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HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on 25-07-2023Judgment delivered on 10-08-2023FA (MAT) No. 118 of 2020

For Appellant

Ms Sharmila Singhai, Sr. Advocate with Shri
P.R. Patankar, Advocate

For Respondent

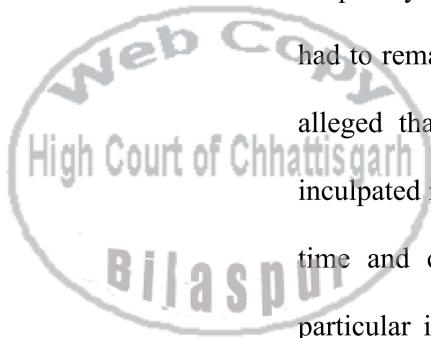
Shri Uttam Pandey, Advocate with Shri
Jitendra Gupta & Shri Hari Om Rai, AdvocatesHon'ble Mr. Justice Goutam Bhaduri &
Hon'ble Mr. Justice Sanjay S. AgrawalCAV Judgment

The following judgment of the Court is delivered by **Goutam Bhaduri, J.**

1. Challenge in this appeal is to the judgment & decree dated 13-3-2020 passed by the First Additional Principal Judge, Family Court, Durg, in civil suit No.53-A/2017 whereby the application preferred by the appellant/husband for grant of decree of divorce was dismissed. The husband is in appeal before this Court.



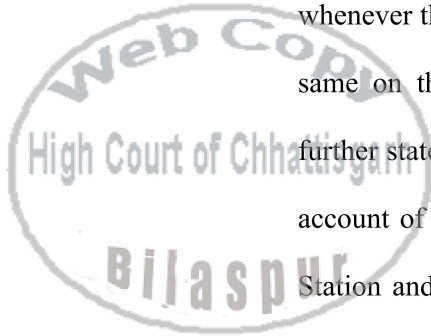
2. The facts of the case, in brief, are that the parties were married on 11-5-2011. Thereafter they stayed at Bhatapara (Chhattisgarh) and Durgapur (West Bengal). It is pleaded that before the marriage the wife was working at Ambuja Cement Plant, Baloda Bazar. After the marriage, she left her job and joined her husband at Durgapur. Subsequently, she was pursuing her studies of Ph.D. in Chemical Engineering at Durgapur. Husband alleged that after the marriage the behaviour of the wife towards him was not congenial, as she used to hurl abuses to him and his mother in the name of mother and sister. It is further stated that the wife frequently used to skip preparation of meal as such the husband had to remain starving or to take his food at hotel. Husband also alleged that the wife used to extend threat that he would be inculpated in some false case, therefore, he remained scared all the time and continued to suffer the mental cruelty. Narrating a particular incident on 11-12-2013 when the husband came with wife from Durgapur to Bhatapara to meet his parents, after two days the wife went to her parental home at Bhilai. Subsequently, she went to Durgapur and thereafter, she had no contact with the husband. During her stay at Bhilai, on a report made by the wife, a case under Section 498-A read with Section 34 of the Indian Penal Code (for short 'the IPC') was registered against the husband and his family members.
3. Husband further stated that the wife used to level the allegation that his father used to keep a bad eye on her. With regard to the





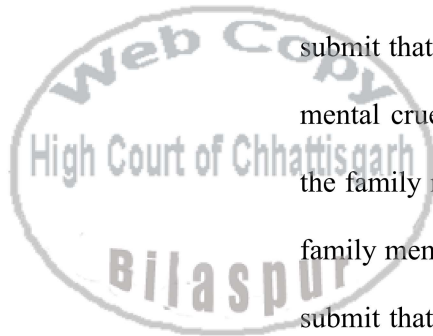
filthy abuses hurled by the wife, a complaint was made before the society wherein it was decided on 15-12-2013 that both the couple would stay separately. It is further stated that the wife used to stay separately and was pursuing her studies at Durgapur and consequently, the relation has got severed and they cannot go together further. The husband is, therefore, praying for dissolution of marriage on the grounds as mentioned hereinabove.

4. While denying the aforesaid contention of the husband, it is pleaded by the wife that while she was working, the entire salary was being taken by the family members of the husband and whenever the wife advised to have a child, the husband refuses the same on the ground that they may have a female child. She further stated that while coming from Durgapur on 13-12-2013 on account of some dispute she was abandoned at Bilaspur Railway Station and the husband refused to take her with him and hence she went to her parental home and thereafter, she went to National Institute of Technology (NIT), Durgapur. She further stated that on 15-12-2013 in a social meeting she narrated the entire cruelty meted out to her by the family members of the husband. According to her, while she was doing Ph.D. she was only getting certain scholarship and she was being humiliated in the name of witchcraft (टोनही). She further stated only on the false grounds the decree of divorce has been sought for, therefore, the same deserves to be dismissed.





5. The appellant/husband in his favour examined himself as PW-1 along with four other witnesses. The respondent/wife in her favour examined herself as DW-1 along with three other witnesses.
6. Learned Family Court framed the issue with regard to cruelty and held it against the husband. After evaluating the evidence dismissed the application preferred by the husband for grant of decree of divorce holding that he has failed to prove that he was treated with cruelty by the wife. Thus, this appeal.
7. Learned senior counsel appearing for the appellant/husband would submit that the evidence on record would show that it is a case of mental cruelty as the filthy abuses were made frequently against the family members and also threat was extended to implicate the family members of the husband in a false case. She would further submit that apart from that character assassination of the husband was made, which also would amount to cruelty. Learned senior counsel would also submit that the order of acquittal for offence under Section 498-A read with Section 34 of the IPC has been filed, which was after the impugned judgment and decree of the Family Court, would show that unwarranted allegations were levelled by the wife over the husband. She would next submit that phone transcriptions were placed on record under the provisions of Section 65B of the Indian Evidence Act, 1872 (for short 'the Act, 1872') and after going through the said





transcription the nature and degree of allegations made by the wife can be evaluated. She would submit that levelling false allegations and implicating in criminal case would also amount to cruelty. She would submit that because of the said fact, social meeting was convened and even the report of the Councilor would lead to show that the wife never wanted to stay with the husband. Therefore, under the circumstances the impugned judgment and decree deserves to be set aside. To buttress her contention, learned counsel would place reliance upon the decision of the Supreme Court rendered by the Supreme Court in the matter of *Seth Ramdayal Jat v Laxmi Prasad*¹ and *Narendra v K. Meena*² and the decision rendered by this Court in the matter of *Nisha v Nandkishor Gajbhiya*³.

8. Learned counsel appearing for the respondent/wife, *per contra*, would submit that against the acquittal order, the acquittal appeal is pending. Apart from that, the case under the provisions of the Domestic Violence Act is also pending. He would further submit that the document filed by covering memo in this case would show that the husband has performed the second marriage during subsistence of this marriage and the evidence of the wife and her mother DW-2 Smt. Lata Dhurandar would show that the wife was forced to leave the house because of torture meted out to her. Learned counsel would also submit that there is no iota of

1 (2009) 11 SCC 545

2 (2016) 9 SCC 455

3 2018 (1) CGLJ 162 (DB)



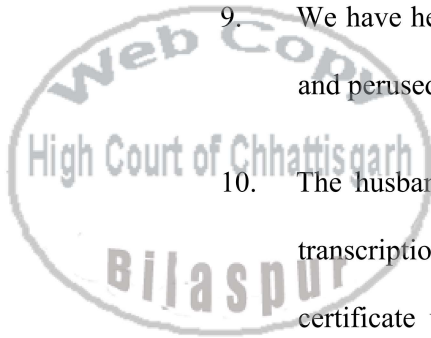
evidence to draw an inference that the husband was subjected to mental torture by the wife and only on the false allegations the report is made. He would next submit that the other allegations are of normal wear and tear and the same would not amount to cruelty. The impugned judgment and decree passed by the learned Family Court is well merited and needs no interference of this Court. In support of his contention, learned counsel would place reliance upon the decisions rendered by the Supreme Court in the matters of *Gurbux Singh v Harminder Kaur*⁴ and *Suman Singh v Sanjay Singh*⁵.

9. We have heard learned counsel appearing for the parties at length and perused the record.

10. The husband alleged that the wife hurled filthy abuses and the transcription of conversation of phone calls has been filed with certificate under Section 65B of the Act, 1872 vide Ex.P/8 & Ex.P/9. The said transcription albeit shows filthy abuses were made by the wife, but in her cross-examination, the wife refused to admit her voice, therefore, the contents of the said transcription of voice will not help the husband in absence of any further evidence. The husband stated in his deposition that because of such filthy abuses and the behaviour of the wife, a social meeting was convened.

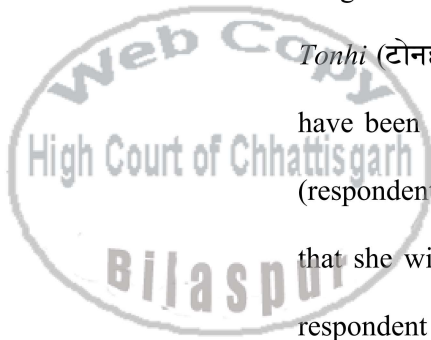
4 (2010) 14 SCC 301

5 (2017) 4 SCC 85





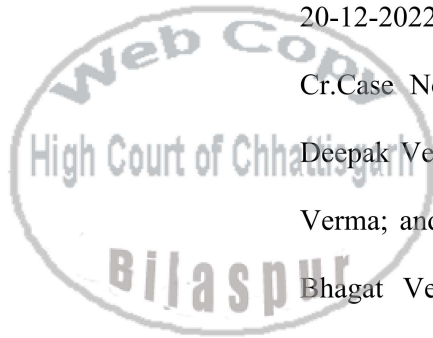
11. PW-4 Khuman Singh in his evidence stated that in the social meeting dated 15-12-2013 the recorded filthy abuses were heard wherein the wife admitted the fact, but this fact has not further been corroborated by any other evidence except the admission of fact of social meeting. The mother of the respondent namely; Smt. Lata Dhurandhar (DW-2) stated that in the meeting their case was not heard by any one, however, after the meeting, it was decided that both the parties will stay apart for a period of six months. Transcription of the social meeting is filed as Ex.P/1 wherein the allegations and counter allegations have been made. The husband alleged that the wife abused his mother as *Sautan* (सौतन) and *Tonhi* (टोनही). The father of the appellant stated that allegations have been made that he keeps a bad eye on the daughter-in-law (respondent herein) and the mother of wife stated that *bahu* told that she will not bear a child. As against this, the father of the respondent stated that the appellant wanted some gold and he also creates a mental problem and demands the ornaments which were given during the marriage. Thereafter, it was decided that both the couple should stay separate for certain time. The averments would show that because of certain allegations the social meeting was convened, but no result came out. However, the report of the Councilor, which is marked as Ex.P/4, would show that during counselling, the wife alleged that the mother-in-law has levelled allegations of theft on her and she further stated that if she is not mentally tortured she will join back. This was of dated 30-12-





2013, meaning thereby the parties were staying separate for a long time since 2013.

12. The husband alleged that the wife has deserted him since December, 2013 appears to be correct on facts. The statement of the husband further would show that he wanted to restore his marriage, therefore, he submitted an application before the society to resolve the dispute, but it would show that they did not reunite. The allegation further is made that a false report was made by the wife under Section 498-A read with Section 34 of the IPC. During the course of appeal, certified copy of the judgment dated 20-12-2022 passed by the Judicial Magistrate First Class, Durg, in Cr.Case No.7582/2014 is placed on record, which shows that Deepak Verma (appellant); his parents D.P. Verma & Kaushalya Verma; and his sister & brother-in-law namely; Anita Verma & Bhagat Verma have been acquitted on the ground that the prosecution was not able to prove the case. The judgment further records admission of the wife that she alleged illicit relation of the appellant with his mother. Apart from this fact, entire reading of the judgment would show that the case under Section 498-A, 406 read with Section 34 of the IPC and under Section 4 read with Section 34 of the Dowry Prohibition Act, 1961 was not proved and the said five accused persons were acquitted.
13. The respondent/wife though would submit that against that acquittal, the acquittal appeal has been filed, but there is nothing





on record to appreciate the same and even otherwise, mere filing of acquittal appeal would not *ipso facto* dilute the finding recorded by the JMFC with respect to acquittal in criminal case.

14. With respect to acquittal in criminal case, the Supreme Court in the matter of *Rani Narasimha Sastry vs. Rani Suneela Rani*⁶ has observed that when a prosecution was launched against the husband on a complaint made by the wife under Section 498-A of IPC, making serious allegations in which the husband and his family members were constrained to undergo trial, which ultimately resulted into acquittal, then in such a case, it cannot be accepted that no cruelty was meted out to the husband, therefore, he can make a ground for grant of decree of dissolution of marriage under Section 13(1)(i-a) of the Hindu Marriage Act.

15. Further reading of the evidence would show that during cross-examination of the husband at para 34 a suggestion was given to him that his father keeps an evil eye on the respondent. This statement further corroborated by the statement of the respondent at para 14 wherein she affirms the fact that her father-in-law keeps a bad eye on her. Further suggestion to her that she used to abuse her mother-in-law was denied. With respect to the statement in the criminal case while it was confronted to her, she admitted the fact that in the Court statement she deposed that the appellant/husband has maintained illicit relation with his mother.

⁶ 2019 SCC OnLine SC 1595





Such admission of her statement is marked as Ex.P/10 wherein at para 16 she fortifies such allegation.

16. The Supreme Court dealing with the issue of extra marital affair allegation in the matter of *Narendra* (supra) reiterated the view taken in *Vijay kumar Ramchandra Bhate v Neela Vijay kumar Bhate*⁷ and held that when the assassination of character is made by either of the parties, it would constitute a mental cruelty for which a claim for divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 would be sustainable. The Supreme Court held thus at para 13 :



“13.....The position of law in this regard has come to be well-settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as

⁷ AIR 2003 SC 2462



the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible.”

17. Apart from the extra marital relation in this case the wife has alleged that the husband (appellant) has an illicit relation with his own mother.

18. The legal position as to when a false complaint would amount to cruelty was also examined by the Supreme Court in the matter of *Raj Talreja v Kavita Talreja*⁸ where the Court held that it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers.

19. The allegation made by the wife against her husband wherein the character of mother of the husband is also assassinated. It cannot be sidelined to say that it was a spur of moment, but it was in raged situation. The nature of such statement destroys the reputation and value of the husband and wife in the eyes of each other and it cannot be said to be a normal wear and tear or isolated incident. When the wife affirms her statement made in the

8 AIR 2017 SC 2138

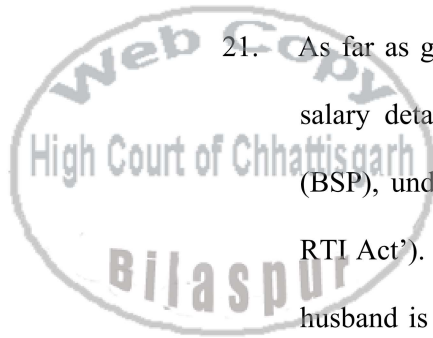


different forums wherein the sacred relation of mother & son is being attacked by such accusation certainly it would lead to mental cruelty.

20. In view of the above discussion, we are of the view that the finding of the learned Family Court requires inference. Accordingly, the appeal is allowed. The impugned judgment and decree dated 13-3-2020 passed by the First Additional Principal Judge, Family Court, Durg, in civil suit No.53-A/2017 is set aside. The marriage solemnised between the parties on 11-5-2011 is dissolved by decree of divorce.

21. As far as grant of alimony is concerned, the wife has placed the salary details of the husband, issued by the Bhilai Steel Plant (BSP), under the Right to Information Act, 2005 (for short 'the RTI Act'). From which it is manifest that as on August, 2022 the husband is getting gross salary of Rs.1,71,995/- per month. The husband has also placed an information provided to him by the Indian Institute of Technology, Kharagpur (IIT), under the RTI Act to establish the fact that the wife received an amount of Rs.4,80,000/- as consolidated compensation for the financial year 2022-23.

22. The concept of maintenance grant is to ensure that the wife is not left in a state of destitution after the divorce. The Supreme Court has consistently held that in order to ameliorate the financial position of a woman who had left her matrimonial home; grant of





maintenance is a means to secure the woman's sustenance, along with that of the children, if any. The statutory provision entails that if the husband has sufficient means, he is obligated to maintain his wife and children, and he cannot escape from his moral and familial responsibilities even after divorce. In the instant case, since no alimony has been fixed by the learned family Court in favour of the wife, and in such circumstances to avoid the multiplicity of proceedings, we are inclined to hold that the wife is entitled to get ₹ 35,000/- (Rupees Thirty Five Thousand Only) per month from the appellant towards maintenance which would be deducted at source from the salary of the appellant. It is further observed that as and when the salary is reciprocally increased, subsequent to it the amount of maintenance shall also be increased proportionally to the extent of increase in salary.

23. A decree be drawn accordingly.

Sd/-

(Goutam Bhaduri)
Judge

Gowri

Sd/-

(Sanjay S. Agrawal)
Judge