

**HIGH COURT OF CHHATTISGARH, BILASPUR****FAM No. 42 of 2008**

(Arising out of judgment/order dated 24.3.2007 in Case No. 98-A/05 of the learned  
2<sup>nd</sup> Additional Principal Judge, Family Court, Raipur)

- Gopal Verma, aged about 48 years, S/o Shri Rampyari Verma,  
R/o Village - Mudtarai, Tehsil - Rajim, District - Raipur (C.G.)

----- Appellant

**Versus**

- Poona Bai, aged about 37 years, R/o Chandna, Police Station -  
Magarlod, District - Dhamtari (C.G.)

----- Respondent

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For Appellant : Shri M.L. Sen on behalf of Shri SC Verma, Advocate.  
For Respondent : Shri Shivendu Pandya, Advocate.

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

**Order On Board By Prashant Kumar Mishra, J**

**06/09/2017**

1. The issue arising for determination in this appeal is whether in view of the wife's allegation that the husband has illicit relation with some other lady during the subsistence of their marriage, a decree for divorce can be granted at the instance of husband on the ground of alleged cruelty and desertion by the wife when such ground is closely connected with the issue of husband's

illicit relation.

2. The appellant and the respondent were married in the year 1984. As pleaded by the appellant, they stayed together at village Manikchouri, PS Abhanpur till 1992. During her stay with the appellant, she was always pressurizing him to get himself transferred to her parental village and on refusal by the appellant, she went back to her parental village along with ornaments. Despite repeated efforts by the appellant himself and through the caste Panchayat, the respondent did not return to join the marital chord, therefore, she has committed cruelty and desertion, as her separate living is without any just and reasonable cause. It was also stated that the respondent had lodged a false criminal case in which the appellant was acquitted in appeal by the appellate Court, therefore, for all the said reasons, a decree of divorce should be allowed.
3. The respondent defended the suit on submission that the appellant has illicit relation with one Kamla Bai of Pandri, new Shanti Nagar Raipur from the year 1991 in respect of which an agreement was executed between her and Kamla Bai on 14.12.1991 for submission before the Panchayat. Kamla Bai herself moved an application to the President, Dalliwar Kurmi Kshatriya Samaj, Rajim on 22.12.1991 alleging carrying five

months' pregnancy from the appellant. It was categorically stated in the written statement that the respondent had caught the appellant and Kamla Bai red handed in an objectionable position on 1.7.2000. She further alleged that the appellant has committed physical as well as mental cruelty and ousted her from the marital home in the year 1992 and is not making any provision for maintenance of herself and their two minor sons for which an FIR was lodged before Rajim Police on 1.7.1992.

4. It is not in dispute that in the criminal case under Section 498 A IPC the trial Court convicted the appellant and sentenced him to undergo RI for six months and to pay a fine of Rs.3,000/-, which was set aside by the 7<sup>th</sup> ASJ, Raipur on 12.7.2001 in Cr.A No. 220/2000. It is also not in dispute that application under Section 125 CrPC moved by the respondent has been allowed for herself and her two minor sons.
5. While the appellant had examined (PW-1) Bishan, (PW-2) Babulal, (PW-3) Umesh Ban Goswami and (PW-4) himself, the respondent examined herself as (DW-1) and her witness (DW-2) Ram Ashray Dilliwar.
6. The main thrust of the appellant's argument is on the point that the respondent left the matrimonial house on her own without any reasonable cause whereas the respondent has tried to prove that

the appellant has illicit relation with Kamla for which Panchayat meetings were convened. (DW-2) Ram Ashray Dilliwar is a witness who attended the Panchayat.

7. The trial Court has found that the appellant had illicit relation with Kamla Bai, therefore, neither she has committed cruelty nor deserted the appellant.
8. In order to find out the correctness of the conclusion arrived at by the trial Court, we have perused the entire evidence. On the one hand, the appellant has only denied his relation with Kamla Bai, whereas, the respondent has produced one of the members of the Panchayat to establish that the appellant has illicit relation with Kamla Bai. (PW-2) Babulal has made categorical statement that on the complaint made by the respondent, the Panchayat enquired the matter on which the allegation that the appellant is having illicit relation with Kamla Bai was found true. He would speak about another Panchayat meeting in which Kamla Bai had attended and stated before the Panchayat that she is carrying five months' pregnancy from the appellant.
9. It is settled law that cruelty as matrimonial offence consists of series of such conduct or behaviour by one or the other spouse which causes such mental cruelty on the complaining spouse that it is difficult to live together or such living together would

endanger the life. One or two isolated incidents of cruelty or misbehaviour would not amount to cruelty.

10. Similarly desertion would mean that the deserter spouse has abandoned the institution of marriage by permanently deserting the company of other spouse with an intention not to resume cohabitation or living together at any point of time in future. To constitute desertion, *animus deserendi* should be of such character that the act of desertion is permanent in nature and the same continues for the entire statutory period of two years without there being any indication of an intent to revive the matrimonial chord. To constitute desertion, the deserted spouse should not be a cause for the other spouse to desert the company meaning thereby that if the desertion is the result of the person's conduct or behaviour, the other party is entitled to raise the defence that but for the conduct or behaviour of the person, he would not have deserted the company.

11. In the case at hand, it is proved from the evidence that the appellant was having illicit relation with one Kamla Bai, therefore, he cannot or should not expect his legally married wife to reside under the same roof where another lady has invaded their marital chord. The appellant being the cause of such desertion, the respondent cannot be accused of deserting the appellant. The

ground of desertion is thus not proved. The trial Court is fully justified in taking such view in the matter.

12. Insofar as the allegation of cruelty is concerned, once the appellant's illicit relation with another lady is proved, it is the appellant who has committed cruelty on the respondent. The other allegations constituting cruelty are not of such nature which would constitute cruelty because the same are usual wear and tear of the marital life and are not so serious that it was difficult for the appellant to live together. As a matter of fact, from 1984 to 1992 the parties resided together. According to the respondent, the appellant's illicit relation with Kamla commenced in the year 1991, therefore, it is highly probable that their relations got strained once the appellant started extra marital affair with Kamla Bai.

13. Insofar as the plea of irretrievable breakdown of marriage is concerned, the Supreme Court in the matter of **Neelam Kumar Vs Dayarani** {(2010) 13 SCC 298} held that if the party to the marriage creates a situation making it impossible for the other party to live together and thus himself becomes a cause for breakdown of marriage, he is not to be given the benefit of such irretrievable breakdown and the marriage cannot be annulled on this point.

14. This is apart from the fact that irretrievable breakdown of marriage is by itself not a ground for dissolution of marriage under Section 13 of the Hindu Marriage Act, 1955. In **Neelam Kumar** (Supra), the Supreme Court also referred to its earlier decision in the matter of **Vishnu Dutt Sharma Vs. Manju Sharma** {(2009) 6 SCC 379} wherein it is observed that irretrievable breakdown of marriage is not a ground for divorce as it is not contemplated under Section 13 and granting divorce on this ground alone would amount to adding a clause therein by a judicial verdict, which would amount to of legislation by Court. Even otherwise, in some cases, the Supreme Court has allowed decree on the ground of irretrievable breakdown of marriage by exercising power under Article 142 of the Constitution of India and not as a ground for divorce under Section 13.
15. There is yet another ground raised by the appellant for seeking divorce inasmuch as according to the appellant, he has been acquitted in the criminal case under Section 498A IPC, therefore, the report lodged by the respondent being false, it furnishes a ground for dissolution of marriage, as held by the Supreme Court in the matter of **K. Srinivas Vs K. Sunita** {(2014) 16 SCC 34}.
16. We have given our anxious consideration to this ground. However, present is a case where the appellant was initially

convicted by the trial Magistrate and the order of conviction was set aside in appeal by the appellate Court. Even if illicit relation constituting cruelty in terms of Section 498A IPC is not found proved in the criminal case on the principle of proof beyond reasonable doubt, the same cannot assist the appellant in the divorce proceeding because in the present case the respondent has examined one of the members of the Panchayat (DW-2) Ram Ashray Dilliwar who has stated that on verification the allegation of illicit relation was found true by the Panchayat.

17. Since civil cases are decided on the principle of preponderance of probability and the respondent is not seeking decree of divorce on the ground of appellant's illicit relation but she is defending the suit for divorce to raise just cause for deserting the company of the appellant, in our considered opinion, the facts in the matter before the Supreme Court were entirely different. Even otherwise, the trial Magistrate had convicted the appellant, therefore, it is not a case where FIR or the allegations were absolutely false and concocted. Moreover after the appellant's acquittal, the respondent had not taken the matter further by moving any revision or appeal against acquittal nor she had ever moved before the appellant's employer which might create adverse impact on his employment. Therefore, it is not a case where the respondent tried to falsely implicate or harass or

torture the appellant in a frivolous case. Merely because the appellant has been acquitted in the criminal case, the same does not furnish a ground nor does it amount to cruelty for seeking decree of divorce.

18. For all the aforestated reasons, we do not find any substance in this appeal, the same deserves to be and is hereby dismissed.

Sd/-  
**Judge**  
(Prashant Kumar Mishra)

Sd/-  
**Judge**  
(Arvind Singh Chandel)