

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 150 of 2012**

- Nisha, W/o Nandkishor Gajbhiya, aged about 46 years, Resident of Bans Para, Sindu Bai Dongre, (Near to toilet), P.S.- City Kotwali, District Durg, Chhattisgarh.

---- Appellant**Versus**

- Nandkishor Gajbhiya, S/o Late Dhuran Lal Gajbhiya, aged about 42 years, Resident of Sweeper District Maliriya Office, P.S. City Kotwali, District Durg, Chhattisgarh.

---- Respondent

For Appellant	:	Smt. Renu Kochar, Advocate
For Respondent	:	None appears.

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

Order On Board By
Justice Prashant Kumar Mishra

20/07/2017

1. The appellant would assail the legality and validity of the impugned decree of divorce allowed by the Family Court, Durg on a petition filed by the respondent-husband under Section 13 (1) (ia) and (ib) of the Hindu Marriage Act, 1955.
2. The brief facts of the matter are that the parties were married on 31st May, 1991. Daughter- Kushbu was born out of the wedlock in the year 1995. The divorce petition was preferred on the avornment that during *Raksha Bandhan* festival of the year 1997, she went to her brother's

house at Risali and soon after return therefrom, she started making inappropriate behaviour and pressurized the plaintiff to live separately. Initially, the plaintiff did not agree, therefore, the wife went to her parental house at Dongargarh and since thereafter there has been no resumption of conjugal relation between them. By amending the plaint, it was also stated that the wife is making unfounded and baseless allegations that the husband has illicit relation with another woman, therefore, these allegations also constituted cruelty. It was further stated in the divorce petition that on several occasions, the wife tried to add poisonous substance in the food articles so that, if any untoward incident happens with the husband, she could get compassionate appointment. The plaint was submitted on 4/7/2008 seeking divorce on the ground of cruelty and desertion.

3. In the written statement, the appellant-wife alleged that for initial two years, they were living happily, but thereafter the husband started treating her with cruelty. She was also beaten/assaulted by the husband. According to the wife, the husband did not like her, therefore, he was finding excuses to oust her from the matrimonial house and in the process she was kept hungry by not providing meals and was also compelled to remain out of the house during the whole night so that out of frustration and depression she may leave the matrimonial house. She denied the allegations of adding poisonous substance in the food, however, she alleged that the husband had illicit relation with another woman. As a matter of fact, the husband amended the plaint to raise the plea of cruelty when false allegations

were leveled in the written statement.

4. Based on the statements of plaintiff Nandkishore (PW-1) and his witnesses Prabha Bai (PW-2), Budhram Meshram (PW-3) and that of defendant Nisha (DW-1) herself and her witnesses Sindhu Dongre (DW-2) and Smt. Ambika Thakur (DW-3), the trial Court has recorded a finding that the husband has successfully proved the allegations of cruelty and desertion.
5. None appears for the respondent-husband despite service of notice, therefore, we heard learned counsel for the Appellant alone and perused the records.
6. A bare perusal of deposition would reveal that the appellant-wife would admit that she is residing separately from her husband since the year 1997 and has no conjugal relation with the husband since then. She would also admit that after her marriage, she prevailed upon her husband to live separate which was accepted by the husband. It is also stated by her that the husband had illicit relation with one Ms. Kavita, however, apart from this bald statement, there is no evidence in support of the said statement. Even though documentary evidence of such relationship is not readily available. Once an allegation of such nature is made, it is the duty of the person making such allegation to make a sincere effort to produce evidence in this regard. However, her own witness, namely, her sister Sindhu Dongre has not stated anything on this aspect of the matter even in her examination-in-chief. Her another witness Ambika Thakur (PW-3) has made such statement in examination-in-chief, but in cross-examination she would admit that

she has never seen the woman with whom the respondent has allegedly performed second marriage. She would categorically admit that this fact is stated by her as per the information gathered from the appellant.

7. If the husband has performed second marriage and resided with that lady from 1997 till 2001, it was not difficult for the appellant-wife to collect evidence in the nature of photographs, statements of neighbours, where the husband and the other lady were allegedly residing together as husband and wife, the husband's ration card, voter list, the papers of his office wherein he might have mentioned the name of that lady as his wife, medical reimbursement claims in respect of the ailment of the lady etc. However, no such evidence has been produced by the appellant before the trial Court.
8. Any false allegation made by the wife against the husband of having illicit relation with some other lady is sufficient enough to constitute a ground of cruelty as held in **Smt. Arati Mondal v. Bhupati Mondal**, AIR 2009 Calcutta 200 (204), **Smt. Vimla Ladkani, v. Dr. Chandra Prakash Ladkani**, AIR 1996 Madhya Pradesh 86 (90), **Anita Krishnakumar Kachba v. Krishnakumar Ramchandra Kachba**, AIR 2003 Bombay 273, **Jayakrishna Panigrahi v. Smt. Surekha Panigrahi**, AIR 1996 Andhra Pradesh 19 (23), **Smt. Anita Jain v. Rajendra Kumar Jain**, AIR 2010 Rajasthan 56 and **Smt. Om Pati v. Rajbir**, AIR 2004 Punjab & Haryana 171 (173).
9. For the foregoing, we are convinced that the Trial Court has not committed any illegality in granting the decree of divorce in favour of

the husband. The appeal has no merit and it deserves to be and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Arvind Singh Chandel

FA (M) No. 150 of 2012

Nisha Versus Nankishor Gajbhiya

HEADLINES

Spouse making false allegation of illicit relation would constitute mental cruelty, therefore, the other spouse is entitled to a decree of divorce.