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

Judgment reserved on: 12.10.2015

% Judgment delivered on: 27.05.2016

\+ **MAT. APP. 57/2009 and C.M. No.12315/2013**

KB ..... Appellant

Through: Mr. Rajeev Saxena & Ms. Mehak Tanwar, Advocates along with appellant in person.

versus

SS ..... Respondent

Through: Mr. A.K. Verma & Mr. Inderdeep Singh, Advocates along with respondent in person.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The present appeal under Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred as 'HMA') assails the judgment & decree dated 21.03.2009 passed in HMA 128/2008 by Additional District Judge (ADJ), Delhi, whereby the learned ADJ while allowing the petition under Section 13(1)(ia) and (ib) of the HMA, has passed a decree of dissolution of

marriage in favour of the respondent/husband and against the appellant/wife.

2. The parties were married on 21.07.2003 in Delhi. One issue was born out of the wedlock on 29.05.2004 at Chandigarh. In his petition, the respondent/husband averred that after coming back from the honeymoon, the appellant lived with the respondent and his family only for a few days. Thereafter, the appellant left for Chandigarh to resume her work, and the respondent along with his parents was living in Delhi. The respondent claimed that when the appellant conceived, the respondent requested her to return to Delhi at her matrimonial home. However, she did not return. The respondent further alleged that the respondent only came to know of the birth of the child from the wife of the landlord of the house at Chandigarh on the following day, and no endeavour was made by the appellant or her family to inform the respondent. The respondent was not allowed to see or touch the child when he went to see the child at Chandigarh. He was also not allowed to conduct the birth ceremonies. Further, the respondent alleged that after coming back from Chandigarh, the appellant, instead of coming to her matrimonial home went to her parental home. The appellant threatened the respondent and his family members with implication in a false dowry case. Thereafter, she filed a complaint dated 13.02.2006 in CAW Cell, on allegations of harassment and infidelity. Even after the settlement of the complaint in the CAW Cell, when the appellant came back to the matrimonial house, she did not fulfill the family obligations and duties as a wife and daughter-in-law.

3. In the written statement filed by the appellant/wife, she denied all the allegations and stated that she fulfilled all her matrimonial duties. She

claimed that the respondent was informed on the day of delivery of the birth of the child, but he refused to come to Chandigarh. The information was communicated through an SMS and through a telephone call made by the father of the appellant. She admitted that the respondent visited Chandigarh after the birth of the child. However, she denied that the appellant did not allow him to touch the child or conduct birth ceremonies. She further claimed that on 26.01.2006, when a reconciliation meeting was held, the respondent refused to take the appellant to the matrimonial home. Even after the settlement in CAW Cell, the respondent and his family members harassed the appellant for bringing insufficient dowry and raised more demands. On 03.09.2006, when the appellant returned to her matrimonial home from work along with the child, the door was not opened and she was forced to stand in the rain. Left with no option, she had to return to her parental home.

4. After the issues were framed, both the parties led evidence in support of their case. The Trial Court on assessing the evidence on record, passed the decree of dissolution of marriage under Section 13(1)(ia) and (ib) of the HMA. The Trial Court came to the conclusion that the respondent/husband had successfully established the cruelty caused to him by the appellant, on account of his not being informed about the birth of the child; him not being allowed to conduct the birth ceremonies, keeping the child away for over 2 years from the respondent, and; filing of false complaint by the appellant dated 13.02.2006 before the CAW Cell. The Court also came to the conclusion that the appellant deserted the respondent in March 2004. Consequently, the marriage was dissolved between the parties. Hence, the

present appeal.

5. Learned counsel for the appellant/wife submits that the respondent was well aware of the delivery date of the child. In his cross-examination, he deposed *"I was aware of the expected date of delivery."* Therefore, it was for the respondent to come to Chandigarh and take care of the appellant. Moreover, the Trial Court has believed the version of the respondent as the gospel truth - that he became aware of the delivery of the child through the landlord's wife, despite absence of any cogent evidence on this aspect.

6. Learned counsel submits that despite the bad behaviour of the respondent and his family members, the appellant came to visit the respondent. In his cross-examination, the respondent (PW-1) deposed that *"It is correct that at occasions, the respondent used to travel from Chandigarh to Delhi while in the family way. Last visit was in March, 2004."* The appellant submits that the respondent failed to provide financial assistance to the appellant. Medical expenses incurred during delivery were also borne by the appellant, and not the respondent, with an excuse that the appellant could get the same reimbursed from the bank. The cruel and hostile behaviour of the family members of the respondent continued even after the appellant resumed cohabitation with the respondent. Moreover, the respondent had made contradictory statements which prove that the version put up by him is false and concocted. The respondent (PW-1) deposed that:

> *"It is correct that on 30.08.2006, my father told both of us to pack up our belongings and leave the house. I do not remember that on 02.09.2006 the respondent rang up the CAW Cell and thereafter she was allowed to enter the house."*
>
> However, in his petition, he stated as follows:

> *"26. That due to the intervention of the senior officers of CAW Cell and after the advise of petitioner's father, the petitioner brought the respondent to his house…. … ."*

7. Counsel for the appellant further submits that the finding returned by the learned ADJ that the filing of the complaint by the appellant dated 13.02.2006 before the CAW Cell caused immense cruelty and mental torture to the respondent and his family members is without any basis. He submits that, assuming, though not admitting that the allegations made by the appellant were not proved during trial, the same could, at best, only be taken as objectionable remarks, being general in nature. The same could not have led to mental cruelty. He places reliance on ***Jitender Singh v. Veena Rani***, 2005 (1) Cur.L.J. (C.C.R.) 353 (DB)(P&H), wherein it was observed that:

> *"... ... . It was found that the mere statement made by the petitioner in this regard cannot be accepted. It was also found that the various allegations made by the petitioner husband were only general in nature and did not prove the allegations of cruelty so as to entitle the petitioner husband to the dissolution of marriage by a decree of divorce. ... ..."*

8. He further submits that the remark that the respondent was involved with other women, and found in an objectionable position, could not be taken to have caused cruelty. The said allegations were neither made in the written statement, nor in the deposition of the appellant, nor were they suggested to the respondent in his cross-examination. Therefore, the same cannot be a ground for alleging cruelty.

9. Learned counsel for the appellant submits that the appellant never mentioned in her written statement that she filed the CAW complaint to

pressurize the respondent. However, the learned ADJ has observed so, and held that the said complaint was a counter blast to the notice dated 10.02.2006. In her affidavit by way of evidence, the appellant (RW-1) stated that *"25. Reconciliation at our level having failed I, lodged a complaint with the CAW on 13-02-2006. Copy of the complaint have been marked as RW-1/5."*

10. Learned counsel for appellant submits that the respondent failed to take responsibility of the appellant and the child. He made no effort to restitute his relationship with the appellant. Statement of the appellant that the respondent met the child for the first time in the CAW Cell was inferred by the Trial Court, to suggest, that the appellant showed no intention of cohabitation. However, the learned Trial Court failed to observe that the respondent also failed to meet his child for over two years.

11. Learned counsel submits that the cruelty on the part of the respondent was condoned by the appellant to save her marriage, when she resided with the respondent for over two and half months. During her job at Chandigarh, the appellant sought transfer to Delhi vide letters dated 04.11.2003 and 01.03.2004 (Ex. RW-1/2A and Ex.RW-1/2B) which evidently show the intention of the appellant to cohabit with the respondent. On the other hand, the respondent admitted that he only took the appellant back to the matrimonial home due to the intervention of senior officials of the CAW Cell. This clearly shows that the respondent never had the intention to reside with the appellant. He submits that in the present case, it is clear that there was no *animus deserendi* on part of the appellant, and in absence of the same, desertion cannot be said to have been established.

12. On the other hand, learned counsel for the respondent/husband submits that while staying at Chandigarh, the appellant used to visit Delhi, but never visited her matrimonial home. The appellant (RW-1), in her cross examination deposed that "*It is correct that I was on leave from 10.11.2003 to 15.11.2003 and was in Delhi."* He further submits that the respondent was never informed by the appellant that she was transferred back to Delhi in July 2004. It is only in one of the meetings that the respondent became aware of the fact that the appellant had been residing in Delhi. J.N. Bhatia (RW-2) – the father of the appellant, in his cross-examination deposed that:

> *"At one of the meetings in the hotel, I informed the father of the petitioner and his son-in-law that the respondent has been transferred back from Chandigarh to Delhi."*

13. Learned counsel submits that the respondent was never informed of the birth of the child by the appellant or her family. He was informed of the child birth by the wife of the landlord of the rented house in Chandigarh. J.N. Bhatia (RW-2) admitted that the respondent met his daughter for the first time in the CAW Cell. He deposed that "*It is correct that the petitioner met his daughter for the first time in CAW Cell."* The respondent submits that the fact he was kept away from his daughter for over two years after her birth, constitutes cruelty.

