

**HIGH COURT OF DELHI****Bench: Hon'ble Mr. Justice Suresh Kumar Kait and Hon'ble Ms. Justice Neena Bansal Krishna****Date of Decision: 1st March, 2024**

MAT.APP.(F.C.) 241/2023 &amp; CM APPL. 729/2000

**Xxx ...APPELLANT****VERSUS****Xxx ...RESPONDENT****Legislation and Rules:**

Order 41 Rule 1 of the Civil Procedure Code, 1908 (CPC)

Section 13(1)(ia) of the Hindu Marriage Act, 1955 (HMA)

**Subject:** Appeal against the refusal of divorce on grounds of cruelty in a marital relationship.**Headnotes:**

Matrimonial Law - Divorce - Cruelty - Appeal against the judgment of the Additional District Judge denying divorce on the ground of cruelty - Husband alleged disrespectful behavior, physical assault, and financial exploitation by wife - Wife alleged husband's extramarital relationship with colleague causing marital discord - Evidence showed husband's intimate association with colleague, including living together and addressing her as mother, corroborating wife's claims - Complaints and representations made by colleague's father further supported wife's allegations - Husband's involvement with colleague during marriage found to be the cause of marital breakdown - Acquittal in criminal case related to marital dispute not absolving husband of cruelty - Principle of not benefiting from one's own wrongdoing applied - Appeal dismissed, divorce denied.

**Referred Cases:**

- Shilpa Shailesh vs. Varun Sreenivasan Transfer Petition (Civil) No.1118 of 214
- Naveen Kohli vs. Neelu Kohli Appeal (Civil) 812 of 2004(SC)
- Dishad Kushwaha vs. Rituraj Singh FAONO.653/2016 (MP HC)

- XXXX vs. XXXX Appeal No.513/2021 of High Court of Kerala
- K. Mallikarjuna vs. H.A. Sudha Mallikarjuna Misc. FAO No.4314 of 2012 of High Court of Karnataka

**Representing Advocates:**

**Appellant: Ms. Naina Kejriwal with Ms. Shoma**

**Respondent: Mr. S. Janani & Ms. Sharika Rai**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

**Marital bonds are delicate emotional human relationships and involvement of any third person could result in complete collapse of trust, faith, and tranquillity. Any sort of influence by a third person can just be a silent destroyer of the bond, leading to prolonged irreconcilable differences. Such relations eventually become a ticking time bomb, where feelings of anguish, despair, rejection and disappointment get trapped and post explosion, the shrapnel of these suppressed feelings causes injury to everyone involved, whether directly or indirectly.**

1. The present Appeal under Order 41 Rule 1 CPC, 1908 has been filed on behalf of the appellant/husband against the Judgment dated 21.12.1999 of the learned Additional District Judge, denying the divorce on the ground of cruelty in a petition filed by the appellant/husband (*Petitioner in the Divorce Petition*) under Section 13(1) (ia) of HMA.
2. **Briefly stated**, the parties got married on 06.12.1982 and were blessed with a daughter and a son on 26.09.1984 and 26.08.1991 respectively.
3. **The appellant/petitioner (husband) had asserted in his Divorce Petition** that the respondent was disrespectful and refused to take care of him and even assaulted him physically. She was in a habit of extracting money and forced him to give expensive gifts to her relatives and had no affection towards him or his family members. It was asserted that the respondent went to Patiala on 16.06.1992 on a false pretext of illness of her mother while the appellant had to go to Kaza for his office work. Subsequently, he came to know that her younger sister had gone missing for the last three days and a

- false pretext of illness of mother had been told to him. On return from Kaza, he stopped at the house of respondent's family in Patiala and tried to counsel the family to let the sister marry the man with whom she had gone, but he was not appreciated for his concern and was threatened with divorce and ridiculed in filthy language by the respondent and the family members.
4. On a previous occasion, she quarreled with him when his sister got married on 03.01.1987 at Arya Samaj Mandir, Vasant Vihar, and advised him to not attend the wedding of his own sister.
  5. The appellant had further asserted that while he was operated in G.M. Modi Hospital on 15.07.1993 for Appendicitis, the respondent quarreled with him despite him being in terrible pain and was forced by the ward staff to leave the hospital. She made false allegations of appellant leading an immoral life and even made false and baseless allegations of him having an illicit relationship with one Ms. B.S., in her complaint dated 04.07.1994 filed before Women Cell, P.S. Hauz Khas, Delhi.
  6. The appellant asserted that on 02.07.1994 while he returned from Bhopal, the respondent along with her parents and sister came to his house and they threatened him with his life. The respondent thereafter, stopped performing her conjugal duties for more than two years and they started living separately in the room, though in the same house.
  7. The appellant asserted that because of such conduct of the respondent his peace of mind was shattered and he was compelled to do all the household work including cooking and taking care of the children. *He thus, sought divorce on the ground of cruelty.*
  8. **The respondent/wife in her Written Statement** asserted that by filing the Divorce Petition, he was seeking to take advantage of his own wrongs. Essentially, it is asserted that their relationship was cordial till the appellant allegedly got into an illegitimate relationship with his colleague Ms. B.S. When she came to know about it in 1993, differences cropped up between them. It is asserted that because of this illegitimate affair the appellant himself started living in a separate room and started ill treating her and made her life miserable since December, 1993.
  9. The respondent further asserted that Shri N.R.S, father of Ms. B.S., also made various representations to the Director of NIEPA, where the appellant was employed aside from representation to Secretary, Department of Education, Ministry of Human Resources Development, Police and also to Legal Aid and Advice Board, Patiala House Courts, New Delhi about the appellant ruining the life of his daughter Ms. B.S.

10. Thereafter, the appellant left the matrimonial home on 11.08.1994 and started residing with Ms. B.S. and the two children at Malviya Nagar, New Delhi. It is claimed that they were living as husband and wife and the children were forced to address Ms. B.S. as mother. The respondent even came to know that Ms. B.S. was in family way.
11. The respondent denied all the allegations of being quarrelsome that were made by the appellant against her. She asserted that she discharged all her matrimonial duties with sincerity, but the discord was only on account of the illegitimate affair of the appellant with Ms. B.S. She admitted making a complaint on 04.07.1994 to CAW Cell, however, she mentioned that it was made because her children had been removed from her custody in a clandestine manner. She further clarified that it was the appellant who stopped maintaining conjugal relationship and he finally left the matrimonial home on 11.08.1994 on account of his illegitimate relationship. In fact, on the same day he and Ms. B.S. also left their job at NIEPA. It was therefore claimed that appellant was not entitled to Divorce.
12. **The appellant in his replication** denied all the allegations of illicit relationship and claimed them to be defamatory. He submitted that he even filed a complaint under Section 500 IPC which was pending disposal before the learned Metropolitan Magistrate, Delhi. He further asserted that the parents of Ms. B.S had come to the hostel where Ms. B.S. was residing and gave public beating to her at the bus stop of Ganga Hostel and was dragged to the parked vehicle. The appellant had tried to intervene and pacified the parents of Ms. B.S. on which they got upset and made wild allegations against his character. He explained that Ms. B.S. had been engaged by him only as a governess to the children. He reiterated his allegations of cruelty against the respondent/wife.
13. **Issues were framed on 04.12.1996** as under:  
*“(i) Whether the respondent has treated the petitioner with cruelty after solemnization of marriage? (ii) Relief.”*
14. The appellant appeared as **PW1** and Ms. B.S. as **PW2** as well as Mr. N.C. S., father of Ms. B.S as CW1. The respondent appeared as **RW1** and also examined Ms. Bharti as **RW2**, H.C. Dal Chand as **RW3**, Shri Prem Pal official of Syndicate Bank as **RW4**, Mr. G.S. Bhardwaj, Administrative Officer of NIEPA as **RW5**, Mrs. Kusum, Ahlmad from the Court of learned Metropolitan Magistrate as **RW6**, Ms. Saroj Bala Sub Inspector of Delhi Police as **RW7**, Ms. Surbi Sarkar, sister of Ms. B.S. as **RW8**, Ramesh Chand, LDC from the

Office of Delhi Legal Aid & Advice Board as **RW9** and Mrs. Bindu Khandelwal as **RW10**.

15. **The learned ADJ** after referring to the evidence and documents **concluded** that the relationship between the appellant and Ms. B.S. was in the nature that would cause one to believe that they had a relationship of husband and wife, which was unlawful, unauthorized and not sanctioned by rule and custom and the possibility of sexual relationship between them could not be over ruled. Hence, the suspicion of the respondent was not held to be baseless and her conduct towards the appellant was not found to be cruel entitling him to a decree of divorce. **The divorce petition was accordingly dismissed.**
16. **Aggrieved by the dismissal of the Divorce Petition, the appellant/ husband has preferred the present Appeal.**
17. Learned counsel for the appellant, in support of his averments in the present appeal, has placed reliance upon the judgment of Shilpa Shailesh vs. Varun Sreenivasan Transfer Petition (Civil) No.1118 of 214, Naveen Kohli vs. Neelu Kohli Appeal (Civil) 812 of 2004 of the Apex Court, Dishad Kushwaha vs. Rituraj Singh FAONO.653/2016 of High Court of Madhya Pradesh XXXX vs. XXXX MAT Appeal No.513/2021 of High Court of Kerala and K. Mallikarjuna vs. H.A. Sudha Mallikarjuna Misc. FAO No.4314 of 2012 of High Court of Karnataka, and sought a prayer for setting aside of decree dated 21.12.1999 and for grant of divorce under 13 (1) (ia) of the Hindu Marriage Act, 1955.
18. **Submissions heard and record perused.**
19. It has emerged from the testimony of the respondent that she and the appellant met while they were studying in JNU together for about a year and half prior to their marriage on 08.12.1982. They were both blessed with a son and a daughter and apparently lived cordially and had a happy married life till about 1993. Apparently, major differences started emerging between them in the year 1994.
20. It is one of those unfortunate cases where after the marriage of the parties on 06.12.1982, the relation *inter se* them could remain stable till about December, 1993. Life in all its uncertainties, unfolded when despite having a cordial married life for sufficiently long period of 10 years, apparently the appellant developed affection for his colleague Ms. B.S. who was working in the same office, and that was the point when the entire world of the respondent came down shattering. The appellant himself has stated that the respondent started making allegations of illicit relationship with Ms. B.S.

However, these allegations were not unfounded, as is borne out from the evidence on record.

21. The appellant was admittedly admitted in G.M. Modi Hospital on 15.07.1993 and was operated for acute Appendicitis. According to him, the respondent arrived in the hospital and had a quarrel because of which she was forced out of the Ward by the hospital staff. The respondent has denied this incident vehemently in her testimony who has rather deposed that she took full care of the appellant while he was admitted in the hospital.
22. It is evident from the respective testimonies of the parties that the dispute *inter-se* the parties had the genesis in the association of the appellant with Ms. B.S. She admittedly came to be known to the appellant while she was working in Indian Institute of Statistics in which the appellant himself admits he had an association. Subsequently, Ms. B.S. got appointed in NIEPA, where the appellant was also working. Their intimacy became more while working together, which is evident from the admission of the appellant that he used to take her along with him on the official tours and had even taken her to Kaza along with the children. He while returning from Kaza had gone with her and the children to the parent-in-law's house in Patiala. He has also admitted that many a times she used to accompany him for various official tours, but has tried to explain it by asserting that she had accompanied him only as Junior Associate.
23. The appellant has denied vehemently that he had any illicit relationship with her, but his own contentions get defeated by his own admission in the petition that she came to live with him in his house in Malviya Nagar. The appellant gave a fantastic explanation that she had shifted with him as a governess to take care of the children. According to the appellant, he had paid her Rs.15,000/- per month for the job. Interestingly, Ms. B.S. was herself a government employee working in NEIPA and she being employed as a governess and even been allegedly paid Rs. 15,000/- is an explanation, which can be only termed as absurd as it can be.
24. In this context it would also be pertinent to refer to the testimony of *RW2, Ms. Bharti*, a family friend who had also deposed that when she had visited the house of the appellant in the year 1994-95, she not only saw Ms. B.S. present in the house maintaining it like a housewife, but the children were addressing her as "*mother*".
25. Another material witness examined by the respondent was *RW8 Surbhi Sarkar*, elder sister of Ms. B.S. who also had deposed that her younger sister, Ms. B.S., had been residing in the house of the appellant with him since 1994.

She also deposed that it was this relationship between the appellant and Ms. B.S. which became a cause of trouble in their family as was reflected in the various letters and complaints sent by her father to various Authorities. The relationship had perturbed the family a lot.

26. Aside from the admissions made in the petition as well as the testimony by the appellant and other witnesses, there is other overwhelming documentary evidence. The appellant has admitted that while he was residing in Malviya Nagar, complaints had been made by the neighbors questioning the relationship of the appellant with Ms. B.S. A complaint was made by the neighbors to the police *vide* Diary No.1966 of 30.11.1994 which is 'Mark A' and had been produced by *PW3 H.C. Daal Chand*. Subsequently, the appellant had sought to explain this complaint by claiming that this was withdrawn *vide* letter *Ex.PW1/R1*. The complaint may have been withdrawn subsequently and the appellant may have tried to explain that the neighbors eventually were convinced about his association with Ms. B.S and had withdrawn their apprehension, but the fact remains that Ms. B.S. admittedly came to reside with the appellant at Malviya Nagar to which there was an objection taken by the neighbors.
27. The second set of documentary evidence, which is revealing about the relationship of the appellant with Ms. B.S., are the complaints written by none other than Mr. N.C.S., father of Ms. B.S., to the Department of NEIPA, the Police, the Delhi Legal Aid Board and other Agencies alleging that the appellant was ruining the life of his daughter Ms. B.S. Interestingly, Mr. N.C.S was present in the Court at that time when the testimony of RPW2 Ms. B.S. was recorded at the instance of the appellant, and his testimony was also recorded as CW1. Pertinently, he admitted having written the letter *Ex.RW5/1* to NEIPA and *Ex.RW8/6* as well as document *Ex.RW8/P1* to Delhi Legal Services Authority. Additionally, *Ex.RW6/1 and Ex.RW6/2*, which are his statements recorded in FIR No. 313/94 reveal that Ms. B.S. was made hostile to her family and was being influenced by the appellant. In all these letters/documents, not only had he taken an objection of his daughter who was much younger, having unacceptable friendship with the appellant but has also stated that the appellant has mislead her and even proposed to marry Ms. B.S. However, in his cross-examination, he tried to back track by asserting that all those complaints were made due to misunderstanding.
28. All these complaints which are contemporary to the incidents happening, have been written from 04.03.1994 onwards. It is quite apparent that subsequently, the appellant was able to prevail upon not only Ms. B.S. but

also on her father who were examined as RPW-1 as the witness of the appellant and CW-1 as the witness by the Court, on 31.08.1998.

29. The very fact that the complaints are all admitted by CW1, Mr. N.C.S, clearly corroborate the averments of the respondent about the appellant having developed affection with Ms. B.S. outside his marriage with the respondent. The appellant may have been able to win over the father of Ms. B.S. during the pendency of the divorce proceedings, but the claim of the respondent of appellant having developed relationship outside the marriage is fully corroborated and supported not only by the oral testimony, but also by the documents.
30. The overwhelming evidence on record reflects that indeed the appellant who got involved with Ms. B.S. since 1994 and left the house in August, 1994 was the one who had committed the cruelty upon the respondent. The respondent wife cannot be penalized for making such allegations and protesting about the relationship which have a strong basis and foundation. In fact, she had a justification to complain about the conduct of the appellant and to take any view otherwise would indeed be committing cruelty upon the respondent.
31. It becomes apposite to mention that an FIR No.313/1992 under Section 498A/406 IPC had been registered against the appellant, his sister and brother-in-law and while the sister and brother-in-law were discharged at the time of framing of charges, the appellant has been subsequently acquitted *vide* judgment dated 03.05.2013. However, considering the overwhelming evidence revealing the relationship with Ms. B.S., this acquittal subsequent to the divorce itself, cannot be a ground to say in the peculiar facts of this case, that any kind of cruelty had been committed upon him by the respondent. Merely because there is an acquittal by a Criminal Court, does not wash away the cruelty committed by the appellant of being involved with a young girl during the subsistence of his marriage with the respondent; mere acquittal in a criminal case cannot be a ground to grant divorce.
32. We, in the light of blatant conduct of the appellant is showing scant regard to his matrimonial relationship, are compelled to observe that despite it being a failed marriage of over 40 years, granting Divorce would be adding a premium to the wrong acts of the appellant. While the human emotions know no bounds and rules, but definitely the human sensibilities emanating from the mind should have prevailed for an educated person like the appellant to have reigned his affections for a third person, with scant regard for the respondent who had reposed complete faith by entering into the vows of marriage with him. This is one case where S.23(1)(a) of the HMA, 1955, which provides



that no person can take advantage of its own wrong, comes into play, in full force.

33. **We hereby conclude that the learned Additional District Judge has rightly concluded that it is the appellant who is responsible for acts of cruelty towards the respondent and had rejected the divorce petition.**
34. Accordingly, there is no merit in the present Appeal, which is hereby **dismissed** along with pending application(s), if any.

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