

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 42 of 2015****Judgment reserved on 30.08.2017****Judgment delivered on 08.11.2017**

(Arising out of Judgment and decree dated 12.03.2015 passed by the Judge, Family Court Dhamtari, in Civil Suit No. 99-A/2013)

- Durga Bai, W/o Narayan Sinha Aged About 25 Years D/o Doman Lal Sinha, R/o Village Semra (Bhakhara), Tahsil And District Dhamtari, Chhattisgarh

---- Appellant

Versus

- Narayan Sinha S/o Dujram Sinha Aged About 27 Years R/o Village- Arjuni, Tahsil And District, Dhamtari, Chhattisgarh

---- Respondent

For Appellant
For Respondent

Shri P.P. Sahu, Advocate
None, though served

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

C A V Judgment

The following judgment of the Court was delivered by
Prashant Kumar Mishra, J.--

1. By this appeal under Section 19 (1) of the Family Courts Act, 1984 the appellant/wife would assail the impugned judgment

and decree allowing the respondent/husband's prayer for dissolution of marriage.

2. The parties were married as per the Hindu rituals at village Semra (Bakhra), Tahsil and District Dhamtari on 17.05.2005. They have a daughter, born out of the wedlock, who was aged about 8 years at the time of presentation of divorce petition on 09.07.2013. The respondent/husband sought divorce on the pleadings that for some time after the marriage their relations were cordial, but, subsequently, the appellant/wife started behaving indifferently and misbehaving with the family members of the respondent/husband. She used to move out of the house without informing him or the family members and on inquiry she used to raise unnecessary dispute. She went to her parental house on 24.08.2008, came back on 15.09.2008, but again went back on 18.09.2008 and did not join the company of the husband, therefore, Panchayat meeting was convened in the month of January, 2009, which was unfruitful, and, as such, second Panchayat meeting was convened in February, 2009. The appellant/wife lodged the First Information Report (FIR) with the Arjuni Police against the respondent and his family members for offence punishable under Section 498-A of the Indian Penal Code (IPC). On completion of the trial, the

accused persons were convicted by the trial Court on 30.04.2011, however, the Session Judge, Dhamtari, allowed the appeal on 17.08.2011 and acquitted all the accused persons. The appellant/wife has also preferred an application for grant of maintenance to herself and her minor daughter. In paras 7 & 9 of the plaint, it was pleaded that the appellant/wife having residing separately for more than two years without any reasonable and justifiable cause the respondent is entitled to divorce on the ground of desertion for which the cause of action has arisen on 18.09.2008 when the appellant left the company of the respondent and on 17.08.2011 when the respondent and his family members were acquitted in the criminal case.

3. The appellant denied the plaint allegations. She stated that the respondent and his family members were subjecting her to intense physical and mental cruelty, therefore, she convened Panchayat meeting wherein the respondent's parents were fined for Rs. 5000/-, but they did not deposit the amount. Another meeting of the Panchayat was convened at Kurud, where a quarrel took place between the parties. Third Panchayat meeting was convened at village Gadadih, which was not attended by the respondent and his parents.

Thereafter, another Panchayat meeting was convened at village Telinsatti where again the respondent and his parents failed to appear. Having failed in her attempt to reconcile the matter through Panchayat meeting, the appellant lodged the FIR. It was further pleaded that the Sessions Court acquitted the respondent and his family members only on the ground that there was delay in lodging the FIR whereas the FIR was lodged immediately when the effort for reconciliation failed even after repeated Panchayat meetings. It was further pleaded that both the parties are residing at village Simra and are frequently meeting, therefore, there is no desertion.

4. The respondent/husband has examined himself as PW-1 whereas the appellant/wife examined herself as DW-1. No other witnesses were examined by either of the parties. The Family Court framed only one material issue for determination as to whether the appellant/wife has treated the respondent/husband with cruelty.
5. The trial Court has recorded a finding in para 18 of the judgment that the plaintiff (husband) has failed to prove that the appellant/wife was misbehaving with him or his family members or that she used to visit her parental house without informing him or his family members. This finding of the trial

Court would imply that the ground of cruelty urged by the plaintiff has not been proved in trial. The trial Court has, thereafter, considered the second aspect of cruelty i.e. whether the appellant/wife has lodged false report for demand of dowry and has, thus, caused cruelty to the plaintiff.

6. The trial Court has referred the judgment rendered by the Supreme Court in **K. Srinivas v. K. Sunita**¹ and has discussed the finding recorded in the appellate judgment rendered by the Sessions Court acquitting the respondent and his family members from the charge under Section 498-A of the IPC.
7. Lodging of false complaint with intent to harass and humiliate the respondent and his family members has been treated to be amounting to cruelty.
8. The Supreme Court in **K. Srinivas Rao v. D.A. Deepa**² observed thus in paras 27 & 28 :

27. We need to now see the effect of the above events. In our opinion, the first instance of mental cruelty is seen in the scurrilous, vulgar and defamatory statement made by the respondent-wife in her complaint dated 4/10/1999 addressed to the Superintendent of Police, Women Protection

¹ (2014) 16 SCC 34

² (2013) 5 SCC 226

Cell. The statement that the mother of the appellant-husband asked her to sleep with his father is bound to anger him. It is his case that this humiliation of his parents caused great anguish to him. He and his family were traumatized by the false and indecent statement made in the complaint. His grievance appears to us to be justified. This complaint is a part of the record. It is a part of the pleadings. That this statement is false is evident from the evidence of the mother of the respondent-wife, which we have already quoted. This statement cannot be explained away by stating that it was made because the respondent-wife was anxious to go back to the appellant-husband. This is not the way to win the husband back. It is well settled that such statements cause mental cruelty. By sending this complaint the respondent-wife has caused mental cruelty to the appellant-husband.

