

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 17.04.2018

Pronounced on 24.04.2018

First Appeal (M) No. 63 of 2012

- Sanjeev Kumar Kaushik S/o Late Shri Dayaram Kaushik, R/o Village Mungelidih, Post-Gochhiya, Tahsil And District- Kawardha (C.G.)

---- Appellant

Versus

- Smt. Mongra Bai Kaushik W/o Sanjeev Kumar Kaushik, at present R/o of village – Jinda, Post – Birkona, Tahsil & District – Kabirdham (C.G.)

---- Respondent

For Appellant	: Shri Bharat Rajput, Advocate
For Respondent	: Shri P.P. Sahu, Advocate

Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT

1) Challenge in this appeal is levied to the judgment and decree dated 15.02.2012 of the District Judge, Kabirdham (Kawardha), C.G. passed in Civil Suit No.24-A/2010, whereby and whereunder she dismissed the petition of appellant filed under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act, 1955').

2) This is admitted by respondent that both the parties are Lodhi by caste and governed by Hindu Law, near about 24 years before 10.11.2010 the marriage of both parties was solemnized in accordance with Hindu rites and rituals in village Jinda district – Kawardha, six years after the marriage Gauna (a custom after marriage) was performed. After Gauna she resided in his parental house at village Mungelidih, in wedlock two children have born, one

is Nitin Kumar who is 16 years, another is Ku. Kavita who is 8 years old, now she is living in her maternal house at village Jinda. He had given him registered notice dated 06.01.2010.

3) In brief, the appellant's case is that few days after Gauna she was making indecent comments, she had refused to do domestic works, she was misbehaving with him. She used to give a harmful liquid to him by mixing it in his meals. She is living separately from him since back three years without any sufficient cause. She had not replied his notice.

4) In brief, the respondent's case is that she was harassed on account of bringing cheap quality utensils in dowry. After getting the job, he started harassing her more, he was preventing her to come in his residence at service place. During her operation of uterus he did not come to see her neither he gave any money. She was ousted after beaten by him.

5) After conclusion of the trial, the trial Court passed the aforesaid judgment and decree. Being aggrieved, appellant preferred this appeal.

6) Shri Bharat Rajput, counsel for appellant strenuously argued that the trial court has not properly examined the evidence and reached to the wrong conclusion. Thus, aforesaid judgment and decree may be set aside and a decree of divorce may be granted.

7) Shri P.P. Sahu, counsel for respondent argued that the trial Court has appreciated the evidence in proper perspective. The judgment and decree passed by the trial Court are in accordance

with law. The impugned judgment and decree do not call for interference by this Court, thus appeal may be set aside.

8) Points for determination :-

The following points are there for determination in this case :-

- (1) Whether after solemnization of the marriage respondent has treated appellant with cruelty ?
- (2) Whether respondent has deserted appellant for a continuous period of not less than two years immediately preceding the presentation of the petition without reasonable cause and without the consent or against his wish ?
- (3) Whether appellant is entitled to get the decree of divorce on the ground of cruelty and desertion ?
- (4) Relief and costs.

Points for determination No.1 & 2 - Findings with reasons :-

- 9) Looking to the convenience, points for determination No. 1 & 2 are decided simultaneously.
- 10) AW1 Sanjeev Kumar Kaushik says in para 5 of his statement given on oath that respondent is living in her maternal house since back 4-5 years.
- 11) AW2 Mohan Lal Kaushik who is the uncle of appellant says in para 1 of his statement given on oath that respondent is living in her maternal house since back 4-5 years.

12) As per the statement of para 1 given on oath of AW3 Baldu Ram Kaushik, respondent is living separately from appellant since 4-5 years back.

13) AW4 Prasadi Ram who is the maternal uncle of appellant says in para 1 of his statement given on oath that respondent is living separately from appellant since 5-6 years ago.

14) AW5 Ramanuj Kaushik, who is the paternal uncle of appellant says in para 5 of his statement given on oath that the respondent is living separately from appellant since 5-6 years back.

15) NAW1 Smt. Mongra Bai says in para 2 during her cross examination that she is living in her maternal house since back one year.

16) NAW2 Ghuruwa Ram, NAW3 Shobha Ram say in para 3 of their statements given on oath that respondent is living in her maternal house since back one year.

17) Respondent has not specifically and strongly pleaded in her reply that allegedly she is living in her maternal house one year prior only. For not doing so, no explanation has been offered by her. In these circumstances, this Court believes aforesaid statements of para 5 of AW1 Sanjeev Kumar Kaushik, para 1 of AW2 Mohan Lal Kaushik, para 1 of AW3 Baldu Ram Kaushik, para 1 of AW4 Prasadi Ram, para 1 of AW5 Ramanuj Kaushik in this reference that respondent is living separately from him for a continuous period of not less than two years immediately preceding the presentation of the divorce petition and disbelieves aforesaid statements of para 2

of NAW1 Smt. Mongra Bai, para 3 of NAW2 Ghuruva Ram, para 3 of NAW3 Shobha Ram in this reference that respondent is living separately from appellant for a continuous period of less than two years immediately preceding the presentation of the divorce petition.

18) After the appreciation of the evidence discussed herebefore this Court finds that respondent is living separately from appellant not less than two years immediately preceding the presentation of the divorce petition.

19) AW1 Sanjeev Kumar Kaushik says in para 2 and 3 of his statement given on oath that, few days after Gauna she was making indecent comments, she had refused to do domestic works, she was misbehaving with him. She used to give harmful liquid to him by mixing it in his meals.

20) AW2 Mohan Lal Kaushik and AW5 Ramanuj Kaushik say in para 1 and 2 of their statements given on oath that respondent was making quarrel with appellant on account of petty matters, appellant had told him that she used to give harmful liquid to him by mixing it in his meals.

21) NAW1 Smt. Mongra Bai says in para 1, 2 and 4 of her statement given on oath that, she was harassed on account of bringing cheap quality utensils in dowry. After getting the job, he started harassing more, he was preventing her to come in his residence at service place. He was not coming to see her in his parental house even in 6-8 months interval. During her operation of uterus, he did not come to see her.

22) In **G.V.N. Kameswara Rao vs. G. Jabilli**; M.L.J. 2002 (1) 317, the Hon'ble Supreme Court has held as under :

“Cruelty can be said to be an act committed with an intention to cause sufferings to the opposite party and it has become intolerable for other to suffer any longer and to live together is impossible. This is to be judged not from a solitary incident, but on an overall consideration of all relevant circumstances. Austerity of temper, rudeness of language, occasional outburst of anger may not amount to cruelty, though it may amount to misconduct.”

23) In **Prabhash Saxena v Smt. Ranjana Saxena** {Mrr.L.J. 2002 (1) 502} Hon'ble Delhi High Court has laid down the following judicial precedent:

“ A consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 13(1)(ia) of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of other party.”

24) In **Gurinder Singh v Bhupinder Caur** {Mrr.L.J. 2008 (1) 261} Hon'ble Punjab and Haryana High Court has laid down the following judicial precedent: -

“Desertion means the separation of one spouse from other with an intention of bringing cohabitation permanently to an end without reasonable cause a consent of the other spouse and with an intention not return or resume cohabitation. Mere severance of relation or separation without desertion is not sufficient. Desertion is not walking out of a house but is withdrawn from a home. Desertion consists in withdrawn not from a place but from the state of thing.”

25) Hon'ble Supreme Court in **Adhyatma Bhattar Alwar v Adhyatma Bhattar Sri Devi** {2002 (1) SCC 308} has laid following judicial precedent:-

“For the offence of desertion two essential conditions must be there; (1) the factum of separation and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). 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 house to form the necessary intention.”

26) AW- 1 Sanjeev Kumar Kaushik says in para- 7, 8 and 10 during his cross examination that, he was going to his parental house once or twice during the festivals in a month. He had not kept respondent with him. At the time of her operation of the uterus, he did not go to see her.

27) AW2 Mohanlal Kaushik says in para 5 during his cross examination that behaviour of respondent was good when she had resided in parental house of appellant.

28) AW4 Prasadi Ram Kaushik says in para 6 during his cross examination that during residing in parental house of appellant, behaviour of respondent was proper.

29) AW5 Ramanuj Kaushik says in para 4 during his cross examination that behaviour of respondent was proper in village Mungelidih. Due to child marriage, disaffection was present between appellant and respondent.

