2025:CGHC:4931-DB
AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 257 of 2023

Judgment reserved on : 19.12.2024
Judgment delivered on : 28.01.2025

Digitally signed by RAMAKANT NIRALA

1 - Dharmendra Sahu S/o Banshi Lal Sahu Aged About 43 Years R/o Vivekanand Nagar, Street No.4, Dhamtari, District Dhamtari, Chhattisgarh.

Appellant

versus

1 - Smt. Sandhya Sahu W/o Dharmendra Sahu Aged About 37 Years Presently R/o Behind Sangam Marriage Palace Boriakhurd, P.S.- Tikerapara, Raipur, District- Raipur, Chhattisgarh.

Respondent

For Appellant	**:**	Mr. Yogesh Pandey, Advocate
For Respondent(s)	**:**	Mr. Shashi Kumar Kushwaha, Advocate

Hon'ble Smt. Justice Rajani Dubey
Hon'ble Shri Justice Bibhu Datta Guru

C A V Judgment

Per Rajani Dubey J.

1. The present appeal has been filed by the appellant/husband against the judgment and decree dated 17.08.2023 passed by the learned Judge, Family Court, Dhamtari (C.G.) in Civil Suit

No.55-A/2022, whereby the appellant's application seeking divorce has been rejected.

2. Brief facts of the case are that the appellant filed application under Section 13 (a) of the Hindu Marriage Act before the learned Family Court stating therein that marriage between the appellant/husband and respondent/wife was solemnized as per hindu rites and rituals on 28.04.2009 at Dhamtari, out of this wedlock, two daughters were born. First daughter namely Disha was born on 14.12.2010 and second daughter Harishita was born on 09.04.2014. It was alleged that from the very beginning that the wife used to quarrel with the appellant on living separately from appellant's parents. On 10.04.2017, she even lodged FIR against the appellant and his family members under Section 498-A of IPC, but all the family members were acquitted by the learned Trial Court in a criminal case registered against them. Thereafter the appellant husband preferred an application before the learned Family Court seeking divorce, which has been rejected vide impugned judgment and decree. Hence the present appeal has been filed by the appellant husband.

3. Learned counsel for the appellants submits that the impugned judgment and decree is erroneous in law and facts both and the same is liable to be set aside. The learned Family Court did not appreciate the fact that the criminal case was lodged by the respondent wife against the appellant and his family members

and they all have been acquitted by the learned Trial Court. The respondent wife has committed cruelty upon the appellant and his family members from the very beginning on the ground that she wants to live separately from the appellant's parents. He further submits that after dismissal of the criminal case against the appellant and his family members, the respondent wife filed acquittal appeals, which too were dismissed by the learned Trial Court, against which she again filed criminal appeal and thereafter criminal revision before this Court, which too have been dismissed, as such it is crystal clear that the respondent wife has committed cruelty and harassment upon the appellant and his family members, but all these aspects of the matter have been ignored by the learned Family Court. Therefore, the impugned judgment and decree deserves to be set aside. Reliance has been placed on the judgments rendered by the Hon'ble Apex Court in the matters of **Rani Narasimha Sastry vs Rani Suneela Rani**, reported in **(2020) 18 SCC 247**, **Raj Talreja vs Kavita Talreja**, passed in **Civil Appeal No.10719/2013, decided on 24.04.2017** and the judgments passed by this Court in the matters of **Koman Lal Sahu vs Smt. Sushila Sahu**, passed in **FAM No.51/2016, decided on 01.08.2022** and **Satpal Singh vs Smt. Preeti Pahuja**, passed in **FA (MAT) No.238/2022**, decided on **18.06.2024.**

4. Learned counsel for the respondent supports the impugned judgment and decree passed by the learned Family Court and

submits that the learned Family Court has minutely appreciated the oral and documentary evidence available on record and rightly rejected the decree of divorce in favour of the appellant husband. The judgment is well merited and does not call for any interference.

5. Heard learned counsel for the appellant and perused the material available on record.

6. Before the learned Trial Court, the husband examined himself and one witness Padmini Dewangan and wife examined herself and his uncle Vijay Kumar Sahu. The appellant husband filed various documents from Ex-P/1 to Ex-P/13 and stated that the wife lodged FIR against him under Section 498-A of IPC. The respondent wife also admitted this fact that she lodged FIR against the husband and she also admitted that her father-in-law is aged about 75 years and mother-in-law is aged about 70 years and their elder daughter is living with the appellant husband. She also admitted that it is true that treatment of elder daughter was done by the appellant husband. She also admitted that in Criminal Case No.460/2017 under Section 498-A of IPC, the learned Trial Court acquitted the appellant and his family members. She also admitted that she fled appeal against that order, which was also dismissed by the learned Session Court. The uncle of respondent Vijay Kumar Sahu admitted this fact that for the last 5 years, she is living separately from her husband.

7. It is clear from the statement of both the parties that the wife lodged FIR against the husband and his family members under Section 498-A of IPC and it is also clear that since 2017, wife is living separately.

8. The Hon'ble Apex Court in the matter of **Rani Narasimha Sastry** (supra) held in para 13 as under:-

> "13. The above observation of the High Court cannot be approved. It is true that it is open for anyone to file complaint or lodge prosecution for redressal for his or her grievances and lodge a first information report for an offence also and mere lodging of complaint or FIR cannot ipso facto be treated as cruelty. But when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498-A of IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has meted on the husband. As per pleadings before us, after parties having been married on 14.08.2005, they lived together only 18 months and thereafter they are separately living for more than a decade now."

9. This Court in **Satpal Singh** (supra) held in para 15 as under:-

> "15. It is to be seen further, as reflected from the testimonies of both the parties, that they are living separately for about 10 years and their marriage, solemnized on 18/02/2002 has, thus, virtually broken down and, therefore, it appears to be a dead for all purposes and cannot be revived. It is true that it would not be a ground for the dissolution of marriage as per the provision prescribed under Section 13 of the Act, 1955, but, recently the Supreme Court in the matter of Rakesh Raman Vs. Kavita, reported in 2023 SCC Online SC 497, has held that irretrievable breakdown of a marriage may not be a ground for dissolution of marriage under the Hindu Marriage Act, but it would cause mental cruelty to both the parties. Relevant observations made therein at paragraphs 17, 20 (xiv) and 21 read as under:-
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> "17. ……. Irretrievable breakdown of a marriage may not be a ground for dissolution of marriage, under

> the Hindu Marriage Act, but cruelty is. A marriage can be dissolved by a decree of divorce, inter alia, on the ground when the other party "has, after the solemnization of the marriage treated the petitioner with cruelty". In our considered opinion, a marital relationship which has only become more bitter and acrimonious over the years, does nothing but inflicts cruelty on both the sides. To keep the façade of this broken marriage alive would be doing injustice to both the parties. A marriage which has broken down irretrievably, in our opinion spells cruelty to both the parties, as in such a relationship each party is treating the other with cruelty. It is therefore a ground for dissolution of marriage under Section 13(1)(ia) of the Act.
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> 20(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.
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> 21. …….The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1)(ia) of the 1955 Act. ……."

10. In view of the above, it is clear that the respondent wife lodged FIR against the appellant husband and his family members. They were acquitted by the learned Trial Court and wife also preferred appeal against acquittal. It is also an admitted position that they are living separately since long, as such looking to the facts and circumstances of the case, it is evident that the appellant wife not only deserted her husband since long but she also committed mental cruelty upon her husband, as has been observed by the Hon'ble Apex Court as well as this Court in the aforesaid

judgments, as such the finding recorded by the learned Family Court is not sustainable.

11. Consequently, the appeal is allowed and the impugned judgment and decree passed by the learned Family Court is hereby set aside and the appellant husband is entitled for decree of dissolution of marriage on the ground enumerated under Section 13 (1) (i-a) of the Act, 1955. Accordingly, the marriage solemnized between the parties dated 28.04.2009 is dissolved.

12. As regards permanent alimony, looking to the facts and circumstances of the case, it would be appropriate to award Rs.5 Lakh as permanent alimony to the respondent wife, which shall be paid by the appellant husband within 2 months from the date of this order.

13. A decree be drawn accordingly.

Sd/-
(Rajani Dubey)
Judge

Sd/-
(Bibhu Datta Guru)
Judge

Nirala