

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 17.04.2018

Delivered on 02.05.2018

First Appeal (Misc.) No. 23 of 2017**FAM No. 23 of 2017**

Suryakant Singh Parihar S/o Shri Markhande Singh Parihar, Aged About 29 Years R/o Madanpur, Revenue District- Mungeli, Chhattisgarh

---- Appellant**Versus**

Priynaka Singh Parihar W/o Surykant Singh Parihar, Aged About 27 Years R/o Basni, Tehsil Pandariya, Kabirdham, Chhattisgarh

---- Respondent

For Appellant	:	Shri Pallav Mishra, Advocate.
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For Respondent	:	None though served.
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Hon'ble Shri Sharad Kumar Gupta, Judge**C.A.V. JUDGMENT**

1. In this appeal, challenge is levied to the judgment and decree dated 25-11-2016 of Additional Judge to the Court of Additional District Judge, Mungeli, Chhattisgarh in Civil Suit No. 55A/2015 whereby and whereunder he dismissed the divorce petition filed by the appellant-husband under Section 13 of the Hindu Marriage Act, 1955 (in brevity 'Act of 1955') against respondent-wife.

2. This is admitted by the respondent that both the parties are Hindu by religion and governed by the Act of 1955. Their marriage was solemnized in July, 2007 in accordance with the Hindu rites and rituals, after the marriage, the Gona ceremony was occurred, they resided in the house of the appellant, she is living separately from him since 18-7-2017, on her complaint a criminal case under Section 498-A of the Indian Penal Code, 1908 is pending against him and his family members.

3. In brief, appellant's case is that first day after the marriage the respondent told him that she was unwilling to marry him, she wanted to marry some other person, she married him under the pressure of her family members. Marriage is not consummated. He had tried for bringing her back but she refused to lead conjugal life with him. He and his family members never demanded dowry. He has not performed second marriage with Yogita. The aforesaid case is false. She had given threatening that if she is compelled to lead conjugal life with him then she would commit suicide.

4. In brief, respondent's case is that the appellant and his family members were harassing her on account of bringing a car as dowry and Rs. 1 lac cash as Barat expenses. They had ousted her. On 16-6-2015 he and his family members came to her parental house and demanded Rs. 10 lacs cash as dowry, abused, beat, threatened and pressurized her to sign on divorce papers. He has performed second marriage with Yogita.

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

6. Shri Pallav Mishra, 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 and divorce may be granted to the appellant.

7. No one appears for the respondent at the time of hearing though served.

8. **Points for determination** : -

There are following points for determination in this case :-

(1) Whether after solemnization of the marriage, the respondent had treated the appellant with cruelty ?

(2) Whether the respondent has deserted the 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 the wish of him ?

(3) Whether appellant is entitled to get the decree of divorce on the ground of cruelty and desertion ?

(4) Relief and costs.

Point for determination No. 1 : Finding with reasons :-

9. The trial Court did not frame issue regarding cruelty though it ought to have been done by the trial Court. The evidence available on record shows that both the parties have adduced evidence regarding the cruelty. The evidence available on record is sufficient to enable this Court to pronounce the judgment. Non-framing of additional issue regarding the cruelty does not cause any prejudice to either of the parties. Thus, looking to the provisions of Order 41 Rule 24 of the Civil Procedure Code, 1908, this Court finds that it may pronounce the judgment in this appeal.

10. AW 1 Suryakant Singh Parihar says in para 2 and 4 of his statement given on oath that, first day after the marriage respondent told him that she was not inclined to marry him, she got married on the pressure of her family members, she was inclined to marry some other person, marriage was not consummated. She had threatened him that if she is compelled to lead conjugal life with him, then she would commit suicide.

11. A.W. 2 Markhande Singh who is father of the appellant says in para 2 of his statement given on oath that second day after the marriage the appellant had told him that, the respondent was not inclined to marry him, she got married on the pressure of her family members, she was inclined to marry some other person.

12. NAW 1 Priyanka Singh Parihar says in paras 3, 5, 7, 12 of her statement given on oath that, the appellant and his family members used to harass her on account of not bringing a car as dowry and Barat expenses of Rs. 1 lac, and used to demand the same. He used to say that he was not inclined to marry her, he is in love affairs with some one else. He married her to become the heir of the property of her Bade Papa Martand Singh. There was sexual relationship between them. He and his family members ousted and beat her and made false allegation upon her character. On 16-6-2015 he and his family members had come to her parental house and demanded Rs. 10 lacs cash as dowry, pressurized her to sign on divorce petition, beat, abused and threatened her, he has performed second marriage with Yogita on the very day.

13. NAW 2 Bhikham Singh alias Nandraj Singh who is maternal uncle of respondent says in para 2 of his statement given on oath that after the marriage appellant and his family members used to harass her on account of demand of a car as dowry and Rs. 1 lac cash as Barat expenses. They ousted her.

14. NAW 3 Dharam Raj Singh says in para 3 of his statement given on oath that, after the marriage appellant and his family members used to harass her on account of demand of a car as dowry and Rs. 1 lacs cash as Barat expenses, her Bade Papa is not adopting the appellant and not transferring his property to him. They ousted her.

15. NAW 4 Krishna Kumar Singh who is father of the respondent says in paras 2, 7, and 8 of his statement given on oath that his daughter had told him that after the marriage appellant and his family members used to harass her on account of demand of a car as dowry and Rs. 1 lacs cash as Barat expenses. They ousted her. On 16-6-2015 appellant and his family members came to him and demanded Rs. 10 lacs cash as dowry,

pressurized her to sign on divorce petition, beat, abused and threatened her. He has performed second marriage with Yogita on the very day.

16. As per the alleged carbon copy of first information report dated 5-8-2015 Ex. D-1 the appellant and his family members used to harass respondent on account of demand of dowry, on 16-6-2015 he and his family members came to her maternal house, demanded dowry, abused, beat, threatened and pressurized her to sign on divorce petition, one Paleshwar Singh told her that the appellant has performed second marriage with Yogita.

17. In **G.V.N. Kameswara Rao vs. G. Jabilli; [2002(2) SCC 296]**, 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.”

18. In **Prabhash Saxena v Smt. Ranjana Saxena [ILR(2001) 1 DEL. 709]** 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.”

19. NAW 2 Bhikham Singh in para 6, NAW 3 Dharam Raj Singh in para 7, NAW 4 Krishna Kumar Singh in para 11, during their cross-examination say that this is true that at the time of fixation of marriage there was no conversation regarding dowry. NAW 1 Priyanka Singh Parihar says in para 15 during her cross-examination that this is true that as per the Hindu rites and rituals she did not wear bangles in her hands and no vermilion on her

forehead.

20. This is not the respondent's case that the appellant allegedly used to say that he married her to become heir of the property of her Bade Papa, and on account of it he was harassing her, he used to say that he was not inclined to marry her and he is in love affairs with some one else.

21. The respondent has not examined any person who had attended the alleged second marriage of the appellant. She has also not examined any Pandit who got performed the second marriage of the appellant. For not doing so she has not offered any explanation.

22. The respondent has not examined any neighbour of the appellant who would say about alleged harassment on account of demand of dowry and Barat expenses. She has failed to prove any letter wherein said fact has been mentioned. She has failed to prove any document of her community wherein said fact has been mentioned. She failed to prove any report lodged by her in any police station immediately before lodging the Ex. D-1. She has failed to prove any notice given by her to him wherein said fact has been mentioned. For not doing so there is no plausible explanation offered by her.

23. Ex. D-1 has been lodged after 5 years from filing the divorce petition. Moreover Ex. D-1 has been lodged near about 1 and half month after the alleged incident dated 16-6-2015. There is no reasonable explanation for this delay. Moreover, this is not normal and natural circumstance that the appellant allegedly after 5 years of filing of divorce petition would go to respondent's maternal house for demanding dowry, allegedly abusing, threatening and beating her, allegedly pressurizing her to sign on divorce papers.

24. Looking to the above mentioned facts and circumstances of the case, this Court believes on aforesaid statements of para 2 and 4 of AW 1

Suryakant Singh Parihar, para 2 of AW 2 Markhande Singh, and disbelieves on aforesaid statement of paras 3, 5, 7, 12 of NAW 1 Priyanka Singh Parihar, para 2 of NAW 2 Bhikham Singh alias Nandraj Singh, para 3 of NAW 3 Dharam Raj Singh, paras 2, 7, 8 of NAW 4 Krishna Kumar Singh, and Ex. D-1 in this reference that appellant and his family members allegedly used to harass her on account of demand of dowry, Barat expenses, allegedly he and his family members came to her maternal house and allegedly demanded dowry and Barat expenses, alleged abused, threatened her, allegedly pressurized her to sign on divorce papers, allegedly he had performed second marriage with Yogita.

25. After appreciation of the evidence discussed herebefore, this Court prima facie found that, alleged allegations regarding the incident of 16-6-2015, alleged allegation regarding second marriage with Yogita, Ex. D-1, alleged criminal case are without concrete base and false.

26. As per the principle laid down by Hon'ble Punjab and Haryana High Court in the matter of **Jasminder Singh -v- Smt. Prabhajinder Kaur** (AIR 2008 P&H 13) denial of sexual intercourse by wife to husband constitutes mental torture, husband is entitled to decree of divorce.

27. Making false allegation, lodging false report are itself amount as to cruelty.

28. Looking to the above mentioned facts and circumstances this Court finds that aforesaid judicial precedents laid down in **G.V.N. Kameswara Rao** (supra) and **Prabhash Saxena** (supra) are applicable in favour of appellant's case and against the respondent's case regarding this point for determination.

29. After appreciation of the evidence discussed herebefore, this Court finds that after solemnization of marriage respondent had treated the

appellant with cruelty. Thus, this court decides point for determination No. 1 accordingly.

Point for determination No. 2 : Finding with reasons

30. The Trial Court did not frame issue regarding desertion though it ought to have been done by the Trial Court. The evidence available on record shows that both the parties have adduced evidence regarding desertion. The evidence available on record is sufficient to enable this Court to pronounce the judgment. Non-framing of additional issue regarding the desertion does not cause any prejudice to either of the parties. Thus, looking to the provisions Order 41 Rule 24 of the Civil Procedure Code, 1908, this Court finds that it may pronounce the judgment in this appeal.

31. 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.”

32. 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.”

33. This is admitted by respondent that she is living separately from appellant since back 18-7-2007. The appellant had filed divorce petition on 21-7-2010.

34. This has been earlier decided that the respondent has treated the appellant with cruelty, he had not harassed her, he has not contracted second marriage.

35. Looking to the above mentioned facts and circumstances, this Court finds that the aforesaid judicial precedents laid down in **Gurinder Singh** (supra) and **Adhyatma Bhattar Alwar** (supra) are applicable in favour of the appellant's case and against the respondent's case regarding this point for determination.

36. After the appreciation of evidence discussed herebefore this Court finds that the 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 the wish of him. Thus this Court decides the point No. 2 for determination accordingly.

Point for determination No. 3 : Finding with reason

37. This has been earlier decided that the appellant has succeeded to prove the grounds of cruelty and desertion. There is no violation of other provisions of Section 23 of the Act of 1955. Thus, this Court finds that the appellant is entitled to get the decree of divorce. Thus, this Court decides the point for determination No. 3 accordingly.

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

38. After complete appreciation of the evidence discussed hereinbefore, this Court finds that the appellant has succeeded to prove his case. Thus, the

appeal is allowed. Hence, the impugned judgment and decree passed by the trial Court are hereby set aside.

39. It is, therefore, ordered that :-

(i) The aforesaid marriage solemnized between the appellant and the respondent is dissolved by the decree of divorce from today.

(ii) The respondent shall bear her own cost as well as the cost of the appellant.

40. A decree be drawn accordingly.

**Sd/-
(Sharad Kumar Gupta)
Judge
02-05-2018**