

***Before Rajan Gupta & Manjari Nehru Kaul, JJ.***

**SHIVANI RATHI—Appellant(s)**

*versus*

**ACHAL MAHESHWARI—Respondent(s)**

**FAO No.2800 of 2018**

September 10, 2019

***Hindu Marriage Act, 1955, S.13(1)(ia)—Divorce—Cruelty—Marital affair of wife—Not possible to give precise definition of what would constitute cruelty in marriage—To determine degree of cruelty allegedly inflicted on spouse same would have to be inferred from consequences of act and not from act alone—Wife admitted exchange of e-mails between her and another man—FIR registered by her against husband—Thus, husband suffered acute mental agony and torture on account of acts and conduct of wife—Decree of divorce in favour of husband upheld.***

*Held that*, it was also urged that the Ld. Family Court went beyond the pleadings and erred in dissolving the marriage between the parties on grounds of cruelty by concluding that she was having an affair with Vibhor Gupta.

(Para 9)

*Further held that*, it is not possible to give a precise definition of what would constitute or amount to cruelty in a marriage. Therefore, to determine the degree of cruelty allegedly inflicted on a spouse in a marriage, the same would have to be inferred from the consequences of the act and not from the act alone.

(Para 10)

*Further held that* a perusal of the evidence on record adduced by the appellant-wife, reveal many gaping holes in her testimony. She has admitted to the exchange of the e-mails between her and Vibhor Gupta and vide Ex.P1, she has apologized to the respondent-husband and given him an assurance that she would not repeat her mistakes in future. In this background, her version that password of Vibhor Gupta had been sent by him to her so that she could access his e-mails for official work and respondent-husband on getting to know the password of Vibhor Gupta fabricated the e-mails between her and Vibhor Gupta, is hard to digest and deserves to be rejected outrightly. It is very apparent that the appellant-wife is trying to thus, plug the holes which

have appeared in her deposition by weaving stories.

(Para 11)

*Further held that* another fact, which cannot be lost sight of is that in FIR dated 29th September, 2015, which was registered against the respondent-husband at the behest of the appellant-wife, he had to seek regular bail. During the course of hearing, it has been brought to our notice that in the aforementioned criminal case, the respondent-husband earned an acquittal.

(Para 12)

*Further held that,* it is thus obvious that the conduct of the wife was seemingly deliberate. It goes without saying that the husband would have suffered acute mental agony and torture on account of the acts and conduct of the appellant—wife. If this would not amount to cruelty, then this Court is at a loss as to what actually could be termed as 'cruelty'.

(Para 13)

Amrita Nagpal, Advocate  
*for the appellant(s).*

Dinesh Arora, Advocate  
*for the respondent(s).*

### **MANJARI NEHRU KAUL, J.**

(1) The instant appeal has been preferred by the wife – Shivani Rathi, whereby, she has impugned the judgment and decree dated 28<sup>th</sup> February, 2018, passed by the Ld. Additional Principal Judge, Family Court, Gurugram (hereinafter referred to as 'Ld. Family Court'), vide which the petition filed by the respondent-husband/Achal Maheshwari, under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), seeking dissolution of his marriage with the appellant-wife on the ground of cruelty, was allowed.

(2) A few facts necessary for adjudication of the instant appeal, as pleaded in the petition filed by the respondent-husband (petitioner therein) before the Ld. Family Court, may be noticed. The marriage between the parties was solemnized on 19<sup>th</sup> April, 2014. No child was born out of the said wedlock. It was a simple marriage sans any dowry. Right from the beginning of their marriage, it was alleged by the husband that behaviour and the attitude of the wife was highly unbecoming and harsh towards him and his family in as much as during their honeymoon from 21.04.2014 to 25.04.2014, she avoided the

respondent and intentionally refused to have conjugal relations with him. On 30<sup>th</sup> April, 2014, the appellant-wife tried to kill the respondent-husband and his family, but they managed to save themselves. The respondent-husband pleaded that the wife was having a love affair with one Vibhor Gupta *qua* which there was enough documentary evidence in the form of messages and e-mails to support the same. Said Vibhor Gupta along with parents of the wife would interfere in the matrimonial life of the parties. On 16<sup>th</sup> November, 2014, the wife in connivance with Vibhor Gupta and her parents left the company of the respondent-husband in his absence, but not before taking along with her all her jewellery, clothes and other valuables. The cruel and hostile behaviour meted out to him by the appellant-wife led the respondent-husband to slip into depression. Despite his earnest efforts to save his marriage, he was unsuccessful. Hence, he prayed for dissolution of his marriage.

(3) On the contrary, the appellant-wife (respondent therein) refuted and denied the allegations of the respondent-husband, in her written statement filed before the Ld. Family Court. She *inter alia* alleged that there had been repeated dowry demands as well as demand of a car and cash by the husband and his family. As she was unable to fulfill their demands, she was physically and mentally abused and harassed by the respondent-husband and his family. Resultantly, an FIR dated 29<sup>th</sup> September, 2015 was lodged against the husband and his family at Saharanpur. She alleged that all the gifts and jewellery received by her at the time of marriage were still in the possession of her mother-in-law. She submitted that despite discharging all her matrimonial duties and obligations sincerely, the respondent-husband and his family remained dis-satisfied. She categorically denied the allegations of illicit relations with Vibhor Gupta as being totally false.

(4) From the pleadings of the parties, the following issues were framed by the Ld. Court below:-

“1. Whether the petitioner is entitled for a decree of divorce on the grounds as mentioned in the petition ? OPP

2. Relief.”

(5) Both the parties adduced evidence in support of their respective stands before the Ld. Family Court. The respondent-husband himself stepped into the witness-box as PW1, while, the appellant-wife examined herself as RW-1.

(6) After analyzing the evidence led by the parties and also the material on record, the Ld. Family Court allowed the petition filed by

the husband and dissolved the marriage between the parties under Section 13(1)(ia) of the Act on the ground of cruelty.

(7) We have heard learned counsel for the parties and have also gone through the evidence and other material on record.

(8) The parties were directed to remain present before this Court vide order dated 12.11.2018. We interacted with the parties at length, but the possibility of any amicable settlement being arrived at between them seems next to impossible. During the course of arguments the parties reiterated their earlier versions and maintained their respective stands as taken before the Ld. Court below.

(9) Learned counsel for the appellant-wife challenged the impugned judgment by urging that the Ld. Family Court failed to appreciate that there was no cogent, much-less, convincing evidence adduced by the husband to substantiate the allegations of cruelty against her. Hence, at best, the allegations could be said to be trivial differences and misunderstandings, which do arise in every marriage. It was also urged that the Ld. Family Court went beyond the pleadings and erred in dissolving the marriage between the parties on grounds of cruelty by concluding that she was having an affair with Vibhor Gupta.

(10) It is not possible to give a precise definition of what would constitute or amount to cruelty in a marriage. Therefore, to determine the degree of cruelty allegedly inflicted on a spouse in a marriage, the same would have to be inferred from the consequences of the act and not from the act alone.

(11) A perusal of the evidence on record adduced by the appellant-wife, reveal many gaping holes in her testimony. She has admitted to the exchange of the e-mails between her and Vibhor Gupta and vide Ex.P1, she has apologized to the respondent-husband and given him an assurance that she would not repeat her mistakes in future. In this background, her version that password of Vibhor Gupta had been sent by him to her so that she could access his e-mails for official work and respondent-husband on getting to know the password of Vibhor Gupta fabricated the e-mails between her and Vibhor Gupta, is hard to digest and deserves to be rejected outrightly. It is very apparent that the appellant-wife is trying to thus, plug the holes which have appeared in her deposition by weaving stories.

(12) Another fact, which cannot be lost sight of is that in FIR dated 29<sup>th</sup> September, 2015, which was registered against the respondent-husband at the behest of the appellant-wife, he had to seek

regular bail. During the course of hearing, it has been brought to our notice that in the aforementioned criminal case, the respondent-husband earned an acquittal.

(13) It is thus obvious that the conduct of the wife was seemingly deliberate. It goes without saying that the husband would have suffered acute mental agony and torture on account of the acts and conduct of the appellant-wife. If this would not amount to cruelty, then this Court is at a loss as to what actually could be termed as 'cruelty'.

(14) The argument of the learned counsel for the appellant-wife that the allegations of the respondent-husband against the wife on the face of it were trivial differences are bereft of any merit, because, one of the essential ingredients and the foundation on which a marriage rests is mutual trust and respect for each other, which seemingly has evaporated between the parties.

(15) As a sequel to the above, we do not find any ground, which would warrant interference of this Court in the impugned judgment. Accordingly, the instant appeal is dismissed and the judgment and decree dated 28<sup>th</sup> February, 2018 of the Ld. Family Court, are upheld.

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*Ritambhra Rishi*