

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 231 of 2018

Krishna Kumar S/o. Shri Kunjram, aged about 42 years, Caste Satnami, R/o. M.Q. 904, Pragti Nagar, Deepka, Tahsil Katghora, District Korba (C.G.)

---- Appellant

Versus

Smt. Punita W/o. Krishna Kumar Sonwani, Aged about 35 years, Caste Satnami, R/o. Hardi (Jarve), Police Station Balod, Tahsil Akaltara, District Janjgir Champa (C.G.)

---- Respondent

For the Appellant :- Mr. Punit Ruparel, Advocate

For the Respondent :- Mr. Ashutosh Trivedi, Advocate

Shri Justice Prashant Kumar Mishra
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board By
Prashant Kumar Mishra, J.

13.12.2018

1. The trial Court has dismissed the appellant/plaintiff suit for divorce on the ground of desertion.
2. The parties were married on 20.04.1996 and they have three daughters and one son out of the wedlock. The appellant is working as Electrician in the SECL, whereas the respondent is house wife. It was alleged in the plaint, that on some dispute the respondent went back to her parental house along with son Shubham on 09.03.2009 but did not return to her marital house despite repeated effort, therefore, she has deserted the appellant company and has refused to join marital chord.

3. The respondent defended the suit on averment that the appellant is a habitual drinker and he used to commit physical cruelty over the children as well as on her in a state of intoxication. She would further aver that the appellant left the house and stayed with one Nirmala Shrivastava for 10-15 days continuously and at times they resided together in the appellant's house, therefore, there is reasonable cause for not joining the company of the appellant.
4. The trial Court has found that the appellant is a singer and the said Nirmala Shrivastava is also a singer. Both of them undertake live musical performance and in connection with the said programme they reside together, therefore, the wife's assertion that the appellant has some kind of intimacy with Nirmala Shrivastava is not without any foundation.
5. We have perused the record, particularly the statement of the appellant where he would admit in para-4 of his affidavit that he is a singer, thereafter in para-18 of the cross-examination he admits that Nirmala Shrivastava is also a singer. The appellant also admits in para-17 of the cross-examination that he moves out-of for musical performance along with other singer/artist. Thus, the findings recorded by the trial Court is borne out of material on record.
6. Learned counsel for the appellant would argue that the respondent has made allegation in respect of the character of the appellant which by itself would amount to cruelty, therefore, the appellant is entitled to a decree for divorce on this ground.

7. It is to be appreciated that after the respondent tried to defend the allegation of desertion by offering explanation of her leaving the marital house, the appellant did not amend the plaint, therefore, no issue on the ground of cruelty has been framed nor the same has been tried as one of the ground for divorce. Therefore, such ground agitated at the appellate stage cannot be considered as the parties have not gone to the trial on this issue. There is no substance in this appeal which fails and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Vimla Singh Kapoor