

HIGH COURT OF CHHATTISGARH, BILASPUR**(Judgment reserved on 20.06.2023)****(Judgment delivered on 13.07.2023)****FAM No. 300 of 2018**

Smt. Priya Sharma W/o Sanjit Sharma, Aged About 22 Years R/o C/o Mahendra Sharma, Professor Colony, Sector-3, Sadak No. 3, Near New Golden Public School Raipur, Tahsil and District Raipur Chhattisgarh.

---- Appellant**Versus**

Sanjit Sharma S/o Basant Tripathi, Aged About 28 Years R/o Sikshak Colony, Near Gayatri Convent School, Danganiya, Raipur, Tahsil and District Raipur Chhattisgarh.....Husband,

--- Respondent

For the Appellant	: Ms. Fouzia Mirza, Sr. Advocate with Mr. Navin Shukla, Advocate
For the Respondent	: Mr. Shashank Thakur and Ms. Priyanka Rai Mishra, Advocates

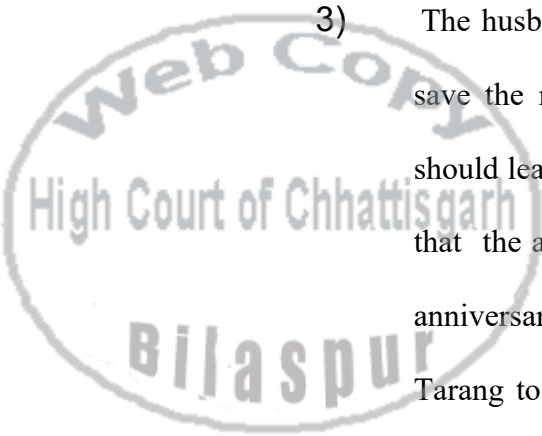
Hon'ble Shri Justice Goutam Bhaduri, Judge &
Hon'ble Shri Justice Sanjay Kumar Jaiswal, Judge

CAV JUDGMENT**Per Goutam Bhaduri, J**

- 1) The instant appeal is against the order dated 07.12.2018 passed by the First Additional Principle Judge, Family Court, Raipur in H.M.A. No. 665 of 2017 whereby the application filed by the respondent husband for grant of decree of divorce u/s 13(1)(1-a) of Hindu Marriage Act, 1955 was allowed. The wife is in appeal before this Court.
- 2) The parties got married on 05.06.2015. Thereafter, they went for their honeymoon to Singapur and came back on 16.06.2015. The husband stated in his plaint that his father was in Government job, as such, he was working at Dhamtari and used to visit Raipur. It was pleaded that the wife insisted that she does not want to stay with the in laws nor she wants to serve them. The visit of the parents of husband was not accepted by the wife and she objected on the

ground that her house is not a *Dharmashala* whenever anybody wants to come and does not like their arrival time again and again. It is stated that she used to insist him to stay apart from his parents and asked to look after her parents as the house in law in her parents house. When the wife made the applicant aware of such thoughts, then he had clarified his intention that he cannot leave his parents as he is the only son and it is his responsibility to take care of his parents. Therefore, she used to pick quarrels on trivial issues with the husband and his parents and used to misbehave with the in-laws whenever they visited to Raipur.. It is stated that lastly on 27.05.2016, the wife left the matrimonial house after she picked a quarrel with the husband and mother-in-law and went away to maternal house. Thereafter she did not return and was living separate.

3) The husband further pleaded that he and his parents made several attempts to save the marriage but the wife remained adamant on a condition that if he should leave his parents then only there would be conversation. It is also stated that the applicant had booked a hotel on 05.06.2017 to celebrate the marriage anniversary and had gone to the house of non-applicant along with his friend Tarang to bring her, then she stated that she will not stay with him until and unless the applicant does not break the relationship with his parents and by saying so, she refused to come. Therefore, when all the efforts made by him went in vain, certain report was made on 16.06.2016 against the wife to the S.P. Raipur and Mahila Thana, Raipur stating that he is ready and willing to keep his wife and requested them to make his wife understand. Further on 27.06.2016 an application was also filed u/s 9 of the Hindu Marriage Act before the Family Court, for restitution of conjugal rights with the wife and pursuant to such proceedings, counselings took place wherein the wife refused to stay with him. Thereafter on 05.08.2016, the wife got the case registered in the police station vide Crime No. 192/2016 against her husband and in-laws for the offence punishable u/s 498-A of IPC with an allegation that the dowry has been demanded, based on which, a criminal case is pending before the JMFC. The wife also filed application on 06.08.2016 u/s 125 Cr.P.C., claiming



maintenance. Eventually the application was filed by her seeking divorce u/s 13 of the Hindu Marriage Act in August, 2016 which was subsequently got dismissed at the joint request of husband and wife in the month of November, 2017 but when all the efforts failed, the application was filed seeking divorce.

- 4) Reply has been filed by the wife wherein she denied all the averments and instead it is stated that the mother in law and father in law along with sister in law started making demands and sarcastic comments on the wife for demand of dowry and stated that Rs. 10 to 20 lakhs was expected to be paid as dowry. The wife further states that having not fulfilled the demand of dowry, the dispute further aggravated and she was put to torture.. However, since she wanted to save her marriage, she continued but eventually on 27.05.2016, she was abused, assaulted and was ousted from the house and was forced to stay at her maternal house. The wife further stated that the husband extended threat to her life and thereafter on false and fabricated averments, the application was filed seeking divorce.

- 5) The learned family Court on the basis of pleadings framed the issues as to whether the wife has treated the husband with cruelty and in order to prove the facts, the husband examined himself as P.W.1 and one Taran Kumar Tamrakar as P.W.2 whereas the wife has examined herself. The learned family Court after evaluating entire facts and evidence passed a decree in favour of the husband u/s 13 of the HMA, therefore, the instant appeal by the wife.

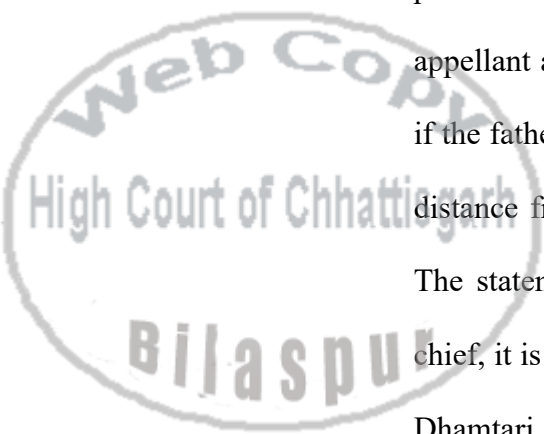
- 6) The learned counsel for the appellant would submit that though all the adverse allegations were made which have not been proved but except the bald allegations, it is stated that she is alleged to have left on 27.5.2016 whereas despite booking of hotel on 05.06.2016 on the occasion marriage anniversary, the allegation that the wife did not join is completely falsified and if she had left on 27.05.2016, how she could refuse to join on 05.06.2016. He further submits that as per the plaint averments and the statements, the father of the husband by virtue of his job was staying at Dhamtari which is at certain distance from

Raipur, therefore, looking to the distance between Dhamtari and Raipur, the wife did not want to stay with in-laws is completely contradictory statement. Learned counsel went through the statement of husband to submit that his mother and father used to visit Raipur on holidays, therefore, it can be inferred that they were not residing at Raipur where the appellant and respondent were residing. With respect to booking a hotel to celebrate the marriage anniversary, it is stated that no evidence is on record to show that the hotel was booked. It is further stated that the allegation was levelled against the wife that she misbehaved with mother-in-law and father-in-law, but both of them having not been examined, the best evidence was withheld. It is stated that the dispute started for demand of dowry, for which, a report was made and it is an admitted fact that till date, the case is pending against the respondent. Therefore, the contention of the wife that she was subjected to torture is well established as no acquittal has been effected till date. It is further stated that even to prove cruelty, certain facts are required to be established and even the lodging of FIR would not *ipso facto* make out an offence of cruelty. Reliance is placed on *(1999) 3 SCC 620 and (2013) 5 SCC 226* and would submit that the judgment and decree of the trial Court is, therefore, required to be interfered.

- 7) The respondents would submit that the evidence would show that the husband tried to save the marriage for one long year and even the application was filed u/s 9 for restitution of conjugal rights, which would show the intention of the parties. It was further submitted that the wife was not forced to leave the house and even the statement of P.W.2 would show that on the occasion of marriage anniversary, the hotel was booked to celebrate the event but the wife refused to join the celebration. The reply of the wife would show that they were living with the parents and they were not alone. It is further stated that the wife expressed her firm opinion during the counselings wherein she often stated that she does not want to stay. However, at other points of time that she wanted to stay and she was not a school going kid. Such state of mind would also amount to cruelty. Therefore, the judgment of the trial Court is well merited which

does not call for any interference.

- 8) We have heard learned counsel for the parties and have also perused the records.
- 9) The husband has stated that on 27.05.2016 the wife herself left the house and thereafter, the husband booked the hotel on the marriage anniversary on 05.06.2017. There is no evidence on record except the statement of P.W.1 & P.W.2 that such hotel was booked which shows the intention of the husband. If the hotel had been booked for the marriage anniversary, it could have been proved by adducing evidence to show the payment thereof. In para 5, the husband stated that his father used to stay at Dhamtari whereas in subsequent para it is stated that the wife did not want to stay along with in-laws. The appellant and respondent were residing at Raipur after the marriage. Therefore, if the father of the husband was residing at Dhamtari, which is at a considerable distance from Raipur, then such statement of husband becomes contradictory. The statement of the husband also stood firm by P.W.2. In examination-in-chief, it is stated that since his father was in Government job, he was residing at Dhamtari and during holidays at sometimes they used to come to Raipur for 1 or 2 days . Consequently, the fact that husband projected that the wife never wanted to stay with the in-laws appears to be contradictory. The husband has produced a document which is a report to the police (Ex.P.2) reading of which would show that the wife refused to stay with in laws. . The document Ex.P.3 is a proceeding of counseling. Reading of it would show that the the case was fixed for remediation by the parties. Counseling between the parties could not happen and she stated that under the pressure of any kind of conditions, she does not want to settle.
- 10) It is obvious that if any terms and conditions are put forth which have not been stated by the husband, it is not expected that the wife should be treated as hired chattel or a bonded labour to stay under the conditions imposed by the husband. Further the document of counseling held in the month of July, 2016 would



show that on account of threat to life having been received by wife, she refused to stay along with the in-laws and in the counseling, it is stated that she did not want to stay with the husband. If the wife apprehends with such a life threat and if she does not want to stay under such threat or conditions which are normal, then in such a case it is not expected that forcibly she would be made to stay at her in-laws' place and thereafter wait for damage to be done, then to cure the same. The application filed by the wife seeking divorce u/s 13-A is marked as Ex.P-9. Reading of it would show that all physical and mental abuses have been stated for the reason that she was subjected to torture for demand of dowry. The order sheet of such divorce proceeding which was at the behest of the wife marked as Ex.P-10 shows that efforts of counseling were carried out, but it did not happen. The order sheet of 17.11.2017 would show that the wife did not further want to prosecute her application for divorce and on her statement, the same was dismissed. Therefore, the intention of the parties would show that eventually she did not prosecute the proceeding despite the fact that the husband was absent on a particular date. The wife could have pressed for ex parte proceedings, but she did not. This also shows the state of mind of wife.

- 11) In the statement of wife, she admits the fact that she cannot stay with her husband and reconciliation was not possible. She has categorically denied the suggestion that she forced her husband to stay at her parental home. In the statement she stated that she wanted to restore her marriage. During the course of arguments before this Court, an affidavit has been filed which shows that on a report being made by the wife for demand of dowry, Crime No.192/2016 was registered for the offence u/s 498-A and 34 of of IPC and the trial is pending wherein the husband and family members were inculpated. She has further stated in affidavit that yet another case under Protection of Women from Domestic Violence Act is also pending vide Case No.987/2017 which is currently pending. There is no rebuttal to this fact.

12) The main allegation of husband is that the wife insisted him to stay apart from his parents and misbehaved with them. The parents of the husband were not examined before the trial Court. No plausible explanation exists for the same. If the wife was residing with the in-laws under one roof and if she committed misbehaviour with the in-laws and husband as alleged by the husband which triggered the cruelty, then the husband could have produced evidence as it cannot be presumed by mere bald statement of husband that his parents were subjected to torture by the wife. The statement of wife would show that she refused to stay under the terms of husband. The allegations also exist that she was subjected to torture for demand of dowry immediately after the marriage. The said allegation eventually converted into report for which the crime was registered and trial is pending. There is no plausible explanation by the husband respondent as to what is the outcome of such proceeding pursuant to the report made by her. Under the circumstances, when the wife refused to join the husband, reasonable reasons exist.

13) The statement of the husband would show that pursuant to the report on 05.08.2016, a criminal case is pending and nothing has been brought before us to show that what has happened in that criminal case and whether any acquittal has been recorded and if the charges has been framed in such criminal case, *prima facie*, the submission made by the wife would be accepted that for the reasons stated in her complaint, she was forced to stay away which cannot be amounted to desertion or cruelty, instead, the conduct of the husband would show that he himself has misbehaved with the wife which is uncalled for. The husband cannot be allowed to take advantage of his own deeds and looking to the nature of allegations which have been stated by him except the trivial facts, it appears that no severe allegations have been made against the wife and in view of the decision of Supreme Court in *Neelam Kumar v. Dayarani (2010) 13 SCC 298* granting decree of divorce will lead to giving someone the benefit of his/her own misdeeds. The Court further held that no decree of divorce can be granted unless a person seeking divorce proves cruelty on the basis of

pleadings and evidence. In the instant case, the burden of proving cruelty since has not been discharged properly by the husband who sought decree of divorce on the ground of cruelty. Therefore, grant of decree of divorce on the ground of cruelty appears to be unsustainable. Accordingly, we are of the view that the judgment and decree passed by the learned Family Court is liable to be and is hereby set aside.

14) With respect to permanent alimony, the affidavit has been filed by the wife which shows that the husband is working as Assistant Grade-III in the directorate of Public Education, Raipur and is drawing a monthly salary of Rs.34,000/- apart from other immovable properties. The affidavit would further show that in proceedings of section 125 Cr.P.C., she was granted maintenance of Rs.6000/- per month. It appears that presently the wife has no source of income. Considering the present market rates and inflation and to further avoid multiplicity of proceedings, we deem it appropriate that Rs.10,000/- be granted as monthly maintenance to the wife henceforth. Accordingly, the husband shall pay an amount of Rs.10,000/- as monthly maintenance of the appellant wife. The deduction shall be made from source and would be paid to the account of wife.

15) It is made clear that as and when salary is reciprocally increased, the amount of maintenance shall also be increased proportionally to the extent of increase of percentage in future salary, which the wife would be entitled to receive.

16) In the result, we allow the appeal and set aside the judgment and decree passed by the trial Court. A decree be drawn accordingly.

Sd/-

(Goutam Bhaduri)
Judge

Sd/-

(Sanjay Kumar Jaiswal)
Judge