

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 190 of 2015

Preeti Tiwari W/o Praveen Tiwari, Aged About 32 Years R/o House of Shri K.N. Sharma, Behind High School, Jawaharpara, Akaltara, District Janjgir-Champa, Chhattisgarh, Chhattisgarh

---- Appellant

Versus

Shri Praveen Tiwari S/o Praduman Tiwari, Aged About 33 Years R/o Village Lagra, Post Pakariya Jhulan Nariyara, Tahsil- Pamgarh, District Janjgir-Champa, Chhattisgarh, Chhattisgarh

---- Respondent

For Appellant	:	Ms. Nirupama Bajpai, Advocate
For Respondent	:	None appears

**D.B. :Hon'ble Mr. Justice Manindra Mohan Shrivastava &
Hon'ble Mrs. Justice Vimla Singh Kapoor**

Order On Board

20/01/2020

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against the judgment and decree dated 28.11.2015 passed by learned Judge, Family Court, Janjgir, District- Janjgir-Champa in Civil Suit No.12-A/2013, by which the appellant's application for grant of decree of divorce on twin grounds of cruelty and desertion has been dismissed.
2. Appellant-wife moved an application for grant of decree of divorce against her husband on the pleadings that parties were married on 25.4.2008, whereafter, she kept on residing in the matrimonial house in Village- Lagra. Appellant's pleading was that soon after marriage, she was subjected to physical and mental cruelty on the allegation that enough dowry was not brought and money was also being demanded. It was also pleaded that despite all odds, she tolerated the cruelty and finally from their wedlock, a child was born on 6.6.2009. It was further pleaded that even after delivery, the respondent-husband did not go to even see the newly born child nor he

extended any kind of financial help. It was also pleaded that on 28.12.2011, a report was also made by the appellant-wife before the Superintendent of Police, Janjgir-Champa making allegation of cruelty and harassment. It was also pleaded that a case under Section 498-A IPC, read with Section 34 has also been registered against the respondent-husband.

Further pleading of the appellant was that the respondent-husband has deserted her for last 3 years and 9 months and during that period, there has been no cohabitation between the parties. Another important pleading made by the appellant-wife was that the respondent-husband had moved an application for grant of decree of divorce which application was dismissed as withdrawn vide order dated 1.7.2011 of the Court. It was also pleaded that respondent-husband committed cruelty by making false allegation on the appellant-wife that the child is not his biological son thereby making allegation on her character.

3. The allegations made by the appellant-wife were denied by the respondent-husband and he pleaded that soon after marriage, appellant-wife was insisting on living separately due to which he had to shift to Akaltara. The allegation of physical and mental cruelty or demand of money was denied. It was further pleaded that the appellant-wife did not inform regarding birth of their child. According to respondent-husband, the allegation of cruelty are false and fabricated.
4. Learned Family Court, on the basis of the pleadings made by the parties, framed as many as four issues. The main issues were on the aspect of cruelty and desertion.
5. After allowing the parties to lead oral and documentary evidence, analyzing the evidence on record, learned Family Court came to the conclusion that the appellant-wife has failed to prove either of the ground to get a decree of divorce and rejected the application.
6. Assailing the legality and validity of the impugned judgment and decree, learned counsel for the appellant-wife would argue that as far as cruelty is concerned, the appellant-wife has clearly pleaded and proved that ground. Regarding the averment made in para-3, 4, 5, 8, 9 & 10 of the application, it is argued that specific pleadings were made and to support those

pleadings, appellant-wife examined herself and deposed in her evidence that after marriage, she was subjected to harassment, assault. It has also been stated by her that husband did not allow her to take up her job and was also not allowing her to come out of the house, used to put a lock and also doubt her character. She also stated in her evidence that on two-three occasions, she was sent back to her parental house stating that the child is not born out of their wedlock, whereafter, a report was lodged in the police station. She also stated that money is also being demanded. In her cross-examination, suggestion that all the allegations are false, has been denied.

7. We have heard learned counsel for the parties and perused the records of the case.
8. The evidence of the appellant-wife, in so far as undue restriction in taking up job and not allowing to come out of the house and putting a lock of the house is concerned, the same is without any such pleading and appears to be clear improvement on the case. The allegation of assault are not based on any specific incident. Neither in the pleadings nor in the evidence, any specific incident or the genesis of the dispute has been stated. The evidence regarding cruelty, as stated by the appellant herself in her own evidence, is extremely vague. The other witness Kishore Kumar Sharma (AW2) who is the brother of the appellant-wife has stated that the respondent- used to go to the school of the appellant and tease her. But this has not been pleaded by the appellant-wife either in her pleadings or stated in her evidence. Though according to the appellant-wife, she was subjected to cruelty during period of eleven months when she resided in the matrimonial house, according to her brother- Kishore Kumar Sharma (AW2) she was assaulted by her husband when she was staying in parental house. He has not stated regarding respondent doubting her character. The allegation of demand of dowry is equally vague, unspecific. What was demanded has not even been stated either in the pleading or in the evidence of these witnesses aforesaid.
9. Though learned counsel for the appellant-wife brings to the notice of this Court that a report was lodged in the police station against the husband on 23.3.2009, we find that the said case was closed as not maintainable. Thereafter, no evidence has been led before the Court to prove that the

appellant immediately lodged any complaint or any community meeting was organized to support her allegation. Though criminal case for alleged commission of offence under Section 498-A IPC is said to have been registered, there is no material on record to prove that respondent-husband has been found guilty of any such offence. Therefore, the shaky, vague and unspecific evidence of cruelty has rightly not been made a ground to grant decree of divorce.

10. As far as ground of desertion is concerned, though the appellant-wife has pleaded in her application that her husband deserted her for last 3 years and 9 months till the date of filing of divorce application and has also stated in her evidence that she has been deserted by her husband, respondent-husband has come out with the pleading and evidence that the appellant herself left matrimonial house and thereafter, she has not returned. Though non-applicant's witness Santosh Sharma (NAW2) has stated in his evidence that non-appellant did not visit the house of the wife after she went back, equally, there is no evidence that appellant-wife also made any attempt to come back to matrimonial house after delivery of child. During the pendency of trial before the Court below, when the Court had drawn conciliation proceedings, the report of the Councilor on record shows that the appellant-wife was not prepared to go and reside with the husband despite offer made by the husband. Moreover, from the order sheet dated 18.4.2013 of the Family Court, it is found that during trial, the learned Court below has also made an attempt to bring about settlement between the parties and when husband offered wife to come back to the matrimonial house, appellant-wife refused the offer and said that she is not prepared to reside with her husband because he is unemployed and is not doing anything. Therefore, the element of *animus deserendi* which is *sine qua non* for grant of decree of divorce is found absent in this case and it cannot be said that the respondent-husband has deserted his wife. Therefore, we do not find any good ground to interfere with the finding of learned Court below on both the issues regarding cruelty and desertion.

11. At the last, learned counsel for the appellant-wife argues that the relationship between the appellant-wife and respondent-husband have remained strained for last 10 years and they are residing separately and at this stage, there is no possibility of re-union and their marriage has

irretrievably been broken. On this submission prayer has been made that a decree may now be granted because otherwise the parties would be left to carry on their shoulders, a dead relationship which no longer subsists between them.

12. We are afraid, no such decree can be granted by us only on the ground that the marriage between the parties is irretrievably broken. Even if we had to accept that submission for the strong reason that the parties are not residing together since last 10 years and are living separately, we find ourself unable to grant any such decree on such ground because the law does not permit us to grant decree on such ground. The ground on which decree of divorce can be granted are exhaustively stated in Section 13 of the Hindu Marriage Act. Therefore, even if we are satisfied that the marriage is irretrievably broken, decree of divorce on that ground cannot be granted.

13. In the result, the appeal fails and is hereby dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge