

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 19.04.2018

Delivered on 04.05.2018

First Appeal (Misc.) No. 113 of 2015

(Arising out of the judgment and decree passed by the Additional District Judge,
Sarangarh District – Raigarh, CG in Civil Suit No. 16A/2015)

Janak Ram Patel S/o Khageshwar Patel, Aged About 40 Years R/o Darrabhata, P.S.
and Tahsil- Sarangarh, District- Raigarh, Presently R/o Salar, P.O. Salar, P.S.
Sarangarh, District- Raigarh CG

---- Appellant**Versus**

Smt. Kavita Patel W/o Janakram Patel, Aged About 38 Years R/o Darrabhata, P.S.
and Tahsil- Sarangarh, District- Raigarh CG, Presently R/o Village- Bundeli, P.S.
and Tahsil- Baramkela, District- Raigarh CG

---- Respondent

For Appellant	:	Shri Rajendra Tripathi, Advocate.
For Respondent	:	Shri R.S. Patel, Advocate

Hon'ble Shri Sharad Kumar Gupta, Judge**C.A.V. JUDGMENT**

1. In this appeal, challenge is levied to the judgment and decree dated 31.07.2015 of the Additional District Judge, Sarangarh District – Raigarh, CG in Civil Suit No. 16A/2015 whereby and whereunder he allowed the petition for restitution of conjugal rights filed by the respondent/wife under Section 9 of the Hindu Marriage Act, 1955 (in brevity 'Act of 1955') against the appellant-husband.

2. This is admitted by the appellant that, the marriage of both the parties was solemnized in year 1995 in accordance with Hindu religion, and customary rites and rituals at village Budeli, in the wedlock two children namely Lokesh Patel aged 19 years and daughter Poonam Patel, aged 17 years were born, the appellant is in service, the appellant used to go for his

service place thus, she was living alone in the house, on 13-12-2010 the heap of straw of villager Bhuneshwar Sidar was burnt by someone, Bhuneshwar Sidar and his wife Roopvati abused and beat her saying that she had burnt the same by practicing witchcraft, she narrated the incident to him, she lodged the report against the Bhuneshwar Sidar and his wife, a criminal case is pending in the Court of JMFC, Sarangarh, she is living separately from him since January 2011 in her maternal house, he has refused to keep her along with him in his house.

3. In brief, respondent's case is that her husband started annoying believing that she is practicing witchcraft. He got her left to her maternal house. She gave the applications before Agharia community, Baramkela, the District Collector, Raigarh, the District Programme Officer, Women and Child Development officer, Raigarh for living with him. She is willing to lead the conjugal life with him.

4. In brief, appellant's case is that, she used to perform sexual intercourse with other persons, that is why he refused to keep her with him.

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

6. Shri Rajendra Tripathi, Counsel for the appellant vehemently argued that the trial Court has not appreciated the evidence in proper perspective. Thus, the impugned judgment and decree may be set aside.

7. Shri R.S. Patel, Counsel for the respondent argued that the impugned judgment and decree of the trial Court are just and proper and in accordance with the law. Thus, the appeal may be dismissed.

8. **Points for determination** : -

There are following points for determination in this case :-

- (1) Whether the appellant has, without reasonable excuse, withdrawn from the society of the respondent ?
- (2) Whether the respondent is entitled to get a decree of restitution of conjugal rights against the appellant ?
- (3) Relief and costs.

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

9. Looking to the convenience points for determination No. 1 and 2 are disposed of simultaneously.
10. AW1 Smt. Kavita Patel says in para 3 of her statement given on oath that her husband started annoying believing that she practices witchcraft. He made false allegations upon her that she is a Tonhi and had illicit relations with other persons.
11. AW2 Lalit Kumar Patel says in para 2 of his statement given on oath that appellant had told that the respondent is a Tonhi and had illicit relations with other persons.
12. AW3 Shankar Lal Naik says in para 2 of his statement given on oath that appellant had told that the respondent is a Tonhi and had illicit relations with other persons.
13. NAW1 Janak Ram Patel says in paras 4, 9 and 5 of his statements given on oath that, the respondent was not interested to cook meals, she was always ready to make quarrel with him, she used to perform sexual intercourse with other persons. She had given an application on 15.09.2013 in police station Sarangarh making false allegation against him. She had also made false complaints against him to the President, All India Agharia Community, the Collector Raigarh, the District Programme Officer, Woman and Child Development Officer.

14. NAW 4 Dinesh Patel who is maternal nephew of appellant says in para 2 of his statement given on oath that whenever the appellant was not present in the house, the respondent used to invite other persons and committed sexual intercourse with them.

15. NAW 5 Poonam Patel who is daughter of the appellant and the respondent says in para 1 that behaviour of her mother was not good, she was not serving meals to his father.

16. As per the admitted facts, the appellant and the respondent lived together near about 16 years after the marriage. In their wedlock two children were born.

17. This is not the appellant's case that the respondent was not interested to cook meals, she was always ready to make quarrel with him. She had given an application on 15.09.2013 in police station Sarangarh making false allegation against him, she had also made false complaints against him to the President, All India Agharia Community, the Collector Raigarh, the District Programme Officer, Woman and Child Development Officer. Moreover, NAW 4 Dinesh Patel says in para 6 during his cross examination that respondent was cooking the meals. NAW 5 Poonam Patel says in para 5 during her cross examination that this is true that when her mother lived with them then she used to cook and serve meals.

18. NAW1 Janak Ram Patel, NAW4 Dinesh Patel do not disclose clearly and strongly the name or identification of those persons, to whom the respondent used to invite and commit sexual intercourse. These witnesses do not say clearly and strongly the date, month of alleged incidents.

19. The appellant has not examined any independent neighbour or any independent person of same locality who would state that, he had personal knowledge that allegedly the respondent used to perform sexual intercourse

with such persons. He has not proved any report lodged in any police station wherein said fact has been mentioned. He has also not proved any document of their community wherein said fact has been mentioned. He has also not proved any notice given by him to her wherein said fact has been mentioned. For not doing so, there is no plausible explanation offered by him.

20. NAW 1 Janak Ram Patel says in para 30 during his cross examination that this is true that the respondent had given the application before the Collector Raigarh, and the Woman and Child Development Officer, for living with him.

21. There is no material on record on strength of which it could be said that the respondent had allegedly filed a false written complaint against the appellant in the police station Sarangarh. There is no material on record on strength of which it could be said that respondent had allegedly made a false complaint before the president, All India Agharia Community against him.

22. After the appreciation of the evidence discussed herebefore this Court believes on aforesaid statements of para 3 of AW 1 Kavita Patel, para 2 of AW 2 Lalit Kumar Patel, para 2 of AW 3 Shankarlal Nayak and disbelieves on aforesaid statements of paras 4, 9 and 5 of NAW 1 Janak Ram Patel, para 2 of NAW 4 Dinesh Patel and para 1 of NAW 5 Poonam Patel.

23. After the appreciation of the evidence discussed herebefore, this Court finds that, after solemnization of the marriage, the respondent had no voluntary sexual intercourse with any person other than her spouse.

24. After the appreciation of the evidence discussed herebefore, this Court finds that the appellant has without reasonable excuse, withdrawn from the society of the respondent, she is entitled to get a decree of restitution of conjugal rights against him. Thus, this Court decides points for determination

No. 1 and 2 accordingly.

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

25. After the complete appreciation of the evidence discussed herebefore, this Court finds that appeal is devoid of merit and deserves to be dismissed. Thus, the impugned judgment and decree of the trial Court are affirmed to the above extent. The appeal is dismissed.

26. Appellant shall bear his own costs as well as costs of respondent.

27. A decree be drawn up accordingly.

Sd/-
(Sharad Kumar Gupta)
Judge
4-5-2018