

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No.90 of 2015**

- Rajesh Kumar Chandra S/o Shri B.R. Katel Aged About 29 Years R/o Plat No. 152, Kosabadi, Korba, Tahsil And District- Korba, Chhattisgarh, Chhattisgarh

---- Petitioner**Versus**

- Smt. Savita Chandra W/o Shri Rajesh Kumar Chandra Aged About 25 Years R/o Q. No. 77/a/04, Balko Nagar, Korba, Tahsil And District- Korba, Chhattisgarh, Chhattisgarh

---- Respondent

For Appellant: Shri Vikash Pandey, Advocate
 For Respondent : Shri Anil Tripathi, Advocate

**D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava &
 Hon'ble Shri Justice Gautam Chourdiya**

Oral Order**PER MANINDRA MOHAN SHRIVASTAVA, J.****21/08/2018**

1. This appeal is directed against the impugned judgment and decree dated 25-04-2015 passed by the Judge, Family Court, Korba in Civil Suit No.53-A/2011, by which, appellant's/plaintiff's application for grant of decree of divorce on the ground of cruelty as well as desertion has been rejected.

2. The appellant filed a suit seeking decree of divorce on the pleadings inter alia that after marriage of the parties, which was solemnized on 17-04-2009, though initially the respondent-wife lived peacefully, but later on, she started quarreling with his parents and also subjected them to cruelty. It was further pleaded that the respondent-wife used to visit her parental house frequently without informing anyone and used to come back to matrimonial house only after great persuasion. Further pleading was that on the issue of visiting parental house, the respondent-wife used to assault by calling her parents and

threatened the appellant and his family members to falsely implicate in a dowry case. It was also pleaded that the respondent was insisting the appellant to live separately from his parents which gave rise to dispute between the parties. On 08-02-2010, the respondent went to her parental house by stating that she is willing to appear in the academic examination and thereafter, she did not return, despite all efforts made. The dispute was taken to the platform of their community, where despite advise, the respondent-wife did not come back to her matrimonial house. Then, the appellant moved an application for restitution of conjugal rights and in these proceedings also, the respondent-wife stated that after delivery, she would come back to her matrimonial house, but she never returned. It was also alleged that the respondent deprived the appellant of marital co-habitation and on such pleadings of cruelty and desertion, a decree of divorce was sought.

3. The respondent-wife, in her written statement, while denying all the allegations of cruelty, stated that the appellant and his family members, subjected her to cruelty in connection with demand of money and also on the ground that proper gifts were not given at the time of marriage. It was also alleged that her husband was inclined to go for second marriage and he was no longer interested in the respondent. It was also alleged that she had suffered abortion while she was residing in the matrimonial house. She also pleaded that every time, when advise was given to the parties to reside together, the appellant used to insist her to give in writing that if something goes wrong, the husband and his family members should not be held as responsible. Later on, an application for restitution of conjugal rights was withdrawn as the appellant was no longer interested to keep respondent-wife with him. Finally, the suit was filed before the learned Family Court seeking decree of divorce.

4. On the basis of the pleadings of the parties, learned Family Court framed two issues, as under:-

1. "क्या अनावेदिका विवाह पश्चात् आवेदक के साथ क्रूरतापूर्ण व्यवहार कर झूठे मामले में फंसा देने की धमकी देकर एवं मारपीट कर मानसिक एवं शारीरिक रूप से प्रतड़ित कर क्रूरतापूर्ण व्यवहार किया है ।

2. क्या अनावेदिका आवेदक को बिना किसी युक्तियुक्त कारण के विगत दो वर्षों से अभित्यजन कर दिया है ?"

5. In order to prove its case, the plaintiff examined five witnesses. In reply, the defendant examined four witnesses. Learned Family Court, after examining the oral as well as documentary evidence on record in the backdrop of pleadings of the parties, found that case of cruelty is not made out. On the issue of desertion, learned Family Court found that the suit itself was premature.

6. Assailing the legality and validity of the impugned judgment and decree passed by the learned Family Court, learned counsel for the appellant argued that the learned Family Court committed gross error of law and fact both in dismissing the application for seeking decree of divorce, though the appellant had proved cruelty through proper pleadings and clinching evidence. Learned counsel for the appellant contended that the specific pleading, as contained in the plaint, that the respondent had indulged in quarrel with his parents and had even assaulted the appellant, has been specifically stated in the evidence which could not be impeached. It is next contended that the respondent-wife had held out threat of false implication in a dowry case and it is admitted in the pleading of the respondent-wife that in the year 2013, during the pendency of civil proceedings, a criminal case was also instituted which fully establishes the plaintiff's case of false implication in a criminal case. This caused severe mental agony to the appellant and one of the main reason for seeking a decree of divorce on the ground of cruelty. Further case of the plaintiff is that the respondent being the wife of the appellant was obliged to perform the marital obligation including co-habitation. It was specifically pleaded and proved that

despite such obligation subsisting till the date of filing of the suit, the respondent refused to perform these obligations as she left matrimonial house on 08-02-2010 and thereafter, she never returned, despite all efforts made. In this regard, reliance is placed on the evidence of plaintiff himself i.e. Rajesh Kumar Chandra, PW-1 and that of the evidence of Kusumlata Chandra, PW-4, Head of the Community that even though the appellant had approached the respondent to take her back to the matrimonial house, she did not accept and declined to go along with the appellant. The bonafides of the appellant are reflected from the fact that he had moved an application for restitution of conjugal rights and even these proceedings were brought to end by withdrawing the same in view of the statements made by the respondent-defendant that after delivery of child, she would come back to matrimonial house and even thereafter, she never came back and when the appellant and his family members sought to persuade her to come back, then, she threatened false implication in a criminal case.

7. On the other hand, learned counsel for the respondent submits that not only the pleadings regarding cruelty are vague but the evidence in that regard, is without any specific details and full of improbabilities. It is argued that the respondent has not only pleaded but proved that it is the appellant and his family members, who subjected her to cruelty in connection with demand of money and she was subjected to cruelty so much so that she had to suffer abortion while she was residing in the matrimonial house, therefore, the allegations that the respondent committed cruelty is false. The appellant was never interested in seeking restitution of conjugal rights and the application filed by him was withdrawn. It is also submitted that after the dispute, the appellant approached the community forum for restitution of conjugal rights but for his own liberty from marital obligations.

8. We have heard learned counsel for the respective parties and perused the records.

9. Pleadings with regard to cruelty as contained in the plaint are that soon after the marriage, the respondent started quarreling with the parents of the appellant and behaved cruelly. It has been further pleaded that the respondent used to go to her parental house time and again without informing and used to come back only after great deal of persuasion. One of the main grounds, as pleaded in the plaint, is that the respondent indulged in assault and calling her parents and also holding out threat of false implication in a dowry case. Further pleading of cruelty was that the respondent was insisting her husband to live separately from his parents. It was lastly pleaded that the respondent has deprived the appellant of marital co-habitation which also amounts to cruelty.

10. It has to be noted that in the present case, admittedly the marriage was solemnized on 17-04-2009 and since 08-02-2010, the respondent-wife is not residing with the appellant. Though, both the parties had given different reasons as to why respondent-wife went to her parental house on 08-02-2010, the fact remains that after 08-02-2010, the respondent-wife is not residing with the appellant-husband. Thus, the entire allegations of cruelty is related to short period of appellant and respondent residing as husband and wife from 17-04-2009 till 08-02-2010, i.e. less than 10 months.

The pleadings of cruelty, cruel treatment to the parents, frequently visiting her parental house without information and returning back after great deal of persuasion, assault on the husband, threatening false implication, insisting on living separately and depriving the appellant of marital co-habitation, are, however, quite vague in this regard. The pleading that she used to quarrel with the parents without any reason and that acted cruelly are without any specific plea. It has come in evidence that the parental house of the respondent is about 10 K.M. away only. In para 3 of the plaint, it is stated that the respondent-wife used to go to her parental house time and again and in the evidence also, Rajesh Kumar Chandra, PW-1 has not specifically stated the period of frequent

visit, vaguely deposing that she used to go to her parental house. In a short period of 10 months, in which month or in which date, she went to her parental house, has not been specifically stated by the appellant in his evidence. Mother and father of the appellant, who have also been examined as plaintiff witnesses, have only repeated the same, which has been stated by the appellant, without any specific details in that regard.

9. There is an allegation of assault. However, the date or month, when this assault was made and as to how such assault was made and what kind of overt act was committed by the respondent on the appellant has not been specifically pleaded. The appellant-Rajesh Kumar Chandra, PW-1 in his evidence, has stated that the respondent had kicked her on private part resulting in swelling on his testis, but this was not specifically pleaded by the appellant. Moreover, the appellant has not come out with medical certificate of receiving treatment or having been treated by any doctor. The allegation of he having been assaulted as stated above, is vague, because, date and time of such incident has also not been stated.

10. The allegation that the respondent deprived the appellant of his marital relationship/cohabitation and physical demands cannot be accepted, because there is overwhelming evidence led by both the parties that the respondent had become pregnant, though, the pregnancy was, later on, aborted. In para 8 of his evidence, the appellant has stated that in the month of October, 2009, pregnancy of respondent was aborted and that respondent started making allegations against the husband. From this, it would be seen that there was co-habitation between the parties before October, 2009. He has further deposed that in November, 2009, the respondent again came back to matrimonial house, though, it is coupled with the statement that she used to go to her parental house frequently.

11. From the pleadings and the evidence of the parties, it is also not in

dispute that respondent gave birth to a child on 23-10-2010. According to the appellant, the respondent left matrimonial house on 08-02-2010, meaning thereby that even before leaving matrimonial house, she had not only marital relationship with the appellant, but also conceived pregnancy due to marital co-habitation between the parties. It is not the allegation of the appellant that the child was not born out of their marital co-habitation. Thus, from the overwhelming and admitted evidence on record, the respondent conceived twice. On the first occasion, for some reasons, pregnancy was aborted but thereafter, she again conceived and gave birth to a child. Therefore, the allegation that the respondent refused to co-habit or to perform marital obligations with the appellant, appears to be wholly improbable and liable to be rejected.

12. The other allegations of false implication in a criminal case, is not proved from any clinching evidence. Neither in the evidence of plaintiff witnesses nor in any other records/documents filed by the respective parties, it is proved that at any point of time till 08-02-2010, the respondent or any member of her family had approached police or any machinery of the State for lodging criminal case. It is an admitted position in the present case that the suit for restitution of conjugal rights was filed by the appellant himself on 28-06-2010. It would be quite improbable for a husband to seek restitution of conjugal rights, if there is any report lodged against him by the respondent-wife and he was subjected to cruelty of such a degree that it would become difficult for him to continue with the marital relations. We also find that during the pendency of the suit for restitution of conjugal rights, child was born on 23-10-2010. Thereafter, as late as in June, 2011, suit for grant of decree of divorce on the ground of cruelty and desertion was filed. This chronology of events itself renders the allegations of cruelty improbable. An application for restitution of conjugal rights was filed since the respondent was residing in her

parental house. One year thereafter, a suit for divorce was filed on the allegations of cruelty in respect of the period prior to 08-02-2010. Therefore, we are of the opinion that even though, there were certain dispute between the husband and wife, after respondent started residing with her parents in the parental house since 08-02-2010, the appellant insisted on restitution of conjugal rights but with passage of time, the appellant changed his mind and attempted to bring the marital relationship to end. He first withdrew application for restitution of conjugal rights and after almost one year, he filed a suit seeking decree of divorce on the ground of cruelty and desertion both. The fact that the FIR alleging commission of offence under Section 498-A of IPC which was filed during the pendency of suit, on 01-02-2013, does not support the allegations of cruelty because this report was filed after almost three years of the appellant and the respondent living separately. Since criminal case is stated to be pending, we would refrain from making any observation on the allegation of cruelty on his wife. For the limited purpose of testing the allegations that the wife had threatened false implication, we are of the view that this fact, does not by itself, support the plea of the appellant of false implication in a criminal case.

13. A decree for divorce on the ground of cruelty cannot be granted unless the parties seeking such relief make specific pleading and proves the same by clinching and reliable evidence. The pleadings with regard to cruelty in the present case are not specific and vague. The incidents of cruelty are required to be specifically pleaded with precision. Mere statement that the cruelty was committed is not enough.

14. We find that the plaintiff's case for grant of decree on the ground of desertion was rightly rejected by the Family Court, because, even according to learned counsel for the appellant, the respondent-wife left the house on 08-02-2010 whereas the suit for grant of decree of divorce on the ground of

desertion was filed on 20-06-2011.

15. In view of above, we are not inclined to interfere with the impugned judgment and decree passed by the learned Family Court, dismissing plaintiff's suit.

16. Accordingly, the appeal is dismissed. Let appellate decree be drawn.

SD/-
(Manindra Mohan Shrivastava)
JUDGE

SD/-
(Gautam Chourdiya)
JUDGE