

IN THE HIGH COURT OF JHARKHAND AT RANCHI**F.A. No. 47 of 2019**

(Against the Judgment dated 05.10.2018 and Decree of dismissal dated 28.11.2018 passed in Original Suit No.174 of 2016 by Principal Judge Family Court, Giridih.)

 Sanjay KumarAppellant
 Versus
 Srimati Suman Kumari Respondent

PRESENT

HON'BLE MR JUSTICE H.C. MISHRA
HON'BLE MR JUSTICE RAJESH KUMAR

 For the Appellant : In person
 For the Respondent : Mr. Sujit Neepulam, Advocate

 The matter was taken up through Video Conferencing. The appellant-in-person or the learned counsel for the respondent had no objection with it and submitted that the audio and video qualities are good.

C.A.V. on 27/08/2020

Pronounced on 08/09/2020

Rajesh Kumar, J.:- Heard the appellant-in-person and learned counsel for the respondent wife.

2. The present appeal has been filed by the husband-appellant/plaintiff against the Judgment dated 05.10.2018 and Decree of dismissal dated 28.11.2018 passed in Original Suit No.174 of 2016 by the learned Principal Judge, Family Court, Giridih.

3. The suit has been instituted by the husband for divorce under Section 13 of the Hindu Marriage Act, 1955 on the ground of cruelty, desertion and mental incapacity of the respondent-wife.

4. The Trial Court after considering the pleading of the parties has formulated six issues for decision, which are as follows:-

- (1) क्या वादी का वाद पोषणीय है ?
- (2) क्या इस वाद में वाद-कारण है ?
- (3) क्या प्रतिवादिनी ने वादी के साथ क्रूरता किया है ?
- (4) क्या प्रतिवादिनी ने लगातार दो वर्षों से अधिक समय से वादी का अभित्याग कर दिया है ?
- (5) क्या वादी विवाह-विच्छेद का डिक्री पाने का हकदार है ?
- (6) क्या वादी किसी अन्य अनुतोष या अनुतोषों को पाने का हकदार है ?

5. After analyzing the evidences, pleadings and argument of the parties all the issues have been decided against the plaintiff-husband and in favour of the wife-respondent vide impugned Judgment dated 05.10.2018 and accordingly decree has been drawn and signed on 28.11.2018.

6. Being aggrieved, the present appeal has been filed by the appellant-husband and vide order dated 24.09.2019, delay in filing the appeal has been condoned. It may be stated that in course of trial as well as during the pendency of the appeal, efforts of mediation were made between the parties, but all the efforts failed. Even during the final hearing of the appeal, efforts of compromise were made by us, but there could be no compromise between the parties. Hence we have heard this appeal on merits.

7. Before this Court, the appellant-husband has taken two points i.e. cruelty and desertion. Mental disability of the respondent-wife has not been pressed. It is worth to note that the court below has rejected the ground of mental illness as no evidence had been led by the appellant-husband.

8. Considering the pleadings and arguments and material available on record, two points are required to be considered by this Court.

(i). Whether the respondent-wife has treated the appellant-husband with cruelty warranting dissolution of marriage.

(ii). Whether residing separately by wife since 12.07.2014 amounts to desertion entitling husband for decree of divorce as per the mandate of Section 13 (i-b) of the Hindu Marriage Act, 1955.

9. As per the pleadings of the husband, marriage had been solemnized between the parties as per Hindu rites and rituals at Mirzaganj on 29.01.2007 in presence of relatives and family members of both the parties and they have lived as husband and wife at Ranchi and Delhi. One son and one daughter have been born out from their wedlock. As per appellant- husband, the respondent-wife always behaved in a psychic and rude manner with the appellant-husband and also with his parents and has treated him as well as his parents with

utmost cruelty in different ways. The appellant-husband was considerate and treated his wife with compassion and tolerated her cruelty giving her time to mend her ways and even he allowed his brother-in-law, namely Dinesh Kumar to live in their matrimonial home at Ranchi in 2007-2008 to pursue his graduation course and on successful completion of course he got job in Insurance Company. Appellant-husband even encouraged his wife for higher studies and accordingly she got admitted in M.A. (History) in Ranchi University in June, 2007 but she did not pursue her course. Thereafter even she was admitted in Indira Gandhi National Open University (IGNOU) for M.A. (English), but in vein. In 2008, appellant-husband had searched a job in English Nursery School as per her educational qualification, but she refused to work. Just after one year of marriage, the appellant-husband had taken his wife to marriage ceremony of her cousin sister, namely, Poonam at Mirzaganj and on completion of the rituals, he informed her parents regarding the cruel and rude behavior of his wife. After coming back, her behavior became ruder. Ultimately, she conceived and gave birth to a healthy male child. Even after birth of the child, her behavior did not improve and after 20 days of birth she had been taken to her parents' place by his father-in-law for better care of child. Due to the behavior pattern of his wife and her family members, appellant apprehended and accordingly he filed an Informatory Petition in the court of C.J.M., Giridih apprehending filing of false case against him and his family members for dowry and domestic violence and requested the learned C.J.M., Giridih to send the above mentioned Informatory Petition to Jamua Police Station and Tisri Police Station with a direction to take necessary, preventive and protective action so that no false case be instituted.

10. Thereafter, appellant moved to Delhi where he got job in AIIMS. Appellant was desirous to bring his wife to Delhi but in the meantime she moved to Giridih Tailik Sahu Sabha who held panchayati on 08.11.2009 and as per dictum of panchayat, she went to Delhi alongwith her husband where she resided for few months. Appellant-husband wanted to bring his father to Delhi for treatment which was refused by his wife and accordingly he died on 11.05.2010

due to lack of proper care and treatment. In spite of death of his father, he attended the marriage ceremony of his brother-in-law, which was held on 05.06.2010 at Mirzaganj and performed necessary rituals. Suddenly after marriage of her brother, namely Rupesh Kumar, she came to Delhi without information on 28.06.2010 and called the appellant in the morning at 7.00 A.M, when he had gone for a breakfast in AIIMS canteen. He informed his wife to remain calm as he will come and open the gate of the residence but she called the police and created a scene. As appellant was getting threats, he again filed an application dated 10.06.2010 in the office of S.P., Giridih.

11. The respondent-wife again went to her parents' place on 07.09.2010. When he went there to meet his wife and son, he was not allowed to meet his wife and son in October, 2010 and January, 2011, which amounts to cruelty. She further lodged an F.I.R. as Tisri P.S. Case No.38 of 2011 dated 12.05.2011 under Section 498A/34 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act. Compromise had been arrived between the parties and on that basis he got bail. That case is still pending for trial, and in spite of the fact that final form had been submitted, still the C.J.M, Giridih has taken cognizance in the case. As per the compromise, they again started living as husband and wife but cruelty of the respondent-wife became more intense and psychic behavior endangering the life of appellant as well as his son. In the meantime, respondent-wife again became pregnant and one day she left for her parents' place but appellant-husband took her back from the railway station but ultimately with her maternal uncle, namely, Praween Kumar, she went to her parents' place on 03.07.2012. Appellant came to know from the independent source in July-August, 2012 that she got the fetus aborted. The appellant ultimately got job at Ranchi and as per desire of his wife, they again started living as husband and wife from November December, 2012 but behavior of respondent-wife did not improve. She used to threat him with suicide and has treated the appellant-husband with cruelty and sometimes not allowed to enter the house if he got delayed due to pressure of work. She used to bolt the house from inside due to her psychic behavior. One day when they were returning after visiting a

park she jumped from the car and ran towards the car on trivial issue. Again she became pregnant and ultimately blessed with a female child in 2014. One day he had been assaulted by the brother-in-law for which he complained to Bariatu police station but subsequently he withdrew the application but his wife has lodged a false criminal case under Section 498A of the Indian Penal Code against the appellant-husband in Bariatu police station and ultimately she left the matrimonial house on 12.07.2014 out of her own will and since then they are living separately and this amounts to desertion.

12. On 02.08.2014 a maintenance case being M.T.S. Case No.232 of 2014 has been filed in which vide order dated 29.11.2016, appellant-husband has been directed to pay Rs.25,000/- as maintenance i.e. Rs.15,000/- for wife and Rs.5,000/- each for two children. (However, it has been admitted in course of argument that for about 11 months payment has not been made.)

13. In support of his pleadings, the appellant-husband has not produced any documentary evidence, but has examined two witnesses, one himself and his mother, namely, Kaushalya Devi.

14. Respondent-wife has filed written statement denying the allegation of cruelty, desertion and mental illness. It has been alleged that demand of dowry of Rs.2,00,000/- and a car could not be given to appellant-husband and for extracting the same, respondent-wife had been treated with cruelty and time to time, she had been ousted from her matrimonial house. She has admitted that they had lived as husband and wife at Ranchi and at Delhi. After birth of male child she went to her parents' place but appellant-husband was not willing to take her back and as such she approached the Tailik Sahu Sabha and panchayati was held on 08.11.2009 and as per dictum of the panchayat she was taken back to the matrimonial home. She has denied that she has ever refuted for treatment of father of the husband rather she has performed her duty towards parents of the appellant-husband. She has further stated that as appellant-husband was harassing her for demand of dowry and as such an FIR being Tisri P.S. Case No.38 of 2011 has been instituted on 12.05.2011 under Section 498A of the IPC and Section 3/4 of the Dowry Prohibition Act in which the wife readily

accepted the compromise to save her marriage upon which as per the terms and condition of the bail order, she was taken to the matrimonial home. When she went to attend marriage of her brother and after completion of marriage ceremony, appellant- husband came alone and was not willing to take her back and as such she went to Delhi alongwith her brother. To avoid the entry, husband locked the house and went to the work place. Even after persuasion, when her husband did not turn up, she had to get the help of Delhi police and upon intervention of Delhi police a compromise had been arrived between the parties and she had been allowed to enter into the matrimonial home at Delhi. Even at Ranchi, she was always mistreated and pressurized for bringing dowry or doing job. Ultimately, she had to approach Bariatu police station by lodging Bariatu police case No.429 of 2013 under Sections 498A and 323 of the IPC in which also she readily compromised. In spite of compromise, she was driven out of matrimonial home on 12.07.2014 and since then she has not been allowed to enter the matrimonial home, although she is always desirous to save the matrimonial home and has participated in the marriage of younger brother of her husband on 07.05.2017 at his village.

15. In support of her pleading, she has examined four witness, namely, Ashok Saw, Naresh Saw, Praveen Kumar and herself. She has also produced documentary evidence i.e. Exhibit-A, a mutual divorce application dated 13.07.2009 sent by the husband to wife after signing. Exhibit-B, letter dated 30.07.2010 to her father giving threat. Exhibit-C, Formal FIR of Tisri P.S. Case No.38 of 2011. Exhibit-D, certified copy of the Charge-sheet of Tisri P.S Case No.38 of 2011. Exhibit D/a, certified copy of the charge-sheet of Bariatu P.S. Case No.429 of 2013. Exhibit-E, certified copy of the order of framing of charge of Tisri P.S. Case No. 38 of 2011, Exhibit-F, certified copy of the compromise between the parties in Tisri P.S. Exhibit-G, certified copy of the order dated 21.01.2012 in Tisri P.S. Case No. 38 of 2011, Exhibit-G/a, certified copy of the order-sheet of A.B.P. Case No. 256 of 2011. Xerox copies of Panchnama of Tailik Sahu Sabha

and information given by the wife-Suman Kumari to Delhi police were marked as 'X' and 'Y' for identification.

16. The appellant-in-person has submitted that the impugned Judgement and Decree passed by the court below are absolutely illegal and against the evidence on record. It is submitted that on the basis of the evidence on record, the cruelty of the respondent wife is proved by him. It is also submitted that admittedly the respondent wife has filed multiple criminal cases against him, in which the appellant had to undergo jail, which in itself amounts to cruelty by the respondent wife, thus entitling the appellant to the decree of divorce. In any event, the desertion since 12.07.2014 is an admitted fact and this alone gives a good ground for divorce. It is further submitted by the appellant-in-person that in spite of the desertion for more than six years, no case for restitution of the conjugal rights has been filed by the respondent wife, which shows that desertion is voluntary on her part as well. He has further submitted that there is irretrievable breakdown of marriage between the parties, and on this ground also, the decree of divorce should have been passed.

17. On the other hand, learned counsel for the respondent wife has submitted that the court below has discussed the evidence of both the sides in detail and has rightly decided all the issues against the appellant and in favour of the respondent wife. As such, there is no illegality in the impugned Judgement and Decree passed by the court below, and this appeal is fit to be dismissed. Learned counsel has submitted that the respondent is still willing to lead a respectable conjugal life with her husband, but the husband is not willing to keep her.

18. Having heard the appellant-in-person and learned counsel for the respondent wife, we find that so far as first point raised by the appellant regarding cruelty, it appears from the pleading of the plaintiff-husband himself that he has given bald and sweeping statements without providing any cogent documentary proof of the same. There is only oral evidence of the appellant and her mother, but the oral evidence adduced by the respondent wife in support of her pleadings, are also supported by documentary evidence, which

demolish the case of cruelty, as pleaded by the husband, rather it supports the case of the respondent wife that actually she was treated with cruelty and torture by the appellant. Merely filing of criminal cases by the respondent wife cannot be treated to be cruel behavior on her part, unless the allegations made by her are proved to be false, which is not the case till date, as the trial in the criminal cases are still pending. Indeed the compromises by her in order to secure bail for the appellant in the criminal cases, clearly indicate the willingness of the respondent wife to resume the respectable conjugal life with the appellant. None filing of any case for restitution of the conjugal rights by the respondent wife, cannot mean that she is also interested in living separate from her husband, rather the facts of this case show that she has been compelled by the husband himself to leave the matrimonial house. As regards contention of the appellant that the marriage between him and the respondent has irretrievably broken down, we still hope that good sense shall prevail over the appellant, keeping in view the fact that he has two children out of this wedlock, and he shall not allow their future to be compromised due to differences between him and his wife. At the place of taking the extreme step of annulling the marriage between them, we would prefer to give more time to the appellant to ponder over future of his children and to reunite his family for a blissful living together. We are also conscious of the fact that irretrievable breakdown of marriage is still not a ground for dissolution of marriage under Section 13 of the Hindu Marriage Act, even though way back in the year 1985, the Apex Court in **Jorden Diengdeh Vs. S.S. Chopra**, reported in (1985) 3 SCC 62, expressed its views as follows:-

