

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No. 03 of 2013

Dr. Chandrabhan Singh Banjare, S/o. Shri J.R.S. Banjare, Aged about 41 years, R/o. Village Mohara, Tahsil and Police Station Gurur, District Durg (C.G.)

---- Appellant

Versus

Smt. Chitrarekha W/o. Dr. Chandrabhan Singh Banjare, Aged about 39 years, Head Teacher Government Middle School, Arjuni, Tahsil and District Dhamtari (C.G.)

Present Address Smt. Chitrarekha Banjare, lecturer (Hindi) Dani Girls Higher Secondary School, Kali Badi, District Raipur (C.G.)

---- Respondent

For the Appellant :- Mr Praveen Dhurandhar, Advocate
For the Respondent :- None for the respondent.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Judgement on Board By
Manindra Mohan Shrivastava, J.

22.07.2019

1. This appeal is directed against the impugned judgment and decree dated 11.10.2012 passed by the Additional Principal Judge, Family Court(Link Court) Balod, in Civil Suit No. 2A/2007 by which the appellant's application for grant of decree of divorce has been dismissed.

2. The appellant/husband filed an application under Section 13 of the Hindu Marriage Act 1955, for grant of decree of divorce on the ground of cruelty as well as desertion on the pleading inter-alia that the parties were married on 22.06.1995 and have been blessed with two children i.e. one daughter and one son. It is further pleaded that 5-6 years after the marriage, the respondent/wife subjected the appellant/husband to cruelty by compelling him to leave his job of medical practitioner, hand over the entire salary to her and also get the property partitioned and construct a house for her by selling his share in the property. It was also pleaded that the respondent/wife started imposing conditions that the relatives of the appellant should not be allowed to come to their matrimonial house nor the appellant should meet his parents, otherwise she would lodge a false report and get him arrested. Respondent/wife is also alleged to have threatened the appellant/husband of committing suicide. In the plaint, an incident of February 2004 was mentioned stating that in the absence of the appellant/husband, the respondent/wife came to his house along with four to five goons where appellant's mother was assaulted and misbehaved by them. Another incident of 28.02.2004 was also mentioned that the respondent had again reached the house of the appellant and misbehaved with his mother. It was further pleaded that a report was lodged in Police Station on 06.05.2004 about cruel act of the wife but, because of the political influence, the appellant was pressurized

to sign the so called *Rajinama*. It was also pleaded that a report of incident dated 02.02.2005 about the assault opened by the respondent/wife was lodged in which it was stated that on account of the said assault, the appellant/husband sustained certain injuries. The dispute is said to have arisen when, after assaulting the appellant/husband on 31.01.2005, the respondent/wife had left her matrimonial house and since then, she is continuously giving threat to him. Ultimately, on 09.07.2005, she is alleged to have come to the house of the appellant/husband and pelted stones therein and thus created a nuisance.

3. In the reply, the respondent/wife denied all the allegations and made counter allegation of being subjected to *marpeet* (assault) and quarrel by the appellant/husband. It is also pleaded by the respondent/wife that she is always willing to continue her marital relationship with the appellant/husband. Allegation of appellant having developed illicit relation with some other women is said to be the cause of quarrel between them.
4. Learned trial Court framed issue both on the ground of cruelty as well as desertion. It also framed an issue as to whether the appellant had developed any illicit relationship.
5. After hearing the parties and considering the oral and documentary evidence, learned trial Court found that the appellant failed in proving any of the grounds which could

entitle him to grant decree of divorce and thus dismissed the suit.

6. Assailing legality and validity of the impugned order passed by the Family Court, learned counsel for the appellant would submit that the appellant has not only specifically pleaded more than one incident of marpeet (assault) and quarrel on him as also on his family members including his mother but he has also categorically deposed in the evidence that the respondent/wife was indulged in quarrel and was making unreasonable demands and finally she left the matrimonial house of her own will. He would argue that in the evidence of Chandrabhan Banjare, examined on behalf of the appellant as first witness, there is a specific averment of ill treatment meted out to the appellant by his wife for which, he had to lodge a report also in the police station and the wife was prosecuted.
7. Additional evidence has also been led that on more than one occasion, the wife had arrived in his house, abuses were hurled by her and in these odd circumstances it was not possible for the appellant to further continue with the marital relation. He has also stated that the wife left the matrimonial house of her own and deserted the husband without any reasonable cause. It is also submitted that the case of the appellant is supported from the evidence of Ramkumar Sahu (A-2) and Govind Prashad Kurre (A-3).

8. It has also been submitted that the allegations made by the wife that the appellant had developed illicit relations are per se false and completely baseless because in the evidence of the wife, more than one name has been mentioned without any basis.
9. There is no representation made by the respondent.
10. It is not in dispute that the respondent and the appellant were married on 22.06.1995 and out of their wedlock, one son and daughter were born. It is also not in dispute that the appellant is a government servant as medical practitioner and so also the respondent is working as teacher in government school.
11. As far as the allegation of cruelty is concerned, we find that in the pleading the appellant has come out with the following allegations.

(A) The respondent was compelling the appellant to give up his job or to give his entire salary, get the parental property partitioned and construct a house by selling the same and thereafter, not maintaining any relationship with anyone from the matrimonial side. The respondent/wife also put the appellant/husband under threat saying that if he does not accept her words, she would get a false report lodged, arrested him also and would commit suicide if eventuality so arises.

(B) In February 2004, respondent accompanied by her relatives came to the house of the appellant/husband in his absence where she hurled abuses and assaulted the appellant's mother.

(C) On 28.02.2004, the respondent had again come to the house of the appellant in the mid night with goons in his absence.

(D) on 31.01.2005, the respondent assaulted the appellant.

(E) On 09.07.2005, the respondent came with her sister and hurled abuses at him and also pelted stones.

12. The appellant who has examined himself as first witnesses has stated regarding the aforesaid incident in the affidavit filed under Order 18 Rule 4 CPC. He also admitted in his cross-examination that the dispute between the parties was never taken before their community nor any application was made. In his cross-examination, he has admitted that against him, a case under Section 325 read with section 506 IPC was registered on the report made by his wife Chitrarekha and in that case, he has been held guilty of commission of offence and imposed sentence till rising of the Court with fine of Rs. 1000/-. He has also admitted that on his report, though, a case u/s 325 IPC was registered and his wife was tried but was acquitted of the charge.

13. In para-15 of his evidence, he has admitted that he sent a legal notice to his wife to take divorce by mutual consent. In his evidence, he admits that both were employed and remained busy with their respective duties. The appellant's witness No.2 (Ramkumar) has admitted in para-12 of his evidence that as both parties do not reside in the village, he does not know as to

what was the conversation between the parties and he is making his statement as was told to him by Chandrabhan. In para-18 of his cross examination, he admits that the respondent is the daughter-in-law of his elder brother. This means this witness is the uncle of the appellant. This witness himself has stated in para-19 of his cross examination that he and his mother had advised Dr. Chandrabhan (Appellant) to give proper treatment to the respondent/wife.

14. The next witness namely Govind Prashad Kurre, states that during the settlement proceedings, it was asked by the respondent/wife that the appellant will give the entire salary in her hands. He has also deposed that he was informed by the appellant regarding the assault made on him on 31.01.2005 but, he does not claim to be an eyewitness to the incident.
15. The aforesaid two witnesses have stated regarding certain incident of quarrel and abuses. However, if we look into the Rajinama Ex.P-4, we find that in Rajinama, the appellant himself has stated that he would not assault or abuse his wife in future, though it also contains as assurance from the side of the wife that she would also not misbehave either with him or with his mother.
16. It is not in dispute that on the report lodged by the wife, the appellant was convicted on the allegation of offence committed under Section 325 read with section 506 IPC, whereas on the report lodged by the appellant against his wife making

allegation of commission of offence under Section 323 IPC, the respondent/wife was acquitted of the charge. True, it is that the respondent/wife was given benefit of doubt but if we look into the aforesaid evidence it is clear that before the criminal Court is the appellant who was convicted as assailant and not his wife.

17. As far as the allegation of wife deserting the husband is concerned, the evidence of the appellant and his witnesses on this aspect is not at all coherent as no specific evidence has been led in this regard. There is no material to show that the appellant, at any point of time, made any attempt to bring his wife back. The conviction of the appellant for committing assault on his wife and injuring him for which, he was convicted also, only support the case of the wife that she was subjected to physical violence. The appellant has admitted in his cross-examination that he sent a legal notice to the wife to obtain divorce. None of the other witnesses have made specific allegations of desertion. Therefore, on the basis of pleading and evidence, referred to, by the counsel for the appellant, we do not find that learned Family Court has committed any illegality in rejecting the appellant's application.
18. The appellant has made last attempt to convince this Court by submitting that whatever may be the reason, the appellant and his wife are not residing together since 2005 because of series of dispute and litigations were pending between them. He also submits that the offer of financial support was also made to the

wife but the adamant attitude of the respondent clearly shows that she has finally decided not to reside with the appellant, therefore, in these circumstances, the marriage has irretrievably broken and on this ground, the appellant be granted decree of divorce.

19. The aforesaid submission of the learned counsel for the appellant does not make out any ground for this Court to grant decree of divorce in exercise of its appellate jurisdiction. The parties would be free to apply for grant of decree of divorce by mutual consent on such terms as may be agreeable to the Court. The appeal is accordingly dismissed. Parties to bear respective costs. Let appellate decree be accordingly drawn.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge