

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No.137 of 2016**

- Rana Dutta S/o Shri Sunil Kumar Dutta, Aged About 31 Years Caste- Kayasth, R/o Paresh Nagar, Post Office- Sewak Road, Siligudi, District- Jalpayigudi West Bengal, West Bengal

---- Petitioner**Versus**

- Smt. Rashmi Dutta W/o Rana Dutta, Caste- Kayasth, R/o C/o Shankar Bahadur, Bheem Dafai, Doman Hill, Chirmiri, Tahsil- Khadgawan, District- Korea, Chhattisgarh, Chhattisgarh

---- Respondent

For Appellant: Shri Anup Majumdar, Advocate
For Respondent : Shri Vikash Pandey, Advocate

**D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava &
Hon'ble Shri Justice Gautam Chourdiya**

Order on Board**PER MANINDRA MOHAN SHRIVASTAVA, J.****27/08/2018**

1. This appeal is directed against the impugned judgment and decree dated 12-04-2016 passed by the Judge, Family Court, Manendragarh, District Korea in Civil Suit No.65-A/2013, by which, the learned trial Court dismissed the appellant's/plaintiff's suit for grant of decree of divorce on the ground of cruelty.
2. The appellant filed an application under Section 13 of the Hindu Marriage Act seeking decree of divorce against the respondent-wife on the allegations of cruelty. In the plaint, it was pleaded that the respondent was quarrelsome lady and used to indulge in quarrel time and again on trivial issues. It was also alleged that at times, the respondent-wife used to indulge in assault and *marpeet*. Further pleading was that the respondent-wife threatened the appellant-husband to commit suicide unless he accepts her demand. Apart from these allegations, the appellant-plaintiff came out with the pleadings that when

he used to come back from duty, despite door being knocked repeatedly, the respondent-wife used to open the door after long time and the appellant felt humiliated due to neighbours watching the situation that he is sitting outside the house for half an hour. Other pleading was that the respondent-wife was not preparing food and the appellant-husband had to prepare food himself. It was next pleaded that on 10-09-2000, when appellant's maternal uncle Gopal visited the house, the appellant requested the respondent-wife to bring snacks and tea, she refused by stating that she is not maidservant in the house and the appellant himself may prepare tea and she hurled abuses and slapped the appellant. This resulted in serious embarrassment and mental agony. Another pleading was that on 09-02-2011, when the appellant and the respondent were to attend marriage, the respondent insisted that she would attend marriage only on the condition that the appellant purchased saree of Rs.5,000/- and footwear of Rs.1700/-. Finally, the appellant succumbed to respondent's pressure and purchased the demanded goods and then only the respondent attended marriage. It was also pleaded that the respondent used to assault his mother and father and threatened that if she was not allowed to go to her parental house, she would end her life by consuming poison and all will be sent to jail. It was also alleged that the respondent wife went to parental house on 21-09-2011 and lodged a report in the police station, Ex.P-1 making false allegations.

On these pleadings and assertions, the appellant-plaintiff came out with the case that these incidents and behaviour of the respondent caused physical and mental agony and therefore, decree of divorce may be granted.

3. The respondent-wife, in her written statement, while denying all the allegations of cruelty, pleaded that the appellant demanded Rs.7 Lakh and he used to abuse and assault her, throw away cooked food and not taking proper care of household needs/ration. Specific allegation was made that the appellant had developed illicit relations with his maternal aunt and on one occasion, when

the appellant and the respondent stayed overnight in the house of maternal uncle of the appellant, the respondent herself witnessed the appellant in a compromising position with his maternal aunt.

4. Having framed the issue as to whether the appellant was entitled to grant decree of divorce on the ground of cruelty, learned Family Court recorded a finding, upon appreciation of the oral as well as documentary evidence led by both the parties, that the appellant failed to prove the evidence of cruelty so as to warrant grant of decree of divorce. This appeal arises out of said judgment and decree.

5. Assailing the legality and validity of the impugned judgment and decree passed by the learned Family Court, learned counsel for the appellant contended before us that the learned Family Court misdirected itself in searching for corroborative evidence ignoring that in the matter of dispute between the husband and wife, normally this all happens in a close door situation. He argued that once the husband emphatically pleaded with specific particulars and details of various incidents which were supported from the oral testimony and the evidence of other witnesses on material aspects, learned Family Court ought to have recorded a finding that the respondent used to frequently quarrel on trivial issues and assaulted the appellant as also gave threat to commit suicide and falsely implicate him. Learned counsel for the appellant also argued that the respondent lodged false criminal case against the appellant which ended in acquittal meaning thereby that false allegations were levelled, therefore, that by itself, constitutes a ground of cruelty. Learned counsel for the appellant also contended that even though, leveling of false allegations was not pleaded as one of the ground of grant of decree of divorce, act of the respondent wife in levelling allegation of illicit relations, would constitute a ground for grant of decree of divorce if the respondent wife failed to substantiate those allegations. Learned counsel for the appellant argued that

