

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 19.04.2018

Delivered on 04.05.2018

First Appeal (Misc.) No. 112 of 2015

(Arising out of judgment/decreed dated 31.07.2015 in Civil Suit No. 7A/2014 of the Additional District Judge, Sarangarh)

- Janak Ram Patel S/o Khageshwar Patel, Aged About 40 Years R/o Darrabhata, P.S. And Tahsil- Sarangarh, District- Raigarh, Presently R/o Salar, P.O. Salar, P.S. Sarangarh, District- Raigarh Chhattisgarh.

---- Appellant

Versus

- Smt. Kavita Patel W/o Janakram Patel, Aged About 38 Years R/o Bundeli, P.S. And Tahsil- Baramkela, District- Raigarh Chhattisgarh.

---- Respondent

For Appellant	:	Shri Rajendra Tripathi, Advocate.
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For Respondent	:	Shri R.S. Patel, Advocate
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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 31.07.2015 of the Additional District Judge, Sarangarh District – Raigarh, Chhattisgarh in Civil Suit No. 7A/2014 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 the respondent-wife.

2. This is admitted by the respondent that name, address and other particulars shown in the title of the application are correct, both the parties are Agharia by caste and hindu by religion, the marriage of both the parties was solemnized in year 1995 in accordance to customary rites and rituals, in wedlock two children namely Lokesh Patel aged 19 years and daughter

Poonam Patel, aged 17 years have born. Appellant is a teacher and posted at village – Tamandih, his paternal residence is at village Darrabhata, he used to commute up and down from village Darrabhata to his working place, his father had died in 1986, his mother had died in year 2010, at the time of marriage his grandfather and grandmother were alive and they died in year 1998, his maternal nephew Dinesh Patel was also residing with them, after the death of his mother, respondent was living alone, she is living in her maternal house since January, 2011. She had filed applications before their community, the Collector Raigarh, the District Program Officer and the Woman and Child Development Officer.

3. In brief, the appellant's case is that the respondent was neglecting him, she was not interested to cook meals, she was always ready to make quarrel with him, she used to perform sexual intercourse with other persons, she had made false allegations against him in aforesaid applications. She had also given an application on 15.09.2013 against him making false allegation before Station House Officer, Police Station - Sarangarh.

4. In brief, the respondent's case is that on 13.12.2010 Bhuneshwar Sidar and his wife had beaten her saying that she had burnt their straws by performing witchcraft. Her husband started annoying believing that she practices witchcraft. He got her left to her maternal house. Thereafter, he refused to keep her with him.

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

6. Shri Rajendra Tripathi, 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. Shri R.S. Patel, Counsel for the respondent argued that the impugned judgment and decree of the trial Court are just and proper and in accordance with the law. Thus, the appeal may be dismissed.

8. Points for determination :-

There are following points for determination in this case :-

- (1) Whether after solemnization of the marriage, respondent had treated the appellant with cruelty ?
- (2) Whether after the solemnization of the marriage respondent had voluntary sexual intercourse with any person other than her spouse?
- (3) Whether appellant is entitled to get the decree of divorce on the ground of cruelty and voluntary sexual intercourse by respondent with any person other than her spouse ?
- (4) Relief and costs.

Points for determination No. 1 & 2 : Finding with reasons :-

9. Looking to the convenience points for determination No. 1 and 2 are disposed off simultaneously.

10. AW1 Janak Ram Patel says in para 3, 4, 5 and 9 of his statement given on oath that respondent was neglecting him, she was not interested to cook meals, she was always ready to make quarrel with him, she used to perform sexual intercourse with other persons, she had made false allegations against him in aforesaid applications. She had given an application on 15.09.2013 in police station Sarangarh making false allegation against him.

11. AW3 Dinesh Patel who is the maternal nephew of the appellant says in para 2 of his statement given on oath that whenever the appellant was not

present in the house, the respondent used to call other persons and commit sexual intercourse with them.

12. AW 4 Poonam Patel who is the daughter of the appellant and the respondent says in para 1 that behaviour of her mother was not good, she was not serving meals to his father.

13. NAW1 Smt. Kavita Patel says in para 2 & 3 of her statement given on oath that on 13.12.2010 Bhuneshwar Sidar and his wife made allegation upon her that she had burnt their straws by performing witchcraft. Her husband started annoying believing that she practices witchcraft. He got her left to her maternal house. Thereafter, he refused to keep her with him.

14. NAW2 Lalit Kumar Patel says in para 2 of his statement given on oath that the appellant had told that the respondent is a witch and refused to keep her with him.

15. NAW3 Shankar Lal Naik says in para 2 & 6 of his statement given on oath that he is the secretary of Baramkela area of the All India Agharia Community. On 12.06.2011, the respondent had given an application to resolve the dispute arisen between her and the appellant. Appellant refused to keep her making the allegations that she practices witchcraft.

16. NAW4 Khemraj Patel says in para 2 & 6 of his statement given on oath that he was the president of Sarangarh area of All India Agharia Community from 2009 to 2013. On 12.06.2011, the respondent had given an application to resolve the dispute arisen between her and the appellant. The appellant refused to keep her making the allegation that she practices witchcraft.

17. NAW5 Jagdish Naik who is the brother of the respondent says in para 2 & 3 of his statement given on oath that on 13.12.2010 Bhuneshwar Sidar and his wife had made allegation that she had burnt their straws by performing black magic. Thereafter, the appellant leveled false allegation on

respondent that she is practicing witchcraft. Thereafter, he refused to keep her with him.

18. As per the appellant's case he and the respondent lived together for near about 16 years after the marriage. In their wedlock two children have born.

19. AW3 Dinesh Patel says in para 6 during his cross examination that respondent was cooking the meals. AW4 Poonam Patel says in para 5 during her cross examination that this is true that when her mother was living with them then she was cooking and serving meals to them.

20. AW1 Janak Ram Patel, AW3 Dinesh Patel do not disclose clearly and strongly the name or identity of those persons whom the respondent used to invite and commit sexual intercourse. These witnesses do not say clearly and strongly the date, month of alleged incidents.

21. From alleged letters Ex.P1, Ex.P2, Ex.P3, Ex.P4, Ex.P5 this is not clear that these letters were written by whom and addressed to whom. From contents of these letters it does not appear that the respondent allegedly was committing sexual intercourse with such persons.

22. The appellant has not examined any independent neighbour or any independent person of same locality who would state that, he/she has the personal knowledge that the respondent was allegedly neglecting him, she was allegedly not interested to cook meals, she was allegedly always ready to make quarrel with him, allegedly she used to perform sexual intercourse with such persons. He has not proved any report lodged in any police station wherein said facts have been mentioned. He has also not proved any document of their community wherein said facts have been mentioned. He has also not proved any notice given by him to her wherein said facts have been mentioned. For not doing so, there is no plausible explanation offered

by him.

23. AW1 Janak Ram Patel says in para 33 during his cross examination that this is true that the respondent had given the application before the Collector Raigarh, the Woman and Child Development Officer, for living with him.

24. There is no material on record on strength of which it could be said that the respondent had allegedly filed a false written complaint against the appellant before SHO, Sarangarh. There is no material on record on strength of which it could be said that the respondent had allegedly made false complaints before the president, the All India Agharia Community against him.

25. After the appreciation of the evidence discussed herebefore this Court disbelieves on aforesaid statements of para 3, 4, 5 and 9 of AW1 Janakram Patel, para 2 of AW3 Dinesh Patel, para 1 of AW4 Poonam Patel and believes on para 2, 3 of NAW1 Smt. Kavita Patel, para 2 of NAW2 Lalit Kumar Patel, para 2, 6 of NAW3 Shankar Lal Naik, para 2, 6 NAW4 Khemraj Patel, para 2, 3 of NAW5 Jagdish Naik.

26. After the appreciation of the evidence discussed herebefore this Court finds that, after solemnization of the marriage, the respondent had not treated the appellant with cruelty and she had no voluntary sexual intercourse with any person other than her spouse. Thus, this Court decides points for determination No. 1 & 2 accordingly.

Point for determination No. 3 : Finding with reasons

27. This has been earlier decided that the respondent had not treated appellant with cruelty, she had not committed sexual intercourse with any person other than appellant. Thus, this Court finds that appellant is not entitled to get the decree of divorce on the ground of cruelty and voluntary

sexual intercourse by the respondent with any person other than her spouse.

Thus, this Court decides point for determination No. 3 accordingly.

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

28. After the complete appreciation of the evidence discussed herebefore, this Court finds that appeal is devoid of merit and deserves to be set aside. Thus, the impugned judgment and decree of the trial Court are affirmed to the above extent. The appeal is dismissed.

29. Appellant shall bear his own costs as well as costs of respondent.

30. A decree be drawn up accordingly.

Sd/-

(Sharad Kumar Gupta)
JUDGE