HIGH COURT OF DELHI

CORAM: HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

Date of Decision : February 28, 2024

MAT.APP.(F.C.) 182/2016 & CM APPL.25202/2023

Xxx ..... Appellant

VERSUS

Xxx .....Respondent

Legislation:

Section 19 of the Family Courts Act, 1984

Sections 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955

Sections 498-A/406/506 IPC

Section 12 of the Protection of Women from Domestic Violence Act, 2005

Subject: Matrimonial appeal challenging the dismissal of a divorce petition filed under Section 13(1)(ia) of the Hindu Marriage Act on the grounds of cruelty.

Headnotes:

Marital Discord and Allegations of Cruelty – Appeal against dismissal of divorce petition under Section 13(1)(ia) of the Hindu Marriage Act – Allegations of cruelty and desertion by the appellant against the respondent, including false dowry demands and domestic violence allegations – Respondent accused of abandoning matrimonial home under false pretexts and causing mental agony to appellant and his family. [Paras 1-7, 11-12, 19, 34, 38]

False Allegations and Acquittals in Criminal Proceedings – Appellant and his family acquitted in criminal proceedings initiated by the respondent under

Sections 498-A/406/506 IPC and the Domestic Violence Act – Trial courts observed lack of evidence and credibility in the respondent's allegations – These false accusations considered as constituting mental cruelty. [Paras 22, 23, 24, 29-31]

Family Court's Dismissal of Divorce Petition – Learned Family Court dismissed the appellant's divorce petition, not considering the implications of false criminal allegations and respondent's behavior as cruelty – Emphasized differences in burden of proof in criminal and civil cases. [Paras 15, 25]

Findings on Cruelty – held – established that the wife's allegations of dowry demand and domestic violence against the husband and his family were unsubstantiated. The court concluded that the wife's false accusations and resultant legal proceedings constituted mental cruelty towards the husband. [Para 38]

Findings on Desertion – observed – the wife's frequent and extended absences from the matrimonial home, without efforts to return or reconcile, amounted to desertion. The court emphasized the importance of permanent intention to end cohabitation in establishing desertion. [Para 33-37]

Decision – Grant of Divorce – The High Court granted the husband a decree of divorce under Section 13 1 (ia) of the Hindu Marriage Act, 1955, on the grounds of cruelty. The judgment of the Family Court was set aside, and the appeal was allowed. [Para 38-40]

Referred Cases:

- V. Bhagat Vs. D. Bhagat (1994) 1 SCC 337
- Jayachandra Vs. Aneel Kaur, (2005) 2 SCC 22
- K. Srinivas Vs. K. Sunita (2014) SLT 126
- 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

- Mangayakarasi Vs. M.Yuvaraj (2020) 3 SCC 786
- Bipinchandra Jaisinghbhai Shah Vs. Prabhavati 1956 SCC OnLine SC 15
- Rakesh Raman Vs. Kavita (2023) SCC Online SC 497

Representing Advocates:

Appellant: Mr. Naginder Benipal, Mr. Harithi Kambiri, Mr. Ankit Siwach

Respondent: Mr. Manish Kumar, Ms. Aprajita Jha, Ms. Sanskriti

JUDGMENT

SURESH KUMAR KAIT, J

1. The present appeal under Section 19 of the Family Courts Act, 1984 has been filed by the appellant against the judgment dated 08.09.2016 passed in HMA Petition No.297/2010, whereby his petition filed under the provisions of Section 13(1)(ia) of the Hindu Marriage Act, 1955 has been dismissed.

2. The brief background of the case, as spelt out in the present appeal ,is that the marriage between the appellant and respondent was solemnised on 15.01.2004 in Delhi as per Hindu rites and customs, however, no child was born out of said wedlock.

3. According to appellant, soon after their marriage, on 16.01.2004 during Kangana ceremony, the respondent wilfully caused injury to the appellant with her hands. The appellant asserted that the respondent did not respect his parents and expressed desires to stay separately in an independent accommodation and made it clear that their relation would be cordial only if he lives separately from his parents otherwise she will implicate them in false case of dowry demand. The appellant alleged that even parents of respondent joined her in the said demand.

4. The appellant has further averred that on 28.01.2004 brother of respondent took her to the parental home for preparation of MA examination. In the month of March, the respondent informed the appellant that she had conceived, however, when the appellant and his family informed her that they want to bring her back to the matrimonial home in order to register her with the hospital for availing medical facilities, she informed that she was not feeling

well and had consumed medicines and so, she was not pregnant anymore. The appellant has averred that he had to face mental agony for respondent having aborted the child without his consent. Thereafter, the respondent joined his company only in June, 2004.

5. The appellant has claimed that again in November, 2004, the respondent left his company for appearing in examinations in December, 2004 and January, 2005 and came back only in August, 2005. The respondent again left her matrimonial home in February, 2006 for appearing in M-Phil. examination and returned in March, 2007, after a period of one year.

6. The grievance of appellant is that the respondent was in the habit of leaving matrimonial home despite having been given a comfortable congenial atmosphere. During all this period, the appellant did not send his family members and so, the appellant acceded to her demand and shifted to an independent accommodation in August, 2007. However, her behaviour did not change. On 23.04.2008 when appellant's mother and nephew visited them, the respondent locked herself in a room in the rented accommodation. She was not happy even with occasional visits made by appellant's mother or relatives which caused great mental cruelty and harassment to the appellant. The appellant has averred that respondent did not even like him to touch her and thereby denied him of his conjugal rights. The respondent also raised unjust demand of their share in parental property of the respondent which is self-acquired property of his parents.

7. On 12.11.2008, the respondent left company of the appellant without his consent or will by throwing her Mangalsutra on his face and took away all her belongings and jewellery. In this regard, the appellant made a complaint to the police on 13.01.2009. Since 12.11.2008, parties have been living separately.

8. On 31.08.2009, the appellant preferred the petition seeking divorce under the provisions of Section 13(1)(ia) and (ib) of the Hindu Marriage Act. As an off-shoot of the divorce proceedings, the respondent lodged FIR No.59/2010, at PS Kherki Dhaula, Gurgaon, under Sections 498-A/406/506 IPC against the appellant and her family members wherein they have been acquitted by the Court.

9. In the written statement filed by the respondent-wife before the learned Family Court, the stand of respondent was that the appellant and his family members demanded the respondent's father to spend Rs.10 lakhs on the marriage which they, after some time scaled down to Rs.5 lakhs with demand of

motorcycle. However, when her father did not agree to it, they insisted that they will not bring the *baraat* in the village and asked them to make marriage arrangements in the city. The respondent averred that their family belonged to village Khandsa, where her father with family was living permanently but he had no option but to arrange the marriage in the city. The appellant and his family members were not happy with the reception and food provided in the marriage ceremony arranged by the father of the respondent and also the dowry given. The respondent has alleged that the appellant's father taunted her that her father had not kept the promise of dowry and only because of social pressure, he has brought her to their matrimonial home. The respondent also alleged that her mother-in-law took all the jewellery articles given to her in the wedding on the pretext of keeping it safely, also she asked her to not make any physical relations with the appellant as he was suffering from severe back pain even though he was hale and hearty.

10. In July, 2004, the appellant snatched her *Mangalsutra* and stopped talking to her; taking food prepared by her; refused to wear clothes washed by her and when she complained this to her mother-in-law, she asked her to leave matrimonial home for some days and stay with her parents so that things could get normalised. Therefore, in January, 2005, the respondent came back to her matrimonial home and again on the occasion of Makar Sakranti, she was taunted for not bringing good clothes and good quality blanket. Even on the occasion of her first Karwachauth, the appellant forced her to gift a suit worth Rs.1,000/- to her mother as per rituals, however, she could only arrange a suit worth Rs.800/- for which she was taunted and humiliated.

11. The respondent alleged in her written statement that the appellant was working as x-ray/lab Technician and earning salary of Rs.30,000/- per month, however, he never financially supported her. The respondent averred that even though she is a postgraduate, however, she was taunted about her qualification and she was never respected in the family. The respondent has averred that whenever she complained the appellant about her problems, instead of listening to her grievances, the appellant beat her, even his mother, bhabi and father also instigated him to beat her. Once when the entire family was out on a trip to Vaishno Devi, the appellant hit the head of the respondent against the wall due to which she received internal head injuries and even then, he did not talk to her for a very long time.

12. The respondent claimed that despite all this humiliation and sufferings, she tried to adjust and stay with the appellant in order to save their marriage, however, she was thrown out of house on 30.11.2008.

13. On the basis of pleadings of the parties, the learned Family Court framed the following issues:-

"1. Whether petitioner has been treated with cruelty at the hands of respondent after solemnization of marriage as detailed in the petition? OPR.

2. Whether the petitioner is entitled to a decree of divorce on the grounds as prayed for? OPP.

3. Relief."

14. To substantiate their case, the appellant got himself examined as PW1 and the respondent examined herself as RW-1.

15. The learned Family Court, after appreciating the testimony of the parties vide impugned judgment dated 08.09.2016, held that even if appellant was acquitted in the criminal case, it cannot be taken as gospel truth narration of the matrimonial life of the parties and their conduct towards each other during the course of their residing together. Further held that the appellant has miserably failed to establish that he was subjected to cruelty by the respondent and consequently, dismissed his petition.

16. Aggrieved against the aforesaid judgment, the appellant husband has approached this Court on the ground that learned trial Court has failed to consider that he was subjected to cruelty at the hands of respondent and the findings returned by the learned Family Court are perverse and based upon assumptions or personal beliefs of the Court. The instances mentioned by the appellant were specific and substantiated with documents which were not rebutted by the respondent and this has been ignored by the learned Family Court.

17. Learned counsel for appellant submitted that learned Family Court has erroneously returned the findings that since respondent was pursuing higher studies, her staying away from appellant was justified as the atmosphere in her matrimonial home was not congenial to pursue her studies. Further submitted that the learned Family Court has over looked the fact that the respondent and his family members were acquitted in FIR No.59/2010, registered at the instance of the respondent for the offences under Sections 498-A/406/506 IPC and thereby, no act of cruelty and dowry demand could be proved. The Court further failed to appreciate that the respondent had voluntarily left his company in the year 2008 without any justifiable cause or reason and the approach adopted by the learned Family Court is illegal and thus, the impugned judgment deserves to be set aside.

18. **This Court had heard learned counsel appearing on behalf of both sides at length; the impugned judgment, deposition of witnesses and the other material placed on record of the learned Family Court, has been carefully perused.**

19. The undisputed fact of the present case is that the parties got married on 15.01.2004 as per Hindu rites and customs and no child was born out of this wedlock. Since the time of their marriage in the year 2004, the respondent, time and again, has spent a substantial time at her parental home, to say that from January, 2005, till August, 2005; February, 2006 till March, 2007; on the grounds of preparing for her MPhil examination. According to respondent due to marital discord, she had permanently shifted to her parental house in the year 2008, even though the appellant in the matrimonial proceedings claimed that the parties have been living separately since the year 2005. On 31.12.2009, the appellant filed the petition seeking divorce from respondent under the provisions of Section 13 (1)(ia) of the Hindu Marriage Act, 1955 on the grounds of cruelty i.e. almost after a year of having lived separately from respondent-wife.

20. On the aspect of cruelty, the Hon'ble Supreme Court in the case of ***V. Bhagat Vs. D. Bhagat*** (1994) 1 SCC 337, has held that mental cruelty under Section 13(1)(ia) of the Act, 1956 can broadly be defined as the conduct which inflicts upon the other party such mental pain and suffering as would make it impossible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put-up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the party. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case.

21. To adjudge whether behavior of one spouse towards the other falls within the definition of cruelty as has been enunciated under Section 13 (1)(ia) of the Hindu Marriage Act, 1955 and catena of decisions rendered by the Hon'ble Supreme Court and this Court. The Hon'ble Supreme Court in the case of ***A. Jayachandra Vs. Aneel Kaur***, (2005) 2 SCC 22, observed as under: -

> *"10…If from the conduct of the spouse, same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like*

matrimony, one has to see the probabilities of the case…... Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other.

