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

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Judgment reserved on: 30.01.2019
Judgment pronounced on: 28.02.2019

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MAT.APP(F.C.) 327/2018

J

..... Appellant

Through: Mr. V.P. Singh Bidhuri, Advocate

versus

J C

..... Respondent

Through: Mr. Rajender Yadav, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J.

1. The present appeal has been filed challenging the judgment dated 05.10.2018 passed by the Family Court in HMA No. 565/2018 whereby the petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 filed by the respondent/husband for dissolution of marriage has been allowed and the marriage has been dissolved by a decree of divorce.
2. The relevant facts necessary for the present appeal are that the parties got married on 16.02.2009 as per Hindu rites and ceremonies at Delhi. After the marriage both the parties resided together at Delhi. Although the marriage was consummated but there is no issue from the said wedlock.
3. Disputes and differences having arisen between the parties, the respondent/husband filed a petition under Section 13(1)(ia) of the

Hindu Marriage Act seeking dissolution of the marriage by passing a decree of divorce on the ground of 'cruelty'. The grounds on which the Divorce Petition was filed were that it was a simple marriage and no dowry articles were demanded by the respondent herein or his family members and only a few items were gifted during the marriage. It was pleaded that since the beginning of the marriage, the appellant (respondent before the Family Court) taunted the respondent herein and often called him 'impotent' (Namard). It was claimed that the conduct of the appellant towards the respondent, his parents and other family members was inhuman, she never shared any work in the kitchen nor gave any love and affection to the respondent. It was further pleaded that the appellant was in a bad habit of picking up frequent quarrels with the respondent and his family and created public scenes. She never gave any respect to the relatives and friends of the respondent and an incident of 02.02.2013 was narrated in the pleadings to state that when two relatives of the respondent, namely Jitender and Devender, came to the matrimonial home and the appellant was asked to prepare tea, she not only rebuked the respondent and insulted him, but also slapped him and called him 'Namard'. The respondent also pleaded that the appellant often left the matrimonial home and went to her parental home without his consent or permission and on being asked as to why she would leave the matrimonial home so often, she would use abusive language and quarrel with the respondent. The respondent pleaded that on 22.02.2013, the appellant picked up a quarrel with the respondent and threw the kitchen articles and also used filthy language including abusing the respondent by calling him a 'Bauna' and thereafter on her own accord, she left the matrimonial home with her jewellery.

4. As per further pleadings, the respondent on two occasions, i.e. on 05.06.2013 and 07.08.2013, went to the parental home of the appellant to get her back, but she refused to join his company and threatened that if he came back again, she would implicate him in false criminal cases.
5. The appellant being respondent/wife in the Divorce Petition, contested the matter and filed a reply to the Divorce Petition. She pleaded that she always did whatever the respondent and his family directed her to do. She denied that it was a simple marriage without any dowry and in fact, gold and silver articles along with a cash of Rs. 3 lacs were given by her parents at the time of marriage to the respondent. The appellant pleaded that the respondent was addicted to gambling and drinking and spent most of his money on these. She claimed that the respondent often threatened the appellant that he would have a second marriage and he would marry the appellant to his younger brother who was a bad element and his parents supported the illegal demands and wrong actions of the respondent. The appellant denied that she had ever misbehaved with the respondent or called him 'impotent' or a 'Bauna'. She denied that she had ever refused to cook in the kitchen and claimed that she tried her best to give all comforts to the respondent. As per the reply, it was the respondent, who would beat her and misbehave with her and in fact, on one occasion she had even lodged a complaint with the Police Station, Khajuri Khas, Delhi. In the reply, the incidents of 02.02.2013 and 22.02.2013 have been specifically denied. The appellant also denied that the respondent ever came to take her back on 05.06.2013 or 07.08.2013 or any time thereafter.

6. The respondent filed a replication to the reply filed by the appellant and reiterated the averments of the Divorce Petition and disputed and denied the contrary averments in the reply filed by the appellant.
7. On 14.08.2018, the following issues were framed by the Family Court:
 - “(i) Whether after solemnization of marriage respondent has committed cruelty upon the petitioner ? OPP
 - (ii) Whether petitioner is entitled to the decree of divorce u/s 13 (1) (a) HMA ? OPP”
8. The respondent appeared in the witness box as PW-1 and produced Jitender Kumar, his brother-in-law, as PW-2. On the other hand, the appellant examined herself as RW-1. The appellant cross-examined PW-1 and PW-2, while the respondent cross-examined the appellant. The affidavit filed by the respondent to lead his evidence was exhibited as PW-1/A while the affidavit of his brother in law was exhibited as PW-2/A. The affidavit filed by the appellant was exhibited as RW-1/A.
9. The family Court after perusing the evidence and the pleadings came to a conclusion that the conduct of the appellant towards the respondent amounted to ‘cruelty’ and therefore decided issue no. 1 in favour of the respondent and against the appellant. Issue no. 2 was consequently also decided in favour of the respondent and the petition under Section 13(1)(ia) of the Hindu Marriage Act was allowed dissolving the marriage between the parties and a decree of Divorce was accordingly passed.
10. The respondent herein has filed a detailed reply to the present appeal.

11. We have heard the learned counsel for the parties. Learned counsel for the appellant has contended that the Family court has overlooked the fact that there was no physical cruelty even pleaded by the respondent. Insofar as the allegations of mental cruelty are concerned, only two instances were cited and rest of the allegations were vague, baseless and without any material particulars. He contended that the alleged incident dated 02.02.2013 was not proved by the respondent by leading any evidence and in fact, PW-2, who was his own brother-in-law had not supported his case. PW-2 had deposed that he had not seen any such incident personally, as both the appellant and the respondent were in the kitchen while he was in the drawing room. It is further contended that the learned Family Court failed to appreciate the contradiction in the evidence of PW-1 and PW-2 inasmuch as PW-1 stated that the quarrel was on account of preparing tea while PW-2 deposed that it was on account of preparing a meal. He vehemently argued that PW-2 in cross-examination stated that he had been a frequent visitor to the matrimonial home and the appellant had never misbehaved with him all this while and thus his testimony supported the appellant. The other plank of the argument of the learned counsel for the appellant is that the allegations of cruelty were not specific, there being no dates, no details and were thus, vague as also false. It was also argued that the Family Court had placed over-emphasis on the allegations that the appellant called the respondent a 'Bauna' without appreciating that if she had not uttered these words in the four years of their married life, there was no logic or reason to do so in 2013 and this allegation was just cooked up and fabricated to create a ground for divorce. It was further contended that minor domestic skirmishes are a normal day-to-day wear and tear

of every married life and this cannot lead to a presumption of cruelty so as to dissolve the marriage between the parties. On the aspect of the allegation of the appellant calling the respondent 'impotent', it is contended that the Family Court failed to appreciate that the couple lived together from 2009 to 2013 but no such complaint was ever made against the wife and assuming that any such incident had happened in 2009, it stood condoned by the parties cohabiting together till 2013. Thus, the sum and substance of the contentions of the learned counsel are that the divorce petition lacked details and material particulars and even the two incidences referred were fabricated to create a ground for divorce and in any case there was no evidence to prove them.

12. Learned counsel for the respondent, on the other hand vehemently opposed the appeal. The respondent in support of the judgment of the Family Court argued that all the allegations averred in the Divorce Petition were true and correct. He reiterated that the appellant committed cruelty against the respondent as she would often quarrel with the respondent and not do any work in the kitchen. She abused him by calling him impotent and Bauna. She had no respect for the elders or his friends and would never look after any guests in the house and on the contrary would insult and rebuke the respondent in the presence of the guests. The learned counsel contended that the evidence led by him and his brother-in-law clearly proved that the appellant by her conduct had committed cruelty on him and the Family Court was justified in passing a decree of divorce, based on the evidence led. He argued that the allegations were duly proved by him

and PW2 and the Appellant could not impeach their testimony in cross-examination.

