

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA(MAT) No. 88 of 2019**

- Fanedra Kumar Jaiswal S/o Shri Shankar Lal Aged About 32 Years R/o Near Radha Krishna Mandir , New Shanti Nagar , Daganiya , Raipur District Raipur Chhattisgarh

---- Appellant**Versus**

- Smt. Punam Jaiswal W/o Fanedra Kumar Jaiswal Aged About 22 Years Through Shri Ravishankar Jaiswal, D/o Mandanlal Jaiswal, R/o Village Jirladih, Post Sendri, Police Station Baradwar, District Janjgir Champa Chhattisgarh

--- Respondent

For Appellant	:	Mr. Rahil Arun Kochar, Advocate.
For Respondent	:	Mr. F.S. Khare, Advocate.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****02/03/2020**

1. Heard on application (I.A. No.1) for condonation of delay in filing the appeal.
2. This appeal is barred by 288 days. The cause shown to seek condonation of delay is that the appellant was suffering from acute illness, because of which, he was incapacitated to take prompt step to file appeal. Medical certificates have also been placed on record.
3. Learned counsel for the respondent submits that in respect of period from May to August 2019, there was no proper explanation and it cannot be presumed that the same problem might have continued.
4. Having considered the submissions of learned counsel for the parties, period of delay and further cause shown in the application, we are inclined to condone the delay and the application (I.A. No.1) is allowed. Delay is condoned.

5. Heard on admission.
6. This appeal has been filed against judgment and decree, by which, the Court below dismissed the application for grant of decree of divorce.
7. Learned counsel for the appellant argues that the Court below has not properly appreciated the pleadings and evidence on record. In view of the clear statement of the appellant-husband that wife, used to go to her parental house time and again and later on, despite repeated request made, she did not come back and threatened to get him falsely implicated. He would further submit that wife was involved in chatting on mobile very frequently, late in the night and when appellant made query, she left the matrimonial house. It is also submitted that the wife has levelled false allegation of commission of offence under Section 498 A IPC, therefore, all these act clearly amounted to mental cruelty.
8. The pleadings and the evidence on record as also the judgment of learned trial Court reveals that the ground pleaded, on which, decree of divorce was sought, was that the wife frequently used to go her parental house on 22.06.2014 and then again on 30.11.2014, having stayed for two months, she went back, she again came back on 04.05.2015 and used to chat on the mobile in the night and was also involved in obscene chatting, thereafter, she left the husband.
9. The pleadings and evidence in this regard only make out a case that the wife has left the husband and residing in her parental house and she is not returning and in the past, this happened more than once. Though, allegations of chatting on mobile phone including obscene talk have been made, there is hardly any evidence to support the same and learned trial Court rightly concluded that mere statement without any clinching evidence would not make out a case. More so, in these days, a complaint only on the ground that the wife is involved in chatting without any proof of obscene chatting, would not amount to cruelty of any standard.
10. The allegation that prosecution is pending under Section 498 A read with 34 IPC and also proceedings under Section 12 of the Domestic Violence Act is pending, at this stage, without there being any finding of the concerned Court,

cannot be said to constitute cruelty. It will open for the appellant to reagitate the issue, in case eventuality so arises, upon finding in pending proceedings.

11. On the basis of pleadings and material available on record, we are not inclined to interfere with the impugned judgment and decree passed by the learned trial Court.

12. The appeal is, therefore, dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge