

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 88 of 2014**

- Ramu Kurmi S/o Nok Raju Aged About 537 Years R/o Budhwari Bazar, P.S. Korba, Tah. And Distt. Korba C.G.

---- Appellant**Versus**

- Smt. M. Shailaja Rani W/o Ramu Kurmi, Aged About 37 Years R/o Bhanpuri, P.S. Bhanpuri, Tah. And Distt. Raipur C.G.

---- Respondent

For Appellant	:	Mr. Jeet Patel, Advocate
For Respondent No	:	None for the Respondent.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Order On Board By
Justice Prashant Kumar Mishra

05/07/2017

1. Present is an appeal preferred by the husband under Section 19(1) of the Family Courts Act, 1984, assailing the judgment and decree passed by the Trial Court refusing to allow his application for grant of divorce.
2. Facts of the case, briefly stated, are that the parties were married on 20/02/2008 and were residing at Akaltara, however, in August, 2008, the appellant was transferred to Korba, where according to husband, he could not arrange proper accommodation, therefore, his wife left his

company and joined her parents in her parental village. It is further averred that the appellant has made all possible efforts to bring back his wife but she refused to join his company. A daughter was born out of the wedlock on 05/03/2009, however, the husband was not informed nor did the wife come to his house when his father died. It is also stated in the divorce application that the respondent–wife was treating the appellant with cruelty by using abusive language; not respecting the elder members of the family etc.

3. The respondent-wife has averred that her brother-in-law (Devar) is involved in business of illicit drugs to which she objected but her protest was ignored and she was threatened to keep quiet. According to wife, her Devar suffered incarceration on the allegation of being involved in illicit drugs business, therefore, it was not possible for her to stay in the house, where her husband and her brother-in-law were residing jointly. The wife has also stated that at the time of marriage a sum of Rs. 3,00,000/- was paid as dowry in installments together with a motor-cycle. Her mother-in-law also demanded a golden chain for her son i.e. husband, on which a golden chain of 2.5 Tolas was gifted to the husband. It is also averred that her husband dropped her at her parental house on 20/09/2008 and never bothered to look back and take care of her wellbeing. She further pleaded that her husband refused to make necessary arrangement to meet out the two ends, despite working as Constable in the Police Department.
4. During the course of trial, the appellant examined himself as P.W.1, Nutan Singh (P.W.2), Vijay Sarthi S/o Shri Baghbali (P.W.3), Vijay

Sarathi S/o Shriram Sarathi (P.W.4), Shailendra Kumar Rathore (P.W.5) and Prem Soni (P.W.6), whereas, the respondent examined herself as D.W.1.

5. A reading of the entire pleadings and depositions would reveal that while the appellant has reiterated the plaint allegations but has failed to examine any of his relative in support of his case, the other witnesses examined by him may appear to be independent witnesses but they are not aware of the strained relation between the husband and wife. Thus, the evidence of other witnesses examined by the appellant have not supported his case, in so far as, the allegation of cruelty and desertion are concerned. The appellant having preferred the application for divorce on the ground of cruelty and desertion, therefore, it was necessary for him to prove the allegation of cruelty on the anvil of test laid down by the Supreme Court in the matters of **Dr. N.G. Dastane Vs Mrs. S. Dastane**, (1975) 2 SCC 326, **V. Bhagat Vs. D. Bhagat (Mrs.)**, (1994) 1 SCC 337, **Sirajmohmedkhan Manmohamadkhan Vs. Hafizunnisa Yasinkhan and Another**, (1981) 4 SCC 250, **Savitri Pandey Vs. Prem Chandra Pandey**, (2002) 2 SCC 73, **Gananath Pattnaik Vs. State of Orissa**, (2002) 2 SCC 619, **Praveen Mehta Vs. Inderjit Mehta**, (2002) 5 SCC 706, **Chetan Dass Vs. Kamla Devi**, (2001) 4 SCC 250, **A. Jayachandra Vs. Aneel Kaur**, (2005) 2 SCC 22, **Naveen Kohli Vs. Neelu Kohli**, (2006) 4 558, **Sujata Uday Patil Vs. Uday Madhukar Patil**, 2007 AIR SCW 986, **Manisha Tyagi Vs. Deepak Kumar**, AIR 2010 SC 1042 and **Ramchander VS. Ananta**, (2015) 11 SCC 539.

6. We have carefully examined the depositions of the appellant and respondent to appreciate and consider as to whether the trial Court's finding on this issue is born out of the records or there is any perversity in the method of appreciation or the finding on this aspect of the matter.
7. While the appellant has alleged that his wife was habitually making abusive language and gave ill treatment to him and his mother, the Respondent - wife has stated that her husband was ill treating her and was demanding dowry, not only at the time of marriage but subsequent to the marriage also. The appellant has not examined her mother or any other relative to strengthen his case of commission of cruelty by the respondent-wife.
8. A bare reading of the plaint would indicate that the appellant has projected his personality, as if, he is a simple and innocent person, whereas, the true picture would emerge after reading of all the contents of written statements and the deposition of the respondent-wife. The pleadings and evidence of respondent-wife reveals that the appellant's brother is involved in illicit drugs business and was incarcerated for a month for commission of crime in such activity. This fact has not been controverted by the appellant in his deposition. It is not a case, where such allegations were made by the wife in her deposition at the stage of examination, but she had made the allegations in the written statement itself. Therefore, it was necessary for the appellant to have controverted and submitted the proof of the fact that his brother is not residing with him or he is not involved in

carrying out illicit drugs business. The appellant has failed to do so. The allegations made by the wife appear to be more probable. Therefore, the allegation of cruelty made by the appellant has rightly been negated by the trial court.

9. In so far as, the issue of alleged desertion by the wife is concerned, it is to be seen that the desertion can be proved by establishing the factum of separation; the intention to bring cohabitation permanently to an end i.e. *animus deserendi*. The elements of permanence, which is a prime condition required with both the essential ingredients, should continue during the entire statutory period of two years.
10. Time and again, the Supreme Court has reiterated the principle as to what is the meaning of word "desertion". In the celebrated case of ***Bipin Chander -Vs- Prabhawati, AIR 1957 SC 176***, the Supreme Court has quoted the Halsbury law of England which has given the following meaning of desertion:-

In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged at tempts at defining desertion, there being no general principle to all cases.

Desertion is not the withdrawal from a place but from a state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state; the state of things may usually be termed, for short, the home;. There can be desertion without previous cohabitation by the

parties, or without the marriage having been consummated”.

11. In view of the principles applicable to establish desertion, we have again examined the evidence, however, we have not found sufficient evidence in favour of appellant so as to constitute the ground for desertion against the respondent-wife. Whereas, it has been found that the appellant and his mother was guilty of demanding dowry and the appellant's brother was involved in the illicit drugs business, to which, the respondent-wife was objecting and further absence of proof that the appellant being a constable did not make any serious effort to bring back his wife to the matrimonial house, thus there is complete lack of *animus deserendi* on the part of the respondent-wife, and in the absence of *animus deserendi*, the desertion by the wife has not been proved. On the contrary, the wife has moved an application under Section 125 Cr.P.C. as also under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal right, from which it is inferred that the respondent-wife has not deserted the appellant but she is willing to join the appellant's company.
12. For the above stated reasons, we do not find any good ground to interfere with the judgment rendered by the trial Court.
13. The appeal having no substance, it deserves to be dismissed and is hereby dismissed.

Sd/-
Judge
Prashant Kumar Mishra

Sd/-
Judge
Arvind Singh Chandel