13. The Family Court advertent to the evidence found that there was a contradiction in the affidavit filed by the appellant, as she stated therein that she left the matrimonial home on 07.08.2013 whereas during the cross-examination, she stated that she had left on 25.02.2013. Further, the appellant had stated that the respondent was a drunkard and a gambler, but in the cross-examination, she was not able to stand by her testimony, coupled with the fact that these allegations were not mentioned even in the complaint dated 11.11.2013 given to the SHO. On this basis, the Family Court has drawn a conclusion that the appellant had made false allegations. What weighed with the Family Court was also the fact that the appellant had never filed any criminal case against the respondent for the alleged wrongful acts. The Family Court mainly relied on the fact that the respondent had, both in his examination in chief and in the cross-examination categorically stated that the appellant had committed cruelty in support of his averments in the Divorce Petition, but the appellant was unable to rebut the allegations and therefore the testimony of the respondent remained unimpeached. The Family Court has observed that even suggestions were not given by the appellant to demolish the testimony of PW-1 and PW-2, and therefore, the respondent had been able to prove the grounds of cruelty.
14. Having perused the pleadings filed by the respondent on the record, we find that there are no material particulars or details in the Divorce Petition and the averments are very general in nature. It is not pleaded

in what manner appellant was not dutiful in discharge of her household duties; how she disrespected the elders and when all she left the matrimonial home. There are sweeping allegations by the respondent that his wife was insulting, abusing and misbehaving with him and his parents but again there are no details.

15. We find that there is nothing even in the evidence of PW1 as to what insulting words, if any, used to be uttered by the appellant-wife. No specific instances, are brought out as to how she was not taking care of her parents-in-law or was insulting or abusing them and what exactly were the nature of acts or omissions causing deep mental turmoil in the mind of the respondent.
16. No doubt that the respondent had averred two instances in his Divorce Petition, one on 02.02.2013 and the other on 22.02.2013. However, a perusal of the pleadings as well as the evidence led, clearly shows that the allegations relating to these incident of 02.02.2013 are only of a general nature as it is not specified as to how the appellant had insulted the respondent and in what manner she had rebuked him. Similarly, even in relation to the alleged instance of 22.02.2013, there is only a general pleading that the appellant had picked up a quarrel and threw the utensils in the kitchen, as well as teased him by calling him a 'Bauna'. In the examination-in-chief, there is a general narration of two incidences but no details are forthcoming. The appellant had during cross-examination of the respondent put suggestions to him that he was making false statements and only cooking up stories so as to make grounds for the Divorce Petition. She had also suggested that she had never given any cause of complaint to him and was performing all

the household duties. In fact, it is relevant and pertinent to mention that in his examination-in-chief, the respondent had himself stated that the only acts of cruelty committed by the appellant were of mostly using abusive language and throwing utensils in the kitchen, calling him 'impotent' and refusing to prepare tea for his relatives and friends. His specific deposition was that apart from these, no other acts of cruelty were committed by the respondent. Insofar as these incidences were concerned, as already noticed above, there were no details or material particulars or evidence in support.

17. The appellant is, thus, right in contending that the allegations were absolutely vague and general in nature, lacking material details and even the two specific instances cited, were not proved. Rule 7 of the Hindu Marriage Rules, 1979 prescribes as to what should be the contents of the petition filed under the Act. It provides that:-

"In addition to the particulars required to be given under Order VII, Rule 1 of the Code of Civil Procedure and Section 20(1) of the Act, all petitions under Section 9 to 13 of the Act shall state:

(a to f) XXX XXX

(g) the matrimonial offence or offences alleged or other grounds, upon which the relief is sought, setting out with sufficient particulars the time and places of the acts alleged, and other facts relief upon, but not the evidence by which they are intended to be proved e.g.;

(i to iii) XXX XXX

(iv) in the case of cruelty, the specific acts of cruelty with the occasion when the place where such acts were committed."

Thus, a perusal of the Rule shows that it is a statutory requirement as well that the acts/offences alleged in matrimonial cases should be set out with specific particulars of time, place etc. The present divorce petition clearly does not meet the requirement of Rule 7.

Merely stating that the appellant was neglecting her duties or that she was abusive and insulting, would not be sufficient to constitute an act of cruelty unless and until specific instances showing such a conduct are pleaded and proved. In matrimonial cases, in order to prove cruelty, it is the contemporaneous nature of evidence, which is important. Such evidence can be in the form of letters or complaints etc., but the ground rule is that the evidence must be of a contemporaneous nature. Bald statements made in the petition, unsupported by such an evidence is not a sufficient proof of the facts alleged. In the present case, the divorce petition is a litany of general assertions and complaints but without specific details. We are supported in our view by a judgment of this court in the case of *Anil Kumar Bhutani vs. Manya Bhutani*.

18. The respondent also deposed that the appellant called him 'impotent' in March 2009 for the first time. The fact that the parties lived and cohabited till 2013 clearly goes to show that assuming this to be true, this stood condoned. Respondent could not prove any recurrence of this. In the case of *Suman Singh vs. Sanjay Singh* reported at (2017) 4 SCC 85, the Apex Court has held that "few isolated incidents of long past and that too found to have been condoned due to compromising behavior of the parties cannot constitute an act of cruelty within the meaning of Section 13(1)(i-a) of the Act."

In this regard, Section 23 (1) (b) of the HMA gains significance. The said provision requires the court to satisfy itself as to whether the act of cruelty alleged have not in any manner been condoned. In this context, we refer to certain paragraphs from the judgment of Apex Court in the case of *Dr. N.G.Dastane vs. Mrs. Dastane*, (1975) 2 SCC 326. The relevant paras are as follows:

“54. Before us, the question of condonation was argued by both the sides. It is urged on behalf of the appellant that there is no evidence of condonation while the argument of the respondent is that condonation is implicit in the act of cohabitation and is proved by the fact that on February 27, 1961 when the spouses parted, the respondent was about 3 months pregnant. Even though condonation was not pleaded as a defence by the respondent it is our duty, in view of the provisions of Section 23(1)(b), to find whether the cruelty was condoned by the appellant. That section casts an obligation on the court to consider the question of condonation, an obligation which has to be discharged even in undefended cases. The relief prayed for can be decreed only if we are satisfied “but not otherwise”, that the petitioner has not in any manner condoned the cruelty. It is, of course, necessary that there should be evidence on the record of the case to show that the appellant had condoned the cruelty.

55. Condonation means forgiveness of the matrimonial offence and the restoration of offending spouse to the same position as he or she occupied before the offence was committed. To constitute condonation there must be, therefore, two things: forgiveness and restoration. [The Law and Practice of Divorce and Matrimonial Causes by D. Tolstoy, 6th Edn., p. 75] The evidence of condonation in this case is, in our opinion, as strong and satisfactory as the evidence of cruelty. But that evidence does not consist in the mere fact that the spouses continued to share a common home during or for some time after the

spell of cruelty. Cruelty, generally, does not consist of a single, isolated act but consists in most cases of a series of acts spread over a period of time. Law does not require that at the first appearance of a cruel act, the other spouse must leave the matrimonial home lest the continued cohabitation be construed as condonation. Such a construction will hinder reconciliation and thereby frustrate the benign purpose of marriage laws.”

19. The only other witness produced by the respondent was his brother-in-law who deposed as PW-2. The said witness in his cross-examination has not supported the case of the respondent. He has deposed that in fact he did not even remember the date on which the appellant misbehaved with the respondent. Insofar as incident of the preparation of the meal is concerned, he stated that he did not personally see anything as he was not even present in the kitchen. As regards the incident of 02.02.2013, the witness has stated that it was on this date that he came to know that the respondent was an impotent. There is no evidence led by him to prove the allegations of the respondent that the appellant called him an impotent. In fact, PW-2 has clearly stated that he had been a regular visitor of the matrimonial home and the appellant had never misbehaved with him.
20. The appellant examined herself as RW-1. In her examination-in-chief, she had clearly denied the allegations made by the respondent and also denied that the respondent had ever come to her parental house to take her back. She specifically denied the two alleged incidences in February 2013. On being cross-examined, the appellant stood her ground and reiterated her deposition made in the examination-in-chief.

She denied the suggestions that she had ever called the respondent a 'Bauna' or ever quarrelled with him or ever called him an impotent.

21. It is a well-settled law that cruelty should be of such a nature that it becomes impossible for a spouse to live with the other. Mere frustrations or desperations cannot be a ground of divorce. In ***Savitri Pandey vs. Prem Chandra Pandey*** (2002) 2 SCC 73, the Apex Court stated as under:

"Mental cruelty, is the conduct of other spouse which causes mental suffering or fear, to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other."

The mental cruelty has also been examined by the Apex Court in ***Parveen Mehta v. Inderjit Mehta*** (2002) 5 SCC 706, which reads as under:

"Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and

frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty, it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.”

In the present case, the respondent has not pleaded any incident which would be of such a grave or serious nature so as to give rise to a danger or an apprehension that it was dangerous to live with the appellant. In fact the averments are general and repetitive and are mere incidences of any marriage and its normal wear and tear.

22. It is equally well-settled that an isolated instance alone and that too without any proof cannot be a ground to dissolve the marriage. In the case of **Parveen Mehta** (*supra*), the Apex Court has held that in case of mental cruelty, it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. Again in the case of **Suman Singh** (*supra*) the Apex Court has held as under:

“16. The incidents alleged should be of recurring nature or continuing one and they should be in near proximity with the filing of the petition.”

Reading of the entire divorce petition shows that only two isolated dates and events have been narrated. There are no details of any such incident having occurred prior to the year 2013.

23. The Family Court has laid too much emphasis on the fact that the appellant had contradicted the date on which she left the matrimonial home. The parties had separated from each other in the year 2013 and the evidence was led in the year 2018. After about 5 years, it can reasonably be expected that a person can be confused about a few dates. Apparently, the appellant got confused with the dates, though she remembered the year in which she left the matrimonial home. This court is of the view that not remembering the exact date of leaving the matrimonial home cannot lead to a conclusion that she was not a truthful witness and her credibility was doubtful, which unfortunately is a conclusion drawn by the Family Court. The observation of the Family court that the appellant did not lodge any criminal complaint was an indicator of the fact that in fact she had no cause to complain is also erroneous. It is not unusual that a wife who suffers at the hands of her husband does not lodge a criminal case. In a conservative family, complaining to the police against a husband is not a common path to tread on.
24. The Family court has also erred, in our opinion, in holding that the appellant has not been able to impeach or rebut the testimony of the respondent. Firstly, the testimony of the respondent as pointed out above, was itself bereft of material particulars and whatever the respondent had stated in his examination-in-chief was rebutted by the appellant and in the cross-examination, she had even given suggestions

to that effect. The Family Court also seems to have lost track that the petition for divorce was filed by the respondent/husband and the onus of proving the cruelty was on the respondent. In fact, the issues framed and which have been extracted above by us also had clearly placed the onus of issue No. 1 on the respondent. It was, thus, for the respondent to have discharged the onus of proving acts of cruelty, which, in our opinion, he failed to discharge and it was not for the appellant to prove that she had not committed acts of cruelty.

25. We thus allow the present appeal and set aside the judgment dated 05.10.2018 passed by the Family Court in HMA No. 565/2018 dissolving the marriage between the parties.
26. No order as to costs.

JYOTI SINGH
(JUDGE)

G. S. SISTANI
(JUDGE)

FEBRUARY 28, 2019
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