28. Pursuant to this complaint, the police registered a case under Section 498-A of the IPC. The appellant-husband and his parents had to apply for anticipatory bail, which was granted to them. Later, the respondent-wife withdrew the complaint. Pursuant to the withdrawal, the police filed a closure report. Thereafter, the respondent-wife filed a protest petition. The trial court took cognizance of the case against the appellant-husband and his parents (CC No. 62/2002). What is pertinent to note is that the respondent-wife filed criminal appeal in the High Court challenging the acquittal of the appellant-husband and his parents of the offences under the Dowry Prohibition Act and also the acquittal of his parents of the offence punishable under Section 498-A of the IPC. She filed criminal revision seeking enhancement of the punishment awarded to the appellant-husband for the offence under Section 498-A of the IPC in the High Court which is still

pending. When the criminal appeal filed by the appellant-husband challenging his conviction for the offence under Section 498-A of the IPC was allowed and he was acquitted, the respondent-wife filed criminal appeal in the High Court challenging the said acquittal. During this period respondent-wife and members of her family have also filed complaints in the High Court complaining about the appellant-husband so that he would be removed from the job. The conduct of the respondent- wife in filing a complaint making unfounded, indecent and defamatory allegation against her mother-in-law, in filing revision seeking enhancement of the sentence awarded to the appellant-husband, in filing appeal questioning the acquittal of the appellant-husband and acquittal of his parents indicates that she made all attempts to ensure that he and his parents are put in jail and he is removed from his job. We have no manner of doubt that this conduct has caused mental cruelty to the appellant-husband.

9. In **K. Sunita** (supra) the Supreme Court allowed divorce on the ground that the criminal complaint lodged by the wife was a contrived afterthought and ill advised.
10. In an extremely recent judgment rendered in the matter of **Raj Talreja v. Kavita Talreja**³ the Supreme Court has held that mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as

3 2017 SCC On line SC 462

cruelty within the meaning of the Hindu Marriage Act 1955 (for short 'the Act'). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty.

11. In the case at hand, the parties stayed together till 18.09.2008 and, thereafter, effort was made by the appellant/wife and her parents to reconcile the matter by convening successive Panchayat meetings on atleast four occasions.
12. The record of the criminal Court, summoned by us, is available. In the written report lodged by the appellant she has stated in detail about the Panchayat meetings wherein the respondent did not appear, therefore, the members of the Panchayat advised her to initiate legal action. The FIR itself states that the delay in lodging the same happened because the appellant was trying to settle the matter in the Panchayat.
13. On completion of the trial, the respondent and his relatives were convicted by the trial Court, which has been set aside by the sessions Court only on the ground that the FIR was delayed. Moreover, in the present suit the respondent/husband has not pleaded that the criminal case lodged against

him and his family members was false and has caused cruelty to him. The criminal complaint was for demand of dowry and physical cruelty and it is not a case where scandalous or indecent allegations have been leveled against the family members of the respondent. Merely because judgment of acquittal has been passed by the Sessions Court, it cannot be said that the same would amount to cruelty because if that is allowed to happen then in every case where the respondent and his relatives are acquitted in the criminal case by the JMFC or by the Sessions Court that would itself amount to grant of decree of divorce.

14. The matters before the family Court and the issue concerning commission of cruelty is to be tested on the basis of evidence adduced before the Family Court and not only on the ground that in criminal case the husband has been acquitted. For this conclusion we would draw support from the observation made by the Supreme Court in the recent judgment rendered in **Raj Talreja** (supra).
15. There is yet another reason as to why in the case at hand the decree of divorce is not sustainable inasmuch as in absence of any pleading that such criminal case has caused cruelty and the decree of divorce is sought on this ground alone, the

respondent/wife was precluded from defending the matter.

16. In a case of this nature where the criminal case has ended in acquittal only on the ground of delay in lodging the FIR without even commenting that the FIR contains false accusations or that there is an effort to implicate the accused persons in a false case, the absence of pleading of causing of cruelty on account of criminal case assumed significance.
17. Moreover, when the dispute occurs between the husband and wife, it cannot be expected of the wife that the moment the dispute arose she would straightway lodge the FIR without making any effort to save the marital institution. The effort to reconcile the matter between the husband and wife by convening Panchayat meeting can never be treated as a ground to disbelieve the prosecution case for acquitting the accused persons.
18. We are aware of the fact that this appeal is not about the validity of the order of acquittal passed by the sessions Court, but in the facts and circumstances of the case, it becomes necessary for us to analyze the whole gamut of evidence to conclude as to whether such acquittal would by itself amount

to lodging of false FIR for harassing the husband and/or his relatives.

19. For all the aforesaid reasons we are convinced that the appellant/wife has not lodged any false report against the respondent and has caused cruelty to him.
20. In the result, the appeal succeeds. The impugned judgment and decree deserves to be and is hereby set aside. The parties shall bear their respective costs.
21. A decree be drawn accordingly.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Arvind Singh Chandel

Gowri