

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 89 of 2017**

(Arising out of judgment/order dated 1.3.2017 passed in Civil Suit No.67A/2016 by the learned Judge, Family Court, Jangjir, District Janjgir-Champa (CG))

- Ramnarayan Sahu S/o Late Mahettar Lal Sahu, Aged About 31 Years R/o Village Jawalpur, Thakurdev Para, Tahsil Baloda, District Janjgir-Champa, Chhattisgarh

---- Petitioner**Versus**

- Smt. Nandkumari Sahu W/o Shri Ramnarayan Sahu, Aged About 30 Years R/o Village Parsabhatha Balco Nagar, Korba, District Korba, Chhattisgarh

---- Respondent

For Appellant	Mr. H.B. Agarwal, Senior Advocate with Mrs. Prabha Sharma, Advocate
For Respondent	Mr. Ashutosh Shukla, Advocate

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

Judgment On Board By**Prashant Kumar Mishra, J.****1/9/2017**

1. Heard.
2. On due consideration, IA No.02, an application under Order 41 Rule 27 of CPC, is allowed and the documents filed along with

the application are taken on record.

3. The appellant is aggrieved by the dismissal of his suit for grant of divorce, which he had preferred on the ground enumerated under Section 13 (1) (ia) (ib) of the Hindu Marriage Act, 1955. The parties were married on 27.6.2007 at Parsabhata at BALCO and have one daughter out of the wedlock.
4. The appellant would seek divorce on the pleadings that the respondent-wife used to insist for going to her parental house every now and then and at times, she used to visit her parental house without informing the appellant, therefore, she is a woman of liberal mindset. When the appellant used to discourage and persuade her not to visit her parental house every now and then, she used to raise quarrel and threaten him of false implication in dowry case. She is residing in her parental house from 22.3.2016. The appellant's effort to persuade her to come back to the marital house yielded no result, therefore, the respondent has committed cruelty on the appellant, for which, a decree of divorce deserves to be granted to annul the marriage between the parties.
5. The respondent-wife defended the suit on pleadings that the appellant is working as Shikshakarmi, but was not receiving regular salary, therefore, he used to force her to demand money from her parents. It was also stated that the appellant used to abuse and assault her in a state of intoxication and forcibly perform sexual intercourse even at the time when she was not feeling well. The appellant had also executed an agreement on

19.6.2011 for improving his behaviour, but he did not improve. On the contrary, his conduct, behaviour and cruelty aggravated when she was brutally assaulted and driven out of her marital house on 30.4.2014 with threatening that if she returns to the marital house, she would be eliminated. The appellant also demanded Rs.3 lakhs for purchase of a house, but when the demand was not fulfilled, she was assaulted and he stopped conversation with her. During Panchayat meeting at Village Jawalpur, the appellant assaulted her father in the presence of the members of the Panchayat. According to the respondent-wife, she is residing at her marital house from 10.09.2015 onwards.

6. On the basis of pleadings and evidence adduced by the parties, the trial Court has found that the appellant has not been able to establish cruelty against the respondent-wife.
7. We have examined the matter to assess the correctness of the findings recorded by the trial Court.
8. In respect of the matrimonial offence of cruelty, the appellant has tried to establish that the respondent-wife used to visit her parental house every now and then and when she was persuaded not to visit her parental house, she used to raise quarrel.
9. In our considered view, such incidents or issues would amount to minor wear and tear of marital life, but would not amount to cruelty, as held by the Supreme Court in the matters of **Dr. N.G.**

Dastane Vs. Mrs. S. Dastane, (1975) 2 SCC 326, **V. Bhagat Vs. D. Bhagat (Mrs.)**, (1994) 1 SCC 337, **Sirajmohmedkhan Janmohamadkhan Vs. Hafizunnisa Yasinkhan and Another**, (1981) 4 SCC 250, **Savitri Pandey Vs. Prem Chandra Pandey**, (2002) 2 SCC 73, **Gananath Pattnaik Vs. State of Orissa**, (2002) 2 SCC 619, **Parveen Mehta Vs. Inderjit Mehta**, (2002) 5 SCC 706, **Chetan Dass Vs. Kamla Devi**, (2001) 4 SCC 250, **A. Jayachandra Vs. Aneel Kaur**, (2005) 2 SCC 22, **Naveen Kohli Vs. Neelu Kohli**, (2006) 4 SCC 558, **Sujata Uday Patil Vs. Uday Madhukar Patil**, 2007 AIR SCW 896, **Manisha Tyagi Vs. Deepak Kumar**, AIR 2010 SC 1042 and **Ramchander Vs. Ananta**, (2015) 11 SCC 539.

10. The trial Court has also observed that to prove the allegations of cruelty, the appellant has not examined any witness. This finding also appears to be borne out from the record, because, the appellant's witnesses Umesh Sahu (AW-2) and Pramod Bharadwaj (AW-3) have deposed about the respondent's adulterous relation with her lawyer Santu Kumar Sahu, but they have not made any statement on the issue of commission of cruelty by the respondent on the appellant.

11. In so far as the allegation of matrimonial offence of adultery, the appellant has tried to establish this allegation by examining Umesh Sahu (AW-2) and Pramod Bharadwaj (AW-3). However, there is no whisper in the plaint about the respondent's adulterous relation with her lawyer Santu Kumar Sahu.

12. It is the settled law that any amount of oral evidence cannot be

read in evidence in absence of pleadings.

13. The respondent-wife has deposed to support her pleadings in the written statement by making allegations of commission of cruelty by the appellant in the form of assaulting her in a state of intoxication, demanding of Rs. 3 lakhs; and compromise between them in proceedings under Section 9 of the Hindu Marriage Act and Section 125 of Cr.P.C.

14. It is also to be noticed that when the parties were living separate and the respondent-wife had instituted maintenance proceedings under Section 125 of Cr.P.C., the same was compromised on 01.02.2016. The order sheet of the trial Magistrate recorded on the said date says that the wife is ready to reside with the husband and both the parties have entered into settlement, therefore, maintenance proceedings are dropped. If both the parties have entered into a compromise, the cruelty, if any, gets condoned.

15. By way of application IA No.02, which has been allowed above, the appellant has placed on record an information (document) supplied to the appellant under the Right to Information Act, by the State Women Commission. The document is an application purportedly written by respondent Nandkumari Sahu alleging that her Advocate Santu Kumar Sahu is physically exploiting her and has compelled her to abort the child, which she was carrying from Santosh Kumar Sahu.

16. We have tallied and compared the signature of respondent Smt.

Nandkumari Sahu available in this document with her signatures available in the order sheets of the trial Court and other documents available in the record.

17. On bare perusal, both the signatures appear to be different, therefore, *prima facie* the document filed along with the application does not inspire confidence. Even otherwise, the impugned judgment was passed on 01.03.2017, whereas, the document is dated 28.11.2016. It has not been stated in the application that the appellant obtained the document after the impugned judgment.

18. In our considered view, neither the document inspires confidence nor the application appears to be bonafide as it seems to be an afterthought. Moreover, when the respondent-wife entered the witness box, the appellant did not suggest to the respondent that she is having adulterous relation with Santu Kumar Sahu. This is apart from the fact that there is no pleading of adultery in the plaint.

19. For all the aforesaid reasons, we have not found any ground to entertain this appeal, which fails and is hereby dismissed at the motion stage itself.

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Arvind Singh Chandel)