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HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No.91 of 2014

Judgment Reserved on : 3.1.2017

Judgment Delivered on : 24.1.2017

Yogesh Kumar Pandey, son of late Chudamani Pandey, aged about 43 years,
R/o Village Lawan, Tahsil Balodabazar, Civil and Revenue District
Balodabazar – Bhatapara (Chhattisgarh)

---- Appellant

versus

Smt. Swati Pandey, wife of Yogesh Pandey, D/o Surya Prakash Pandey,
aged about 34 years, R/o Parsuram Ward, Kuldeep Bhawan, Near Hanuman
Mandir, Bhatapara, Post and P.S. Bhatapara, Civil and Revenue District
Balodabazar – Bhatapara (Chhattisgarh)

--- Respondent

For Appellant	:	Shri Raghvendra Pradhan, Advocate
For Respondent	:	Shri Sanjay Agrawal and Ms. Reena Singh, Advocates

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Anil Kumar Shukla

C.A.V. JUDGMENT

Per Anil Kumar Shukla, J.

1. This appeal has been preferred under Section 19(1) of the Family Courts Act, 1984 by the Husband/Appellant being aggrieved by the judgment dated 19.8.2014 passed in Case No.224-A of 2010 by the First Additional Principal Judge, Family Court, Raipur, whereby the Family Court rejected the application under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 moved by the Husband/Appellant against the Wife/Respondent for a decree of divorce.
2. The undisputed facts of the case are that the marriage between the Appellant and the Respondent was solemnised according to Hindu customs and traditions at Bhatapara, District Raipur (Chhattisgarh)

on 7.7.2006. Out of their wedlock, a son, namely, Ritik was born on 25.2.2008. It is also not disputed that the Appellant had sent a notice to the Respondent through his Advocate for restoration of conjugal rights, which was replied by the Respondent through her Advocate.

3. The case before the Family Court was that the marriage between the Appellant and the Respondent was solemnised at Bhatapara, District Raipur (Chhattisgarh) on 7.7.2006. Thereafter, both went to Singhroula, Chandrapur (Maharashtra), where the Appellant was employed as an Engineer and began to reside and lead their married life there. Out of their wedlock, the Respondent conceived. Since this was her first delivery, her parents brought her back from Chandrapur (Maharashtra) and got her admitted in Bagdi Nursing Home at Raipur (Chhattisgarh), where she delivered son Ritik on 25.2.2008. At that time, the Appellant was present there. After discharge from the nursing home, the Respondent, without consent and permission of the Appellant, went to her maternal house at Bhatapara (Chhattisgarh). When the Appellant went to Bhatapara to see his son, he was refused and threatened to be beaten. Thereafter, the Appellant and his family members went to Bhatapara 5–6 times to take the Respondent back, but the family members of the Respondent refused to send her and said that sufficient facility of treatment is not available at the place where the Appellant is employed and posted, while, as per the Appellant, sufficient facility of treatment is available at Village Singhroula, Chandrapur (Maharashtra). On 5.4.2008, elder brother of the Appellant, namely, Pinakpani Pandey went to Bhatapara to bring back the Respondent, but the family members of the

Respondent refused to send her and they misbehaved with Pinakpani Pandey and abused and threatened him. On the occasion of naming ceremony of the new born baby, when the mother of the Appellant went to Bhatapara, she was illtreated and was threatened to be implicated in a false case of torture for dowry. Thereafter, a false case under Section 151 of the Code of Criminal Procedure was lodged against the Appellant and he was got arrested. He was threatened that he will also be falsely implicated in a case under Section 498A of the Indian Penal Code. On account of torture being given by the Respondent, the Appellant seriously fell ill and was admitted in Navjyoti India Foundation, New Delhi for treatment. The Respondent was tried to be taken back to her matrimonial house on behalf of the Appellant through the NGO (Non-Government Organisation) of Ms. Kiran Bedi, but the family members of the Respondent did not send her back without any reason. A notice was sent to the Respondent on behalf of the Appellant for restitution of conjugal rights. In response to the said notice, the Appellant was threatened by the Respondent to be falsely implicated in a case under Section 498A IPC. When the Appellant went to Bhatapara to see his son on 29.8.2010, the family members of the Respondent beat him and lodged a false case of torture for dowry against him. Likewise, on his again going to Bhatapara on 25.4.2012, a false case under Sections 294, 506 Part II IPC was lodged against him. The Appellant, thereafter, having been physically and mentally tortured on behalf of the Respondent, filed an application against the Respondent before the Family Court for grant of a decree of divorce on the grounds of cruelty and desertion.

4. The Respondent, leaving the admitted facts of the application for divorce, denied the rest of the facts and pleaded that after solemnisation of the marriage when she went to Chandrapur (Maharashtra) along with the Appellant for leading the married life, in the first night, the Appellant came to her in drunken condition and misbehaved with her and illtreated her which caused her severe mental agony. Thereafter, the Appellant used to return home in drunken condition and torture her daily. The Respondent, thinking of her life and social respect of her parents, continued to tolerate everything, but the Appellant did not change his behaviour with her. In the meanwhile, the Respondent conceived. The Appellant did not look after her and did not get her medically treated properly and continuously tortured her, therefore, she became very weak. Having seen poor health condition of the Respondent, her parents, with the consent of the Appellant, took her back to her maternal house. Thereafter, the Respondent was admitted in Bagdi Nursing Home at Raipur for delivery, where son Ritik took birth on 25.2.2008. The Appellant did not bear any expense of the delivery of his son nor did he take care of the Respondent. Rather, after the delivery, the Appellant, having drunk, misbehaved with the family members of the Respondent. When the elder brother of the Appellant came to Bhatapara, he was requested to persuade the Appellant, but he quarreled with the Respondent and her family members and thereafter returned. The Appellant or his family members never came to take the Respondent, but whenever they came to Bhatapara they quarreled with the Respondent and her family members and returned. The Appellant sent notice to the Respondent for restoration of conjugal rights. The Respondent replied to the notice that she will return to

the Appellant after recovery of her health but on a condition that the Appellant will not torture her in future. But, even after receipt of her reply, the Appellant did not come to Bhatapara to take her. On 8.6.2008, the Appellant, accepting his mistakes, executed a conditional agreement (Ex.D-1), but, even thereafter, he did not come to take her and their child. The Appellant repeatedly gave physical and mental torture to the Respondent in which his family members also contributed. The Appellant made false promises to the Respondent to take her to the matrimonial house. On the pretext of delivery, the Appellant left the Respondent at her maternal house and did not take her back and without there being sufficient reason, he deserted her. The Respondent opposed the relief of decree of divorce sought by the Appellant.

5. After completion of the pleadings of the parties, the Family Court framed issues. On behalf of the Appellant, Appellant Yogesh Kumar Pandey (AW-1), his elder brother Pinakpani Pandey (AW-2) and his mother Smt. Shyama Pandey (AW-3) were examined before the Family Court. On behalf of the Respondent, Respondent Smt. Swati (NAW-1) and her father Surya Prakash Sharma (NAW-2) were examined.
6. The Family Court, after hearing arguments advanced by the parties, rejected the application under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 filed by the Appellant against the Respondent for a decree of divorce. Hence, this appeal.
7. Learned Counsel appearing for the Appellant argued that the judgment of the Family Court is contrary to the facts and law. The Respondent went to her maternal house of her own accord and did

not return to her matrimonial house which caused cruelty to the Appellant. The family members of the Respondent illtreated and misbehaved with the family members of the Appellant. This fact was not considered by the Family Court. The Respondent herself and his family members misbehaved with the Appellant many times. Due to this, the Appellant seriously fell ill and was admitted in Navjyoti India Foundation, New Delhi where the Respondent did not come to see him. On service of notice on the Respondent on behalf of the Appellant for restitution of conjugal rights on 1.4.2008, the Respondent did not return to her matrimonial house and instead, filed a false criminal case against the Appellant. On these grounds, Learned Counsel for the Appellant prayed that the impugned judgment be set aside, the instant appeal be allowed and a decree of divorce may be granted in favour of the Appellant. Learned Counsel for the Appellant placed reliance on **K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226, Ramchander v. Ananta, (2015) 11 SCC 539** and **Malathi Ravi, M.D. v. B.V. Ravi, M.D., (2014) 7 SCC 640**.

8. Learned Counsel appearing for the Respondent, opposing the arguments advanced on behalf of the Appellant, submitted that the impugned judgment passed by the Family Court is impeccable and does not warrant any interference. Learned Counsel further submitted that the Respondent had come to her maternal house because of there being sufficient medical facility and she stayed at her maternal house for the purpose of delivery and thereafter for recovery of her health. The Respondent never committed any cruelty with the Appellant. Instead, the Appellant used to torture the Respondent in drunken condition. Therefore, the appeal filed

by the Appellant be dismissed.

9. The Appellant has sought a decree of divorce on the grounds of (i) cruelty and (ii) desertion.
10. As far as the ground of cruelty is concerned, the Appellant in paragraph 6 of his application for divorce has stated that cause of action arose on 25.2.2008 and daily thereafter, meaning thereby the Respondent never committed any cruelty with the Appellant before 25.2.2008. 25.2.2008 is the date on which the Respondent delivered son Ritik in Bagdi Nursing Home at Raipur (Chhattisgarh). No evidence has been led by the Appellant that any cruelty was committed with him by the Respondent on 25.2.2008. A woman who has undergone a surgery for delivery of a child needs proper treatment and due care after such delivery and recovery of her health takes time. In the instant case, son Ritik was born by cesarean delivery of the Respondent in the Nursing Home at Raipur (Chhattisgarh). Therefore, her return to her maternal house at Bhatapara (Chhattisgarh) due to there being availability of sufficient facility of medical treatment and not to her matrimonial house at Village Singhroula, Chandrapur (Maharashtra) due to there being lack of proper facility of medical treatment is *bona fide* and cannot be termed as cruelty or desertion in any manner.
11. Appellant Yogesh Kumar Pandey (AW-1) has stated in his deposition that when he went to Bhatapara to meet his wife/Respondent and son Ritik, the family members of the Respondent threatened him to beat and bury. On 5.4.2008, brother of the Appellant, Pinakpani Pandey (AW-2) went to

Bhatapara (Chhattisgarh) to take the Respondent. Appellant Yogesh Kumar Pandey (AW-1) has not made clear that why did he not go to Bhatapara to take his wife/Respondent and why did he send his brother Pinakpani Pandey (AW-2), who is elder brother-in-law (*Jeth*) of the Respondent, to take her.

12. Smt. Shyama Pandey (AW-3), mother of the Appellant, has admitted in paragraph 5 of her deposition that daughter-in-law (*Bahu*) does not go with elder brother-in-law (*Jeth*). Likewise, Surya Prakash Sharma (NAW-2), father of the Respondent, has stated in paragraph 7 of his deposition that brother of the Appellant Pinakpani Pandey (AW-2) had come alone to Bhatapara (Chhattisgarh) to take the Respondent in the night at 9 O'clock and wanted to return along with the Respondent at 11:00 p.m. Therefore, it was not possible to send the Respondent along with Pinakpani Pandey (AW-2). Therefore, in these circumstances, if the Respondent did not go with the brother of the Appellant, no reason arises for raising objection on her. Appellant Yogesh Kumar Pandey (AW-1) has not made clear that between 25.2.2008 and 5.4.2008 when did he visit his son Ritik and when was he threatened?
13. On 14.4.2008, a naming ceremony for giving name to the son of the Respondent was arranged. Smt. Shyama Pandey (AW-3), mother of the Appellant, has stated in paragraph 1 of her deposition that on giving invitation she had attended the naming ceremony of the son of the Appellant and the Respondent at the maternal house of the Respondent, where she was illtreated. No any witness has been examined on this count. If the mother of the Appellant was an invitee in the ceremony, there was no reason to

illtreat her. Appellant Yogesh Kumar Pandey (AW-1) has deposed that on 14.4.2008 he was illtreated by the family members of the Respondent and was got arrested under Section 151 Cr.P.C. by them. But, no document has been proved by him regarding his arrest under Section 151 Cr.P.C. The Appellant has also stated that he seriously fell ill due to the cruelty being committed by the Respondent and he was treated in Navjyoti India Foundation, New Delhi. The Appellant has not produced any document regarding his treatment in Navjyoti India Foundation, New Delhi and he has admitted it in paragraph 9 of his deposition. The Appellant has stated in his deposition that he had met with Ms. Kiran Bedi at Navjyoti India Foundation, New Delhi where he had gone for his treatment and has also stated that he had tried to compromise with the Respondent with the assistance of Ms. Kiran Bedi.

14. Navjyoti India Foundation, New Delhi is, according to the contents available on its website, a centre where drug addicts are offered integrated treatment and counseling for drug de-addiction and where, for the treatment and counseling, drug addicts undergo six-month residential detoxification and correction program. According to the Appellant himself, he was admitted in Navjyoti India Foundation, New Delhi for treatment. This reveals that the Appellant was a drug addict. This is corroborated from the allegation/statement of the Respondent that in the first night the Appellant came to her in drunken condition and misbehaved with her and illtreated her which caused her severe mental agony. Thereafter, the Appellant used to return home in drunken condition and torture her daily. From the Appellant's own statement that he was admitted in Navjyoti India Foundation, New Delhi for treatment

and the Respondent's above referred to allegation/statement, it is apparent that the Appellant was illtreating and torturing the Respondent.

- 15.** Appellant Yogesh Kumar Pandey (AW-1) has further deposed that despite his several efforts the Respondent did not return to her matrimonial house and, therefore, on 1.4.2008, he issued a notice to the Respondent through his Advocate for restitution of conjugal rights. In response to the said notice, the Appellant was threatened on behalf of the Respondent that a complaint under Section 498-A IPC will be lodged against him. From the evidence on record, it is apparent that on 5.4.2008 brother of the Appellant Pinakpani Pandey (AW-2) had gone to the maternal house of the Respondent to take her. Prior to this itself, on 1.4.2008, the Appellant had given notice to the Respondent in which the Appellant stated about his presence at Bagdi Nursing Home, Raipur on 25.2.2008 and differences arose between him and the father of the Respondent. In this notice, it is not mentioned that the Appellant had personally gone to take the Respondent nor is it mentioned that what was discussed between the Appellant and the Respondent. Asking the Respondent by giving her notice by the Appellant to return to her matrimonial house would be like pressurising her especially in the circumstance the Respondent had undergone a cesarean delivery on 25.2.2008. Definitely, the age of new born baby would be 2 months at that time and going along with that baby to Village Singhroula, Chandrapur (Maharashtra), where sufficient medical facility is not available and while the incidents of 5.4.2008 and 14.4.2008 had taken place, cannot be said to be natural. Therefore, in these circumstances,

the reply given by the Advocate of the Respondent to the notice of the Appellant on 19.4.2008 (Ex.D-2) cannot be said to be cruelty with the Appellant. Ex.D-2 mentions about torture to the Respondent after the marriage and illegal demands. It also mentions about the statement made by the mother of the Appellant during the naming ceremony on 14.4.2008 that she wants son (Ritik) and not the wife (Respondent), which caused mental agony to the Respondent.

16. Appellant Yogesh Kumar Pandey (AW-1), in paragraph 5 of his deposition, has also stated that on 29.8.2010 the Respondent lodged a false complaint of torture for dowry against him, his elder brother Pinakpani Pandey (AW-2) and mother Smt. Shyama Pandey (AW-3) and on 29.8.2010 itself, brother of the Respondent along with some anti-social elements committed *marpeet* with the Appellant, whose report was lodged by the Appellant in Police Station Bhatapara. But, the Appellant has not stated in his evidence that for what purpose he had gone to the Respondent on 29.8.2010.
17. Surya Prakash Sharma (NAW-2), father of the Respondent has stated in paragraph 7 of his deposition that on 29.8.2010 the Appellant had come to his house and committed *marpeet* with the Respondent against which a report was lodged in the police station. As far as the First Information Report lodged under Section 498-A IPC on 29.8.2010 by the Respondent is concerned, the police, after completion of the investigation, has filed final report (Ex.A-1) against the Appellant, his brother and mother in the Court of Judicial Magistrate First Class, Bhatapara, trial of which is pending. Therefore, until that matter is disposed of, it cannot be

presumed that the Respondent lodged a false report and thus committed cruelty with the Appellant. From the above evidence, it is established that no ground of cruelty with the Appellant is made out against the Respondent and, therefore, the case of the Appellant for grant of a decree of divorce on the ground of cruelty is liable to be rejected.

18. Learned Counsel appearing for the Appellant has placed reliance on paragraphs 11 and 12 of the judgment in **K. Srinivas Rao case** (supra), which read as under:

“11. In *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511, this Court set out illustrative cases where inference of “*mental cruelty*” can be drawn. This list is obviously not exhaustive because each case presents its own peculiar factual matrix and existence or otherwise of mental cruelty will have to be judged after applying mind to it. We must quote the relevant paragraph of *Samar Ghosh*. We have reproduced only the instances which are relevant to the present case: (SCC pp. 546-47, para 101)

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with

other party.

(iii) * * *

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) – (ix) * * *

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) – (xiii) * * *

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

12. It is pertinent to note that in *Samar Ghosh case* the husband and wife had lived separately for

more than sixteen-and-a-half years. This fact was taken into consideration along with other facts as leading to the conclusion that matrimonial bond had been ruptured beyond repair because of the mental cruelty caused by the wife. Similar view was taken in *Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558.”

19. From perusal of the above quoted paragraphs 11 and 12, it appears that the judgment in **K. Srinivas Rao case** (supra) is distinguishable on facts and does not support the case of the Appellant for grant of a decree of divorce on the ground of cruelty.
20. The Appellant has also taken the ground of desertion by the Respondent in which he has stated about arising of cause of action on 25.2.2008 and thereafter. The Appellant filed the application for grant of a decree of divorce before the Family Court on 14.6.2010. In respect of the ground of desertion, it is necessary to appreciate the purpose for which the Respondent resided at her maternal house separately from the Appellant. From the discussion in the preceding paragraphs, it is established that from Village Singhroula, Chandrapur (Maharashtra), the Respondent came to her maternal house at Bhatapara (Chhattisgarh) for the purpose of delivery of the child (Ritik) and she gave birth to Ritik by a cesarean delivery at Bagdi Nursing Home at Raipur (Chhattisgarh) and thereafter she resided at her maternal house at Bhatapara (Chhattisgarh) for the purpose of taking rest and recovery of her health after the cesarean delivery. Therefore, Respondent's residing separately from the Appellant during this period cannot be termed as desertion of the Appellant. Meanwhile, on 5.4.2008, elder brother of the Appellant Pinakpani Pandey (AW-2) came to Bhatapara for taking the Respondent, but she did not go with him.

Reason for her not going with Pinakpani Pandey (AW-2) has already been discussed above.

21. Appellant Yogesh Kumar Pandey (AW-1), in paragraph 15 of his deposition, has admitted that on 8.6.2008 a social meeting was convened at Bhatapara in which he, his brother Palendra Shukla, uncles of the Respondent Ashok Sharma and Devesh Sharma were present, but in this meeting, no any other condition was agreed. Learned Counsel for the Appellant claiming that the so called agreement (Ex.D-1) is a forged document, has argued that the said agreement mentions the date of purchase of the stamp for agreement as 27.6.2008, therefore, recording of any agreement on this stamp paper in the date of 8.6.2008 is doubtful. As far as the conditions recorded in the agreement are concerned, Surya Prakash Sharma (NAW-2), father of the Respondent has admitted in cross-examination at paragraph 6 that a social meeting was convened at Bhatapara on 8.6.2008 in which an agreement was executed between the Appellant and the Respondent. The witness has further stated that it was not agreed in the said agreement that the Respondent will be sent to the Appellant within a week. He has also stated that he was agreed to send the Respondent to the Appellant, but the Appellant did not come to take the Respondent. He has further stated that after few days of the execution of the agreement, the Respondent along with her brother was sent to the house of the Appellant, but the Appellant refused to keep the Respondent with him and sent her back. This witness has admitted that he has not mentioned this fact in his affidavit, but, on being questioned, this witness has stated all these facts in his cross-examination.

22. Elder brother of the Appellant Pinakpani Pandey (AW-2) and his mother Smt. Shyama Pandey (AW-3) have only stated about agreement of sending of the Respondent to her matrimonial house. In addition to that, nothing has been disclosed by them in their evidence with regard to other things discussed in the social meeting about the dispute between the Appellant and the Respondent, which indicates that something is being hidden.
23. Thus, on the basis of the outcome of the social meeting held on 8.6.2008, the evidence adduced by the Appellant and the evidence of the father of the Respondent, it cannot be said that the Respondent refused to go with the Appellant at her matrimonial house and she deserted her husband/Appellant before his filing the application for divorce. Therefore, the ground of desertion taken by the Appellant for grant of a decree of divorce is also not sustainable.
24. In support of the ground of desertion taken for grant of divorce, Learned Counsel appearing for the Appellant has placed reliance on the judgment in **Malathi Ravi case** (supra). In the case on hand, the Respondent, as established above, stayed away from the Appellant at Bhatapara (Chhattisgarh) for the purpose of delivery of child (Ritik) and thereafter for recovery of her health because at Singhroula, Chandrapur (Maharashtra), where the Appellant was employed and residing, sufficient medical facility was not available. The Respondent, as an outcome of the social meeting convened, had gone to the house of the Appellant, but he refused to keep her. This does not amount to desertion of the Appellant. The judgment in **Malathi Ravi case** (supra) is also distinguishable on facts.

- 25.** The judgment in **Ramchander case** (supra) relied upon by Learned Counsel for the Appellant is also distinguishable on facts and grounds taken for divorce.
- 26.** Consequently, the first appeal is dismissed. Parties shall bear their own costs.
- 27.** A decree be drawn-up accordingly.

Sd/-
(Prashant Kumar Mishra)
JUDGE

Sd/-
(Anil Kumar Shukla)
JUDGE