“7. It is thus seen that the law relating to judicial separation, divorce and nullity of marriage is far, far from uniform. Surely the time has now come for a complete reform of the law of marriage and make a uniform law applicable to all people irrespective of religion or caste. It appears to be necessary to introduce irretrievable breakdown of marriage and mutual consent as grounds of divorce in all cases. The case before us is an illustration of a case where the parties are bound together by a marital tie which is better untied. There is no point or purpose to be served by the continuance of a marriage which has so

completely and signally broken down. We suggest that the time has come for the intervention of the legislature in these matters to provide for a uniform code of marriage and divorce and to provide by law for a way out of the unhappy situations in which couples like the present have found themselves in. We direct that a copy of this order may be forwarded to the Ministry of Law and Justice for such action as they may deem fit to take. In the mean while, let notice go to the respondents.”

19. From pleading of the parties and the evidence on record, it appears that the husband wants to get rid of his wife as it is evident from Exhibit-A, i.e., petition for mutual divorce which has been sent to the wife after signing by the husband. Exhibit-B, letter dated 30.07.2010 which has been sent to the father-in-law by the husband also suggests that he wants to get rid of his wife by hook and crook. Lord Denning, **L.J. in Kaslefsky v. Kaslefsky [(1950)] 2 All ER 398; 403]** observed as under:

“If the door of cruelty were opened too wide, we should soon find ourselves granting divorce for incompatibility of temperament. This is an easy path to tread, especially in undefended cases. The temptation must be resisted lest we slip into a state of affairs where the institution of marriage itself is imperiled.”

20. Be that as it may, the allegation of cruelty as alleged by the husband has not been proved by placing any cogent evidence on record and as such this ground has to fail and accordingly this point has been decided in favour of the respondent-wife and against the appellant-husband, which we hereby, affirm.

21. So far as point of desertion is concerned, it is admitted position between the parties that they are living separately since 12.07.2014. The argument of the appellant-husband is that living separately itself is sufficient in the eyes of law for granting divorce, which is not acceptable. Section 13(1)(i-b) of the Hindu Marriage Act, is quoted hereinunder:-

“(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

Explanation. —In this sub-section, the expression “desertion” means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

22. From perusal of the above section, it is evident that command of law is clear that desertion has to be voluntary. In the present case, the wife has been driven out of her matrimonial home and she is still willing to live in her matrimonial home as it is evident from the fact that she has participated in the marriage of younger brother of her husband on 07.05.2017 at village of her husband and the compromises by her in the criminal cases in order to secure bail for the appellant. Further the entire sequence of fact suggests that husband is desirous to get rid of his wife and on so many occasions, he had to take her back only after compromise and on the dictum of panchayati.

23. It is also settled principle of law that nobody can take benefit of his own fault. If the contention of the appellant-husband is accepted then the very purpose of the law will be defeated. Any husband desirous to get rid of his wife may get desired result by driving out his wife from matrimonial home by force or creating a situation and thereafter taking plea of desertion for more than two years. The law is clear that if one of the parties to the matrimonial home, voluntary and without any plausible explanation has left the matrimonial home giving no option to the other party, then it amounts to desertion. Desertion is a willful and voluntary act by the party to leave something without any rational reason. In the present case, husband is at fault and this is the reason for separate living of both the parties.

24. In view of the finding recorded by us, the appellant-husband is not entitled for decree of divorce on the ground of desertion for more than two years.

25. As both the points have been decided against the appellant-husband, the appeal fails and accordingly it is dismissed. The Judgment dated 05.10.2018 and Decree of dismissal dated

28.11.2018 passed in Original Suit No.174 of 2016 by Principal Judge Family Court, Giridih, are, hereby, affirmed.

26. Office is directed to prepare the decree accordingly.

27. In the facts of the present case and considering the conduct of the parties it is held that wife is entitled for cost of litigation which is quantified to Rs.20,000/- (Twenty Thousand), which must be paid within two months from the date of the decree.

28. With above observations and directions, the present appeal is, hereby, dismissed.

(Rajesh Kumar, J)

H.C. Mishra, J.:-

(H.C. Mishra, J.)

Jharkhand High Court at Ranchi
The 08 day of September, 2020
Shahid/NAFR/