

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No. 192 of 2017

- Smt. Uma Kundu, W/o Dinesh Kundu, aged about 31 years, through Niren Chandra Rai, R/o Ward No. 6, Umdam Colony, Mana Camp, Opposite Govt. School Raipur, District Raipur, Chhattisgarh. --- **Appellant**

Versus

- Dinesh Kundu, S/o Arun Kundu, aged about 35 years, R/o House No.836, Ward No.42, Kasaridih, Durg, Tahsil and District Durg, Chhattisgarh. --- **Respondent**

For the Appellant :- Mr. A. D. Kuldeep, Advocate.
For the Respondent :- Mr. C.P. Soni, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Justice Manindra Mohan Shrivastava J.
28.02.2020

With the consent of the parties this appeal is heard finally.

2. This appeal arises out of order dated 26.08.2017, passed by Family Court, Durg in Civil Suit No. 331/2016, by which, respondent's/husband's application for grant of decree of divorce has been allowed and decree passed.

3. An application for grant of decree of divorce was filed by respondent/husband on the pleadings relating to cruelty, as well as desertion by stating that the conduct and behaviour of the appellant/wife was arrogant, she used to hurl abuses and also assaulted her husband in front of friends and relatives and she had also threatened him to falsely implicate in criminal case. This led to lodging of report and compromise was arrived at, but one month

thereafter, the appellant/wife left the matrimonial house and since then, she is residing separately.

4. The application was resisted on the ground that the husband is subjecting the wife to cruelty as, in state of intoxication, he used to assault the wife. It was also alleged that the husband developed illicit relation with another lady Reshma, who is residing with him. For those reasons, the wife is residing with her parents. The learned Family Court framed issue with regard to cruelty and desertion both, in view of the pleadings of the parties.

5. Relying upon the evidence led by respondent/husband, both with regard to cruelty and desertion, particularly taking into consideration the evidence of the appellant/wife in her cross-examination that she herself deserted the husband, decree of divorce was granted to the husband.

6. Assailing legality and validity of the said judgment and decree, learned counsel for the appellant argued that the Family Court has wrongly disbelieved the evidence with regard to cruelty meted out to the appellant/wife by her husband and also the evidence led by her that he had developed illicit relationship. According to learned counsel for the appellant, the reason assigned to disbelieve the evidence of wife that she was subjected to cruelty, is that it has not been supported by any independent witness nor she has filed any report in the police station regarding alleged cruelty and illicit relation whereas, the evidence of the wife in this regard was liable to be accepted. He further submits that specific evidence has been led that the respondent/husband has developed illicit relation with one Reshma and in that view of the

matter, even if it is held that the wife had left the house of the husband, she had reasonable cause for residing separately as she was subjected to cruelty and the husband had developed illicit relation.

7. He would also submit that no orders have been passed on prayer for grant of permanent alimony.

8. On the other hand learned counsel for the respondent/husband would submit that the application for grant of decree of divorce has been granted by the Court below after scrutiny of the evidence on record particularly specific evidence led by the respondent/husband with regard to specific instances of cruelty as also that it has been supported by the evidence of other witnesses that the appellant/wife was behaving arrogantly, hurling abuses and assaulting openly her husband and threatening him to implicate in false case. He would further submit that the evidence of cruelty, as led by the appellant/wife, is not supported by any clinching evidence and has therefore, been rightly disbelieved. As far as allegation of illicit relation is concerned, the learned Family Court has recorded a finding that no clinching evidence in that regard could be led by the wife. He would submit that once the wife fails to establish allegation of illicit relation and allegation of husband of loose character that by itself amounts to cruelty.

9. We have heard learned counsel for the parties, perused the pleadings and evidence on record as also the judgment of learned Family Court.

10. In the application the respondent/husband came out with the allegations that the conduct and behaviour of the appellant/wife has been very aggressive and arrogant as she was insisting that she would not be residing in a joint family, she used to hurl abuses and also assaulted in front of the friends and relatives of the husband. She had threatened that if she is restricted from going to her parental house, she will consume poison and get the entire family falsely implicated. She has administered threat of committing suicide time and again. The matter was reported in the police station and on such complaint made by the husband, the husband and wife both were called in the police station and counselling was also conducted, compromise was arrived at. Thereafter, the appellant/wife came back to the matrimonial house with her son but after sometime, she started repeating her earlier behaviour of abuses, quarrel, assault and false implications and finally left the matrimonial house. It was also pleaded that in an enquiry made by the independent authorities of the police, it was found that the appellant/wife was behaving arrogantly and finally left the matrimonial house. She having deserted the husband after all such incidents on 02.06.2012, a decree of divorce, both on the ground of cruelty and desertion, was sought.

11. In order to prove its case, the respondent/husband examined himself as AW-1, Smt. Sunita Ghosle as AW-2, Smt. Leena Yadav as AW-3. The evidence led by the husband regarding assault, quarrel openly in front of others and also administering threat, has been supported from the evidence of two neighbours Smt. Sunita Bhosle and Smt. Leena Yadav. Both of them have

stated that the appellant/wife is quarrelsome and was pressuring the respondent/husband to reside separately from his parents and was also hurling abuses and also used to assault him. They have stated that she used to hold respondent/husband by his collar and abuse him. They are independent witnesses and nothing is elicited in their cross-examination to disbelieve their testimony. They are not family members of the respondent/husband.

12. As against this, the evidence of appellant/wife that she was subjected to cruelty by her husband appears to be more in the nature of self serving statement. It is not a case where on such allegation, she lodged any report and any offence was registered against the husband. In fact, the husband himself approached the police station alleging arrogant behavior of the appellant/wife. One of the witnesses of the appellant, namely, Billu Ghosh, who filed his affidavit under Order 18 Rule 4, did not enter the witness box, therefore, his affidavit cannot be admitted in evidence.

13. We also noticed that the appellant/wife had made serious allegation against the character of her husband by making allegation of he living in adultery with another lady Reshma. However, this allegation could not be proved by any clinching evidence, except self serving statement. Neither that lady has been examined nor any other independent witness to prove such allegation has been examined. Though, appellant came out with the case that in the compromise arrived at the police station, the husband admitted his relationship with that lady Reshma, learned Family Court has rightly recorded finding that no documentary evidence in that regard was placed before the Court. Thus, the

allegation of illicit relation levelled against the husband, could not be established by the wife and this by itself constitutes cruelty.

14. Proceedings to bring about amicable settlement were drawn not only by the Court below but also by this Court. We have interacted with the parties. Again time was granted but parties could not arrive at settlement.

15. The learned Family Court has granted decree not only on the ground of cruelty but also on the ground of desertion taking into consideration the evidence of the appellant in her cross-examination that she, of her own, has left the house of the husband and living separately since 2012. The appellant having failed to establish any reasonable cause for living separately, the decree passed on the ground of desertion by the Court below is also not liable to be interfered with.

16. We however, find that the Family Court did not pass any order with regard to grant of permanent alimony. In the absence of specific pleadings and evidence in that regard, we are not inclined to go into that aspect of the matter. However, it will be open for the appellant/wife to move separate application under Section 25 of the Hindu Marriage Act for grant of permanent alimony before the Family Court.

17. In the result, in view of aforesaid observations, this appeal is dismissed. Parties to bear their respective costs. Let appellate decree be accordingly drawn.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge