

MANU/CG/1338/2022

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

FAM No. 51 of 2016

Decided On: 01.08.2022

Appellants: **Koman Lal Sahu**
Vs.
Respondent: **Sushila Sahu**

Hon'ble Judges/Coram:

Goutam Bhaduri and Deepak Kumar Tiwari, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Ravindra Sharma and Akash Agrawal, Advs.

For Respondents/Defendant: Shivendu Pandya and Dinesh Yadav, Advs.

JUDGMENT

Deepak Kumar Tiwari, J.

1. The present Appeal has been preferred against the judgment dated 19.11.2015 passed by the Family Court, Mahasamund in Civil Suit No. F 15A/2015 whereby the suit preferred by the appellant under Section 13(1) of the Hindu Marriage Act, 1955 (henceforth 'the Act') seeking divorce has been dismissed.

2. Facts of the case are that the appellant filed an application under Section 13(1) of the Act seeking divorce from the respondent, inter alia, stating that the marriage between the parties was solemnized on 15.4.1981 at Katabhanji, (Orissa) as per the Hindu Rites and Rituals, and out of the wedlock 3 children were born.

3. It is stated in the application that right from the beginning of the marriage, the character of the respondent-wife was suspicious, as she used to talk with strangers both in presence and absence of the appellant. As and when the appellant used to raise objection, the respondent-wife used to quarrel with the appellant. The respondent-wife always used to raise quarrel with the appellant and used to extend threat through other persons. Lastly, the respondent-wife left the matrimonial home and started residing in her parental home. The respondent-wife also lodged a report against the appellant under Section 498-A of the IPC. In the said matter, the appellant was acquitted by the trial Court on 19.5.2005 (Ex.-P/1). As the respondent is residing separate since last 13 years and there is no cohabitation between them and deserted him without any sufficient cause, therefore, the appellant is entitled for divorce.

4. The respondent-wife filed a written statement denying the allegations levelled by the appellant and stating that the appellant has performed second marriage with a Nurse. It is stated that soon after the marriage the appellant started harassing the respondent-wife on the ground of bringing less dowry and also used to doubt her character. The father of the appellant also used to beat the respondent-wife and pressurized the respondent-wife to give divorce to the appellant.

5. Learned counsel for the appellant would submit that the impugned order is bad, illegal, perverse and contrary to the law. The learned family Court has failed to

appreciate the material available on record. Learned family Court also failed to appreciate the fact that it was not possible for the parties to live together, as the parties are residing separate for the last 15 years. Therefore, the appellant is entitled for divorce.

6. On the other hand, learned counsel for the respondent would support the impugned judgment.

7. We have heard learned counsel for the parties at length and perused the record.

8. Appellant Koman Lal Sahu has deposed that the respondent-wife is living separately since 13 years and thereby deprived him of the conjugal rights. She has also taken minor children with her and also deprived him of the love and affection of the children. The appellant has produced (Ex.-P/9) which would show that the appellant had earlier filed an application under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights and in the said case, the conciliation proceeding failed on 2nd December, 1993.

9. Respondent - Smt. Sushila Sahu (NAW-1) in her cross-examination admits that she is living separate from the appellant for about 20 years. She denies that prior to filing of the divorce petition, the appellant has also filed an application for restitution of conjugal rights. She also denies that in the said proceeding, effort of conciliation was made. She also denies that in the said proceeding, she refused to go with the appellant. However, perusal of Ex.-P/9 would reveal that both the parties along with their Advocates were present and in the presence of the parties, the Presiding Officer has observed that there is no possibility of re-union, therefore, the conciliation failed. Only bare statement of the respondent would not be given weightage in view of the judicial proceeding.

10. The respondent-wife has also filed certified copy of the order sheets and petition for divorce, which was earlier filed by the appellant and the said case was registered as CS No. 106-A/1994. The respondent-wife (NAW-1) deposed that the divorce petition filed earlier was dismissed and thereafter she was residing with the appellant for about 2 years at Saraipali and thereafter in the year 2000, she left the appellant and came to Mahasamund. She further admits that after returning to Mahasamund, she lodged an FIR against the appellant and his father for dowry & harassment at Police Station Mahasamund. She further states that she is not aware as to the judgment passed in the said case. The appellant has filed (Ex.-P/1), copy of the judgment dated 19.5.2005 wherein the Judicial Magistrate 1st Class, Saraipali, in Criminal Case No. 151/2001, giving benefit of doubt has acquitted the appellant and his father of the charge under Section 498-A of the IPC.

11. Respondent Smt. Sushila Sahu (NAW-1) also admits in her cross-examination that during the divorce proceeding, her husband had filed an application to keep her, but she had not filed any reply. She also admits that she has not taken any steps or filed any application for living together. She also admits in para-12 of the cross-examination that she has not informed about the marriage of children to the appellant. She further deposed that she was having problem with father-in-law.

12. The appellant in his cross-examination at para-8 categorically denies that he has kept another woman as his wife and is living with him. The respondent-wife has deposed that the appellant himself has informed her by sending letters that he has kept another woman with him. The respondent-wife has also filed copy of letters (Ex. D/1 to D/8), which were filed in the earlier round of litigation i.e. in CS No. 160-A/94. Though

the respondent-wife has clearly made allegations in her written statement that the appellant has performed second marriage and the girl is Nurse, however, except some letters of the appellant, no other substantial evidence was produced. The appellant has categorically denied that he has performed any second marriage. The appellant in his earlier deposition which was recorded in CS No. 106-A/94, vide Ex.-D/17, in para-9 explained that due to continuous agony and harassment made by the respondent, he has written those letters in order to scare her.

13. In the matter of K. Srinivas Rao Vs. D.A. Deepa {MANU/SC/0180/2013 : (2013) 5 SCC 226}, the following has been observed at para-16:-

"16. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh v. Jaya Ghosh, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse."

14. In the case at hand, the respondent-wife has made pleading and also deposed that after the marriage she was continuously harassed for bringing less dowry, though only bald statement was made by her. The FIR lodged by the respondent-wife was also culminated into acquittal and the allegation against the appellant that he is keeping second wife was also not proved.

15. It has also come on record that the wife refused to go during the proceeding filed by the appellant for restitution of conjugal rights. Even during divorce proceeding, the appellant has made efforts to take back his wife, but except for the statement that she is willing to go and join the company of the appellant, there was no honest intention on the part of the respondent-wife.

16. From the aforesaid evidence, it is explicit that mutual respect and understanding between the parties has completely gone and they are residing separate for more than 20 years, both of them have made allegations and counter allegations against each other and even the wife has made police case, which was resulted into acquittal, so, considering the facts and circumstances of the case, filing of such accusation under Section 498-A of the IPC by the wife against her husband and father-in-law, wherein both have acquitted, also amounts to cruelty. For this, we are fortified in our view by the judgment of the Hon'ble Supreme Court in the matter of Rani Narasimha Sastry Vs. Rani Suneela Rani {MANU/SC/1837/2019 : (2020) 18 SCC 247}. In the said matter, it was observed that it is true that it is open for anyone to file complaint or lodge prosecution for redressal of 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 IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has been meted out on the husband.

17. Further in the present case, it is established that the wife without any sufficient cause was living separate since 2000 and deserted the husband. Therefore, this Court is of the opinion that the appellant has been able to prove both the grounds i.e. cruelty and desertion, and the findings recorded by the Court below are not sustainable and the same deserve to be set aside.

18. In the result, we allow the Appeal of the appellant, set aside the judgment dated

19.11.2015 passed by the family Court, Mahasamund and grant decree of divorce.

19. However, this Court would take note of the fact that the respondent-wife has admitted in her statement that she has built a house at Raipur in the year 2007 and the appellant has also produced property tax receipt (Ex.-P/8), which was in the name of wife. The appellant was working as Ophthalmic Assistant and was drawing salary of Rs. 3,000/- in the year 1995 vide Ex.-D/12, and maintenance amount was fixed at the rate of Rs. 1600/- for the wife and her 3 children. Now the daughter has already got married and the son has also become major. The wife has stated that she has no income and she is dependent on the pension of her mother. In the circumstances, we direct that the appellant shall pay a sum of Rs. 6,000/- per month to the respondent-wife. Liberty is also reserved in favour of the respondent-wife to move appropriate application to revise maintenance amount, as and when occasion arises.

20. A decree be drawn accordingly.

21. Parties shall bear their own costs.

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