



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
FA (MAT) No. 150 of 2022

(Arising out of judgment dated 30/07/2022 passed by the Judge, Family Court, Balodabazaar in H.M.A. No. 47-A/2020)

---- Appellant

Versus

---- Respondent

For Appellant : Mr. Sumit Shrivastava Advocate
For Respondent : Mr. Md. Ruhul Ameen Memon, Advocate

Hon'ble Shri Goutam Bhaduri, J
Hon'ble Shri Deepak Kumar Tiwari, J

Judgment on Board

Per Goutam Bhaduri, J.
22/11/2023

Heard.

1. The present appeal is against the judgment and decree dated 30/07/2022 passed by the Judge, Family Court, Balodabazaar in H.M.A. No. 47-A/2020, whereby the application preferred by the husband/appellant seeking divorce was dismissed.



2. The suit for seeking divorce was filed by the husband/appellant with the pleadings that they were married on 20/04/2005 at village Gadahidih. Thereafter, both the husband and wife stayed at village Dharashiv, which is the matrimonial home of the wife. Subsequently, to earn the livelihood, they went to Hyderabad and after six months, they came back to village Dharashiv. According to the husband, thereafter she went to her paternal home and despite all efforts made by the husband, she did not return. He further pleaded that because of financial stringency of the husband, primarily the wife did not want to come back. Narrating certain incidents, it has been pleaded that deliberate quarrels were picked up by the wife and the threat was extended to the effect that she will commit suicide, therefore, a social meeting was convened and in such meeting, the wife again went back to parental home. It has been stated that since 14/04/2017, the wife has not come back to join the company of the husband and as such she has deserted him and filed an application under Section 125 of the Cr.P.C, which was dismissed by the Judicial Magistrate.

3. The defendant wife, in reply, pleaded that she was subjected to torture by the husband and as such she was driven out of matrimonial home. Consequently, she was constrained to stay at her parental village since 14/04/2017. She further pleaded that abuses were hurled against her on colour of skin and she was subjected to physical assault. The husband,



in fact, wanted to remarry therefore the application for divorce was preferred.

4. On behalf of the husband, he examined himself as AW1 and his neighbour Omprakash Verma as AW2. The wife examined herself as NAW-1 and her father Nanak Ram Verma as NAW-2.

5. The learned Family Court after evaluating the evidence adduced by the parties, dismissed the application preferred by the husband. Hence, this appeal.

6. Learned counsel for the appellant/husband would submit that the wife without any rhymes and reasons abandoned the husband since 2017 and the evidence on record would show that all efforts to reunite have failed. He would further submit that certain averments were made during the evidence though were not part of the pleadings, consequently, those grounds cannot be assailed by the wife/respondent. He would further submit that despite all efforts when the wife did not come to join the company of the husband, the application for divorce was filed which would show that she consciously deserted the husband which is evident from the fact that maintenance claim application under Section 125 of the Cr.P.C was preferred by the wife, which was also dismissed. Therefore, the order passed by the learned Family Court requires to be interfered by granting a decree of divorce.



7. *Per Contra*, learned counsel appearing on behalf of the defendant/wife opposes the submissions made by the learned counsel for the appellant/husband.
8. We have heard learned counsel for the parties and perused the pleading and evidence available on record.
9. The husband/appellant stated that immediately after the marriage, they went to Hyderabad to earn their livelihood and thereafter when they came from there to village Dharashiv, the wife went to her parental home and when she did not return back and after great intervention, she came back, the excuse was given that she was not mentally fit to come back by the parents of the wife. The husband/appellant stated that because of financial condition of the husband, the wife/respondent did not want to join back his company. On the contrary, the evidence of the wife/respondent would show that after the marriage, they went out to Hyderabad and came back to her matrimonial home after four months, and during such stay, the husband/appellant used to abuse her with the comments that she is a lady having black skin colour, and as such she was abused and assaulted. She further stated that during her pregnancy, she was also physically assaulted on the ground that her colour of skin is black.
10. On the other hand, the husband stated that in the morning on



14/04/2017, when he was sitting for having meal, the wife, while brooming, deliberately touched broom on his feet two three times and when the husband scolded her, the wife poured kerosene and extended threat to commit suicide. Subsequently, the family members of the wife were summoned and after the meeting, the wife was sent to her paternal house for few days. As against this, the statement of wife would show that while she was assaulted, the villagers intervened and said that she is not at fault, therefore, she should not be thrown out of the house. Thereafter, the parents of the wife/respondent were summoned and they also requested with folded hand to husband/appellant and his family members, but they refused to keep her. She also stated that the matter was reported to the society and a social meeting was convened and in such meeting also, her brother and father requested the husband/appellant to keep the wife with him, but they refused to do so. She also stated that prior to the meeting, she was pregnant and she gave birth to a child, however, the child did not survive for more than 3-4 days, thereafter, the husband took the wife back. She stated that again the husband/appellant started to comment that she is having black skin colour and again abused and assaulted her. In cross-examination of the wife, certain suggestions though were made that she poured kerosene on her, it was denied. In further cross-examination she admitted the fact that the villagers namely Rajulal, Jagmohan, Omprakash and



Pyarelal were called, which was also narrated by the husband.

11. Omprakash (AW2) has narrated that on 14/04/2017, while the husband was sitting for his meal, the wife deliberately broomed and touched the same with the feet of the husband, and ultimately the dispute aggravated. Consequently, the wife poured kerosene on her and thereafter, the mother and father of the wife were called. This statement of neighbour Omprakash (AW2) appears to be tutored for the reasons that he narrated certain facts, which happened in the four corners inside the room of husband and wife and he narrated to have seen them. The nature of incident and time of such narration by a neighbour appears to be improbable. Therefore, the evidentiary value of the same become doubtful. The statements of father of wife, Nanak Ram (NAW-2) would show that when they went to leave the daughter i.e. the wife/respondent at her matrimonial home, initially, they refused this, subsequently, the wife was allowed to enter and they came back. Thereafter, a social meeting was convened at Village Dharashi, where the appellant/husband refused to keep the wife. The persons who interfered to settle the dispute namely Rajulal, Jagmohan, Pyarelal were not examined except Omprakash (AW2). However, the statement of Omprakash (AW2) does not corroborate the facts narrated by the husband/appellant and for the reasons that he pretended to be a eye-witness to the incident which happened inside a house of the



appellant/husband.

12. Evaluating the evidence, facts on the preponderance of probability and the allegations of husband and counter allegations of wife, the reasons assigned by the wife appears to be more logical. The wife/respondent without hesitation has come up with a plea that the husband wanted to desert her on the ground that she has black colour skin.
13. In a study in this subject indicates there appears to be a skin-colour preference with regard to making decision about suitability of an individual as a potential partner. The study further indicates that the attractiveness and competency is controlled in a manner to minimize their influence, which attributes to the skin-colour variation. Dark skinned were rated lower than their highly competent light-skinned counterparts and the majority of skin-lightening cosmetics target women. They are likely to portray a dark-skinned woman as an under confident and insecure person who is unable to secure success in life until someone suggest the use of a fairness cream. Entire society of the human race needs to change the dialogue at home, which may not promote the fairness preference of skin. Therefore, the incentive cannot be given to a husband to promote such mind set of the society for preference of light skin over a dark.



14. After cumulative reading of the evidence, we are of the view that no ground of cruelty or desertion has been made out by the husband to get the decree of divorce which are under the Hindu Marriage Act, 1955.
15. For the foregoing reasons, the appeal is dismissed leaving the parties to bear their own cost.
16. A decree be drawn accordingly.

Sd/-

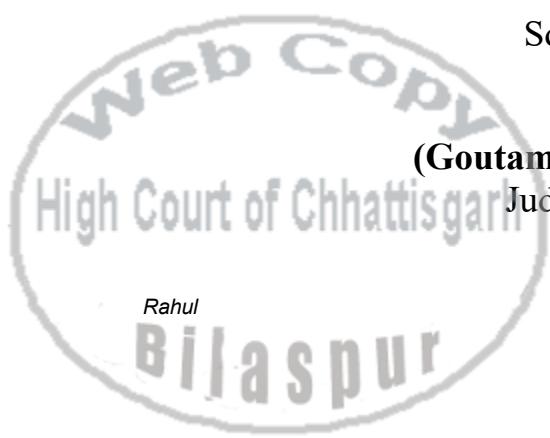
Sd/-

(Goutam Bhaduri)

Judge

(Deepak Kumar Tiwari)

Judge





HEAD NOTE

Entire society of the human race needs to change the dialogue at home, which may not promote the fairness preference of skin.

शीर्ष – नोट अथवा

मानव जाति के सम्पूर्ण समाज को घर के अंदर हो रहे संवाद को ऐसा बनाने की जरूरत है, जो गोरे रंग की प्राथमिकता को प्रोत्साहन न दे।

