

**Delhi HC On A False 498A Being The Basis For A Divorce**

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO 67/2000

Smt. Pinki Jain ... Appellant.

Through: Mr. Gopal Narain Aggarwal, Advocate

Vs.

Sh. Sanjay Jain ... Respondent.

Through: Mr. Narinder Kaushik, Advocate

DATE OF RESERVE: 12-01-2005

DATE OF ORDER: 31-01-2005

CORAM:

31.01.2005

HON'BLE MR. JUSTICE O.P. DWIVEDI

1. Whether Reporters of Local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest?

O.P. DWIVEDI J.

This appeal is directed against the order dated 24.12.99 passed by the learned Additional District Judge whereby respondent-husband's petition under section 13 (1) (ia) of the Hindu Marriage Act, 1955 (for short the 'Act') seeking dissolution of marriage by a decree of divorce on the ground of cruelty has been allowed. Various instances of cruelty alleged by the respondent have been detailed in para No. 4 (i) to (xxii) of the impugned judgment. In the written statement appellant-wife controverted the allegations made by the respondent husband and further alleged that petition has been filed because the appellant did not satisfy the respondent's greed for more and more dowry. In support of their respective versions, the respondent husband examined himself as PW-1 and appellant wife examined herself as RW-1. After considering the material on record, learned Additional District Judge came to the conclusion that the appellant wife had lodged a false complaint at Meerut on the basis of which a case was registered in the Court of CJM, Meerut under section 147/149/498-A/33/504/506 IPC read with section 3 and 4 of Dowry Prohibition Act regarding allegations of harassment for dowry. Police arrested the respondent husband, his father and uncle. They remained in jail for about ten days. Even their bail application was strongly opposed by the appellant. Ultimately a mutual settlement was arrived at between the parties under which the appellant agreed to

receive Rs. 5,25,000/- towards full and final settlement for divorce by mutual consent. She also received Kisan Vikas Patra valuing Rs. 3 lakh, Rs. 35,000/- in cash and the balance amount of Rs.1,90,000/- was to be paid by way of two FDR's in the sum of Rs.95,000/- each in the name of son and daughter who were being looked after by the appellant. Terms of the settlement are contained in the agreement Ex. PW-1/A.

The appellant and her brother appeared as witness before the CJM but did not support the prosecution case and were declared hostile. Ultimately respondent husband and other co-accused persons were acquitted by the CJM vide order dated 6.6.95 (certified copy PW-1/B). After receiving Kisan Vikas Patra for Rs. 3 lakh and Rs. 35,000/- in cash, the appellant resiled from the settlement and did not agree for divorce by mutual consent.

This according to the learned Additional District Judge is a clear instance of cruelty.

As regards other instances of cruelty enumerated in the petition, the learned Additional District Judge appears to have been inclined to accept the husband's version because the appellant wife did not examine her relations in whose presence some of the incidents of cruelty allegedly took place. As per allegations made in the petition corroborated by the statement of the respondent-husband, the incident of December 1989 when the parties had gone to Mahabirji, the appellant had insulted respondent in presence of her brother Arun Kumar and brother in law Padam Chand Jain.

The incident dated February 1990 when the appellant allegedly insulted and abused the respondent happened in presence of Padam Chand Jain in hotel Claridge. According to the husband, the brother and father of the appellant were called on several occasions to advise the appellant to behave properly but instead of advising the appellant they insisted that husband should shift to Brut and settle down there to which husband did not agree. It was further alleged that in July 1993 the sister-in-law of the appellant came to reside with the parties for about 10 to 12 days and in her presence also appellant's insulting behavior continued. The appellant allegedly tried to commit suicide during that period. From the impugned order it appears that, the learned Additional District Judge was inclined to accept the statement of the husband regarding these incidents because appellant wife did not examine her relations in whose presence these incidents allegedly took place. Learned counsel for the appellant vehemently contended that the burden of proof lay on the husband who has filed divorce petition to prove alleged instances of cruelty and the failure of appellant to examine her relations cannot be taken to be a factor against appellant nor respondent's case gets strengthened just because appellant did not examine her relations.

Reference in this contention was made to:- Sm. Bijoli Choudhury Vs. Sukomal Choudhury-AIR 1979 Calcutta 87; Moran Mar Basselios Catholicos and another Vs. Most Rev. Mar Poulouse Athanasius and others- AIR 1954 S.C. 526; Sankar Kumar and another Vs. Mohanlal Sharma- AIR 1998 Orissa 117; and M/s Roy and Co. and another Vs. Sm. Nani Bala Dey and others; AIR 1970 Calcutta 50. Further contention of learned counsel for the appellant is that many other instances of cruelty allegedly took place in presence

of some relations of the husband but he too did not examine any of them e.g the incident at Nainital allegedly occurred in presence of his friend Amar Jain.

The incident dated 30.6.89 when appellant allegedly insulted the respondent for not bringing a decent gift at the time of her B'day allegedly took place in presence of relations of the respondent husband. But none of them have been examined. The four arbitrators, the people from the biradari namely Harish Chand Jain, Mahipal Jain, Pawan Kumar Jain and Rajinder Kumar Jain have also not been examined by the respondent husband. The incident dated 31.12.91 allegedly took place in presence of Mohini, Bhabhi of the husband. The instance of January 1993, when the appellant allegedly abused the father of the husband took place in the presence of the father of the respondent but he has also not been examined.

Learned counsel for the appellant contended that when no adverse inference has been drawn against the respondent husband for not examining his close friends and near relations on various allegations of cruelty, the same approach should have been adopted while assessing the effect of the appellant's failure to examine her friends and relations. This argument carries weight. No implicit faith can be reposed in the testimony of the either party in such litigation when parties are inclined to make wild allegations against each other.

It is important to note that after their marriage in January 1988, parties resided in the matrimonial home i.e House No. 2159, Gali No.9, Kailash Nagar, New Delhi, up to August 1993. Their three children, born in 1989, 1991 and 1993 were all born in this very house.

The parties took separate rented accommodation only in August 1993. Even cantankerous ladies are normally accepted in the family fold if they bear a male child. In the present case male child was born on 18.6.93 after the birth of two daughters. When the parties continued to reside in matrimonial home for years together, cohabited and produced three children from the wedlock the inference that the alleged acts of cruelty, which took place before 18.6.93 were condoned, can be safely drawn. It is obvious that something went seriously wrong with the parties during their stay in the rented accommodation at Yamuna Vihar in August-September 1993. As per the averments made in the petition and the statement of the respondent husband the appellant refused to cook meals for some friends whom he had invited for a party on the occasion of his B'day on 15.8.93 and then on 13.9.93 the appellant allegedly poured kerosene oil on her and raised hue and cry.

These averments have been denied by the appellant and there is no independent evidence to corroborate solitary statement of the respondent husband. But one single instance of cruelty which stands admitted between the parties takes the wind out of appellant's sails. Admittedly, appellant wife had lodged a complaint at Meerut on the basis of which a case was registered in the Court of CJM, Meerut under section 147/149/498-A/323/504/506 IPC read with section 3 and 4 of Dowry Prohibition Act making false allegations of torture for dowry against her husband, father-in-law and other relations of the husband. It is also admitted

between the parties that Police arrested the respondent, his father and uncle. They remained in jail for about ten days. It is further admitted that some settlement for divorce by mutual consent was arrived at between the parties vide PW-1/A under which the appellant agreed to receive Rs. 5,25,000/- towards full and final settlement for divorce by mutual consent.

It is further admitted that the appellant received Kisan Vikas Patra amounting to Rs. 3 lakh and Rs. 35,000/- in cash and the balance amount of Rs.1,90,000/- was to be paid at the time of filing joint petition for divorce by way of two FDR's in the sum of Rs.95,000/- each in the name of son and daughter who are living with the appellant. These subsequent events can very well be taken into consideration as facts are admitted between the parties. The statements of the appellant and his brother were recorded before the CJM wherein it was admitted that the complaint was not based on true facts. The act of the appellant in filing a false complaint case and getting her husband and other in-laws arrested clearly amounts to cruelty. The statement of the appellant and her brother before CJM points towards falsity of the complaint. Not only that she received Rs. 35,000/- and kisan vikas patra for Rs.3 lakh long back in the year 1994. Yet she resiled from the agreement and did not sign papers of divorce. In the case of GVN Kameswara Rao Vs. G. Jabilli- (2002) 2 SCC 296, Supreme Court taking note of its earlier decision in the case of (1994) 1 SCC 337, V. Bhagat Vs. D. Bhagat, observed that:-

"Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible 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 petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. 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. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."

In that case it was found on facts that wife made a false complaint to the police, which reflected adversely on the husband's reputation in the society. Marriage of the parties had broken down. The apex court, therefore, allowed the appeal and granted divorce. In the present case, the situation is still worse. Not only the wife made a false complaint and got the husband and other in-laws arrested, she also took money and then resiled from the agreement. Admittedly, the husband and wife are living separately since September

1993. Learned Additional District Judge took note of this conduct of the appellant and held that it clearly amounts to an act of cruelty.

Taking over all view of the matter, I think, learned Additional District Judge has rightly allowed the petition and passed a decree of divorce under sections 13 (1) (ia) of the Act in favour of the respondent-husband. I am not inclined to take a different view in the matter.

In the result, this FAO 67/2000 filed under section 28 of the Act against the impugned order dated 24.12.1999 fails and is hereby dismissed. All pending applications also stand disposed of.

January 31, 2005 O.P.DWIVEDI J.