

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 241 of 2016**

- Om Babu Gupta S/o Shri Ram Babu Gupta, Aged About 28 Years, Occupation- Service Jindal Power Limited Tamnar, R/o Urjanagar Colony Tamnar, District- Raigarh, Chhattisgarh, Permanent R/o Choti Bazar, Banda, District Banda Uttar Pradesh.

---- Appellant**Versus**

- Smt. Anjali Gupta W/o Shri Om Babu Gupta, Aged About 24 Years, D/o Shri Ramswarup Gupta From Luktara Occupation- Housewife, R/o Balkhandi Naka, Karaiyakuva Ki Gali, Banda, Tahsil And District Banda, Uttar Pradesh.

---- Respondent

For Appellant	:	Shri Abhishek Saraf, Adv.
For Respondent	:	No representation made.

Hon'ble Shri Justice Goutam Bhaduri &
Hon'ble Smt. Justice Rajani Dubey
Judgment on Board by Goutam Bhaduri, J.

17/12/2021

Heard.

1. The instant appeal has been preferred by the appellant (husband) against the judgment and decree dated 01.11.2016 passed by the Family Court, Raigarh (C.G.), in Civil Suit No. F-36(A)/2015, whereby the divorce claimed by the husband was dismissed.
2. As per the case, the marriage between the parties was solemnized on 30.11.2013. After the marriage, since the husband was working at Jindal Power Limited, Tamnar (Raigarh), the wife refused to reside at matrimonial house at Banda. It was pleaded that after marriage the husband came

back to his place of working on 15.12.2013 at Tamnar (Raigarh) and used to visit occasionally to Banda where the wife was residing with her in-laws place with parents of husband. It was further pleaded that after the marriage the wife was not found to be of sound mind and she never allowed the husband to have a physical relation with her. It was also pleaded that after the marriage behaviour of the wife with the husband was full of cruelty. She never used to work and used to break the utensils of home, and in April 2014, on a trivial dispute with in-laws, she tried to commit suicide by cutting her artery for which she was admitted at Bhargav Nursing Home. Thereafter, she left for her maternal home.

3. It was further pleaded that because of the behaviour of the wife, the family members of the husband got him separated from the joint properties and thereafter, on 03.07.2014, the wife joined the company of the husband and started living at Tamnar in Raigarh. It was further stated that despite the fact that she joined her husband there was no change in her behaviour and started to resort to unnatural behaviour. It was pleaded that she refused to cook food on many occasions and at times she used to leave the house voluntarily for which she had to be kept at hostel of the husband's company, and on 03.08.2014, the father and the brother of the wife came and took her along with them. Thereafter, again she joined her husband on 28.08.2014 and lastly on 07.04.2015, when the husband came back from his duty, he saw that the wife has left the matrimonial house. It is further pleaded that

because of such behaviour of the wife the husband suffered mental agony and the cruelty was meted out to the husband by the wife.

4. The wife had filed written statement and denied all the allegations. Instead, it was pleaded that the husband demanded cash and Maruti Car as a dowry but the same demand was not fulfilled, thus, she was subjected to physical and mental torture by the husband. With respect to allegation of committing suicide, it is pleaded that the wife was severely physically attacked for which she sustained injury and she was required to be admitted in hospital. It was completely denied that she never tried to commit suicide. It is further submitted that because of the demand of dowry and the cruelty to the wife, a report for demand of dowry along with domestic violence was lodged and the proceedings are still pending.
5. The trial Court framed the issues on the ground of cruelty whether the husband is entitled for divorce and it was held and recorded that cruelty was not proved and dismissed the petition.
6. Learned counsel for the appellant (husband) would submit that according to the testimony of the husband Om Babu (PW-1) and witness Rohit Gahoi (PW-2), the wife behaved in unnatural fashion and misbehaved with the family members of the husband. Learned counsel would further submit that the wife tried to commit suicide. In support of his submission, he placed reliance on the judgment of Hon'ble Supreme Court rendered in the matter of **Narendra vs. K. Meena**¹ and on

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the judgment of Delhi High Court in the matter of **Smt. Shashi Bala vs. Shri Rajiv Arora**², wherein it has been held that an attempt to commit suicide would constitute a cruelty as there was all likelihood that the husband would get entangled into the clutches of law. He further submits that the incident which is narrated and have been proved would go to show that the behaviour of the wife before the public would also constitute a mental cruelty to the husband. Therefore, he was entitled for decree of divorce.

7. No representation is made on behalf of the respondent while the case was being heard.
8. We have heard learned counsel for the appellant and perused the record.
9. The primary allegation of cruelty as put above whether has been proved or not is required to be examined.
10. In the pleading and the evidence of the husband (PW-1), it was stated that after the marriage, no physical relation was established with the wife, the fact of which has been denied by his wife in her statement. Wife in her statement maintained the stand that she continued with her matrimonial duties. In cross-examination subsequently repeated suggestions were given that she has refused to have physical relation with the husband which she denied and suggested otherwise. A relation between husband and wife is sacred and sole between the parties, if certain allegations are made that the wife did not cohabit with the husband which is denied by the wife herself, no other evidence will crepe in to deny the same and the testimony of

2 Judgment dated 21.03.2012 passed by Delhi High Court in FAO No. 185/2001

the wife to draw a presumption has to be given a preference. The wife in the instant case has repeatedly denied the fact that she maintained her matrimonial obligations and duties, including the physical relation with husband and therefore, in absence of having strong facts and medical evidence to prove it otherwise we accept the testimony of the wife to be correct.

11. The husband has also made an allegation that at one point of time the wife tried to commit suicide by cutting her artery. The evidence in this regard would show that the wife in response to such allegations have attributed the allegation to the family of husband. It is stated by husband that while she was in the matrimonial home and the husband was not there, on April 2014, because of certain dispute between the family members she cut her artery for which she was admitted to the hospital. The wife in turn has denied such allegation and the evidence she has deposed that she was admitted to the hospital for the reason that she was subjected to physical abuse as such had sustained physical injuries. The husband has not adduced any evidence in support of poof in order to establish that the wife tried to commit suicide by cutting her artery. The husband has not placed any documents on record i.e. treatment slip or calling the people from respective Nursing Home. It is only the oral statement which he has made which has been denied by the wife. In absence of any documents of treatment which could have been filed by the husband as also could have been the best evidence to prove the fact having been withheld, we are constrained to draw

adverse inference against such statement of husband to hold that the wife tried to commit suicide in the month of April 2014.

12. The wife on the other hand has raised the allegation that she was subjected to torture for demand of dowry and Wagon R car was demanded. She also maintained the stand for demand of such dowry and reports have also been made. Pursuant there too a case was filed under Section 498-A against husband. During the course of argument it was submitted that till the date case is pending under Section 498-A. Therefore, what could be the outcome of the said case is a matter of future aspect. At this stage and the available evidence on the record which was adduced by the husband to get the divorce we are satisfied to hold that neither the husband was able to prove that the wife has deserted the husband and failed to cohabit with the husband of their matrimonial life nor the husband was able to prove the fact that the wife tried to commit suicide at her matrimonial house. Therefore, in absence of any evidence no sufficient admissible evidence has been brought before the trial Court to make out a ground for divorce.
13. Consequently, after perusal of the entire record and evidence, we are of the opinion that the findings recorded by the trial Court do not call for any interference. Accordingly, appeal is liable to be and is hereby dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Sd/-
(Rajani Dubey)
Judge