

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

% *Judgment Reserved on: August 30, 2016*
Judgment Delivered on: September 01, 2016

+ **MAT.APP.(F.C.) 4/2013**

RAJDEEP Appellant
Represented by: Mr.T.A. Francis, Advocate with
Mr.Mahesh Katyayen, Advocate with
appellant in person

versus

GURMEET SINGH Respondent
Represented by: Mr.Davinder Hora, Advocate with
Mr.Rohit Verma, Advocate with
respondent in person

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Cruelty as a ground for matrimonial relief is defined as conduct of such character as causes or is likely to cause danger to life, limb or health, body or the mind, or as to give rise to a reasonable apprehension of such danger. The concept of cruelty has varied from time to time, place to place, individual to individual. Cruelty is antithetical to love and affection. Between a husband and a wife cruelty would be a conduct which destroys the soft feeling of concern for each other and the sense of togetherness which is the bed-lock of a healthy matrimonial relationship. Such conduct which assumes a level where parties cannot reasonably be expected to live together would be cruelty of the kind warranting the matrimonial bond to be

snapped. The factors of each case must be considered and the accusations and allegations must be viewed in the context in which they were made. Whether a spouse is guilty of cruelty is essentially a question of fact. The distinction between ordinary wear and tear of marriage vis-a-vis grave and weighty conduct so as to make cohabitation virtually unbearable has to be kept in mind.

2. The preamble statement above, if read by a lay person, would result in the person forming an opinion that it is very easy for a Judge to decide a matrimonial dispute because the contours of law are so well defined that cases on either side of the line can be identified with precision.

3. Alas! This is not so. Human relations are built on feelings. Not on reason or logic. Feeling is not an exact science; it has vagueness around it. Law and justice is built on reason and logic – not feelings. Therefore the process of judicial decision making in matrimonial affairs is riddled with complications. To a person who is weathered by time and circumstances and whose emotions have been overcome by the vagaries of time, a hard word spoken may be inconsequential. To a soft minded person, where feelings matter more, even the most trivial word would be cruel. More the love – more the affection. But the danger would be that a slightest dent would break the edifice.

4. The situation is indeed paradoxical. Matrimonial bonds which are bonds of emotion require adjudication on logic and reason.

5. The facts of the instant case bring out the dichotomy as also the paradox inherent in matrimonial dispute adjudication.

6. Rajdeep Kaur and Gurmeet Singh, professing Sikh religion, after a year and a half courtship solemnized their marriage on November 19, 2006. They were blessed with a son on September 27, 2007. They named him

Sahil. The separation took place on April 06, 2008 when Rajdeep, with the infant son, moved to her parents' house. Gurmeet sought dissolution of the marriage on grounds of cruelty and desertion by filing a petition under Section 13(ia) and Section 13(ib) of the Hindu Marriage Act, 1955.

7. Experience tells us that there is a lot of exaggeration in divorce petitions and probably the reason is a feeling that unless the other spouse is painted black the chances of success are meagre. The problem which these pleadings create is a diffuse of evidence making it difficult for a Judge to sieve the grain from the chaff. The propensity is to throw all and sundry at the opposite party hoping that something would stick. The same is the story in the instant case.

8. Gurmeet claims that the couple met in response to a matrimonial which Rajdeep does not deny. After a long courtship ceremony of recent origin, called Roka, was performed in the second week of August, 2006. A word on the so called Roka. Its existence take backs approximately 25 years. The couple is treated as a kind of a chattel. Its significance is that on account of money given by the family of the female to the male it is conveyed to the society that neither would henceforth scout for a life partner – the search for a life partner is stopped : Roka. It is a social evil which needs to be condemned. It entails useless expenditure and in many cases becomes the source of future bickering. A Judge has no means to fly back in time to see what had happened. But we find in every case allegations painting the opposite spouse black commences from the day of the Roka. Gurmeet is no exception.

9. Gurmeet Singh works with Mahanagar Telephone Nigam Ltd. (MTNL). Rajdeep Kaur works as a nurse at All India Institute of Medical Sciences (AIIMS).

10. Setting the scene for cruelty to be established, Gurmeet pleads that after the Roka ceremony was performed Rajdeep complained to him over the telephone that his parents had not gifted her sufficient items as per her taste and living standard evincing that he was a member of a low class of society. Taking the story forward, Gurmeet claims that September 23, 2006 he went to Rajdeep's house because it happened to be her birthday and his father-in-law enquired if he had any special demand for marriage, to which he replied that he would prefer to solemnize the marriage at night; and got the response that if he so desired he could take Rajdeep with him to his house and arrange the marriage at the night. He claims that a month before the marriage, Rajdeep's father in the company of some relatives came to his house and on a stamp paper wanted him to give in writing that the marriage was without dowry so that on the day of the marriage his family would not create a scene demanding dowry. Informing that the marriage was solemnized on November 19, 2006 at Gurudwara Hari Nagar, he claims that right after the marriage Rajdeep started creating problems in his life and refused to perform any household work saying bluntly that she was not a maid and wanted to enjoy life and not waste her life doing petty household works. She boasted of earning herself. He pleads further that he requested Rajdeep to leave her job, but claims she insisted to continue with the job and not sit idle at home and claims that she told him that she did not like to be in her matrimonial house. He claims that after 4-5 days of the marriage Rajdeep wanted him to purchase a washing machine and when he expressed financial constraint she cursed herself uttering that she was an unlucky girl who had been cheated into marriage. She abused him and his parents. He pleads that it was he who had to always initiate sex and Rajdeep was always indifferent. By December, 2006 Rajdeep showed a tendency of repeatedly

going to her parental house without informing him and she started spending weeks at a stretch at the house of her parents. During this period of separation it was only he who used to contact her and she never attempted on her own to ever contact him. He claims that on December 16, 2006 when he and Rajdeep were returning from Rajdeep's parental home he found Rajdeep had brought something from her parental home and he asked what had she brought and got the response that who was he to ask her anything when he could not buy even an umbrella for her which she had desired the previous month. She taunted him by uttering that he was not worth even the price of an umbrella costing ₹200/-. He claims that on December 19, 2006 he found Rajdeep missing from the house at 11:30 PM and when he contacted her was shocked to learn that she was at the bus stop. He rushed to the bus stop and requested Rajdeep to return. She refused bluntly telling him that she wanted a divorce. He claims that on January 01, 2007 Rajdeep returned home after night duty and next morning he requested her to have breakfast with him. She refused. She refused to contact and wish her father a happy new year when he requested her to do so adding further that he desired her to contact her father only to extract money from her father. He claims that in the first week of January, 2007 his father had to be admitted for medical treatment and being discharged after two days he requested Rajdeep to take leave and take care of her father-in-law but she refused telling him that it was his duty as a son to take care of his ailing father. He claims that for the first time somewhere in the middle of January, 2007 Rajdeep initiated sex with him and thereafter in the first week of February, 2007 informed him that she was in the family way. He claims that in the second week of January, 2007 Rajdeep learnt that the house in which they were living was in the name of his father and taunted him of being a beggar,

saying that even the job which he had was because of his father. He further pleads that Rajdeep insisted that the house be transferred in her name and when he expressed his inability to request his father to do so she left the matrimonial home abusing him and his family in the filthiest words. He pleads that in the month of March, Rajdeep desired to abort the foetus and when he refused to give consent she said that she found herself entangled due to the pregnancy and said that after the child is born she would leave. She taunted him that then he could sleep with his mother or marry again. He claims that in the month of March he obtained two policies, one in his name and the other in the name of his wife, upon which Rajdeep picked up a quarrel on the point as to why he had given his name as a nominee in the policy which he had taken in the name of Rajdeep; and she desired the nominee to be her father. She told him that he had taken a policy in her name with him as a nominee only to kill her and enrich himself with the gains of the sum insured. He claims that he tolerated the mental cruelty inflicted by his wife because she was an expecting mother. They were blessed with a baby boy on September 27, 2007. He claims that Rajdeep refused to nurse the child on the plea that breastfeeding the child would spoil her figure. He claims that the verbal trauma increased thereafter. His wife lodged a complaint with the local police. He was kept in the lockup for hours and the police gave him a beating. He claims that in the morning of April 04, 2008, Rajdeep told him that she was not feeling well and would not go to her office. When he was in his office he received a call from his wife informing him that she was in her father's house and would never return. She told him to have fun with his mother and that her son would live with her father. He claims that in mid May, 2008, when he was lonely, he contacted Rajdeep and requested her to meet him but she refused. He

received a call one day from his wife either in the month of June and July 2008, telling him that somebody had practiced witchcraft outside her father's house and when he responded that there was nothing to worry she abused him and levelled the allegation that he had practiced witchcraft to kill her and her son. He claims that Rajdeep starting visiting his colleagues to tell them concocted stories speaking ill of him and his family. Well wishers arranged for a family meeting at the local gurudwara at GTB Nagar in August, 2008 during which meeting Rajdeep's father started abusing him and his family members. He pleaded that on the day of Deepawali, with great difficulty he could meet his son and when he requested his wife to let him have a photograph of their son she refused and taunted that he would practice witchcraft on the photograph of their child. He claims that in September, 2009 on the birthday of his son the gifts which he gave were adversely commented upon by Rajdeep who threw the same alleging that they were of cheap quality. He pleads that on March 28, 2010 he received a call from Rajdeep informing that her father had passed away. Accompanied by his family members he reached the parental house of Rajdeep only to be abused and accused of having killed her father. On April 04, 2010 at a ceremony to pay homage to Rajdeep's father he and his family members were abused. Rajdeep uttered as to why he was not satisfied by killing her father and she taunted him as to how many more would he kill. With effect from April, 2010 Rajdeep would contact her on the phone regularly only to abuse him. Due to family tension his mother became ill in mid May, 2010 and was hospitalized and in spite of Rajdeep knowing said fact she did not even meet him or his mother.

11. In her written statement Rajdeep denied the insinuations alleged against her. Commencing her reply from what happened at the Roka

ceremony she denied that she complained regarding the gift items exchanged. As per her it was a simple ceremony at gurudwara Nanak Piao. Sweets were exchanged and as per custom the girl's family gave cash in envelopes to the relatives of the boy. Her family gave 11 boxes of sweet and a basket of fruits to the parents of Gurmeet. As per her a small complaint was made by her mother-in-law concerning money to be given to the relatives of the boy being put in one envelope and not in separate envelopes, to which complaint her father apologises and promised that in future all customs would be followed as requested by her in-laws. Concerning what happened at her birthday on September 23, 2006 she admitted that Gurmeet desired marriage ceremony to be performed at the night but claims her father refusing to accede to the request informing Gurmeet that they were Sikhs and as per custom the marriage would be performed during day time in the gurudwara. Her father told Gurmeet that if he insisted, he could arrange for a night function akin to a reception which could be attended by relatives from both sides provided the expenses were equally shared between the boy's and the girl's side. The matter was dropped. Denying the allegation that her father desired any writing to be given on a stamp paper regarding no dowry demand she pleaded that being the only child her parents used to shower her with gifts and for their own happiness and joy would have done so even at the marriage. Denying that she refused to perform household works Rajdeep pleaded that working as a nurse in AIIMS she was used to arduous work and there was no question of her not being mindful of her duties as a wife. She denied that she was ever requested to leave her job. To the plea of Gurmeet that when he refused to buy a washing machine she cursed herself uttering that she was an unlucky girl who has been cheated into marriage she replied that a small incident had

been completely twisted. As per her, a few days after the marriage when she had an off day she requested her husband to come home a little early saying jocularly : *'do you want me to just keep washing clothes whole day or can we both go out in the evening'*. To which her husband retorted : *'if you want to wash clothes you should have brought a washing machine from your father's house'*. She claimed that she was hurt, but let the matter pass with a smile. She denied the allegation of indifference towards her husband or the tendency of repeatedly going to her parental house. As per her she would visit her parent's house after informing her husband. As per her, her in-laws showed reluctance in her visiting her parental home. She claimed that one day when she requested her husband to accompany her to her father's house, he drove her around and parked the car in a street and said tauntingly *'here is your father's house'*. Regarding the version concerning an umbrella, she said that as a matter of habit she used to carry an umbrella with her and because she used to give her entire salary to her husband she requested her husband to purchase an umbrella for her and got the response that she better gets one from her father. Responding to the allegation that on December 19, 2006 she left the matrimonial house and was found by her husband at the bus stop, she pleaded that Gurmeet was a heavy drinker of alcohol and was in the habit of beating her. On the day in question he gave her a beating and to save herself she ran out towards the bus stop. She denied ever refusing to have breakfast with her husband on January 01, 2007 and pleaded that after breakfast there was a heated discussion which ended with her receiving a slap in the form of the new year gift. Concerning the allegation that she did not take leave when her father-in-law was unwell she claims that on account of leave taken by her for the marriage her in-laws agreed that she need not take any further leave. Regarding the plea that it was Gurmeet alone who

used to initiate sex, she denied the same and pleaded that it was consensual. She denied that she ever coerced her husband to compel his father to transfer his immovable property in her name. She pleaded that she was the only child of her parents and would inherit their immovable and movable property. She denied that she ever desired to abort the foetus. She denied picking up any quarrel on the issue of the name of the nominee in the policy taken by Gurmeet. She denied refusing to nurse her baby and pleaded that as a professional nurse she was aware of the benefits of breastfeeding a child. Admitting that she had made a complaint to the local police, she claimed that her parents being away and on she being tried to be throttled she had no option but to inform the police because there was nobody to rescue her. She emphasized in her pleading that her parents were away to Punjab. As per her, her husband tried to abscond but the police caught him. When he returned from the police station he threatened her. She denied having made any insinuation that her husband could have fun with her mother. Regarding the incident pleaded by Gurmeet having taken place in the morning of April 04, 2008, she pleaded that nothing happened on said date. She clarified that on April 06, 2008, notwithstanding it being a Sunday, she had to go for work. She requested her husband to look after their baby and got the reply that she should take the child along to the hospital. She got furious and said this was not possible and told her husband to behave like a responsible father. Her husband became angry and snatched the five month's old baby from her hands and flung him on the bed. She rushed to comfort the terrified child who was crying. All this while Gurmeet abused her. The next day she took off; being unwell. Fearing for the safety of the child and hoping that the separation would cool down her husband she left for her parental house. She asserted that her husband and

his family stopped communicating with her and not vice versa. As per her, when her mother-in-law died her husband contacted her. She denied refusing access to her husband to meet their child. She denied the allegations made against her regarding she complaining of any witchcraft practiced or of adversely commenting upon any gifts. She claimed that her husband visited her parental house to meet their child only twice in three years after she left her matrimonial house. She denied that she or her family members ever insulted her husband during the religious ceremony to pay homage to her father. In fact, she claimed that her husband spoke tauntingly regarding her father's death to her. She denied not offering to look after her mother-in-law. She pleaded that her husband's family did not want her to look after her mother-in-law. According to her when her mother-in-law died her husband and his relatives wanted her to stay in her matrimonial house and she agreed. After the death rituals were over her husband asked her to leave for sometime. And therefore she went back to her father's house.

12. At the outset it strikes the reader of the rival versions projected by Rajdeep and Gurmeet that there is a serious flaw in the version of Gurmeet concerning the child born to the parties on September 27, 2007. On the one hand he claims that when Rajdeep learnt of the pregnancy she desired to abort the foetus claiming that she felt entangled due to the pregnancy and told him that after the child is born she would leave the house leaving the child behind and that after the child was born she refused to nurse him and on the other hand he pleads that Rajdeep denied him access to his child and that it was with great difficulty that he managed to meet his child on the day of Deepawali. This mutually contradictory behaviour of Rajdeep pleaded by him, destroys his pleadings, and sets the further analysis by us and for which the onward journey requires us to note the testimony of the husband and the

wife in light of their pleadings.

13. Needless to state in his examination-in-chief by way of affidavit filed Gurmeet parroted pleadings in the petition seeking divorce and if we look at the petition and the affidavit by way of evidence we find the same a verbatim copy of each other. Paragraph by paragraph, line by line the two are identical.

14. In his cross-examination he admitted knowing Rajdeep for about a year and half prior to the marriage and being on regular telephonic touch with her and meeting her two-three times. He admitted that his mother had met his fiancée two-three times before they were married. He admitted that his parents were aware that his fiancée was the only child of her parents and her mother had died long time back. As per him, money was not an issue because both were in Government service. He admitted that his father was suffering from a chronic mental illness for which he was being administered medicines. As per him a discussion had taken place between him and his wife regarding a house in Bhai Parmanand Colony and in Jahangir Puri and there was an issue regarding title of the house being in the name of his father. On the issue of he alone initiating sex, during cross-examination he admitted : *'there were no big issues over sex but sometimes some small arguments used to take place. In the beginning, there was some resistance towards physical relations by the respondent'*. He admitted that the resistance for house work by his wife was on account of her working hours. He said that he told his wife to leave the job and concentrate on household works. He admitted that his father-in-law used to stay alone He admitted that when their child developed jaundice and was admitted in the hospital he did not take leave. Tellingly he admitted during cross-examination : *'After my marriage, I would go into fits of depression for which I would go to a*

doctor for consultation and treatment. The consultant would prescribe medicines for me for my condition but I would not take the same as I did not want to become dependent upon medicines. Initially, I did take medicines but I did not want to become dependent, so, I stopped taking the same. I do not remember the name of the medicines now. I am an otherwise peaceful person but the respondent would irritate and annoy me and then I would get very angry..... I have told the respondent many times that I am in depression and that she should please be understanding about this.’ With respect to the death of his mother, during cross-examination, he admitted : *‘It is correct that the respondent did come on the date of death only of my mother and she left after the funeral ceremonies were over. It is correct that the respondent again came after a day or two and stayed with me for about two or three days’.*

15. As with Gurmeet, Rajdeep’s examination-in-chief is also by way of affidavit by way of evidence and parrots her written statement.

16. During cross-examination she admitted that the surname of her son at the time of admission in the school was got written by her as her surname before marriage and not the surname of her husband. She stated that after her mother-in-law had died and she stayed with her husband at the matrimonial home but justified returning to her matrimonial home on the plea that her husband never asked to remain in her matrimonial house. As per her, her husband told her to stay with her father for about 15 days and join the matrimonial house at Jahangir Puri. We find a lot of irrelevant cross-examination unrelated to the pleadings of the parties, for example a suggestion has been given to Rajdeep, which she has denied, that she used to taunt her husband of having illicit relations with a tenant.

17. Apparent from the fact that Rajdeep is in appeal is that the learned

Judge Family Court has returned a verdict in favour of Gurmeet.

18. Pithily stated the findings returned are that Gurmeet has established that from the beginning of the marriage Rajdeep resisted physical relations with him and that he has proved that she taunted him to marry his own mother. That she disliked he being made a nominee in the policy which he took in the name of his wife. That Rajdeep did not breastfeed the infant child because she did not want her figure to be spoilt and lodged a false complaint resulting in Gurmeet being kept in the lock-up for some time. In para 58 the learned Family Court has returned a finding as under:-

“58. The parties come from the middle class section of the society. They came to know each other through matrimonial advertisement. They continued to meet and share their thoughts for more than a year. Admittedly, they had a good understanding of each other. The things, however, changed after their marriage. The petitioner was frustrated since the respondent did not take interest in having physical relations with him. The petitioner himself had to plead with her and on every such occasions, there used to be altercation between them.”

19. In para 61 the learned Judge has returned a finding as under:-

“61. The petitioner had felt lonely, obviously, in the absence of his wife and the newly born son. He, therefore, requested the respondent to let him meet the minor son. She did allow him to meet the son but she did not like the gifts brought by him (for their son). She did not like her mother-in-law meeting the minor child, also. There, apparently could be no reason except the frustration with herself. She, admittedly, worked in shifts; had to look after the infant son as well as her old ailing father. It has come over the record that she herself had to purchase medicines for him. Her father would have wished to have a Ghar Jamai. Admittedly, the respondent had earlier got engaged to someone else but the engagement had to be broken as the person to whom she was engaged, apparently, did not accept her father's condition. It was, in such circumstances, that the respondent and her father accepted the petitioner.”

20. In para 62 the learned Judge has returned a verdict as under:-

“62. She could have very well stayed at her matrimonial home and her mother-in-law would have taken care of the minor son (her grandson). She, however, did not exercise this option and the reason is obvious. She had to take care and look after her old ailing father and for that reason, she risked her own relations with the petitioner and her in-laws.”

21. The finding in paragraph 58 returned by the learned Family Court that the couple were meeting each other for more than a year before they got married and thus had a good understanding of each other, was the backdrop of the facts to be considered as to what went wrong after marriage, in that, Rajdeep did not take interest in having physical relations with Gurmeet and Gurmeet had to plead with her on every such occasion, overlooks the admission made by Gurmeet during cross-examination. We quote:-

“There were no big issue over sex but sometimes some small arguments used to take place. In the beginning, there was some resistance towards physical relations by the respondent.”

22. The finding returned in paragraph 61 overlooks that there is an inherent contradiction in the case pleaded by Gurmeet concerning Rajdeep's attitude towards their son, in respect whereof we have already made a comment in paragraph 12 above. There is no evidence that Rajdeep denied access to Gurmeet to meet his son or did not like the father meeting the son or the gifts brought by him. As per the learned Family Court the reason for her frustration was the admission that she had to work in shifts and had to look after an infant son and an ailing old father. The learned Judge had returned a finding that her father would have wished her to have a son-in-law living with him. The learned Judge had returned a finding that Rajdeep

had admittedly got engaged earlier to someone but the engagement had to be broken. There is no factual setting in the pleadings by Gurmeet in the petition filed by him on these facts and we find that they emerge from the cross-examination of Rajdeep. This is the version of Gurmeet put to her for the first time, and we find that she has denied the same. Her cross-examination on this aspect reads as under:-

“It is wrong to suggest that before marrying the petitioner, I also got engaged with someone else. It is wrong to suggest that my father has a condition that my son in law would stay with him at my parental home. It is wrong to suggest that since the person with whom I got first engaged had not agreed to the said condition, first engagement was broken. It is wrong to suggest that the petitioner has also not agreed to the said condition, therefore, it took us around two and a half years to finally agreeing for the marriage.”

23. On this aspect the learned Judge has overlooked the cross-examination of Gurmeet. The same is revealing. It reads:-

“I knew the respondent for about a year and a half prior to my marriage. I also have met the respondent about 2-3 times prior to my marriage. I was regularly talking to the respondent on the telephone. (Vol.It is not as if only I used to call, the respondent also used to call me). There was a good understanding between me and the respondent and we would share our inner-most thoughts with each other.

The marriage took place in fact a year and a half approximately after the newspaper advertisement. My parents were aware that she is the only child in her family though it was not a point considered favourable or otherwise by my parents. The respondent’s mother had expired long prior to all these discussions.”

24. With respect to the findings returned in para 62 that the reason for Rajdeep to leave the matrimonial house was that at her matrimonial home she was to look after her mother-in-law, which she did not want to do since

she wanted to take care of her ailing father and thus she risked her relationship with her husband and her in-laws, we find that the learned Judge has overlooked the admission made by Gurmeet during cross-examination as under:-

“My father had, and still has two immovable properties in his name - one in Bahi Parmanand Colony and the other in Jahangir Puri. I stayed with the respondent in Bhai Parmanand Colony and our son was also born during our stay in Bhai Parmanand Colony.”

25. Now, admittedly Gurmeet and Rajdeep had set up their residential house at Bhai Parmanand Colony where the child was born to them. Gurmeet's parents admittedly lived separately in the house at Jahangir Puri. Thus, it cannot be said that Rajdeep wanted to move away from the matrimonial house because her mother-in-law was residing there and she had to look after her mother-in-law, which he did not want to do.

26. The learned Trial Judge has also faulted Rajdeep for having lodged a complaint with the police which resulted in, as claimed by Gurmeet, he being kept in the lockup and beaten. As we have noted above, as per Rajdeep she admitted going to the police station but claimed it being her compulsion to do so because under influence of alcohol her husband was beating her and her father was away to Punjab. The learned Judge has overlooked the admission made by Gurmeet in his cross-examination as to what happened thereafter. We quote:-

“When the police came, I was in the office. I came back home in the evening and the police came and told me that I would have to come to the police station because of some complaint by the respondent. When I came home, it is correct that there were some relatives of mine who were already in the house. Some of my relatives did accompany me to the police station. In the police station, I did say that if there are any misunderstanding, we should talk over it and settle it at home.”

27. From the admission made by Gurmeet it is apparent that the police came to the matrimonial house next day when he was in office. When he returned home the police came once again and wanted him to report at the police station. He went to the police station with his relatives. In the police station he said that if there was a misunderstanding he and his wife would sort it out. We wonder as to wherefrom the learned Judge has accepted Gurmeet's version that he was kept in the lock-up and beaten and that the complaint lodged by Rajdeep was false. Admissions made by Gurmeet have been completely overlooked.

28. In our opinion the most telling admissions made by Gurmeet which throw light on what is the real cause of the problem have been overlooked by the learned Judge. During cross-examination Gurmeet stated as under:-

“My father was a retired person from MTNL during this period. My father was suffering from a chronic mental illness for which he was being treated and was on regular medicines for the same.

After my marriage, I would go into fits of depression for which I would go to a doctor for consultation and treatment. The consultant would prescribe medicines for me for my condition but I would not take the same as I did not want to become dependent upon medicines. Initially, I did take medicines but I did not want to become dependent, so, I stopped taking the same. I do not remember the name of the medicines now. I am an otherwise peaceful person but the respondent would irritate and annoy me and then, I would get very angry. This situation would arise perhaps once or twice a month. It is incorrect that I ever tried to squeeze the neck of the respondent.”

29. The real problem obviously was Gurmeet suffering from depression, and though Gurmeet has not admitted it, we see no reason to disbelieve Rajdeep's version that it was due to excessive intake of alcohol. Gurmeet's

admission that he would not take the medicine prescribed with the justification for the conduct being, that he did not want to become dependent upon medicines establishes what Gurmeet has admitted : he being irritable and exploding with anger at the drop of the hat.

30. From the totality of the evidence, picking up pieces akin to that of a jigsaw puzzle and putting them in place, the clear picture which emerges is that Rajdeep showed behaviour as would any other newly married working girl. She shared her soul and her body with her husband and even Gurmeet reciprocated but unfortunately circumstances over took him and for which he is responsible. It was alcoholism. This led him to bouts of depression. Gurmeet being a nurse took him to a doctor. Anti-depression medicines were prescribed. Gurmeet had a phobia of becoming dependent on the medicines and he stopped taking the same. He became irritable and prone to anger at the drop of the hat. Rajdeep's father never desired Gurmeet to live with him so that Rajdeep could serve him. Rajdeep and Gurmeet set up their matrimonial home in the house of Gurmeet's father at Bhai Parnamand Colony. Gurmeet's parents lived at Jahangir Puri and thus Rajdeep leaving her matrimonial house to avoid serving her in-laws is not even in the realm of a possibility. Rajdeep, as any woman would desire, wanted to have a baby. She conceived. The version of Gurmeet that she wanted to abort the foetus and when the baby boy was born she did not nurse him and breastfeed him is false. She never denied Gurmeet access to the son. Gurmeet's version that on the one hand she did not desire a child and on the other hand she kept him away from the child and took away the child with her cannot stand together.

31. We conclude by bringing the curtains down holding that neither cruelty nor desertion have been proved. Gurmeet's drunkenness and

refusing to take anti-depression medicines is the foundation of the problem. Rajdeep's desire to live with her husband has been established through her testimony and admissions made by Gurmeet, provided Gurmeet takes anti-depression medicines which would inhibit his violent behaviour leads us to hold that though as a matter of fact Rajdeep left the matrimonial house but it was without any animus to withdraw from the consortium and the fact of desertion being the result of the conduct of Gurmeet would be in law be a case of constructive desertion and thus the appeal is allowed. Impugned judgment and decree dated April 10, 2013 is set aside. HMA No.303/2011 filed by Gurmeet is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

SEPTEMBER 01, 2016

mamta