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

% Judgment delivered on: 09.02.2023

+ **MAT.APP.(F.C.) 138/2022 & CM APPL. 39648/2022**

DEEPTI BHARDWAJ Appellant

versus

RAJEEV BHARDWAJ Respondent

Advocates who appeared in this case:

For the Petitioner: Mr Nishit Kush, Mr Mercy Hussain and Mr Siddharth Sikri and Ms Kirti, Advocates.

For the Respondent: Ms Priyanka Gupta, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns the judgment dated 27.07.2022, whereby the petition filed by the respondent-husband under Section 13(1) (i-a) of the Hindu Marriage Act, 1956 seeking dissolution of marriage on the ground of cruelty has been allowed and a decree of divorce has been passed.
2. Learned counsel for the appellant contends that the Family Court has been swayed by a mere suggestion given by the counsel

towards the end of the cross-examination of the respondent-husband that he had filed the petition for divorce for the reason that he was having an extra marital affairs with his co-worker.

3. Learned counsel submits that there was no pleading to the said effect and the suggestion was a mere suggestion given by a counsel, who was over jealous, in his cross-examination without any instructions from the appellant. He submits, that alone cannot be a ground for grant of divorce.

4. Learned counsel further submits that the allegations of cruelty are unsubstantiated and that there are no dates mentioned as to when the alleged cruelty has taken place.

5. Learned counsel for the respondent disputes the same. She contends that the allegations of adultery or having an affair with the co-worker, though are not in the pleadings before the Family Court in these proceedings, but similar allegations have been levelled against the respondent-husband in the replication of the petition filed under Section 125 Cr.PC by the appellant.

6. Learned counsel further submits that even if these allegations were to be ignored, respondent has sufficiently established that he was treated with cruelty.

7. We notice that in the petition filed for divorce, the respondent has specifically averred and stated the taunts and the language used by the appellant and her father against the respondent and his family. In the divorce petition, the instances of cruelty have been spelt out as under:

4. That since beginning the nature, conduct and behaviour of the respondent and her family members was very cruel towards the petitioner and his family. The father of the respondent always used to taunt petitioner that **"I am a superintendent in education department, your family is not upto our standard"**. It is pertinent to mention here that the respondent also did never perform her matrimonial duties towards the petitioner and his parents. However the petitioner tried all his best to please the respondent but all in vein.

5. That the respondent, whenever the petitioner tried to make her understand on petty issues, packed her bag and left for her parental house. After the birth of children, the poor petitioner thought that everything will be alright, but all in vein. Now the respondent started leaving for her parental home along with infants. The respondent always cross questioned with the petitioner and never replied him anything in right manner. She always used to argue with petitioner and his parents in filthy and unparliamentarily language saying **"2 kodi ka policewala h tera baap, mera kuch nahi bigad sakta, ministry tak pahuch hai mere papa ki"**.

6. That it is pertinent to mention here that being more educated than the petitioner, the respondent always dominated him. She always insulted him in this way or that. The respondent was too stubborn to her demands. If sometimes due to lack of money or some other reason, the petitioner did not fulfill any demand of respondent, she got furious, used to throw households, TV remote, shouting in abusive language and threatened to kill the petitioner. But the petitioner left all his fate upto the almighty God thinking one day seeing growing children the respondent will prevail good senses and the atmosphere of the house will be harmonious, but all in vein due to the unnecessary intervention of the

parents and sisters of the respondent, as they always used to instigate the respondent against the middle class culture and amenities of the petitioner. Every month petitioner gave ₹15,000/- to the respondent for household, groceries and upbringing of the children. It is pertinent to mention here that the respondent used to incur huge expenses of mobile use unnecessarily conversing with different relatives without any reasonable cause. It was difficult to bear expenses of about Rs. 100/- on mobile phone each day. The petitioner then tried to make her understand that both the children are growing up, we must reduce our expenses for their upbringing. Then the respondent got furious and replied "**main itna kharch nahi karti jitna teri dawao pe kharch hota hai**". The poor petitioner felt helpless and dejected and left the room. It is submitted that the poor respondent took a personal loan of ₹70,000/- from Home Credit India Finance Limited to do some side business to meet the desires of petitioner to appease her, which is still being repaid by the respondent of EMI Rs.5,000/- per month.

7. That it is specific to mention here that the petitioner is an asthmatic patient and is on regular medicines since last 25-26 years. He regularly consumes Wisolone 20mg tablet, theoesthaline SR tablet and the same inhaler in case of breathing stops and many a times taken to the hospital for admission while on duty by his colleagues and this fact was also in knowledge of the Defendant. But still the quantum of cruelty of the respondent towards petitioner does not get less. The respondent has failed to discharge her matrimonial obligations towards her husband and family.

8. That in the year 2008, the petitioner got selected in DTC as Driver as he was just 10th standard pass. Since then the greedy in-laws of the petitioner started forcing him to shift to their place as he was

the govt. employee now, and to succumb to the petitioner to their illegal demand, the parents and sisters of the respondent started harassing and insulting the petitioner as they all wanted the petitioner to fulfill their own expenses, but petitioner refused. On this the respondent started abusing the petitioner and declared strike in kitchen and brought meals for her from outside. However the old aged mother of the petitioner managed the situation and started cooking meals for entire family including the respondent. It is pertinent to mention here that for the sake of the respect of the family, in 2009, the father of the petitioner constructed the first floor and shifted the petitioner alongwith the respondent and their children there.

*9. That after getting separated, the respondent was happy for some time. But still she had to be indulged in household chorus. She used to talk with her mother and sisters for several hours over phone. Whenever the petitioner even asked her to pick his medicines, she replied "**dikhayi nahi deta baat kar rahi hu, saans ki bimari hai lakwa nahi hai jo khud nahi le sakte dawai**".*

10. That in April 2015, the respondent instigated her younger son to beat the petitioner and she herself threw utensils and hurled sleeper on the petitioner. Petitioner narrowly managed to escape and called Police dialing 100 no. The petitioner also gave written complaints to the concerned SHO and ACP on dt. 27/08/2017 vide D.D. No. 69-B and 28/02/2015 respectively. Under these backdrop and with deep anguish, pain and untold atrocities, torture and cruelties tried out to the petitioner by the respondent and her family members, the petitioner hereby enumerates the facts, circumstances and instances of cruelty inflicted on the petitioner by the respondent and the circumstances which led the petitioner to leave home in July 2016."

8. In response to the petition, the appellant has denied the allegations made in the petition.

9. It may be noticed that in the affidavit of evidence filed by the respondent, respondent has deposed and reiterated the allegations made in the petition as extracted hereinabove.

10. To the said allegations, we notice that there is no cross-examination or even a suggestion on behalf of the appellant that the allegations are incorrect or false.

11. The cross-examination is a very cryptic cross-examination and does not even refer to any of the allegations and words referred to by the respondent-husband in his petition and his testimony.

12. For the purposes of completeness, the entire cross-examination is extracted herein and reads as under:-

“09.04.2019

PW-1 Statement of Sh.Rajeev Bhardwaj, S/o Sh. Bishan Swaroop aged about 44 years, R/o Chirag Delhi (Witness submits that he does not remember the house number).

On S.A.

I tender my evidence by way of affidavit Ex.PW-1/X which bears my signatures at points A and B. The contents of my affidavit are true and correct. I also rely upon the following documents:

- 1. Wedding photographs : Ex.PW-1/1 & 1A*
- 2. Copies of my medical documents : Ex.PW-1/2 to 2F (OSR)*

3. Copy of my salary slip for July 17: Ex.PW-1/3 (OSR_
4. Copies of complaints made by me to police: Ex.PW-1/4 & 4A
5. Copy of rent agreement : Ex.PW-1/5 (OSR)

Facts mentioned in affidavit are correct.

XXX by Sh.Santosh Kumar, learned counsel for the respondent.

About Rs.03 lacs were spent by us on my marriage. I have not placed on record any bills or receipts in that regard. Gifts amounting to around Rs.2-2.5 lacs had been received from the girl's side at the time of marriage. The marriage ceremony was performed in Community Centre, DA Flats, Timar Pur, Delhi.

First quarrel between me and Deepti took place about 11 months after our marriage. It was her parents who quarreled with me at my house. Thereafter they took Deepti with them. I did not lodge any police complaint in that regard.

I have not placed on record any bill or document in support of my contention that Deepti used to spend talktime of Rs,100 in one day.

It is correct that my medical expenses are reimbursed from the office. (Vol. The reimbursement is after due deductions).

My net salary as of today is around R.s.38,000/- per month.

I had lodged my first police complaint in 2013. I have not brought with me the original complaint. From 1995 till 2013 whenever any quarrel took place between me and Deepti, her parents used to send some mediator to settle the issue but I never made any police complaint.

The rent agreement Ex.PW-1/5 was got prepared by me from Chirag Delhi.

It is incorrect to suggest that the respondent had never quarreled with me from 1995 till today. It is incorrect to suggest that parents of the respondent had spent Rs.6-7 lacs at the time of her marriage. It is incorrect to suggest that petition filed by me is on basis of false facts. It is incorrect to suggest that I am deposing falsely. It is incorrect to suggest that I had levelled false allegations against the respondent in the petition and my affidavit.

It is incorrect to suggest that I am having an affair with one of my co-worker or that is the reason that I have filed the present divorce petition.

RO & AC”

13. Family Court in the impugned order has noticed that the respondent-husband has duly proved the allegations of cruelty and held that the behaviour of the appellant was not cordial towards her in-laws and the husband. Further, the appellant-wife used to abuse the respondent and his parents in filthy language.

14. Family Court has held that appellant has not been able to prove any of the allegations of counter cruelty alleged by her. The Family Court has held that the credibility of the evidence of the husband could not be shaken during his cross-examination and taking into account the overall factual circumstances has held that the case of cruelty has been made out and, accordingly the marriage was liable to be dissolved.

15. We may specifically refer to the language which the respondent-husband has attributed to the appellant-wife against him and his family members. The specific words that have been proved to

have been used by the appellant against the respondent and his family members are as under:-

- “(i) *I am a superintendent in education department, your family is not upto our standard.*
- (ii) *2 kodi ka policewala h tera baap, mera kuch nahi bigad sakta, ministry tak pahuch hai mere papa ki.*
- (iii) *main itna kharch nahi karti jitna teri dawao pe kharch hota hai.*
- (iv) *dikhayi nahi deta baat kar rahi hu, saans ki bimari hai lakwa nahi hai jo khud nahi le sakte dawai.”*

16. Every person is entitled to live with dignity and honour. If the words as stated herein above are used against an individual, the same would be very derogatory and humiliating for the individual. The contention of the respondent-husband is that whenever there was a quarrel, the appellant-wife would use the words and humiliate him and his family. Repeated use of words of the nature as extracted herein hereinabove are clearly humiliating and would certainly amount to cruelty. No person can be expected to live with constant abuse being hurled upon him.

17. The Supreme Court in *Vishwanath Agrawal vs. Sarla Vishwanath Aarawal, (2012) 7 SCC 288* has categorically held that cruelty depends upon the social background of parties, the way of life, relations, temperament and emotions.

18. The Supreme Court in *V. Bhagat Vs. D. Bhagat, (1994) 1 SCC 337* has explained the concept of cruelty as under:

“16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

17. At this stage, we may refer to a few decisions of this Court rendered under Section 13(1)(i-a). In Shobha Rani v. Madhukar Reddi [(1988) 1 SCC 105 : 1988 SCC (Cri) 60] , Justice K. Jagannatha Shetty, speaking for the Division Bench, held: (SCC pp. 108-09, paras 4 and 5)

“Section 13(1)(i-a) uses the words ‘treated the petitioner with cruelty’. The word ‘cruelty’ has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact

and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in Sheldon v. Sheldon [(1966) 2 All

ER 257, 259 : (1966) 2 WLR 993] ‘the categories of cruelty are not closed’. Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.”

It was a case where the wife was a postgraduate in biological sciences while the husband was a doctor. The wife moved the court for divorce on the ground of cruelty. According to her, she had an amount of Rupees two lakhs in fixed deposit in a bank apart from a house property, that her mother-in-law used to make constant demands of money, and that the respondent-husband supported his mother therein. She did not report the same to her parents because she was afraid that if she informed her parents, something may be done to her. The respondent-husband himself admitted in a letter written to the wife that the demand for dowry by his parents was nothing wrong. On the above facts, it was held that the ground of cruelty was established and divorce was granted. The following further observations of Shetty, J. appear to us relevant: (SCC pp. 114-15, para 18)

“Section 13(1)(i-a) of the Hindu Marriage Act provides that the party has after solemnization of the marriage treated the petitioner with cruelty. What do these words mean? What should be the nature of cruelty? Should it be only intentional, wilful or deliberate? Is it necessary to prove the intention in matrimonial offence? We think not. We have earlier said that cruelty may be of any kind and any variety. It may be different in different cases. It is in relation to the conduct of parties to a marriage. That conduct which is complained of as cruelty by one spouse may not be so for the other spouse. There

may be instances of cruelty by the unintentional but inexcusable conduct of any party. The cruel treatment may also result by the cultural conflict of the spouse. In such cases, even if the act of cruelty is established, the intention to commit suicide cannot be established. The aggrieved party may not get relief. We do not think that that was the intention with which the Parliament enacted Section 13(1)(i-a) of the Hindu Marriage Act. The context and the set up in which the word 'cruelty' has been used in the section, seems to us, that intention is not a necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment."

19. In the present case, the conduct of the appellant-wife which has been proved on record is of such quality, magnitude and impact as would have caused mental agony, pain, anger and suffering to the respondent-husband on a regular and continuous basis and thus clearly amounting to cruelty.

20. The contention of learned counsel for the appellant that specific dates and time is not mentioned, in the facts and circumstances of the case, would lose its significance for the reason that the respondent-husband has in his evidence specifically stated that whenever a quarrel would take place the appellant-wife would use those words against him and his family, which implies that the said words have been used

repeatedly over the period when they were together. This specifically, in view of the fact that there is no rebuttal of cross-examination or even an attempt to disprove the said imputations, shows that the same have been duly proved and established.

21. This court in *S.A. Vs. AA, 2016 SCC OnLine Del 1818* has held as under:

33. Apart from making the aforesaid specific allegations, the respondent also made general allegations in his petition with regard to the alleged general conduct and behaviour of the appellant. It may not always be possible for a party to make specific allegations with regard to the date, time, place of occurrence in relation to a generalized conduct, act or omission-where such conduct is repeated continuously over a period of time. Thus, the allegations that the appellant used to call the respondent 'Hathi' or 'Mota Hathi', cannot be given a particular date, time or place of utterance as, according to the respondent, such an utterance was repeatedly made by the appellant. Similarly, it may not be possible to give specific dates and times in relation to the allegations that the appellant denied sex to the respondent consistently. When two parties are in a marital relationship, neither is expected to maintain a logbook and note down therein each and every instance of matrimonial offence committed by the other. When the allegation is that a party showed uncooperative attitude towards his/her spouse and family members; did not show respect to the other spouse and his family members; misbehaved and abused with the opposite party and his family members-in respect of such allegations, it may not be possible to plead a specific date, time or place of occurrence. However, when intolerable conduct/matrimonial offence manifests itself into an incident which has larger proportions, the aggrieved party would be able to pin pointedly-with particulars and details, recite and establish such matrimonial offence.

(underlining supplied)

22. Accordingly, we are of the view that there is no infirmity in the finding returned by the Family Court that respondent has been treated with cruelty. We are also satisfied that the cruelty that has been proved on record is sufficient and constitutes cruelty as required under Section 13(1)(i-a) of the Hindu Marriage Act. Consequently, we find no infirmity in the judgment allowing the petition and granting divorce on the ground of cruelty.

23. We, accordingly, find no merit in the appeal. The appeal is consequently, dismissed. Parties are left to bear their own costs.

SANJEEV SACHDEVA, J

VIKAS MAHAJAN, J

FEBRUARY 9, 2023
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