14. Learned counsel submits that the appellant never made any complaints of dowry demand by the respondent and his family members prior to 26.01.2006, which goes to prove that the complaint dated 13.02.2006, is based on false and concocted facts. The said complaint is a counter blast to the notice dated 10.02.2006 sent by the respondent.

15. Learned counsel for the respondent submits that the appellant made various allegations of the respondent having illicit relationships with other women. She alleged that after a month of her marriage, she had seen the respondent with another woman in an objectionable position in the respondent's car. She also alleged that the respondent is a drunkard, gambler, smoker, unchaste, licentious, adulterous and a womanizer. In her written submissions before the learned ADJ, the appellant stated that she lodged the complaint dated 13.02.2006 with a view to put pressure on the respondent. However, in her affidavit towards examination in chief, the appellant stated that she lodged the said complaint because the reconciliation between the parties failed. The appellant also alleged that she was mercilessly beaten and harassed. Learned counsel submits that the appellant not only made contradictory statements, but also made allegations without substantiating them before the learned Trial Court. He places reliance on ***Jayanta Nandi v. Shipra Karmakar (Nandi)*** I (2015) DMC 345 DB, to submit that making baseless allegations amounts to cruelty under Section 13(1)(ia) of the HMA.

16. On the aspect of desertion, learned counsel for the respondent submits that it was admitted by the appellant in her cross-examination that she deserted the respondent from March 2004 to March 2006. She deposed that *"It is correct that from March 2004 till March, 2006 I did not live with the petitioner. I lived with the petitioner at my matrimonial home from 23.06.2006 to 04.09.2006"*. He submits that it is also not in dispute that there was no communication between the parties during the period of 26.01.2006 to 13.02.2006, except a legal notice dated 10.02.2006 sent by the

respondent.

17. Learned counsel for the respondent places reliance on the following judgments in support of his submissions:

i. ***Vimla Balani (Dr.) v. Jai Krishan Balani***, I (2009) DMC 858

ii. ***Mahendra Kumar Sharma v. Sunita Sharma***, I (2015) DMC 325

18. In rejoinder, learned counsel for the appellant submits that the judgment in the case of ***Jitender Singh*** (supra) is irrelevant, in light of the facts of the present case.

19. I have carefully considered the submissions of learned counsels for the parties and perused the record laid in the case, including the impugned judgment.

20. On 23.06.2006, in pursuance of the settlement reached between the parties at the CAW Cell, the appellant/ wife started residing at her matrimonial home and stayed there at till 04.09.2006 i.e. for approximately two and half months. In such circumstances, the respondent, to prove the alleged cruelty and desertion, must establish that after the resumption of matrimonial life from 23.06.2006 till 04.09.2006, the appellant again committed matrimonial offences having the effect of reviving earlier matrimonial offences alleged against the appellant prior to resumption of cohabitation.

21. In ***Inglis v. Inglis and Baxter,*** (1967) 2 All ER 71, the Court has observed:

> *"**Condonation is the reinstatement of a spouse who has committed a matrimonial offence in his or her former***

matrimonial position in the knowledge of all the material facts of that offence with the intention of remitting it*, that is to say, with the intention of not enforcing the rights which accrue to the wronged spouse in consequences of the offence."* (emphasis supplied)

22. The Supreme Court in ***Dr. N.G. Dastane v. Mrs. S. Dastane***, (1975) 2 SCC 326 observed as follows:

"57. But condonation of a matrimonial offence is not to be likened to a full Presidential pardon under Article 72 of the Constitution which, once granted, wipes out the guilt beyond the possibility of revival. ***Condonation is always subject to the implied condition that the offending spouse will not commit a fresh matrimonial offence, either of the same variety as the one condoned or of any other variety****.* ***"No matrimonial offence is erased by condonation. It is obscured but not obliterated"*** *[See Words and Phrases : Legally Defined (Butterworths) 1969 Edn., Vol. 1, p. 305 ("Condonation")] .* ***Since the condition of .forgiveness is that no further matrimonial offence shall occur, it is not necessary that the fresh offence should be ejusdem generis with the original offence.*** *[See Halsbury's Laws of England, 3rd Edn., Vol 12, p. 306] Condoned cruelty can therefore be revived, say, by desertion or adultery.*

58. ... ... ***'Condonation' is a technical word which means and implies a conditional waiver of the right of the injured spouse to take matrimonial proceedings. It is not "forgiveness" as commonly understood.*** *[See Words and Phrases: Legally Defined (Butterworths) 1969 Edn., p. 306 and the cases cited therein] In England condoned adultery could not be revived because of the express provision contained in Section 3 of the Matrimonial Causes Act, 1963 which was later incorporated into Section 42(3) of the Matrimonial Causes Act, 1965.* ***In the absence of any such provision in the Act governing the charge of cruelty, the word "condonation" must receive the meaning which it has borne for centuries in the world of law.*** *[See Ferrers v. Ferrers, (1791) 1 Hag Con 130,*

> *131]* ***"Condonation" under Section 23(1)(b) therefore means conditional forgiveness, the implied condition being that no further matrimonial offence shall be committed***." (emphasis supplied)

23. Therefore, it is essential to first look at the conduct of the appellant during the period of 23.06.2006 to 04.09.2006. In the present case, after the resumption of cohabitation, the respondent alleged cruelty in his petition on the grounds, firstly, that the appellant used to leave the matrimonial home early in the morning with the child and return late at night, therefore, depriving the respondent and the family members the company of the minor child as well as not fulfilling the matrimonial obligations. Secondly, the appellant did not allow the respondent to have sexual intercourse, used abusive language and threatened him of being implicated in criminal cases. Thirdly, she did not allow the respondent to touch the child and threatened him that if he touches the child, she would file a complaint in the CAW Cell.

24. In her written statement, the appellant (RW-1) stated that:

> *"... ... ... the petitioner had neglected to maintain the respondent and her minor baby, who is most irresponsible fellow who had left the respondent in the lurch and played with two lives. ... ..."*

25. However, her deposition, in her evidence on affidavit, went beyond the pleading. The appellant stated that:

> *"28. I say that, while leaving for office, I used to leave the child in the custody of my husband and my mother-in-law for about 20 days in the beginning, but they neglect to look after the child. I had been compelled to make arrangement for upkeep of the child in the crèche etc. and in the process I had to leave the house early in the morning with the child, make arrangement*

for the child and to pick the child in the evening and return late in the evening. Even this had been objected to by the Petitioner."

26. In paragraph 46 of the judgment, Trial Court observed that the aforementioned facts were not pleaded in the written statement. Since the respondent made a specific grievance with regard to the child being taken away by the appellant with her, early in the morning, and of her returning with the child only late in the night, the appellant had the opportunity to deal with the said allegations made against her, and to make a full and complete disclosure of a defence to the said allegations. Apart from making a general statement that the respondent had neglected to maintain the appellant and her minor baby, she did not state as to on what basis the said allegation was made against the respondent. In her written statement, she also did not state that she left the child in the custody of the respondent and her mother in law for about 20 days in the beginning. Even in her evidence, apart from stating that the respondent and his mother neglected to look after the child, she did not elaborate to state as to how the child was neglected, and what made her to infer so. It is, even otherwise, inconsistent with normal human conduct that a father of a two year old daughter and child's grandmother would not take care of the child, and would neglect her in the absence of the mother, who has gone out to work. The Trial Court rejected the evidence of the appellant (as above extracted) on the ground that the same is beyond pleadings and appears to be an afterthought, and I find myself in complete agreement with the said finding of the Trial Court. The appellant has not been able to point out any error in the said finding. It is also pertinent to note that the appellant does not claim to have made a grievance or a

complaint about the so-called neglect of the child by the respondent and his mother in her absence. The record shows that the respondent was not even aware of the child being admitted in a crèche. The respondent (PW-1), in his cross-examination deposed that:

> *"Q. I say that you did not make any arrangement i.e. crèche (sic.) etc. for looking after the child when the respondent was away to her office and your mother was already over burden with the household works.*
>
> *Ans. I* ***did not make any arrangement of the crèche (sic.)*** *as I did not want to send my child to the crèche (sic.).*
>
> *Q. I say that it was compulsion for the respondent to leave early the house alongwith the child and to make arrangement for putting the child in the crèche (sic.) and to pick the child in the evening and return late in the evening.*
>
> *Ans.* ***I am not aware of crèche*** *(sic.)* ***arrangement****. Rest is OK leaving early in the morning and returning back late at night."*
> (emphasis supplied)

27. The second ground raised by the respondent to point to a matrimonial offence by the appellant, after the parties restarted cohabiting, was that the appellant deprived him of sexual intercourse. In his petition, the respondent, inter alia, averred as follows:

> "*28. That the petitioner always tried to have patience and tried to make the respondent understand that we are to live as a one family unit clearly telling her to discharge her matrimonial duties including having sex with the petitioner but the petitioner every time created a scene and many times ran out of the house and started using filthy and abusive language and threatening the petitioner that she will implicate him and his family in criminal cases without any rhyme and reason in the presence of neighbourers and friends.*"

In response to para 28, the appellant in her written statement stated as follows:

> "*20. That the contents of para no.28 of the petition are also false, wrong, incorrect and baseless and denied. In fact respondent is the only lady who always feel that child is the only juncture who can play a vital role in both the lives. Till date the respondent want a father for her only child but due to stubborn, arrogant, egoistic and irresponsible behavior of the petitioner, the respondent unable to get love and affection from the petitioner for her child*".

Thus, the specific averment made by the respondent/ husband with regard to denial of intercourse was not traversed by the appellant in her written statement. I have perused the other paragraphs in the written statement as well, and the appellant has not answered the aforesaid specific allegations against her in any part thereof.

28. In her cross examination, the appellant stated:

> *"Q. The matrimonial obligations included the cohabitation with the petitioner and after you joined the petitioner from the CAW Cell, you never cohabited with the petitioner.*
>
> *Ans. I made my sincere efforts but they did not allow me to do."*

Thus, she did not deny the fact that the parties did not cohabitate as husband and wife after her return to the matrimonial home on 23.06.2006.

29. On this aspect, the Trial Court observed as follows:

> *"47. ... ... RW-1 deposed in her cross examination that she made sincere efforts for cohabitation with the petitioner but they did not allow her to do. It is very surprising to know that*

an act of cohabitation/physical relationship between the spouses which is the inevitable part of the happy married life and a private affair between them, then how, they i.e. the family members of the petitioner could interfere between the parties in performance of the same. Hence, it can be inferred that despite all efforts from the side of the petitioner to continue and save the matrimonial life, the respondent deliberately avoided the company of the petitioner. The respondent had not discharged her matrimonial obligations including the sex with the petitioner during the period from 23.06.2006 till 30.08.2006. … … … .”

30. In the light of the pleadings of the parties and the cross examination of the appellant, the finding returned by the learned ADJ, as aforesaid, appears to be completely in order and the appellant has not been able to point out any infirmity therein calling for its interference. Thus, the said matrimonial offence stands duly proved as against the appellant.

31. Firstly, be merely living again under one roof the conjugal relationship did not get reestablished. The parties did not live as husband and wife. They did not establish a physical relationship between them. Thus, it cannot be said that there was condonation of the earlier matrimonial offences by one or the other party. In any event, the aforesaid conduct of the appellant, in my view, revive the earlier matrimonial offences alleged by the respondent against the appellant, even if it were to be assumed that they stood condoned merely on account of the parties resuming to live under the same roof from 23.06.2006 to 04.09.2006. In this light, the allegations of the respondent/ husband with regard to infliction of cruelty by the appellant, and with regard to desertion by the appellant even prior to 23.06.2006 would need examination.

32. The first grievance of the respondent - as found in para 6 and 7 of his petition, is that at the time of birth of the child, the appellant or her parents did not even inform the respondent or his family members about the birth of the child. He also stated that it was the wife of the landlord of the house rented in Chandigarh, who informed him about the birth of the child, the next day. In his examination in chief, the respondent (PW-1) deposed on the same lines. He was cross examined by the appellant. He admitted that he was aware of the expected date of delivery. Even in his cross examination, he stood by his stand that he was informed by the wife of the landlord about the birth of the child. Pertinently, it was not even suggested to the respondent that he had been informed by the father of the appellant about the birth of the child by making a call or sending a message on the mobile phone (SMS).

33. In her written statement, the appellant stated under "Preliminary Objections", that the respondent and his family members were duly informed by the appellant and her parent about the birth of the female child. She stated that the respondent and his family members visited Chandigarh, but no one turned up to the appellant even for enquiring about the welfare of the appellant and newly born child. In response to para 6 of the petition, the appellant stated that the respondent and his family members were intimated regarding the birth of the baby through SMS and telephone by the father of the appellant. However, as noticed above, no such suggestion was given to the respondent during his cross examination. Even when the father of the appellant was examined as RW-2, he did not produce any evidence in support of his claim that he had sent a message from his mobile phone, or

made a call to the respondent about the birth of the child. The respondent could not have led evidence to disprove the alleged call and SMS claimed to have been sent to him by RW-2. If the call was made, and SMS was sent, it was for RW-2 to establish the same by producing the call details/ record. In these circumstances, in my view, no error can be found in the finding returned by the learned ADJ that the respondent was not informed at the time of birth of the child at Chandigarh by the appellant or her parents.

34. So far as the allegation of the respondent that the respondent and his family members were kept away from rituals and ceremonies such as chola ceremony, naam karan ceremony etc. is concerned, the same does not appear to have been substantiated. It has come in the evidence of RW-2, the father of the appellant that no such ceremonies were held.

35. The respondent alleged cruelty against the appellant by asserting that the appellant remained out of contact with the respondent and his family for a period of around two years after the birth of the child. During this period, the respondent and the father tried to contact the appellant several times, but their efforts were rendered futile by the appellant's parents. The appellant also did not take any initiative to contact and inform the respondent about her and child's well being during this period, giving rise to mental agony to the respondent and his parents.

36. In the written statement filed by the appellant, there is no specific denial of these allegations. Even from the evidence brought on record, it cannot be said that the appellant ever tried to contact the respondent or bring

the child to Delhi at her matrimonial home. Pertinently, RW-2, the father of the appellant, admitted in his cross examination that:

> "*It is correct that the petitioner met his daughter for the first time in CAW Cell."*

37. Thus, the finding of the learned ADJ on the aforesaid aspect appears to be based on the pleadings and the evidence brought on record and does not call for interference.

38. The respondent also alleged that after the birth of the child, when the appellant was transferred back to Delhi, she moved directly to her parents house at Vikaspuri along with the child and did not inform the respondent or his parents about her return/ transfer to Delhi. Once again, there is no specific denial of the said allegations made by the respondent in the written statement of the appellant. The respondent had deposed on the same lines in his examination in chief. In his cross examination, the respondent categorically stated that he had no idea that the appellant had been transferred back to Delhi. Pertinently, the appellant in her evidence does not establish that she had informed the respondent of her transfer to Delhi. It is also pertinent to note that in his cross examination, RW-2, the father of the appellant stated as follows:

> *"At one of the meetings in the hotel, I informed the father of the petitioner and his son-in-law that the respondent has been transferred back from Chandigarh to Delhi."*

39. This clearly shows that the respondent was not informed of the said transfer of the appellant back to Delhi at the time when the same took place.

Furthermore, this was not directly informed to the respondent, and it appears to have been mentioned - in the passing, to the respondent's father and son-in-law. This conduct of the appellant clearly brings out the fact that the appellant was not keen to get back to her matrimonial home even after being transferred back to Delhi from Chandigarh. It is clear that she was in no frame of mind to resume cohabitation with the respondent, and she was happy to lead her lift with her minor child by residing with her parents in the same town.

40. So far as the finding returned by the learned ADJ regarding the making of a false complaint by the appellant against the respondent and his family members before the CAW cell on 13.02.2006, and its causing mental agony and pain to the respondent is concerned, in my view, the Trial Court has comprehensively analysed the evidence brought on record by the parties and the same also does not call for interference by this Court in appeal. The appellant does not dispute that the respondent sent a legal notice dated 10.02.2006 asking the appellant to resume her matrimonial duties and join the company of the respondent. The case of the respondent was that, as a counterblast, the appellant lodged the complaint with the CAW cell dated 13.02.2006 (Ex. RW-1/5). The appellant claims that the notice dated 10.02.2006 had been received only on 14.02.2006, whereas the complaint had been lodged a day prior to, i.e. 13.02.2006 and thus, it could not be said that the complaint before the CAW cell was a counterblast by the appellant. Pertinently, in her submissions filed before the Trial Court, the appellant stated that "*…she in order to put pressure on the Petitioner moved the CAW cell on 13-02-2006 and it was due to the efforts of the CAW cell that she had*

been allowed to enter the matrimonial house on 23-06-2006". Thus, it emerges that the said complaint to the CAW cell was made with a view to put pressure on the respondent.

41. Turning to the complaint itself, it is not in dispute that the said complaint, firstly, made allegations against the respondent and his parents of demanding dowry and, secondly, of the respondent having illicit relations with several other females. The appellant also claimed that she had seen the respondent in an objectionable position with a woman in his car.

42. So far as the allegations of dowry demand are concerned, as observed by the learned ADJ, the appellant shifted to Chandigarh after about 25 days from the return from honeymoon of the parties. The respondent accompanied her, and even helped her to set up her home in Chandigarh in a rented accommodation. He stayed with her for five days before returning back to Delhi. The appellant admitted that the relationship between the parties was normal at that time. The appellant also used to visit Delhi, and was in Delhi from 10.11.2003 to 15.11.2003. Admittedly, from March 2004 till March 2006, the appellant did not live with the respondent. The last meeting took place between the parties on 26.01.2006 (before they resumed cohabitation on 23.06.2006), and till that date, the appellant made no allegations of cruelty and demand for dowry and salary against the respondent and his family members. Though, in relation to the meeting of 26.01.2006, the appellant claimed that the respondent had abused her, she did not make any allegations of dowry demand sought by the respondent or his family members. The only communication between the parties which took place between 26.01.2006 and 13.02.2006 – when Ex. RW-1/5 was

lodged by the appellant, was the legal notice dated 10.02.2016 Ex. PW-1/3 issued by the respondent. Thus, it is clear that there was no occasion for the respondent or his family members to make a dowry demand on the appellant till 13.02.2006. Pertinently, the allegation of dowry demand was bereft of any particulars – neither the amount claimed; nor the person who had made the demand, nor the time and place where the demand was raised, was disclosed by the appellant either in the complaint (Ex. RW-1/5), or in her evidence. The finding of the learned ADJ that the appellant had not been able to substantiate the alleged dowry demand by the respondent, as aforesaid, is well reasoned and does not call for interference. Admittedly, the appellant never gave her salary to the respondent and his family members. The respondent and his family members were not, even according to the appellant, in a weak financial position, so as to drive them to make any demands on the appellant.

43. Turning to the allegations contained in (Ex. RW-1/5) with regard to immoral conduct of the respondent, once again it is seen that there was no corroboration of the said allegations by the appellant. In fact, the submissions of the appellant made before this Court themselves, contain an implied admission of the appellant that the said allegations were not substantiated. The appellant has sought to contend that making of such allegations in a complaint to the CAW cell would not afford a ground of cruelty, as the said allegations were not made in the written statement, or were not sought to be leveled even at the stage of leading of the appellants evidence. The appellant has argued that the allegations could, at the highest, be labeled as "objectionable remarks", but not serious enough to entitle the

respondent to claim divorce on the ground of causing mental cruelty to the respondent. In this regard, reliance has also been placed on ***Jitender Singh*** (supra) by the appellant.

44. I do not find any merit in the aforesaid submissions of counsel for the appellant. In the said complaint (Ex. RW-1/5), the appellant, inter alia, stated as follows:

> "…. …. *because my husband maintains intimate relationship with other women and their calls are received on his mobile phone often in her presence, and they used to give gifts to him and my husband used to give away my things to them and would also threaten me. After about one month of my marriage, I myself saw my husband with one strange woman in an objectionable condition in his car*".

45. The aforesaid allegations made by the appellant against the respondent are of a serious nature. It was not the appellants complaint that she had mere apprehensions, that the respondent may be maintaining illicit relations with other women. She has made definite allegations of him maintaining illicit relations with other women. She claims to be a witness to the respondent talking to, and receiving calls from strange women in her presence. She also claims that her husband used to receive gifts from strange women, and that he had even taken away her belongings to gift to strange women. Not only this, she even claimed to be an eye witness to the respondent being in an objectionable position with a strange woman in his car. These allegations are very serious since they have the effect of running down the respondent, and they constitute a blow to his character and moral standing. Such allegations, when made in respect of the respondent to an authority, such as CAW cell, would have naturally caused mental agony and

pain to the respondent and his family members, particularly when there is nothing to show that there is any iota of truth in them. These allegations, like the allegations of dowry demand, surfaced for the first time only on 13.02.2006 when (Ex. RW-1/5) was lodged by the appellant. It does not matter that these allegations were not repeated by the appellant in her written statement, and no evidence was led by the appellant in relation to the said allegations.

46. It is not only when such allegations are made in judicial proceedings that the person – against whom they are made, may have valid grievance. The damage to the matrimonial bond had been done by the appellant when she made such serious and scandalous allegations against the respondent in her complaint to the CAW cell vide Ex. RW-1/5.

47. It is a settled position that leveling of unsubstantiated allegations in the pleadings, or otherwise, amount to mental cruelty under Section 13(1)(ia) of the Act (See ***AS v. SNS***, 226 (2016) DLT 565, ***Manisha Sandeep Gade v. Sandeep Vinayak Gade***, AIR 2005 Bom. 180). ***Vimla Balani*** (supra), ***Mahendra Kumar Sharma*** (supra) and ***Jayanta Nandi*** (supra).

48. Thus, the writing of the complaint to the CAW cell (Ex. RW-1/5) tantamounted to causing grave mental agony and cruelty to the respondent as it contained serious and baseless allegations against the respondent and his family members of demanding dowry from the appellant and her parents, and also of the respondent maintaining illicit relations with other women. The said allegations were nothing short of character assassination of the respondent. The making of such serious allegations must have caused grave

mental agony to the respondent, and his claim that the matrimonial bond has been destroyed on that account cannot be negated. The respondent has a reasonable ground to believe that living with the appellant may again lead to serious injury to his name and reputation, and to that of his family. The finding of the learned ADJ on this aspect is, therefore, affirmed.

49. Turning to the aspect of desertion, the appellant did not deny the fact that the parties remained separated from one another for a period of two years from March 2004 to March 2006. She sought to put the blame for the same at the door of the respondent by alleging that she had to leave the matrimonial home on account of cruelty caused by the respondent.

50. However, other than her averments in the pleadings and her own examination in chief, there is not a shred of evidence to suggest that the respondent had treated her with cruelty. In fact, the respondent in his cross examination had specifically denied the suggestions alleging harassment and cruelty by him upon the appellant.

51. It has come in evidence that the appellant did not came back to the matrimonial home since March 2004, even though she was transferred back to Delhi. She preferred to stay with her parents in Delhi and did not even inform the respondent about her transfer to Delhi. This conduct of the appellant clearly demonstrates her intention to walk out of the marriage, and to not cohabit with the respondent. Pertinently, even after she came back to the matrimonial home on 23.06.2006 on the intervention of the CAW cell, she did not resume cohabitation with the respondent as the parties never established their conjugal bond. She continued to live with an estranged relationship with the respondent as she used to take the child with her in the

morning, have her in a crèche, and return in the night with the child. Even this arrangement did not last long, and the parties eventually separated on 04.09.2006. It is, therefore, clear that the ground of desertion has also been made out by the respondent. The finding returned by the learned ADJ on the said aspect is also founded upon evidence brought on record. This finding also, therefore, does not call for interference in this appeal.

52. The parties have lived apart for approximately 10 years. Various police complaints /CAW Cell complaints were filed by the appellant and the family members of the respondent. There appears to be no possibility of the revival of the matrimonial relationship between the parties, and the relationship between the parties has irretrievably broken down. The marriage is as good as dead. The irretrievable breakdown is the result of the conduct of the appellant and the respondent/husband is entitled to a decree of divorce under Sections 13(1)(ia) and (ib) of the Act.

53. In the light of the aforesaid discussion, the impugned judgment and decree of the learned Trial Court is upheld. The present appeal stands dismissed, leaving the parties to bear their respective costs.

VIPIN SANGHI, J

MAY 27, 2016