

MANU/CG/1229/2022

Equivalent/Neutral Citation: I(2023)DMC179Chhat., 2022(3)HLR512

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

FAM No. 164 of 2017

Decided On: 11.07.2022

Appellants: Devki Nandan Das **Vs.** Respondent: Manorama Das

Hon'ble Judges/Coram:

Goutam Bhaduri and Deepak Kumar Tiwari, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Praveen Dhurandhar, Advocate

JUDGMENT

Deepak Kumar Tiwari, J.

1. The present Appeal has been filed under Section 19(1) of the Family Court Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955 challenging the judgment and decree dated 11.7.2017 passed by the First Additional Principal Judge, Family Court, Durg in Civil Suit No. 141-A/15 whereby the suit under Section 13(1-ia)(1-ib) of the Hindu Marriage Act filed by the appellant seeking divorce has been dismissed.

2. Indisputably, the appellant's marriage was solemnized with the respondent on 31.1.2010 in accordance with Hindu and Bangali rituals at Hudco, District Durg. The appellant is having Diploma in Mechanical Engineering and is presently working as Production Engineer in Advani Aarlincon Factory, Raipur, and the respondent is working as Shiksha Karmi, Grade-II at Tilda, Raipur.

3. Case of the appellant/plaintiff is that he is the only son of his parents, therefore, it was expected from the respondent that she would carry on the lineage, but the wife denied physical relations with the appellant on the ground of illness as also on the ground of appellant being impotent. Upon being asked by the family of the respondent, the appellant got himself medically examined and nothing adverse was found, but when the appellant asked the respondent for her medical examination, she refused for the same. After the marriage, most of the time, the respondent used to go to her parents' house and the parents of the respondent used to interfere in the family matters of the appellant. The wife, without any sufficient reason, left the matrimonial house since 10.7.2010 and started residing in her parental house and deserted the husband/appellant. When the appellant attempted to bring her back, she denied to go with the appellant and threatened to falsely implicate the appellant in dowry or criminal case. So the appellant intimated to the Mahila Police Station Durg on 27.7.2010, 1.3.2011 & 11.1.2012 vide Ex. -P/5, P/6 & P/23 respectively, and the police has also given notice under Section 155 CrPC vide Ex. -P/17 being family dispute. The appellant further pleaded that while leaving the matrimonial house, the respondent has also taken joint passbook and ATM Card of the salary account of the respondent, which was opened after the marriage and also jewellery of 110 grams given to her by the family members of the appellant. So the appellant seeks divorce on the ground of cruelty and desertion.

4. In the written statement, the respondent/wife denied the allegations raised in the plaint and averred that the appellant has not filed any medical documents/papers about his capability to perform cohabitation. It was also denied that after examination by Dr. Jain, he found the appellant to be fit to perform cohabitation. It was also denied that the respondent has not consented for medical examination. It was further pleaded that due to harassment and beating given by the appellant, she came to her parents' house on 10.7.2010. She further admitted that she brought the passbook of joint account and the ATM Card and asserted that in the said account, the amount of her salary is being deposited. The appellant wanted the salary of the respondent-wife. She further pleaded that she is always willing to reside with the appellant but the appellant does not want to keep her. On the basis of false allegation, the suit has been filed. After 3 months of the marriage, the appellant started harassing and torturing her on the ground of bringing less quantity of gold and for bringing less dowry. The appellant has beaten her and also not made any physical relations and thereby deprived her from enjoying the fruits of married life and the marriage could not be consummated. The appellant and his family members did not give proper food to her and also threatened to kill her if she returns to the matrimonial house. So the appellant himself has deserted the respondent-wife without any sufficient reason. Therefore, the suit be dismissed.

5. The learned family Court after providing opportunity of hearing to the parties and after appreciating the evidence has come to the conclusion that the appellant/plaintiff has failed to prove the allegation of cruelty and desertion by the respondent and dismissed the suit.

6. Learned counsel for the appellant submitted that the impugned judgment is bad in law. As the wife alleged the appellant to be impotent and such allegation was not proved by the wife, the same would amount to cruelty on the appellant. He further contended that the wife herself left the matrimonial house and false allegation of torture was made against him and his family. The said fact has also not been proved by adducing evidence. As the marriage between the parties was not consummated, there is complete breakdown of marriage and, therefore, the learned family Court ought to have passed decree of divorce. Hence the Appeal may be allowed and the impugned judgment may be set aside.

7. None appeared for the respondent though served.

8. We have heard learned counsel for the appellant and perused the record with utmost circumspection.

9. Having gone through the record, we are unable to agree with the view and the approach adopted by the learned family Court for the reason that when the wife has made grave allegation about impotency of her husband and such allegation remains unsubstantiated and took excuses for consummation of marriage and false allegation of torture by not providing good food and beating has been levelled and the same was not founded on merit, then unsubstantiated allegations would amount to mental cruelty, and damage to the matrimonial bond has been done by the wife herself.

10. In the written statement, the respondent has denied that on the medical examination by Dr. Jain the appellant was found capable to perform cohabitation and she stated that she has never denied for medical examination. At para-30 & 31 of the cross-examination, the respondent has specifically deposed that the appellant informed her that he was unable to perform physical relation and cheated on her. Though the respondent has stated that she has got herself medically examined, but no document

was produced for the same. In her statement at para-32, she categorically admits that there was no physical relation with the appellant, therefore, the marriage could not be consummated. Though the respondent says that the appellant himself not made physical relation, however, at the time of counseling at Mahila Police Station, Durg on 5.3.2011 (Ex. -P/21), the respondent stated that the appellant is not capable to perform physical relation and asserted that the appellant solemnized the marriage with fraud. The appellant has not taken any treatment for the same and advised the respondent for treatment. In the counseling proceeding recorded on 2.4.2011, the respondent refused to go with the appellant and as advised by the Counsellor for medical consultation, therefore, on the said date, the counseling was terminated. The respondent has also admitted that counseling proceeding was terminated due to her absence.

11. The respondent has addressed a letter to the Superintendent of Police, Durg vide Ex. -P/24 on 16.2.2012 for re-opening of the counseling proceeding. Even after filing of the suit by the appellant, the respondent stated before the Counselor of the family Court on 11.6.2013 (Ex. -P/20) and made allegation that the appellant is not competent to fulfill the matrimonial obligations for consummation of marriage, in spite of it she is always willing to reside with the appellant.

12. The appellant denied in the cross-examination that he himself not made physical relations with the respondent and stated that the wife and her family members have victimized him as impotent. Amulya Ratan Das, (AW-2), father of the appellant, has also stated that the respondent used to insult his son by calling him as impotent.

13. The appellant has specifically deposed that on 10.7.2010, the respondent voluntarily left the matrimonial house. When he and his family members contacted the respondent and her family members, she refused to come back and threatened to falsely implicate him in a dowry or criminal case. So the appellant has intimated to the Mahila Police Station on 27.7.2010, 1.3.2011 & 11.1.2012 vide Ex. -P/5, P/6 & P/23 respectively. Though the respondent has stated that the appellant after harassing her, ousted her from the matrimonial house, however, in the cross-examination, she admits that on the said date, she had gone to her place of duty and returned from the duty in the evening at 6 pm. The respondent has neither examined any witness nor reported any matter to the police nor given any notice nor preferred any application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights that she was forcibly ousted from the matrimonial house. So her allegation about ill-treatment and torture by the appellant and his family members remained unsubstantiated.

14. From the aforesaid evidence, it is explicit that the respondent herself voluntarily left the matrimonial house on 10.7.2010 and continued to make allegations at Mahila Police Station during counseling and at Family Court Counseling that the appellant is unable to perform matrimonial obligations. Therefore, the conduct of the respondent clearly demonstrated her intention to desert the appellant and also lack of sensitivity to the physical and emotional needs of the appellant and made comments against her husband that he is unable to perform physical relations.

15. In Samar Ghosh Vs. Jaya Ghosh MANU/SC/1386/2007 : (2007) 4 SCC 511, the Supreme Court has indicated illustrative cases where inference of mental cruelty can be drawn. They are reproduced as under:-

"101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in

the succeeding paragraphs are only illustrative and not exhaustive:

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(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."

16. Considering the aforesaid principle and the conduct of the respondent with respect to the matrimonial duties and obligations, this Court finds that a false allegation of torture and impotency would never be tolerated by a reasonable man and it amounts to mental cruelty. The respondent herself left the matrimonial house voluntarily after making such allegations, therefore, the relationship has deteriorated to such an extent that matrimonial bond is beyond repair. The marriage between the parties has become 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.

17. In view of the above, we are of the view that the appellant has been able to prove the grounds contained under Sections 13(1)(ia) and (1) (ib) of the Hindu Marriage Act and hence the findings recorded by the family Court are not sustainable and the same are liable to be set aside.

18. In the result, the Appeal is allowed and the impugned judgment is set aside. The marriage solemnized between the parties on 31.1.2010 is dissolved by a decree of divorce.

19. The parties shall bear their own cost.

20. A decree be drawn accordingly

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