

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 72 of 2018**

- Smt. Deepika Soni W/o Shri Purnadutt Soni Aged About 29 Years Through Ravindra Soni, R/o Block 1/A, Street No.6, Sector 1, Bhilai, Tahsil Durg, Civil And Revenue District Durg, Chhattisgarh

---- Appellant**Versus**

- Purnadutt Soni S/o Shri Tulsiram Soni Aged About 32 Years R/o In Front Of Janta School, Mukht Jeans Corner, G.E.Road, Main Market, Bhilai-3, Tahsil Patan, Civil And Revenue District Durg, Chhattisgarh

--- Respondents

For Appellant	:	Mr. Sunil Sahu, Advocate.
For Respondent	:	None appears.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****07/10/2020**

Heard.

1. This appeal is directed against judgment and decree dated 19.02.2018 passed by learned First Additional Principal Judge, Family Court, Durg (C.G.), by which appellant's application for grant of decree of divorce on the ground of cruelty has been rejected.
2. Appellant-wife moved an application under Section 13 of the Hindu Marriage Act for grant of decree of divorce on the pleadings that after the marriage was solemnized between the parties on 12.07.2013, gifts which constitutes '*Stridhan*' were snatched away by the father of the husband. At the time of marriage, it was wrongly stated that respondent and his family was established businessman of cloth with Rs.45,000/- to 50,000/- monthly income but after marriage, appellant came to know that the respondent is only class 10th pass and is not doing anything and is unemployed and rather fully dependent on his father. Further allegation was that the appellant was

subjected to cruelty by respondent-husband and his parents. All the gifts and cash of Rs.30,000/- were snatched away and appellant was being scolded and abused by stating that car was not given in dowry, her husband assaulted in intoxicated condition and pressurized the appellant to bring a car and with all harassment, she was shunted out from the room. In this manner, cruelty continued. The appellant was not being provided proper food and even the father of the respondent-husband was keeping an evil eye. A vehicle was taken on finance basis and EMI is being deducted from appellant's salary. Whatever salary she used to bring, used to be snatched away by her in-laws. She also specifically pleaded that respondent-husband used to forcibly commit sexual intercourse leading to bleeding. This prolong cruelty was discussed to her father and when her father came, he was also assaulted on 05.10.2014. After this incident, when the appellant went to matrimonial house, there she was beaten by her husband and mother-in-law and again shunted out from matrimonial house and thus, from 05.10.2014, she is residing in her parental house. An FIR has also been lodged against the respondent-husband alleging commission of offence under Section 498 IPC as also Section 4 of the Dowry Prohibition Act. The appellant also prayed for return of '*Stridhan*' by giving details of various gifts as per para-8 of the plaint. On such pleading, decree of divorce and return of '*Stridhan*' was sought.

3. In the written statement, the husband denied allegations and stated that he was threatened and abused by the father of the wife and he is still willing to keep his wife with him.
4. After allowing learned counsel for the parties to lead oral and documentary evidence, learned Family Court dismissed the suit holding that the appellant failed to prove the allegation of cruelty.
5. Assailing legality and validity of the order passed by learned Family Court, learned counsel for the appellant would submit that even though appellant led cogent and reliable evidence regarding cruelty meted out to her by respondent-husband and her parents time and again, on trivial discrepancies, substantial and reliable evidence of cruelty has been held not proved. Learned counsel for the appellant would further argue that discrepancy with regard to contents of FIR and what has been pleaded and led in evidence has been made one of the basis to arrive at such finding, ignoring that even if the

allegations clouded by discrepancies are kept aside, there was abundance of evidence led by the appellant to prove cruelty. It is further submitted that merely because the appellant a Government servant, could not appear in community meeting because of pre-occupation in the office, no adverse inference could be drawn against her.

6. Learned counsel for the appellant further submits that the allegations as levelled in the pleading are proved from cogent evidence and if the evidence of the appellant is found otherwise reliable, it could not be rejected only on the ground that it is not supported from the evidence of any other witness.
7. There is no representation made by the respondent even after service of notice.
8. We have gone through the impugned judgment and decree passed by the learned Court below. The three main operative reasons for the Court below to disbelieve the evidence of the plaintiff/appellant are:-

Firstly, that as far as the nature of allegations are concerned, the discrepancy in the contents of the FIR and what has been pleaded and led in the evidence in the matrimonial proceedings; secondly, that the appellant did not participate in the community meeting; and thirdly, that the other witness of the appellant is only a hearsay witness.

9. Having closely examined the pleadings and evidence led by the appellant, we are of the view that the learned Court below was not at all justified in rejecting the case of the appellant and her evidence on the aforesaid three grounds.
10. In the application, the appellant has very elaborately pleaded in paragraph 5 stating the manner, in which, she was subjected to cruelty by the respondent-husband and his parents. In the beginning of the pleading, it has been stated that at the time of marriage itself, the appellant was misled with regard to family and financial status that the respondent-husband is unemployed and doing nothing but mainly dependent on his father. It was elaborately pleaded that all the gifts and cash of Rs. 30,000/- were snatched away from the hands of the appellant and she was being harassed in the name of demand of dowry. She has made specific allegation that in the night, husband came in

intoxicated condition and assaulted her and pressurized her to bring a car, she was abused and shunted out of the room. She was threatened not to disclose the incident. Thereafter, she was continuously assaulted and pressure was built up to bring a car. She specifically pleaded that the salary used to be snatched away by her in-laws. She has made a very specific allegation of cruel act of the husband in committing sexual intercourse against the wishes so much so that there was bleeding and she had to also undertake treatment. Specific allegation of she being subjected to assault on 05.10.2014 and throwing her away from the matrimonial house was also pleaded.

11. Aforesaid specific pleadings have been very clearly stated in her evidence under Order 18 Rule 4 CPC where all such allegations have been specifically made. In her cross-examination, most of the elicitations are more with regard to '*Stridhan*'. The other thing elicited is that she could not appear in the community meeting which is explained by her by stating that because of office work she could not appear. However, only on that ground, the evidence of the appellant, otherwise reliable, could not be rejected. She has clearly stated in her evidence and it is not in dispute that she is in employment and, therefore, inability to participate in the meeting because of the occupation in the office, does not warrant any adverse inference to be drawn much less rejection of categoric evidence with regard to cruelty. It is not a dispute that an FIR was also lodged. The contents of the FIR and allegations made therein are substantially what has been stated by the appellant in the application and in her evidence. The discrepancy noted by learned Court below is that the allegation of appellant shunted out of the room by hurling abuses, snatching away her salary and father-in-law having an evil eye have not been stated in the FIR. However, only on that ground, what has been pleaded and specifically supported from categoric evidence in matrimonial proceeding could not be rejected. The learned Court below has rejected the evidence only on the ground that the contents of FIR and what has been stated by the appellant in her application are not identical. Even if, allegations which are not specifically stated in the FIR are kept aside, there is abundance of evidence led by her in her evidence, referred to hereinabove, which makes out a case of cruelty that she was abused, assaulted, shunted out of the matrimonial house. She has made specific pleading and led specific evidence that she was subjected to forceful sexual intercourse by the husband which led to bleeding also. There is no reason to disbelieve such specific allegation.

12. One of the grounds for learned Court below to reject the evidence of the appellant is that the other witness of the appellant is only a hearsay witness. That perhaps may be one of the reason to reject the evidence of that witness but it could not be a reason to altogether disbelieve appellant's evidence which is otherwise found to be reliable and acceptable.
13. In view of above consideration, we are of the view that on the basis of pleadings and evidence led by the appellant, she was entitled to decree of divorce on the ground of cruelty.
14. In the result, appeal is allowed, impugned judgment and decree is set aside and appellant's application for grant of decree of divorce on the ground of cruelty is allowed. The marriage of the appellant with the respondent-husband stands dissolved from the date of this judgment.
15. Appellant is entitled to costs of this appeal from the respondent.
16. Let appellate decree be accordingly drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge