

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 124 of 2014

- Smt. Hemlata Sevtā, W/o Dinesh Sevtā, Aged About 34 Years, Occupation - Shiksha Karmi, Grade-II, High School, Bamhni, Kondagaon, R/o Kanapond, P.S. and Tahsil Charama, Civil and Revenue District Kanker (C.G.)

---- Petitioner

Versus

- Dinesh Sevtā, S/o Late Fattesingh Sevtā, Aged About 39 Years R/o Gidhali, P.S. and Tahsil Charama, Civil and Revenue Distt. Uttar Bastar Kanker, Chhattisgarh

---- Respondent

FAM No. 31 of 2015

- Dinesh Sevtā, aged 40 years, S/o Fattesingh, By Occupation Teacher, R/o Gidhali, Tahsil Charma, District Uttar Baster Kanker, Chhattisgarh

---- Petitioner

Versus

- Smt. Hemlata Sevtā W/o Dinesh Sevtā Aged About 35 Years R/o Kanapod, Tahsil Charama, Distt. Uttar Baster Kanker At Present Shiksha Karmi Grade 2, High School Bamhani Kondagaon, Tahsil and Distt. Kondagaon, Chhattisgarh

---- Respondent

For Smt. Hemlata Sevtā

Shri R. K. Sharma, Advocate

For Shri Dinesh Sevtā

Shri Parag Kotecha, Advocate

Hon'ble Justice Mr. Prashant Kumar Mishra

Hon'ble Justice Mrs. Vimla Singh Kapoor

Order On Board

15/11/2018

1. FAM No.124/2014 is an appeal preferred by the appellant wife challenging grant of decree of divorce on an application filed by the respondent husband.
2. FAM No.31/2015 is an appeal by the husband/father seeking custody of minor daughter Ku. Purbi, presently aged about 11 years. The Family Court has dismissed his application seeking custody of the said minor daughter.
3. Both the appeals have been listed together, however, we shall deal with the appeals separately, as the subject matter of the suit is different in both the matters.

FAM No.124/2014

4. The Trial Court has allowed husband's application under Section 21 of the Special Marriage Act, 1954 (for short 'the Act, 1954') seeking decree of divorce on the ground of cruelty. Since the parties are tribal, the Hindu Marriage Act is not applicable to them, therefore, the suit was preferred under the Act, 1954. We are not entering into the dispute as to whether or not such suit is maintainable under the Act, 1954, because no such objection was raised by the respondent husband before the trial Court and consequently no issues have been framed in this regard. It is also to be seen that even if an application under the Act, 1954 is not applicable, a suit for declaration of marital status which necessarily includes severance of such status by the decree of divorce is cognizable by the Family Court in terms of Section 7

(1), Explanation (a) of the Family Courts Act, 1984 (for short 'the Act, 1984'). Thus, in either case, whether it is a suit under the Act, 1954 or under Section 7 of the Act, 1984, the same shall be tried by the Family Court, which has decided the present suit between the parties.

5. The parties were married according to the custom prevalent in the Gond Tribal Community on 16.05.2005. At that time, the appellant wife was working as Teacher, however, subsequent to the marriage, the appellant wife was also appointed as Shiksha Karmi, which resulted in their separate residence due to their posting at different places. The respondent husband alleged that despite persuasion, the wife did not seek transfer to the place where the husband was posted. She was not treating well and paying respect to the members of his family and lodged false complaint with the Police, on which crime under Section 498-A read with Section 34 of IPC was registered. His mother died on account of shock and trauma due to this false criminal complaint. The criminal case eventually ended in acquittal of all the accused persons including the husband by the judgment dated 01.11.2017 passed by the CJM, North Bastar, Kanker.
6. The Hon'ble Supreme Court in the matter of **K. Srinivas vs K. Sunita**¹ and this Court in the matter of **Rakesh Kumar vs Smt.**², authored by one of us (Prashant Kumar Mishra), held that false complaint by the wife alleging demand of dowry and other cruelty under Section 498-A of IPC amounts to commission of cruelty.

¹ (2014) 16 SCC 34

² AIR 2018 CG 92

7. In the case at hand also, there is no dispute about the fact that the criminal case against the husband and his family members has ended in their acquittal, against which the appellant wife did not file any appeal. Thus, applying the law laid down by the Supreme Court in the matter of **K. Srinivas** (supra) and that of this Court in the matter of **Rakesh Kumar** (supra), we have no hesitation in holding that the decree passed by the Trial Court on the ground of cruelty does not call for any interference. We are also alive to the fact that since after the grant of decree of divorce dissolving the marriage between the parties, the husband has already performed re-marriage.
8. Accordingly, FAM No.124/2014 deserves to be and is hereby dismissed.

FAM No.31/2015

9. In this appeal, the appellant husband has assailed the order passed by the Family Court refusing to hand over custody of minor girl Ku. Purbi to the appellant.
10. The appellant Dinesh Sevtia sought custody of the minor girl on the ground that the respondent wife is not keeping the daughter with herself and the daughter is residing with her maternal grandmother. Therefore, it is better if custody of the girl is handed over to the appellant so that proper care and attention is taken in respect of her education and broughtup.
11. The Trial Court has dismissed the prayer for custody on the ground that the minor girl is residing with her grandmother since

her birth and her mother is taking due care and attention to her education and upbringing. It is also to be seen that now the appellant has performed re-marriage with one Gita Hidko, therefore, it may be difficult for the girl child to adjust with her step mother, if she is given in custody to the appellant Dinesh Sevtā. Moreover, the girl was also examined before the trial Court, wherein she has expressed her desire to live with her mother. We also notice that the girl child is presently aged about 11 years, therefore, to take proper care of the girl child during the age of puberty, it is necessary that she stays with her mother rather than her father.

- 12.** For all the above stated reasons, the appeal preferred by the father Dinesh Sevtā deserves to be and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Vimla Singh Kapoor
Judge