

AFRHIGH COURT OF CHHATTISGARH, BILASPURReserved on 16-4-2018Pronounced on 20-04-2018First Appeal (M) No. 5 of 2015

- Hemant Kumar Patel S/o Banshidhar Patel Aged About 30 Years R/o Village And Post- Timerlaga, P.S. And Tah. Sarangarh, Distt. Raigarh, Chhattisgarh

---- Appellant

Versus

- Smt. Uma Patel @ Toshika Patel W/o Hemant Kumar Patel Aged About 33 Years R/o Kumhari, Tah. Saraipali, Distt. Mahasamund C.G., Presently Posted As Shiksha Karmi, Grade-I, Govt. High School, Singharpur, Tah. Bhatapara, Now Distt. Balodabazar-Bhatapara, Chhattisgarh

---- Respondent

For appellant : Shri S.B. Pandey, Advocate
 For respondent : Shri Raghvendra Pradhan, Advocate

Hon'ble Shri Sharad Kumar Gupta, JudgeC.A.V. JUDGMENT

1. Challenge in this appeal is levied to the judgment and decree dated 11.12.2014 passed by the Additional District Judge, Sarangarh, District – Raigarh in Civil Suit No. 3-A/2012 vide Annexure A-1 whereby and whereunder the trial Court dismissed the divorce petition filed by appellant under section 13 of the Hindu Marriage Act, 1955 (in brevity 'the Act, 1955').

2. This is admitted by respondent that name, occupation of both parties shown in the title of the application are true, both parties are Hindu by religion and governed by Mitakshara Branch of Hindu Law, marriage of both parties was solemnized on 09.07.2010 in accordance

with Hindu rights and rituals at village Kumhari, after the marriage she resided in appellant's parental house at village Timerlaga, thereafter, she went to her maternal house at Kumhari, she returned back on 20.07.2010 at Raipur where appellant was residing, both parties had led conjugal life at Raipur, she has received a notice dated 27.11.2010 sent by appellant, now she is not living with him.

3. In brief, the appellant's case is that respondent was not behaving properly, she used to go some other places leaving the school without intimating him, she was making quarrel with him on petty matters, she was not inclined to sexual intercourse. On 17.10.2010 by 8 pm a quarrel occurred between them on account of meals, on the next day when he returned back from his duty by 9 am then he found that she was not present in the house and had gone away to her maternal house along with her bag and baggages. He has lodged the report on 24.10.2010. He had tried for bringing her back but she did not come with him. She did not reply his notice.

4. In brief, the respondent's case is that appellant is living at his posting place at Narayanpur. She is still living in same house where they were living jointly at Raipur. He had left that house and gone away to his place of posting.

5. After completion of the trial, the trial Court passed aforesaid judgment and decree. Being aggrieved, appellant

preferred this appeal.

6. Shri S.B. Pandey, counsel for appellant vehemently argued that the trial Court has not properly appreciated the evidence available on the record. The trial Court ought to have given weightage to appellant's witnesses. Aforesaid judgment and decree are bad in the eyes of law and deserve to be set aside.

7. Shri Raghvendra Pradhan, counsel for respondent argued that the impugned judgment and decree are in accordance with law and do not call for any interference by this Court, thus, the appeal may be dismissed.

8. **Points for determination :-**

There are following points for determination in this case :-

(1) Whether respondent had subjected appellant with cruelty ?

(2) Whether the trial Court had territorial jurisdiction to entertain the divorce petition filed by appellant ?

(3) Whether appellant is entitled to get the decree of divorce for dissolution of the marriage on the ground of cruelty ?

(4) Relief and costs.

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

9. The trial Court has not framed issue regarding cruelty though the trial Court ought to have done it. The evidence available on record shows that appellant and respondent

have adduced evidence regarding this point for determination. The evidence available on record is sufficient to enable this Court to pronounce the judgment. Non-framing of additional issue regarding this point for determination 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. AW1 Hemant Kumar Patel says in para 2, 3, 4 and 7 of his statement given on oath that respondent was leaving the house early and returning back late in night. She was not behaving properly. She used to go some other places leaving the school without intimating him. She was making quarrel with him on petty matters. She was not inclined to sexual intercourse. On 17.10.2010 by 8 pm, a quarrel occurred between them on account of meals, on the next day when he returned back from his duty by 9 am then he found that she was not present in the house and had gone away to her maternal house along with her bag and baggages. He had tried for brining her back but she did not come with him.

11. AW2 Arun Kumar Patel who is brother of appellant says in para 6, 2 and 3 of his statement given on oath that as told by AW1 Hemant Kuamr Patel he knows that disputes were occurring on account of early leaving, late returning and going other places by respondent without

intimating appellant. On 17.10.2010, respondent left the house along with her bag and baggages in absence of appellant. She had told him that she is not inclined to live with appellant.

12. AW3 Banshidhar Patel who is father of appellant says in para 2 & 3 of his statement given on oath that, disputes were occurring on account of early leaving, late returning and going other places by respondent without intimating appellant. Respondent left the house along with her bag and baggages in absence of appellant. Respondent had told that she will never return back.

13. As per Ex. P1 dated 24.10.2010 (marked as Ex. P2 also) on 17.10.2010 a dispute occurred between appellant and respondent in night, next day morning when appellant returned back to his house then found respondent had gone away along with her bag and baggages.

14. As per the notice Ex.P4 respondent was not behaving properly, she used to go some other places leaving the school without intimating appellant, she was making quarrel with him on petty matters, she was not inclined for sexual intercourse. On 17.10.2010 by 8 pm a quarrel occurred between them on account of meals, on the next day when he returned back from his duty by 9 am then he found that she was not present in the house and had gone away to her maternal house along with her bag and baggages. He had tried for brining her back but she did

not come with him.

15. NAW1 Uma Patel says in para 3 of her statement given on oath that her husband left the house without intimating her.

16. NAW2 Dhanurjay Patel who is the father of respondent says in para 4 of his statement given on oath that appellant left the house without intimating respondent.

17. As per the rent agreement Ex. D1 dated 03.04.2012 the house was taken on rent on 20.07.2010 and the tenancy was renewed from 03.04.2012 to 03.03.2013 with respondent.

18. In **G.V.N. Kameswara Rao vs. G. Jabilli; M.L.J. 2002 (1) 317**, 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.”

19. In **Prabhash Saxena v Smt. Ranjana Saxena** {Mrr.L.J. 2002 (1) 502} 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.”

20. This is not the appellant's case that respondent was allegedly leaving house early and returning back late in night on account of school. Moreover, this is not mentioned in Ex.P1 that respondent allegedly was not behaving properly, she allegedly used to go some other places leaving the school without intimating him, she was allegedly making quarrel with him on petty matters, she was allegedly not inclined for sexual intercourse. On 17.10.2010 by 8 pm allegedly a quarrel occurred between them on account of meals, on next day when he returned back from his duty by 9 am then he found that allegedly she was not present in the house and had gone away in her maternal house along with her bag and baggages. He had allegedly tried for brining her back but she did not come with him. Moreover, appellant has not examined any school authority who could have stated that she was leaving school during working hours.

21. AW1 Hemant Kumar Says in para 5, 13, 14, 15 and 16 of his statement given on oath that he had left the house where he and respondent were residing earlier and started living in another house. Village Singharpur is near about 60-65 km away from his earlier residence at Pandari by

road. This is true that she used to go Bhatapara by rail and then Singharpur by bus or auto, she was returning back by same mode. Raipur railway station is 4-5 km away from Pandari. The train takes 1 hour from Raipur to Bhatapara. She used to go Bhatapara by 7:40 am train. It takes 45 minutes to go from Bhatapara to Singharpur by bus. She used to return back from Bhatapara to Raipur by catching Danapur Express at 7:00 pm. She used to come from Raipur railway station to their house by auto or walking. She was returning back by 8 – 8:30 pm. When she was returning back after some time it was time for him to go for his duty.

22. AW2 Arun Kumar Patel says in para 6 of his statement given on oath that any dispute between appellant and respondent had not been occurred in his presence.

23. AW3 Banshidhar Patel says in para 8, 9 and 11 of his statement given on oath that this is true that when appellant was returning back from his duty it was time for respondent to leave for her duty. Due to this time mismatching disputes were occurring. Appellant had left that house and started residing in another house at Raipur.

24. Appellant has not examined any neighbour to that house where he and respondent were residing jointly who could state that respondent allegedly was not behaving properly, she allegedly used to go some other places

leaving the school without intimating him, she was allegedly making quarrel with him on petty matters, she was allegedly not inclined for sexual intercourse, on 17.10.2010 by 8 pm allegedly a quarrel occurred between them on account of meals, on next day when he returned back from his duty by 9 am then he found that she was allegedly not present in the house and had gone away to her maternal house along with her bag and baggages. He had allegedly tried for bringing her back but she did not come with him. Moreover, he has not proved any letter wherein said facts have been mentioned. Moreover, he has failed to prove any report lodged by him in any police station wherein this has been mentioned that, respondent allegedly was not behaving properly, she allegedly used to go some other places leaving the school without intimating him, she was allegedly making quarrel with him on petty matters, she was allegedly not inclined for sexual intercourse. He had tried to bring her back but she refused to live with him. He has failed to prove any document of their community wherein said facts have mentioned.

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

26. After appreciation of the evidence discussed

herebefore this Court finds that appellant does not get any help from Ex.P1, Ex.P4 regarding this point for determination, this Court disbelieves on aforesaid statements of para 2, 3, 4 and 7 of AW1 Hemant Kumar Patel, para 6, 2 and 3 of AW2 Arun Kumar Patel, para 2 and 3 of AW3 Banshidhar Patel, and believes on aforesaid statements on para 3 and 4 of NAW1 Uma Patel @ Toshika Patel, para 4 of NAW2 Dharunjay Patel and on Ex. D1.

27. After appreciation of the evidence discussed herebefore this Court finds that, appellant failed to prove that respondent had subjected him with cruelty. Thus, this Court decides point for determination No.1 accordingly.

Point for determination No. 2 : Findings with reasons :-

28. It would be pertinent to mention the provisions of Section 19 of the Act, 1955, thus, reads as under :-

“Section 19. Court to which petition shall be presented - Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction -

- (i) the marriage was solemnised, or
- (ii) the respondent, at the time of the presentation of the petition, resides, or
- (iii) the parties to the marriage last resided together, or [(iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or]
- (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside

the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.]

29. This is admitted that marriage was solemnized in village Kumhari, both parties lastly resided at Raipur. From Ex.D1 this is clear that at the time of the filing of the divorce petition respondent was residing at Raipur.

30. Looking to the above mentioned facts and circumstances this Court finds that the trial Court had no territorial jurisdiction to entertain the divorce petition filed by appellant. Thus, this Court decides point for determination No.2 accordingly.

Point for determination No. 3 : Findings with reasons :-

31. This has been earlier decided that appellant failed to prove ground of cruelty, the trial Court had no territorial jurisdiction to entertain the divorce petition, thus, this Court finds that appellant is not entitled to get the decree of divorce for dissolution of the marriage. Thus, this Court decides point for determination No. 3 accordingly.

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

32. After complete appreciation of the evidence discussed hereinbefore, this Court finds that there is no substance in this appeal. Thus, this Court affirms the impugned judgment and decree to the above extent. The appeal deserves to be and is hereby dismissed.

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

34. Decree be drawn up accordingly.

Sd/-
(Sharad Kumar Gupta)
Judge

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