

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Judgment Reserved on: October 03, 2016*

% *Judgment Delivered on: October 07, 2016*

+ **MAT.APP.(F.C.) 63/2016**

SANTOSH SAHAY ..... Appellant

Represented by: Mr.A.K.Sharma &  
Mr.C.M. Sharma, Advocates.

versus

HANUMAN SAHAY ..... Respondent

Represented by: Mr.Arunav Tiwari, Advocate  
with respondent in person.

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE PRATIBHA RANI**

**PRATIBHA RANI, J.**

1. The appellant/wife is in appeal impugning the judgment and decree dated January 30, 2016 whereby the respondent/husband has been granted a decree of divorce on the ground of cruelty. For the sake of convenience we shall be referring the parties as 'the wife' and 'the husband'.

2. HMA Petition No.73/10 (Old No.402/07) was filed by the husband seeking dissolution of marriage with the respondent on the ground of cruelty and desertion. The status of the parties at the time of marriage as pleaded in para 2 of the divorce petition was as under:

(i) Husband - 23 years - Hindu Bachelor

(ii) Wife - 18 years - Virgin

3. The marriage was consummated. The couple was blessed with two sons – elder one born on July 12, 2003 and younger one born on September 09, 2005.

4. It was an arranged marriage. The husband was belonging to a family of farmers though employed as teacher in Rajasthan. The father of the wife was a Government servant. As per the husband the wife was not comfortable leading a rural life in the village. When the husband got selected as a teacher in Delhi after one year of marriage, he brought his wife to Delhi. There were some temperamental differences between the husband and wife and of the wife with her in-laws. As per the husband the wife used to disrespect the guests visiting them and was not even preparing tea for them. His wife was indulged in some *tantrik* activities and performing '*Tantrik Kriya*' which terrified him. She also used to light a *diya* during midnight and perform *puja*. She also put clove, cardamom and beetle nut under his pillow cover. The wife also used to tie half baked bread smeared with vermilion on her belly, prepare a effigy of flour and used to insert the iron nail (*keel*) in it and immerse it in Yamuna river. She made an attempt to strangulate him with her hands. She also used to avoid physical relations. Though he tried to make her understand the need to satisfy the sexual desires, she did not pay any heed and continued avoiding him. Not only that, she also accused him of having illicit relationship with another lady. The husband has also pleaded that he is a non-smoker a teetotaller but he was defamed by her as an alcoholic and womanizer. This adversely affected his reputation in the family so much so that he even thought of committing suicide. The averments made in para 46 of the petition refer to the incident where after the wife left the matrimonial home, are extracted hereunder:

*'46. That from that day the Petitioner had the sleepless night, the petitioner was always worried about his sons and their life. The petitioner never had sleep after that day. The respondent again one day when petitioner was sleeping came and again tried to strangulate him. The respondent was as if she was under some evil spell, taking the knife in her hand she tried to*

*kill the petitioner. It was midnight time; the petitioner after getting rid of her went out of his house and keeps on roaming in the street like a mad whole night. The bad thoughts about his sons keep on haunting the Petitioner whole night. The petitioner after mustering up some courage and believing god went back to his house in the morning but to his shock and his dismay, the respondent was gone with his both son. That when enquired from the neighbours it transpired that the Respondent without informing anybody with her bag and baggage.'*

5. The husband sought divorce on the ground of cruelty and desertion.
6. In the written statement the wife denied all the instances of cruelty and desertion alleged in the divorce petition. She pleaded that her husband was not a bachelor at the time of his marriage with her. His first wife committed suicide by jumping into the well because of the harassment and torture caused to her. After her marriage she was also severely beaten by her father-in-law Sh.Ram Sahay and brothers-in-law Sh.Ranjeet, Sh.Parbhas Dayal, Sh.Ram Gopal and Sh.Ram Babu. She also claimed that she was harassed on non-fulfilment of the dowry demand. While pleading that the parties were having normal conjugal relationship till the period March 28, 2007 to June 18, 2007, when the husband had gone to attend the marriage of her sister on June 19, 2007 at Alwar, Rajasthan, he returned without attending the marriage.
7. While raising preliminary objection about the maintainability of the divorce petition but admitting relationship of husband and wife between the parties, the wife pleaded it to be a case of she being harassed on account of dowry demand. She also pleaded that the husband had relations with other women. He always came late at night in drunken state and did not share bed with her in the same room for sleeping at night and had been neglecting not only her but also his matrimonial obligations.

8. While the husband examined himself as PW1 he also produced two more witnesses as PW2 - Kishan Lal and PW3 - Bhagwan Dass who visited them and were insulted by his wife.

9. The wife examined herself as RW1.

10. After considering the evidence adduced by the parties, learned Judge, Family Court dismissed the divorce petition on the ground of desertion for the reason that the divorce petition was filed before expiry of statutory period of two years from the date of desertion.

11. On the ground of cruelty, learned Judge, Family Court concluded as under:

(i) The allegations regarding demands of dowry by the wife are general, vague and ambiguous.

(ii) There was no evidence of her husband being earlier married or the wife committing suicide on account of dowry demand.

(iii) The wife has tarnished the reputation of the husband by assassinating his character that he was having relationship with a school teacher.

12. Written submissions running into 13 pages have been filed by the learned counsel for the appellant, major part of which refer to the pleadings in the divorce petition. The contentions raised in the written submissions to disprove cruelty by the wife can be noted as under:

(i) The husband was under graduate at the time of marriage. The fact that he not only completed his graduation but also got a Government job after one year of marriage reflects that the wife provided a peaceful and healthy environment at home.

(ii) The persons who were allegedly defamed or insulted by the wife have not been examined and even PW2 and PW3 did not depose about any

rumour being heard by them which had the effect of adversely affecting the character of the husband.

(iii) The wife is only 8<sup>th</sup> Class pass and there is no question of she getting any job in place of her husband if something goes wrong with him.

(iv) Birth of two children out of this wedlock indicates her dedication and love for the husband.

(v) The allegation against her of making long calls from PCO on the false pretext, that she was calling her family, has not been established.

(vi) Name of the *Tantrik* who performed the *puja* is not disclosed.

(vii) No complaint was made to the police when the husband was allegedly tried to be strangulated by her.

(viii) She always expressed her desire to live with the husband which has not been considered by the Family Court.

(ix) The legal recourse taken by her by filing petition under Section 125 Cr.P.C. and FIR No.901/07 under Section 498A/406/34 IPC at PS Uttam Nagar against the husband and his family does not amount to cruelty.

13. Before dealing with the contentions raised on behalf of the wife we would like to note that in the written statement filed on August 23, 2007 by the wife she had made various defamatory allegations against the husband especially in preliminary objection No.5 which reads as under:

*'That the petitioner is a teacher and he has the relation with other women and he always came late at night with drinking condition and he was not shared, the room for sleeping at night and thus, the respondent has neglecting from the matrimonial relation as husband and wife, hence, this present petition is liable to be dismissed with cost.'*

14. Thereafter in FIR No.901/07 under Section 498A/406/34 IPC, registered on December 07, 2007 at PS Uttam Nagar, apart from making allegations of she being harassed and tortured on account of dowry demand,

without referring the month/year even by approximation she pleaded of being compelled to bring ₹50,000 from her parents for purpose of arranging a job for the husband. She apprised her parents about the physical and mental torture and the beatings given by her father-in-law as well younger brothers of her husband, she being dragged out of the house and again given beating by kicking and hitting with fist and blows. She talked to her father who sent ₹50,000 through her *Fufa* - Sh.Madan Lal and thereafter she was kept well for a few days. The FIR further reads as under:

*'mere pati Hanuman Sahay sarkari school mein master ki naukri par lag gaye hain. Jo kuch baad hi ek aurat jo mere pati ke school mein teacher hai ko ghar par laaye aare mujhe batlaya ki yeh meri dharma ki behan hai lekin ¾ mah baad hi uske avaid sambandh sthapit kar liye aur ab mujhe tatha mere bachhon ko beghar karke nikalna chahta hai. Mere pita ji biradari ke paanch-saat logon ko le kar iske paas (pati ke paas) aaye aur samjhane ki koshish ki jis par Hanuman Sahay (pati) ne kaha ki main to dusari aurat rakhunga. Jo chahe kar lo. Aap se anurodh prarthna hai ki meri shikayat par uचित karyavahi kar ke mera jeevan surakshit kiya jaaye.'*

15. Perusal of the LCR shows that when the wife left the matrimonial house, both the children were left with the father. Thereafter one child was taken away by the wife. In MAT Appeal No.10/2012 filed by the husband the order dated February 09, 2012 passed by this Court records his concern as father for the child Yash who was taken by the wife to the village. He was studying in Air Force School at Palam, Delhi. The said order reads as under:

*'the only grievance of the appellant is that the child is studying in a village and he wants that the child should study in Air Force School at Palam, Delhi where he was earlier studying. The appellant/husband has also agreed to bear the school expenses of the child apart from maintenance of ₹6,000/- which he is already paying to the respondent/wife.'*

*He has also stated that he has no objection if the respondent/wife continues to stay in the house of the appellant at Mohan Garden, Uttam Nagar, where she was earlier residing. The learned counsel for appellant has stated that appellant has no objection if custody of child remains with respondent/wife as is ordered by Ld. Trial Court. The respondent is present in person. The counsel for respondent, after taking instructions from her, has stated that the respondent has no objection and has agreed that she will bring the child Yash in Delhi and she has also no objection in staying in the aforesaid accommodation and also sending the child to the Air Force School as per wish of appellant/husband. Appellant/husband has agreed that it will be his responsibility to get the child admitted in the said school.'*

16. It is an admitted fact, recorded by the Family Court, in the order on application under Section 24 of the Hindu Marriage Act, 1955 that the house which was purchased by the husband in Delhi is in use and occupation by the wife since beginning and it is the husband who is residing in a rented accommodation. Thus the allegation made by the wife that he intended to dispossess them from the house, which was purchased by the husband by availing loan facility, is contrary to the factual situation noted in the two orders (i) by the Family Court while disposing of an application under Section 24 of the Hindu Marriage Act, 1955; and (ii) by this Court in MAT Appeal No.10/2012.

17. Testimony of PW2 and PW3 proved that when they visited the house of the appellant, they had to face insult and humiliation at the hands of the wife. They were produced by the husband not to prove that his character has been assassinated but to bring on record the conduct of his wife even with the guests visiting their house.

18. So far as character assassination of the husband is concerned, it is a matter of record that such accusations have been made not only in the

written statement filed on August 23, 2007 but also thereafter in the FIR registered on December 07, 2007. It may be relevant to refer here that after taking the plea in the written statement that the husband is not only a drunkard but also lives in adultery and failed to perform matrimonial obligations, she pleaded of being harassed after the marriage and physically assaulted for not meeting the dowry demands. The written submissions are just contrary to that. Wherein she projected herself to be a good wife providing right kind of environment to the husband for study and preparing for competition for government job, she could not have done so had she been harassed and physically tortured on above grounds. It may be relevant to mention here that the marriage was solemnised on May 01, 2001 and FIR making such types of allegations was lodged on December 07, 2007, almost after a period of six and a half years of marriage.

19. The averment made in the written statement that the husband and in-laws tried/threatened to set her on fire by pouring kerosene oil on her is conspicuously absent in the FIR. Making such type of accusations in the written statement in itself amounts to causing mental cruelty to the husband especially when his entire family has been blamed for giving beatings on non-fulfilment of the dowry demand. The wife has not examined either her father or her *Fufa* to establish that the alleged demand of ₹50,000 was fulfilled for arranging a job for the husband nor this fact is pleaded in the written statement. It is a matter of record that he got the job on merits. The husband has education to her sons in a reputed school in Delhi even after the wife left him and continue doing so even after litigation started. Even if all the pleas by the wife are considered to be proved, she could not establish herself to be a victim of matrimonial offence.

20. With a view to examine the correctness of the finding returned by the learned Judge, Family Court that the husband was subjected to cruelty, we have re-appreciated the entire evidence. First of all we may note that plea of the wife that her husband was already married and his first wife committed suicide by jumping into a well, which was concealed at the time of her marriage to the respondent, has not been substantiated by any material – oral or documentary. Suffice it to note here that a case of unnatural death of young bride and that too in a village can never be kept a secret. Such type of unnatural deaths invite penal action. We restrict our discussion only on the under mentioned four grounds for the reason if these grounds are substantiated by the respondent/husband, we need not delve any further:-

(1) The wife insulting and humiliating not only the husband and in-laws but also the guests visiting their house.

Apart from the version of PW-1 - the husband, PW-2, Kishan Lal has also stated that on his visit to the house of the parties whenever the appellant/wife was asked to prepare tea, she used to abuse without caring for the presence of the guests. PW-3, Bhagwan Dass visited the house of the parties on the occasion of the birth of their younger son. He has also stated that without bothering for the presence of other guests the wife was abusing the husband that he had not properly invited her parental family.

(2) Assassinating the character of the husband as leading an adulterous life and projecting him as drunkard.

Not only in the written statement filed on August 23, 2007 but also in the FIR registered on December 07, 2007 the husband has been accused of having illicit relationship. However, neither in the written statement nor during cross-examination of PW-1 the name of the lady has been disclosed. It may be noted that in the written statement the illicit relationship was

stated to be with some women but in the FIR the lady was referred to be a teacher in the same school without disclosing her name. No evidence was led by the respondent/wife to bring on record that some lady was living in the same house along with them as his '*Dharam Behan*' or that after 3-4 months her husband established illicit relationship with her. She has not led any evidence in support of these allegations or confronted the husband during his cross-examination

Legal position is well settled that making of allegations against the spouse assassinating his character amounts to mental cruelty. In the decision reported as (2003) 3SCR 607, *Vijaykumar Ramchandra Bhate Vs. Neela Vijaykumar Bhate*, the allegations of unchastity and extramarital relations were made by the husband against the wife. The Supreme Court considered it to be constituting mental cruelty and held as under:

*'Levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra-marital 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 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 the Supreme Court.'*

In the instant case the spouse making such allegations is wife who has branded her husband as a drunkard and leading an adulterous life. The effect of such allegations on the state of mind of the husband is reflected in para No.44 of the divorce petition. The husband has pleaded that he felt like

committing suicide when his wife made such type of accusations despite he being a non-smoker and teetotaler but desisted for the sake of his son.

(3) Accusing the husband and his entire family of treating the wife with physical and mental cruelty on non-fulfilment of the dowry demand.

The marriage between the parties was solemnized on May 01, 2001. For more than six and a half years they lived together initially at his native place, then in Delhi. There was no averment in the written statement of any specific dowry demand being fulfilled. For the first time at the stage of registration of FIR in December, 2007 the allegations were made of fulfilment of the demand of ₹50,000 to arrange a job for the husband and the money being sent by her father through her uncle (*Fufa*) Sh. Madan Lal, without even specifying the month/year of meeting the demand. The husband has qualified SSB just after one year of the marriage and is employed as a teacher in MCD school. This shows that he has qualified the competitive examination and got selected on merits. Absence of any such pleading in the written statement filed just four months prior to the registration of FIR is indicative of the falsity of such allegations. We are not informed about the fate of the investigation in the above FIR No. and whether the trial has been concluded or not. In this case we are dealing with the matrimonial offence which is required to be proved on probability and not on the standard of 'proof beyond reasonable doubt' as required in a criminal trial. We have drawn the above inference on the basis of averments made in the written statement dated August 23, 2007 and in the FIR dated December 07, 2007.

(4) Performing 'Tantrik Kriyas' through a Tantrik and herself, the acts under the evil spell i.e. attempt being made on the life of the husband repeatedly to strangulate him and attack him with a knife.

In para Nos.38 and 39 of the divorce petition the husband had pleaded about the '*Tantrik Kriyas*' being performed by the wife through *Tantrik* as well herself. In para No.45 of the petition the husband has pleaded that one night his wife tried to strangulate him which filled him with terror and shock. In para No.46 of the petition he again pleaded that he was spending sleepless nights worrying about his life and of his son. Another attempt made on his life by his wife was also by trying to strangulate him. His wife appeared to be under some evil spell and was having the knife in her hand at mid-night. He got out of the house and kept roaming on the street, feeling haunted. In the morning when he returned he found his wife missing with both the sons. He informed the incident telephonically to his father-in-law.

21. In the written statement the above averments have been simply denied by the wife.

22. We do not want to delve about motive behind such '*Tantrik Kriyas*' or the intention behind keeping clove, cardamom and beetle nut under his pillow cover. The question to be decided is whether such acts by the wife constitute mental cruelty. A detailed analysis is available in a well reasoned decision reported as AIR 1961 P&H 125 *P.L.Sayal Vs. Smt.Sarla Rani*, in which numerous decisions have been cited and discussed on this subject. In the above noted case, it was conceded by the wife that some kind of magical charm or tawij or potion was administered by her to the petitioner/husband sometime in the end of 1951. Thereafter, the husband became ill. Apart from nervous breakdown he suffered various other complications. This was pleaded as an act of cruelty to seek judicial separation under Section 10 of Hindu Marriage Act, 1955. The petition was dismissed and impugned in appeal bearing FAO No. 72-D/1957 (decided on September 22, 1960).

23. The question for determination in the appeal was whether the above act of the wife constitutes such cruelty as to cause a reasonable apprehension in the mind of the husband that it was harmful or injurious for him to live with her. While deliberating on the above subject it was held:-

*'6. Considering the state of mind, the status and the prevailing notions of the strata of society to which the parties belong, the conclusion appears to be irresistible that a state of tension exists between the husband and the wife and the husband, at any rate, is afraid of living with his wife lest such a thing should happen again. Admittedly, the parties are not living together and their marital life has ceased to exist from 1953. It is to be seen in this context whether the conduct of which the petitioner complains comes within the ambit of legal cruelty according to the meaning attached to this word by eminent authorities.*

x x x x x

*11. In my judgment, the crucial point to determine is whether there is reasonable apprehension in the mind of the petitioner of a similar act from his spouse in future. The evidence in this case leaves no doubt in my mind about the reality of this fear in the mind of the petitioner. I also think that the fear in the mind of the petitioner, in the context and circumstances of this case, is not groundless and is based on the instinct of self-preservation. He has suffered a great deal from the hands of an ignorant wife and no amount of repentance can undo the wrong that has been wrought. In this situation and state of affairs, it would be futile to expect the petitioner and the respondent to live a normal married life again and it would be a plain denial of justice to keep them within the bonds of marriage.'*

24. Reverting to the facts of the instant appeal, we find that the acts of cruelty attributed to the wife have been proved by the husband not only by his own testimony but also by examining two other witnesses who visited their house and left insulted and humiliated. The allegations of dowry demand, physical and mental harassment made by the wife in the written

statement and even going to the extent that she was threatened to be set on fire by putting kerosene oil on her are of very serious nature. Most of the allegations made in the written statement including threat to set her on fire are missing in the FIR No.901/07 under Section 498A/406/34 IPC, registered at PS Uttam Nagar just after four months of filing the written statement. The wife has been assassinating the character of the husband by accusing him of having illicit relationship with his colleague or projecting him as an alcoholic without there being even an iota of evidence to establish the above fact even on probabilities. We have unrebutted testimony of the husband that he is a non-smoker, teetotaler and was compelled to walk out of the house fearing threat to his life because of the '*Tantrik Kriyas*' being performed by his wife. This is sufficient to create fear in his mind about his safety. The husband cannot be made to spend sleepless night fearing for his life.

25. The admitted fact that he purchased a house in Delhi after availing home loan facility and has given to his wife to live there by shifting to a rented accommodation, bearing the maintenance and education expenses of both sons and even ensuring that his children study in a good school in Delhi i.e. Air Force School Delhi reflect that he is a caring father having no intention to sell either the house or intend to dispossess them to settle in life with another lady.

26. The disgusting accusations made by the wife against the husband of he being in illicit relationship, referring him as a drunkard are serious in nature assassinating his character and harming his reputation as a teacher. She has failed to prove any of the above but yet resisting the divorce which if accepted, would make life of the two even more complex and unbearable. The allegations made not only in the written statement but also in the FIR

against the husband and his entire family have the effect of causing mental cruelty to him and his entire family. It is now beyond cavil that if a false character assassination allegation is made by either spouse it would invariably constitute matrimonial cruelty to entitle other spouse to seek divorce.

27. The findings recorded by the learned Judge Family Court in our opinion are fully borne out from the material on record and cannot be faulted with. Therefore, the decree of divorce granted by the Family Court has to be upheld.

28. The appeal is dismissed.

29. LCR be sent back alongwith copy of this order.

30. No costs.

**PRATIBHA RANI**  
**(JUDGE)**

**PRADEEP NANDRAJOG**  
**(JUDGE)**

**October 07, 2016**  
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