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

+ MAT.APP.(F.C.) 119/2020 and C.M. No.25687/2020

SANNO KUMARI Appellant

Through: Mr. Pranaynath Jha, Advocate along
with appellant in person.

versus

KRISHAN KUMAR Respondent

Through: Mr. Jitender Ratta, Advocate along
with respondent in person.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

28.10.2021

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C.M. No. 25688/2020

1. Considering the fact that the impugned judgment was passed by the Family Court on 20.01.2020, whereafter the COVID-19 pandemic hit the country, and affected the ability of the parties to pursue their rights, *inter alia*, before Courts, the application is allowed, and delay in filing of the appeal is condoned.

MAT.APP.(F.C.) 119/2020

2. The present appeal is directed against the judgement dated 20.01.2020 passed by the learned Principal Judge, Central District, Family Court, Tis Hazari, Delhi in HMA Petition No. 904/2017 preferred by the appellant wife against the respondent husband under Section 13(1)(ia) and 13(1)(ib) of the

Hindu Marriage Act, 1955 (HMA) to seek decree of divorce. By the impugned judgment, the learned Family Court has dismissed the said divorce petition by returning the findings that neither of the grounds of cruelty or desertion has been established by the appellant wife.

3. Both the parties come from poor background. The marriage between the parties was solemnized on 07.12.2000. Pertinently, at that point of time the appellant was minor. She was barely 13 years of age, whereas, the respondent was 19 years old. The appellant attained majority on 05.03.2005. She was residing in her parental home all through. Even though, the appellant attained majority in the year 2005, she continued to reside at her parental home till November 2014. During this period, she was studying and on account of her own merit, she was able to secure a job with Delhi Police in the said year.

4. We may note that the case of the appellant is that since 2005, the appellant's family was trying to persuade the respondent to take the appellant to the matrimonial home. However, the respondent showed no interest. It was only after the appellant got a job with Delhi Police in the year 2014, that the respondent became interested in calling the appellant to the matrimonial home on account of the fact that she had secured a stable job and income.

5. The case of the appellant is that she started living with the respondent on 20.11.2014. The respondent was unemployed and was an alcoholic, and used to physically abuse the appellant, and demanded money from her. She has stated that the respondent and his family were only interested in her salary which she was deriving from her job. They were insisting that she

parts with her salary since the respondent himself was unemployed.

6. Further case of the appellant was that in March, 2015 the respondent demanded Rs. 1 Lakh from her on account of some emergency. The appellant, however, refused since she was not having that kind of money. The appellant has stated that the respondent gave her beating on that occasion. She further stated that since she was subjected to physical and verbal abuse, and she was also finding it difficult to balance her work and family life with an abusive, alcoholic, and demanding husband, the relationship between the parties sored, and the appellant was kicked out from her matrimonial home on 11.04.2015. After that she has never been taken back into the matrimonial home.

7. In these circumstances, she preferred the aforesaid divorce petition. The reason why the Family Court has dismissed the said divorce petition is that the appellant did not lead any independent evidence to establish the allegations made against the respondent, namely, that he was an alcoholic, and; that he used to beat her up. The Family Court found that the appellant had not established the incident of the appellant being beaten up on 11.11.2015 as there was no medical examination report of the appellant to support that she was subjected to any physical beating. There was no police complaint made by the appellant in that regard. So far as desertion is concerned, the Family Court has found that the appellant had left the matrimonial home on her own, and that there was nothing to suggest that she had been turned out of matrimonial home. The Family Court found that there was no *animus deserendi* established on the part of the respondent.

8. We have heard the learned Counsels for the parties. We have also

interacted with both the parties today. During our interaction, we put it to the respondent that the parties, though married in the year 2000, have hardly lived together for a period of about 5 months. They have been separated since 11.04.2015 – which is well over 6 years ago. We enquired from the respondent as to what is there left in this marriage. In response to our query, the respondent states that he is a labourer and he wishes to continue the relationship. When we put to him that: would it not be better that they part ways, since there is no real marriage in existence and, apparently, there never was one, the prompt response of the respondent was that what will happen to the amounts spent by him on the education of the appellant. The respondent claims that he funded the education of the appellant, and it is on account of the fact that the appellant has got educated and found a job in Delhi Police, that she does not wish to reside with him.

9. From our interaction with the respondent, it has become absolutely clear to us that the interest of the respondent in continuing with the relationship is only on account of the fact that the appellant has a job with Delhi Police, and he views the alleged expenditure – which he claimed he has incurred on the education of the appellant (and which is disputed by the appellant), as an investment, which would not bear fruit in case parties were to part ways with judicial intervention. It is, thus, clear that the respondent is primarily eyeing the income of the respondent which she derives on account of her job from Delhi Police.

10. There is absolutely no explanation as to why the appellant was not taken into the matrimonial home soon after she attained majority in the year 2005, and why she had to live with her parents till the year 2014. This

circumstance lends support to the appellant's case that the respondent was himself not initially interested in accepting the appellant, and took her to the matrimonial home only after she got a job, because he eyed her income.

11. Since she was living with her parents till 2014, it is obvious that all her expenses for living and upbringing would have been borne by her parents. Nothing to the contrary was placed on record by the respondent. The continued distance between the parties even after the appellant attained majority would, in itself, have caused trauma and resulted in cruelty to the appellant apart from everything else. If the appellant would not have been interested in starting a married life and establish a conjugal relationship with the respondent, she would not at all have gone to live with the respondent. The fact that she went to live with him in 2014, after getting a job with Delhi Police, belies the respondent's stand that the appellant wanted to ditch the respondent since she had secured a job with Delhi Police. In fact, this circumstance probabalises the stand of the appellant, that the respondent harassed the appellant to pocket her income, since he was himself unemployed. The respondent, it appears, viewed the appellant as a cash cow and became interested in her only after she got the job with the Delhi Police. Such brazenly materialistic attitude of the respondent, with no emotional ties, would have in itself caused mental agony and trauma to the appellant sufficient to constitute cruelty to her. We cannot ignore, that generally it is the desire of every married woman – particularly belonging to the economic strata to which the parties belong, to get married and start a family. However, in the case in hand, it appears the respondent was not interested in nurturing the marriage, but only interested in the appellant's income.

12. In matrimonial matters, the quality and quantity of evidence required to accept the plea by one or the other party, cannot be same as that required in criminal proceedings. Standard of proof in matrimonial proceedings is founded upon the preponderance of probabilities, and not upon a fact being established beyond all reasonable doubts. Looking to the overall circumstances, we are of the considered view that the appellant was able to establish the ground of cruelty and desertion. In ***Samar Ghosh v. Jaya Ghosh***, 2007 (4) SCC 511, the Supreme Court has, *inter alia*, observed as follows:

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) *Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.*

(vii) *Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.*

(viii) *The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.*

(ix) *Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.*

(x) *The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.*

(xi) *If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.*

(xii) *Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.*

(xiii) *Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.*

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

13. In our view, when we appreciate the evidence and circumstances of this case in the aforesaid light, a clear case of perpetration of mental cruelty is established against the respondent. We, therefore, set aside the impugned judgment and allow the present appeal and dissolve the marriage between the parties by decree of divorce under Section 13(1)(ia) of the HMA. The parties are left to bear their respective costs.

VIPIN SANGHI, J

JASMEET SINGH, J

OCTOBER 28, 2021

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