



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA(MAT) No. 30 of 2022

Judgment Reserved on 13.03.2024

Judgment Delivered on 23.04.2024

•
-----Appellant

Versus

•
----- Respondent

For Appellant

Mr. A.N. Bhakta and Mr. Vivek Bhakta,
Advocates.

For Respondent

Mr. Nishikant Sinha, Advocate.

Hon'ble Shri Justice Goutam Bhaduri &

Hon'ble Shri Justice Radhakishan Agrawal

C A V Judgment

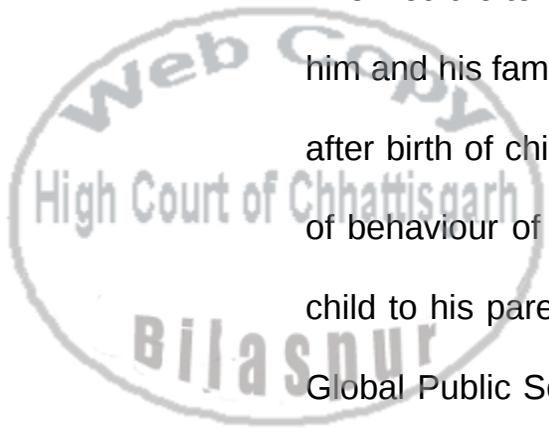
Per Radhakishan Agrawal, J.

1. Appellant-Husband preferred this appeal against the judgment and decree dated 29.11.2021 passed by the Family Court, Ambikapur, District Surguja, C.G. in Civil Suit No.136-A/2018, whereby the suit filed under Section 13 of Hindu Marriage Act, 1955 (for short, 'the Act, 1955') by the husband/appellant for grant of decree of divorce has been dismissed.

2. The facts, in brief, are that marriage between the appellant/husband



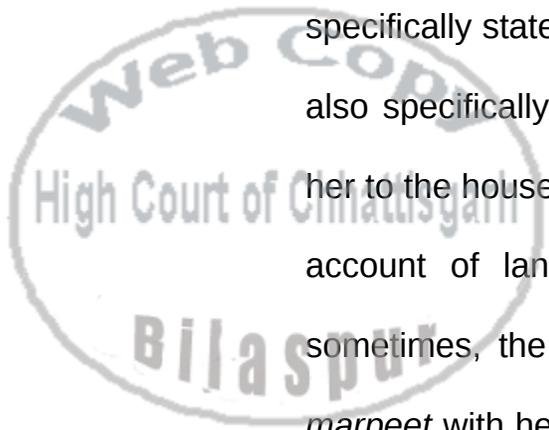
and respondent / wife was solemnized on 26.04.2013 at Ambikapur according to Hindu rites and rituals. After marriage, the respondent / wife joined the company of the husband and out of their wedlock, one female child was born. It is alleged by the husband that after marriage, the wife used to visit her maternal home frequently without any information and also refuses to stay at village Ranpurkala. It is averred by the husband that he is working as Constable in the Chhattisgarh Armed Force at village Silphili and on account of his busy in performing duties, it is not possible for him to look after his parents and old maternal grand-mother (*nani*) and for this reason, the wife would often fight with the appellant and never wanted to stay with him and his family as she often used to go to her maternal home even after birth of child. It was also put forth by the appellant that because of behaviour of his wife and looking to his busy in duties, he left his child to his parents house at Surajpur where he admitted his child in Global Public School and despite that, the wife took his child without any permission from School Management and information to which has been given to Surajpur, Police Station, who advised him to go to the Court as it is a family dispute. Since the wife often used to go to her maternal home, the appellant is unable to give much time to care his old maternal grand-mother (*nani*). It was alleged that since the wife is leading an independent life by her free conduct and behaviour, therefore, she is not performing her matrimonial obligations and because of which he and his family members have to face difficulties and inconvenience. It is also alleged that wife has filed a case against him under the Protection of Women from Domestic Violence Act (for short, 'the DV Act') before the Chief Judicial Magistrate, Ambikapur





and further filed a case for maintenance, which act of the wife has hurt the honour and dignity of the husband in the society. In this way, his wife always tried to implicate him in a false case to teach him a lesson and thus he was subjected to mental cruelty by wife and the respondent-wife is residing separately for the past 3 years from him and there is no possibility of staying together as he was deserted by her without any sufficient cause, therefore, the appellant is entitled to decree of divorce.

