

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 18-01-2019

Judgment delivered on 15-03-2019

FIRST APPEAL No. 188 of 2004

Smt. Chandrakanta d/o. Bhaiya Lal, aged about 28 years,
Caste Rajwar, r/o. Ghatpodi (Pawanpur) PS
Ramanujnagar, Tahsil Surajpur, District Surguja (CG).

---- Appellant

Versus

1. Awadh Bihari s/o. Sonalram, aged about 32 years, Caste Rajwar, r/o. Village Premnagar, PS Premnagar, Tahsil Surajpur, Distt. Surguja (CG).
2. Rajkumar Sahu s/o. Vishwanath Sahu, aged about 30 years, occupation Agriculture r/o. Village Premnagar, colony Karmitikra, PS and Tahsil Premnagar, Dist. Surguja (CG).

---- Respondents

For appellant : Mr. Atnu Ghosh, Advocate.
For respondents : None

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 17-9-2004 passed by 4th Additional District Judge (FTC), Surajpur, District Surguja (CG) in Civil Suit No. 1-A/04 wherein the said court granted the decree of divorce in favour of respondent No.1 Awadh Bihari/husband and against the appellant/wife.

2) Appellant is legally wedded wife of respondent No.1. Respondent No.1 filed an application under Section 13 of the Hindu Marriage Act, 1955 (for short, "the Act, 1955") for divorce on the ground of adultery and same was decreed by the trial Court.

3) Learned counsel for the appellant would submit as under:

- i) Standard of proof regarding the charge of adultery is high and merely on the basis of hypothetical observations, the same against the appellant has been found proved by the trial Court.
- ii) The trial Court has recorded the finding without there being material witness and medical evidence.
- iii) Proper opportunity of hearing has not been afforded to the appellant and material admission and omission on the part of respondent No.1 has been overlooked that is why the decree passed by the trial Court is liable to be set aside.

4) I have heard learned counsel for the appellant and perused the record in which judgment and decree has been passed.

5) From the record, it appears that the marriage between the parties took place in the year 1989. It is alleged that in the year 1996 the appellant started service as Anganbadi worker. After

appointment she made illegal relation with respondent No.2. The wife of respondent No.2 objected their relation. From the evidence of respondent No.1 Awadh Bihari (PW/1) and Gayatri (PW/2), it is established that the appellant maintained physical relation with respondent No.2 and as per version of Smt. Gayatri (PW/2) she saw the appellant and respondent No.2 Rajkumar Sahu sleeping in cot in her house. As per version of Smt. Gayatri (PW/2) she tried to convince the appellant, but she did not agree and she has seen them many times. Version of these witnesses is supported by version of Ram Narayan (PW/3) and Kal Sai (PW/4). Version of these witnesses is supported by report of Urmila who is wife of respondent No.2 and as per version of respondent No.1 a meeting was arranged in the society but the appellant did not join in the said meeting and refused to come.

6) From the record, it is clear that a report was lodged against the respondent No.2 and he has been arrested under Sections 107, 116 and 151 of the Cr.P.C for breach of peace. From the entire evidence it is clear that both sides have no relation since 1996 and appellant is in-cohabitation with respondent No.2 for a long. Looking to the evidence adduced by both sides, it appears that as both sides crossed the point of no return, working solution is certainly not possible. Parties at this stage cannot reconcile themselves and live together forgetting their past as bad dream. As

there is no chance of return of the appellant to the house of respondent No.1, the trial court is right in granting decree of divorce. After re-assessing the entire evidence, this court has no reason to substitute contrary finding. The appeal is liable to be dismissed.

7) Accordingly, decree is passed against the appellant and in favour of respondent No.1 as under:

- (i) The appeal is dismissed with cost.
- (ii) Parties to bear their own costs.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju