

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 101 of 2015**

- Smt. Kanchan Kela W/o Rajendra Kela Aged About 33 Years R/o C. S. E. B. Colony, House No. S. E. 665, Korba, District Korba Chhattisgarh.

---- Appellant
Non-applicant

Versus

- Rajendra Kela S/o Dhaniram Kela Aged About 44 Years R/o G.T. Hostel, C. S. E. B. Korba, District Korba Chhattisgarh.

---- Respondent
plaintiff

For Appellant	:	Shri Kunal Das, Advocate.
For Respondent	:	Shri Devesh G. Kela, Advocate.

Hon'ble Shri Manindra Mohan Shrivastava,
Hon'ble Shri Gautam Chourdiya, JJ

Order On Board By Justice Gautam Chourdiya
10/09/2018 :

The appellant/wife has filed the instant appeal against the judgment and decree dated 21.7.2015 passed by learned Family Court, Korba (CG) in Civil Suit No.117A/2012 granting decree of divorce in favour of the respondent/husband under Section 13(1)(ia) of the Hindu Marriage Act, 1955 on the ground of cruelty.

02. As per averments made in the application for divorce filed by the respondent/husband, his marriage with the appellant was solemnized on 30th June, 1999 at Village-Bakimongra, Distt. Korba as per Hindu rites and rituals and after marriage, both of them started residing together in Village-Navagaon, Katghora. Out of their wedlock, two children namely Gaurav and Sourabh were born. According to the respondent, the appellant used to pressurize him for living separately from his family members and quarrel with him on that ground.

Thereafter, the respondent started living separately in Korba with the appellant but there also the appellant used to quarrel with him on trivial matters and therefore, he started living separately from her. On 21.4.2011 when he went to meet his children, the appellant and her mother, father and brother did not allow him to meet his children, committed marpeet with him as a result of which he suffered severe injuries and lodged report in this regard at the police station. The respondent has also alleged that the appellant was a woman of easy virtue and she used to threaten him of false implication in dowry case if he did not succumb to her illegal demands. Thus, the respondent by filing an application under Section 13(1b) of the Hindu Marriage Act prayed for grant of decree of divorce.

03. The appellant/wife by filing written statement denied all the allegations made against her by the respondent/husband and stated that in fact it is the respondent who used to quarrel with her more often, he used to misbehave and ill-treat her saying that he is in police department and nobody can cause any harm to him. When this ill-treatment became unbearable she filed an application under Domestic Violence Act, 2005 before the Court of Chief Judicial Magistrate, Korba where counseling proceedings were held. However, even thereafter there was no change in the behaviour of the respondent. She states that the respondent has filed the divorce petition on false and frivolous grounds and therefore, the same may be dismissed.

In support of his case, the applicant/respondent examined as many as six witnesses whereas the non-applicant/appellant examined

three witnesses to substantiate her defence.

04. Learned Family Court after considering the pleadings of the respective parties and the evidence led by them, by the impugned judgment and decree allowed the application of the respondent and thereby granted decree of divorce in his favour on the ground of cruelty.

05. Learned counsel for the appellant submits that the Family Court did not consider the documentary and oral evidence adduced by the appellant in its proper perspective and as such, erred in passing the judgment and decree in favour of the respondent. He submits that the Court below was not justified in treating the single incident of assault on the respondent by the family members of the appellant, which has not been duly proved, as cruelty by the appellant. Lastly he submits that though there used to be quarrel between the parties, but considering the fact that such quarrels are common between husband and wife, the same were over trivial issues, it cannot be taken as cruelty by the appellant against the respondent.

He placed reliance on the judgment of the Hon'ble Supreme Court in the matter of ***Gurubux Singh Vs. Harminder Kaur***, reported in ***AIR 2011 SC 114***.

06. On the other hand, learned counsel for the respondent supporting the impugned judgment submits that the Court below after considering the entire evidence on record and the conduct of the appellant, has rightly granted decree of divorce in his favour on the

ground of cruelty which needs no interference by this Court in appellate jurisdiction.

07. Heard learned counsel for the respective parties and perused the material available on record.

08. AW-1 Rajendra Kela has admitted in para-4 of his deposition that being fed up with the appellant, he himself started living separately since January 2010. In his application for divorce, in para-6, the respondent has pleaded that from 24th January, 2012 both of them are living separately. Thus, from the pleading and admission of the respondent/husband, it is clearly proved that there is no desertion by the appellant. It is also relevant to mention here that the ground of desertion by the appellant has also not been accepted by the Family Court.

09. The only issue to be considered by this Court for adjudication of this appeal is whether, in the facts and circumstances of the case, the Family Court was justified in granting decree of divorce in favour of the respondent/husband on the ground of cruelty by the appellant/wife?

10. AW-1 Rajendra Kela, respondent/husband, in para-4 has admitted that from 2010 he had withdrawn himself from the company of the appellant/wife and was living separately from her. In para-2 he states that on trivial issues, there used to be quarrel between the respondent and the appellant even while residing at Korba. He states that once when he had gone to the parental house of the appellant, he was beaten there by family members of the appellant and suffered

injures on his head.

11. AW-6 Jagatram has admitted in para-3 of his deposition that he has no knowledge about the cause of dispute between the appellant and the respondent. He states that when they were living together in Korba, they used to quarrel and that the respondent is living separately from the appellant. AW-5 Ravindra Kela has admitted that marriage of the appellant and the respondent was solemnized about 10-15 years ago; the appellant wanted to live with the respondent in Korba as at the relevant time the respondent was posted in Korba as Constable where quarters was allotted to him by the department. AW-1 Rajendra Kela admits that after marriage, he resided with the appellant at Katghora for two years and thereafter they resided in Korba and during this period, two children were born out of their wedlock. He admits that on account of quarrel between them, he started living separately from the appellant since January, 2010 at Korba.

12. Thus, considering the entire evidence of both the parties, it is clearly proved that marriage between the parties was solemnized on 30th June, 1999, after marriage they resided for two years at Katghora and thereafter, as the respondent was posted in Korba, they shifted there and lived there till 2010 and during this period, two children were born out of their wedlock. No any incident of serious nature took place during this long period of 12 years between them and there is also no evidence that the appellant committed cruelty against the respondent during this period.

13. As per statement of AW-2 Manikdas, after marriage the appellant

and the respondent resided at Katghora for one year and thereafter the respondent took the appellant to Korba where he was posted at the relevant time. In para-4, this witness has specifically admitted that there used to be quarrel between the appellant and the respondent as the respondent did not bring household articles including grocery items in time.

14. The case of the respondent is substantially based on cruelty by the appellant. According to him, the appellant used to quarrel with his family members. However, from the evidence on record, it is seen that after marriage the appellant and the respondent resided at Katghora only for 1 -2 years and thereafter, they shifted to Korba where only the appellant and the respondent both were living whereas family members of the respondent were living at Katghora. Thus, after marriage, for a considerable period the respondent lived with the appellant at Korba, the respondent has failed to prove that during this period any such incident occurred which could amounts to cruelty.

15. AW-3 Shankhdhar Jaiswal has admitted the fact in para-1 of his deposition that from 2010 dispute arose between the parties; the respondent had informed him that the appellant is not sending his children to school and when the respondent went to the parental house of the appellant, there was quarrel between them and the respondent was beaten by the appellant and her family members. It is noteworthy to mention here that this is the only incident which occurred in 2010 whereas during the long period of about 12-13 years of marriage, no other incident of this nature ever took place.

16. AW-5 Ravindra Kela in para-4 of his deposition states that in the year 2010-11 the appellant had assaulted the respondent with lathi on his head. On 11.5.2011 a written application was submitted by the respondent to Incharge, Family Counseling Center, Korba vide Ex.P/1 alleging therein cruelty on the part of the appellant. As per Ex.P/5C, medical examination of the respondent was conducted. However, the treating doctor has not been examined. Further, as per Ex.P/3C and Ex.P/4C, applications were submitted by the respondent to Superintendent of Police, Korba and Station House Officer, P.S. Rampur, Distt. Korba against the appellant but no complaint was filed by him against the appellant and her family members regarding commission of cruelty on the part of the appellant. As per Ex.P/5C, on 21st April, 2011 the respondent is said to have been assaulted by his mother-in-law, father-in-law and brother-in-law over some family dispute with hands and fists. However, no complaint was lodged by the respondent for registration of criminal offence against them.

17. In the matter of *Gurubux Singh* (supra) the Hon'ble Supreme Court in similar case observed as under:

“11. ...Cruelty has not been defined under the Act. It is quite possible that a particular conduct may amount to cruelty in one case but the same conduct necessarily may not amount to cruelty due to change of various factors, in different set of circumstances. Therefore, it is essential for the appellant, who claims relief, to prove that a particular/part of conduct or behaviour resulted in cruelty to him. No prior assumptions can be made in such matters. Meaning thereby that it cannot be assumed that a particular conduct will, under all circumstances, amount to cruelty, vis-à-vis the other party. The aggrieved party has to make a

specific case that the conduct of which exception is taken amounts to cruelty. It is true that even a single act of violence which is of grievous and inexcusable nature satisfies the test of cruelty. Persistence in inordinate sexual demands or malpractices by either spouse can be cruelty if it injures the other spouse. There is no such complaint by the appellant. In the case on hand, as stated earlier, the appellant has projected few instances in which, according to him, the respondent abused his parents. We have verified all the averments in the petitions, reply statement, written submissions as well as the evidence of both parties. We are satisfied that on the basis of such instances, marriage cannot be dissolved.”

18. Thus, in the given facts and circumstances of the case, considering the entire evidence, oral and documentary available on record, the single incident of assault which allegedly occurred in the year 2011 i.e. after 10 years of marriage, cannot be construed to be cruelty of such a nature which could entitle the respondent for decree of divorce. It is true that even a single act of violence which is of grievous and inexcusable nature satisfies the test of cruelty. However, in the present case, except the alleged incident of assault by the appellant and her family members on the respondent in the year 2011, which has also not been duly proved by the respondent, there is nothing on record which could suggest that the appellant treated the respondent with cruelty. Though it has come in the evidence of the respondent's witnesses that there used to be quarrel between the parties, but such quarrels were over trivial issues that the respondent was not taking the appellant to Korba where he was posted as Constable and he did not bring household articles in time etc. Such quarrels are common between husband and wife and by no stretch of

imagination, can be termed as cruelty by one party to the other. The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. From the evidence it is seen that it is the respondent who withdrew himself from the company of the appellant in the year 2012 and since then the appellant started residing at her parental house.

19. On the basis of aforesaid discussions, we are of the opinion that the respondent/husband has failed to make out his case for grant of decree of divorce on the ground of cruelty or desertion. As such, the learned Family Court was not justified in granting decree of divorce in favour of the respondent on the ground of cruelty. Resultantly, the appeal is allowed and the impugned judgment is hereby set aside. A decree be drawn up accordingly.

Sd/-

(Manindra Mohan Shrivastava)

Judge

Sd/-

(Gautam Chourdiya)

Judge