

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 6 of 2016**

- Chandan Singh, S/o Shri Jitendra Singh, Aged About 25 Years, R/o Bhawani Nagar, Behind Vivekanand Vidyapeeth, Kota, Police Station Amanaka, District Raipur, ChhattisgarhPlaintiff

---- Petitioner

Versus

- Smt. Sangeeta Singh, D/o Shri Virendra Singh, Aged About 24 Years, W/o Shri Chandan Singh, Ambedkar Nagar, In Front Of Balti Factory, Gudhiyari, Police Station Gudhiyari, Raipur Presently Residing At Behind Ramsakha Upadhyay Collage, Gondwara Road, Ektra-Nagar, Gudhiyari, Raipur, District Raipur, Chhattisgarh

---- Respondent

For Appellant
For Respondent

Shri Sandeep Shrivastava, Advocate
Shri A. K. Sahu, Advocate

Hon'ble Justice Shri Prashant Kumar Mishra**Hon'ble Justice Shri Gautam Chourdiya****Order On Board by Prashant Kumar Mishra J.****20/08/2019**

1. This appeal would call in question the legality, validity and the propriety of the judgment and decree passed by the Trial Court dismissing the appellant/plaintiff's suit for grant of decree of divorce on the ground of cruelty and desertion.
2. The parties were married at Raipur on 19.06.2006. According to the appellant, the respondent wife was not paying proper respect to his parents and used to instruct his mother to prepare meals

as per her menu. She returned to her parental house after 20-22 days of marriage and after repeated requests, she returned to her marital house in December, 2006 and started pressurizing the appellant to live separate, which was accepted by the appellant and they resided separate at Sundar Nagar, but there was no change in the attitude and behavior of the respondent. She lodged a false complaint of demand of dowry after her return to the house of her maternal grandfather/grandmother. She left the company of the appellant on 25.05.2007 and thereafter has never joined the company of the appellant to perform her marital obligation. Thus, the plaintiff/appellant prayed for a decree of divorce on the ground of mental cruelty and desertion.

3. The respondent wife denied the plaint allegations. She pleaded that she was subjected to cruelty in connection with demand of dowry. The plaintiff was not providing sufficient means to live a decent life at Sundar Nagar and she was also not allowed to move freely. Her in-laws have retained the *Streedhan* properties and the appellant used to threaten that he will obtain divorce and remarry. She categorically stated in her reply that she is willing to join the company of the appellant.
4. While the appellant examined himself in course of trial, the respondent examined herself and her witnesses Sarwati Sahi and R. N. Sahi. The Trial Court dismissed the suit on 07.02.2012 leading to filing of FAM No.42/2012 by the appellant in this Court, which was eventually allowed vide order dated 16.10.2014 and the matter was remitted back to the Trial Court for fresh decision.

By the impugned judgment, the Trial Court has again dismissed the suit on the finding that the appellant has failed to prove the ground of mental cruelty and desertion.

5. Perusal of the pleadings and depositions would indicate that from the very beginning, the appellant has been making allegation that the respondent has impleaded him, his parents and other relatives in false criminal case for offence under Sections 498-A/34 and 323 of IPC. The appellant, his father Jitendra Singh, his mother Smt. Usha Singh and his maternal uncles Kanhaiya Kumar Singh and Sanjay Singh were sent for trial for the said offence. However, the Trial Magistrate vide judgment dated 31.10.2017 in Criminal Case No.977/2010, decided by the JMFC, Raipur, has acquitted the accused persons of the charges under Sections 498-A/34 and 323 of IPC. Certified copy of the said judgment has been placed on record by the appellant. Para 17 of the said judgment would refer to the deposition of the respondent wife wherein she would make allegation against the appellant's father Jitendra Singh that on one night, he entered her bedroom stating that if the demand of dowry is not fulfilled, he will subject her to sexual intercourse. This statement was not made either in the legal notice served on the appellant before lodging criminal case or at any other stage. At all other places, she was stating that she was subjected to disrespectful and indecent behavior by the appellant and his family members. Thus, the allegation of cruelty and demand of dowry or causing simple hurt was not found proved by the Trial Magistrate. It is also significant to note

that when the respondent wife was examined in the present suit, the Family Court asked a specific question to the respondent as to whether she is willing to reside with the appellant, to which she answered with an emphatic 'NO', 'Never'. Thus, she not only made false allegation but she is also not willing to reside with the appellant, which is contrary to her own pleading at para 14 and at the last para of the written statement that she is willing to reside with the appellant.

6. In the above facts and circumstances, it is important to notice the law laid down by the Supreme Court in the matter of **K. Srinivas Rao vs D. A. Deepa**, reported in (2013) 5 SCC 226. The Supreme Court observed that scandalous, vulgar and defamatory statement by the wife against the mother of the appellant causes mental cruelty to the husband. It was further observed that the conduct of the respondent wife in filing a complaint making unfounded, indecent and defamatory allegation and thereafter failing to prove the same would amount to causing mental cruelty. It was thereafter observed in paras 29, 30 & 31 thus:-

“29. In our opinion, the High Court wrongly held that because the appellant-husband and the respondent-wife did not stay together there is no question of the parties causing cruelty to each other. Staying together under the same roof is not a precondition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable. This is what has happened in this case.

30. It is also to be noted that the appellant-husband and the respondent- wife are staying apart from 27/4/1999. Thus, they are living separately for more than ten years. This

separation has created an unbridgeable distance between the two. As held in Samar Ghosh, if we refuse to sever the tie, it may lead to mental cruelty.

31. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the [Hindu Marriage Act, 1955](#). But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree."

7. In the case at hand also, the respondent wife made allegation of demand of dowry and causing simple hurt, which she could not prove. In her court statement, she made indecent and scandalous allegation against her father-in-law. Therefore, in view of the law laid down by the Supreme Court in the above referred matter of **K. Srinivas Rao** (supra), we are inclined to allow the appeal to grant a decree of divorce in favour of the appellant to dissolve marriage between the parties solemnized at Raipur on 19.06.2006. We accordingly allow the appeal in the said terms.
8. A decree be drawn accordingly.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge