whether the parties could be expected to lead a normal married life and whether the husband in particular could be expected to live with the wife after the husband had read the said letter. On the face of the aforesaid letter, the court reasoned that in the context of the academic and professional competence of the wife, she ought to have restrained herself from writing it which put an end to the possibility of reconciliation between the parties. The court reasoned as under:

*“Even if, there may not have been any person called Pardeep Singh Sethi in her life yet it was an act of irresponsibility on her part to give an impression to the petitioner that she was keen on revival of an old friendship.*

*The respondent is such a matured person that I fail to appreciate why she had displayed such an immaturity in her correspondence with her husband. There was no purpose in suggesting that the divorce papers would follow if she was not keen to divorce the petitioner. The objectionable portion in her letter Ex.P1/2 is not her suggestion to go for a divorce but her suggestion that she would not mind marrying an old friend. None of the authorities cited on behalf of the respondent deal with such a fact situation as this Court is confronted with and it would be of no use to discuss in detail these authorities in this judgment. I am of the considered view that in the face of Ex.P1/2, the petitioner is not expected to live with the respondent. Even if there may have been any shortcoming in the behaviour and the conduct of the petitioner qua the respondent the same did not justify the kind of treatment he has received at the instance of the respondent. This letter, thus, constitutes a matrimonial cruelty on her part inasmuch as this act is such an unendurable one that the petitioner is justified in his contention that he has been dealt with by the respondent with cruelty in the sense in which this term is understood in matrimonial litigation. I am not inclined to persuade myself to hold that the explanation rendered by the respondent is plausible or that she has been able to reasonably explain the admission of her having written the letter. There can also be a situation in the facts and circumstances of a particular case where even a single act may be sufficient to constitute cruelty. The act of writing Ex.1/2 cannot be said to be an isolated act done without understanding its consequences. In such circumstances, it is sufficient to hold that the respondent has treated the petitioner with cruelty. While giving to the petitioner the benefit of the consequences logically flowing from the act of the respondent, the Court is not giving him any advantage of his alleged wrong. Even though he has failed to provide air tickets to the respondent and the child by June, 1990 there was still no justification for using such language as is used in Ex.Pw1/2 by an otherwise intelligent person as the respondent for which there is no proper explanation much less any justification. Accordingly, insofar as this issue is*

*concerned, in view of the preceding discussion it is answered in affirmative.”*

5. Apropos the allegation of desertion, the trial court noted that neither had an issue been framed in this regard nor did the petitioner press for adjudication of this issue throughout the proceedings. Even the evidence on record did not prove that Rs.10,000/- received by the wife was provided by the husband for the purpose of purchasing flight tickets to the USA. The fact that she had got a visa from the American Embassy shows that the appellant herein was willing to cohabit with the respondent. However, the amount of Rs.10,000/- for travel cost for herself and her child was insufficient because at the relevant time the cost of air-tickets was somewhere in the range of Rs.45,000/- for both the mother and the child. The court reasoned that since she was a teacher, her salary was not enough to afford the air-fare. The court held that it was incumbent upon the husband to provide for air tickets. The court concluded that it could not be said that she decided to put an end to the marriage at any point so as to dissolve the marriage and there was no proof whether she was thrown out of her matrimonial home or if she left it by herself. Indeed the parties continued to co-habit in view of the letter dated 25.6.1988, which suggested that the parties harboured no intention to separate from each other. Since the deciding factor of putting an end to co-habitation was not manifested by the wife, the court held that there was no cause of action for the dissolution of marriage on the grounds of desertion.

6. However, as aforementioned, the marriage was dissolved on the ground of cruelty. The learned counsel for the appellant argues that no specific allegation of cruelty was made, hence, there was no cause of action

in the petition and the trial court erred in returning the finding against the wife on this ground. The sole ground purporting to constitute cruelty is the letter dated 3.6.1990 which is a one-off, stray incident and could not be a ground for divorce, especially in view of the fact that the family's life has been disrupted by the unreasonableness of the husband, and in particular due to his failure to provide any money to his wife for travelling to the USA along with their child to co-habit with him. The aforesaid letter was written in sheer frustration since the wife had been waiting for many years to resume co-habitation with her husband. She wanted to join her husband and for which purpose she had procured a visa. But it was of no consequence since the husband stalled her visit by not sending adequate money for her and her daughter's air travel, which was in the range of Rs.45,000/-. Admittedly, no air tickets were sent by the husband. It was in these circumstances that the wife, out of sheer exasperation, wrote the said letter to rattle him so that he stopped taking his wife for granted. Hence, the said letter could not be deemed to be a cruel act as it was done in innocence out of frustration; that it is what any reasonable wife could be expected to do in the circumstances.

7. The learned counsel for the appellant relies upon the dicta of Calcutta High Court in *Smt. Krishna Sarbadhikary v. Alok Ranjan Sarbadhikary*, **AIR 1985 Calcutta 431**, which held that merely because the party has an unruly temper or she falls short of the conduct or whether the party is inconsiderate, whimsical, cannot be a ground for divorce. Merely because parties are unhappy, the court cannot give divorce under the caption "cruelty." The learned counsel contends that cruelty cannot be referred as a lone act, which as stated, was committed in the circumstances. The aforesaid

act borne out of anguish and desperation by the wife could not be construed as cruelty, especially since the wife herself was suffering her husband's indifference towards herself and their daughter, along with the consequent isolation and agony that came with living apart from her husband for many years. The learned counsel further relies on the dicta of Supreme Court in **S. Hanumanta Rao v. S. Ramani** AIR 1999 SC 1381. Paras 9 &10 reads as under:

*8. Before we deal with the submission it is necessary to find out what is mental cruelty as envisaged under Section [13\(1\)\(ia\)](#) of the Act. Mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the bond between the wife and husband and as a result of which it becomes impossible for the party who has suffered to live with the other party. In other words, the party who has committed wrong is not expected to live with the other party. It is in this background we have to test the argument raised by the learned Counsel for the appellant. The respondent after having admitted the removal of Mangalsutra stated, that while in privacy the husband often used to ask her to remove the chain and bangles. She has also stated that in her parent's house when her aunt and mother used to go to bathroom they used to take out Mangalsutra from their neck and therefore she thought that she was not doing anything wrong in removing Mangalsutra when she was asked to do so by her husband. She also stated that whenever she removed Mangalsutra, she never thought of bringing an end to the married life and was still wearing her Mangalsutra: and it is when her husband made hue and cry of such removal of Mangalsutra, she profusely apologized . From all these evidence the High Court concluded that the incident was blown out of proportion and the appellant attempted to take advantage of the*

*incident by pasteurizing the same as an act of cruelty on the part of the wife. The question, therefore, arises whether the removal of the Mangalsutra by the wife at the instance of her husband would amount to mental cruelty within the meaning of Section [13\(1\)\(ia\)](#) of the Act. It is no doubt true that Mangalsutra around the neck of a wife is a sacred thing for a Hindu wife as it symbolises continuance of married life. A Hindu wife removes her Mangalsutra only after the death of her husband. But here we are not concerned with a case where a wife after tearing her Mangalsutra threw at her husband and walked out of her husband's house. Here is a case where a wife while in privacy, occasionally has been removing her Mangalsutra and bangles on asking of her husband with a view to please him. If the removal of Mangalsutra was something wrong amounting to mental cruelty, as submitted by learned Counsel for the appellant, it was the husband who instigated his wife to commit that wrong and thus was an abettor. Under such circumstances the appellant cannot be allowed to take advantage of a wrong done by his wife of which he himself was responsible. In such a case the appellant cannot be allowed to complain that his wife is guilty of committing an act of mental cruelty upon him, and further by such an act, has suffered mental pain and agony as a result of which married life has broken down, and he is not expected to live with his wife. It also appears to us that, whenever the appellant asked his wife for removal of her Mangalsutra, the respondent never comprehended that her husband at any point of time would react to such occurrences in the way he did. Under such circumstances, the appellant was not expected to have made an issue out of it. We are, therefore, of the view that removal of Mangalsutra by the respondent would not constitute mental cruelty within the meaning of Section [13\(1\)\(ia\)](#) of the Act.*

9. *The next ground of act of cruelty attributed to the wife relates to her preserving and maintaining copies of her letters sent to her husband. Learned counsel urged that the act of the wife's preserving copies of such letters has shaken the confidence of the husband which amounts to mental cruelty upon her husband, as according to him, copies of such letters were preserved knowingly to use them as evidence in future and such an action definitely amounts to mental cruelty.*

10. *The view taken by the High Court was that mere retention of copies of the letters would not amount to mental cruelty. We also find that if the wife had any intention to use copies of those letters she would have filed the same before the trial court. Excepting filing a counter affidavit the respondent-wife did not file any copy of the letters sent to her husband, whereas the husband has filed all the letters sent to him by his wife in the court which were exhibited. The respondent wife in her testimony stated that she wrote several letters to her husband, but her husband did not reply any of them and as such she started preserving the copies of the letters sent by her to her husband. This act of the respondent, according to us, is a most natural behavior of human being placed in such circumstances. Thus, we find mere preserving the copies of the letters by the wife does not constitute an act which amounts to mental cruelty, and a result of which it becomes impossible for the husband to live with his wife. We, therefore, reject the submission of learned Counsel for the appellant.*

8. The learned counsel for the appellant submits that if the action of the husband is such that it necessarily invokes a particular kind of reaction then the husband cannot take advantage of his own wrong doing. She relies upon the case of ***Smt. Kavita v. Shri Rakesh Raman* 178(2011) DLT 743** and ***Savitri Panday v. Prem Chandra Pandey*, (2002) 2 SCC 73**, para 14 of

which reads as under:

*14. In any proceedings under the Act whether defended or not the court would decline to grant relief to the petitioner if it is found that the petitioner was taking advantage of his or her own wrong or disability for the purposes of the reliefs contemplated under Section 23(1) of the Act. No party can be permitted to carve out the ground for destroying the family which is the basic unit of the society. The foundation of the family rests on the institution of a legal and valid marriage. Approach of the court should be to preserve the matrimonial home and be reluctant to dissolve the marriage on the asking of one of the parties.*

9. The learned counsel further submits that the husband left the wife and desertion by the wife has not been proved. She submits that even a single act of violence which is of grievous and inexcusable nature satisfies the test of cruelty, as held in ***Gurbax Singh v. Harminder Kaur AIR 2011 SC 114***. The said judgment referred to the analysis and conclusion in ***Samar Ghosh vs. Jaya Ghosh (2007) 4 SCC 511*** whereby a three judge bench of the Supreme Court while considering Section 13(i)(a) of the Hindu Marriage Act laid down certain guidelines. The same are reproduced as under:

*72. On proper analysis and scrutiny of the judgments of this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.*

*73. Human mind is extremely complex and human behavior is equally complicated. Similarly human*

*ingenuity has no bound, therefore, to assimilate the entire human behavior in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.*

*74. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior 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.*

*(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of 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 behavior 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 lengthy period, where the relationship has deteriorated to an extent that because of the acts and behavior of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.*

*(xi) If a husband submits himself for an operation of sterilization 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.*

10. In **Gurbax Singh** (supra), the court held that it is quite possible that a particular conduct may amount to cruelty in a case, but the same kind of conduct in different circumstances may not be deemed to be cruelty. Hence, it is always essential for the persons who claim relief on the ground of cruelty to prove that the particular conduct or misbehaviour resulted in cruelty inflicted upon him or her. No prior assumption can be made in such

matters and “The aggrieved party has to make a specific case that the conduct of which exception is taken amounts to cruelty.” The learned counsel has sought to distinguish the applicability of this ratio to the present appeal on the ground that the wife’s response was what a reasonable person would do when faced with consistent indifference by the husband. The learned counsel also relies upon the dicta of this Court in ***Kavita vs. Rakesh Raman*** in **MAT. Appeal No.52/2009**, wherein it was held that “*mental cruelty indeed is not easy to establish as physical cruelty but the impact of the alleged cruel incidence on the mind of the complainant spouse has to be deliberated upon. However, an isolated or stray incident, an angry look, a random quarrel, a sugar coated insult or a taunt cannot lead the Court to grant a decree of divorce.*” The learned counsel further relies upon the dicta of this Court in ***Savitri Devi v. Ramesh Chand*** **104 (2003) DLT 824** which reads as under:

*“To ascertain marital cruelty though ordinarily whole series of acts of conduct should be weighed to infer cruelty yet an isolated act can lead to inference of cruelty if its gravity or seriousness is of such a magnitude that it is likely to cause grave injury to physical or mental health of victim’s spouse. Composite picture should be drawn as to the acts, incidence or conduct for ascertaining whether these amounts to cruelty- physical or mental. Unless such kinds of physical or mental ill-treatments when taken together lead to the inference of persistent cruelty, charge of cruelty cannot stick.”*

11. The learned counsel argued that there was no dispute that the husband left for USA in June, 1987 leaving behind the wife and daughter in India and a perusal of the records would show that the husband made no efforts to

ensure that his wife and daughter join him in the foreign country.

12. The learned counsel for the appellant contends that the learned trial court erred in not appreciating the fact that the letter by the wife was drafted in utter despair and was, at best, an act of immaturity and in the context in which it was written, it would not necessarily amount to cruelty. Despite her having obtained the visa to travel to the USA, the husband did not send money to facilitate her travel. She relies upon the dicta of this Court in ***Kavita vs. Rakesh Raman*** (supra) by concluding that “*while adjudicating matrimonial cases, the Courts have to be cautious and conscious of the fact that the holy bond of matrimony involves delicate human emotions and complex situations and often there gets created a chasm which if fortified by the court can lead to irredeemable destructions*”

13. In substance, the learned counsel submits that there was no fault of the wife, who was constrained to write the aforesaid letter as a consequence of the cruel act of the husband.

14. In his reply, the learned counsel for the respondent submits that the analysis and finding pertaining to the aforesaid letter is sound and cannot be faulted; that the appellant had taken contradictory pleas. In the written statement to the divorce petition, the appellant herein has denied the letter dated 3.6.1990 whereas she has admitted the same during the recording of evidence. The letter would show that the appellant had thought of divorce at that time and had made sufficient provisions to put her thoughts into action. This is evident from the fact that she had posted an affidavit drawn up by her lawyer to her husband and asked him to sign and post it back to her.

15. Having considered the arguments of learned counsel for the parties, the Court is of the view that the letter dated 3.6.1990 clearly specified that

the appellant-wife wanted to dissolve the marriage by mutual consent and had taken steps for the same. In the letter, she clearly mentions that she has an old friend by the name of Pardeep Singh Sethi who wants to marry her soon and hence she wanted a divorce. There is nothing on the record to show that subsequent to the aforesaid letter, the wife made any effort to intimate her husband that the letter was simply written in desperation so as to unnerve him and to remind him not take his marriage and wife for granted. The letter was posted in 1990 and the divorce petition was filed in 1992. The divorce was finally granted in 1995 and, during all these years, the wife made no attempt to convey to the husband that the contents of the letter were fictitious and written only with the design of startling him and portraying to him how negligent and callous he had been towards her and their child. The husband made the aforesaid letter as a ground for divorce and indeed divorce was granted on this ground itself. A period of two years is long enough for any wife to have clarified her position that she did not actually mean to divorce or dissolve the marriage through mutual consent and that her so-called old friend viz. Pardeep Singh Sethi, was simply a fictitious person. Furthermore, the letter was wholly denied in the written statement and it is only during the recording of evidence that she admitted to the letter being written by her and that too, under duress, because of the circumstances brought about by her husband's stated indifference towards her.

13. The Court notes that the parties have been living separately since 1987, i.e., for almost 28 to 29 years. There is no mitigating factor on record to show that the wife had intended the said letter only as a threat or that she did not actually intend on ending the marriage by divorce/dissolution by

mutual consent or that the person, Pardeep Singh Sethi, who wanted to marry her, was a fictional person. For a husband who had been living away from his wife since 1987, to have received a letter from his wife intimating him about her unequivocal decision to dissolve the marriage and marry another man would have been a pain as grievous as any to endure. Such an element of rejection, coupled with the brunt of emotional infidelity by the wife, can break the spirit of a husband to continue with marital ties. In the given circumstances, the long separation between the husband and wife could well have disrupted the marriage, but nevertheless either or both of the parties could have hoped that they would manage to salvage their estranged relationship. However, the written intimation to the husband, that the wife had found someone to replace him as her husband, would have caused acute mental agony to the husband. Thus, the justification on behalf of the wife that the aforesaid letter was only meant to jolt her husband out of his complacency cannot be accepted. This sole act of cruelty continued for a period of about 4 to 5 years, between the letter dated 3.6.1990 and her stand before the trial court that it was a mere threat. The Court is of the view that the import of the letter could only evoke pain, distress, rejection and self doubt in any reasonable husband. The letter alongwith a specific reference to an impending draft affidavit from her lawyer, is a telling testimony of cruelty. The import of the letter assumes extra significance because the appellant's academic record is brilliant and by profession she is a teacher at Lady Shri Ram College, Delhi. The letter shows clarity of thought and is to be understood so.

16. In the circumstances, the Court is unable to persuade itself that the trial court has erred in dissolving the marriage on the ground of cruelty.

In view of the aforesaid, the petition is devoid of any merit and is accordingly dismissed.

17. There is no order as to costs.

**NAJMI WAZIRI, J.**

**FEBRUARY 09, 2016/aj**