the learned Family Court without any clinching evidence or material particulars, jumped to the conclusion that the appellant had illicit relations with his maternal aunt, which is wholly improbable. In support of the submission that on the ground of false allegations of illicit relations, the husband is entitled to grant of decree of divorce, reliance has been placed on a decision of the Supreme Court in the case of ***Narendra v. K. Meena***¹ and ***Vishwanath Agrawal S/o Sitaram Agrawal v. Sarla Vishwanath Agrawal***².

6. On the other hand, learned counsel for the respondent supported the impugned judgment and decree and submitted that not only the pleadings in the plaint were vague and unspecific, lacking material particulars, but also, the evidence led by the plaintiff is also vague, without specific details of the assault or allegations of threat of committing suicide and false implication. It is further argued that quarrel between the husband and wife on trivial issue, by itself, without anything more, has rightly been not made a basis for grant of decree of divorce by the learned Family Court. Next submission of learned counsel for the respondent is that the respondent has not only specifically pleaded, but has proved from her oral evidence that the husband was having illicit relations with his maternal aunt which the learned counsel for the appellant has also found proved. Therefore, the respondent has specifically pleaded and proved that the appellant used to demand money and harass as also commit violence. In this background, if the learned trial Court has dismissed the suit, no fault could be found with the same and therefore, it is prayed that the judgment and decree passed by the learned Family Court be dismissed.

7. Having heard learned counsel for the parties, we have perused the records.

8. As we have seen from the pleadings from the plaint, we find that the decree of divorce has been sought by the appellant-husband on the following

1 AIR 2016 SC 4599

2 (2012) 7 SCC 288

pleadings:-

- (a) The respondent used to enter into quarrel and assault on trivial issues.
- (b) The respondent used to hold out threat to commit suicide and to falsely implicate the appellant and his family members.
- (c) The respondent used to open the door even after one hour, despite husband knocking the door and he had to face embarrassing situation in the view of neighbours.
- (d) The respondent did not use to cook food.
- (e) On 10-09-2010, when appellant's maternal uncle Gopal visited his house and the respondent was requested to prepare snacks and tea, which was refused by the respondent-wife by stating that she is not a maidservant, abused and slapped the husband.
- (f) On 09-02-2011, for attending marriage ceremony, the respondent-wife insisted the appellant-husband to purchase saree and footwear and only upon fulfillment of those demands, she attended marriage.

9. As we find from the pleadings of the appellant, there is no specific allegations of cruelty on the ground that the respondent used to make false allegations of illicit relations of the husband and on such false allegations, she used to behave cruelly so as to cause mental agony to the husband and this was being circulated by the respondent amongst her family members, family members of the appellant and the public.

10. As far as the allegations of quarrel on trivial issue and *marpeet* are concerned, we find that the pleadings are absolutely vague. True it is that all the incidents could not be expected to be detailed, at least, some of the incidents which happened on trivial issues and quarrel and when he was assaulted and in what manner, whether it caused any injury on any part of the body, ought to be pleaded. It was required to be pleaded very specifically and merely by saying that the respondent-wife has indulged in quarrel and *marpeet* is not enough. In order to prove these allegations, the appellant has examined himself as PW-1. In his evidence also, he has not given any specific details of the alleged quarrel

and marpeet as pleaded in para 3 of the plaint. The allegations and the evidence are both general. On these vague pleadings, it cannot be said that the appellant has been able to prove the cruelty. The other allegations is of giving threat of committing suicide and also to falsely implicate each and every member of the family. In the pleadings, it has not been specifically pleaded as to when this happened and what was the background of the incident of quarrel, in which, this happened. The evidence in this regard is quite vague.

11. The allegation of not opening the door immediately after being knocked for half an hour, have not been supported by any independent evidence. We find that in the pleadings, it has been stated that the appellant felt embarrassed in the view of neighbours watching that he is sitting outside the house for half an hour, but no neighbour has been examined.

12. There is specific allegations of incident dated 10-09-2010, when appellant's maternal uncle Gopal visited his house. The allegation is that the respondent was asked to prepare snacks and tea, but she refused by stating that she was not a maid servant, hurled abuses and slapped the appellant. This has been specifically denied by the respondent. The most important evidence of this incident is the maternal uncle of the appellant i.e. Gopal, PW-2. In his evidence, this witness has stated in his examination-in-chief that he had visited the house of the appellant and the appellant asked the respondent-wife to prepare snacks and tea, but she refused by saying that she is not their servant, except this, no other incident at that stage has been stated by this witness. He has not even stated that the respondent-wife hurled abuses much less that she slapped the appellant-husband. Even in his cross-examination, no such suggestion has been given to elicit this fact of abuse and slapping. Therefore, the appellant/plaintiff's case in this regard is liable to be rejected.

13. This takes us to one of the serious allegations of illicit relation made by the respondent-wife against the appellant-husband. In the written statement, the

respondent-wife has pleaded that the appellant had developed illicit relations with his own maternal aunt. The allegations are based on the pleadings that once it happened that the appellant left the house by telling the respondent-wife that he will be going outside, in connection with his job and he would be returning after 15 days. The respondent doubted the statement and went to the house of the appellant's maternal uncle, where she was surprised to see that the appellant there. Upon being asked, excuse was given by the appellant that as he fell sick, he stayed there. Further pleading was that the respondent was also asked to stay there. The respondent further stated that in the night, she herself witnessed the incident by seeing her husband in a compromising situation with his own maternal aunt. The appellant sought apology and stated that such incident would not happen in future. In order to prove these allegations, the respondent has examined herself as sole witness. In her evidence, she has deposed in para 5 that in the night, when she was sleeping along with her husband, about 2 'O' Clock, when the appellant was not found on the bed, she enquired and found that he was in the room of his maternal aunt in a compromising situation. When the respondent intended to disclose about the incident to the maternal uncle, the appellant asked the respondent-wife not to do that and gagged her mouth. In between, elder maternal uncle got up and came to the room and asked what they were doing. As deposed, the appellant stated that child was crying, therefore, they come to see. Thereafter, the maternal uncle advised them to go to their room. She has further stated on that date, the younger maternal uncle had gone outside in connection with certain purchase.

14. In order to support these allegations, the respondent has examined herself and there is no other witness. According to evidence of the respondent, in the night of that incident, her elder maternal uncle also reached the spot. According to the case of the plaintiff, Gopal Vishwash, PW-2, is his elder

maternal uncle, but no suggestion has been given to this witness in support of the incident of he having witnessed the incident and advised the parties to go to their room. This renders the allegations of the respondent improbable. Further, it is seen that the maternal aunt, with whom the appellant is alleged to be having illicit relations, was not residing alone in her house, but there were other members of the family. Resultantly, heavy burden lies on the respondent-wife to prove the aforesaid allegation of serious nature. We also find that in order to lay credence to the story of the appellant having been found in compromising situation with his own maternal aunt, it has been deposed that on that day, younger maternal uncle was not at home and had gone elsewhere. But, in his cross-examination, she states that she does not know where he had gone. Moreover, above all, there is no specific date and month stated as to when this incident happened. She has not even examined her own parents to prove her pleadings and lay support to the evidence as to why this was not disclosed to her parents. Therefore, on scales of probabilities, we are inclined to hold that the respondent could not establish those allegations of her husband having illicit relations with his own maternal aunt.

15. We shall now deal with the submission of learned counsel for the appellant that even though, cruelty was not pleaded specifically in this case as false allegation of illicit relation, has been made during the course of proceedings which the respondent could not substantiate, the appellant may be granted decree of divorce.

16. Decisions in the case of **Narendra** and **Vishwanath Agrawal** (supra) are distinguishable on facts. In both the cases, it was specifically pleaded by the appellant-husband that making of false allegations and making it public by way of circulation caused mental agony to the appellant. On this ground, Their Lordship's in the Supreme Court held that if the spouse fails to prove such allegations and these allegations remained unsubstantiated, it would provide

ground to the husband to seek decree of divorce. In the absence of any pleading, we are not inclined to grant decree of divorce on this ground.

17. Learned counsel for the appellant argued that the respondent-wife had levelled false allegations of cruelty against the appellant-husband and his family members and the criminal case ended in acquittal, therefore, decree of divorce ought to be granted in his favour.

18. Firstly, this is said to have arisen during the pendency of the case. Secondly, said judgment of learned trial Court is not before us. Though, learned counsel for the parties did not dispute that the fact of acquittal vide order dated 14-11-2017, learned counsel for the respondent submits that against the order of acquittal, an appeal has already been filed. Therefore, in this background, we are not inclined to grant decree of divorce on that ground only, but, then ultimately if the acquittal is maintained, the husband may move an application for grant of decree on that ground.

19. In the result, we are not inclined to interfere with the impugned judgment and decree passed by the learned Family Court, dismissing plaintiff's suit.

20. Accordingly, the appeal is dismissed. Let appellate decree be drawn.

SD/-
(Manindra Mohan Shrivastava)
JUDGE

SD/-
(Gautam Chourdiya)
JUDGE