AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No.75 of 2016

Reserved on 30.03.2022
Pronounced on 12.05.2022

- Pritam Lal Sahu, S/o Shri Ramkumar Sahu, aged about 38 years, Caste – Teli, R/o Bazarpara, Jairamnagar, Police Station Masturi, Post Jairamnagar, Tahsil Masturi, Civil and Revenue District – Bilaspur, Chhattisgarh **---- Appellant**

Versus

- Smt. Kalpana Sahu, W/o Pritam Lal Sahu, aged about 33 years, Caste – Teli, Present address – Ramesh Gali, Sitamadhi, Korba, Tahsil and District – Korba, Chhattsgarh **---- Respondent**

For Appellant	:	Shri Dharmesh Shrivastava, Advocate.
For Respondent	:	None.

Coram: Hon'ble Shri Justice Goutam Bhaduri and Hon'ble Shri Justice Sanjay S. Agrawal

C.A.V. Judgment/Order

The following judgment of the Court is delivered by **Sanjay S. Agrawal, J.**

1. This appeal has been preferred by the Applicant – husband being aggrieved by the judgment and decree dated 23.02.2016 passed by the learned Family Court, Korba in Civil Suit No. 60-A/2010, whereby the application filed by him seeking dissolution of marriage has been dismissed. The parties to this appeal shall be referred hereinafter as per their description before the Court below.

2. Briefly stated the facts of the case are that the Applicant – husband instituted a suit claiming decree for dissolution of marriage on the grounds enumerated under Section 13 (1) (i) and (ia) of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act, 1955). It is pleaded in the application that his

marriage with Non-Applicant – wife was solemnized on 01.05.1996 in accordance with the Hindu rites and rituals and immediately after the marriage, they started living at his village Jairamnagar, District Bilaspur and out of their wedlock, two children were born. According to the Applicant, his wife frequently used to go to her parental house at Korba and used to quarrel with him whenever he asked for the reason of her repeated visits. It is pleaded further that she lodged a false report on 07.09.2008 against him and his parents at Police Station Masturi, District Bilaspur, based upon which, an offence punishable under Section 498-A, 323 read with Section 34 of IPC was registered in connection with Crime No.290/2008. It is pleaded further that he had also initiated a proceeding for restitution of conjugal rights under Section 9 of the Act, 1955, which was registered as Civil Suit No.26-A/2009 and came to an end on 15.09.2009 based upon compromise and thereafter he and his parents have been acquitted of the charge under Section 498-A of IPC vide order dated 30.10.2009 passed by the Judicial Magistrate First Class, Bilaspur in Criminal Case No.850/2008.

3. According to the further contention of the Applicant – husband, his wife is living adulterous life as it was revealed based upon the preliminary examination conducted on her at hospital on 09.10.2009 that she became a pregnant, though there was no cohabitation during the said period. It is pleaded further that his wife has deserted him and started living separately since 02.12.2009, therefore, he is entitled to get a decree for

dissolution of marriage under Sections 31 (1) (i) and (ia) of the Act, 1955.

4. While contesting the aforesaid claim, it was pleaded by the Non-Applicant – wife that after the solemnization of marriage, her husband and in-laws were demanding motorcycle and colour TV and owing to which, she was subjected to cruelty when the alleged demand of theirs was not fulfilled, and therefore, she has been constrained to lodge the alleged report on 07.09.2008. It is contended further that when the proceeding initiated by her husband for restitution of conjugal rights came to an end based upon compromise on 15.09.2009, at that relevant point of time, she was put in immense pressure by her husband to get the matter settled amicably in relation to the alleged crime and because of that she has not stated anything adversely against them and on account of her support, they have been acquitted of the said crime vide judgment dated 30.10.2009, which was passed in Criminal Case No. 850/2008. While denying specifically regarding the allegation of her living adulterous life, it is stated that when they were settling the dispute during the pendency of a proceeding initiated by her husband under Section 9 of the Act, 1955, he used to visit her house at Korba and used to stay there with her for 2 – 3 days and during the said period, she did not resist for having physical relation with him and out of which she has become pregnant.

5. After considering the evidence led by the parties, it was held by the Family Court that although the Non-Applicant – wife was found to be pregnant but it cannot be said that it was on account

of her illicit relation with some one else as during the course of pendency of proceeding initiated by the Applicant – husband under Section 9 of the Act, 1955, the Applicant – husband used to stay with her before its settlement and, that apart, the Applicant – husband has failed to examine the D.N.A. test of his wife in order to establish the said fact so as to hold that his wife is living adulterous life, as alleged by him, or has caused the mental cruelty upon him. It held further that since there was a serious dispute existed between the parties at the relevant point of time owing to lodging of reports against each other, therefore, it cannot be said that the Non-Applicant – wife has left for her matrimonial home on 02.12.2009 for committing suicide, as alleged by her husband, or has caused mental cruelty upon him. In consequence, the Family Court has dismissed the Applicant's claim seeking a decree for dissolution of marriage on the ground of adultery as well as cruelty. This is the judgment and decree, which has been impugned by way of preferring this appeal.

6. Learned counsel appearing for the Applicant – husband submits that the finding of the Court below holding that his wife is not leading an adulterous life is apparently contrary to the materials available on record. It is contended further that as both were living separately owing to the report lodged by the Non-Applicant – wife on 07.09.2008 and started living together only from 15.09.2009 when a suit being Civil Suit No.26-A/2009 came to an end on compromise, but on a preliminary examination conducted on 09.10.2009, it was revealed that she was pregnant carrying pregnancy of 40 days and contended further that since

the Applicant – husband was bed ridden owing to fracture in his left leg from 19.08.2009 upto 13.09.2009, therefore, the Court below ought to have held that the alleged pregnancy of his wife was caused by some one else and under such circumstances ought to have held that she is leading an adulterous life. It is contended further that the false report in relation to the alleged demand of dowry was lodged by the wife, therefore, the Court below ought to have granted a decree for divorce on the ground of cruelty as well.

7. No one appeared on behalf of the Non-Applicant/respondent despite service of notice of this appeal.

8. I have heard learned counsel appearing for the Applicant and perused the entire record of the Court below.

9. From perusal of the record, it appears that the marriage between the parties was solemnized on 01.05.1996 and a report was lodged by the Non-Applicant – wife on 07.09.2008 (Ex.P.3), based upon which, a criminal case was registered against her husband and in-laws with regard to the offence punishable under Sections 498-A read with Section 323/34 of IPC in connection with Crime No.290/2008 and since then both, husband and wife were living separately. It appears that a proceeding initiated by the Applicant – husband seeking restitution of conjugal rights under Section 9 of the Act, 1955 came to an end on compromise vide order dated 15.09.2009 (Ex.P.17) passed by the Family Court, Korba in Civil Suit No.26-A/2009 and immediately

thereafter the alleged criminal case being Criminal Case No. 850/2008 has been decided vide judgment dated 30.10.2009 (Ex.P.6) whereby the Applicant and his parents have been acquitted of the charge under Section 498-A of IPC owing to compromise arrived at between the parties as the Non-Applicant – wife, based upon the said compromise, has not supported the allegations levelled against them.

10. Be that as it may, before passing of the said judgment (Ex.P.6), the Non-Applicant – wife, who started living with her husband from 15.09.2009 upon the disposal of the said proceeding of conjugal rights, has gone for her sterilization operation on 09.10.2009 wherein she was found to be pregnant carrying pregnancy of 40 days, though they lived only for a period of 24 days. That apart, the Applicant's left leg was fractured and was under the treatment of Dr. R.S.Meravi (A.W.1) with effect from 19.08.2009 upto 13.09.2009. In such circumstances, it, thus, appears that there was no cohabitation taken place between the parties, yet the Non-Applicant – wife was found to be pregnant as on 09.10.2009 carrying pregnancy of 40 days. It is, thus, apparent that after the alleged marriage, she had participated in sexual intercourse with some one else other than her husband, else she could not have carried such a pregnancy. It is true that in order to establish the alleged fact, the Applicant has neither opted for D.N.A. test nor had raised any objection in a proceeding initiated by his wife for grant of maintenance that she is leading an adulterous life. But, merely on this ground, the

above mentioned material fact cannot be overlooked and it cannot be held that she was not leading an adulterous life, as held by the Court below. It is the settled principles of law that in a case based on non-access or period of gestation, the Court cannot compel any party to submit a blood test.

11. It is to be noted at this juncture the principles rendered by the Supreme Court in the matter of ***Dr.N.G. Dastane*** vs. ***Mrs. S. Dastane*** reported in **(1975) 2 SCC 326**, wherein it was observed that as the proceedings under the Act, 1955 are of civil nature, the test of criminal proceedings need not be applied, and therefore, it is not necessary to prove the allegations beyond all reasonable doubt. Proof beyond reasonable doubt is not postulated where human relationship is involved and eye witnesses are difficult to obtain and thus direct evidence to prove adultery is not possible and has to be inferred from circumstances which exclude any presumption of innocence in favour of the person against whom it is alleged.

12. As observed herein above, both the Applicant – husband and the Non-Applicant – wife have lived together for 24 days, i.e., 15.09.2009 upto 09.10.2009 after the compromise arrived at between them in a proceeding for restitution of conjugal rights, which ended vide order dated 15.09.2009 (Ex.P.17) in a Civil Suit No. 26-A/2009 and on 09.10.2009, it was discovered vide Sonography report dated 09.10.2009 (Ex.P.28) that she was pregnant while carrying pregnancy of 40 days. It was also found that even prior to 15.09.2009, the Applicant – husband was

under the treatment of Dr. R.S.Meravi with effect from 19.08.2009 upto 13.09.2009 as his left leg was got fractured and the Applicant was thus virtually not in contact with his wife from 19.08.2009, yet she was found to be pregnant carrying pregnancy of 40 days, as revealed vide Sonography report dated 09.10.2009 (Ex.P.28). In view thereof, it is evident that she had sexual intercourse with some one else other than her husband and the Applicant is, therefore, entitled to a decree for dissolution of marriage on the ground enumerated under Section 13 (1) (i) of the Act, 1955.

13. In so far as the allegation raised by the Applicant – husband regarding cruelty is concerned, the same is also found to be proved as the Non-Applicant – wife has lodged the report against her husband and in-laws only on 07.09.2008, i.e., after passing of more than the period of 12 years from the date of her marriage, which took place on 01.05.1996 and based upon which the offence punishable under Sections 498-A, 323 read with Section 34 of IPC was registered against them. In the said matter, they have been acquitted of the charge vide judgment dated 30.10.2009 (Ex.P.6) passed by the Judicial Magistrate First Class, Bilaspur in Criminal Case No.850/2008 “State of Chhattisgarh vs. Shivkumari Sahu and others” in relation to the alleged allegations levelled by the Non-Applicant as owing to the said compromise she has not supported her alleged allegations. True, it is, that they have been acquitted as such, but it appears that no allegations as such were ever made by her prior to

lodging of the alleged report dated 07.09.2008 (Ex.P.3), based upon which the Applicant was put in jail for some time. Levelling alleged allegations after such a long time would have thus caused a mental cruelty upon him (husband). It is to be noted at this juncture the principles laid down by the Supreme Court in the matter of ***Rani Narasimha Sastry*** vs. ***Rani Suneela Rani*** reported in **2019 SCC OnLine SC 1595,** wherein it has been held at paragraph 14 as under:-

> "**14.** The above observation of the High Court cannot be approved. It is true that it is open for anyone to file complaint or lodge prosecution for redressal for 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 of IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has meted on the husband. As per pleadings before us, after parties having been married on 14.08.2005, they lived together only 18 months and thereafter they are separately living for more than a a decade now."

14. Moreover, it appears that both husband and wife are living separately since 18.04.2010 and thus they are living apart for over more than 12 years. It, thus, appears that the alleged marriage solemnized on 01.05.1996 has irretrievably broken down, and therefore, it is dead for all purposes and cannot be revived as held by the Supreme Court in the matter of **K. Srinivasa Rao** v. **D.A.Deepa** reported in **(2013) 5 SCC 226** wherein it has been held at paragraphs 30 and 31, which read as under:-

> "**30.** It is also to be noted that the appellant husband and the respondent wife are staying apart from 27-4-1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in *Samar Ghosh* (*2007 1 SCC 337*), if we refuse to sever the tie, it may lead to mental cruelty.
>
> **31.** We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree."

15. Applying the aforesaid principles to the case in hand, it appears, as observed herein above, that both are not only living separately for over more than 12 years, but a false criminal case was found to be lodged by the Non-Applicant – wife against her husband and in-laws, which certainly caused mental cruelty to him. As a consequence of it, the Applicant – husband would be entitled to get a decree for dissolution of marriage on the ground enumerated under Section 13 (1) (ia) of the Act, 1955 as well. The finding of the trial Court declining to grant a decree for divorce on the ground of cruelty is accordingly set aside and the Applicant is, thus, held to be entitled to a decree for divorce under Section 13 (1) (ia) of the Act, 1955 also.

16. In view of the aforesaid background, the appeal is allowed and the Applicant – husband is accordingly entitled to a decree for dissolution of marriage on the ground enumerated under Section 13 (1) (i) and (ia) of the Act, 1955. No order as to costs.

A decree be drawn accordingly.

Sd/-
(**Goutam Bhaduri**)
Judge

Sd/-
(**Sanjay S. Agrawal**)
Judge

Anjani