

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No.33 of 2013

- Bholanath Nande, aged about 28 years, S/o Shri Shescharan Nande, resident of Village Amapali, Tahsil Dharamjaigarh, Police Station Dharamjaigarh, Revenue & Civil District Raigarh (C.G.)

---- Appellant

Versus

- Smt. Sarju Nande, aged 27 years, W/o Shri Bholanath Nande, resident of Village Karrahan, Tahsil Lailunga, Police Station Lailunga, Civil and Revenue District Raigarh (C.G.)

---- Respondent

For Appellant
For Respondent

Shri A. N. Bhakta, Advocate
Shri R. K. Pali, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Anil Kumar Shukla

Order On Board by

Prashant Kumar Mishra J.

19/06/2017

1. Appellant/plaintiff has preferred this appeal under Section 19 (2) of the Family Courts Act, 1984 to assail the judgment and decree passed by the trial Court dismissing his suit for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 (henceforth 'the Act, 1955').

2. Indisputably, the marriage between the parties was solemnized at Village Karrahan, District Raigarh on 02.04.2006, however, on account of dispute between the husband and wife, the respondent went back to her parental house on 07.04.2007. She lodged an FIR against the present appellant on 02.05.2007 alleging commission of cruelty in connection with demand of dowry as also infliction of physical cruelty by assaulting her while she stayed in her matrimonial house. It is also not in dispute that in the criminal case initiated against the appellant, the trial Magistrate has convicted him for the offences under Sections 498-A and 323 IPC by judgment and decree dated 29.07.2011 in Criminal Case No.259/2007.
3. After his conviction in the criminal case, the appellant preferred the present suit on 28.05.2012 on the pleadings inter alia that the respondent wife refused to perform her marital and conjugal duties without any reasonable cause, therefore, a decree for restitution of conjugal rights deserves to be granted. The respondent contested the suit on the averment that the appellant was behaving with her in a cruel manner and is therefore himself responsible for creating the situation wherein the respondent was compelled to leave his company, therefore, decree for restitution of conjugal rights need not be allowed. It was also stated in the written statement that the appellant used to physically assault the respondent in state of intoxication and this has become his everyday habit, therefore, there is threat to her life.

4. Before the trial Court, the plaintiff examined himself as AW-1 and his father Shescharan Nande as AW-2, whereas the defendant/respondent examined herself as NAW-1 and her father Shyamrath Sharma as NAW-2, his wife Guruwaru as NAW-3 and Shaukilal Mishra as NAW-4.
5. Considering the nature of pleadings and evidence on record, particularly the appellant's conviction under Sections 498-A and 323 IPC, the trial Judge concluded that the respondent has reasonable cause for leaving the company of the appellant and residing in her parental house, therefore, in the facts and circumstances of the case, the appellant does not deserve a decree for restitution of conjugal rights.
6. We have seen the pleadings and the evidence available on record. The judgment of conviction recorded by the trial Magistrate records categorical finding that during the period from 02.04.2006 to 07.04.2007, when the respondent resided in her matrimonial house in the company of the appellant, she was ill treated and physically assaulted by the appellant. It is not a case where the respondent lodged the FIR as an upshot or as a counter blast to the application filed by the appellant under Section 9 of the Act, 1955. On the contrary, the present plaint has been preferred after the appellant's conviction by the Magistrate, therefore, the respondent was fully justified in leaving the company of the appellant and refusing to perform the conjugal rights when there was threat to her life and she was continuously

ill treated by the appellant and his relatives, who have been convicted by the trial Magistrate.

7. The present is not a case where the findings recorded by the trial Judge suffers from any perversity or non consideration of any material evidence which has substantial bearing on the issue brought before the Court.
8. For the foregoing, this Court does not find any ground to interfere with the impugned judgment and decree passed by the trial Judge. The appeal sans substance deserves to be and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Anil Kumar Shukla

Nirala