

AFRHIGH COURT OF CHHATTISGARH, BILASPURReserved on 16-4-2018Pronounced on 23-04-2018First Appeal (M) No. 182 of 2015

- Smt. Sarita Bai D/o Sant Ram Baghel, Aged About 28 Years W/o Sonu Ram Jangde, R/o Village Aara, Tahsil, P.S. And District Jashpur, Chhattisgarh

----Appellant

Versus

- Sonu Ram Jangde S/o Chaitram Jangde, Aged About 33 Years R/o Village Dhardei, Tahsil Pathariya, District Mungeli, Chhattisgarh

---- Respondent

For appellant : Shri Harish Kunitya, Advocate
 For respondent : Shri M.K. Sinha, Advocate

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

1. Challenge in this appeal is levied to the judgment and decree dated 26.09.2015 passed by the Additional District Judge, Mungeli in Civil Suit No. 20-A/2013 vide Annexure A-1 whereby and whereunder the trial Court allowed the divorce petition filed by respondent-husband under section 13 of the Hindu Marriage Act, 1955 (in brevity 'the Act,1955') and dissolved the marriage solemnized between him and appellant-wife.

2. This is admitted by appellant that marriage of both the parties solemnized in May, 2007 in accordance with customary rites and rituals, now she is living in her maternal house.

3. In brief, the respondent's case is that in May, 2012 his father-in-law had taken appellant for some family function at her

maternal house. Thereafter, he tried to bring her back but she refused to come with him. He deprived him of his conjugal rights. Appellant is giving threatening to implicate him in false case.

4. In nutshell, the appellant's case is that a murder case was registered against respondent, he was jailed in that case thus she had gone to her maternal house. After the acquittal, he came out of the jail, but, did not try to take her back to his house.

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

6. Shri Harish Khutiya, counsel for appellant vehemently argued that the trial Court failed to appreciate the evidence properly. The aforesaid judgment and decree of the trial Court are bad in the eyes of law. Thus, the impugned judgment and decree may be set aside.

7. Shri M.K. Sinha, 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 after solemnization of the marriage appellant treated respondent with cruelty ?
- (2) Whether respondent is entitled to get the decree of divorce for dissolution of the marriage on the ground of cruelty ?

(3) 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 judgment in this appeal.

10. AW1 Sonu Ram Jangde in para 2 and 3 of his statement given on oath says that he had gone so many times to appellant's maternal house but she did not come with him. He is deprived of his conjugal rights.

11. AW2 Santram says in para 3 that respondent had gone so many times in appellant's maternal house but she did not come with him.

12. AW3 Jashpal Singh who is the younger brother of respondent says in para 3 that respondent had gone so many times to appellant's maternal house but she did not come with him.

13. NAW1 Smt. Sarita Bai Jangde and NAW2 Sant Ram Baghel who is the father of respondent, say in para 3 of their statements given on oath that after getting release from the jail

respondent did not come to take back appellant with him.

14. 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.”

15. 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.”

16. AW1 Sonu Jangde does not say as per his case that appellant is giving threatening to falsely implicate him in a case. AW3 Jashpal Singh says in para 6 during his cross examination that they never went to take back appellant from her maternal house.

17. Respondent has not examined any neighbour of the appellant's maternal house or any person of that locality who

could state that allegedly respondent had come to bring her back and she had refused to go with him, allegedly she had given threatening to falsely implicate him. He has not proved any letter wherein said facts have been mentioned. He has not proved any report lodged by him in any police station wherein said facts have been mentioned. He has failed to prove any document of their community wherein said facts have been mentioned. He has failed to prove any notice given by him to her wherein said facts have been mentioned. For not doing so, no explanation has been offered by respondent.

18. Looking to the above mentioned 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 respondent's case and in favour of the appellant's case regarding this point for determination.

19. After appreciation of the evidence discussed herebefore this Court disbelieves on aforesaid statements of para 2 and 3 of AW1 Sonu Ram Jangde, para 3 of AW2 Sant Ram and AW3 Jashpal Singh and believes on aforesaid statements of para 3 of NAW1 Smt. Sarita Bai Jangde and NAW2 Sant Ram Baghel.

20. After appreciation of the evidence discussed herebefore this Court finds that, respondent failed to prove that after solemnization of the marriage appellant treated him with cruelty. Thus, this Court decides point for determination No.1 accordingly.

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

21. Respondent failed to prove ground of cruelty, thus he is not

entitled to get a decree of divorce on the ground of cruelty. Thus, this Court decides point for determination No.2 accordingly.

22. As per the Section 13 (1)(i-b) of the Act, 1955 a marriage may be dissolved by a decree of divorce on the ground that respondent has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the divorce petition, without reasonable cause and without the consent or against the wish of him / her.

23. In the case in hand, the trial Court has granted the decree of divorce on the ground that appellant has deserted respondent.

24. In the case in hand, this is the respondent's case that appellant had left his house in May, 2012. He has filed divorce petition on 11.06.2013. Meaning thereby, respondent has filed divorce petition within two years from May, 2012. Thus, in these circumstances, as per the provisions of Section 13 (1)(i-b) of the Act, 1955, the ground of desertion was not available to respondent at the time of the filing of the divorce petition. Thus, the trial Court has committed gross illegality while granting the decree of divorce on ground of desertion.

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

25. This has been earlier decided that appellant failed to prove ground of cruelty. The trial Court committed gross illegality while granting the decree of divorce on ground of desertion, because this ground was not available to respondent at the time of filing of the divorce petition. Thus, this Court allows the appeal and hereby set aside impugned judgment and decree of the trial

Court. Accordingly, divorce petition filed by respondent is dismissed.

26. Respondent shall bear his own costs and costs of appellant also.

27. A decree be drawn up accordingly.

Sd/-
(Sharad Kumar Gupta)
Judge

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