

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No.231 of 2016

Santoshi Sahu, D/o Aajuram Sahu, aged about 23 years, Caste Teli, At present R/o Village Mudpar, Tahsil Nawagarh, District Janjgir-Champa, Chhattisgarh

---- Appellant

versus

Omprakash Sahu, S/o Sitaram Sahu, aged about 31 years, Caste Teli, R/o Village Limtari, P.O. Purgaon, Police Station and Tahsil Bilaigarh, District Balodabazaar-Bhatapara, Chhattisgarh, Present Address : Army No.15419535 H. Nayak / Lab Assistant Omprakash Sahu, 339 Field Hospital, C/o – 56 A.P.O. Palampur (Himanchal Pradesh)

--- Respondent

For Appellant	:	Shri Pushpendra Kumar Patel, Advocate
For Respondent	:	Shri Shivendu Pandya, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

1.2.2018

1. This appeal under Section 28 of the Hindu Marriage Act, 1955 (henceforth 'the Act of 1955') is directed against the judgment and decree dated 19.10.2016 passed in Civil Suit No.(HMA)-13A/14 by the District Judge, Baloda Bazar by which the Learned District Judge has allowed the Respondent/husband's application under Section 13 of the Act of 1955 for dissolution of marriage with the Appellant/wife.
2. Case of the Respondent/husband is that marriage between him and the Appellant/wife was solemnised on 16.5.2010. The husband is employed in Army and posted at Palampur (Himachal Pradesh). In January, 2011, he went to Palampur at his job. Thereafter, father of the Appellant/wife took her his house back. In June, 2011, when the husband came to his village, the wife also reached his village. At that time, the wife was carrying a pregnancy of 12 weeks. Since no sexual relationship had taken place between the husband and the wife during the last 6 months,

on being asked, the wife told the husband that she had an illegal relationship with Harishankar Bhardwaj. The husband asked her to stop the illegal relationship, but she did not do so. On 3.7.2012, the husband returned to his duty and the wife also returned to her paternal house. Thereafter, no sexual relationship took place between the husband and the wife. On the ground of cruelty and desertion by the wife, the husband sought divorce from her.

3. The wife, in her written statement, denied all the allegations made by the husband and pleaded that she became pregnant from the husband itself. She further pleaded that she had no illegal relationship. The husband and his family members used to torture her for dowry. A village meeting had also been convened in which the husband had admitted his fault. Thereafter, he maintained her well for few days, but later on he again started cruelty with her. She went to her paternal house for her treatment. In February, 2013, when her parents took her to the house of her husband, he refused to keep her. Since then she is living separately. But, she wants to live with the husband.
4. After trial, the Trial Court found that cruelty by wife has not been proved, but the divorce was granted on the ground of desertion only. Hence, this appeal by the wife.
5. It is submitted by Learned Counsel appearing for the Appellant/wife that the Trial Court adopted the arbitrary manner. The fact that the wife left the house of the husband without any sufficient reason was not proved, but the Trial Court granted the decree of divorce. The Trial Court, in a very arbitrary manner, held that the wife does not want restitution of conjugal rights and, therefore, the husband was granted the decree of divorce. This observation made by the

Trial Court is completely illegal, erroneous and contrary to law. It is further argued that from the pleading of the husband itself it reveals that on 3.7.2012, the husband returned to his duty and the wife went to his paternal house on the same day. The husband filed the suit on 4.3.2014 on the ground of desertion. Since 2 years had not elapsed, therefore, the Trial Court did not appreciate this fact, but granted the decree of divorce in arbitrary manner.

6. Per contra, Learned Counsel appearing for the Respondent/husband supported the impugned judgment and decree.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. A bare perusal of the impugned judgment reveals that the Trial Court granted the decree of divorce only on the ground of desertion by the wife/Appellant. From the pleadings and the evidence of the husband, it is clear that he has averred about the illegal relationship between his wife and one Harishankar Bhardwaj. From the pleadings and the statement of the husband, it is also clear that even after disclosure of the aforesaid illegal relationship in June, 2011, he lived with the wife till 3.7.2012. The fact of illegal relationship has not been proved by the husband. Since he levelled this allegation but could not prove the same, it cannot be accepted that the wife deserted him without any reasonable cause.
9. In **AIR 1964 SC 40 (Lachman Utamchand Kirpalani v. Meena @ Mota)**, the Supreme Court has held that desertion in its essence means the intentional permanent forsaking and abandonment of

one spouse by the other without that other's consent and without reasonable cause.

10. In **AIR 1972 SC 459 (Smt. Rohini Kumari v. Narendra Singh)**, the Supreme Court yet again held that desertion does not imply only a separate residence and separate living. It is also necessary that there must be a determination to put an end to marital relation and cohabitation.
11. Apart from the above, from the pleadings of the husband itself, it is clear that both the husband and the wife lived together till 3.7.2012 and the husband filed the suit on 4.3.2014. Even if for the sake of argument his contentions are accepted for a while, *prima facie* it is not established that the husband and the wife lived separately for 2 years before filing of the suit by the husband on 4.3.2014. Therefore, the ground of desertion by the wife is also legally not available to the husband.
12. In the premises of aforesaid discussion, the appeal is allowed. The impugned judgment and decree of the Trial Court are dismissed.
13. A decree be drawn up accordingly.
14. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge