

**HIGH COURT OF CHHATTISGARH, BILASPUR****FIRST APPEAL (M) No. 124/2017**

Shailendra Kumar Chandra, S/o. Shri Babulal Chandra, aged about 31 years, Caste Chandranahu, R/o. Quarter No. 182/1/B, Balco Nagar, Korba, Tahsil and District Korba (CG)

---- Appellant/Petitioner

Versus

Smt. Bharti Chandra W/o. Shailendra Kumar Chandra, aged about 23 years, Caste Chandranahu, R/o. Village Sakti Jhulkadam Basti, near Saroja Manharan Rathor Farmer M.L.A. Residence, Tahsil Sakti, Distt. Janjgir-Champa (CG)

---- Respondent

For appellant : Mr. T.K. Jha, Adv.
For respondent : Ms. Minu Banerjee, Adv.

Reserved on : **12-4-2022**

Order delivered on : **27-4-2022**

Hon'ble Mr. Goutam Bhaduri, Judge
Hon'ble Mr. N.K. Chandravanshi, Judge

CAV Judgment

Per N.K. Chandravanshi, J.

1. Challenge in this appeal is to the judgment and decree dated 21-2-2017 passed by the Judge, Family Court, Korba (CG) in Civil Suit No. 57-A/2014, whereby the application filed by the appellant-husband for grant of decree of divorce on the ground of cruelty was rejected.

2. The appellant-husband pleaded that he was married to the respondent-wife on 18-6-2011. Their family life went fine for only about 3 months. Thereafter, the respondent-wife started quarreling over small things and then without his consent, she used to go to her parental house with his father. After making various efforts, she returned. She said that she did not want to live along with his parents at Korba. She also said that if he wanted to live with her, then he has to live with her parents at Sakti, otherwise, they will lodge dowry case against him. On 25-3-2012, again without his consent, she went to her parental house along with her father. Appellant-husband went her



parental house along with some reputed persons of their society to bring her back, but she did not return. Since, they frequently used to threaten him to implicate in dowry case, the appellant-husband submitted application to the Collector and police officials in this regard. Even the appellant-husband filed application against the respondent-wife under Section 9 of the Hindu Marriage Act in the Family Court, Korba, which was culminated on the compromise. Despite that, respondent-wife did not live with him. On 21-3-2013, when the appellant-husband was coming from Tutikorin (TN) along with respondent-wife by train, on 22-3-2013, in a preplanned way, she got off the train at Raipur on the pretext of treatment and went along with her father from there, by assuring him that she will return to Korba. Since mother of the appellant-husband was ill, hence on 11-4-2013 he asked his father-in-law to send respondent-wife, then he misbehaved him and also said to live at Shakti along with them, otherwise, they will send him to jail in dowry case. Even on being noticed thrice by their social forum, they refused to take the notice. Due to such conduct of respondent-wife, the appellant-husband is suffering from physical and mental cruelty. Since 8-4-2013, the respondent-wife has deserted the appellant-husband without any reason. Despite all possible efforts made by them, possibility to maintain their marital life has come to an end due to aforesaid physical and mental cruelty and desertion by respondent-wife. In view of above, a decree of divorce was prayed for.

3. In her reply, the respondent-wife denied all the allegations levelled by appellant-husband, stating therein that neither she nor her father has threatened in any way to the appellant-husband to live with her parents, nor they have said that, otherwise they would send him behind the bar, nor she has committed any type of torture as alleged in the application filed by the appellant-husband. Rather, after about 2 months of their marriage, she was subjected to cruelty on demand of car and jewelery. Even the appellant-



husband used to assault her. Due to cruelty meted out to her, she got ill, despite that, they did not provide her treatment. She does not want to break her relation with her husband, and therefore, she has not lodged any complaint against him, but the appellant-husband himself does not want to maintain marital relation, therefore, he has lodged various false and fabricated complaints before police and other authorities. It is further contended that after compromise in the case under Section 9 of Hindu Marriage Act, father of respondent-wife had gone to drop her to her matrimonial house on 23-11-2012, but the appellant assaulted her, saying that he had not made compromise to keep her with him, but he did so only to create documents for his defence in Court. Even in Tutikorin, the appellant and her parents abused her and tortured her physically and mentally. On being asked by the appellant himself, her father had come to Railway Station, Raipur and took her for treatment, as her health condition was not good. When her father called him and asked over phone to take her with him, then the appellant had said that until his demand is fulfilled, he is not ready to keep her with him. Therefore, on being compelled by the appellant-husband and due to physical and mental torture committed by him and his family members, she is living in her parental house. It has been further contended that she has neither harassed the appellant in any manner nor has deserted him on her own, rather, she still wants to settle their dispute and live with the appellant. As a consequence, the appellant-husband would not be entitled for a decree of divorce.

