

(2013) 05 DEL CK 0357
In the Delhi High Court
Case No : FAO 108 and 109 of 2013

Suman Singh

APPELLANT

Vs

Sanjay Singh

RESPONDENT

Date of Decision : 23-05-2013

Acts Referred:

Hindu Marriage Act, 1955 — Section 13(1)(ia), 9
Penal Code, 1860 (IPC) — Section 406, 498A

Citation : (2013) 200 DLT 638 : (2013) 2 DMC 475 : (2013) 136 DRJ 107 :
(2013) 3 ILR Delhi 2045 : (2014) 1 JCC 537

Hon'ble Judges : V. Kameswar Rao, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Padmini Gupta, for the Appellant;

Judgement

Pradeep Nandrajog, J.—On February 26, 1999, respondent Sanjay and appellant Suman got happily married and the two were blessed with a daughter born on June 15, 2002 followed by another bundle of delight, another daughter born on February 10, 2006. Unfortunately, relations soured with passage of time. Sanjay sought dissolution of the marriage alleging cruelty and Suman sought restitution of her conjugal rights.

2. Both Sanjay and Suman reached the Court on July 19, 2010. It appears both were aware of the action proposed to be taken by the other. Petition filed by Sanjay u/s 13(1)(ia) of the Hindu Marriage Act was filed on July 19, 2010, which was the date when Suman's application u/s 9 of the Hindu Marriage Act was also filed.

3. Whereas Suman alleged that within a few days of the marriage Sanjay's behaviour changed because he was aggrieved of insufficient dowry brought by her notwithstanding her family members having spent lavishly when the two got married; but she bore him. His behaviour turned rude and he started picking up quarrel on trivial matters and additionally he would even turn physical, but she continued to suffer to maintain the family bond but realized that Sanjay have

developed intimacy with another woman and had left the matrimonial house compelling her to seek restitution of her conjugal rights. Sanjay pleaded that the marriage was a dowry-less marriage and during 10 years thereafter he was regularly harassed and tortured by Suman who degraded and insulted him at the drop of the hat and even would misbehave with his parents. To save the marriage he left his parents and since January 2005 started living separately from his parents. But Suman's attitude did not change. In the year 2006 he purchased Flat No. 91, Pocket IV, Sector-2, Rohini in Suman's name hoping that she would improve. But she did not. She even started visiting his office and created ugly scenes by abusing him. She not only threatened but lodged false complaints with the police alleging false facts against him and his parents. She repeatedly threatened to commit suicide and leave a note recording false facts to teach him and his parents a lesson.

4. Sanjay's written statement to Suman's petition is his version pleaded in the petition filed by him seeking dissolution of the marriage; of course he denied the insinuations against him, and as regards Suman, she denied the insinuation against her but pleaded that theirs was a love marriage solemnized on March 22, 1997 without telling the parents and that subsequently, in front of her parents she and Sanjay performed the rituals of marriage on February 26, 1999. For 3 years after the marriage she and Sanjay lived with a friend and shifted to the house of Sanjay's parents in May 2002 but since they never approved of the marriage she and Sanjay shifted to a residential accommodation before Sanjay purchased a flat in her name in Rohini part sale consideration whereof was paid by her mother; but would continue to harass and misbehave with her. He developed intimate relations with a lady named Jyoti and therefore wanted Suman to divorce her and that Sanjay was pressurizing her mother to transfer ownership of her property situated in Sultanpuri in his favour.

5. In HMA No. 527/2010 filed by Suman, following issues were settled:-

1. Whether the Petitioner is entitled to the restitution of conjugal rights as prayed? OPP

2. Relief.

6. In HMA No. 685/2010 filed by Sanjay, following issues were settled:-

1. Whether after solemnization of marriage, the Respondent has treated the Petitioner with cruelty? OPP

2. Whether the Petitioner is entitled to the decree of divorce as prayed? OPP

3. Relief.

7. Evidence was led by the parties in HMA No. 685/2010 filed by Sanjay. In support of his case, Sanjay examined himself as PW-1. In his examination-in-chief, Sanjay PW-1 deposed on the lines of averments made in the divorce petition filed by him. He was cross-examined, and being relevant, a part of the

cross-examination is being noted as under:-

I was married with the respondent about 13 years back but I do not remember the date. Our marriage was love marriage. My parents were not agree for the marriage but the parents of the respondent were agreed for the marriage... After marriage I resided with the respondent at rental accommodation at P-2/401-402, Sultanpuri, Delhi. Presently, I am posted at Directorate of Family Welfare, Metcalfe House, Delhi, as UDC.... I always resided with the respondent at rental accommodation. For two years after the marriage, we resided at rented accommodation but I do not remember the exact period and thereafter. I along with the respondent shifted to my parental home. I along with the respondent resided at my parental home for about 6 years...Presently, I am residing separately from the respondents since 11/2 years... I know Ms. Jyoti Sharma as she was earlier my colleague. Ms. Jyoti Sharma never met me after the year 2007. Again said, she met me 2-3 times in the year 2007 in connection with official work. It is wrong to suggest that I used to meet Ms. Jyoti Sharma after the year 2007... It is wrong to suggest that my father in drunken condition has thrown out the respondent after quarrelling with the respondent. It is correct that after throwing out the respondent from the matrimonial home, after some time we lived together in a rented accommodation.... It is wrong to suggest that I have not purchased any flat in the name of the respondent in the year 2006. It is wrong to suggest that I had purchased the said flat in the name of the respondent in the year 2005 with the contribution of money given by the mother of the respondent. I used to come home after 12 midnight. I used to come home between 9 PM to 10 PM. It is wrong to suggest that I used to come home after 12 midnight. (Vol. I used to come late due to the nature of work assigned to me by the department as I was appointed as a caretaker). It is wrong to suggest that I used to spend time with one Jyoti after close of working hours at 5.00 PM... I have no liability except the petitioner and my two minor children... It is wrong to suggest that we are residing separately since January 2007 or that there is no cohabitation since September 2008. It is wrong to suggest that I am deposing falsely.

8. Suman examined herself as RW-1 and deposed in harmony with the averments made in the written statement filed by her to the petition seeking divorce filed by Sanjay. She proved a complaint, Ex. RW-1/1 dated July 28, 2010, submitted by her to Deputy Commissioner of Police, Outer District, Delhi, which complaint records that Sanjay and his father used to harass Suman for dowry. She was cross-examined and being relevant, a part of the cross-examination is being noted as under:-

It is correct that I have filed a petition against the respondent (petitioner in the HMA No. 685/10). It is also correct that I have also filed a complaint against the respondent (petitioner in the HMA No. 685/10) and his other family members u/s 498A/406 IPC. The complaint was filed by me in August, 2010 but the complaint was made earlier to DCP, Outer. It is correct that the petition filed by me under

Domestic Violence Act has been dismissed from the court of Ms. Rachna Tiwari Lakhanpal, the Id. M.M., Delhi. The respondent (petitioner in the HMA No. 685/10) has committed cruelty towards me in the year 1999 at the time of Raksha Bandhan. I have not made any complaint in the year 1999. I have also not made any complaint since 1999 to 2010. It is correct that all the complaints have been made by me after August, 2010. I have not mentioned any incident in my affidavit Ex. PW1/A.

I am graduate. It is correct that I have not mentioned in my affidavits Ex. PW1/A regarding demand of dowry and beatings and cruelty by the respondent (petitioner in the HMA No. 685/10) and his other family members. It is correct that I have mentioned in my domestic violence petition that I had purchased the flat bearing No. 91, Second Floor, LIG Flat, Pocket-4, Sector-2, Rohini, Delhi after selling my jewellery. I have not filed any petition against the respondent (petitioner in the HMA No. 685/10) in respect of demand of dowry as well as cruelties during the period 1999 to 2010. It is correct that I have no matrimonial relations with respondent (petitioner in the HMA No. 685/10) for the last about 3 and a half years... I have not told about my cruelty as well as demand of dowry to my mother and other family members... It is correct that I made so many complaints against my husband. It is correct that all the complaints have been made by me after August, 2010 as I came to know about Ms. Jyoti Sharma. It is wrong to suggest that the respondent (petitioner in the HMA No. 685/10) is not having any relations with Ms. Jyoti Sharma... I have seen Jyoti Sharma with the respondent (petitioner in the HMA No. 685/10) at C-1, 368, Third Floor, Muskan Apartment, Sector-17, Rohini, Delhi. (Vol. The said property is in the name of Jyoti Sharma and mentioned as Jyoti Sharma, W/o. Sanjay Sharma). I have not filed any documents regarding the said property as I have approached the concerned authority through RTI but still, I have not received any information. It is wrong to suggest that the respondent is not having illicit relations with Ms. Jyoti Sharma.

It is correct that the complaints dated 30.06.2010, 01.07.2011, 18.05.2011, 21.07.2011, 25.10.2011, 01.06.2011, 28.10.2010, 13.08.2010 and 28.07.2010 have been filed by me and the same are Ex. RW-1/PX (Colly). It is correct that I had a few differences with the respondent like not giving me quality time.... It is correct that I am also filed a petition under Domestic Violence Act and the same was also dismissed by Ms. Rachna Tiwari Lakhanpal, the Id. M.M. I did not file any appeal against the said order of Id. MM since we have got our house property back. After the marriage, my father-in-law and two brothers-in-law raised demands of dowry. I never lodged any complaint against the said in-laws with police or any other authority.

It is correct that I have stated in my affidavit that my husband had illicit relation with one Ms. Jyoti Sharma his colleague. It is also correct that I want to stay with my husband despite his having illicit relationship with the said Jyoti Sharma. It is correct that I have not cohabited with my husband for last 4 years. I made

several efforts to stay with my husband. I even suggested that he may continue with his illicit relationship but stay in the house with us. It is wrong to suggest that I am deposing falsely.

(Emphasis Supplied)

9. By a common judgment dated December 14, 2012, the learned Additional Principal Judge, Family Courts, Rohini, Delhi has allowed petition seeking dissolution of the marriage filed by Sanjay being HMA No. 685/2010, and has dismissed HMA No. 527/2010 re-numbered as HMA No. 273/2011 filed by Suman. The learned Judge has held that Sanjay has successfully established cruelty as pleaded by him at the hands of Suman.

10. In so concluding, it has been held by the learned Trial Judge that:-

(i) In spite of being cross-examined on material points no contradictions to render unreliable Sanjay's testimony were brought out;

(ii) Sanjay was not found wavering on material points;

(iii) On many material points Suman's lawyer had not cross-examined Sanjay i.e. had not even dared to challenge Sanjay's sworn testimony;

(iv) Complaints lodged by Suman alleging dowry harassment at the hands of Sanjay and his parents were ex-facie false;

(v) Suman had failed good to establish Sanjay having illicit relationship with another lady and said allegations would cause immense mental pain and agony;

(vi) Sanjay's testimony that whenever he visited Suman's parental house he was treated badly could be rebutted by Suman by examining her family members, whom she did not requiring an adverse inference to be drawn against her.

11. It would be most apposite to note the following portion of the impugned judgment passed by the learned Trial Judge:-

39. The failure of the Respondent/her counsel, in not putting forward her case in cross-examination of the Petitioner/husband and failure to give suggestions in rebuttal of his deposition constitute and are deemed, to be admissions on her part. The Petitioner, has thus, clearly brought over the record that the Respondent started harassing and torturing him just a few days after the marriage. She pressurized him to get separated from his family members. She was brought to the matrimonial home by the parents of the Petitioner but due to her nature/conduct, she (with the Petitioner), was asked to leave the house, after staying for a few days. The Petitioner has, also, brought over the record that the Respondent did not like him talking to his parents and other family members. She did not like him to sit with them even when they were unwell. She never wanted him to help them financially, to whatever little extent he could.

45. It is a general rule that one who asserts a fact or claim has to prove it. The

burden of proof is on him, who asserts it and not on him who denies. [Reliance placed on I Smt. Kakali Das Vs. Dr. Asish Kumar Das, The nature of proof required in the matrimonial matters is different. The facts alleged by a spouse about their private intimate life are not supposed to be known to any other person and no corroboration can be expected in such case. To seek a corroboration to a fact alleged by a spouse to a marriage regarding the healthy or unhealthy character of their intimate relation which belongs to the sacred and secrets precincts of marital life, and which are known only to the spouses and which are not supposed to be known to any other living soul on the surface of the planet, would amount to shutting one's eye towards the facts of life and reality. Corroboration, therefore, to the version of either spouse can hardly be expected to come from any other independent source. Such matters are always decided on preponderance of probabilities. (Reliance placed on A versus B-1985 Matrimonial Law Reporter 326).

46. It is, also, well settled law that where accusations and allegations have been leveled by the parties against each other, the court has to consider the context in which such accusations etc. have been made, the court, also, has to keep in mind the physical and mental condition of the parties, as well as their social status and has to consider the impact of the personalities and conduct of one spouse on the mind of the other, weighing all the incidents and quarrels between the spouses from that point of view. The conduct of a spouse has to be examined in the light of the other spouse's capacity for endurance and extent to which that capacity is known to the spouse. (Reliance placed on 151 (2008) DLT 341 - Surender Pal vs. Kanwaljeet Kaur).

47. The parties are well-educated and come from middle class section of the society...

48. The values that middle class section of our Indian society holds, are well known. The in-laws and other relations expect due regards from the newly-wed wife. In fact it is expected that she gets-up early, prepares breakfast, lunch and dinner for the entire family herself or with the assistance of other family members. It is, also, expected that such a newly-wed greets the guests and visitors to the house respectfully. It is, also, expected that she serves lunch or dinner to them and if it does not happen, they feel disgraced in the presence of others. If the newly-wed does not behave in such manner as expected from her, they are bound to suffer mental pain and agony. The Respondent, in the instant case, remained indifferent towards the feelings of the Petitioner's parents and other family members. She did not care for any visitor(s), any guest(s) or any relation(s) of the Petitioner or even his friend(s). The Petitioner, therefore, would have suffered mental pain and agony, due to such acts of omission and commission on the part of the Respondent.

(Emphasis Supplied)

12. Aggrieved by the impugned judgment dated December 14, 2012 passed by

the Trial Judge granting decree of divorce to Sanjay and dismissing HMA No. 527/2010 filed by Suman seeking restitution of conjugal rights, Suman has filed the above captioned appeals.

13. Section 13(1)(ia) of the Hindu Marriage Act, 1955 prescribes that any marriage, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party "has, after the solemnization of the marriage, treated the petitioner with cruelty".

14. A matrimonial dispute is not just a legal dispute, but more importantly it is a family problem and a social concern. Matrimonial disputes should not be viewed from the glasses of legal technicalities. They should be appreciated at the human level of being a conflict between a husband and wife. Such issues should be dealt with sensitively rather than mechanically. Thus, a pragmatic approach and not a pedantic one is required while dealing with matrimonial disputes.

15. While dealing with the concept of "cruelty", in the decision reported as A. Jayachandra Vs. Aneel Kaur, the Supreme Court observed as under:

The expression "cruelty" has not been defined in the Hindu Marriage Act, 1955. The said expression has been used in relation to human conduct or human behavior. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. It may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger, The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live.

16. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare, then such conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case.

17. Cruelty may be mental or physical. 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. If the cruelty is physical, the Court will have no problem in determining it. It is a question of fact and degree. In physical cruelty, there can be tangible and direct evidence, but in case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those, of husband and wife. First, the enquiry must begin as to

the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per-se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

18. 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". 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 it 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, would not amount to cruelty. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case, keeping in view the physical and mental condition of the parties, their character and social status. A too technical and hypersensitive approach would be counter productive to the institution of marriage. Conduct has to be considered 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, entitling the complaining spouse to secure divorce.

