

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 9 of 2013**

- Smt. Kamala Bai Chauhan W/o Nandkishor Chouhan Aged About 30 Years R/o Bhajandipa Behind Govt. School, Tah. And Distt. Raigarh C.G., Chhattisgarh

---- Appellant.**Versus**

- Nandkishor Chaouhan S/o Dinbandhu Chouhan Aged About 38 Years R/o Bhajandipa Behind Govt. School, Tahsil and District . Raigarh C.G..

---- Respondent

For Appellant	:	Mr. Pallav Mishra, Advocate
For respondent	:	Mr. Tarun Dansena, Panel Lawyer

Hon'ble Shri Prashant Kumar Mishra,
Hon'ble Shri Ram Prasanna Sharma, JJ

Oral Order**Per Ram Prasanna Sharma, J****(2-5-2018)**

1. This appeal is preferred under Section 19 (1) of the Family Court's Act, 1984 against the judgment and decree dated 27-1-2012 passed by the Judge, Family Court, Raigarh in Civil Suit No. 62-A/2012 wherein the said Court has dismissed the suit filed by the appellant/wife under Section 13(1)(a) of the Hindu Marriage Act, 1956 (for short, "the Act, 1956") for divorce on the ground of cruelty against the respondent/husband.

2. As per case of the appellant, marriage between her and her husband took place 13 – 14 years back from the date of filing of the suit i.e., on 7-8-2012 according to Hindu rites and out of their wedlock two sons were born namely Abhilekh and Abhay. It is alleged by the appellant that the respondent used to beat her after consuming liquor and also tortured and harassed her and she was tolerating all this with a hope that things would be better in the days to come. On the contrary, attitude of respondent/husband had been far from tolerable and it was impossible to live with him. She lodged report against the respondent in the Jute Mill Police Station, Raigarh complaining of inhuman behaviour on his part on 18-7-2009 and thereafter she filed an application under Section 125 of the Cr.P.C, before the court seeking maintenance. In the said court, both the parties compromised the matter and the respondent promised that in future he would neither consume liquor nor treat the appellant with any kind of cruelty. The respondent kept his wife for about two years peacefully and thereafter again he started harassing the appellant and meting out cruel treatment. On 13-7-2012 the respondent had driven his wife from his house. However, the respondent denied all the allegations and pleaded that in his absence the appellant left the house and when he went to bring her back from parental house, she refused to come back.

3. Learned counsel appearing for the appellant submits as under:

- i) In order to prove cruelty, no particular mode could be evolved. Merely because no documentary evidence was produced by the appellant, it does not mean that no cruelty was meted out to her.
- ii) Parental house of the appellant was not too far from the matrimonial house of the appellant and the appellant was in visiting terms with her parents with whom she could have shared her grievances orally, therefore, documentary evidence is not required in the peculiar facts and circumstances of the case.
- iii) Allegation of cruelty is corroborated from the report (Ex.P/1) dated 18-7-2009 lodged by her in Police Station, but the trial Court did not give weightage to it by taking a hyper-technical view
- iv) Version of appellant Kamala Bai (AW/1) is supported by the version of Smt. Guddi Bhardwaj (AW/2) who was a neighbour and version of the witnesses is worthy of credence.

4. On the other hand, learned counsel for the respondent would submit as under:

Version of the appellant is not supported by her witness namely Smt. Guddi Bhardwaj (AW/2) because she does not state against the respondent that he ousted the appellant from his house.

- ii) No medical expert is examined to substantiate the allegation of physical violence and there is nothing on record to establish any mental harassment on the part of the respondent.
- iii) In absence of any documentary evidence or circumstantial evidence, the Family Court is right in holding that the charge of cruelty is not established.

5. We have heard learned counsel for the parties and perused the material on record.

6. The first question for consideration is as to what is “cruelty” which is the sole ground in the petition of divorce.

7. In **Vishwanath Agrawal s/o. Sitaram Agrawal vs. Sarla Vishwanath Agrawal**¹, Their Lordships opined thus:

The expression ‘cruelty’ has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.

8. In **Suman Kapur vs. Sudhir Kapur**² it has been held by Their Lordships as under:

The treatment complained of and the resultant danger or apprehension must be very grave,

¹ (2012) 7 SCC288

² (2009) 1 SCC 422

substantial and weighty. Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

9. In **Samar Ghosh vs Jaya Ghosh**³, Their Lordships have held as under:

“(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy,

3 (2007) 4 SCC 511

selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

10. In the present case, appellant (AW/1) deposed that marriage between the parties took place 13 – 14 years ago since filing of the petition for divorce and she gave birth to two children. Though she reported against the respondent in Police Station and filed an application in the court for maintenance in the year 2009, but thereafter compromise took place and she lived with

the respondent peacefully upto year 2012. She deposed before the trial Court that the respondent had driven her from matrimonial house on 13-7-2012, but the same is not corroborated by her witness namely Smt. Guddi Bhardwaj (AW/2). In rebuttal, respondent (NAW/1) deposed that it is the appellant who withdrew from his company and left the house on 13-7-2012. Version of the respondent is supported by the version of Rooplal Chouhan (NAW/2). The application was filed before the trial Court on 17-8-2012 i.e., within less than one month from 13-7-2012. No one was examined as medical expert in favour of the appellant to substantiate any physical violence on the body of the appellant.

11. From the evidence of both sides, it is clear that the appellant was in the company of the respondent till 13-7-2012. The evidence led by the appellant establishes that she is not in the company of the respondent from 13-7-2012 and the application is filed on 17-8-2012, it means there is no desertion from either side for a continuous period upto two years. As per Section 13 (1)(ib) of the Act, 1955, application can be presented on the ground of desertion only when the petitioner has been deserted for a continuous period of not less than two years immediately preceding the presentation of the petition.

12. From the evidence of the appellant it is clear that both appellant

and respondent have lived together till the month of July, 2012 and any difference before the said period was resolved by them through settlement by compromise and they lived together for 13 – 14 years. In absence of evidence of medical expert, physical violence was not established before the trial Court and there is no evidence regarding sustained course of humiliation or torture against the respondent.

13. Now the point is whether a decree of divorce can be passed in the facts and circumstances of the case. First we shall consider as to what the marriage is. Marriage as a social institution is an affirmance of civilized social order where two individuals, capable of entering into wedlock, have pledged themselves to the institutional norms and values and promised to each other a cemented bond to sustain and maintain the marital obligation. It stands as an embodiment for continuance of the human race. Despite the pledge and promises, on certain occasions, individual incompatibilities, attitudinal differences based upon egocentric perception of situations, maladjustment phenomenon or propensity for non-adjustment or refusal for adjustment gets eminently projected that compels both the spouses to take intolerable positions abandoning individual responsibility, proclivity of asserting superiority complex, betrayal of trust which is the cornerstone of life, and sometimes a pervert sense of revenge, a dreadful diet, or sheer sense of envy bring the cracks

in the relationship when either both the spouses or one of the spouses crave for dissolution of marriage, – freedom from the institutional and individual bond.

14. Marriage life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The great secret of successful marriage is to treat all disasters as incidents and none of the incidents as disasters. It is not the case of the appellant that she made all efforts for continuation of matrimonial life. She had not filed an application for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955, but had taken a negative step by filing a petition for divorce. Continuation of marriage is a rule and divorce is an exception and the thing which is an exception should not be granted lightly by the courts. The institution of marriage in a civilized society has been established since ages to regulate the society and save the humanity from rule of forest. It is the matrimonial institution which differentiate a man from beast, meant to transfer its knowledge and culture to posterity. Grant of divorce by the courts leisurely or merely on asking or with the consent of parties or because one does not like other shall spoil the whole social set up in due course of time.
15. On overall assessment of the evidence led by the appellant and on consideration of complete matrimonial life of the parties, we do not find any infirmity or illegality in the judgment passed by

the Family Court.

16. For the foregoing, a decree against the appellant and in favour of the respondent is passed as under:

- I) The appeal is dismissed with cost.
- ii) Parties shall bear their own costs.
- iii) Counsel fee, if certified, be calculated as per schedule or certificate whichever is less
- iv) A decree be drawn up accordingly.

Sd/-

Judge
(Prashant Kumar Mishra)

Sd/-

Judge
(Ram Prasanna Sharma)

Raju