3. The respondent-wife filed its written statement denying the averments pleaded in the suit filed by the appellant-husband. She has specifically stated that no cruelty has ever been meted out by her. It is also specifically stated by her that after marriage, the husband took her to the house of his grand-mother situated at Ranpurkala where on account of land dispute, there is always a threat of fight and sometimes, the opposite party used to come to home and commit *marpeet* with her husband for which she lodged a report in the Police Station, Gandhinagar. She has also specifically stated that husband used to misbehave and beat her over small petty matters and thinking that everything would go in smooth in future, she continued to tolerate the torture meted out by her husband. She made a number of requests to take her to Silphili quarter, which was refused by him. After her daughter has been admitted in a school situated at his parents village, at that time, she was living all alone in village Ranpurkala. Therefore, she went to the school and took her daughter back after informing the same to the Mahila Police Station at Ambikapur. It was also specifically stated by her that husband was

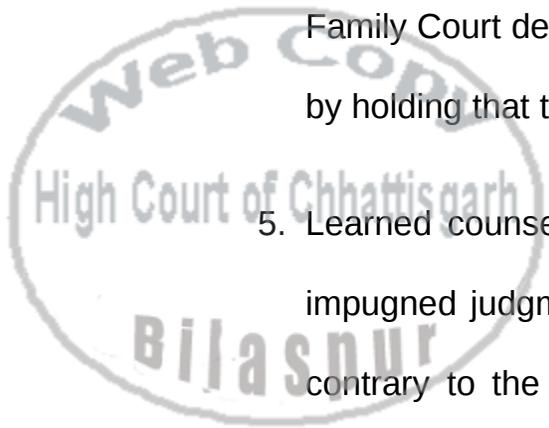




not paying any expenses for her maintenance and of her daughter, therefore, she was forced to file an application to get the maintenance. On earlier occasions, she made all possible efforts to live with the husband and to discharge her marital duties, but it was the husband who made impediments in her marital life and she is still ready to lead a happy marital life with the husband. Therefore, it was prayed by her that the application filed by the appellant- husband seeking dissolution of marriage be dismissed.

4. On the basis of the averments made by the parties, the issues were framed and after affording opportunity of hearing to the parties, the Family Court decided all the issues in negative and dismissed the suit by holding that the husband / appellant failed to prove his case.

5. Learned counsel for the appellant / husband would submit that the impugned judgment and decree are perverse, illegal, erroneous and contrary to the facts of the case as well as evidence available on record. He would further submit that the wife was harassing the appellant-husband both mentally and physically and used to suspect his character. According to him, there is no cohabitation between them since December, 2014, as the respondent-wife has deserted the husband and is living separately without sufficient cause. It is also submitted by the appellant-husband that respondent-wife committed act of cruelty on many times and this apart, the wife also tried to commit adultery with husband's cousin. On these grounds, he urged that he is entitled to decree of dissolution of marriage. Reliance has been placed on the decision of Hon'ble Supreme Court in the matters of *Debananda Tamuli vs Smti Kakumoni Katakya* passed in Civil



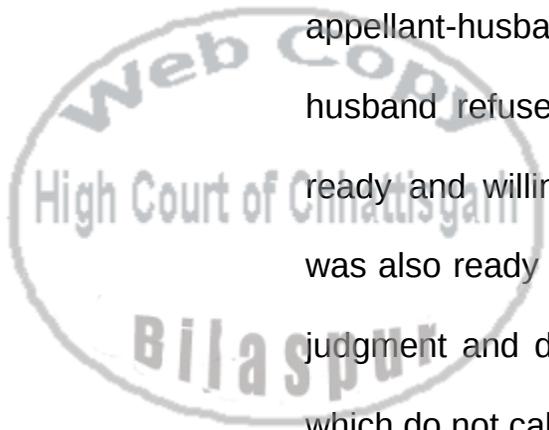


Appeal No.1339 of 2022 [@SLP (C) No.22667 of 2019] & *Dr. N.G. Dastane vs Mrs. S. Dastane* reported in *AIR 1975 SC 1534*.

6. Per contra, learned counsel for the respondent / wife would submit that the appellant / husband used to quarrel with her, his behaviour towards her was cruel and he always created hindrances in her life because of which she was not able to perform her marital obligations properly. According to the wife, appellant-husband and his family members ousted her from the matrimonial home without any rhyme or reason. It would contend that the respondent-wife met the Officers of his Office in person and expressed her desire to live with the appellant-husband in government quarters, despite that the appellant-husband refused to live with her. Respondent / Wife was always ready and willing to live with appellant-husband and daughter and was also ready to discharge her marital duties. Hence, the impugned judgment and decree passed by the Family Court are well merited, which do not call for any interference.

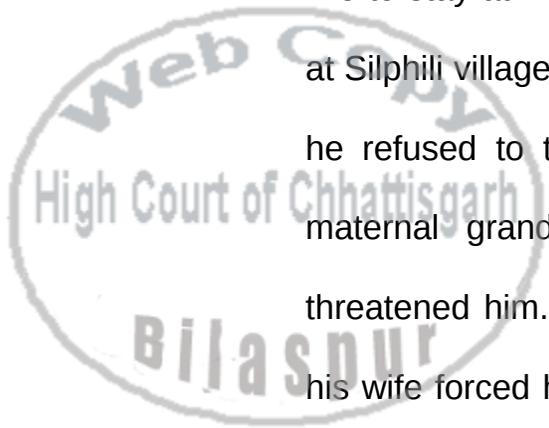
7. We have heard learned counsel for the parties and perused the record carefully.

8. Admittedly, these facts are not in dispute that the marriage between the parties was solemnized in the 26.04.2013 and out of their wedlock, one female child was born. The appellant / husband filed a suit seeking dissolution of marriage on two grounds i.e. desertion and cruelty. In order to deal with the desertion and cruelty, PW-1 Husband has stated that after marriage, he brought his wife to the house situated at village Ranpurkala where she used to say that she did not





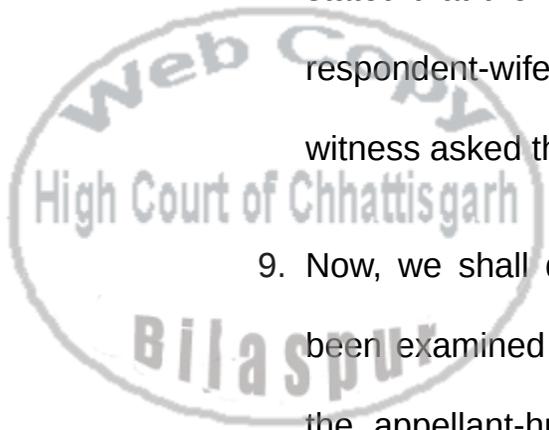
come here to serve your maternal grand-mother (*nani*) as she is not servant and then started quarreling with him and his family members. He has further stated that after delivery of a female child, the wife remained in Ranpurkala village for a period of three months and during her stay also, she had quarrels with his family members and one fine morning, she left Ranpurkala village. Thereafter, his foster father- Nigam Mishra persuaded her and took her back to Ranpurkala village where she stayed for a period of 3-4 months, at that time also, she did not take care of his family members and on being asked about the same, she replied that she is not a servant and would not like to stay at Ranpurkala and in turn, she asked him to stay with him at Silphili village which is 12 kms away from Ranpurkala. Upon which, he refused to take her to Silphili village as his foster parent and maternal grand-mother (*nani*) have become old, to which she threatened him. It is also stated by him that his cousin told him that his wife forced him (cousin brother) to maintain physical relations or else threatened him to implicate in a false case. Thereafter, after about a week, his wife, leaving her daughter, went away to her maternal home and did not come to his house again. Further, he has stated that he had gone to her maternal home in December, 2014 and since then there is no relationship between them and as she subjected his family members to harassment, therefore, he seeks divorce from her. He was subjected to cross-examination where he has stated that after delivery of her daughter, she stayed with him for a period of two months and on the contrary, he has further stated that after passing of six months, she has returned to his home. He has admitted in para 10 that he used to say to his wife to take care and to





look after his grand-mother. It is admitted by him that after divorce, he would marry again with another girl. PW-2 Nirmala Singh, mother of the appellant-husband deposed the similar statement and thus supported the statement of PW-1-Appellant / husband. PW-3 Smt. Fulkunwar is the grandmother of the husband and in her statement she has stated that after delivery of child, the wife remained with her for a period of two and half months and thereafter she left for maternal house leaving the two and half months infant. She has further admitted that till the time the respondent was in her house, she had offered food to her and on the contrary, she has further stated that the respondent-wife did not give food on time and in turn respondent-wife used to say that she is not her maid whenever this witness asked the respondent to serve her.

9. Now, we shall deal with the evidence of respondent-wife, who has been examined as DW-1. With respect to the facts of marriage with the appellant-husband and out of their wedlock, they have been blessed with one female child, are not in dispute. She has specifically stated that on the pressure of her mother-in-law, her husband applied for divorce from her, despite there being no dispute between them. Since her mother-in-law ousted her from the matrimonial house, therefore, she has been living in her maternal house for the last five years. It has been stated by her that appellant solemnized marriage with her as per his choice, but his mother-in-law wants to get him married to a working girl and that her mother-in-law was always taunting her that she wanted a male child and not a female child. She was subjected to cross-examination where in para 6, she has





admitted that she was staying in Ranpurkala for a period of five years and during her stay, in Ranpurkala, she used to go to her maternal house whenever her mother-in-law used to come. In para 7, she has admitted that she used to take proper care of the family members of the husband even in his absence. She has spontaneously stated that a month before filing of application for divorce, her mother-in-law ousted her from the house. In para 10, she has admitted that husband himself has made a demand of Rs.5 lakh and if his demand is fulfilled, then he would not marry another girl and further stated that she did not want to escalate the dispute, but wanted to live with her husband peacefully. In para 11, it was admitted by her that on 06.10.2017, her mother-in-law ousted her from the house, whereas her husband never ousted her. In para 15, she has stated that she stayed in Ranpurkala for 7-8 months during the year 2017 to 2019. She has further stated that she used to take money from husband for educating her child, whereas her parents used to bear her expenses.

10. DW-2 Archana Singh, cousin of appellant-husband, has stated that after marriage, respondent-wife stayed with the appellant-husband for a period of 5-6 years and further stated that appellant-husband always used to talk to a girl over mobile phone and for this reason, dispute ensued between them. She has also admitted that respondent-wife used to come to her matrimonial home even while she was staying at her maternal home. She has also admitted that respondent-wife lived in Ranpurkala with the appellant-husband itself.
11. DW-3 Smt. Rinku Singh is one of the relatives of appellant-husband and has stated that due to birth of female child, the mother of husband





(PW-2) got annoyed and used to ask respondent-wife to leave her son (appellant-husband) and appellant also wanted a male child and ultimately, ousted the respondent-wife from the house on account of birth of a female child.

12. The husband sought decree of divorce on the grounds of cruelty and desertion. In this regard, the Supreme Court in the matter of *Savitri Pandey v. Prem Chandra Pandey*, (2002) 2 SCC 73, has observed thus in paras 6 and 9 :

“6. Treating the petitioner with cruelty is a ground for divorce under Section 13(1)(i-a) of the Act. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. “Cruelty”, therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other. In the instant case both the trial court as well as the High Court have found on facts that the wife had failed to prove the allegations of cruelty attributed to the respondent. Concurrent findings of fact arrived at by the courts cannot be disturbed by this Court in exercise of powers under Article 136 of the Constitution of India. Otherwise also the averments made in the petition and the evidence led in support thereof clearly show that the allegations, even if held to have been proved, would only show the sensitivity of the appellant with respect to the conduct of the respondent which cannot be termed more than ordinary wear and tear of the family life.

9. Following the decision in *Bipinchandra* case [AIR 1957 SC 176] this Court again reiterated the legal position in *Lachman Utamchand Kirpalani v. Meena* [AIR 1964 SC 40] by holding that in its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. For the offence of desertion so far as the deserting spouse is



concerned, two essential conditions must be there (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). Similarly two elements are essential so far as the deserted spouse is concerned : (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation.”

13. In *Smt. Rohini Kumari Vs. Narendra Singh* {AIR 1972 SC 459}, the Supreme Court held that desertion does not imply only a separate residence and separate living. It is also necessary that there must be a determination to put an end to marital relation and cohabitation.

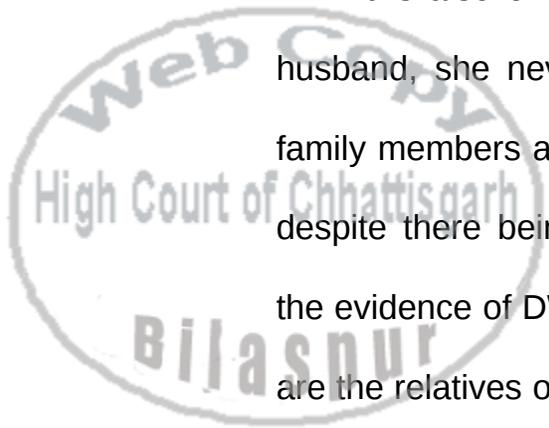
14. The Supreme Court, in the matter of *Debananda Tamuli (supra)* has observed in para 8 which reads as under:-

“8. The reasons for a dispute between husband and wife are always very complex. Every matrimonial dispute is different from another. Whether as case of desertion is established or not will depend on the peculiar facts of each case. It is a matter of drawing an inference based on the facts brought on record by way of evidence.”

15. Considering the facts of the present case in light of the aforesaid principles of law laid down by their Lordships of the Supreme Court, it is quite vivid that marriage between the parties was solemnized on 26.04.2013 and their relations were cordial while living at village Ranpurkela. Perusal of the evidence of appellant-husband would reveal that he used to have quarrels with the respondent-wife with respect to proper care of his family members and whenever the respondent-wife expressed her desire to live in Silphili where he is working, the appellant used to refuse and never took her along with him on one pretext or other. From perusal of evidence of PW-1 appellant / husband, it appears that the husband got married with the respondent-wife only to



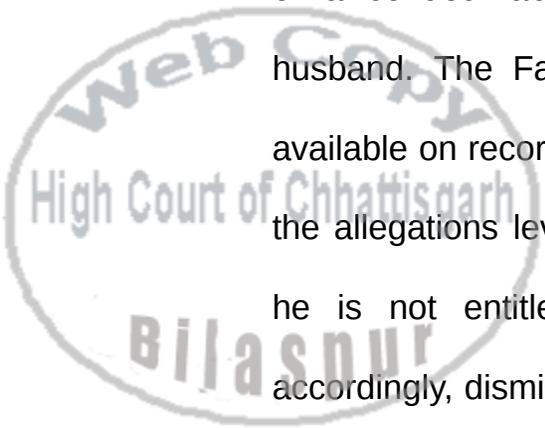
serve his family members as maid servant. It also appears from perusal of statement of PW-1 husband that he used to suspect her character as his cousin told him that his wife forced him (cousin brother) to maintain physical relations or else threatened him to implicate in false case, but no evidence has been produced by him to substantiate this specific allegation. In fact, the allegations leveled by him are omnibus and there is no reason for this Court to believe his statement, in absence of any cogent and reliable evidence. On the other hand, from perusal of the evidence of respondent-wife, it appears that she is always ready and willing to live with the appellant-husband despite trivial issues raised by him. It is also evident from her evidence that even in absence of her husband, she never lost the opportunity in properly looking after his family members and in performing her matrimonial obligations carefully despite there being unfavourable circumstances. It is also clear from the evidence of DW-2 Archana Singh and DW-3 Smt. Rinku Singh, who are the relatives of husband, that the appellant-husband always used to have engaged in talking with another girl over mobile phone and that because of delivery of female child, the respondent-wife has been ousted from her matrimonial home. It is manifest from their (DW-2 & DW-3) evidence that after marriage, the respondent-wife was staying in Ranpurkala village for a considerable period, which shows that the respondent-wife was always ready and willing to stay with the appellant-husband and never deserted either the appellant or his family members, rather it was the appellant-husband who used to pressurize her to serve his family members with proper care. It also appears from perusal of above evidence that even after dispute ensued between the husband and wife, the respondent-wife used to maintain cordial





relations with husband and his family members and some times at the behest of his mother (PW-2), the husband himself used to have quarrels with the wife and ultimately, she has been ousted from her matrimonial home by mother-in-law (PW-2).

16. It is very natural and rightful demand of the wife from her husband to keep her along with him. The appellant-husband herein, from the very beginning, not accepted any such genuine request of the wife and always used to treat her as a chattel and thought that she is bound to live in such a place where he wants to keep her. It is a well settled that in the matrimonial house, the wife should not be treated as hired chattel or a bonded labour to stay under the conditions imposed by the husband. The Family Court, considering the evidence and material available on record, held that the appellant-husband has failed to prove the allegations levelled by him against the respondent-wife, therefore, he is not entitled for a decree of dissolution of marriage and accordingly, dismissed his suit. Therefore, on overall assessment of the evidence, we are of the opinion that cruelty & desertion on which divorce was sought for have not been proved by the appellant-husband.
17. Having gone through the judgments relied upon by learned counsel for the appellant / husband and the principles of law laid down therein, in the given facts and circumstances of the present case, the aforesaid judgments being distinguishable on facts are of no help to the appellant / husband.
18. Being so, the finding arrived at by the learned Family Court rejecting the decree of dissolution of marriage as sought for by the appellant-husband does not call for any interference.





19. In the result, the appeal filed by the appellant-husband being without any substance is liable to be dismissed and is, accordingly, dismissed.

20. A decree be drawn up accordingly.

Sd/-
(Goutam Bhaduri)
Judge

Sd/-
(Radhakishan Agrawal)
Judge



