

**HIGH COURT OF CHHATTISGARH, BILASPUR****FAM No. 30 of 2017**

Sukhdev Sahu

---- Appellant**Versus**

Smt. Gauri Sahu,

Respondent

For appellant- Shri Shaleen Singh Baghel, Advocate.

For respondent – Shri Rajat Agrawal and Ms. Saloni Verma, Advocate.

Hon'ble Shri Justice Goutam Bhaduri &
Hon'ble Shri Justice Radhakishan Agrawal
Judgement

Per Goutam Bhaduri, J.**01/09/2022**

Heard.

1. Instant appeal is against the judgement and decree dated 27/07/2016 passed by the learned Family Court, Rajnandgaon whereby petition filed by the husband seeking divorce on the ground of cruelty was dismissed.

2. Brief facts as pleaded by the husband was that the parties were married on 29/04/2004. Thereafter, the wife joined the company of husband. It was pleaded by the husband since he was posted to perform his duty in the naxalite affected area as such he had to stay at the station



of posting wherein the family were not allowed to be taken with them. Consequently, while he was discharging his duty in naxalite prone area he could not take his wife, that enraged the wife. It is further pleaded that out of the trivial issue, the wife started behaving improperly with the family members and mis-behaviour reached to the extent that it turned into cruelty to the aged mother. It was further pleaded that false allegations were imputed of demand of dowry and torture and wife even filed a complaint under Section 498-A of IPC wherein eventually the husband was acquitted. It was further pleaded that on the earlier occasion too because of difference in between the parties, an application for divorce was filed but it was mutually settled, thereafter the wife joined the company of the husband but her behaviour did not improve and she started behaving with the husband with cruelty and therefore on the daily basis since quarrel occurred in between the parties, they were not compatible to each other, divorce was sought for.

3. In reply to the allegation, the wife contended that though the husband stayed at naxalite area, but it was for only few period of time but while he was posted in different places in Raipur, Durg she was not taken with him and she was left alone in the village. It was further stated that the husband used to stay away for no reason whatsoever and during her stay she was being tortured for demand of dowry, however when the report was made u/s 498-A of IPC in order to get rid of it a compromise was effected in criminal case and the wife joined the company of husband but again the husband started the same behaviour which eventually did not improve. It was further stated that he was having some extra marital relation and used to stay away from the wife and on the false pretext claim



for divorce was made.

4. The husband examined himself as PW-1, Dheluram Sahu as PW-2 and Sher Singh as PW-3 whereas the wife examined four witnesses including herself as DW-4 and another three witnesses.

5. Learned family court after evaluating the facts and evidence dismissed the application seeking divorce by the husband. Hence, this appeal.

6. Learned counsel for the appellant/husband would submit that the evidence on record would show that the false allegations were attributed to the husband and report under section 498-A IPC was lodged wherein after trial he was exonerated, therefore on this ground alone the husband is entitled for divorce. He would further submit that false allegations have been attributed to assassinate the character of the husband and there is no proof of the same. Consequently, the husband and wife they could not go together and the trial court has failed to appreciate the evidence of the husband PW-1 and specially the evidence of PW-2 who has fully supported the contention of the husband. Therefore, the finding arrived at by the learned family court is defective and is liable to be set aside.

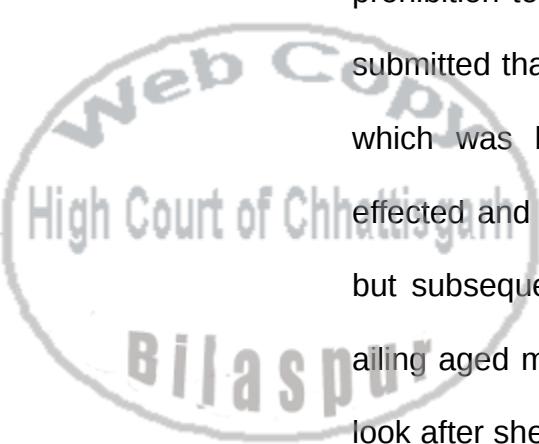
7. Per contra, learned counsel for the respondent/wife would submit that the evidence of the husband when are evaluated it would show that no cruelty to the extent of degree which entitle him for divorce has been proved. He would submit that when the report was made under Section 498-A of IPC after the trial commenced, the husband on the pretext that the wife would be kept properly had compromised and therefore complaint under Section 498-A IPC was disposed off. He would submit that the



ground as alleged by the husband would show that it was the husband at his behest the wife was subjected to cruelty as she was left alone in the village though she could have been taken to his working place, as such the dismissal of the application for divorce is well merited.

8. We have heard the learned counsel for the parties at length and perused the documents.

9. Perusal of the pleading made by the husband would show that because of the fact he was posted in the naxalite prone area to discharge his duty he could not bring his family to that place as there was official prohibition to bring the wife or the family at those places. He further has submitted that on the earlier occasion an application was filed for divorce which was bearing No.82-A/2010. Subsequently, a compromise was effected and husband took the wife with him and got the case dismissed but subsequently again the wife started quarreling and did not see her ailing aged mother where she was at the village and on being insisted to look after she used to abuse. The deposition is also in the similar line. The cross-examination of the witness would show that the husband was admitted to the service in the year 2007. A document Ex.D-1 was referred during the cross-examination which pertains to some counseling in the family in the Sahu Sang, Dongargaon. He admitted the fact that on 3/11/2006 an application was filed by him for convening the meeting of the society and he also admitted the fact that the wife filed an application on 28/10/2006 for convening the meeting of society. Thereafter, meeting of society was convened and in that they attended and admitted to have given their statement. Perusal of Ex.D-1, though the husband refused the signature, in such document it was concluded that both the husband and





wife would stay together and it was agreed that he will take and treat the wife with all honour and follow the rituals of the society. The said document is of 24/12/2006. Subsequently, the evidence of facts would show that on the basis of compromise the appellant and the respondent started living together. Statement further shows that after the reunion husband had left for battalion of service. He took the wife to Bhilai and kept her there and thereafter after 15 days he took the wife to place Chhuikhadan. He further admitted that in March, 2007 a report was lodged against him under Section 498-A of IPC and the statement would show that after the compromise was effected the complaint under Section 498-A IPC was not adjudicated on merits. According to the statement of the husband an application was filed for divorce, in the year 2010 but subsequently since they started living together as such that application was not adjudicated on merits.

10. Statement of Gauri Sahu respondent corroborated by one Ramnath Sonkar and Chandan Lal would show that after the marriage respondent/wife was living at Chuikhadan with her in-laws. The suggestion given to them was denied that in-laws were aged and ailing. Further suggestion was given to the witnesses of the respondent/wife that the wife insisted to stay alongwith the husband at his place of working which shows the state of affairs that wife wanted to stay with husband. The husband in his affidavit and the statement stated that the wife always insisted to stay alongwith him but he could not take the wife to his working place the naxalite area. As against this the statement of the witness PW-2 Dheluram Sahu would show that even the husband was posted at city of Raipur and city of Bhilai the wife and the children were kept at



Chuikhadan. The statement of PW-2 would further show that she used to take care of the needs of her mother-in-law while she was living at Chuikhadan. Therefore, the analysis of the evidence would show that the husband insisted the wife to stay at his mother's place even if he was posted in city. It is obvious that if the wife insists to stay with the husband and without any extraneous reason or official cause, if husband refuses to keep her it cannot be said to be a cruelty by the wife towards the husband for such insistence. During the matrimonial ties the reciprocal respect and regard to each other and the company is necessary. In absence thereof any forceful imposition of condition by either side may lead to a matrimonial disruption. So if the husband expects the wife to stay at a place other than his company without any sufficient cause it cannot be stated that because of resistance by the wife to stay apart-it would be a cruelty by wife.

11. Consequently, after evaluation of the entirety of the facts and evidence, we are of the view that no illegality and perversity can be attached to the impugned judgement. Appeal has no merits and it is dismissed.

Sd/-

(Goutam Bhaduri)
Judge

Sd/-

(Radhakishan Agrawal)
Judge