

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 185 of 2017**

- Smt. Abha Sahu W/o Yashwant Sahu, Aged About 33 Years, D/o M. L. Sahu, R/o Near Sai Mandir, Bangalipara, Purana Sarkanda, Bilaspur, District Bilaspur Chhattisgarh.

---- Petitioner

Versus

- Yashwant Sahu S/o R.P.Sahu, Aged About 34 Years R/o House No. 377, Sundar Nagar, Raipur, District Raipur Chhattisgarh.

---- Respondent

For Petitioner	Shri Sunil Otwani, Advocate.
For Respondent	Shri D.N. Prajapati and Ms Shriya Mishra, Advocates.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Ram Prasanna Sharma****Order On Board By****Prashant Kumar Mishra J.****25/04/2018**

1. In this appeal under Section 19 (1) of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955, the appellant would assail the legality and validity of the impugned judgment and decree whereby the respondent's application under Section 13 of the Act, 1955 for grant of divorce has been allowed on the grounds enumerated under Section 13 (a) (1) (1-a) (1-b) of the Act.
2. Challenge is mainly on the ground that the Family Court has not granted proper and sufficient opportunity to the appellant to cross examine the respondent's witnesses which has resulted in miscarriage of justice.

3. Shri Prajapati, learned counsel appearing for the respondent would submit that if the petitioner feels that proper opportunity has not been granted to her to cross examine the witnesses, the decree may be set aside and the matter may be remitted back for cross examination of the respondent's witnesses with further direction to the Family Court to decide the matter at the earliest.
4. A reading of the impugned judgment particularly Para 14 thereof would demonstrate that finding recorded by the Family Court against the appellant is on account of her failure to cross examine the respondent's witnesses. Therefore, in view of the submission made by the Shri Prajapati, the impugned decree of divorce is set aside.
5. At this stage, Shri Sunil Otwani, learned counsel would submit that during pendency of application under Section 125 Cr.P.C before the same Presiding Officer, the appellant has moved an application for transfer to some other Court of competent jurisdiction. Therefore, if the matter is remitted back to be tried by the same Presiding Officer, the appellant has serious apprehension of bias.
6. Considering the entire facts situation of the case, in view of the aforesaid, the impugned decree is set aside. The matter is remitted back to the trial Court for affording the appellant to cross examine the respondent/husband's witnesses and thereafter to render the judgment afresh. The proceedings may be concluded within a period of 6 months from today. The trial shall be conducted by the Principal Judge, Family Court, Bilaspur and not by the Presiding Officer who has rendered the impugned judgment.

Sd/-

Sd/-

Judge

Judge

Prashant Kumar Mishra

Ram Prasanna Sharma

Akhilesh