

**HIGH COURT OF DELHI****Date of Decision: December 11, 2023****Bench: Justice Suresh Kumar Kait And Justice Neena Bansal Krishna**

MAT.APP.(F.C.) 296/2019 &amp; CM APPL. 49178/2019

**RASHMI ... Appellant****VERSUS****MANOJ ... Respondent****Legislation and Rules:**

Section 19 of the Family Courts Act, 1984

Section 13(i) (ia) of the Hindu Marriage Act, 1955

Section 498A/406 IPC

Section 12 of the Domestic Violence Act, 2005

Section 125 Cr.P.C.

**Subject:** Appeal against the divorce decree granted on grounds of cruelty under Section 13(i) (ia) of the Hindu Marriage Act, 1955. The case involves allegations of cruelty, denial of conjugal rights, and false allegations leading to mental agony.

**Headnotes:**

**Divorce Granted on Grounds of Cruelty – Appellant (wife) appealed against the divorce decree based on alleged cruelty by her – Accusations of illicit**

relations, denial of sex, and filing false complaints against husband (respondent) constituted cruelty. [Paras 1, 8, 14-19, 24]

**Allegations of Misconduct by Appellant – Appellant accused of levelling false allegations against husband's family, denying conjugal rights, and inflicting mental agony – Respondent proved these acts constituting cruelty. [Paras 2, 8, 17-19]**

**Contradictory Statements by Appellant – Appellant's inconsistent statements regarding the respondent's alleged illicit relationship weakened her position – Supreme Court precedents cited for defining cruelty. [Paras 17, 18]**

**Settlement Efforts and Condonation – Appellant's failure to comply with the terms of mediated settlement and continuation of legal proceedings against respondent highlighted insincerity, negating any condonation of past acts. [Paras 20-23]**

**Judgment by Family Court Upheld – High Court finds no error in the family court's judgment granting divorce on grounds of cruelty as per Section 13(1) (ia) of the Hindu Marriage Act, 1955. [Paras 24, 25]**

- Referred Cases:

- Raj Talreja vs. Kavita Talreja (2017) 14 SCC 194
- Ravi Kumar vs. Julmidevi (2010) 4 SCC 476
- Rita vs. Jai Solanki (2017) SCC OnLine Del 9078
- Nishi vs. Jagdish Ram 233 (2016) DLT 50

Representing Advocates:

Appellant: Mr. Aman Arora

Respondent: Mr. Abhishek Sharma

## **JUDGMENT**

**SURESH KUMAR KAIT, J**

1. The present appeal under Section 19 of the Family Courts Act, 1984 has been preferred by the appellant-wife against the judgment dated 26.08.2019 passed by the learned Principal Judge, Family Court, Delhi in HMA No. 561296/2016 petition filed by respondent-husband under Section 13(i) (ia) of the Hindu Marriage Act, 1955 has been allowed and divorce has been granted on the grounds of cruelty.
2. The respondent filed the petition under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 seeking divorce from appellant on the ground of cruelty. The parties got married on 14.05.2011. The respondent husband claimed that he and his family members had welcomed the appellant herein with love, affection and respect. However, her family members frequently visited her and interfered in their day to day life. Accordingly, her behaviour with him and his family members was not co-operative and she misbehaved with them. The respondent alleged that appellant levelled false and frivolous allegations against his father and sister-in-law and used abusive and filthy language with them. She never discharged her matrimonial obligations and threatened to commit suicide and implicate them in the case of murder. The respondent averred that appellant alleged of him having illicit relations with his sister-in-law and refused to make physical relations with him. Consequently, since August, 2012 they did not live as husband and wife. The respondent also alleged that appellant used to frequently live with her parents without his knowledge and used to come back of her own in 10-12 days. That is how appellant left her matrimonial home in August, 2012 and since then she is living with her parents.
3. The stand of appellant in her written statement before the learned Family Court that she was taunted for the marriage ceremony not being performed as per the standard of respondent's family and made dowry demand, even though her parents had spent more than Rs.8,00,000/- in marriage and given Rs.5,00,000/- cash to her husband. The appellant further alleged that respondent used to drink liquor and at the instigation of his sister-in-law (brother's wife) used to beat her and never took care of her emotional feelings and was hostile towards her. She further claimed that she was treated like a maid by respondent, his mother and other family members and that she was subject to cruelty and taunted for dowry demand. The appellant averred that her allegations of respondent having illicit relations with his sister-in-law were true and correct, as they used to lock themselves in a separate bolted room

for a long time and for this reason, the respondent left her at her parental home. The appellant contended in her written statement that respondent never took care of her emotional and physical needs and used her as per his wishes and her family members never interfered in their married life.

4. The appellant has averred that in August, 2012 on the occasion of Raksha Bandhan, the respondent took her to her parents house and thereafter, never came back to take her to her matrimonial home. The appellant has alleged that she had objected to respondent's relation with his sister-in-law and, therefore, he left her to her parent's house. Even though her father called her father-in-law to take her back to the matrimonial home, but respondent refused and rather threatened them of dire consequences.
5. The appellant made a complaint on 19.12.2012 to the SHO Mangolpuri, Delhi against physical and mental cruelty to which she was subjected while living with her in-laws, however, no action was taken. On 24.01.2013, the appellant filed a complaint with Crime Against Women Cell against her in laws and FIR No. 879/2013 under Sections 498A/406 IPC was registered at Police Station Mangolpuri, Delhi. She also filed a case under Section 12 of the Domestic Violence Act, 2005 against the respondent and his family members, on 28.11.2013. Thereafter, on 05.05.2014, she preferred a petition under Section 125 Cr.P.C. seeking maintenance from respondent.
6. On the pleading of the parties, the learned Family Court framed the following issues:-
  1. *Whether after the solemnization of marriage, the respondent has treated the petitioner with cruelty?*
  2. *Whether the petitioner is entitled to the decree of divorce as prayed?*
  3. *Relief."*
7. To substantiate their case, the respondent examined himself as PW-1 and two other witnesses i.e. his brother- Vishal, as PW-2 and mother as PW3. The appellant examined herself as RW-1 and no other witness was examined by her.
8. The learned Family Court in the impugned judgment observed that the respondent could prove various acts of cruelty such as denial of sex by the appellant, filing of false complaints and allegations of extra marital affairs which are sufficient to constitute cruelty upon the respondent and awarded decree of divorce on the ground of cruelty as per Section 13(1) (ia) of the Act

and dissolved the marriage between the parties. Aggrieved by the aforesaid judgment and decree of divorce, present Appeal has been preferred.

9. The stand of appellant before this Court is that the learned Family Court has failed to appreciate the fact that as per settlement dated 21.12.2016, parties had started living together as husband and wife and the appellant was discharging all her duties towards the respondent and thereby, all the previous acts of cruelty by appellant, as alleged by respondent, stood condoned. The learned Family Court ignored the fact that pursuant to settlement, the respondent had withdrawn the divorce proceedings and the application seeking restoration of the petition, the respondent did not mention even a single act of cruelty when she stayed with him pursuant to settlement. The parties, after the settlement, lived together as husband and wife for almost a year and it cannot be the case of respondent that he was not allowed to make physical relations with appellant. The appellant has averred that respondent in his cross-examination has stated that in the year 2017 they were living together after the settlement but the learned Family Court has arrived at a finding that parties lived together till 2012 only.
10. The appellant has further averred that neither the details of the person named Rahul, who according to respondent had spread the rumours of his having illicit relationship with his brother's wife, were given nor he was examined by the respondent and as such, no person named Rahul existed. On this count, appellant has further submitted that she did not cross-examine the respondent or other witnesses as there were no allegations of illicit relationship and the finding of learned Principal Judge that appellant had made reckless allegations impeaching the character of the respondent, must have caused apprehension in the mind of respondent that it would be dangerous to live with him, is without any basis. The appellant has averred that after the settlement, parties cohabited until December, 2017 and, it cannot be said that there was no relationship between the parties.
11. Learned counsel for the appellant has submitted that the finding returned by the learned Principal Judge that she used to make PCR calls on daily basis raising frivolous serious allegations against the respondent and his family members is without any substance, therefore, the impugned judgment deserves to be set aside in view of the fact that she was beaten by respondent, his brother, mother and sister-in-law. As per the MLC dated 04.11.2017 and 09.12.2017, injuries were found on her person, consequently, an FIR No. 879/2013 for the offences punishable under Section 323 IPC was

registered against them. It is averred that the impugned judgment suffers from various infirmities and deserves to be set aside.

12. The submissions advanced by learned counsel representing both the sides, were heard at length.
13. On perusal of impugned judgment, testimony of witnesses recorded and the material placed on record, this Court finds that the parties had got married on 14.05.2011 and no child was born from this wedlock. The parties lived normal married life only for three months and thereafter, marital differences arose between them and they lost love, trust and faith in each other. In August, 2012 appellant left matrimonial home to visit her parental home on the occasion of Raksha Bandan and she never turned back nor did the respondent made any efforts to bring her back to the matrimonial home.
14. It is not the case of appellant that she tried to enter her matrimonial home and she was not permitted by respondent or his family members. Rather, the appellant made a criminal complaint to the police in December, 2012; in January, 2013 she filed a complaint in Crime Against Women Cell; in November, 2013 appellant filed a complaint under Section 12 of the Domestic Violence Act, 2005 and in May, 2015 she filed a case under Section 125 Cr.P.C. seeking maintenance from respondent.
15. The Hon'ble Supreme Court in **Raj Talreja vs. Kavita Talreja** (2017) 14 SCC 194 has observed that :-

*“Cruelty can never be defined with exactitude...it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act, 1955 (for short “the Act”). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty.”*

16. Mere filing of various complaints before different forum does not in any way prove the allegations of cruelty and the onus was upon the appellant to prove the cruelty which has been meted upon her.

17. The respondent claims that appellant caused mental agony by raising allegation of illicit relationship with his sister-in-law, which is not denied by the

appellant. Thus, it is undisputed that the appellant has raised scandalous allegation of illicit relationship of respondent with his sister-in-law (brother's wife). On one hand, in her written statement, the appellant averred that her allegations of respondent having illicit relations with his sister-in-law were true and correct, while in the present Appeal, she has averred that one Rahul who had purportedly spread rumours of respondent having illicit relationship with his brother's wife, but he has not been examined by the respondent; rather she has asserted that in fact, no such Rahul ever existed. The contradictory stand of appellant casts a doubt about authenticity of these allegations.

18. The Supreme Court in **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.

19. By making frivolous allegations against the respondent, the appellant has infact caused mental cruelty upon the respondent as well his family members, especially sister-in-law (brother's wife), which cannot be ignored.

20. The appellant has agitated that the learned Family Court did not consider that a mutual settlement was arrived at between the parties and in terms thereof, parties lived together for about a year and thereby, the acts of cruelty, if at all committed by the appellant, stood condoned. This Court has gone through the Settlement-Agreement dated 21.12.2016 reached between the parties at Delhi Mediation Centre, Rohini District Courts, Delhi, in terms whereof the parties had reconciled their disputes and lived together and withdrew all their cases against each other.

21. The purported settlement indeed would have amounted to condonation of previous acts, had it been genuinely acted upon by the appellant.

22. Relevantly, the respondent filed an application dated 12.07.2017 seeking restoration of his petition seeking divorce under the provisions of Section 13(1) (ia) of the Hindu Marriage Act, 1955 on the ground that the appellant did not to withdraw any of her complaint or case against the respondent and his family, which were proceeding further. Further, it is rightly

pointed out by the appellant that in the said application, appellant had not pointed out any incident of cruelty meted out by her upon respondent, however, in the considered opinion of this Court the appellant was not fair to not abide by the terms of mediated settlement dated 21.12.2016 and to continue to pursue her complaints and cases against the respondent and his family, she has in fact caused cruelty upon them, which cannot be ignored.

23. The efforts of respondent for settlement, in fact, reflects his inclination to try restore the broken relationship but unfortunately the appellant had no sincerity or else there was no reason for her to express reciprocity and to withdraw the multiple litigation initiated by her. It is abundantly clear that she had no intention to resume conjugality with the respondent. In the given circumstances, failed efforts of settlement cannot be held to have condoned the past acts of the appellant.

24. In the considered opinion of this Court, the learned Family Court has rightly held that from the quality and quantity of evidence, it was proved that respondent was treated with cruelty by the appellant. In our view, the respondent has rightly been granted decree of divorce on the ground of cruelty as per section 13(1) (ia) of the Act.

25. Finding no error in the impugned judgment, the present appeal and pending application are accordingly dismissed.

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