19. In the backdrop of above legal position, we proceed to examine the present case.

20. In the instant case, it is the claim of Sanjay that Suman treated him with cruelty after their marriage was solemnized. On the other hand, Suman claims that it was Sanjay who treated her with cruelty and that she is ready to forgive Sanjay and lead a matrimonial life with him.

21. As already noted hereinabove, the Trial Judge has accepted the case set up by Sanjay that Suman had treated him with cruelty after solemnization of their

marriage. The mainstay of the decision of the Trial Judge is that the failure of counsel appearing for Suman to put forward the case of Suman to Sanjay in his cross-examination and giving suggestions to him regarding number of the allegations leveled against her by him in his examination-in-chief goes to show that Suman had "admitted" as correct the allegations of cruelty leveled against her by Sanjay.

22. The aforesaid approach adopted by the Trial Judge is too narrow and pedantic. It is true that the cross-examination of Sanjay by the counsel acting for Suman is most unsatisfactory because with respect to numerous incidents deposed to by Sanjay the counsel has not even bothered to even suggest that the same are untrue. But, human relations have not to be severed due to level of advocacy falling below acceptable standards. In an adversarial litigation, which we follow in India, if a Judge were to find that a counsel's standard has not reached the desired level and the litigation ceases to be adversarial, the Judge must step in. We often use the phrase that a Judge is a match referee. We do not use the phrase that the Judge is an umpire. Now, an umpire has a static position as in the game of cricket. But a referee, as is to be found in a game of football, runs up and down in the field keeping a hawk's eye on the football to ensure that nobody fouls.

23. A closer look at the impugned judgment would reveal that the learned Trial Judge had adopted different yardsticks while appreciating the evidence led by the parties. In case of Sanjay, his sole testimony has been held to be sufficient by the learned Trial Judge on the ground that "to seek a corroboration to a fact alleged by a spouse to a marriage regarding the healthy or unhealthy character of their intimate relation which belongs to the sacred and secrets precincts of marital life, and which are known only to the spouses and which are not supposed to be known to any other living soul on the surface of the planet, would amount to shutting one's eye towards the facts of life and reality." On the other hand, an adverse inference has been drawn against Suman for not examining her family members to disprove allegations leveled by Sanjay that he was not treated properly by family members of Suman whenever he went to her parental house. One of the allegations leveled by Suman against Sanjay was that the family members of Sanjay used to misbehave with her and instigate Sanjay to treat her with cruelty since they did not approve of their marriage. The learned Judge has not drawn an adverse inference against Sanjay who has likewise not produced his parents to rebut the same.

24. As observed by us in the preceding paras, a pragmatic approach and not a pedantic one is required while dealing with matrimonial disputes. The Trial Judge has dealt with the evidence led by the parties in a very superficial manner.

25. We take upon ourselves the task of examining the evidence led by the parties in order to arrive at a just decision in the present case.

26. A careful analysis of the evidence led by the parties brings out the following:

Sanjay and Suman had a clandestine love affair because both knew that their family members would be against their relationship. They probably solemnized a secret marriage and two years thereafter on February 26, 1999, with the blessings of Suman's parents the two got officially married, but without any approval from parents of Sanjay. For about 2 years after their marriage, Sanjay and Suman stayed in a rented accommodation. Thereafter they shifted to the parental house of Sanjay. On June 15, 2002 Sanjay and Suman were blessed with a baby girl Shriya. For the next 5 years Sanjay and Suman stayed at the parental house of Sanjay, during which period they were blessed with another baby girl, Harleen on February 10, 2006. In the year 2007 Sanjay and Suman along with the two daughters shifted to a rented accommodation and finally to a house purchased in Suman's name by funds partly made available by Sanjay and partly by Suman's parents.

27. The city of Delhi is a costly place to live. Family budgeting and especially when a child is born is becoming a herculean task even for the financially well-off and even they come under financial stress and the same burdens and causes stress on the matrimonial bond.

28. From the fact that Sanjay and Suman, as admitted by Suman herself, got secretly married on March 22, 1997 without informing their parents and for 2 years hid the marriage till when the two officially got married on February 26, 1999; but only in presence of her parents, we have sufficient proof that the marriage was a dowry-less marriage and Sanjay's parents never reconciled to their son marrying a girl not of their choice. Thus, ex-facie, Suman's allegations that her in-laws harassed her for dowry from the inception of the marriage is incorrect. Admittedly, for another three years the couple lived with a friend of Sanjay. They shifted to the house of Sanjay's father, where Sanjay's parents resided in May, 2002 and the reason appears to be the fact that Suman was in the family way. Shriya was born on June 15, 2002. It appears that by said time the anger of Sanjay's parents had vanished. The couple resided in the house of Sanjay's parents for a few years, and a second child was born, but it is apparent that things were not moving in the right directions evidenced by the fact that firstly the couple shifted to a residential accommodation and then to a flat purchased in Suman's name by finances provided partly by Sanjay and partly by Suman's mother. It is apparent that between the young couple, they were managing well. But, two more lives meant two more mouths to be fed and it appears that the economic pressures of family budgeting started taking their toll. Whereas Suman is a housewife and Sanjay works, and we are given to understand earns about Rs. 45,000/- per month, Suman started suspecting Sanjay's fidelity towards her. She probably could not understand that in a workplace where even women work, her husband was bound to be speaking to his female colleagues. The young couple could not sort out their affairs and Suman was ill-advised to lodge false complaints alleging dowry harassments not only by Sanjay but even his father. We cannot overlook the fact that Sanjay had contributed for a flat to be purchased in the name of Suman. The pressure-

cooker seems to have exploded in the year 2009. Sanjay had deposed of Suman coming to his office and creating a scene. Complaints have been made by Suman to the police contents whereof which she has not been able to prove as true; and on the contrary from the admitted facts noted above any reasonable person would draw the conclusion that the complaints alleging dowry harassment from the inception not only by Sanjay but even his parents are ex-facie false. Admittedly Sanjay's parents did not bless the couple when they officially got married on February 26, 1999. If they were not present at the scene, where is the question of they demanding dowry from the very inception of the marriage. The fact that Sanjay and Suman resided with Sanjay's friend till the year 2002 is proof of the fact that both of them were persona-non-grata in the house of Sanjay's parents. Thus, there would be no question of a dowry demand being raised till said year. Admittedly, the two shifted to the house of Sanjay's parents when Suman was in the advanced stage of pregnancy. Within less than 3 weeks of the couple shifting to the house of Sanjay's parents, they were blessed with a baby girl. They shifted out of the house somewhere in the year 2007 and it is apparent that things were not too well. The only probable reason which one can fathom is that the dislike for Suman could not be bridged. But the fact that Sanjay left the house of his parents is proof of the fact that he was ready to stand by Suman. The young couple along with their two daughters took a house on rent but probably found the rent to be a strain on their finances. It appears that the usual matrimonial discord which we find in a large number of houses in Delhi i.e. the difficulty faced to beat the inflation and manage the family budget started taking its toll. Suman's parents stepped in to provide some finances and some were provided by Sanjay to buy a flat in Suman's name. The fact that the flat was purchased in Suman's name tells us that her parents were wanting to secure their daughter when they provided part finances. But the fact that even Sanjay provided part finances and still allowed the flat to be purchased in Suman's name evidences that he had no motive to extract dowry. It was a desperate attempt of the young couple to not only acquire a property but get rid of the liability to pay monthly rent. All this budgeting must have taken a toll. Small skirmishes seems to have turned into ugly spats finally ending up with Suman accusing her husband of having developed illicit relations, probably for the reason Sanjay was reaching home late; and as regards him, the probable reason could be: the thought of returning to a comfortless home with a nagging wife waiting resulting in his spirits being more often depressed than excited and therefore the return to the house being late. The young couple appears to have been caught in a vicious circle of cause and effect. Suman's nagging led Sanjay to return home late and Sanjay's late returning to home in turn triggering further nagging and thereby compelling Sanjay to return home late and late and in turn the nagging becoming severe till it reached the uncomfortable level for Sanjay to tolerate any further when Suman started lodging false complaints with the police.

29. At this juncture, we note the decision of the Supreme Court reported as K.

Srinivas Rao Vs. D.A. Deepa, in which decision, on the subject of making unfounded complaints to the police, and the same being treated as constituting mental cruelty, the Supreme Court observed as under:-

14. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.

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22. We need to now see the effect of the above events. In our opinion, the first instance of mental cruelty is seen in the scurrilous, vulgar and defamatory statement made by the respondent-wife in her complaint dated 4/10/1999 addressed to the Superintendent of Police, Women Protection Cell. The statement that the mother of the appellant-husband asked her to sleep with his father is bound to anger him. It is his case that this humiliation of his parents caused great anguish to him. He and his family were traumatized by the false and indecent statement made in the complaint. His grievance appears to us to be justified. This complaint is apart of the record. It is apart of the pleadings. That this statement is false is evident from the evidence of the mother of the respondent-wife, which we have already quoted. This statement cannot be explained away by stating that it was made because the respondent-wife was anxious to go back to the appellant-husband. This is not the way to win the husband back. It is well settled that such statements cause mental cruelty. By sending this complaint the respondent-wife has caused mental cruelty to the appellant-husband.

23. Pursuant to this complaint, the police registered a case u/s 498-A of the IPC. The appellant-husband and his parents had to apply for anticipatory bail, which was granted to them. Later, the respondent-wife withdrew the complaint. Pursuant to the withdrawal, the police filed a closure report. Thereafter, the respondent-wife filed a protest petition. The trial court took cognizance of the case against the appellant-husband and his parents (CC No. 62/2002). What is pertinent to note is that the respondent-wife filed criminal appeal in the High Court challenging the acquittal of the appellant-husband and his parents of the offences under the Dowry Prohibition Act and also the acquittal of his parents of the offence punishable u/s 498-A of the IPC. She filed criminal revision seeking enhancement of the punishment awarded to the appellant-husband for the offence u/s 498-A of the IPC in the High Court which is still pending. When the criminal appeal filed by the appellant-husband challenging his conviction for the offence u/s 498-A of the IPC was allowed and he was acquitted, the respondent-wife filed criminal appeal in the High Court challenging the said acquittal. During this period respondent-wife and members of her family have also filed complaints

in the High Court complaining about the appellant-husband so that he would be removed from the job. The conduct of the respondent-wife in filing a complaint making unfounded, indecent and defamatory allegation against her mother-in-law, in filing revision seeking enhancement of the sentence awarded to the appellant-husband, in filing appeal questioning the acquittal of the appellant-husband and acquittal of his parents indicates that she made all attempts to ensure that he and his parents are put in jail and he is removed from his job. We have no manner of doubt that this conduct has caused mental cruelty to the appellant-husband.

24. In our opinion, the High Court wrongly held that because the appellant-husband and the respondent-wife did not stay together there is no question of the parties causing cruelty to each other. Staying together under the same roof is not a pre-condition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable. This is what has happened in this case.

28. In the ultimate analysis, we hold that the respondent-wife has caused by her conduct mental cruelty to the appellant-husband and the marriage has irretrievably broken down.

(Emphasis Supplied)

30. Applying the ratio of law laid down by the Supreme Court in Deepa's case (supra), we have no hesitation in holding that by filing numerous false complaints against Sanjay and his family members with the police and in the office of Sanjay that Sanjay and his family members used to demand dowry from her and treated her with cruelty when she failed to fulfill their demands and that Sanjay was having an illicit relation with his colleague, Suman has caused "mental cruelty" to Sanjay thereby entitling him to a decree of divorce u/s 13(1) (ia) of the Hindu Marriage Act, 1955.

31. In view of above discussion, impugned judgment dated December 14, 2010 passed by the Principal Judge, Family Courts, Rohini, Delhi granting decree of divorce in favor of Sanjay and dismissing application for restitution of conjugal rights filed by Suman is affirmed. Parties are left to bear their respective costs.