

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on: 11/04/2017****Judgment delivered on: 09/05/2017****First Appeal (M) No.126 of 2011**

- Kamlakant Banshi, aged about 34 years, S/o H.R. Banshi, R/o Pangaon, Police Station Pamgarh, District Janjgir-Champa, Chhattisgarh

---- Appellant**Versus**

- Smt. Dimpal Baghel, aged about 34 years, W/o. Kamlakant Banshi, R/o. Bangalipara Gali No.4, Sarkanda, Bilaspur, Chhattisgarh present address Govt. High Secondary School, Sakarra, Tahsil Takhatpur, District Bilaspur, Chhattisgarh.

--- Respondent

For the Appellant : Ms. Seema Singh, Advocate.

For the Respondent : Smt. Kiran Singh, Advocate.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice R.C.S. Samant****C A V JUDGMENT****Per R.C.S. Samant, J****09/05/2017**

1. This appeal has been preferred against the judgment dated 1.9.2011 passed by the learned Judge, Family Court, Janjgir-Champa in Civil Suit No.9A of 2009 by which the petition filed by the appellant under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage

was dismissed.

2. It is admitted fact that marriage of appellant/applicant and respondent/non-applicant was solemnized on 10.6.2003.
3. The case of appellant/applicant in brief is this, that respondent while residing with appellant brought her sister Seema Baghel for residing with her, appellant had objection about staying of sister of respondent with them. Later on, Seema eloped with one Rameshwar Khare. Respondent used to visit and stay for long hours in the residence of Rameshwar against the wishes of appellant, thereafter, she left appellant and started residing in the house of her sister Seema and Rameshwar Khare. Appellant has made every possible efforts to bring back the respondent, but he has not succeeded.

On the contrary, respondent threatened him that if, he continued in his attempts for taking her back, she will send all the family members behind the bars. It is alleged that respondent is living with Rameshwar as his wife. For this reason, wife of Rameshwar has filed a complaint under Section 494/34 of IPC against respondent Dimpal Baghel, Rameshwar and Seema Baghel, which is pending before the Court. Respondent has lodged various complaints against appellant and his family members and friends in the police-station. Efforts to resolve the dispute between them made by Mahila Thana have also failed as respondent bluntly refused to co-habit with appellant. Urging the grounds of desertion and cruelty, it was prayed that decree of dissolution of marriage be passed.

4. Learned counsel for the respondent/non-applicant has in reply stated, that it was on the insistence of appellant, her sister Seema Baghel was residing with them. She denied that Seema eloped with Rameshwar Khare. Denying other allegations made by appellant, she has further stated that appellant and his family members used to torture her for demand of dowry. She denied that she resided with Rameshwar Khare as his wife. It is alleged that appellant had conspired with the wife of Rameshwar Khare and lodged a report under Section 498A of IPC against Rameshwar Khare.

Similarly, at the instance of appellant, wife of Rameshwar Khare has filed complaint under Section 494 and 496 of IPC, which has been dismissed by order dated 29.8.2008, as the allegations were found baseless. It is stated that appellant himself has leveled false allegation on character of the respondent. Prior to filing this application, appellant has filed an application under Section 9 of Hindu Marriage Act, 1955 before the Judge, Family Court, Janjgir-Champa which has been dismissed by the said Court. Further, it is stated that appellant has performed second marriage with one Shashikala Kurre. Prayer has been made for dismissal of the application.

5. The Judge of Family Court framed issues, after affording the opportunities to both the parties for adducing evidence and hearing arguments and thereafter, the impugned order has been passed. The issue that respondent has deserted appellant and appellant is subjected to cruel behavior by respondent, has been found to be not proved. On the basis of this finding, the petition for divorce was

dismissed and decree was drawn accordingly.

6. The grounds in this appeal are these, that the learned Family Court below has failed to appreciate the evidence brought by the appellant and that the appellant has successfully proved the ground of desertion and cruelty on the part of respondent. It was proved that respondent is continuously residing with another person, which has been overlooked. Hence, for these reasons, the findings of the trial Court are perverse and bad in the eye of law. It is prayed that appeal be allowed and the judgment and decree of the trial Court be set aside with order of relief in favour of appellant.
7. It is submitted by the learned counsel for appellant that the grounds of desertion and cruelty have been proved by the evidence of appellant Kamlakant Banshi AW/1 and Savitri AW/2, who is the wife of Rameshwar. On the contrary, the evidence led by respondent was not enough to rebut or contradict the statements of the appellant witnesses. For these reasons, the trial Court has given an erroneous finding, which is liable to be set aside.
8. Learned counsel for the respondent submits that appellant has conspired against the respondent bringing various criminal action against her. The allegation made by appellant has been disputed in the evidence of respondent, hence, for these reasons, the judgment of trial Court does not suffer from any infirmity.
9. The question involved in this appeal is whether the grounds of desertion and cruelty, as alleged in the application by the appellant was

proved by him and the finding given by trial Court is an erroneous finding ?". The evidence before the trial Court is perused.

10. Kamlakant Banshi AW/1 has stated that after solemnization of marriage respondent came to live with him in village-Pangaon, when she called her sister (Seema Baghel) to reside with them, this became the reason of quarrel between them as appellant objected to residing of Seema with them, but Seema continued to reside in his house against his will. Respondent and her sister both have tortured the appellant. Later on, Seema left his house to reside with one Rameshwar Khare. Respondent used to visit the house of Rameshwar Khare and spend long hours there. On objection made by appellant, respondent replied that she cannot live without her sister and appellant can do whatever he wants to do, which resulted in quarrel between them and for this reason, appellant left his residence on 19.11.2004 and started living with his friend in his house situated at Rajkishore Nagar. Appellant tried to bring about a compromise by calling elderly persons of the family of both the parties, but respondent clearly said in front of all those persons that she has no relation with the appellant and said Rameshwar Khare is everything for her.

Later on, he came to know that respondent is residing in the house of Rameshwar Khare. Other statements have been made about the complaints made by the respondent and the petition filed by the appellant. It is stated that by the efforts of Women Commission a compromise was arrived at, even then respondent did not come to live with him and filed false complaint in the Court about torture and

demand of dowry, which has been dismissed by the criminal Court. He has stated that he filed a petition under Section 9 of the Hindu Marriage Act, 1955, but that petition was dismissed in default. Respondent is living in adultery and demanding Rs.1 lac from appellant for giving consent for divorce. In cross-examination, he remained consistent with his statement and denied all the adverse suggestions given in defence.

11. Savitri Bai AW/2 has stated that appellant and respondent were residing in her neighborhood after their marriage since 2003. She saw, sister of respondent Seema Baghel residing with them. Respondent and her sister used to come to the house of this witness on which, appellant used to raise objection which often resulted in quarrel between appellant and respondent and ultimately, appellant himself was driven out of the house by respondent. Later on, respondent and her sister Seema both came and started residing with husband of this witness which has resulted in friction between this witness with her husband. In cross-examination, she has admitted that appellant and Rameshwar both were good friends, she has also admitted that she is divorcée of Rameshwar and presently Seema is the wife of Rameshwar. Thus, the relation of respondent is as sister-in-law of Rameshwar.

12. Hetram Banshi AW/3 has supported with the appellant and stated that appellant is residing separately since 2004, Meena Banshi AW/4 has stated similarly that all the efforts made for resolution and compromise between the appellant and respondent have failed and respondent is residing with her sister on her own will.

13. Dimple Baghel NAW/1 has stated that she resided for one year with appellant after her marriage in 2003. Soon after marriage appellant used to ask her to demand refrigerator, cooler, T.V., sofa etc. by way of dowry and also to demand Rs.5 lac for doing some business. Appellant made a false statement at the time of marriage that he was a Principal of Pachpedi College, whereas he was just a teacher getting Rs.1,000/- to 1200/- per month, hence, household expenses were cared for by respondent herself. Appellant and his friends Premchand and Harwansh Kurre used to come and torture her. Later on, on one occasion, appellant gave severe beating to respondent because of which respondent and her sister Seema had been to PS-Sarkanda for lodging a report, but after they were made to understand about that situation they came back. Appellant on his own will left her on 19.11.2004 to reside with his friend Rajesh Khanna and used to come occasionally to demand money.

Later on, appellant has prompted the wife of Rameshwar Khare to file a false complaint against her under Section 494 of IPC. After the compromise entered before Womens Commission on 6.3.2008, she went to live with appellant in his residence at Bangalipara, Sarkanda, but after passing on a day, appellant left her, and started leveling false allegation on her character. In cross-examination, her statement has remained un rebutted, she has stated that when she resided with appellant he used to see her off and bring her back from her school where she was a teacher in school. She admitted that her sister Seema came to reside with them and she had married one Hemant Inwati by

performing a registered marriage in Court. She has stated that she has looked at Rameshwar Khare as brother-in-law (जीजा) Seema also resides with her. She is not aware about the wife of Rameshwar Khare.

14. Rameshwar Khare NAW/2 has stated similarly in favor of respondent and appellant. He admitted that he used to be the friend of appellant. In cross-examination, he has stated that respondent used to reside in his house as sister-in-law. No question was put to him by appellant about him having any illicit relation with the respondent.

15. After closely scrutinizing the evidence of both the parties, the most apparent thing in this case is this, that there is a grave misunderstanding between appellant and respondent. The grounds of desertion as alleged in the application have been denied and another story has been set up in the respondent evidence about the conduct of appellant in maintaining the relationship with respondent. This fact is also noticed that appellant is not employed and totally dependent on respondent. The allegation on character of respondent are not substantiated in any manner, as the statement of allegation in appellant's evidence has been denied in the respondent's evidence and no specific question was put either to respondent herself or Rameshwar Khare AW/2 about the illicit relationship of respondent with Rameshwar Khare AW/2. Respondent has stated her own reasons about not residing with the appellant and if, her version is to be believed, it is appellant, who has deserted her. Hence, for these reasons, finding given by the Court below seems to be correct and it does not suffer from any infirmity.

16. Reliance has been placed on the judgment of Supreme Court in **Praveen Mehta V Inderjit Mehta**, reported in **(2002) 5 SCC 706**, in which it has been held that in these circumstances it can be reasonably inferred that the marriage between the parties has broken down irretrievably without any fault on the part of one of the parties has remarried under these circumstances, decree of divorce should be granted.

This is not a similar case. Respondent is willing for resolution of marriage which seems there is hope of reunion although alleged that appellant has remarried but it has not been admitted or proved, hence, the guideline in this judgment cannot be followed in this case.

Adhyatma Bhattar Alwar Vs Adhyatma Bhattar Sri Devi, reported in **(2002) 1 SCC 308**, is relied upon on the same point. Similarly, reliance has been placed in the case of **Naveen Kohli Vs Neelu Kohli** Civil Appeal No.81/2004 decided on 21.3.2006 by Supreme Court in which it has been held that in the matter of desertion the essential conditions must be there namely:-

- factum of separation,
- the intention to bring cohabitation permanently to an end.

Similarly two elements are essential so far as the deserted spouse is concerned (1). the absence of consent, and (2). absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by

those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation.

This is a case where respondent does not intend for dissolution of her marriage with appellant, hence, evidence shown that appellant himself is deserter, thus, appellant cannot be benefited in any manner from the guideline laid down in the above judgment.

17. After due consideration on all the material on record, we are of the considered opinion that the judgment and decree passed by the trial Court does not suffer from any infirmity, hence, this appeal is dismissed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(R.C.S. Samant)
JUDGE