

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAT APP No. 98/2010

Judgment delivered on: 19.11.2010

Smt. Nitu Aggarwal Appellant Through: Mr.Rajiv Shukla, Adv.

Versus

Sh.Gireesh Gupta Respondent Through: Mr.Gyan Prakash, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may

be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported

in the Digest? Yes KAILASH GAMBHIR, J. Oral:

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1. By this appeal filed under Section 28 of the Hindu Marriage Act, 1955 the appellant seeks to challenge MAT APP No. 98/2010 Page 1 of 11 the judgment and decree dated 27.4.2010, passed by the learned Additional District Judge, Delhi, whereby a decree of judicial separation was passed.

2. Brief facts of the case relevant for deciding the present appeal are that the parties got married on 5.11.03 at Noida according to Hindu rites and ceremonies and a female child was born out of wedlock on 14.9.04. The matrimonial relations between the parties were stained right from the very beginning of their married life and distressed by the behaviour of the appellant, the respondent filed a petition under section 10 of the Hindu Marriage Act, 1955 for a decree of judicial separation on the ground of cruelty which vide judgment dated 27.4.10 was granted. Feeling aggrieved with the same, the appellant has filed the present appeal.

3. Mr. Rajiv Shukla, counsel for the appellant submits that the learned trial court has wrongly assumed that the appellant had consumed some poisonous substance with a view to commit suicide. The contention of the MAT APP No. 98/2010 Page 2 of 11 counsel for the appellant is that the respondent used to compel and force the appellant to consume certain medicines under the pretext that the same were good for her health and for the child in the womb. Counsel further submits that the respondent also failed to prove on record that an attempt of suicide by the appellant was made with a view to coerce the respondent to accede to any of her demands and in the absence of any such assertion on the part of the respondent, no logic or rationale behind the alleged attempt of suicide by the appellant could be established by the respondent. Explaining the contradiction on the part of the appellant in the FIR lodged by her under Section 498A/406/34 IPC, counsel submits that even if the appellant in the said FIR took a stand that the respondent had given her something to drink, the same will not make any difference vis-a-vis her stand in the matrimonial proceedings where she had stated that the respondent used to administer some medicines. Counsel thus submits that there was a minor variation in the stand of the appellant which would not amount to any kind of self contradiction on MAT APP

No. 98/2010 Page 3 of 11 her part. Counsel thus states that there is clear infirmity and perversity in the findings of the learned trial court on this aspect and the same should be set aside.

4. Assailing the impugned judgment on another ground, counsel submits that the learned trial court has wrongly observed that the implication of the relatives of the respondent is in itself an act of cruelty against the respondent. The contention of the counsel for the appellant is that the mere fact that the said relatives were not charge sheeted by the police would not show that the allegations leveled by the appellant against the relatives of the respondent were false. The contention of the counsel is that at the stage of framing of charges, it would be for the concerned Criminal Court to see whether based on the allegations leveled by the appellant in her criminal complaint such relatives are required to be proceeded against or not.

5. Counsel for the respondent on the other hand refutes the submissions made by the counsel for the MAT APP No. 98/2010 Page 4 of 11 appellant and submits that the present appeal deserves to be dismissed at the admission stage itself as the appellant has failed to point out any material illegality or perversity in the order passed by the learned trial court.

6. I have heard learned counsel for the parties.

7. The petition under Section 10 of the Hindu Marriage Act was preferred by the respondent husband so as to seek a decree of judicial separation from the appellant on the ground of cruelty. The marriage between the parties was solemnized according to Hindu rites and ceremonies on 5.11.2003 and both the parties are well educated academically. One of the allegations leveled by the respondent against the appellant is that the appellant had consumed some poisonous drink on 18.8.2004 and her condition became very critical in the morning of 18.8.2004 and she was immediately taken to Kailash Hospital, Noida and it is only on account of the timely action taken by the respondent and his parents that life of the appellant and the unborn child could be saved. It is an admitted case of MAT APP No. 98/2010 Page 5 of 11 the parties that subsequent to the filing of the said petition by the respondent husband the appellant wife got registered one criminal complaint under Section 498A/406/34 IPC vide FIR No. 498/2005 not only against the respondent but his parents and some other relatives as well. Some of the relatives implicated by the appellant in the said complaint case were the residents of far off places like Saharanpur and Baroda. It is also an admitted case of the parties that the relatives of the respondent were not charge- sheeted by the police as no incriminating material was found against them during the course of investigation. The respondent has taken this false implication of his relatives on the part of the appellant as a ground of cruelty. Learned trial court has also granted decree of judicial separation in favour of the respondent and against the appellant taking the said two grounds clearly establishing the cruel conduct of the appellant towards the respondent. Before the learned trial court as well as before this court the appellant has failed to disclose as to what kind of medicines were being administered by the respondent to her during the stage of MAT APP No. 98/2010 Page 6 of 11 pregnancy on the pretext of the same being good for her health and that of the unborn child. It is incomprehensible to accept the argument that the appellant who is a well qualified lady having a degree of Chartered Accountancy and Company Secretary would take the medicines without even knowing what kind of medicines she was taking. The appellant has also clearly taken a contradictory stand in her criminal complaint, wherein she stated that she was given something to drink by the respondent and his parents on the pretext that it is good for her pregnancy. The appellant has also not denied the fact that she was admitted to Kailash Hospital in the morning of 18.8.2004 where she was treated after having consumed some poisonous substance. It is also not in dispute that the appellant did not lodge any police complaint against the respondent or his parents complaining about administration of some poisonous medicines by her husband or his parents. The learned trial court has duly taken into consideration all these circumstances into account and thus has arrived at a finding that such an attempt by the appellant to commit MAT APP No. 98/2010 Page 7 of 11 suicide is an act of cruelty on her part upon her husband.

8. The concept of cruelty is of wide amplitude and has not been defined in the act. The Apex Court through various judicial pronouncements has explained the concept and scope of cruelty. It would be useful here to

refer to the judgment of the Apex Court in the case of A. Jayachandra vs. Aneel Kaur AIR 2005 SC 534 where it was held as under:

"12. To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

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13. The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. 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. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. 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." Cruelty therefore is to be garnered taking the cumulative effect of all the factors into play. The parties are well educated and such an attempt to end her life by the appellant would certainly cause mental agony to the respondent. It would aggravate the case when the appellant tried to commit suicide in the state of pregnancy. A highly educated lady claiming that she was administered poisonous substance which she was unaware of does not help her case. No doubt in the petition the respondent did not give any specific reason or cause behind such suicidal attempt but it goes without saying that such an act even in the absence MAT APP No. 98/2010 Page 9 of 11 of any reason certainly would constitute an act of cruelty on the respondent husband.

9. Even on the second argument of the counsel for the appellant, this court does not find any merit in it. The complaint under Section 498A/406/34 IPC was lodged by the appellant during the pendency of the said petition filed by the respondent for judicial separation. In her complaint the appellant roped in various relatives of the respondent which include his uncle and aunt residing at Saharanpur and brother and sister in law residing at Baroda. The learned trial court is right in taking a view that false implication of relatives who were residing at far off places from the matrimonial home of the appellant and against whom there are no specific allegations of cruelty in itself is an act of cruelty by the appellant towards her husband. However, as these relatives were not charge-sheeted by the police the same would clearly show that the police did not find any incriminating material against these relatives during the investigation and this by itself is sufficient enough to show MAT APP No. 98/2010 Page 10 of 11 that the appellant had roped in and implicated all these relatives with vengeance to cause unnecessary harassment to them and such act certainly would cause cruelty to the husband with whom they are related. Implicating the relatives with a motive to harass the relatives, residing in different parts of the country, is nothing but a ruthless act of harassment. Therefore, the respondent

husband has successfully proved cruelty on the part of the appellant on both the counts.

10. In the light of the above, this court does not find any infirmity or illegality in the findings arrived at by the learned trial court. There is no merit in the present appeal and the same is hereby dismissed at the stage of admission itself.

November 19, 2010 KAILASH GAMBHIR, J mg

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