

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 195 of 2016**

- Pushpa Suryavanshi W/o Laxmi Prasad Suryavanshi, Aged About 31 Years R/o Village- Janjgir, P.S. And Tahsil- Janjgir, District Janjgir-Champa, Chhattisgarh .

---- Appellant**Versus**

- Laxmi Prasad Suryavanshi S/o Jugroo Ram Suryavanshi, Aged About 37 Years R/o Village- Janjgir, P.S. And Tahsil- Janjgir, District- Janjgir-Champa, Chhattisgarh

---- Respondent

For Appellant	: Shri Ram Kumar Tiwari, Advocate
For Respondent	: Shri Ravindra Sharma, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Smt. Justice Rajani Dubey

Order On Board**Per Prashant Kumar Mishra, J****25/01/2021**

This appeal is directed against the trial Court's judgment and decree dissolving the marriage between the parties and granting a decree of divorce.

2. Appellant (wife) has moved an application under Order 41 Rule 27 CPC to file memo of acquittal appeal preferred by the State against the acquittal of respondent (husband) and his family members in the criminal case for the offence under Section 498-A IPC.

3. Since the memo of appeal is part of record of pending acquittal appeal bearing Acq. Appeal No. 160/2014 before this Court, we allow the application. Despite the application being allowed, the matter need not be remitted back to the Family court for re-trial as it only concerns one of the ground of appeal.

4. The parties were married in the year May 2006. At the time of marriage, appellant (wife) was working as Shiksha Karmi Grade-III whereas respondent/plaintiff (husband) was working as Shiksha Karmi Grade-II. Subsequently, the respondent was promoted to the post of Shiksha Karmi Garde-I. As per the plaint allegations, appellant (Wife) having been employed prior to marriage, she was not taking interest in discharging her marital obligations viz-a-viz the duty towards her in-laws family and was always treating her husband and his family members with cruelty. She used to disrespect and humiliate them by hurling abuses and used to threaten to commit suicide. She went back to her parental house without any rhyme or reason on 21.12.2007 only to force her husband (respondent) to live separately from his parents. The respondent (husband) succumbed to her request and started residing separately at village Bhadesar from the year 2008. However, despite this, the appellant's (wife) behaviour did not improve and she again started treating her husband with cruelty. It was specifically stated that she used to physically assault her husband and such incident had taken place at vilage Dhaneli on 12.06.2010. She lodged a false report for the offence under Section 498-A in which initially husband and his family members were convicted by the Chief Judicial Magistrate Janjgir-Champa. However, in appeal, the Sessions Court

acquitted them vide judgment dated 03.12.2013 against which an acquittal appeal preferred by the State is pending consideration before the High Court.

5. According to the respondent (husband), on account of cruelty committed by his wife on him and his family members it has become difficult for him to lead a peaceful married life with his wife and since she is residing separately from the year 2011 onwards without any justifiable reason, she is guilty of deserting the company of the husband.

6. Per contra, appellant (wife) denied the plaint allegations. According to her, after two months of the marriage, her husband and the family members started demanding TV, fridge and motorcycle which was not fulfilled and her parents did not have sufficient means therefore she was treated with cruelty. It was pleaded that because of the cruelty committed by her husband, FIR was lodged on 03.05.2011 consequent to which they were tried for the offence under Section 498-A IPC and eventually convicted by the court of Chief Judicial Magistrate Janjgir-Champa vide judgment dated 28.10.2013. Thus, according to the appellant, the allegations of cruelty was found proved by the criminal court.

7. Shri Tiwari, learned counsel for the appellant would submit that once allegation of cruelty has been found proved by the criminal court, a reverse allegation of cruelty alleged by the husband against the wife is not acceptable. He would submit that the respondent (husband) has made bald allegations without there being any proof of the incidents of

cruelty.

8. Per contra, counsel for the respondent (husband) would refer to the law laid down by the Supreme Court in the matter of **K. Srinivas Rao vs D.A. Deepa** reported in **(2013) AIR SC 2176** and argue that once the husband and his family members have been acquitted by the criminal court, the allegation of cruelty is proved because they were falsely implicated. He would further submit that the trial court has considered the evidence and having appreciated the same has recorded a finding which does not call for any interference in this appeal.

9. We have heard counsel for the parties and perused the material available on record.

10. In the course of trial, the appellant (wife) examined herself as (NAW-1), Feku Gadewal (NAW-2), Jeevan Lal (NAW-3), Dildaar (NAW-4) and Doojram (NAW-5) whereas the respondent (husband) has examined himself as AW-1, Jugru Ram (AW-2), Kali Ram (AW-3), Rishi Kumar (AW-4), Tijau Ram (AW-5) and Jamuna Bai (AW-6).

11. The respondent (husband) and his witnesses have reiterated the plaint allegations to depose that the appellant(wife) ill-treated her husband and his family members and lodged a criminal case. They have also deposed that she is not residing with her husband for last about 5 years. The appellant (wife) and her witnesses have stated that her husband treated her with cruelty. The material available in the record would indicate that the appellants parental house and matrimonial house is situated at a distance of 2-3 kms. whereas her

place of posting is at a distance of 9-10 kms. from these two places. She used to attend her duties at village Dhaneli by driving a scooty. She was employed even before marriage. Her witnesses have admitted that because of the criminal case lodged by the appellant, her husband and his family members were mentally and physically harassed. Her witness Doojram (NAW-5) admits that she is residing in her parental house with her own will and that he also wants that their marriage should be dissolved.

12. While the appellant (wife) has denied the statement of physical cruelty committed by her on her husband and his family members, her examination-in-chief in the form of affidavit under Order 18 Rule 4 CPC, is silent on this material aspect. It is not a case where the respondent (husband) has made vague or bald statement. It was specifically mentioned in the plaint and in his affidavit filed under Order 18 Rule 4 CPC that on 12.06.2010, when he had gone to village Dhaneli, appellant (wife) and her parents had assaulted him. This particular incident of physical assault by the appellant (wife) on the husband has not been denied in her examination-in-chief under Order 18 Rule 4 CPC. Thus, the plaint allegations read along with the deposition of the respondent (husband) and absence of denial of this cruelty in appellant's examination-in-chief, affidavit under Order 18 Rule 4 CPC highly probabalizes that she had in fact committed physical assault on the husband. Although this incident was never reported to the police by the respondent (husband) but in view of the state of evidence on record, we have to proceed on the principle of preponderance of probability, therefore the trial court's acceptance of

the allegation of cruelty committed by the appellant over her husband is not perverse or contrary to the record.

13. The trial court has decreed the suit for divorce on the ground of desertion also. On this point, it is to be seen that the appellant (wife) has not stated in her written statement as to what exactly transpired on the day when she left her matrimonial house. What was that specific incident which happened in the month of August 2010 which compelled her to move to her parental house for not returning to her matrimonial house in future has not been divulged. It may be true that she was carrying pregnancy and might have stayed back in her parental house for some time after delivery of the child but she did not make any effort to return to her matrimonial house after some reasonable time of delivery of the child.

14. In her deposition she admits in para 9 of the cross-examination that she has never moved any application before the Caste Panchayat complaining that she is not accepted by her husband (respondent) or his family members. She has also not moved any application for restitution of conjugal rights.

15. Although, acquittal of the respondent (husband) and his family members in the criminal case for the offence under Section 498-A IPC may not by itself be a ground for grant of divorce as the trial court had convicted the accused persons and it has not been found that the offence was registered on wholly false allegations but still the fact of acquittal may be considered as corroborative piece of evidence in support of the respondent's (husband) plea of cruelty or desertion. The

fact that the parties were residing at a distance of 2-3 kms but the appellant (wife) never tried to approach the police or the caste panchayat coupled with the allegations of respondent (husband) that she used to physically assault him, we are satisfied that the respondent (husband) has proved the ground under Section 13(1)(a) (ib) of the Hindu Marriage Act constituting cruelty and desertion.

16. In view of the above, we affirm the judgment and decree passed by the trial court and dismiss the appeal. Accordingly, the appeal is dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Rajani Dubey)
Judge