

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 06-09-2019

Delivered on 04-10-2019

FA No. 233 of 2005

- Jeetram Patel s/o Puranjanlal Patel, aged about 35 years, occupation Shikshakarmi, Primary School Girhulpali, r/o. Village Dhhomabhanta, Tahsil Sarangarh, Dist. Raigarh (CG).

---- Appellant/plaintiff.

Versus

- Smt. Shanti Patel w/o. Jeetram Patel, D/o. Babulal Patel aged about 31 years, r/o. Dhhomabhanta, Tahsil and Dist. Sarangarh, Dist. Raigarh (CG).

---- Respondent/defendant

For the appellant : Ms. Deepali Pandey, Advocate.

For the respondent : None though served.

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 31-8-2005 passed by the 1st Additional District Judge, Raigarh (CG) in Civil Suit No. 14-A/2005 wherein the said court dismissed the application filed by the appellant/husband for divorce under Section 13 of the Hindu Marriage Act, 1955 (for short, "the Act, 1955").

2. Appellant/plaintiff filed an application under Section 13 of the Act, 1955 on the ground that the marriage of appellant/plaintiff and

respondent/defendant was solemnised on 2-7-1997 at village Darrabhata and out of their wedlock two children were born. After marriage respondent started living with appellant at his home village Dhoomabhata, Tahsil Sarangarh, Dist. Raigarh. As per version of the appellant, respondent right from the beginning started to behave with cruelty with appellant, his parents and young brother. She was not cooking food for them and was also not doing the household work. She used to quarrel with them many times and threatened to commit suicide for implicating them in false case. Due to misbehaviour of respondent, it became difficult for appellant to continue his job peacefully. Apart from this, respondent was in habit of going to her parental house without his consent and while returning to matrimonial house ignoring the appellant she was sitting with her relative namely Rishikesh Choudhary. Later on it came to the knowledge of the appellant that his wife has illicit relation with Rishikesh Chudhary that is why application was filed for divorce which was dismissed by the trial court after recording evidence of parties and after hearing the parties.

3. Learned counsel for the appellant submits as under.

- i) The trial court has not considered the evidence properly and it came to erroneous conclusion on important point.
- ii) The trial court failed to consider the fact

that threat to commit suicide for implicating the family in false case of dowry death constitute cruelty.

- iii) Adultery can be proved by circumstantial evidence, but this very fact has been ignored by the trial court.
- iv) When relation is broken , there cannot be any reconciliation and therefore, decree of divorce ought to have been passed by the trial court.
- v) The case of the appellant is proved by PW/1 Jeetram Patel, PW/2 Mitram Patel, PW/3 Usatram Patel and PW/4 Murlidhar, but the trial court refused to act on the statement of these witnesses.
- vi) It is a case of 16 years of continuous separation and matrimonial bond is beyond repair, therefore, decree of divorce should be passed.

He placed reliance in the matter of, **Savitri Pandey vs. Prem Chandra Pandehy**, reported in AIR 2002 SC 591, **G.V.N. Kameswara Rao vs. G. Jabilli**, reported in AIR 2002 SC 576, **Raghunath Mandalekar vs Bhumika Mandalekar (2014) 4 CGLH 612**, **K. Srinivas Rao vs. D.A. Deepa (2013) 5 SCC 226** and **V. Bhagat vs. D. Bhagat**

(1994) 1 SCC 337.

4. I have heard learned counsel for the appellant and perused the record of court below including the judgment and decree.

5. The first question for consideration of this court is whether the respondent committed cruelty against the appellant. All the witnesses named above deposed before the trial Court that the respondent refused to perform house-hold work and threatened the appellant and his family members to implicate them in any false criminal charge. Version of these witnesses is general and bald statement. If respondent was not in practice to perform household work, she could have learnt in the house of the appellant gradually by help of family members of the appellant, therefore, non-performing of household work is not cruelty against the appellant. The evidence regarding threatening to implicate the family members of the appellant in false charge is general in nature which is rebutted by the respondent (DW/1). There is nothing on record to show that any complaint was made by the respondent in society or to parents against any member of the family, therefore, threatening on the part of the respondent is also not proved by clinching evidence.

6. The second question for consideration of this court is whether respondent is living adulterous life and she performed

sexual intercourse with any person namely Rishikesh after marriage. From the evidence of the appellant side, it is clear that Rishikesh is paternal uncle (Phoophu) of the respondent and he is equivalent to her guardian. To accompany of respondent by his paternal uncle is natural and there is nothing from the evidence of any of the witnesses of the appellant that he performed sexual intercourse with respondent, therefore, there is nothing on record to establish illicit relation of the respondent and his paternal uncle. In absence of clinching evidence this ground of divorce is also not available to the appellant.

7. The other question for consideration of this court is whether the appellant has acted bonafidely in taking legal recourse. If respondent has withdrawn from company of the appellant, the appellant may have filed application for restitution of conjugal rights under Section 9 of the Act, 1955 but that is not done and appellant took negative approach in filing the petition for divorce.

8. It is contended on behalf of the appellant that the application was filed before the trial court in the year 2004 now 17 years have been passed, therefore, matrimonial bond is beyond repair and decree should be passed in favour of the appellant.

9. In the present case, cause of action arose as per the application on 3-7-2002 and application was filed on 22-7-2002. The ground raised by the appellant was not proved to the satisfaction of the court. The appellant should have adopted positive approach against the respondent at first instance for restitution of conjugal rights, but that is not done and the application for divorce is filed in the same month in which cause of action is alleged to arise. He has not mentioned in his application regarding maintenance of respondent wife and children. Again he charged his wife for adultery for which there is no proof, therefore, it is the appellant who committed wrong in levelling false charge against the wife. It is settled principles of law that no party can be benefited of his own wrong. Accordingly, argument advanced on behalf of the appellant is not sustainable and the case laws cited by learned counsel for the appellant do not help to him as the same are very distinguishable to the facts and circumstances of the present case. The appeal is liable to be dismissed.

10. Accordingly, decree is passed in favour of the respondent and against the respondent as under.

- i) 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