



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 13th September, 2023

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Pronounced on: 06th March, 2024

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MAT.APP.(F.C.) 172/2019

..... Appellant
Through: Mr. Vikas Nagpal, Advocate with
appellant in person.

versus

..... Respondent
Through: Ms. Mishika Singh, Advocate from
DHCLSC with respondent through
Video Conferencing.

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.

Vindictiveness, vexation and intolerance are the foes of coherent comprehension. Though the aggrieved person is entitled and well within their rights to avail the remedy under laws, but, crossing the point of “no return” becomes inevitable once the spouses get engulfed in this rabbit hole of criminal litigations. The bullets of unjustified accusations and complaints cause such fatal wounds, leading to unendurable mental and physical acrimony, making it impossible for the spouses to live together.



CM APPL. 30029/2019

1. By way of present application, the applicant/appellant seeks condonation of 45 days' delay in re-filing the present Appeal.
2. For the reasons and grounds stated in the present application, the application is allowed, the delay of 45 days in re-filing the present Appeal is condoned.
3. Accordingly, the present application is disposed of.

MAT.APP.(F.C.) 172/2019

4. The present Appeal under Section 19 of the Family Courts Act, 1984 has been filed on behalf of the appellant/husband assailing the Judgment and Decree dated 21.12.2018 *vide* which the Divorce Petition filed by the appellant/husband under Section 13 (1)(ia) of the Hindu Marriage Act, 1955 (*hereinafter referred to as "HMA, 1955"*) has been dismissed.
5. **Briefly stated the fact**, the appellant/husband, now Major in the Indian Army met the respondent/wife holding the same position, way back in 2006, while they were undergoing training. Eventually, after their long courtship they got engaged in July, 2009 and finally got married on 11.02.2010, at New Delhi. Though their marriage was consummated, no child was born from their wedlock. However, the differences started emerging after their engagement itself, as according to the respondent/wife the expectations of dowry and consequent demands from the appellant's family, started emerging. The parents of the appellant/husband expected dowry considering that the respondent/wife was a Punjabi and there is a culture of lot of dowry being given in their marriage.
6. **The appellant/husband has asserted in his Divorce Petition** that the parties stayed together for about 46 days after their marriage in the



matrimonial home i.e., from 12.02.2010 to 30.03.2010. Thereafter, the appellant/husband who was posted in Kargil went for his posting, while the respondent/wife went to live in her parental home.

7. The appellant/husband has asserted that the respondent/wife used to frequently abuse him physically and even financially. The respondent/wife made a demand of Rs. 4,00,000/- in April, 2010 for booking up a flat which the appellant/husband politely declined. However, the respondent/wife suggested to the appellant/husband that he should borrow this money from his parents, to which he did not agree. The appellant/husband's disinclination brought up sudden behavioural changes in the respondent/wife.

8. The appellant/husband tried to reason with the respondent/wife, but it was of no avail. The respondent/wife despite owning a car and a scooty of her own, insisted for the car of his father to be given to her for commuting to her parental place. She threatened that if her demands were not met, she would report the matter to his Commander, Brigadier S.K. Sawhney and ruin his career.

9. The appellant/husband approached his Commander, Brigadier S.K. Sawhney and his wife to help resolve the disputes *inter se* the parties. Mrs. Alka Sawhney told the respondent/wife to meet them, but she failed even to confirm the date of meeting. This created an embarrassing situation for the appellant/husband with his Senior Commanding Officer.

10. The appellant/husband asserted that in order to make their marriage work, he requested the respondent/wife to join him in Kargil on leave, but she came to Leh on official duty for five days in September, 2010. Even during her short stay, she indulged in physical abuses and even manhandled



him.

11. The appellant/husband in order to be together and celebrate the birthday of the respondent/wife, took five days' leave and came to Delhi on 12.12.2010. However, the respondent/wife made a demand of costly Diamond set which the appellant/husband was not able to afford. The respondent/wife then made a demand for the Diamond set owned by his mother, to which he did not accede. In the meanwhile, she refused to return the laptop of the appellant/husband which she kept forcibly on her birthday.

12. According to the appellant/husband, a fight took place on 17.12.2010, wherein the respondent/wife abused and manhandled the appellant/husband as well his parents. The respondent/wife was joined by her parents who also abused the appellant/husband and his family members. The father of the respondent/wife extended threats to the appellant/husband by asserting that that he was a "Yamnu Par Ka Gunda". The appellant/husband was left with no choice but to call the Police and a complaint was lodged by the father of the appellant/husband.

13. A similar incident happened on 25.12.2010, when the respondent/wife along with her parents went to the house of the appellant's parents in an Army vehicle (4 ton) along with two Orderly. The appellant/husband was not present at that time and in his absence, she started loading her items, household articles and other objects belonging to his parents, despite their objection and resistance. The Police was called by the father of the appellant/husband, but the situation could not be controlled even by the Police. The respondent/wife took an undue advantage of the situation and gave beatings to the mother of the appellant/husband in the presence of Police. This whole scene of shouting and abusing tarnished the image of the



appellant/husband's family in their colony.

14. The appellant/husband has asserted that the continuous harassment, bickering and inapt behaviour of the respondent/wife has immensely harmed and ruined his peace of mind, career prospects, health as well as his wealth. Because of non-cohabitation and desertion by the respondent/wife without any reasonable cause, his normal life was affected and he was unable to fix his official work and to enjoy normal marital bliss, which is essential for the mental and physical well-being of human life.

15. The appellant/husband claimed that he had made all possible efforts to save his marriage, but because of the adamant conduct of the respondent/wife, all his efforts have gone in vain. Moreover, the respondent/wife lodged a complaint before the Army Authorities and another complaint in CAW Cell to further harass and blackmail the appellant/husband.

16. The appellant/husband thus, sought the divorce on the ground of cruelty.

17. **The respondent/wife in her Written Statement** admitted that she and the appellant/husband were serving in the Indian Army and on his persistence and insistence, they developed love for each other.

18. The appellant/husband also told her during their courtship that he was from Rajasthan, having Army background and that his family was broad-minded, above the barriers of caste, creed and religion and would not have an objection to the marriage which was inter-caste, in the sense that she was a Punjabi. However, all assertions of the appellant/husband turned out to be a big farce as soon after the marriage, the parents of the appellant/husband started making demand of Rs. 10,00,000/- in cash and a big car as the



parents of the appellant/husband were under an impression that in the marriage and thereafter, the respondent/wife would bring huge dowry and would meet their demands. Thus, in a deceitful manner, without making a hue and cry for dowry, they sophisticatedly dealt with the marriage and thereafter started raising their demands and the appellant/husband also sided with his parents.

19. The respondent/wife claimed that her love-cum-arranged marriage survived for a short period of 46 days, though preceded by a long courtship of three years, which makes it apparent that the appellant/husband had been forced by his parents to ask her to further their demands.

20. The respondent/wife also asserted that even before she could adjust in her matrimonial life, she was shown the door by the parents of the appellant/husband and was thrown out of the matrimonial home. The moment the appellant/husband's parents realised that their demands are not going to be fulfilled, they without wasting any time with an intention to get the appellant/husband re-married, filed the Divorce Petition on totally false, baseless and bogus allegations.

21. The respondent/wife asserted that all the incidents as narrated in the Divorce Petition are concocted stories. The respondent/wife admitted that the appellant/husband was posted in Kargil and after he left for his posting, she had gone to her parental home on account of her brother's marriage.

22. The respondent/wife had explained the conduct of the parents of the appellant/husband to him who assured that he would sort out the issue with his parents. However, none of the family members of the appellant/husband ever requested her to return to the matrimonial home after her brother's marriage which came as a shock to her and all her dreams got shattered into



pieces. She had to shift to Government accommodation only because she was shunted out from her matrimonial home and was being pressurised to hand over her salary to the appellant/husband's parents.

23. The respondent/wife had further explained that it was not a sin for her to make an effort to have her own house and all the surrounding circumstances as alleged by the appellant/husband, have been stated out of the context.

24. Insofar as meeting with Brigadier S.K. Sawhney is concerned, the respondent/wife claimed that his conduct was dubious and being supportive of orthodox mindset, similar to that of the parents of the appellant/husband. The respondent/wife clarified that she went to Kargil/Leh for 10 days not for five days on her own in an effort to save the matrimonial life.

25. It was asserted that all the allegations made by the appellant/husband are distortions of the true facts and that there is no ground for grant of divorce.

26. **The appellant/husband in his Replication** re-affirmed his assertions as made in the Divorce Petition.

27. On the basis of the pleadings, the **issues** were framed on 12.12.2012 which are as under: -

“(i) Whether the Respondent after the solemnisation of marriage has treated, the Appellant with cruelty?”

(ii) Relief.”

28. The appellant/husband appeared as **PW1** and examined his father Lt. Colonel (Retd.) Hare Ram Singh as **PW2** and Prahlad Singh, the landlord/family friend as **PW3**.

29. The respondent/wife appeared as the sole witness in support of her



case as **RW1**.

30. **The learned Family Judge**, Family court considered each of the incident as was asserted in the Divorce Petition and observed that the appellant/husband could not prove any of the allegations of misconduct or unjustified demands of the respondent/wife and also observed that mere filing of the criminal complaint in CAW Cell or registration of consequent FIR, in itself cannot be termed as an act of cruelty.

31. Further, it was observed that the appellant has himself made allegations of second marriage of the respondent/wife without substantiating the same, which in itself can be termed as a cruel treatment and he cannot be allowed to take advantage of his own wrongs. It was concluded that there was no cogent evidence to substantiate the allegations made in the Divorce Petition and **the Divorce Petition was dismissed**.

32. Aggrieved by the Judgment and Decree dated 21.12.2018, the present Appeal has been preferred by the appellant/husband.

33. The learned Counsel for the appellant, to buttress the argument and in support of the grounds raised in the appeal, has placed reliance on Preeti Vs Vikas Mat. App. (F.C) 14/2023; Mamta Vs Pradeep Kumar Mat. App. (F.C.) 12/2021; Poonam Wadhwa Vs Rajiv Wadhwa Mat. App. (F.C) 197/22; Devender Govind Ram Ravin Vs Rekha Mat. App. (F.C) 146/19; Kulvinder Singh Gehlot vs Parmila Mat. App. (F.C) 144/2019; Anju Vs Sandeep Mat App. (F.C) 173/2022; Kavita Tyagi vs Sunil Kumar Tyagi Mat. App. (F.C) 13/2022 ; Manjit Kharb vs Sarita Mat. App. (F.C) 221/2019 ; Sivasankaran vs Santhimeenal, CA. 4984-4985/2021; Naveen Kohli vs Neelu Kohli (2006) 4 SCC 558 ; Samar Ghosh vs Jaya Ghosh (2007) 4 SCC 511; Kirti Nagpal vs Rohit Girdhar Mat. App. (F.C.) 92/2020; Shikha Aggarwal vs Anil



Aggarwal Mat. App. 68/2012 ; Shantaram Tukaram vs Sandhya Shantaram Sarfare F.C. Appeal No.94/2010 Bombay HC ; Sher Mohammad vs Mohan Mangotra 203 (2013) DLT 708 ; Suman Singh vs Sanjay Singh 200 (2013) DLT 638 (DB); Anil Bhardwaj vs Nirmesh AIR 1987 Del 111; G. Padmini vs G. Sivananda Babu (AP HC), AAO Nos.733 and 734/1997; Prabir Kumar Das vs Papiya Das (HC of Chhattisgarh) and Monika Sharma vs Kuldeep Kumar Dogra (HC of Shimla), FAO (HMA) No.70 of 2013.

34. Submissions heard from the counsels for the parties and the documents/written submissions as well as the evidence perused.

35. The young Army Officers met in the Training Institute and developed affection for each other which was followed by a long courtship of about three years, and they eventually got married on 11.02.2010. Despite having been together for a period three years, giving them sufficient time to understand their respective temperaments and also their familial circumstances, their marriage could not survive for long due to major adjustment issues. Soon after the marriage, the parties resided together in the matrimonial home of the appellant/husband in Najafgarh for about 46 days. Thereafter, the appellant/husband being posted in Kargil went away and the wife remained in Delhi.

36. According to the respondent/wife, the parents of the appellant/husband who had an Army background had underlying expectation of huge dowry of Rs. 10,00,000/- and a big car, but their expectations fell short. They, in their own sophisticated way, started manifesting the conduct which was non-conducive for the respondent/wife. The respondent/wife, after the appellant/husband left, went to attend the marriage of her brother. The respondent/wife thereafter, expected the parents



of the appellant/husband to call her back, but according to the respondent, none of the family members of the appellant/husband made any effort to call her back; rather they had an expectation from her to give her salary to them. Disgruntled and disillusioned, the respondent/wife thus took a government accommodation of her own in Delhi.

37. While it cannot be denied that a wife comes to a matrimonial home to live amongst members who may not be well known to her and it is the duty of the family members to make her comfortable and feel welcome in the home, but at the same time it is also obligatory on the new member to accept the family as her own and make an endeavour to get transplanted in her matrimonial home. The respondent as per her own admission, went to her parental home to attend the wedding of her brother and did not return. Her assertion that she was not asked to return seems unacceptable as there is nothing to suggest that she, as a daughter in law, made any effort to contact her in laws or herself return to her matrimonial home. Instead, she admittedly, took a Government accommodation for herself. Her conduct does not reflect that there was any act of the appellant or his parents which prompted her to set up independent house for herself.

38. From the testimony of the respondent/wife what emerges is that she was unhappy with the conduct of the parents of the appellant/husband, which she even found demanding and oppressive. However, except bald assertions, there is no evidence led by her to corroborate her assertions.

39. Further, indisputably, the respondent/wife went to Kargil for 5 to 10 days. According to the appellant/husband, the respondent/wife came there temporarily for 5 days to Leh on official duty. Whatever may have been the reason, but the fact remains that the respondent/wife did go to Kargil in



September, 2010 to spend whatever time she could with the appellant/husband. According to the respondent/wife, she was there with him for about 10 days. Whether it is 5 days or 10 days, is not material, but the fact that admittedly, they did get together at Kargil in September, 2010 is more significant as it reflects that there were apparently no major issues till this period.

40. The appellant/husband had tried to substantiate his claim of the respondent/wife being greedy by asserting that after the engagement, she asked him for giving her Rs. 1,00,000/- as the initial amount for booking the flat. After the marriage, she demanded an additional Rs. 4,00,000/-. The appellant/husband gave her Rs. 75,000/- initially for the booking of the flat, but he expressed his inability to meet the subsequent demand of Rs. 4,00,000/-. On this, the respondent/wife tried to insist upon him to demand such money from his parents, to which he did not agree.

41. The respondent/wife in her Written Statement explained that an ambition of a woman to have a house of her own, cannot be considered as a sin.

42. It is the respondent/wife who is correct in her assertions. When two people get married they intend to build their nest and a life where they can celebrate their joys and share the sorrows together. Looking for support from her husband during the courtship and later for being able to buy a flat, cannot be termed as unreasonable. The appellant/husband and the respondent/wife took a holy vow of supporting each other in every endeavour, as life partners. The desire and endeavour of the respondent/wife to make an effort to buy the house for which she sought the support from her husband, cannot by any interpretation, be considered either as a greed or



unjust demand from her husband. In no way, can her request for financial support from her own husband be termed as an act of cruelty.

43. The separation of the parties soon after their marriage because of their service exigencies, evidently did not inure to the benefit of both the parties as this was the time for them to have nurtured their relationship and build mutual understanding to stabilize their marriage. Though they had a courtship of three years prior to the marriage, but the expectations and contours of a relationship undergo a complete change after marriage. The matrimonial relationship when nurtured with love and care metamorphosizes from its nascency to a full bloomed relationship which has to grow through interactions not only inter se them but with the environment and people around them for a happy existence. Since initially, only the two had to be together, their life was smooth but after the marriage, the interaction did not remain limited to the appellant with whom the respondent/wife apparently had no serious issues. The problem emerged in meeting the expectations of the families and adjusting with the parents of appellant/husband. This was the most crucial time when they should have worked upon their relationship to not only deepen their mutual understanding but also to develop acceptability with their respective families, which unfortunately did not happen. Their physical distances created a huge gap in their matrimonial life; in less than one year it led not only to their separation, but a tirade of complaints essentially by the respondent/wife.

44. Sensing the widening differences, the appellant/husband had even sought assistance of his Commander, Brigadier S.K. Sawhney, who in an attempt to resolve the marital discord did organise a meeting as well. However, the respondent/wife did not have faith and did not turn up to meet



him in order to help them ease out their differences.

45. Even on the birthday of the respondent/wife, on 12.12.2010, starry eyed and with all his affection and plans, the appellant/husband took leave of 5 days and came to Delhi for the celebration, but to his dismay, the respondent/wife made a claim of an expensive diamond set which he could not afford. According to the appellant/husband, the respondent/wife then made a demand of an expensive diamond set owned by his mother. Since he could not accede to the demands, it apparently seems to be the point when the relationship became strained and started manifesting itself in ugly incidents.

46. The appellant asserted that on 17.12.2010, the respondent started abusing his mother and man-handled her and pushed when he intervened to stop her. The respondent's parents came to their house and started shouting and abusing the appellant and his family members. Her father also threatened them and said that he was "*Yamuna par ka gunda*". The police had to be called and a complaint was lodged by his father.

47. Though his father Colonel (Retd.) Hare Ram Singh, who appeared as PW-2, denied having made any formal complaint to the police on 17.12.2010, but the appellant had placed on record a compliant dated 25.12.2010, Ex-PW2/2, that had been made by his mother, which was addressed to the President, AWWA, South Block, New Delhi, reporting about this incident. She had also stated that after the incident, they have broken their relationship with their son (appellant) and the daughter-in-law and have even published a disclaimer in the newspaper, in order to prevent her entry in the house.

48. The appellant also produced a complaint dated 17.09.2011 Ex.PW-



2/D, made by his father to Deputy Commissioner of Police, South West District, Dwarka, New Delhi, wherein he referred to the incident of 17.12.2010. In the said complaint, it has been explained that while he and his wife were present alone in their house and the appellant had gone to the market, the respondent along with her parents, came to their house and broke the glass door and other household articles of the house of the complainant. The mother of the respondent caught hold of the mother of the appellant and instigated the respondent to beat her. She gave fist and leg blows and *danda* blows, to the mother of the appellant and also pushed her because of which she suffered serious injuries.

49. Hence, it emerges that PW-2 Colonel (Retd.) Hare Singh had correctly stated that he had not made the complaint on 17.12.2010, but this incident was mentioned by him in his subsequent complaint of 17.09.2011. Merely because this incident was not put to the respondent in her cross-examination, this incident cannot be brushed aside in the light of the positive evidence that has been led by the appellant. It is evident that things were not working out and all the endeavours made by the appellant to be able to maintain cordiality with the respondent, were being responded by the violent acts, as happened on 17.12.2010.

50. The appellant had further deposed that on 25.12.2010, the respondent along with her parents came in an Army Vehicle (4 ton) along with two orderly and started loading all her stuff including her clothes, household items, jewellery, T.V., in the vehicle and though the parents of the appellant objected to the same, she did not desist. The police was also called by his father but they were also unable to control her. Taking advantage of being a lady, she gave beatings to his mother and also created a scene in front of the



people of the colony. She abused the family and went away with all her household belongings. Again, there is not much contradiction or a counter-evidence adduced by the respondent, denying that she finally left the matrimonial home on 25.12.2010.

51. Smt. Leelawati, the mother of the appellant, in her complaint dated 25.12.2010 to AWWA, Ex-PW-2/2, also reported about the incident of 25.12.2010 and mentioned about the respondent having abandoned the matrimonial home. PW-2 Colonel (Retd.) Hare Ram Singh, in his testimony has also proved his complaint dated 25.12.2010, made to the Police Station: Chawla, Delhi, the day on which DD No. 14 and DD No. 14A dated 25.12.2010, were registered. The respondent conspicuously is silent about all these incidents and has merely asserted that because of the expectations of the parents of the appellant, for dowry the things did not work out between the parties.

52. The appellant by the conduct of the respondent as manifested over a period of about 10 months from their date of marriage in February till December, 2010, felt completely dejected by the physical, financial and mental cruelty, leading to loss of focus on his career. He then filed the Divorce Petition on 09.03.2011. Sadly, neither the same was countered by the respondent nor by any conciliatory efforts but by various complaints made not only against the appellant but his family members as well.

53. The respondent again soon thereafter, with the complaint dated 23.03.2011 in CAW Cell, filed against the appellant and his family members, which eventually led to registration of FIR No. 48/2011 under Sections 406/498A/34 of the Indian Penal Code (IPC), 1908, Police Station Gulabi Bagh. The appellant and his family members had to seek anticipatory



bail, which was granted *vide* Order dated 30.09.2011. The respondent admittedly filed for cancellation of the bail, though she did not succeed.

54. Soon thereafter on 12.05.2011, she also filed a Petition under Section 12 of the Protection of Women From Domestic Violence Act, 2005, against the appellant and his family members, wherein again allegations of domestic violence were made. However, the Petition was dismissed by the learned Metropolitan Magistrate by observing that there was no *prima facie* case made out.

55. Pertinently, it is evident that as a counter-blast to the Divorce Petition, the respondent reacted by filing complaints against appellant under the provisions of the D.V. Act, 2005 and the Indian Penal Code (IPC) 1908, on the allegations of cruelty and dowry harassment. That there was no such domestic violence, has been concluded by the learned Metropolitan Magistrate, while dismissing the Petition under Section 12 of the D.V. Act 2005.

56. As has already been discussed in detail, the respondent in her affidavit of evidence, has not given any incident from where it could be inferred that she was in fact subjected to cruelty or to dowry harassment. As is evident from the testimony of both the parties, they resided together initially for 46 days and thereafter, while the appellant went back to his place of posting in Kargil, the respondent initially stayed at her parental home and thereafter took her Government accommodation. Thereafter, they barely resided together for about five/ten days in September, 2010 in Kargil and again for 10 days from 12.12.2010 till 25.12.2010 in Delhi, when admittedly the respondent left the matrimonial home. Not a single incident of significance during this period has been proven by the respondent. It is evident that all



her allegations of dowry demands and harassment, were more in the realm of allegations rather than being a reality.

57. The respondent has deposed in her affidavit that even though the Divorce Petition had been filed and was pending, the appellant came to stay with her in her Government Accommodation, in October-November, 2011 and even co-habited. The appellant proposed the terms of settlement and left her house by telling that he would try to convince his parents to settle their disputes. However, he did not return and she felt that he has gone missing and made a complaint to the Police and went to the house of the appellant's parents on 10.11.2011. The Police arrived at the house of the appellant and when on her knocking, the door was opened, she was informed that the appellant has gone to Gurgaon. However, soon the appellant and his cousin brother came out from the house and they all abused her and threw her to the ground and caused severe injuries. Another complaint was registered against the appellant, his parents and his cousin brother at the instance of the respondent, with respect to this incident of 10.11.2011.

58. The appellant, however, had another story to tell, who in his Complaint dated 10.11.2011 Ex-PW-1/17, admitted that the respondent had come to their house and there was a fight between them all in which he and his family members were beaten by the respondent and her father. They also retaliated by giving her beatings. In his testimony, the appellant stated that his wife went to the extent of spreading false news against him and his family before the print and electronic media just to disrepute them in society. It emerges that two days after the incident of 10.11.2011 i.e. on 12.11.2011, the incident was extensively reported in Major News daily such as "the Hindu" and on several other English and Hindi new channels, which



caused grave public humiliation to him and his family members. So much so that even his comments were called about this incident by his Commander and he had to give his explanation. The appellant had filed the newspaper clippings which is marked as “*Mark I*” and the copy of the comments given by him were also marked as “*Mark J (Colly.)*”.

59. There is no denial of an incident of *inter se* fight having taken place on 10.11.2011. The complainant filed a Complaint Case bearing No. 4998618/2016, under Sections 323 and 34 IPC, Police Station Chawla. The *learned Magistrate* after appreciation of the entire evidence, concluded that from the totality of circumstances it seemed reasonable to accept the defence of the appellant that she had come to their house with the sole intent of securing cancellation of the Anticipatory bail of the appellant and his family members. It was thus concluded that the respondent was not able to prove the incident as claimed by her and giving the benefit of doubt to the appellant and the complaint was dismissed and the appellant and his family members were acquitted.

60. It is not denied that an Application for cancellation of bail application was indeed filed by the respondent after the incident of 10.11.2011, which reflects a vindictiveness to somehow harm the appellant not only physically and mentally but also his career wise.

61. The incident of 10.11.2011 did not only result in filing of the criminal complaint, the trial of which lasted almost for 10 years but also costed the appellant and the family members their reputation in public. We may not place much reliance on these Newspaper clippings and the Articles published therein or delve into technicalities of whether the act was intentional or not, however, it can be concluded that the cumulative impact



of the entire incident of 10.11.2011 and protracted litigation of almost 10 years which resulted in acquittal of the appellant and his family members, coupled with such News publications and false complaints soon after the filing of the Divorce Petition and dragging the appellant and his family members in this loop of endless criminal litigations including a case under Section 498A/ 406 IPC with serious dowry and harassment allegations against the entire family which apparently is still continuing since 2011, are sufficient to conclude mental, emotional and physical cruelty for the appellant and his family members.

62. Making such unsubstantiated allegations of dowry harassment which is palpably not made out from the family circumstances of the parties is nothing but an act of mental trauma and cruelty as held in the case of K. Srinivas Vs. K. Sunita X (2014) SLT 126. 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.

63. There is overwhelming evidence to establish that disgruntled by a failed marriage for lack of adjustment between the parties and their respective families, the respondent resorted to all acts of making false allegations and complaints only to bring the appellant to his knees and to ruin his career.

64. In the recent case of Joydeep Majumdar vs. Bharti Jaiswal Majumdar 2021 SCC OnLine SC 146, in similar facts, not only defamatory complaints



were made to the Superiors of the husband in the Army for which a Court of Inquiry was held, but it had an impact on his career progression as well. It was observed that the allegations levelled by a highly educated spouse which have a propensity to irreparably damage the character and reputation of the appellant and sully his reputation amongst his colleagues, superiors and society at large would be such acts, condonation of which is difficult to be expected from the aggrieved party. The explanation of the wife that the complaints were made in order to protect the marital ties, cannot by any standard considered a reasonable explanation to justify her persistent efforts to undermine the dignity of the husband. In such circumstances, the wronged party cannot be expected to continue the matrimonial relationship and there is enough justification for separation.

65. The respondent in her affidavit of evidence has further alleged that the appellant without getting a divorce, started misleading by changing his status in his official documents as being divorced even though no divorce had come through. She further deposed that he started having lucid talks with girls and presenting himself as single.

66. The appellant had also averred in his testimony that the respondent had made a complaint before the Army against one Mr. Deepak Pandey, in which she had alleged that he was making obscene calls to her at the instigation of the appellant. However, as per his response dated 07.10.2011 to the complaint, he denied knowing any person named Deepak Pandey but admitted that the phone number mentioned by the respondent in the complaint from which she received the calls, belonged to his brother and he had used that same when he was in Delhi. The respondent's assumptions may have some basis as admittedly the phone number was at one point in



time used by her husband, but is not sufficient to establish that it was appellant who got those calls made to the respondent.

67. The respondent has also averred that the appellant had made allegations of her remarriage during the subsistence of her first marriage with one Mr. M.P. and the same had caused grave humiliation to her. The appellant has explained that same by stating that he came to know about Mr. M.P. through his friend, Sh. Satyavrat, who had provided him photographs of Mr. M.P. and the respondent in Shimla. He stated that though photographs are not proof of marriage however, his friend made him believe that the respondent and Mr. M.P. had gotten married and had gone to Shimla for their honeymoon.

68. It emerges that the above chain of allegations post filing of the petition, by either spouse is nothing more than a domino effect which was a direct result of the strained relations between the two. The respondent should have led evidence to prove the allegations of the appellant being involved with other girls and should have made efforts to verify the details of the phone number with her husband, before making a complaint to the Army Authorities and alleging that the obscene calls by Sr. Deepak Pandey were made at his instance. Similarly, even the husband should have not merely relied on hearsay before making allegations of second marriage; however, the relationship inter-se the spouses became so fragile, delicate and full of apprehensions that they were quick to jump to conclusions. It thus emerges that though these allegations have not been substantiated or justified, and hence, cannot be termed as cruelty by either spouse, in the present case.

69. We may also observe that admittedly, parties have separated in the



year 2010 and the parties are living separately ever since. There is not an iota of evidence that after the parties separated, there was any effort made for re-conciliation. Rather, the testimony of the appellant shows that having separated from each other, the respondent made various complaints to the police. For a couple to be deprived of each other's company, proves that the marriage cannot survive, and such deprivation of one spouse of conjugal relationship by the other spouse, is an act of extreme cruelty. The acts of the respondent reflect her non-re-conciliatory attitude and also establishes that she had withdrawn from the company of the appellant and abandoned her matrimonial relationship for no justifiable reason. Such long separation, with no effort by the respondent/wife to resume matrimonial relationship, is an act of cruelty as is held in the case of Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511.

70. We thus, conclude that the evidence on record proved that there is no chance of reconciliation between the parties and such long separation peppered with false allegations, Police reports and criminal complaints can only be termed as mental cruelty. This dead relationship has become infested with acrimony, irreconcilable differences and protracted litigations; any insistence to continue this relationship would only be perpetuating further cruelty upon both the parties.

71. We hereby conclude that there was overwhelming evidence on record to prove the cruelty by the respondent towards the appellant. Accordingly, we hereby set-aside the impugned judgment dated 21.12.2018 and grant the divorce to the appellant on the ground of cruelty under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955.



72. The appeal is allowed and the decree sheet be prepared accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

MARCH 06, 2024
S.Sharma/RS