

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (Misc.) No. 49 of 2014

1. Viru Sen S/o Shri Rajkumar Sen, aged about 32 years, R/o Shikshak Colony, Tilda, P.S. Nevra, Civil & Revenue District Raipur (C.G.)

---- Appellant

Versus

1. Smt. Vidya Sen W/o Viru Sen, aged about 26 years, R/o Village Saddu (Tarpongi), P.S. Dharsiva, District Raipur (C.G.)

---- Respondent

For Appellant –	Shri A.D.Kuldeep, Advocate under the instruction of Shri C.R.Sahu, Advocate for the appellant.
For Respondent –	None, through served.

Order On Board

26/06/2015

1. Heard on admission.
2. The appeal is admitted for consideration.
3. By filing the instant appeal the appellant has challenged the legality and propriety of the judgment dated 30-04-2014 passed by the Additional District Judge, Bhatapara, District Balodabazar, C.G. in Civil Suit H.M.A.No.19/2011 whereby and whereunder the learned court below has dismissed the appellant's/husband's suit for dissolution of marriage by a decree of divorce filed under Section 13 of the Hindu Marriage Act, 1955 (in short 'the Act, 1955') against the respondent/wife/non-applicant.
4. As per the prayer made before the court below, the parties are legally wedded spouse, the marriage was solemnized on 15-02-2006 at Village Tilda, P.S. Nevra. Thereafter, the respondent/non-applicant was living along with the appellant/applicant at Tilda. Out of their wedlock they were blessed with a girl child. The applicant was less educated and earning his bread by labour work.

Mother of the applicant always used to instruct the appellant/applicant for doing business of salon. Father of the applicant, younger brother of the applicant were also government employees. The respondent/non-applicant was running a beauty parlor and making money. The mother of the non-applicant objected regarding alleged behavior of the applicant. The non-applicant after alleged dispute went to his maternal house. After a compromise made by members of the community, she returned back thereafter again she left the house of the applicant/appellant and lodged a report under Section 498A/34 of the IPC before police. Police filed the charge sheet and the applicant/appellant, his mother and his younger brother faced trial. The criminal court acquitted them. As submitted, the non-applicant/respondent after declaring herself deserted engaged for the post of Aanganbadi worker and was also running a beauty parlor. As the non-applicant/respondent committed cruelty for not consuming the marital life and living separately for not proper and sufficient reason, the applicant/appellant filed a suit praying for dissolution of marriage by a decree of divorce under Section 13 of the Act, 1955.

5. The non-applicant filed her written response to the application/suit filed by the applicant/appellant and denied the entire allegation made against her in the application. And in addition, she submitted that she was harassed by the applicant/appellant and the family members of the applicant/appellant. She was subjected to cruelty, demand of motor-cycle and cash amount. With the presence of element of cruelty, the non-applicant gave birth of a girl child. The applicant threatened her to go out of the house. Looking to the circumstances and the facts that the non-applicant was being beaten and she was forced to go out from the matrimonial house, she informed the matter to Bhatapara police. No any attempt for compromise or conciliation was attempted. The non-applicant/respondent further submitted that she is not residing in her parent's

house without any proper and satisfactory cause; as she was thrown out from her matrimonial house, she is living along with her parents with no option left. She is also maintaining a girl child and for her bread and maintenance she is doing labour. Hence, prayed that the application/suit made by the applicant/appellant be dismissed with cost.

6. After providing opportunity of hearing, adducing evidence and hearing of both the parties, the learned court below has dismissed the suit for dissolution of marriage by a decree of divorce. Against the impugned order the appellant/applicant preferred the instant first appeal (misc.) and had taken the ground that though the evidence regarding cruelty and other facts were adduced before the trial Court, but the trial Court failed to appreciate the evidence. The judgment of the trial Court is illegal, arbitrary and liable to be set aside and quashed. The trial Court also failed to appreciate that the non-applicant is a Aanganbadi worker and also earning from private job. The job of Aanganbadi worker was obtained as she is a divorcee lady. At the time of the said application for being considered as Aanganbadi karyakarta, the non-applicant was not a divorcee woman. The trial Court erred in holding that by lodging the false report under Section 498A against the appellant and his family members and after the pronouncement of the judgment by the criminal court, in the presence of the circumstances it would be dangerous for the appellant to live with the respondent. After two years of marriage as the respondent is living separately, now it is very difficult for the appellant to live with the respondent as she involved him and his family members in a criminal proceeding. The witness examined on behalf of the appellant supported the case of the appellant, but by not appreciating those oral evidence, the trial Court erred for not appreciating the matter adduced by the applicant/appellant. By filing this first appeal (misc.), the appellant prayed that the judgment and

decree passed by the trial Court be set aside and this appellate Court is prayed to pass a decree of divorce in favour of the appellant in the interest of justice.

7. Notice issued to the respondent returned served through her brother, but the respondent not made any arrangement for her representation before the Court and remained absent. Consequently, there is no material in rebuttal of the material available along with F.A.(M) filed by the appellant.

8. I have heard learned counsel for the appellant present and perused the evidence adduced and available on record and the judgment and decree of the court below.

9. Learned counsel for the appellant argued vehemently that as the respondent lodged a false report under Section 498A of the IPC and by which the charge sheet filed against the appellant and his family members, the criminal court acquitted the appellant and other co-accused, this is a cruelty by lodging false report before police. The respondent herself does not want to live with the appellant. The appellant is less educated, this is the reason why the respondent does not want to live with him. After the dispute, a social meeting of the community members were convened and they were restarted living together but after a very short time, again she left the house and started living separately. She left the house without any information. Presently she is working as a Aanganbadi worker. The Ex.-P/2, a certificate given by the Village Panchayat Saddu goes to show that she is deserted woman, deserted by her husband. On the basis of this certificate, she was given bonus marks for being considered for the post of Aanganbadi worker. This is proved by Ex.-P/3 and Ex.-P/4. There was no reason to leave the house of the appellant. She left the house for no proper reason. Hence, the decree and judgment passed by the trial Court be set aside and a decree of divorce by dissolution of marriage be passed.

10. In order to appreciate the argument advanced on behalf of the party present before the Court, I have perused the evidence and the judgment of the court below.

11. The applicant/appellant not furnished any document regarding acquittal from the concerned court. Also not filed any document regarding the charge sheet filed against him and his family members. The facts that police registered a case under Section 498A and filed charge sheet and thereafter after trial, criminal court acquitted the appellant, as per relevant provisions of the Evidence Act, the onus lies on the appellant and this could only be tested by filing those certified copies so that the Court may appreciate what was the allegations, what was the evidence and what was the final outcome of the criminal court. Also as per settled law, merely lodging an FIR regarding factum of cruelty by the victim/wife may not itself cover the element of cruelty as mentioned in the Section 13 of the Act, 1955. Merely acquittal for the charges by a criminal court also not constitute a factum of cruelty for the appreciation of the material as required for Section 13 of the Act, 1955. In the entire application, no any specific date except the date of marriage is mentioned by the appellant. In para 15 of the application, 30-12-2008 is mentioned from which both the parties are not living together, but in the para 10 and 11 which is in relation with the pleading for living the non-applicant separately for no reason, no date is given, it goes to show that there is no specific pleading regarding the time and other facts mentioned in the application filed by the appellant. On the other hand, the respondent pleaded before the trial Court, also gave evidence to the fact that she was being forced to go out from the house of the appellant. Thereafter, she lodged the report before the police station Bhatapara. After lodging the report, attempt for conciliation was made by the senior members of the community and after reconciliation she was

taken in the house and after sometime as the respondent was being beaten, she had no option but to inform her parents and thereafter with the help of brother of the respondent she was taken to her maternal house along with her only girl child. Thereafter, again she lodged a report on 04-01-2009. The respondent adduced the evidence that she was thrown out from the house of the appellant and under compulsion she is living in her maternal house and doing job of Aanganbadi worker and private job for her and her daughter's livelihood. After perusal of Ex.-P/2, Ex.-P/3 and Ex.-P/4, it does not sound that she gave a false certificate. On Ex.-P/4, it is clearly mentioned that as the respondent was being beaten, tortured and thrown out from the house and being deserted she is living in the house of her parents. Desertion does not mean divorce, it would not be correct to say that on the basis of the false information regarding divorcee woman, she got the job of Aanganbadi worker. She prayed before the authorities for an additional bonus marks as provided for consideration of the endorsement of the job of Aanganbadi worker. In the considered opinion of this Court, desertion and divorce are different words for different facts; no any false information was given by the respondent for getting the job of Aanganbadi worker.

12. The trial Court after entire appreciation found that the appellant failed to prove the factum of cruelty. Consequently as the appellants himself failed to prove the pleadings, the trial Court decided the issue as not proved and dismissed the application of the appellant filed under Section 13 of the Act, 1955.

13. After appreciation of the entire evidence and documents adduced before the trial Court, I am of the concurrent view that finding of the trial Court is proper, based on correct appreciation of facts and law; also I do not see any point for interference in the judgment and decree passed by the trial Court. I do

not find any illegality and infirmity in such finding on any ground for dissolution of marriage solemnized between the parties by a decree of divorce. Consequently, the appeal filed on behalf of the appellant is liable to be and being devoid of merit, is hereby dismissed.

14. No order as to cost.

Sd/-
(C.B.Bajpai)
JUDGE