

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****FA No. 113 of 2001**

Anandram, aged 38 years, S/o Tejram, profession- Service,  
President of village Tildega, PS- Pathalgoan, Disst- Raigarh  
(C.G.)

**---- Appellant****Versus**

Smt.Laxmi Bai, aged 38 years, wife of Anandram, R/o-Sisring,  
Tahsil. Dharamjaigarh, Diss- Raigarh(C.G.)

**---- Respondent**

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| For the appellant  | : | Shri Akhand Prataph Singh on behalf of Shri Sanjay Agrawal, Advocate. |
| For the respondent | : | None.                                                                 |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant****Order on Board****05.09.2017**

Heard.

1. This first appeal has been brought under Section 28 of Hindu Marriage Act,1956 against the judgment and decree passed by the Court of Second Additional Sessions Judge, Raipur, in Civil Suit No. 52 A/95 dated 12.07.2001 by which the divorce petition brought by the petitioner was dismissed.
2. Petitioner and respondent are husband and wife. The marriage between them was performed in the year 1984. Respondent started living separately from the appellant from the year 1986. The appellant moved an application under Section 13 of Hindu Marriage Act,1956 against the respondent on the grounds of

desertion and adultery committed by wife (the respondent). It was stated in the application that respondent never resided continuously with the appellant and she had physical relationship with some other persons prior to the marriage with the appellant, because of which a child was born within 7 months from the date of performance of marriage. A man named Shrawan Kumar usually came to visit respondent, when she used to live with appellant, thereafter, respondent started living with Shrawan Kumar without informing the appellant in the residence of Shrawan Kumar. The appellant tried to bring back his wife but she did not come back. On the contrary, she filed the application under Section 125 Cr.P.C before the Court of JMFC Dharamjaigarh. While residing separately, respondent became pregnant and the child was born on 30.06.1989. It was alleged that respondent has physical relationship with number of other persons and on these grounds, decree for dissolution of marriage was prayed for.

3. Respondent in written statement admitted her marriage with the appellant and denied all the pleadings in the application. She has stated that Shrawan Kumar was her cousin. She has denied the fact that she was residing at his residence. She stated that children were born out of the wedlock with the appellant. Denying all other allegations made, prayer was made to reject the divorce petition.
4. The Trial Court framed issues and after affording opportunity of

hearing to both of the parties to produce evidence and hearing arguments has passed impugned judgment, in which the grounds raised by the appellant for grant of decree for dissolution of marriage were rejected.

5. The ground in this appeal are that the trial Court has failed to appreciate the evidence brought by appellant on record. The appellant had successfully proved by production of evidence that respondent was living in adultery, having relationship with Shrawan Kumar and others, thus causing mental cruelty to the appellant and further she has deserted the appellant without any reasonable cause, hence, this prayer of appellant may be allowed, judgment passed by the Trial Court be set aside and relief be granted to the appellant.
6. Heard, learned counsel for the appellant. None for appeared for the respondent.
7. Perused the record of the trial Court.
8. In support of the pleadings made in the divorce petition, the appellant Anand Kumar (AW-1) has stated before the Court that soon after marriage respondent used to habitually leave for her maternal house and she resided only for few days in her matrimonial home. First child of respondent was born in seven months. It is stated that when he used to leave for work, a man named Shrawan Kumar used to visit his wife/ respondent and stayed for sufficient time. Whenever, appellant used to ask about Shrawan Kumar, respondent used to say that he was her cousin.

Ultimately on 18.06.1986 respondent went with Shrawan Kumar and did not come back. The appellant was searching his wife, the respondent/wife was found present in the house of Shrawan Kumar. He told Shrawan Kumar to send back his wife, but his wife never came back. It is also stated that respondent had physical relationship with other persons, hence, she became pregnant and gave birth to a child on 30.06.89, while living separately from the appellant. In cross-examination, he has remained firm on his statement in examination- in -chief.

9. Bajra Sai (AW-2) has stated that respondent was living with Shrawan Kumar and he has knowledge that respondent has never come back to reside with appellant. In cross-examination, he has denied the suggestions given by the counsel for respondent and has remained firm on the statement. Similar statement has been given by Bhusharan Ram (AW-3) and he has also remained firm on his statement. Masat Ram (AW-4) has stated that he came to know that Shrawan Kumar had brought the respondent to his residence and respondent was staying in his house since four months. He enquired from Shrawan Kumar as to why he has brought the wife of appellant, on which Shrawan Kumar told him that he kept respondent as his wife. His statement in examination- in-chief has remained intact in cross-examination.
10. Respondent/ non applicant (DW-1) has stated that soon after marriage, appellant used to quarrel, assault and abuse the

respondent for the reasons that he wanted to perform another marriage because of which she left for Pandripani to stay in the house of Shrawan Kumar and from Pandripani, she was taken to her maternal home at Village-Sisringa, thereafter, she got the job of Aganbadi and she started living in Village- Pusulda. In cross-examination she had admitted that she never lodged any report regarding the treatment of cruelty by the appellant. She has denied that first child was born within 7 months of the marriage and no specific statement has been made regarding second child, born on 30.06.89.

11. After closely scrutinizing the evidence led by both the parties, it appears that birth of first child was within 7 months of marriage, which is disputed, but it is not disputed that respondent left the appellant on 18.06.86 and that too with Shrawan Kumar. Statements of applicant's witnesses also supported desertion that respondent lived with Shrawan Kumar. The statement of Masat Ram (AW-4) regarding the inquiry made from Shrawan Kumar is also unrebutted. Although respondent Laxmi Bai (DW-1) has given explanation, but she never complained against her husband because of his cruel treatment. Further there is no denial to this statement made by applicant and the pleadings that second child was born on 30.06.89. After the admission made by respondent that she was not living with appellant since 18.06.86 which clearly establishes a ground under Section 13(1) (I). The ground of desertion also appear to have been established. On

the basis of the evidence brought by appellant/applicant, and also non explanation by respondent as to why she never made any effort to go back to her matrimonial home and that the birth of second child out of the wedlock also undisputed. It is a case in which the decree for divorce should have been granted by Trial Court .

12. On the basis of the reasons as aforementioned this appeal is allowed, the judgment and decree passed by the Trial Court is set aside and the prayer of appellant is allowed and decree of divorce is granted.
13. (1)- The marriage between appellant and respondent shall stand dissolved from the the date of passing of the judgment.
14. This appeal stands disposed off.

**Sd /-**

**(Rajendra Chandra Singh Samant)**

Judge