

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 35 of 2015**

- Smt. Suman Bai @ Devita W/o Shri Rajesh Verma Aged About 23 Years R/o Village- Runwatala, Post- Sakuldaihan, Tahsil And Distt.- Rajnandgaon, Chhattisgarh, Chhattisgarh

---- Applicant**Versus**

- Rajesh Verma S/o Shri Budharuram Verma Aged About 38 Years R/o Village- Dharmapur, Tahsil And Distt.- Rajnandgaon, C.G. Present Address Near Dauchoura, Khairagarh, Tahsil - Khairagarh, Distt.- Rajnandgaon, Chhattisgarh, Chhattisgarh

---- Respondent

For Applicant	Shri Samir Singh, Advocate.
For Respondent	Shri S.S. Baghel, Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Shri Justice Gautam Chourdiya****Judgment on Board****By****Hon'ble Shri Manindra Mohan Shrivastava J.****20/08/2018**

1. This appeal is directed against impugned judgment and decree dated 26.07.2014 passed by Family Court, Rajnandgaon in civil suit No.38-A of 2012, by which, the respondent's application for grant of decree of divorce on the ground of both desertion and cruelty have been allowed and decree granted.
2. Respondent filed an application under Section 13(1)(a)(b) of the Hindu Marriage Act, 1955 for grant of decree of divorce both on the grounds

of desertion and cruelty, on the pleadings *inter alia*, that the husband/applicant was married to non-applicant wife on 05.05.2005 and they were blessed with a son on 26.11.2006. The wife left for her matrimonial house on 26.08.2007 along with her brother. But thereafter, she did not return, though several efforts were made and since then she has completely deserted the applicant without any reasonable cause.

3. The applicant/husband also pleaded that the non-applicant wife subjected the applicant and his parents to physical and mental cruelty both. It was pleaded that wife made false allegations of commission of offence under Section 498-A of IPC and Sections 4 and 5 of the Chhattisgarh Tonahi Pratadna Nivaran Act, 2005. The parents of the applicant were arrested and due to this false accusation leading to arrest and criminal case, the applicant and his family suffered severe mental agony. The learned trial Court vide judgment dated 13.02.2012 vide Ex.P-11, acquitted the applicant and his family members finding that the allegation are not made out. In this manner, the non-applicant wife subjected the applicant to severe physical and mental cruelty. On such pleading decree was sought.
4. The non-applicant/wife came out with the pleading that after she had gone to her parental house in the year 2007, nobody including her husband came to take her back to her matrimonial house, though, efforts were made. It was also pleaded that she was subjected to cruelty and was branded as Tonahi. Therefore, she is justified in living separately.
5. The learned trial Court after recording the evidence and taking on

record the documentary evidence found that the wife had deserted the husband without any reasonable cause and also that the husband was subjected to mental cruelty. This led to grant of decree of divorce.

6. Learned counsel for the appellant argues that the learned Family Court has granted decree of divorce on the ground of desertion without proper appreciation of evidence on record. It is submitted that the evidence led before the Court is that after she went to her parental house to celebrate Rakshabhandan Festival, the husband never came to take her back to matrimonial house. Therefore, the husband cannot complain of desertion. It is next submitted that the Family Court also did not appreciate the oral, documentary evidence led by the wife which proved that she was subjected to cruelty by treating her as Tonahi and was also subjected to demand of dowry and harassed. Because of such cruelty for two different reasons, she was justified and had a reasonable cause in living separately and it was for the applicant/husband to build confidence, lend assurance and take her back to the matrimonial life which was never done.

7. On the aspect of cruelty, it is argued that merely because the husband and his family members were acquitted in the criminal case by giving benefit of doubt, it cannot be treated as proof of falsity of allegation made by the wife. Otherwise also, it is argued before the Family Court that clinching and reliable evidence was led to prove cruelty by the husband and his family by branding the wife as Tonahi i.e. (one who plays witchcraft). Therefore, the allegation of husband having been subjected to cruelty is highly improbable.

8. On the other hand, learned counsel for the respondent in support of

the judgment decree, submits that the learned Family Court has granted decree of divorce on the ground of desertion taking into consideration that since the time when the wife left the matrimonial house on 26.08.2007, she never returned. It is also submitted that the allegations of cruelty to constitute reasonable cause for living separately have neither been properly pleaded nor proved and therefore, learned trial Court has rightly rejected the case of the wife.

9. It is then argued that the acquittal of the husband and his family members by the Criminal Court, though by giving benefit of doubt, tilts the scale of probabilities in favour of the husband that the allegations were false and therefore it was for the non-applicant wife to prove cruelty by the independent evidence. The failure on the part of the wife to prove the allegation of cruelty, in civil proceedings would certainly be a case of falsity of allegations causing mental agony and cruelty to the husband and would constitute a ground for grant of decree of divorce on the ground of cruelty.
10. We have heard learned counsel for the parties and perused the records.
11. The respondent/husband sought decree both on the grounds of desertion and cruelty. We shall therefore deal with the two grounds separately, with reference to the pleadings and evidence of the parties.
12. In order to make out a case of grant of decree of divorce on the grounds that the appellant/wife deserted the husband without any reasonable cause, for more than two years, it has been pleaded that

on 26.08.2007 wife-Suman Bai left for her parental house along with her brother but, thereafter, she did not come back to her matrimonial house, though efforts were made in that regard and since 26.08.2007, she has not returned and deserted the husband.

13. In the written statement, the fact that the respondent's wife of her own left for parental house on 26.08.2007 has not been disputed, though it has been pleaded that the husband was supposed to come and take her back. In para 10 of her cross-examination she admitted that she is living separately from her husband for last seven years.

14. Therefore, it is proved from the pleadings and evidence of both the parties that ever since 26.08.2007, respondent's wife is living separately.

15. Under the law, a decree of divorce can be granted under Section 13(i)(b) on the ground that the wife has deserted the husband for a continuous period of not less than two years immediately preceding the presentation of the petition.

16. By way of explanation, the expression 'desertion' has been explained as a desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the willful conduct of the petitioner by the other party to the marriage.

17. The pleadings, as contained in the application, are that after the wife left matrimonial house on 26.08.2007 with her brother to celebrate Rakshabhandan festival, she did not turn back. This fact having been admitted, the appellant's wife ought to have led clinching and reliable

evidence to prove that she had reasonable cause for not returning to the matrimonial house. In this regard, if we look into the reply filed by the appellant's wife, the pleadings are blissfully vague. In the written statement, it has been vaguely pleaded that while the wife was residing in her parental house, the husband was engaged in making false allegation by visiting his relations and held out threat not to take the wife with him to the matrimonial house. No specific details of so called false allegations have been pleaded when threat as alleged was made. How it was made has also not been specifically pleaded.

18. It is further pleaded that by making false allegation, an atmosphere was created so that the wife may not like to reside with the husband in the matrimonial house. This again is absolutely vague lacking in specific material particular details.
19. Again in Para 10 of the written statement, it has been vaguely pleaded that the husband and his family members used to demand dowry and subject wife to cruelty. What kind of dowry was being demanded and in connection with demand of such dowry what overt act was committed which, if proved, would constitute cruelty, has also not been pleaded.
20. In her separate and special pleadings, it has been pleaded that she has been subjected to mental cruelty. The only specific incident to allege cruelty, which has been pleaded by her, is that at the time of pregnancy, she had gone to her parental house. The husband or other members of the family did not visit to inquire about her well being and health and in a function after birth of her child, no one attended. The other allegation is that when five months after delivery of child, she

was sent to matrimonial house, nobody used to communicate but made false allegations that she is engaged in witchcraft.

21. In support of these pleadings, most of which, as we have noted, are vague, the respondent wife has examined herself as the sole witness. In her affidavit under Order 18 Rule 4 of C.P.C. she comes out with a story of demand of dowry of Rs. 1,00,000/- which has not been pleaded anywhere in the written statement. Similarly, the demand of Sofa Set, Godrej Almirah and Vehicle are also an afterthought as in her pleading nothing of this nature was pleaded. Not only this, for the first time in the affidavit, she has made an allegation of she being subjected to assault which is not specifically pleaded anywhere in the written statement. The allegation that when she used to fall sick, instead of providing proper medical treatment she was subjected to local fake practices is also stated for the first time.

22. Against her own pleadings, it has been stated that while she was pregnant, she was assaulted and then thrown away from the matrimonial house. In this series of making out an entirely new case other than what has been actually pleaded, she further states in her affidavit that after she was sent back to matrimonial house, the husband refused to keep her by stating that she plays witchcraft and is Tonahi. The pleadings in the written statement were that after she went to her matrimonial house, husband did not come to take her back. In her cross-examination, while admitting that she is living separately since 2007, she denies that she had subjected the husband and family members to cruelty in many ways.

23. It would thus be seen that what has been pleaded has not been

proved and the evidence which has been led lacks supportive pleadings to make out a case that the wife was having a reasonable cause for not residing with the husband. Therefore, the finding of the learned trial Court that there was no reasonable cause for the wife to live separately with her husband does not warrant any interference. We do not find that any attempt was made by the wife to seek restitution of conjugal rights by moving any application before the Court.

24. As far as cruelty as one of the ground of divorce is concerned, the same is sought to be established by the husband on two grounds. Firstly, that the wife was engaged in a very unusual activities in which sometimes she used to mix Vermilion in the food and at times, she used to behave obnoxiously by smearing Vermilion on the forehead of the husband and then touching it with her feet. The other ground based on acquittal of the husband & his parents, it is clear that they were subjected to false accusations of commission of under Section 498-A of IPC and also under Sections 4 and 5 of the Chhattisgarh Tonahi Pratadna Nivaran Act, 2005.

25. In so far as falsity of allegation is concerned, we find from the perusal of the judgment of the Criminal Court, placed on record of the Court below vide Ex.P-11, that husband and his parents namely- Budhruram and Mangteen Bai were tried for commission of offence under Section 498-A, read with Section 34 of IPC and also under Sections 5 of Chhattisgarh Tonahi Pratadna Nivaran Act, 2005. Upon consideration of evidence the Criminal Court held that the prosecution failed to prove the guilt beyond reasonable doubt that Suman Bai was

subjected to cruelty in connection with demand of dowry and on the ground that she was a Tonahi (one who plays witchcraft). After a full fledged trial, acquittal of the husband and his parents lays credence to the probability of the plea and evidence led by the husband that he and his parents were subjected to false accusations and in connection which even they were arrested and sent to jail. Even in these proceedings, the wife could have led clinching evidence to prove cruelty as the degree of proof in civil matter being based on probabilities without their being any necessity to prove beyond reasonable doubt. Upon scrutiny of pleadings and evidence on record, we do not find that the wife has been able to make out a case of she having been subjected to cruelty. In this regard, we have already dealt with the discrepancy in the pleadings and proof. In so far as desertion aspect is concerned, we find that wife has failed to prove that she had a reasonable cause for living separately with the husband.

26. Indeed, where the acquittal had taken place in the criminal trial, burden on the wife was very high to prove and establish a case of cruelty as a reasonable cause for not residing with her husband having deserted him. The variance of pleadings and proof in this regard, in our considered opinion, leads to the only conclusion that the wife has failed to establish cruelty. The pleadings are quite vague. Even in her evidence also, she has not given any specific details of such cruelty. In fact, in the pleadings, it has been vaguely stated that after she had gone to matrimonial house, on false accusations husband was avoiding to take her back. Specific details of cruelty have neither been pleaded nor proved.

27. Therefore, we do not find any good ground to interfere with the impugned judgment. We also take a note of the fact that it is admitted position that since 26.08.2007, the parties are living separately and also according to the report of the mediation, all attempts to bring about settlement between the parties have failed.

28. In view of this above consideration, we do not find any good ground to interfere with the impugned judgment decree passed by learned family Court. In the result, appeal fails and is hereby dismissed.

29. Appellate decree be drawn accordingly.

Sd/-
Manindra Mohan Shrivastava
Judge

Sd/-
Gautam Chourdiya
Judge

Akhilesh