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13. …..However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity…... Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. ***Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent."***

22. In the year 2010, i.e. after filing of divorce petition by the appellant, the respondent lodged a complaint against the appellant and his family members, based upon which *FIR No.59/2010 under Sections 498-A/406/506 IPC was registered (Crl. Case No.99/2012)* and consequently, the appellant and his family faced trial before the Judicial Magistrate First Class, Gurgaon, Haryana. The learned court vide judgment dated 19.02.2014 while acquitting them, observed and held as under:-

"10. I have considered the arguments and have gone through the case file very carefully and minutely. The prosecution has examined six witnesses namely PW1 Complainant Jagwanti, PW2 her brother Naveen kumar, PW3 SI Jagdish Rai, PW4 her mother Krishna Devi, PW5 Durga Parshad and PW6 investigating officer Narotam Parshad. PW4 Krishna Devi who is mother of complainant specifically admitted in her crossexamination that at the time of first talk of marriage her daughter was not selected by the boy and no dowry demand was put forth at that time. She also deposed that Sham Singh and Bharat Singh told her that family of Sandeep is
well settled and her daughter will be happy there and on this fact the relationship was entered into. It means conduct accused „family was known to the parents of complainant and on basis of their good reputation of accused family the relationship was entered into, moreover testimony of PW2 Naveen Kumar is not sufficient to prove the accused guilty for offence alleged. It is pertinent to mention here that deposition of PW2 Naveen Kumar that he did not want custody of matrimonial articles in police custody could not support allegations leveled against accused because it implies from it that accused had bonafide in regard to the same. The deposition of PW1 complainant that accused and his family

members demanded the dowry before marriage is not sustainable because a prudent man of society could never enter into relationship with a person who desired or demanded dowry before marriage specifically in the social strata to which parties belong. Moreover, PW1 complainant Jagwanti mentioned various incident of mental and physical cruelty with time, however, she failed to acknowledge the same in her cross examination. She deposed that she never told her family members about beatings but this statement does not inspire confidence of the court because in Indian society when newly married lady is subjected to any type of cruelty by her in-laws, she would definitely share it with any of her family members. The complainant filed her complaint Ex.PW1/A against six members of her in-laws family and all the said accused persons except her husband were found innocent in the investigation. The complainant has also alleged that the accused gave beatings to her but no medical record to that effect is on the case file. The complainant has completely failed to cement her allegations put forth against the accused person. There are just vague and general allegations against the accused person. Accordingly, there is no cogent and convincing evidence on record to prove the guilt of the accused beyond the shadow of reasonable doubt. Therefore, the prosecution has failed to prove the guilt of the accused Sandeep. Accordingly, the accused is acquitted of the charges framed against him."

23. It is further relevant to note that the respondent-wife had also filed a complaint under *Section 12 of the Protection of Women from Domestic Violence Act, 2005* (hereinafter referred to as 'DV Act') against the respondent before Judicial Magistrate First Class, Gurgaon Haryana, which was dismissed vide judgment dated 02.01.2016 observing and holding as under:-

"*9. Perusal of the case file reveals that factum of marriage between the applicant and respondent is admitted. It is observed that the complainant has filed the present complaint against her husband Sandeep only but has also attributed the role of her mother-in-law, Bhabhi Saroj, one sister in law Kanta and her husband Omkar. However, nothing incriminating in evidence against the abovementioned person has come on record. Further the applicant by way of application/complaint as well as her affidavit has averred some facts relating to mental torture and injuries caused by respondent and his family members and denial by her husband of food prepared by applicant and cloths washed by her and other facts regarding physical relation. However, the applicant has also been failed to prove these abovesaid averments. The applicant has examined as many as three witnesses. However, no independent witness has been examined by the applicant to corroborate her version qua the sufferance of any domestic violence at the hands of the respondent and his family members. Nothing relevant and cogent evidence has been produced on record, which could show that she was beaten by the respondent and due to which, injuries were*

sustained on her person. Moreover, the contention of the applicant that during the tour of Vaishno Devi, her husband hit her from her head against a wall, due to which she received head injuries as well as on the Eve of Diwali, bleeding was also suffered by her, is also not tenable. Due to non-examination of any Doctor and non-production of any medical document. The contents of application reveals an averment regarding a Panchayat held in the year 2009 to resolve the matter but no respectable person from the Panchayat has been examined by the complainant/applicant to prove the same. It has also come to my notice that she had a stay at house of respondent‟s sister which had been comfortable and peaceful and that arrangement was made by Sandeep. It shows that the applicant had no issue with Sandeep. In this way, the applicant has failed to prove the domestic violence against her husband.

Further it is the contention of learned counsel for the respondent that a criminal case under sections 498-A, 406 and 506 IPC has already been decided, wherein respondent has been acquitted from the charges levelled against him. It is duly proved by the certified copy of judgment dated 19.02.0214 titled as State Vs. Sandeep passed by the Court of Shri Ashok Kumar, learned JMIC, Gurgaon that complainant was not subjected to any cruelty by respondent and his family.

10. In view of the above said discussion, I am of the considered view that the applicant has failed to establish her case and she is not entitled to any relief under the Domestic Violence Act, 2005. Therefore, I do not find any merit in this application filed by the applicant. Hence, this present application is hereby dismissed."

24. Aggrieved against the judgment dated 02.01.2016, the respondent had also preferred an appeal (CRA No.10/2016) before the Court of Sessions, Gurgaon, which was also dismissed vide judgment dated 12.10.2018 holding as under:-

"*10. Applying the above said proposition of law to the facts in hand and after re-appreciation the entire evidence on record, it comes out that during the course of arguments it is undisputed case of counsel for the appellant-wife that side by side of this litigation the respondent-husband has already filed a divorce petition against the appellant-wife which is pending in the Family Court at Rohini, Delhi and in that petition the respondent –husband is already directed to pay maintenance of Rs. 4,000/- per month as per the order dated 06.8.2011, copy of which is Ex-RW/B. Then it is also admitted that side by side appellant-wife has also lodged a criminal case vide FIR No.59 of 2010 and after investigations the police has challaned only the respondenthusband and after being put on trial vide judgment dated 19.02.2014 the respondenthusband is already acquitted extending him benefit of doubt and it is a fact that no further appeal etc. has been filed against the said judgment Lastly, it is also a fact that present petition was also*

filed on the basis of same allegations alleging that she was maltreated and harassed by the respondent-husband and thrown out of her matrimonial home which were found to be doubtful by the court while acquitting respondent-husband. Then it is also a fact that when this petition was filed no interim relief was ever sought in view of the interim maintenance granted in the divorce petition which is still going on between the parties and lastly it is a fact that on account of matrimonial dispute between the parties the appellant-wife was already living separately from the respondent-husband well before the filing of the present petition. Rather, even if we assume that the stand taken by the appellant-wife in this regard is correct stand, in her affidavit she alleged that she was thrown out of her matrimonial home on 30.11.2008.

Although, this fact was denied by the respondedhusband alleging that she is residing separately from him since 2005 and deserted him. But even if we assume that the matrimonial relationship comes to an end in the month of November, 2008 the present petition has been filed after more than one year being filed on 24.12.2009, whereas as per the law laid down by the Hon"ble Apex Court in ***Inderjeet Singh's case (supra)*** *such a petition must be filed within one year of the last incident otherwise domestic relationship comes to an end. Thus, keeping in view all these facts and circumstances it is a fact that when this petition was filed the parties were not in any domestic relationship as matrimonial dispute was already going on and they were residing separately. At the same time a divorce petition is already going on between the parties and thus the appellant–wife has every right to seek all available reliefs of maintenance etc. In divorce petition interim maintenance is already granted to her and thus in given facts and circumstances, the learned trial court rightly concluded that she is not entitled for any relief under the provisions of DV Act especially when it is admitted fact that there is no domestic relationship between the parties and the petition has been filed after more than one year of the separate living which amounts to end of the domestic relationship so far as the reliefs under the DV Act are concerned and thus no new interpretation is possible…….. As held above, it is prima facie proved at this stage that both the parties are not in domestic relationship for prescribed period before are not in domestic relationship for prescribed period before and at the time of filing of this petition, as such, there is no question of any domestic violence by the appellant to the respondents in any manner which is the sine-qua-non of the maintainability of a petition under DV Act. Thus, the impugned order of the learned Adjudicating Magistrate is well founded and affirmed accordingly."*

25. The learned Family Court in the impugned judgment has noted that the contents of the complaint, which was filed by the respondent against the appellant in Gurgaon, were not brought on record by filing certified copies and so, no observation could be given. Even with regard to acquittal of appellant in FIR No.59/2010, under Sections 498-A/406/506 IPC, the learned Family

Court has observed that neither the copy of FIR nor the Charge-Sheet nor the final judgment, has been proved and thus, again no observation could be given. The learned Family Court also observed that in criminal cases the prosecution has to establish the offences of the accused beyond the shadow of doubt whereas in civil cases especially in divorce cases, the petitioner has to stand on his/her own legs in accordance with the preponderance of probabilities and that only because such appellant has been acquitted in criminal cases, cannot be taken to be a gospel truthful narration of the matrimonial life of the parties.

26. However, the certified copies of the judgments passed by the Courts at Gurgaon in proceedings under the provisions of DV Act as well as FIR No.59/2010 under Sections 498-A/406/506 IPC have been placed before this Court and we find that the allegations levelled by the respondent against the appellant and his family members in her complaint, which culminated into registration of FIR No.59/2010 as well as her complaint under Section 12 of the DV Act, are verbatim similar as have been spelt out in her written statement in the divorce proceedings. Also, in proceedings in Crl. Case No.99/2012, under Sections 498-A/406/506 IPC, the complainant had stepped into witness-box as PW-1 and the prosecution had examined the brother of respondent/ complainant as PW-2, father of the appellant as PW3, mother of the appellant as PW-4. Similarly, in proceedings under Section 12 of DV Act, the respondent/complainant had examined herself as PW-1, her brother as PW-2 and her mother as PW-3 and the appellant had stepped into witness box as RW-1.

27. With regard to deposition of the witnesses, the Court at Gurgaon vide judgment dated 19.02.2014 in Crl. Case No. 99/2012 observed that respondent's brother (PW-2 therein) had admitted that no medical examination was conducted to prove the charge of beatings and also the appellant had delivered the dowry articles to police but they refused to take possession of the same. Also, respondent's mother (PW-4) deposed that the middle men, who had brought the marriage proposal of the parties, were known to them and the conduct of appellant's family was well within the knowledge of respondent's family. Based upon the deposition of brother and mother of the respondent, allegation of alleged beatings by the appellant are not proved and also, the allegation of dowry demand prior to the marriage are, not substantiated.

28. The learned Judicial Magistrate- I at Gurgaon while disposing of complaint under the DV Act, vide judgment dated 02.01.2016 noted that the brother of the respondent (PW-2) deposed that appellant had been acquitted of the offences in case under Section 498A IPC.

29. In the present proceedings, the appellant had got himself examined as PW-1 and respondent examined herself as RW-1. No other witnesses have been examined by the parties. During her cross-examination, the respondent/RW-1 has admitted dismissal of her complaint under Sections 498-A/406/506 IPC and that she had not preferred any revision petition against thereof. She also admitted that prior to appellant preferring the petition seeking divorce on the grounds of cruelty and desertion, she had not made any complaint against him or his family members alleging cruelty upon her.

30. In ***K. Srinivas Vs. K. Sunita*** (2014) SLT 126, the Hon'ble Supreme Court has held that filing of the false complaint against the husband and his family members constitutes mental cruelty for the purpose of Section 13(1)(ia) of the Act, 1955.

31. Further, the Supreme Court in the case of ***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.

32. Similarly, it has been held by the Supreme Court in ***Mangayakarasi Vs. M.Yuvaraj*** (2020) 3 SCC 786 that it cannot be doubted that in an appropriate case, the unsubstantiated allegation of dowry demands or such other allegations, made the husband and his family members exposed to criminal litigation. Ultimately, if it is found that such allegations were unwarranted and without basis and if that act of the wife itself forms the basis for the husband to allege the mental cruelty has been inflicted on him, certainly, in such circumstance, if a petition for dissolution of marriage is filed on that ground and evidence is tendered before the original Court to allege mental cruelty, it could well be appreciated for the purpose of dissolving the marriage on that ground.

33. Also, in the present case, since the time of their marriage in the year 2004, the respondent, time and again, has spent a substantial time at her parental home, to say that from January, 2005 till August, 2005 and February, 2006 till March, 2007; on the grounds of preparing for her MPhil examination. There is no doubt in marriages, especially arranged marriages, the initial period of

togetherness is crucial and important, as the newly married couple in the process of knowing each other, develop trust and respect and also learns to adjust in the family. Even though the observation of the learned Family Court that respondent could get better congenial atmosphere at her parental home to study and appear in examination but by leaving the matrimonial home frequently to appear in the examination, that too for a period of more than six months, could imply as temporary separation from husband and in-laws.

34. According to respondent due to marital discord, she had permanently shifted to her parental house in the year 2008, even though the appellant in the matrimonial proceedings claimed that the parties have been living separately since the year 2005. Even if the claim of the respondent that she was made to leave her matrimonial home in the year 2008 on the asking of her mother-in-law to create some peaceful gap, is accepted, the respondent has not been able to show if any efforts were made by her to return her matrimonial home or that she had involved any friend or relative to help her mediate with appellant or his family on this aspect. Even no application under Section 9 of the Hindu Marriage Act seeking Restitution of Conjugal Rights, was made by her to join company of her husband. All this shows that she had deliberately chosen to stay away from appellant and not to come back to her matrimonial house.

35. The Hon'ble Supreme Court in ***Bipinchandra Jaisinghbhai Shah Vs. Prabhavati*** 1956 SCC OnLine SC 15 has observed as under:-

> *"Thus the quality of permanence is one of the essential elements which differentiates desertion from wilful separation. If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned : (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid."*

36. The Hon'ble Supreme Court in ***Bipinchandra Jaisinghbhai Shah*** has further observed that *once it is found that one of the spouses has been in desertion, the presumption is that the desertion has continued and that is not necessary for the deserted spouse actually to take steps to bring the deserting spouse back to the matrimonial home.*

37. In a recent decision in ***Rakesh Raman Vs. Kavita*** (2023) SCC Online SC 497, the Hon'ble Supreme Court, in an appeal preferred by the husband, challenging the order passed by the High Court whereby his petition granting decree of divorce by the learned trial court was dismissed; observed that:-

> *"16. Matrimonial cases before the Courts pose a different challenge, quite unlike any other, as we are dealing with human relationships with its bundle of emotions, with all its faults and frailties. It is not possible in every case to pin point to an act of "cruelty" or blameworthy conduct of the spouse. The nature of relationship, the general behaviour of the parties towards each other, or long separation between the two are relevant factors which a Court must take into consideration."*

38. In our considered opinion, the learned Family Court has failed to take note of the fact that the respondent had made false allegation of dowry demand and domestic violence and thereby, committed cruelty upon the appellant and his family members, who had to face agony of trial. We thus consider that the appellant is entitled to decree of divorce under Section 13 1 (ia) of the Act.

39. With aforesaid observations, the impugned judgment dated 08.09.2016 is hereby set aside and the present appeal is allowed. The appellant is granted decree of divorce under Section 13 1 (ia) of the Hindu Marriage Act, 1955 on the grounds of cruelty. Decree sheet be prepared accordingly.

40. The appeal is accordingly disposed of.

41. Pending application is disposed of as infructuous.