4. Learned counsel for the appellant-husband would submit that financial condition of the respondent-wife is better than the appellant-husband and due to lower strata of their status, after 3 months of their marriage, the respondent-wife started quarreling with appellant, as she did not want to live in matrimonial house along with her in-laws. It is further submitted that after 2-3 months of marriage, the respondent-wife, without consent of family



members of husband, went to her parental house. After various efforts, she came, but after few days, she again went with her father. It is further submitted that respondent-wife and her father pressurized the appellant-husband to leave his parents and come to live with them at Sakti. Even after various efforts made by the husband by involving reputed persons of their society, the social forum and filing petition under Section 9 of the Hindu Marriage Act, she did not join marital life with the appellant-husband, instead thereof, due to pressure/threat of living separately from his parents and implication in dowry case, the appellant-husband is facing immense physical and mental torture. Therefore, all the possibilities of maintaining their marital relation have come to an end. He further submits that without any lawful reason, the wife left the company of husband since 8-4-2013, therefore, on the ground of cruelty, learned Family Court, Korba ought to have granted decree of divorce, but without properly appreciating the evidence adduced by the appellant-husband in its proper perspective, learned Family Court has dismissed the petition which is not sustainable. Hence, impugned judgment and decree be set aside and decree of divorce be granted to the appellant. To buttress his arguments, learned counsel for the appellant placed reliance on the judgment of Hon'ble Supreme Court rendered in the matter of **Narendra versus K. Meena** [(2016) 9 SCC 455].

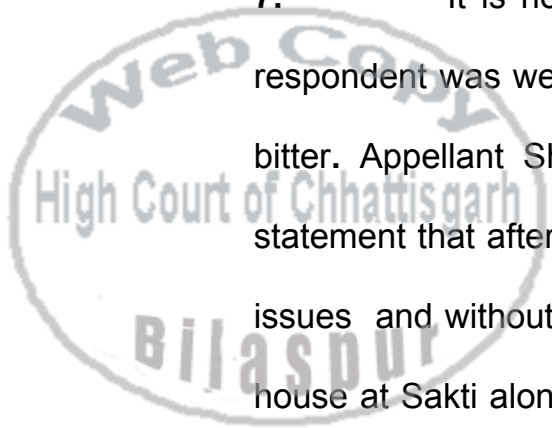
5. Per contra, learned counsel for the respondent-wife would submit that the order of learned Family Court, Korba is well considered and well merited. It is further submitted that the respondent-wife or her father has neither pressurized the appellant -husband to live with them in her parental house at Sakti, nor they have threatened him to implicate in dowry case, rather, the appellant-husband himself does not want to keep her with him, as they have tortured her physically and mentally due to demand of car, money and ornaments and also assaulted upon her on various occasions, even he



has apologized from them in police station. It is further submitted that the respondent-wife wants to live with her husband and settle their dispute amicably, therefore, despite harassment/ cruelty meted out to her, she has not lodged any report to the police against the husband or his family members, but the appellant with ulterior motive himself has made various complaints to the police and other officials to create documents against wife. It is further submitted that the order of learned Family Court is a well reasoned order and does not call for any interference by this Court.

6. We have heard learned counsel for the parties and perused the evidence available on record.

7. It is not in dispute that marital relation of the appellant and the respondent was well only for about 2-3 months. Thereafter, their relation got bitter. Appellant Shailendra Kumar Chandra (P.W. 1) has deposed in his statement that after about 3 month, the respondent started quarreling in petty issues and without their consent, again and again used to go to her parental house at Sakti along with her father. When she came, then she said that she does not like to live with all (in-laws) and if he wants to live with her, then he has to live with her parents at Sakti. Once, when she was not returning from her parental house, then he took some reputed persons namely Ashok Kumar Chandra (P.W.2), Ramesh Chandra, Ramadhar Chandra and some other persons to bring her back, despite that respondent did not come with him and in front of those persons, the respondent and her father asked that if he wants to live with respondent, then he has to leave behind his parents and come to live with her at Sakti, otherwise, they will implicate him in dowry case. His this statement has been supported by Ashok Kumar Chandra (P.W.2) in his deposition.



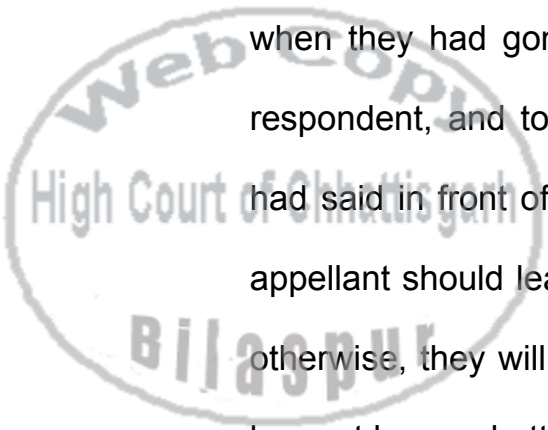


8. Smt. Bharti Chandra (D.W. 1) earlier denied in her deposition in para 17 that on 8-4-2012, the applicant had come to Sakti with his father, Ashok Chandra and Ramesh Chandra to take her, but she has admitted that they had come for meeting only. Her father Chhavilal Chandra (D.W.2) has also admitted in his deposition in para 23 that on 8-4-2012, the appellant had come along with Ashok Chandra, Ramadhar Chandra, Ramesh Chandra and Babulal Chandra, to take her daughter and on that day, there was a talk between them about taking her daughter. He has also admitted in para 24 that, his daughter had not gone with them to her matrimonial home.

9. Ashok Kumar Chandra (P.W. 2) has also supported the statement of appellant Shailendra Kumar Chandra (P.W. 1) that on 8-4-2012 when they had gone to Sakti to settle the dispute of the appellant and the respondent, and to bring her back, then the respondent and her parents had said in front of them that she will not go with him, instead thereof, the appellant should leave his parents and live with her at Sakti with her parents, otherwise, they will lodge dowry case in police station against him. This fact has not been rebutted in cross-examination.

10. Appellant Shailendra Chandra (P.W. 1) has further deposed that since respondent and her father have threatened him to implicate in dowry case, therefore, on 24-4-2012, he had made an application (Ex. P-1) before the District Magistrate, Korba and police officials in this regard, but, police did not take any action and gave intimation (Ex. P-2) under Section 155 of the Cr.P.C. His statement is well supported by Ex. P-1 and Ex. P-2.

11. Both the parties have deposed that the appellant had filed a petition under Section 9 of the Hindu Marriage Act against the respondent in Family Court, Korba, which was culminated on compromise between them. This fact is also proved from the copy of order-sheet dated 19-11-2012





Ex. P-3, wherein it has been mentioned that they have agreed to live together. It is also apparent from the statement of both the parties that in compliance of aforesaid order, on 23-11-2012, father of respondent had gone to drop her to her matrimonial home at Korba, but on that date, the respondent did not stay in her matrimonial home and came back with his father. Evidence of the appellant-husband Shailendra Kumar Chandra (P.W. 1), wife Smt. Bharti Chandra (D.W. 1), and her father Chhavilal Chandra (D.W. 2) shows that the dispute had taken place between them alleging each other responsible for the dispute, which ultimately concluded in police station after seeking apology by the appellant. Ex. P-4 is a complaint made by the appellant to the SHO, Balco Thana against respondent-wife and her father. The appellant-husband has stated in para 28 of his deposition that he had sought apology because he was threatened that if he does not do so, then they will send him to jail. The respondent-wife Smt. Bharti Chandra has deposed that on that day, she had lodged report but she has not filed any document in this regard.

12. The appellant Shailendra Kumar Chandra (P.W. 1) has further deposed in his statement that on 21-3-2013 when they (appellant and respondent) were coming from Tutikorin to Korba to celebrate Holi festival, then on 22-3-2013, despite his refusal, the respondent got off the train at Railway Station, Raipur and went along with her father, saying that she will come to Korba. Respondent has admitted this fact in her cross-examination but, she has stated that this fact was in the knowledge of appellant, because she was ill at that time and her father took her to Balaji Hospital, Raipur, for her treatment, whereas the appellant had said that it was not in his knowledge and he had taken her ticket up-to Korba. The respondent has not filed any document in respect of her treatment in Balaji Hospital or elsewhere showing that she got treatment on 22-3-2013.



13. The appellant has further deposed that when the respondent did not join him after Holi festival, then on 4-4-2013, when he asked her father over phone to send his daughter, as his mother was not well, then he scolded him and again threatened him to live with them at Sakti, otherwise they will implicate him and his whole family in dowry case and send them jail. He has further stated that on 6-4-2013, his father-in-law had left the respondent to Korba, but after 2 days i.e. on 8-4-2013, he (father-in-law) again took her back to Sakti. Thereafter, she had not joined the marital life with the appellant. This fact has not been controverted by the respondent. As per deposition of the appellant, he had also tried to get compromise with respondent by giving application Ex. P-7 to the regional president of their social forum, so that, their life may be settled. But, despite notices issued thrice by the forum to the respondent, she refused to take notice Ex. P-8 and Ex. P-9, which was informed by the Regional President Umeshchandra Chandra (P.W. 4) vide Ex. P-11.

14. Umeshchandra Chandra (P.W. 4) has not only supported the statement of the appellant, but he has also deposed in his statement that he himself had gone to the parental house of the respondent and tried to persuade her to settle their dispute, but the respondent and her family members had not taken any interest for settlement of their dispute. His statement has not been controverted in his cross-examination. Although, the respondent-wife (D.W. 1) and her father (D.W.2) have denied that such notices were sent to them, but the statement of the appellant is well supported by Umeshchandra Chandra (P.W. 4) and documentary evidence i.e. Ex. P-7, P-8, P-9 and P-11 also.

15. Babulal Chandra (P.W. 3) is father of the appellant. He has also supported the statement of the appellant. In para 20 of cross-examination, on being suggested to him, he has admitted that after marriage, the respondent

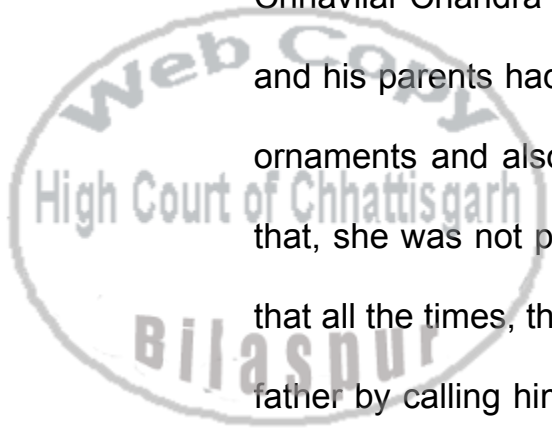


while living with them, used to say that she is ill and she did not do any work and used to keep sleeping.

16. Ashok Kumar Chandra (P.W. 2) has also stated that respondent did not do any work in her matrimonial home. Babulal Chandra (P.W. 3) has stated that the respondent belongs to Gotia family (landlord family), whereas they belong to agriculturist family. This fact somehow reveals that since financial status of parental house of the wife is better than that of her matrimonial house, therefore, she was interested to live separately with her husband and was not willing to live with her in-laws.

17. The respondent-wife Smt. Bharti Chandra and her father Chhavilal Chandra have deposed in their statement that since the appellant and his parents had subjected her to cruelty on demand of dowry like car and ornaments and also assaulted her many times, therefore, she fell ill, despite that, she was not provided treatment by the appellant. They have also stated that all the times, the appellant himself had sent the respondent along with her father by calling him, whereas the respondent was always ready to settle her dispute with the appellant and live peaceful life with him. Therefore, neither they have made any complaint against them to their society nor lodged any report to police. Ramadhar Chandra (D.W 3) has deposed that in the year 2012 when father of the respondent had gone to drop her to her matrimonial house, then the appellant had assaulted her, but in cross-examination, he has made contradictory statement in this regard and even he has admitted that he does not know as to what happened between the appellant and her father-in-law, because he was sitting outside the house. Hence, his statement does not inspire confidence of this Court.

18. From the scrutiny of the evidence, it is apparent that marital life of the appellant and respondent went good only for 2 – 3 months, thereafter, the





respondent, without consent of the appellant and his family members, many times went along with her father to her parental house at Sakti. It is also manifest from the evidence that the respondent and her father were pressurizing the appellant to live separately from his parents and also to live with his wife and in-laws at Sakti, otherwise, they will implicate him in a dowry case and send him to jail. Oral and documentary evidence adduced by the appellant also makes it clear that he had tried many times to settle their dispute by involving reputed persons of their society and also by giving application to their social forum, but, the respondent and her parents never honoured such attempts, rather they refused to take notices issued to her. Although, the respondent-wife and her father have deposed that the respondent was subjected to cruelty due to demand of dowry and she was also assaulted by the appellant-husband many times, but they have never lodged any report in this regard. The respondent has pleaded and stated in her deposition that she wanted amicable settlement with the appellant and to live peaceful life with him, but she has admitted in para 19 of her cross-examination that she has never made any application to their social forum to protect her marital life. It seems that the respondent-wife belongs to higher strata in their society in respect of financial status comparatively then the appellant, hence, she wants to live with the appellant but not along with her in-laws. And, therefore, she always creates mental pressure in this regard on the appellant and has threatened also to fastened him in dowry case.

19. It is obvious from the evidence available on record that the father of appellant is an old aged retired employee from the post of Asstt. Foreman from Balco, he has one younger brother also. In such a lower middle class family, it is the responsibility of the eldest son (as the appellant is, in the instant case) to take care of his elderly parents, as the appellant has deposed also in his statement. In such a situation, if wife persistently creates



constraints upon husband to get separated from his family and to live with her at her parental house and also threatened him that, otherwise she will implicate him in dowry case, it, itself amounts to mental cruelty on the appellant. During the course of argument, learned counsel for the appellant drew our attention on the copy of order dated 17-10-2012 passed in Civil Suit No. 42-A/2012 (Shailendra Kumar Chandra -v- Smt. Bharti Chandra), which is said to be the case of restitution of conjugal rights under Section 9 of the Hindu Marriage Act, wherein it has been mentioned that as per settlement memo (Sulah Pratedan), the respondent-wife had said that if the applicant-husband lives in separate house, then only, she is ready to live with him. This fact also supports the evidence adduced by the appellant.

20. Hon'ble Supreme Court in the matter of **Vishwanath Agrawal versus Sarla Vishwanath Agrawal** [(2012) 7 SCC 288] has held that "The expression 'cruelty' has an inseparable nexus with human conduct or human behaviour. It is always dependent upon social strata or the milieu to which the parties belong, their ways of life, relationship, temperament and emotions that conditioned by their social status. The facts and circumstances are to be assessed emerging from the evidence on record and thereafter, a fair inference has to be drawn whether the petitioner in the divorce petition has been subjected to mental cruelty due to the conduct of others.

21. In the case of **Narendra** (supra), the respondent-wife wanted the appellant-husband to get separated from his family. The evidence of that case shows that the family was virtually maintained from the income of the appellant-husband. In that circumstances, Hon'ble Supreme Court has observed that :-

"..... It is not a common practice or desirable culture for a Hindu son in India to get separated from the parents upon



getting married at the instance of the wife, especially when the son is the only earning member in the family. A son, brought up and given education by his parents, has a moral and legal obligation to take care and maintain the parents, when they become old and when they have either no income or have a meagre income. In India, generally people do not subscribe to the western thought, where, upon getting married or attaining majority, the son gets separated from the family. In normal circumstances, a wife is expected to be with the family of the husband after the marriage. She becomes integral to and forms part of the family of the husband and normally without any justifiable strong reason, she would never insist that her husband should get separated from the family and live only with her. As stated hereinabove, in a Hindu society, it is a pious obligation of the son to maintain the parents. If a wife makes an attempt to deviate from the normal practice and normal custom of the society, she must have some justifiable reason for that and in this case, we do not find any justifiable reason, except monetary consideration of the respondent wife. In our opinion, normally, no husband would tolerate this and no son would like to be separated from his old parents and other family members, who are also dependent upon his income. The persistent effort of the respondent wife to constrain the appellant to be separated from the family would be tortuous for the husband and in our opinion, the trial court was right when it came to the conclusion that this constitutes an act of “cruelty”.





22. The dictum aforesaid is squarely applicable in the case in hand.

But, the family Court has observed in the context that :-

“इस प्रकार उपलब्ध साक्ष्य से दहेज प्रताडना एवं उभय पक्षकारों के बीच आपसी पारिवारिक सामाजस्य न होने के कारण दोनों पक्षों के बीच विवाद होने की स्थिति दिखाई देती है। ऐसी स्थिति में आवेदक के कथन अनुसार यह नहीं कहा जा सकता कि अनावेदिका बिना किसी कारण के अपने दाम्पत्य जीवन को छोड़कर अपने मायके में निवास कर रही है। हालांकि आवेदक व उसके साक्षियों ने दहेज प्रताडना के तथ्यों को साक्ष्य के दौरान इंकार किया है। इस प्रकार आवेदक के द्वारा अनावेदिका के खिलाफ उसके और उसके माता पिता के साथ अनावेदिका के द्वारा क्रूरतरापूर्ण व्यवहार किये जाने के सम्बंध में आवेदक के द्वारा अनावेदिका के खिलाफ जो कथन किये गये हैं, उस कथ तथ्य न मात्र से अनावेदिका के द्वारा आवेदक एवं उसके परिवारवालों के साथ क्रूरतापूर्ण व्यवहार किया जाना दर्शित नहीं होता अर्थात् उभय पक्षकारों के बीच विवाद की स्थिति है, वह ऐसी नहीं है कि उभय पक्षकार भविष्य में एक छत के नीचे सुखी दाम्पत्य जीवन व्यतीत नहीं कर सकते। वह भी ऐसी स्थिति में जबकि न्यायालय में प्रकरण की सुनवाई तिथि को सुलहकर्ता द्वारा प्रकरण में सुलह कराये जाने और न्यायालय के द्वारा भी सुलह कराये जाने पर अनावेदिका के द्वारा हमेशा ही यह कहा गया है कि वह आवेदक के साथ रहकर सुखी दाम्पत्य जीवन व्यतीत करना चाहती है, वह आवेदक को तलाक देना नहीं चाहती। इसी कारण से उसने आवेदक एवं उसके परिवारवालों के खिलाफ दहेज प्रताडना के सम्बंध में कोई शिकायत थाना समाज या किसी अन्य संस्था में नहीं किया है। इस प्रकार उभय पक्षों के बीच भविष्य में एक साथ दाम्पत्य जीवन व्यतीत करने की संभावना दर्शित होती है। इसी के परिणामस्वरूप आवेदक के द्वारा भी अनावेदिका के मायके में रहने के दौरान आवेदक के द्वारा धारा 09 हि.वि.अधि. का आवेदन प्रस्तुत किया गया था। इस प्रकार आवेदक ने अपने साक्ष्य के द्वारा युक्तियुक्त रूप से अनावेदिका के द्वारा उसके साथ शारीरिक व मानसिक रूप से प्रताडित कर क्रूरता का व्यवहार किये जाने के तथ्यों को प्रमाणित नहीं किया है।....”





23. We have no hesitation to hold that the Family Court was highly unjustified in making above observation. The Family Court has taken the role of a councilor rather than an adjudicator while doing so. It is after much efforts and counseling that a case comes up before the court for adjudication. Then the role of the court is to adjudicate the issue involved in the case based on the evidence after duly appreciating it. The Family Court is not supposed to advice the remedies to the parties or dispose of the case on the probabilities of leading happy marital life in future.

24. Evidence as discussed above is satisfactory for us to take a view that the respondent has treated the appellant with cruelty sufficient enough to grant a decree for dissolution of marriage in his favour. The Family Court undoubtedly has gone wrong in declining the relief to the appellant. The judgment of the Family Court under challenge deserves to be reversed.

25. In the result, the appeal stands allowed. The judgment under challenge is set aside and a decree for dissolution of marriage on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act be drawn in favour of appellant-husband.

26. No order as to costs.

Sd/-

**(Goutam Bhaduri)
Judge**

Sd/-

**(N.K. Chandravanshi)
Judge**