

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 49 of 2001****Reserved on : 07.03.2019****Delivered on : 26.04.2019**

Ramkishor, aged 46 years, S/o Ramdhan Shukla, R/o Vidhya Nagar,
Bilaspur, Present address Civil Line Dhamtari, District- Dhamtari (C.G.)

---- Appellant**Versus**

Smt. Mangala, aged 38 years, W/o Ramkishor Shukla, R/o Chaubey Colony,
Raipur, Tahsil & District- Raipur (C.G.)

---- Respondent

For Appellant	:	Mr. H.V. Sharma, Advocate.
For respondent	:	Mr. H.B. Agrawal, Sr. Advocate with Mrs. Meera Jaiswal, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 21.12.2000 passed by Fifth Additional District Judge, Raipur (C.G.) in Civil Suit No. 294-A/1996, wherein the said court dismissed the application for divorce filed by the appellant (Husband) against the respondent (Wife).
2. As per version of the appellant, marriage between the parties was solemnized on 17.05.1989 at Raipur. Sister of the appellant namely Ratna Shukla was married to brother of the respondent namely Rakesh Sharma on 15.05.1989. As both sides could not bear each

other started living separately from July 1990. Sister of the appellant who married to Rakesh Sharma also not maintained relation for a long and decree of divorce was passed by the Court of Third Additional District Judge, Raipur in Civil Suit No. 32-A/1993 dated 07.02.1996 (Ex.P/1). Both the parties are living separately since July 1990. The appellant filed a suit for divorce before the trial court which was dismissed saying that the ground of divorce is not available to the present appellant.

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

- (i) The trial court has wrongly held that the respondent never deserted the appellant.
- (ii) The trial court has wrongly held that the marriage between sister of the appellant and brother of the respondent is not root cause of strained relation between the parties.
- (iii) The trial court passed its judgment on emotional ground ignoring legal aspect of the matter, therefore, the finding arrived at by the trial court is liable to be reversed.

4. Learned counsel for the appellant placed reliance in the matter of **Sanat Kumar Agarwal Vs. Smt. Nandini Agarwal**, reported in **AIR 1990 Supreme Court 594**, **V. Bhagat Vs. Mrs. D. Bhagat**, reported in **AIR 1994 Supreme Court 710** & **Maju Kumari Singh alias Smt. Manju Singh Vs. Avinash Kumar Singh**, reported in **AIR 2009 Jharkhand 35**.

5. On the other hand, learned counsel for the respondent submits that

the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

6. The appellant examined Smt. Ratna Shukla (PW-1) and himself as PW-2. In rebuttal, the respondent examined herself as DW-1 and Rajesh Sharma (DW-2). From statement of Smt. Ratna Shukla (PW-1), it is clear that she got married with brother of the respondent on 15.05.1989 and she started living separately from October, 1989. The respondent started living separately from the appellant from July, 1990. From her statement, it is clear that a decree of divorce has been passed in her favour as per Ex. P/1. Though, Smt. Mangla (DW-1) deposed before the trial court that she is willing to continue with the appellant, but the fact remains that the relation between the parties is not normal because there had been allegations and counter allegations against each other. Now it is more than 28 years that the parties are living separately.
7. Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.
8. The expression 'cruelty' has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of

marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger.

9. It is settled by a catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses.
10. Today, the position is that the marriage between the parties is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted. Decree of divorce has been granted to put quietus to all the litigations between the parties and to save them from further agony, therefore, the order passed by the trial court is not sustainable and the same is hereby set aside.
11. It appears from the record that the respondent was working as Food Inspector and now he has been retired. He was getting salary of Rs. 65,000/- per month and now he is getting pension of Rs. 32,000/- per month. Looking to his length of service, he can be directed to pay permanent alimony to the respondent.
12. Accordingly, the appeal is allowed. The decree is passed in favour of the appellant and against the respondent on the following terms and conditions:-
 - (i) The appeal is allowed. The marriage between the appellant and the respondent solemnized on 17.05.1989 is dissolved on payment of

Rs. 10,00,000/- (Rs. Ten Lakhs) by way of permanent alimony by the appellant to the respondent upto 31st August, 2019 by way of bank draft which shall be condition precedent for dissolution of marriage.

(ii) Parties to bear their own costs.

(iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.

(iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge