

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 151 of 2016

- Ashok Manekar S/o Late Shri Sohan Lal Manekar, Aged About 45 Years R/o Civil Line Behind Police Station Magarpara, Bilaspur, District Bilaspur, Chhattisgarh

---- Petitioner

Versus

- Smt. Jagriti Manekar W/o Shri Ashok Manekar, Aged About 40 Years, Sakeen Civil Line, Behind Police Station, Magarpara, City Bilaspur, District Bilaspur, Chhattisgarh

---- Respondent

For Appellant
For Respondent

Mr. Jitendra Pali, Advocate
Mr. R.K. Pali, Advocate on behalf of Mr.
Mr. P.P. Sahu, Advocate

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

Order On Board By

Prashant Kumar Mishra, J.

29/6/2017

1. Heard.
2. Challenge in this appeal is to the impugned judgment and decree passed by the Family Court, allowing the respondent's

application for dissolution of marriage.

3. The parties were married on 11.12.2005. They have no issues out of the wedlock. The respondent-wife moved an application under Section 13 of the Hindu Marriage Act on the ground that since after the marriage, the appellant-husband has consistently and regularly treated her with cruelty as the appellant was in the habit of consuming liquor on daily basis and he used to assault her in such state of intoxication.
4. A Civil Suit for dissolution of marriage was earlier preferred by the respondent bearing Civil Suit No.304-A/2012, however, both the parties entered into a compromise on 30.08.2012. Thereafter, as per the respondent-wife, she went to her matrimonial house but on 17.09.2012, the appellant demanded a motorcycle and in connection with such demand, he assaulted and seriously injured the wife, for which, an FIR was lodged and eventually, a Criminal Case was lodged bearing Crime No.534 of 2012 at P.S. Civil Lines, Bilaspur. Subsequently, the appellant was convicted for committing offence under Section 307 of IPC and sentenced to undergo R.I. for 7 years.
5. The appellant-husband has denied the allegations on the ground that the divorce petition has been preferred at the instance and provocation of respondent's sister, only with an object to grab the house belonging to the appellant, which is presently occupied by the respondent and her sister.
6. The appellant further defended the petition on submission that

the present suit is hit by the principles of *res judicata* as earlier the suit between the parties has already been compromised.

7. Based on the pleadings made by the parties, the only issue for determination framed by the trial Court was about the allegations of cruelty committed by the appellant-husband against the respondent-wife. The trial Court has discussed the statements of witnesses namely Jagriti Manekar (AW-1), Jyoti Khobragade (AW-2) and Ashok Manekar (DW-1) in substantial detail to conclude that the allegations of cruelty has been proved against the appellant.
8. The respondent-wife has stated in her evidence that the appellant earns Rs.20,000/- per month yet he was not giving any amount for the household expenditure; instead the appellant used to waste the money on consumption of alcohol and gambling, which by itself is cruelty. The respondent has stated that she was dragged out of the matrimonial house in November 2010, therefore, she had to take shelter in her sister's house. She was assaulted by the appellant on 12.12.2011 and 07.04.2012 in the night when the appellant entered the house in a state of intoxication, due to which, an FIR bearing Crime No.175/2012 was registered against the appellant, in which, he was convicted under Section 324 of IPC and sentenced to undergo R.I. for 06 months. Thereafter, a suit for divorce was filed, in which, they entered into a compromise and with all bonafides the wife went to the matrimonial house to make a fresh start of her marital life but once again, she was

assaulted by the appellant in a state of intoxication on 17.09.2012 and yet again, he was convicted and sentenced to undergo RI for 07 years.

9. The appellant could not elicit any substantial defence for himself in the cross-examination of the respondent-wife. The respondent's statement is duly supported and corroborated by her sister Jyoti Khobragade, who was examined as AW-2.

10. Even though the appellant has denied all the allegations in his deposition yet considering the documentary evidence in form of two criminal trials, in which, the allegations against the appellant was of beating/assaulting and injuring his wife in a state of intoxication, applying the law 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 Janmohamadkhan 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, **Parveen 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 SCC 558, **Sujata Uday Patil Vs. Uday Madhukar Patil**, 2007 AIR SCW 896, **Manisha Tyagi Vs. Deepak Kumar**, AIR 2010 SC 1042 and **Ramchander Vs. Ananta**, (2015) 11 SCC 539, the allegations of cruelty levelled by the respondent against the appellant are found to be duly proved.

11. The trial Court has not committed any error of law or jurisdiction nor the findings recorded by it appears to be perverse, therefore, the appeal *sans substance* deserves to be and is hereby dismissed.

Sd/-

Sd/-

Judge

Judge

(Prashant Kumar Mishra)

(Arvind Singh Chandel)

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