30) Appellant has not proved any letter wherein it has been mentioned that allegedly few days after Gauna she was making indecent comments, she had allegedly refused to do domestic works, she was allegedly misbehaving with him. She allegedly used to give harmful liquid to him by mixing it in his meals. He has not proved any document of their community, wherein said facts have been mentioned. He has not proved any report lodged by him in any Police Station wherein said facts have been mentioned. He has not proved any notice wherein said facts have been mentioned. Looking to these circumstances, this Court finds that aforesaid judicial precedents laid down in GVN Kameswara Rao (supra) and Prabhash Saxena (supra) are applicable against the appellant's case regarding point for determination No. 1, and this Court disbelieves aforesaid statements of para- 2 and 3 of AW 1 Sanjeev Kumar Kaushik, para 1 and 2 of AW 2 Mohanlal Kaushik, para 1 and 2 of AW 5 Ramanuj Kaushik and believes aforesaid statement of para 1, 2 and 4 of NAW1 Mongra Bai in this reference that allegedly she has not committed any cruelty with appellant.

31) AW3 Baldu Ram Kaushik says in para 1 and 2 of his statement given on oath that a meeting of Lodhi community was held, wherein respondent had refused to come back to the appellant's house.

32) NAW2 Ghuruwa Ram and NAW3 Shobha Ram, say in para 2 of their statements given on oath that in the meeting of the Lodhi community, appellant did not come nor is taking back respondent.

33) This is not the appellant's case that he had allegedly called a meeting of the Lodhi community, wherein respondent had refused to live with him. Thus, this Court disbelieves the aforesaid statements of para 1 and 2 of AW 3 Baldu Ram Kaushik and believes aforesaid statements of para 2 of NAW2 Ghuruwa Ram and NAW3 Shobha Ram.

34) Looking to the above mentioned facts and circumstances of the case, this Court finds that appellant does not get any help from the aforesaid notice.

35) Looking to the above mentioned facts and circumstances of the case, it could not be said that respondent is living separately from appellant without any just and sufficient cause.

36) Looking to the aforesaid facts and circumstances, this Court finds that aforesaid judicial precedents laid down in Gurinder Singh (supra) and Adhyatma Bhattar Alwar (supra) are applicable against appellant regarding point for determination No.2.

37) After appreciation of the evidence discussed herebefore, this Court finds that there is no such evidence on record which shows that respondent has an intention to bring cohabitation permanently to an end (*animus deserandi*) without reasonable cause and consent of appellant. Respondent has an intention not to return or resume cohabitation with appellant.

38) After appreciation of the evidence discussed hereinbefore, this Court finds that appellant has failed to prove that after solemnization of the marriage, respondent treated him with cruelty,

she has deserted him for a period of not less than two years immediately preceding the presentation of the petition without consent or against his wish. Thus, this Court decides points for determination No. 1 and 2 accordingly.

Point for determination No.3 - Findings with reasons :-

39) This has been earlier decided that appellant has failed to prove the ground of cruelty and desertion.

40) Shri Bharat Rajput, counsel for appellant cited para- 15 of a Division Bench judgment of this Court in **Smt Vijaya Laxmi Soni vs Rajkumar Soni** {2009 (2) CGLJ 72}, relevant portion of which is given below :

“15Though the learned Court below was empowered to pass a decree of judicial separation in accordance with Section 13A of the Act, 1955 in case of petition for dissolution of marriage by a decree of divorce under Section 13 of the Act, 1955, however, it is not a case where it was necessary to pass a decree of judicial separation. When reunion or restitution of conjugal rights becomes impossible between the parties, dissolution of marriage by a decree of divorce is the only effective remedy for the welfare of the parties.”

41) In the case in hand appellant failed to prove the ground of cruelty or desertion. In the case in hand there is no situation that whether appellant is entitled either judicial separation or divorce. In other words, appellant has no option. Thus, appellant does not get any help from the aforesaid judicial precedent pronounced in Smt. Vijaya Laxmi (supra).

42) After appreciation of the evidence, this Court finds that appellant is not entitled to get decree of divorce on the ground of cruelty and desertion. Thus, this Court decides point for determination No.3 accordingly.

Point for determination No.4 - Findings with reasons :-

43) After complete appreciation of the evidence discussed herein before, this Court finds that the appeal is devoid of merit and deserves to be set aside. Thus, the impugned judgment and decree of the trial Court are hereby affirmed as to the aforesaid extent. The appeal is hereby dismissed.

44) Appellant shall bear his own costs as well as costs of the Respondent.

45) A Decree be drawn up accordingly.

Sd/-
(Sharad Kumar Gupta)
JUDGE