

**HIGH COURT OF DELHI
BENCH : JUSTICE RAJIV SHAKDHER, HON'BLE MR. JUSTICE AMIT
BANSAL
Date of Decision: 3rd May 2024**

MAT.APP.(F.C.) 199/2017 & CM 27854/2023, CM 7981/2024

DHARMENDER SINGH BISHT – APPELLANT

VERSUS

BABITA BISHT – RESPONDENT

Legislation:

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

Sections 406, 498A, 34 of the Indian Penal Code, 1860

Section 125 of the Code of Criminal Procedure, 1973

Subject: Appeal against the dismissal of a divorce petition on grounds of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955 – Appellant alleges respondent's act of initiating false criminal proceedings and other instances of cruelty.

Headnotes:

Family Law - Divorce - Appeal against Family Court's judgment dismissing divorce petition based on alleged cruelty by the wife - Family Court found no sufficient evidence of cruelty or dowry harassment by respondent; however, High Court reverses decision, citing mental cruelty due to false criminal accusations and prolonged legal battle - Held, marriage irretrievably broken, decree of divorce granted on grounds of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955. [Paras 1-29]

Evidence and Testimony - Lack of corroborative evidence from the respondent on allegations of dowry harassment against the appellant and his family - High Court notes previous acquittal of appellant in related criminal proceedings, undermining credibility of respondent's allegations - Held, false criminal charges against spouse can constitute mental cruelty justifying divorce. [Paras 20-22]

Maintenance and Financial Support - Discussion on maintenance payments - Appellant's obligations towards maintenance addressed, with direct deductions from his pension - Execution proceedings for arrears in maintenance are acknowledged but left to be resolved in pending execution proceedings. [Paras 10-11, 27]

Decision: Judgment of Family Court reversed – Decree of divorce granted on grounds of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955 – Appeal disposed of with all pending applications. [Para 32]

Referred Cases:

- Mangayakarasi v. M.M. Yuvaraj, (2020) 3 SCC 786

Representing Advocates:

Ms. Shriya Maini for appellant

AMIT BANSAL, J

1. By way of the present appeal, the appellant (petitioner/husband) impugns the judgment dated 22nd August, 2017 passed by the Principal Judge, Family Courts, Central District, Tis Hazari, Delhi (hereinafter the Family Court).
2. *Via* the impugned judgment, the appellant's petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (hereinafter the Act) seeking divorce on the grounds of cruelty was dismissed.
3. The prefatory facts leading up to the filing of the divorce petition before the Family Court are as follows:-
 - (i) The appellant and the respondent (defendant/wife) got married on 7th May, 2006 as per Hindu rites and ceremonies. The marriage between the parties was arranged through the Uttarakhand Marriage Bureau at Kidwai Nagar, Delhi.
 - (ii) At the time of marriage, the appellant was working as Sub Inspector (Fire), at Central Industrial Security Force (CISF) in Hyderabad. On the other hand, the respondent was working at HBL Global Pvt. Ltd, an associate company of HDFC Bank.
 - (iii) After the marriage, the parties briefly resided at their matrimonial home at Vasundhra, Ghaziabad, Uttar Pradesh and for a brief period in Hyderabad.
 - (iv) The marriage lasted barely for a few months and the parties, due to irreconcilable differences, started living separately since October, 2006. No child was born out of the wedlock.
 - (v) Subsequently, the appellant instituted a petition under Section 13(1)(ia) of the Act seeking divorce on 30th October, 2007.
4. In his petition before the Family Court, the appellant sought divorce on the grounds of "cruelty" by making, *inter alia*, the following averments:-

- (i) After the marriage, the appellant found out that the respondent was an uncooperative and hostile person who exhibited an indifferent attitude towards the appellant.
- (ii) The respondent was left at her parental house during the month of “*Jeth*” from 16th May, 2006 to 15th June, 2006, as per the customs and traditions governing their community, post which she returned to her matrimonial house. The appellant, meanwhile, had left to resume his job in Hyderabad. At her matrimonial home, the respondent misbehaved with the appellant’s family members in his absence.
- (iii) The respondent abruptly joined the appellant in Hyderabad on 8th July, 2006, where the parties continued to quarrel. The respondent also filed a complaint against the appellant with the DIG, CISF, as a result of which he was subjected to an enquiry.
- (iv) Due to repeated tribulations between the parties, the appellant brought the respondent back to Delhi in October, 2006 at the time of Diwali. On return, the respondent refused to come back to her matrimonial home and started residing at her parental home. Further, the respondent and her family misbehaved with the appellant and subjected him to insults and abuse.
- (v) After the Diwali break in Delhi in October 2006, the respondent refused to travel back to Hyderabad, where the appellant was posted at that point of time.
- (vi) Furthermore, the respondent filed a complaint against the appellant with the Crime Against Women Cell (CAW Cell). On the basis of this complaint, FIR no. 162/07 under Sections 406/498A/34 of the Indian Penal Code, 1860 (IPC) was registered at Police Station Janakpuri, Delhi against the appellant and his family members. The respondent also filed a petition under Section 125 of the Code of Criminal Procedure, 1973 (Cr.P.C) seeking maintenance.

5. In her Written Statement before the Family Court, the respondent sought the dismissal of the divorce petition by making the following averments:-

- (i) Soon after the marriage, the appellant’s family started hurling abuses at her and repeatedly started demanding dowry. It is submitted that her *streedhan* was also snatched from her.
- (ii) There was no family tradition or custom for the newly wedded wife to reside with her parents during the month of “*Jeth*”. The respondent stayed at her parental home after the marriage only because the appellant had refused to take her to Hyderabad.

- (iii) Despite humiliation and suffering, the respondent's father sent her to Hyderabad with cash of Rs. 1 lakh to get her rehabilitated with the appellant. However, even there she was ill-treated and physically and mentally abused by the appellant.
- (iv) On return from Hyderabad to Delhi during the month of October, 2006, the appellant refused to take the respondent back to her matrimonial home. Rather, she was forcefully left back at her parental home.

6. The appellant, in order to prove his case, testified himself as PW-1. He was supported by Jitender Bisht, his elder brother (PW-2), Jasdevi Bisht, his mother (PW-3), Mahipal Bisht, his other brother (PW-4) and P.K Yadav, his colleague from work (PW-5). On the other hand, the respondent herself testified as RW-1. No other witnesses were produced by her. 7. The Family Court framed the following issues on 15th July, 2008:-

***“(i) Whether the respondent has treated the petitioner with cruelty, after solemnization of the marriage? OPP
(ii) Relief.”***

Findings of the Family Court

8. The Family Court dismissed the divorce petition filed on behalf of the appellant by holding that:-
- (i) The appellant abandoned the respondent with his family members in Delhi while he himself moved to Hyderabad on official posting. He did not take any steps to get the respondent to Hyderabad.
 - (ii) The appellant and his family members harassed the respondent over dowry.
 - (iii) None of the witnesses of the appellant gave specific instances as to how the appellant and his family members were subjected to ill-treatment and cruelty on the part of the respondent.
 - (iv) The evidence given on behalf of the appellant was based on the feedback given to him by his family members as he himself was in Hyderabad. The appellant did not have personal knowledge with regard to alleged incidents that took place in Delhi.
 - (v) The evidence given by the appellant of the respondent's misbehaviour while the couple resided together in Hyderabad from 8th July, 2006 to 14th October, 2006 was held to be not satisfactory.
 - (vi) When the couple had come back to Delhi in mid-October for Diwali, the appellant left behind the respondent at her parental home in Delhi and himself moved back to Hyderabad.
9. In sum, the Family Court held that the parties resided together for just over three months and the appellant was unable to demonstrate that he was

subjected to cruelty in the aforesaid period on behalf of the respondent. The court also noted that since the trial under FIR No. 162/07 was sub-judice, no inference could be drawn from the same. Accordingly, the divorce petition filed by the appellant was dismissed.

Maintenance Petition under Section 125 of the Cr.P.C.

10. The Family Court, in the respondent's petition under Section 125 of the Cr.P.C, via order dated 21st February, 2008 granted her interim maintenance of 30% of the gross income of the appellant after making statutory deductions. However, *via* the final judgment dated 29th April, 2015, the Family Court reduced the quantum of maintenance from 30% to 15% of the gross salary. This judgment was challenged by the respondent before this court in CRL. REV. 456/2015 titled ***Babita Bisht v. Dharmender Singh Bisht*** wherein, this court *via* judgment dated 29th May, 2019, restored the maintenance to 30% of the appellant's gross salary after statutory deductions.
11. The appellant took voluntary retirement from the CISF in the year 2019. *Via* a special seal authority, issued by the Central Pension Accounting Office, Ministry of Finance, dated 19th November, 2020 and later amended by special seal authority dated 3rd February, 2021, the respondent has been awarded 30% of the appellant's pension amount during her life time or until she remarries, whichever is earlier.
12. It is pertinent to mention that the respondent has filed execution proceedings in respect of the maintenance awarded to her, which is stated to be still pending.
13. During the pendency of the present appeal, the parties were referred to mediation vide order dated 13th February, 2020 however, the same failed.
14. *Via* order dated 6th March, 2023, Ms. Shriya Maini was appointed as an *Amicus Curiae* to assist the court on behalf of the appellant.
15. In the appeal, the appellant in addition to reiterating the submissions made before the Family Court, has made the following submissions:-
 - (i) The appellant and his family members after having been dragged in a criminal litigation for nearly two decades have been acquitted of charges under Sections 498A/406/34 of the IPC in FIR No. 162/2007 by the Metropolitan Magistrate, Mahila Courts, Dwarka, Delhi *vide* judgment dated 18th July, 2022.
 - (ii) The appellant was subjected to an enquiry by the DIG, CISF based on the written complaint of the respondent. He was eventually exonerated in the same and the enquiry officer attributed no fault to him.

- (iii) The act of making false and frivolous allegations without being backed by cogent evidence, amounts to cruelty. Reliance in this regard has been placed on the judgment of the Supreme Court in ***Mangayakarasi v. M.M Yuvaraj***, (2020) 3 SCC 786.
 - (iv) The marriage is beyond any scope of salvage and the parties have already been living separately for almost 17 years.
 - (v) No amount of arrears of maintenance are due from the appellant. The appellant took voluntary retirement and the maintenance amount is automatically deducted from his pension and is directly credited by the employer into the respondent's account.
16. *Per Contra*, the respondent has reiterated the submissions made before the Family Court and relied upon the findings of the Family Court. She further submits that arrears of maintenance to the tune of Rs. 8,15,865/are due to her.
17. We have heard the parties and perused the material on record.
18. It is undisputed that the appellant and respondent got married on 7th May, 2006 as per Hindu rights and ceremonies. However, it is apparent from the record that the parties did not get along with each other since the beginning of the marriage. Immediately after marriage, differences arose between the parties. The parties barely spent, cumulatively, about four months together before they separated.
19. The record bears out that the respondent had initiated a complaint with the CAW Cell against the appellant, based on which an FIR against the appellant and his family members under Sections 498A/406/34 of the IPC, being FIR No. 162/2007 was registered at Police Station Janak Puri. In the aforesaid FIR, the respondent made allegations not only against the appellant, but also his family members, including his mother and newly married sister, for demanding dowry and treating the respondent with cruelty.
20. The aforesaid FIR resulted in charges being framed against the appellant and his family members followed by a trial, in which the appellant and his family members were finally acquitted vide judgment dated 18th July, 2022. It is the case of the appellant that he had to take leaves from his official duty in order to attend and appear in the said proceedings which caused him pain and humiliation. The appellant and his family members had to face a criminal trial for 15 long years which ultimately resulted in an acquittal. Significantly, the judgment of acquittal notes that the allegations of dowery demand and harassment made by the respondent against the appellant and his family

members were vague and unsubstantiated. Admittedly, the aforesaid judgment of acquittal has not been challenged by the respondent.

21. The Supreme Court has held that filing a false complaint against the husband and his family members would amount to 'mental cruelty' for the purposes of Section 13(1)(ia) of the Hindu Marriage Act, 1955. Reference in this regard may be made to the judgment of the Supreme Court in ***Mangayakarasi*** (supra). The relevant observations of the Supreme Court in the aforesaid judgment are produced below:-

***“14. It cannot be in doubt that in an appropriate case the unsubstantiated allegation of dowry demand or such other allegation has been made and the husband and his family members are exposed to criminal litigation and ultimately if it is found that such allegation is unwarranted and without basis and if that act of the wife itself forms the basis for the husband to allege that 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*”**

[emphasis is ours]

22. The Coordinate Bench of this court has also held in MAT.APP. (F.C) 2/2021 titled XXX. v. XXX. decided on 2nd November, 2023 that making serious and unsubstantiated allegations and implicating the husband and his family members in a false criminal case would amount to cruelty towards the husband.
23. In our considered view, the act of the respondent in initiating criminal proceedings against the appellant and his family members which caused them harassment for 15 years and ultimately resulted in acquittal, would undoubtedly qualify as an act of mental cruelty which would entitle the appellant to a decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955.
24. It also emerges from the record that the respondent filed a complaint with the employer of the appellant pursuant to which, an inquiry was ordered against the appellant. The appellant has also deposed that the filing of the said complaint caused him great humiliation at his workplace. It is pertinent to note that the appellant was exonerated in the said inquiry.
25. One of the factors which weighed with the Family Court was that the appellant did not take the respondent along with him to Hyderabad immediately after the marriage. However, the appellant has clearly stated in his evidence that at the time of marriage, he was residing in a bachelor accommodation in Hyderabad, and therefore, he was not in a position to take the respondent with him to Hyderabad straight away after the marriage. He states that he had

- assured the respondent that as soon as he is able to make suitable arrangements for the stay of the respondent with him, he would take the respondent to Hyderabad. In our view, this was a plausible explanation proffered by the appellant which should have been considered by the Family Court.
26. The appellant has deposed in his affidavit that when the respondent resided with him in Hyderabad, she used to frequently quarrel with him, did not contribute to household responsibilities and even went on to slap him during one heated conversation. He has further deposed that he had made railway bookings for the respondent to travel back with him to Hyderabad after they had come to Delhi during Diwali break in October, 2006 and proved in his evidence the railway ticket booking (Exhibit PW-1/2). However, the respondent failed to join him at the railway station and the appellant had to travel alone. All the aforesaid facts deposed by the appellant in his affidavit remain unrebutted and yet have not been taken into account by the Family Court.
27. As regards the submission of the respondent that the appellant has not paid the complete arrears of maintenance awarded in favour of the respondent, it is a matter of record that the respondent has initiated execution proceedings towards the recovery of the said arrears. Even though, the appellant denies that there are any arrears, we do not propose to delve into this issue. If any arrears of maintenance are due, the same would be subject to the execution proceedings initiated by the respondent.
28. Before we conclude, it is important to emphasize that the parties entered into matrimony as far as back on 7th May, 2006 and the separation between them took place barely a few months after the marriage. The fact that the couple has no child, and in the interregnum, the appellant has been subjected to departmental inquiry and criminal proceedings, there is very little scope for the parties to come together. As noticed above, criminal proceedings were lodged not only against the appellant but also his family members, which, fortunately for them, did not lead to a conviction. In our opinion, there is a complete trust deficit between the parties. Therefore, parting of ways is perhaps the only sensible and practicable approach in this matter.
29. In our view, all the aforesaid acts would cumulatively qualify as acts of mental cruelty, which would entitle the appellant to grant of a decree of divorce. Accordingly, we set aside the impugned judgment dated 22nd August, 2017 and grant a decree of divorce to the appellant on the grounds of cruelty under Section 13(1)(ia) of the Act.

30. The Decree Sheet be prepared.
31. The court appreciates the able and prompt assistance rendered by the Ld. *Amicus Curiae* Ms. Shriya Maini.
32. The appeal is accordingly, along with all pending applications, disposed of.
33. A copy of this judgment be sent to Secretary, Delhi High Court Legal Services Committee for information.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.