



Neutral Citation Number 2023:DHC:5592-DB

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on: 18.05.2023
Judgment delivered on: 08.08.2023

+ MAT. APP. (F.C.) 38/2023, CM APPL. 18473/2012, CM APPL. 18474/2012 & CM APPL. 7002/2018

KAMLESH SHARMA Appellant

versus

YOGENDER KUMAR SHARMA Respondent

Advocates who appeared in this case:

For the Appellant: Mr. Atul Kumar and Mr. Nishant Prakash, Advocates with appellant in person.

For the Respondent: Respondent in person (through VC)

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J.

1. Appellant-wife is aggrieved by judgment dated 23.08.2012 passed by the Court of Ld. Addl. District Judge-01 (East), Karkardooma Courts, Delhi whereby a petition seeking divorce filed by her husband (respondent herein) has been allowed and their marriage has been directed to be dissolved under Section 13 (1)(i-a) of Hindu Marriage Act, 1955 on the ground of cruelty. For the sake of convenience, appellant herein shall be referred to as 'wife' and respondent as 'husband'.



2. Marriage between the parties was solemnized in Delhi on 02.05.1982 as per Hindu rites and customs. They were blessed with three children and as on date, they all have already attained age of discretion. The Husband filed the divorce petition contending that disputes between them arose from the first day of the marriage itself. He alleged that the behaviour of his wife was very rough and she also used to claim that such marriage had been solemnized against her wishes as she had succumbed to the desire of her parents.

3. It was also averred by the husband that his wife left his company in 1989 though she kept on residing in the same house. She also filed false cases against him. She reported matter to Crime Against Women Cell which was, however, later withdrawn by her. She also filed a petition seeking maintenance and one civil suit seeking probate which indicated cruelty on her part as she was only interested in grabbing his house.

4. According to him, his wife was ill-natured and used to talk filthy. She was in the habit of calling police unnecessarily, particularly because her younger brother was in Delhi Police. The husband, who was a government servant, therefore, became mentally, physically and financially disturbed on account of her such cruel behaviour. Contending that such acts of cruelty had never been condoned by him in any manner whatsoever, he prayed that marriage between them be dissolved.



5. Generally, courts are faced with very elaborate, lengthy and bursting plaint in such type of matters. However, a bare glance of the petition filed by the husband indicates that it was a very brief petition, also shorn of vital details.

6. Petition was resisted by the wife and in her written statement, she took preliminary objection that her husband was guilty of suppression of material facts and rather he was the one who had deserted her. While denying all the averments made by her husband, she also claimed that they both had cordial relation till August 1991 when her husband developed illicit relationship with a woman named Sunita and started residing somewhere else. She made best efforts to settle the things and even requested him to mend his ways for the sake of their children but he did not give any heed to her request. Rather, he became so enraged that on 23.10.1991, he tried to kill her by pouring kerosene oil on her. Such incident resulted in registration of FIR with Police Station: Welcome, which eventually was compromised. She, thus, prayed that the petition being devoid of any merit and was liable to be dismissed with heavy cost.

7. Replication was filed reiterating the averments made in the petition and controverting the stand taken in her written statement. As regards his being in illicit relationship, he claimed in the replication that such allegation was wrong and defamatory and a concocted story had been churned out by his wife. He also denied that there was ever any attempt to kill her by pouring kerosene oil. On the contrary, he



mentioned in his replication that a false case under Section 107/151 Criminal Procedure Code had been got registered against him.

8. On consideration of the pleadings of the parties, learned family court framed the following issues on 16.12.2005: -

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

9. It will not be out of place to mention here that the learned family court also considered the application moved under Section 24 of Hindu Marriage Act, 1955 by the wife and directed her husband to pay interim maintenance @ Rs. 2,500/- per month. Order in this regard was passed on 21.02.2006.

10. In order to substantiate his averments, the husband entered the witness box as PW1. He also examined his sisters (PW2 Ms. Usha Sharma and PW3 Smt. Shashi Bala Gaur) and his maternal uncle (PW4 Sh. O.P. Sharma). The Wife also entered into the witness box as RW1 and examined RW2 Ms. Sonal Sharma (her daughter) and RW3 Prof. Hari Shankar Gaur (her brother) in support of her version.

11. After analyzing the evidence led by the parties, learned family court came to the conclusion that the instances narrated by the husband could not be termed as *grave and weighty* and of such nature to infer that the marriage needed to be dissolved. Learned family court was of the view that all such alleged instances of cruelty were trivial and vague in nature, based on inferences. It was also observed that



evidence of the petitioner was lacking in specific and material facts and, therefore, no inference of cruelty could be drawn.

12. Thus, as per learned family court, the instances, as mentioned by the husband in the Petition seeking divorce, did not amount to cruelty. However, despite, holding that the allegations of the husband did not amount to cruelty, divorce was still granted to him.

13. According to the family court, the wife had indulged in character-assassination of her husband by claiming that he was in illicit relationship and that he had attempted to kill her and such unproven allegations were sufficient, in themselves, to cause mental cruelty.

14. Learned family court noted that the wife had attributed specific averments in her written statement and she also reiterated the same when she entered into witness box. Taking note of the evidence led on record, learned family court observed that wife was not having any personal knowledge of any such illicit relationship and rather she was informed in this regard by one Sh. Aman Singh who was not even examined by her and such fact was sufficient to cast doubt about the veracity of her said allegation.

15. It was held that the allegation of illicit relationship amounted to serious suspicion on the character and fidelity of a person and, therefore, such allegation should have been proved by some evidence which was beyond preponderance of probabilities. Since wife was not



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able to bring on record any material to establish such illicit relationship, her such averment had travelled far beyond the reasonable limits of her defence, sufficient to constitute mental cruelty. It also noticed that no document regarding registration of any FIR was placed on record either and that the burden was on her to substantiate the same. Holding that such unproven allegations amounted to mental cruelty, the issue was, eventually, decided in favour of the husband and resultantly, the petition was allowed and the marriage was dissolved.

16. Learned counsel for the Appellant submits that the onus was on the husband to have proved and substantiated the allegations of cruelty as mentioned by him in his petition, which he failed to prove. In such a situation, learned family court committed serious error in allowing the divorce petition merely on the premise that there were unproven serious allegations in the written statement. It is submitted that the allegations of illicit relationship and attempted murder were true and these were appropriately proved as is reflected in the deposition of the wife and her daughter.

17. It is further submitted that there is nothing on record which could have even remotely suggested that these allegations were false and motivated. Moreover, these were never held as 'disproved' by the Court.



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18. Learned Counsel further submits that the husband never dubbed these allegations as amounting to mental cruelty. He submits that if the husband was of the view that such allegations were causing mental cruelty, he should have appropriately amended his petition. Without there being a corresponding amendment in the petition, the family court could not have returned any finding in his favour as the issue of cruelty ostensibly emanates from the averments made in the petition.

19. Learned counsel submits that without there being any averment or plea on behalf of the husband that the allegations amounted to cruelty, it was not appropriate for the trial court to have, on its own, presumed that it was a case of mental cruelty, particularly when the husband did not depose even a single word in this regard in his deposition.

20. Per contra, the husband has denied the contentions on behalf of the wife. He submits that serious and scandalous allegations were made by his wife in her written statement to cover up her own acts of omissions and commission. He submits that the family court was fully justified in relying upon the Judgments in *Vijaykumar Ramchandra Bhate Vs. Neela Vijaykumar: JT 2003(4) SC 85* and *Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal:2012 SCC OnLine SC 489*.



21. It is thus contended that even unproven allegations of the nature in question were sufficient to constitute mental cruelty and, therefore, there is no error in the impugned judgment.

22. Before adverting to the aforesaid all-important aspect of the case, it needs to be reiterated that the husband had prayed for divorce on the ground of cruelty and, as noted hereinabove, the instances of cruelty averred by him were found to be insufficient for making out any case for dissolution of marriage. We may also point out that husband is not aggrieved by such finding as neither has he filed any appeal nor has he filed any cross objection in the present matter.

23. In view of the aforesaid, this Court is only required to assess and evaluate the impact of the allegations made by the wife in her written statement.

24. There are two major allegations. Firstly, that her husband is having an illicit relationship with one Sunita and secondly, his attempt to kill her by pouring kerosene oil on her.

25. What needs to be examined is whether these allegations could be proved by her or not. We may add a caveat here.

26. There is huge difference between a fact being “proved”, “not proved” and “disproved”. If any allegation, made about the other spouse being in illicit relationship, is proved then the other side stands precluded from raising any kind of grievance about such allegation.



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Naturally, if proved, he must bear the brunt. Coming to the second aspect, at times, it may not be always possible for a person making allegation to be able to prove the same by bringing sufficient evidence on record. In such a situation, allegations would simply remain in the realm of being ‘not proved’ and it cannot be, *ipso facto*, assumed to be false, motivated or vexatious, unless held so specifically. Thirdly, there can be a situation where on account of the evidence brought on record, including that by the other spouse, the court may even go to the extent of concluding that such allegation stood ‘disproved’.

27. In the present case, the family court has merely concluded that the allegations were ‘not proved’ as distinct from ‘disproved’.

28. The Family court has relied upon the Judgment in *Vijay Kumar Ramchandra Bhate vs. Neelavijay Kumar Bhate*: JT 2003 (4) SC 85. In said case, the wife had filed a petition seeking for dissolution of marriage on the ground of cruelty. Her husband in his written statement made allegations branding his such wife as an unchaste woman, who was keeping illicit relation with son of their neighbour. Curiously, such imputation was even subsequently withdrawn by the husband by moving an application seeking amendment in the written statement. The question which came up for consideration before the Supreme Court was whether such accusation and character-assassination of the wife by the husband, made in the written statement, constituted mental cruelty or not and it was observed that levelling such kind of disgusting accusation of unchastity was a grave



assault on the character, honour, reputation and status of the other spouse and in Indian context, it would amount to worst form of insult and cruelty.

29. Para 7 of the said judgment reads as under:-

“The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(i-a) of the Act. The position of law in this regard has come to be well settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was



taunting her like that and rendered the maintenance of matrimonial home impossible.”

30. There cannot be any qualm with the above legal proposition but, at the same time, the judgment in *Vijay Kumar Ramchandra Bhate (supra)* is not applicable to the facts of the present case.

31. Firstly, in *Vijay Kumar Ramchandra Bhate (supra)*, the allegation of unchastity had rather been made against the wife which was held as worst form of cruelty and insult, in Indian context. Secondly, the allegation made in the written statement in this regard was withdrawn by the defendant-husband by way of an amendment, which itself suggests that such allegation was not true.

32. The family court has also relied upon the judgment in *Vishwanath Agarwal Vs. Sarla Vishwanath Agarwal:2012 SCC Online SC 489*. In that case, the husband had filed the petition seeking divorce on the ground of cruelty. His wife resisted the same and while challenging the averments made in the petition, she also claimed in her written statement that her husband was having involvement with one lady who was living with him as his mistress. Fact remains that his petition was dismissed and such order was eventually upheld by the High Court. The entire evidence was analyzed by the Supreme Court and it was noticed that the family court and appellate court had disbelieved the evidence of most of the witness cited on behalf of the husband on the ground that they were interested witness. It was observed that in a matrimonial dispute, it would be inappropriate to expect outsiders to come and depose.



Besides above, it was also noticed that the allegations made in the written statement, were also to be factored in. It was further observed that the evidence of the wife would rather show that there was ‘more of a suspicion’ than any kind of truth in the same and, eventually, based on cumulative effect of the evidence brought on record, Supreme Court held that it stood established that sustained attitude of causing humiliation and calculated torture on the part of wife had made life of husband miserable, resulting in cruelty and, therefore, he was entitled to a decree of divorce. Thus, the allegation of extramarital relationship was found to be based on mere suspicion only. Moreover, besides the above, the husband was also able to prove his own case.

33. We may also refer to the Judgment of the Supreme Court in *V. Bhagat vs. D. Bhagat*: (1994)1 SCC 337. The husband therein had sought divorce on the ground that his wife was guilty of adultery. His wife not only denied the allegations but attributed allegations on her husband and branded him as lacking requisite mental equilibrium. Though the originally filed divorce was on the ground of adultery, the husband amended his petition and added new ground of divorce, i.e., mental cruelty. He sought such amendment based on allegations made in the written statement by his wife, which according to him *per se* constituted cruelty which entitled him straightway to divorce without going into the original allegation of adultery. When his divorce case was still pending trial before this Court, he filed an



application before the Supreme Court and the question before the Hon'ble Supreme Court was the same one, i.e. whether the allegations made in such written statement would constitute mental cruelty or not. The answer given by the Hon'ble Supreme Court was in affirmative, though the Supreme Court had dissolved the marriage as it was found to have *broken down irretrievably*.

34. Para 20 of the said judgment reads as under:-

“20. In the light of the principles enunciated hereinabove, we may now examine whether the allegations made by the wife in her written statement and the questions put by her counsel to the petitioner in cross-examination amount to mental cruelty within the meaning of the said sub-clause? The relevant portions of the written statement have already been set out by us hereinbefore. We have also set out in the said paragraph the explanatory statement made by the respondent's counsel in court in justification of the questions put by him to the petitioner in his cross-examination. It is true that the said averments must be read in the context in which they were made. At the same time, it must be remembered that the wife was merely defending herself against what are, according to her, totally unfounded allegations and aspersions on her character. It was not necessary for her to go beyond that and allege that the petitioner is a mental patient, that he is not a normal person, that he requires psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations - and to crown it all, to allege that he and all the members of his family are a bunch of lunatics. It is not as if these words were uttered in a fit of anger or under an emotional stress. They were made in a formal pleading filed in the



Court and the questions to that effect were put by her counsel, at her instructions, in the cross-examination. Even in her additional written statement she has asserted her right "to make correct statement of facts to defend herself against the wanton, imaginary and irresponsible allegations" These are not the mere protestations of an injured wife; they are positive assertions of mental imbalance and streak of insanity in the mental build-up of the husband. The husband is an Advocate practising in this Court as well as in Delhi High Court. The divorce petition is being tried in the Delhi High Court itself. Making such allegations in the pleadings and putting such questions to the husband while he is in the witness-box, is bound to cause him intense mental pain and anguish besides affecting his career and professional prospects. It is not as if the respondent is seeking any relief on the basis of these assertions. The allegations against her may not be true; it may also be true that the petitioner is a highly suspicious character and that he assumes things against his wife which are not well founded. But on that ground, to say that the petitioner has lost his normal mental health, that he is a mental patient requiring expert psychological treatment and above all to brand him and all the members of his family including his grandfather as lunatics, is going far beyond the reasonable limits of her defence. It is relevant to notice that the allegations of the wife in her written statement amount in effect to "psychopathic disorder or any other disorder" within the meaning of the Explanation to clause (iii) of sub-section (1) of Section 13, though, she has not chosen to say that on that account she cannot reasonably be expected to live with the petitioner-husband nor has she chosen to claim any relief on that ground. Even so, allegations of 'paranoid disorder', 'mental patient', 'needs psychological treatment to make him act a normal person' etc. are there coupled with the statement that the petitioner and all the members



of his family are lunatics and that a streak of insanity runs through his entire family. These assertions cannot but constitute mental cruelty of such a nature that the petitioner, situated as he is and in the context of the several relevant circumstances, cannot reasonably be asked to live with the respondent thereafter. The husband in the position of the petitioner herein would be justified in saying that it is not possible for him to live with the wife in view of the said allegations. Even otherwise the peculiar facts of this case show that the respondent is deliberately feigning a posture which is wholly unnatural and beyond the comprehension of a reasonable person. She has been dubbed as an incorrigible adulteress. She is fully aware that the marriage is long dead and over. It is her case that the petitioner is genetically insane. Despite all that, she says that she wants to live with the petitioner. The obvious conclusion is that she has resolved to live in agony only to make life a miserable hell for the petitioner as well. This type of callous attitude in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the petitioner with mental cruelty. It is abundantly clear that the marriage between the parties has broken down irretrievably and there is no chance of their coming together, or living together again. Having regard to the peculiar features of this case, we are of the opinion that the marriage between the parties should be dissolved under Section 13(1)(ia) of Hindu Marriage Act and we do so accordingly. Having regard to the peculiar facts and circumstances of this case and its progress over the last eight years - detailed hereinbefore - we are of the opinion that it is a fit case for cutting across the procedural objections to give a quietus to the matter.”

35. Reference may also be had to the judgment of a Co-ordinate Bench of this Court, i.e., *Kirti Nagpal vs. Rohit Girdhar*: 2020 SCC



online Delhi 1466. In the said case, the husband had initially filed a petition seeking decree of nullity of marriage under Section 12(1)(a) and (c) of HMA, 1955 claiming that the marriage could not be consummated on account of his wife's impotency and that his (husband's) consent was obtained by concealing several material facts. The wife filed a written statement in which she claimed that her husband was suffering from impotency which was the true cause of non-consummation of marriage. She made other allegations also. In view of the aforesaid allegations made in the written statement, the husband sought amendment in his petition and he sought additional relief of divorce on the ground of mental cruelty as according to him the allegations made in the written statement were false and had caused him mental cruelty. On the basis of the amended pleadings, the issues were framed. Though the husband did not succeed before the learned Family Court and could not seek any decree of nullity, the marriage was dissolved on the ground that the wife had made false allegations in her written statement qua the impotency of her husband as well as harassment and it was observed that these unsubstantiated and unproved allegations were enough to hold mental cruelty.

36. This Court held that if it was established from the evidence that the allegations were evidently false, the same can amount to cruelty. Para 19 of the said judgment reads as under-

“19. As regards the allegations made in pleadings, Courts have considered this question time and again and it is now no longer res integra that false, baseless,



scandalous, malicious and unproven allegations made in the written statement may amount to cruelty. If it is established from the evidence that the allegations were evidently false, then such baseless allegations made in the written statement can amount to cruelty and the Court can pass a decree of dissolution of the marriage. In Jayanti v. Rakesh Mendiratta, (2016) 4 CLJ 498 Del, it was held that in matrimonial proceedings, the pleadings assume great significance. Similarly, in the case of V. Bhagat (supra), grave false allegations were made by the wife against the husband in her written statement. Such allegations were even put to the husband in cross-examination. The Supreme Court held that such allegations were bound to cause mental pain and anguish to the husband amounting to mental cruelty and dissolved the marriage between the parties. In the present case, we therefore agree with Mr. Prabhjit Jauhar that the allegations in the Written Statement are grave and serious accusations, which are likely to impact Respondent's self-image and adversely affected his mental well-being. Thus, having regard to the law on the subject, we find no infirmity in the findings and observations of the trial court that the allegation of the Appellant in the Written Statement with respect to the impotency clearly falls within the concept of cruelty as defined under law.”

(Emphasis supplied)

37. Reference be also made to the judgment in *Pushpavathi Vs. Manickasamy*: I (2001)DMC 679 SC. In said case, husband had sought divorce on the grounds of cruelty and desertion. His such petition was allowed and he was granted divorce on both the grounds. In first appeal, such judgment was reversed and petition for divorce was dismissed. However, since the second appeal filed by the



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husband was allowed by the High Court, the matter was taken to Supreme Court by his wife. The consideration before the Supreme Court was to assess whether there was any cruelty or not. In that case, the High Court had noted that the wife had come up with serious allegation against her husband and mother-in-law and the same could not be established by her by examining any independent witness and such unfounded allegation constituted mental cruelty. Supreme Court observed that what is cruelty in one case may not amount to cruelty in another as it was a matter to be determined in each case having regard to the individual facts and circumstances. It was also observed that each and every allegation made against husband by the wife in the written statement, defending petition for divorce, cannot constitute mental cruelty. Relying on *V. Bhagat v. D. Bhagat (supra)*, it was observed that merely because there were allegation and counter-allegation, a decree of divorce cannot follow nor it could follow merely on the ground of delay in disposal of divorce proceedings.

38. In the backdrop of said precedents, it may be appropriate to revert to the allegations made by the appellant-wife in her written statement in relation to the alleged illicit relationship. The relevant portion, as appearing in para 4, is extracted as under:-

“..... Both the parties have cordial relations till August, 1991, when the petitioner developed illicit relations with a woman named Sunita and started residing somewhere else.

.....



The money earned by him was wasted in the bad habits and on the woman, with whom he was having illicit relations.

.....

The petitioner continued to have the bad habits and illicit relations, totally ignoring his family duties and responsibilities. On the contrary, petitioner made the life of the respondent miserable and filled with hardships and sufferings.”

39. In replication, said allegation was controverted in the following manner:-

“.....It is wrong and defamatory on the part of the respondent to allege that the petitioner developed illicit relations with a woman named Sunita or started residing some-where else. It is further wrong and denied that the petitioner used to come to the house in drunken position or started creating nuisance and abusing the respondent (wife) and the children. It is further wrong and denied that the money earned by him was wasted in the bad habits and on the woman and it is further wrong and denied that he was having the illicit relations with any woman.

..... *सत्यमेव जयते*

It is further wrong and denied that the petitioner continued to have the bad habits and illicit relations totally ignoring the family duties and responsibilities or that the petitioner made the life of the respondent miserable and filled with hardships and sufferings. The allegations of the respondent are wrong, false and misleading and also defamatory and the petitioner reserves his right to file the defamation proceedings and other appropriate steps against the petitioner no. 1. The



respondent is trying to create false evidence and is making one or the other false allegation to conceal and cover-up her own acts of omissions and commissions.”

40. We may also add that when the parties were directed to adduce evidence and when husband submitted his affidavit Ex. PW1/A sworn on 27.05.2006, not a word was mentioned by him regarding aforesaid allegation made by his wife about his being involved in illicit relation.

41. In the cross-examination, though, he denied any such extra marital relationship, he nowhere stated that such allegation had caused any mental trauma to him. Even in the affidavits filed by his sisters and maternal uncle and their cross-examination there is not even a whisper or suggestion that such allegations had inflicted any mental cruelty upon the husband.

42. Appellant-wife entered into the witness box and in her affidavit Ex. RW1/A, she reiterated the averment regarding her husband having an extra-marital affair. When she was cross-examined, nothing material was put to her in this regard. In response to one question, she merely answered that she had not filed any record of any complaint or notice pertaining to the illicit relation between her husband and Smt. Sunita. Besides the above, there is no suggestion of any kind whatsoever. There is no denial by or on behalf of the husband to the allegation of extra-marital affair or that such allegation was false or motivated, much less that it had caused any mental trauma to him.



43. When RW2 Ms. Sonal Sharma (daughter of the parties) entered into the witness box, she also, in her affidavit, deposed about the fact that her father was having an illicit relation. She was also cross-examined by the learned counsel for husband and during such cross-examination, she claimed that she learnt about such illicit relationship, not from any outsider but from the disputes between her parents. She also volunteered that she had even met said lady Sunita. Undoubtedly, it was suggested to her that she never knew Sunita or never met her but fact remains that it was not suggested to her that her father was not having any illicit relationship. To make things worse, it was suggested to her that it was rather her mother who was having extra-marital affair. Thus, he (respondent herein) doubted the character of his wife and indulged in her character-assassination by putting such suggestion to his own daughter.

44. Admittedly, no spouse should make reckless, scandalous and mischievous allegations in the pleadings. These can, certainly, have an adverse impact if these amount to grave mental cruelty to the other.

45. In the present case, though the wife had made allegation of extra-marital affair against her husband in her written statement, nonetheless, when the husband entered into the witness box and tendered his affidavit in evidence, he did not whisper even a word in this regard. His affidavit (Ex. PW1/A) is conspicuously silent on the said crucial score. He was the one who had come to the Court seeking dissolution of marriage and if he felt mentally traumatized by such



allegations, it was but expected that he would have deposed so in his affidavit Ex. PW1/A. This is a serious lapse on his part which disentitles him to seek dissolution of marriage on said ground.

46. Nothing would though turn on from the fact that the mother of the respondent had left behind a *Will* in which he was not a beneficiary as such *Will* (Mark RX) does not specify or indicate any reason thereof.

47. No doubt there is an allegation of extra-marital relationship in the written statement filed by the wife but, at the same time, mere fact that she is not able to prove the same would not necessarily mean that the allegation was *per se* false or actuated by any malice or ill-will, unless held so by the Court. Moreover, there is nothing to indicate that the allegation was found to be 'disproved'.

48. As noted above, for totally inexplicable reasons, respondent-husband did not seem to have taken such allegation as an instance of mental cruelty. He, nowhere, mentioned the same in his affidavit when he entered into witness box nor did he amend the Petition to incorporate the same as an instance of cruelty for grant of divorce.

49. The family court cannot substitute its own view in the matter as it is always the perception and the stand-point of the petitioner which matters the most, nothing else. Since petitioner-husband never claimed in his affidavit that such allegation had caused any mental cruelty upon him, the family court should not have assumed thus.



50. With regard to the contention of the wife that her husband had tried to set her ablaze, the family court has held that the wife could not substantiate her allegation. In this regard, we may note that some incident did take place on 23.10.1991 and the matter was also reported to the police. It seems that the police, merely, registered a case u/s 107/151 Cr.P.C. In her affidavit Ex. RW1/A, the wife mentioned about the aforesaid incident in Para-6 and no suggestion was put to her that no such incident had taken place or that such false allegation had caused mental trauma to him.

51. Thus, in the given factual matrix and the evidence led by the parties, there is nothing which may imply that such allegations were evidently false. These were also not held as ‘disproved’.

52. Reference may be had to the Judgment of the Andhra Pradesh High Court in *Naval Kishore Somani vs. Poonam Somani*:1998 SCC Online AP 370. In that case, the husband had filed a petition seeking dissolution of marriage on the ground of mental cruelty. He, however, failed to prove such allegations. He sought decree, also, on the ground that his wife, in her written statement and in defence, had made false and vexatious allegations against him, which she failed to prove. His plea before the High Court was to the same effect that since the wife had failed to prove the allegations of ill-treatment, it amounted to cruelty and, therefore, he was entitled to divorce.



53. It was held that undoubtedly, whenever false, scandalous, fallacious and baseless allegations are made by one party against the other, it does amount to cruelty. However, it was also held that a fact which was not proved does not necessarily mean that it was false one and thus it could not be contended that unproven charges made in the written statement were sufficient to constitute cruelty. It was also held that the burden was on the petitioner to show that the charges were false and the burden could not be thrown on the respondent because respondent had not come to the Court for seeking any relief. Thus, it was held that it was *sine-qua-non* for the petitioner to show that respondent's allegations, made in the written statement, were false.

54. As already noticed, in the present case, the husband had prayed for divorce on specified instances of cruelty which he could not prove. He then went on to seek divorce claiming that his wife had not been able to prove the above serious allegations questioning his conduct and character. However, he did not depose even a single word on this aspect when he submitted his affidavit in order to prove his case.

55. At the time of filing the evidence affidavit, it was incumbent and obligatory for him to have mentioned the same very specifically, if, at all, he was of the view that these allegations had caused mental trauma to him. He never did the same. The insignificant cross-examination of his wife also goes on to indicate that perhaps he does not deny his being in extra-marital relationship. His wife though could



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not prove the aforesaid allegations but fact remains that there is nothing which may show that these were false, deliberate or motivated. There is also nothing on record which may compel us to record that her such allegations stood disproved.

56. The family court should not have substituted its own view and should not have assumed that these allegations would have caused him mental trauma, particularly when the husband himself never cared to say so in his affidavit or even amend the Petition to incorporate such a plea.

57. In view of our foregoing discussion, we are of the view that the impugned judgment granting divorce to the husband is not sustainable. The Appeal is, resultantly, allowed and as a necessary corollary, impugned judgment dated 23.08.2012 passed by learned family court is set aside and petition seeking dissolution of marriage under Section 13 (1)(i-a) of Hindu Marriage Act, 1955 is dismissed.

58. No order as to costs.

MANOJ JAIN, J

SANJEEV SACHDEVA, J

AUGUST 08, 2023/dr