

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 96 of 2017**

- Amarjeet Singh @ Sonu S/o Ranjeet Singh Saluja, Aged About 34 Years Occupation Electrical Shop, R/o Beltukari Chowk, Near Dadiji Bhawan, Main Road, Khariyar Road, District Nayapara Odisha

---- Appellant**Versus**

- Smt. Jasvinder Kour @ Rani W/o Shri Amkarjeet Singh @ Sonu Saluja, Aged About 33 Years Occupation House Wife, R/o Punjabi Para, Navagarh, District Bemetara, Permanent R/o Beltukari Chowk, Near Dadiji Bhawan, Main Road, Khariyar Road, District Nayapara Odisha

---- Respondent

For Appellant : Shri Raghvendra Pradhan, Advocate

For State : Shri Vaibhav Goverdhan, Advocate

D.B.:- Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****28/02/2020**

This appeal is directed against impugned judgment and decree dated 23/02/2017 passed by the Family Court, Bemetara in Civil Suit No.22-A/2012 by which, the application for grant of decree of divorce filed by the respondent / wife has been allowed and decree of divorce has been granted in her favour and against the appellant / husband.

2. The respondent / wife moved an application under Section 13 of the Hindu Marriage Act for grant of decree of divorce on the pleadings *inter alia* that the marriage of the parties was solemnized on 28/02/2000 and thereafter, marital life was peaceful until birth of their daughter – Simran and it was pleaded that after the

daughter was born, the husband, parents and unmarried sister-in-laws, all started subjecting the respondent / wife to physical and mental cruelty in the name of dowry. It was also pleaded that the husband, in the state of intoxication, used to beat the wife almost every day and even when this was informed to the in laws, they only favoured the husband. Further pleading was that after birth of their son Prabhjot, the husband refused to maintain them and informed the family members of the wife to take her back otherwise, he will not be responsible. Thereafter, her relations remained strained and taking into consideration the situation, she was brought back to her parental house where she is residing since 2½ years. Further pleading is that in the year 2007, the husband, along with in laws and some more persons came to Navagarh to bring the wife and children back to the matrimonial house stating that the incidents of cruelty would not be repeated and on such assurance, the wife went back to the matrimonial house. However, after one year, the same behavior was repeated. The husband was not fulfilling the demands of the children except paying school fee. According to the respondent / wife, the reason for bringing her back was in connection with marriage of her brother-in-law. Further pleading was that a step motherly treatment was given to her when her brother-in-law was blessed with a son. The maid servant was also terminated and all household works were to be performed by the wife along with sister-in-laws. In May 2012, the husband informed the mother-in-law and father-in-law over telephone to take back the wife and children otherwise something may happen. Thereafter, her brother came and took her back to the parental house where she was residing with her parents. No attempts were made to take her back. She got her children admitted in a school near Navagarh. Even prior to May, 2012, there was no cohabitation between the husband and the wife. There is threat of life to her if she goes back to the matrimonial house. On such pleadings that after subjecting the wife and children to physical and mental cruelty and forcibly sending them back to parental house, no attempt has been made to bring her and children

back, finally, application had to be filed for grant of decree of divorce.

3. The allegations made in the application were denied by the husband. The allegations of cruelty were also denied and it was said that the wife went to the parental house and thereafter, she did not come back despite attempts made by the husband to bring her back.

4. In view of the pleadings of the parties, learned Trial Court framed issues as to whether wife was subjected to cruelty on the ground of demand of dowry and subjected her to physical violence and whether on that ground, she is entitled to decree of divorce.

5. In order to prove her case, the respondent / wife examined herself and also her mother- Swarna Kaur (AW2). The appellant examined himself and no other witness was examined.

6. Learned Trial Court relied upon the evidence with regard to cruelty suffered by the wife and held that the wife is entitled to decree of divorce giving rise to this appeal.

7. Assailing legality and validity of impugned judgment and decree of divorce, learned counsel for the appellant would argue that the Family Court committed illegality in granting decree of divorce without there being specific pleading, much less clinching and specific evidence on cruelty proved by the respondent / wife. He would submit that the allegation of demand of dowry and subjecting the wife to cruelty in connection with dowry, after birth of first daughter, itself is highly improbable. The next submission is that the pleading itself was extremely vague and unspecific with regard to allegation of cruelty and bald statement has been made. Next submission is that according to the pleadings, settlement had taken place between the parties and the wife was brought back to the matrimonial house

by the husband in the year 2007 and according to her, things remained proper for about one year. But thereafter, what cruelty was committed, has not at all specifically stated but vague statement has been made in para 8 to 13 of the plaint, which on the face of it, do not amount to sufficient pleading to *prima facie* make out a case of cruelty. Further argument is that the wife's case that she was subjected to cruelty, is not supported from any clinching evidence. The evidence of the wife herself is not very specific. The mother has been examined as the only witness stating regarding she being informed by the respondent / wife that she was subjected to assault in a state of intoxication by her husband. There is no report lodged in the police station nor is there any evidence that the matter was taken before the community meets of the parties for resolution of the dispute. Neither the father nor the brother have been examined. The respondent / wife has admitted in her evidence that she is not willing to reside with her husband but as far as the ground for such refusal that the appellant has committed cruelty upon her, cannot be said to be proved as per the requisite standard of proof of cruelty.

8. On the other hand, learned counsel for the respondent, relying upon the decision of the Supreme Court in the case of **Vishwanath Sitaram Agrawal v. Sau. Sarla Vishwanath Agrawal, 2012 AIR SCW 4300**, submits that the amount of pleadings and evidence which have been led by the respondent / wife meet the required standard to prove cruelty. He submits that no hard and fast rule is applicable and each and every case would depend on its own facts. His submission is that the respondent / wife has categorically pleaded in her plaint that even before 2007, she was subjected to cruelty in connection with demand of dowry and she used to be beaten by her husband, in state of intoxication. It is categoric pleading, after she was brought back to the matrimonial house, though things remained normal, the earlier cruel conduct was again repeated and specific pleading have been made in this regard. Further submission is that the evidence

of the wife that she was subjected to beating in a state of intoxication, deserves to be believed and merely because it is not supported from any other evidence or circumstance, by itself, could not be made a basis to disbelieve her testimony. Further argument is that not only from the pleadings but also from the evidence, it is proved that the husband neglected to maintain his wife and children and this indifferent and apathetic conduct of the husband would also amount to cruelty. Learned counsel for the respondent would further argue that as the evidence has come, the husband is not in any employment and is hand to mouth, therefore, an impression created in the mind of the wife that the husband is not able to maintain her and children, is sufficient to form an opinion that living with the husband would be harmful to her and therefore, the decree which has been granted to her by the Court below is not liable to be interfered with.

9. If we look into the pleadings made by the respondent / wife, even according to the pleadings made in para 6, till the time the daughter Simran was born, things were alright and behavior with her was proper. According to the pleadings made in this paragraph, the husband and other members of the family started subjecting her to physical and mental cruelty in the name of dowry. Thus, even according to the wife, till the daughter was born, no cruelty was meted out to her in the name of dowry. The application for grant of decree of divorce was filed in the year 2012 and at the time of filing of the application, daughter is said to be about 11 years. That means, even according to the respondent / wife, nothing happened for about one year after solemnization of marriage. With this background, allegations of cruelty in connection with demand of dowry have to be appreciated. According to the pleadings, at the time of marriage, motor cycle was given. Further, it has been stated that later on, cash of Rs.50,000/- was also demanded, which was given by her maternal uncle and then only, she was allowed to come to her parental house. However, to prove this allegation of demand of Rs.50,000/-, the person concerned

i.e. the maternal uncle, who is said to have paid that amount, has not been examined.

In the pleadings, though it has been stated that after the daughter Simran was born, physical and mental cruelty was inflicted in the name of dowry but, what dowry was demanded is not stated. Even according to the respondent, motor cycle was given at the time of marriage. Therefore, the allegation that the operative reason for inflicting physical and mental cruelty was demand of dowry, appears to be an afterthought. In para 18 of her cross-examination, she has stated that gifts were exchanged voluntarily, though she states that motor cycle was demanded. She, however, herself states that motor cycle was given. Thereafter, what demand was made, has not been clearly stated in her evidence. Therefore, even if we accept, for the argument's sake, that the motor cycle, as demanded was given, in view of respondent's own case that for a period of one year, neither demand was made nor any cruelty was committed upon her, respondent's allegation that after the daughter was born, she was subjected to cruelty in connection with demand of dowry, cannot be accepted.

10. In para 6 of the plaint, it has been stated that the appellant / husband used to beat the wife in intoxicated condition, almost every day. However, in the cross-examination of the respondent / wife as also in the cross-examination of her mother, it has been admitted that no report was lodged. It is also admitted that the matter was not taken on the platform of their community. Further, this allegation of assault has not even been supported by the mother in her evidence. In her evidence, she has not stated that soon after the birth of daughter Simran, her daughter used to inform that she was being subjected to assault by her husband in a state of intoxication. It is not a case where specific instances have been mentioned. Though, it may not be required in every case that each and every instances of cruelty should be pleaded and proved in detail if cruelty is being

continued for a long time, however, in a case like the present one, where there is no support to the statement of cruelty from any corner, not even from the evidence of the mother, the Court would certainly look for a specific evidence and pleadings in that regard. In order to prove cruelty, not only specific pleadings are required to be made but clinching evidence is also required to be led. The standard and degree of proof of cruelty requires the party alleging cruelty to lead specific and reliable evidence.

11. In the present case, the reason for subjecting the wife to physical cruelty is stated to be demand of dowry which, for reasons stated above, does not appear to be probable. Therefore, the allegation of cruelty is required to be examined with due care and caution. Certainly, one would try to find out as to what was the probable reason for committing cruelty. True it is that at times, behavioral aspect, for no reason, may also result in cruelty. For example, the husband being a drunkard and assaulting his wife. But in such case, there has to be some specific evidence in support of the allegations and it must satisfy the Court that the pleadings and evidence inspire confidence to accept the allegations. Where the operative reason for such cruelty is also not found proved, the burden on the party alleging cruelty becomes still higher. Even though, each and every detail was not required to be proved, atleast some specific instances were required to be pleaded and proved which are completely lacking in the present case.

12. In the present case, we find that the father and the brother, who are also said to be involved, have not been examined.

13. What is important and relevant to note is that according to the respondent, she had stayed in her parental house for about 2½ years until she was taken back to her matrimonial house by her husband and in laws who had come to her parental house in the year 2007 and she was taken back. According to the

pleadings contained in paragraphs 8 to 13, after she was brought back, things were alright for about one year. That means, till the end of 2008, nothing happened. From 2009, what happened has been stated in paragraphs 8, 9 and 10. In paragraph 9, it has been stated that after about one year of return, earlier behaviour was repeated but except this, nothing has been stated with regard to cruelty. That much of pleading is not enough to make out a case of cruelty. The other statement is that the husband did not use to fulfill demands of children except payment of school fees. That cannot be said to be cruelty against the wife. Further pleadings are that after the child was born to her brother-in-law, a step motherly treatment was given to her children. The allegations that some cruelty was committed by her sister-in-laws, has not been supported from any evidence. The pleading that maidservant was not in the house and all household works were to be performed by the respondent / wife and sister-in-laws, cannot constitute cruelty. It has also been stated that there was dispute between the husband and brother-in-law and quite often, they used to quarrel and also take out some weapons. This pleading is hardly supported from any clinching evidence with regard to dates of incident and reason for any such dispute.

14. Therefore, we find that the allegations of cruelty are not only unspecific, they are not made out, even from the pleadings after the wife returned from parental house to matrimonial house in the year 2008.

15. Reliance has been placed on the decision in the case of **Vishwanath Sitaram Agrawal** (supra). The said decision lays down principles on which pleading and evidence with regard to mental cruelty has to be examined. In the present case, there is hardly any pleading, much less evidence of mental cruelty. The main allegations are of physical assault and not mental cruelty.

The argument that failure on the part of the husband to properly take care of

the wife and children amounts to cruelty, does not merit acceptance because this is based on allegations that after the wife went back to the matrimonial house from parental house, proper care has not been taken. In this regard, we find that the appellant has pleaded that an attempt was made to bring the wife back and respondent / wife in her evidence, has admitted in para 18 of the cross-examination that after she came back to Navagarh, her husband and mother-in-law had come along with fruits and sweets to bring her back. Her statement that though they had come for that purpose but there were no talks with regard to she going back to matrimonial house, does not merit acceptance. Having admitted that the husband and mother-in-law had come with fruits and sweets but did not offer to come along with them, is wholly improbable. The respondent has admitted in her evidence that she is not willing to go with her husband and because of the dispute, she is residing with her parents and she has filed application for decree of divorce because she is not willing to go back to her husband.

16. Present is not a case where we are required to go in detail to record a specific finding as to whether the appellant / husband has deserted his wife or the respondent / wife, of her own, has left the matrimonial house. In the present case, we are only concerned whether a case of cruelty is made out so as to grant decree of divorce in favour of the respondent. For that reason, we are also not going into other part of the evidence regarding filing of application under Section 9 for Restitution of Conjugal Rights by the husband and relevant evidence in that regard.

17. In view of above consideration, we are unable to uphold the judgment and decree passed by the learned Court below. The pleadings and evidence with regard to cruelty have failed to meet the required standard and degree of proof so as to grant decree of divorce. The very fact that the husband and wife are living separately definitely goes to show that their relations are strained. But on that

ground alone, we cannot jump to the conclusion that the husband has committed cruelty and that is the sole reason why the wife is living separately.

18. In the result, the appeal is allowed. The impugned judgment and decree passed by the Family Court is set aside. Respondent's application for grant of decree of divorce is rejected. Let appellate decree be drawn. Parties to bear their respective costs.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge