

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on: 07/09/2017

Judgment delivered on: 07/11/2017

First Appeal (M) No.139 of 2014

- Smt. Indu Banjare W/o Santosh Kumar Banjare Aged About 26 Years
R/o C/o Shri Tuman Lal Kosre, Jaithambh Chowk, Somni, Mukam
Post And P.S. Somni, Tah. And Distt. Rajnandgaon C.G.

---- Appellant

Versus

- Santosh Kumar Banjare S/o A.D. Banjare Aged About 36 Years Occupation-
Govt. Employee (Teacher), R/o Vivekanand Colony, Jashpur Nagar, P.S., Tah.
And Distt. Jashpur Nagar C.G.

---- Respondent

For the Appellant : Shri Shrawan Agrawal, Advocate.

For the Respondent : Shri Neeraj Mehta, Advocate.

Hon'ble Shri Justice R.C.S. Samant

C A V JUDGMENT

07/11/2017

1. This appeal has been preferred against the judgment dated 30.10.2014 passed by Additional District Judge (FTC), Jashpur, District-Jashpur (C.G.), in Civil Suit No.1A of 2014, by which the petition filed by the respondent under Section 13(1)(1-A) of the Hindu Marriage Act, 1955 for dissolution of marriage was decreed.
2. Respondent filed a petition under Section 13(1)(1-A) of Hindu Marriage Act, 1955, stating in it that marriage between the parties was

solemnized on 24.7.2007 and out of their wedlock, a son was born on 6.3.2008. It has been further alleged in the application that after one year of marriage the appellant wife started pressurizing the respondent husband to live with her in her parental home and on his refusal, the appellant left her matrimonial home on 14.7.2007. Respondent made efforts with the help of members of the community and brought back the appellant on 15.10.2007 from her paternal home at Somni. The matrimonial discord continued and appellant again left her matrimonial home on 2.11.2007 and at that point of time respondent came to know that appellant is having illicit relationship with some other person residing in Somni.

3. Thereafter, an application under Section 125 Cr.P.C. was filed by the appellant before the Family Court under Section 125 of Cr.P.C. and during the pendency of said proceeding, a compromise was arrived at between the parties on 16.7.2009.
4. On 18.7.2009 appellant again came to Jashpur to reside with respondent. Respondent having some doubt, got the appellant medically examined in District Hospital, Jashpur on 10.8.2009 and Sonography test report of the appellant revealed that she is carrying pregnancy of 6 weeks and 1 day. Said fact was further confirmed in the repeated sonography test conducted on 12.8.2009. It was pleaded that Respondent had no occasion to cohabit and have physical relationship with appellant between 2.11.2007 and 16.7.2009, hence, appellant was having pregnancy on account of physical relationship with some other person and thus she had been living in adultery at the relevant point of time. It was on this ground that decree of divorce was sought.

Appellant/non-applicant did not turn up on service of notice on her, hence, *ex-parte* proceedings withdrawn and judgment and decree dated 5.8.2011 was passed decrees the suit in favour of respondent.

5. Needless to mention here that an application was moved by appellant for setting aside the *ex-parte* judgment and decree dated 5.8.2011 passed granting decree of divorce against her, which came to be registered as Misc. Civil Suit No.13/2011. This petition was allowed vide order dated 5.11.2011 and the *ex-parte* decree of divorce was set aside and the matter was remanded back to the court below for taking decision afresh after hearing the parties
6. Appellant in her written statement denied all the pleadings made by respondent / complainant and made allegations about cruelty and ill treatment given to her by the respondent. It is stated that respondent/complainant is making false allegation against the appellant about the pregnancy from extra marital relationship. Denying all the other statements in the plaint, the appellant prayed for dismissal of divorce petition.
7. On the basis of the pleadings of the parties, the trial Court framed issues and afforded opportunity of adducing evidence to both the parties and after completion of evidence, the trial court by the impugned order has held that the appellant failed to prove that she had been subjected to cruelty by the respondent husband. However, it was found proved that appellant was living in adultery and on this basis the divorce petition was allowed and decree of dissolution of marriage was granted.

8. It is submitted by counsel for appellant that the learned Court below has erroneously passed the judgment dissolving the marriage of the parties on the ground that the appellant is living in adultery. The evidence led by appellant that she was subjected to cruel treatment by the respondent was wrongly disbelieved. It was strictly denied by the appellant that no Sonography test was conducted on her to give any finding about her pregnancy, which has not been appreciated by the trial Court. In fact, she had not been pregnant as alleged, hence, the impugned judgment is contrary to the evidence of the case and the provisions under the law. Hence, prayed that the decree of divorce granted in favour of respondent be set aside and the appeal be allowed.
9. It is submitted by counsel for respondent that it has been clearly proved by the respondent/plaintiff that appellant had been living in adultery which resulted in her pregnancy. The fact that the appellant was pregnant stands proved from the Sonography tests conducted on 10.8.2009 and 12.8.2009 respectively. Hence, there is no scope for interference in the impugned judgment.
10. Heard both the parties and perused the record of the trial Court.
11. The only ground on which the petition for divorce was allowed is that appellant/defendant was living an adulterous life as it was found proved on the basis of the evidence on record. Hence, this is the only question to be considered, analyzed and scrutinized in this appeal.
12. Santosh Banjare (PW-1), respondent/plaintiff, has made specific statement, that the appellant herein was not residing with him between 2.11.2007 and 16.7.2009 and only after arriving at a compromise

before the Family Court, on 18.7.2009 she came back to her matrimonial home. On suspicion that the appellant had illicit relationship with some other person, the respondent got conducted Sonography test of the respondent in the District Hospital on 10.8.2009 and Sonography report revealed that she was carrying pregnancy of six weeks & one day. A repeat test was conducted on 12.8.2009 and the pregnancy was again confirmed. On being enquired, the appellant admitted that she was having physical relationship with some other person. Thereafter, appellant again left respondent and went to her matrimonial home. Reports Ex.P-4, Ex.P-6 are exhibited on record. In cross-examination, his statement on this point remained unshaken.

13. Dr. Manju Minj PW-2 has stated that she conducted Sonography test of appellant Indu Banjare on 10.8.2009 and found her pregnant. As per report of Ex.P-6, the appellant was carrying pregnancy on 6 weeks 1 day. In the cross-examination, nothing material could be elicited so to make her testimony unreliable or doubtful. There is no specific admission by her that it is not the appellant upon whom test was conducted by her. This statement of the doctor supports the version of Sontosh Banjare PW-1.

14. In defence Indu Banjare NAW-1 has made a statement that she was never subjected to Sonography test by her husband/respondent. In cross-examination she denies that when she went to reside with her husband on 18.7.2009 and during her stay she urinary infection and therefore she was sent to the District Hospital, Jashpur for treatment. She has denied that she was subjected to Sonography on 10.8.2009 and 12.8.2009. She has also denied that in the Sonography test it was

found that she is pregnant. Sonography test report dated 26.5.2010 is produced and exhibited as Ex.D-9 by the appellant, showing that appellant was not pregnant, but there is no whisper in the statements of other defence witnesses namely Rajkumar DW-2 Uman Lal DW-3 about the said pregnancy test. Even this report had not been proved by the person who conducted the test. Thus, the report subsequent dated 26.5.2010 cannot be treated as sufficient piece of evidence to rebut the statements of plaintiff's witnesses, especially when the sonography reports of appellants showing her to be pregnant on 18.8.2009 & 12.8.2009 have been proved by the persons who conducted such test.

15. Hence, on close and careful analysis of the evidence brought on record by both the sides, it is found that on the basis of preponderance of probabilities, respondent/plaintiff has brought sufficient proof against the appellant, that there was no co-habitation between the parties between 2.11.2007 & 18.7.2010; on a test conducted on 10.8.2010 i.e. just after 3 weeks of arrival of the appellant to her matrimonial home, she was found carrying pregnancy of more than 6 weeks which has not been explained by her in any manner. Mere denial on the part of appellant/defendant is not sufficient to rebut the evidence led by plaintiff side supported with medical documentary proof.

16. After due consideration and on the basis of the reasons as aforementioned, it is found that the trial Court was justified in granting decree of divorce under Section 13 (1) (i) of the Hindu Marriage Act, 1995. The findings recorded by the trial Court need no interference by this Court in exercise of its appellate jurisdiction.

17. In the result, the appeal being meritless is liable to be dismissed and it is accordingly dismissed.

Sd/-

(Rajendra Chandra Singh Samant)

JUDGE

Nisha