

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 31 of 2016

- Dharmendra Kumar Sahu S/o Pardeshi Ram, Aged about 28 Years, R/o Village Dhaneli, P.S. & Tahsil- Gurur, District- Balod (Chhattisgarh), Present Address - Army No. 15696289 M.C.I.F. Romeo Force Signal Regiment 56 A.P.O. Pin 918391(Applicant)

---- Appellant

Versus

- Smt. Geetanjali Sahu W/o Dharmendra Kumar Sahu, Aged about 25 Years, R/o Village Potiyadih, in the House of Father Basant Kumar Sahu, P.S.- Arjuni, District- Dhamtari (Chhattisgarh)(Non-Applciant)

---- Respondent

For Appellant

Shri P.R. Patankar and Shri Utsav Mahiswar, Advocates.

For Respondent

Shri Adil Minhaj, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

By

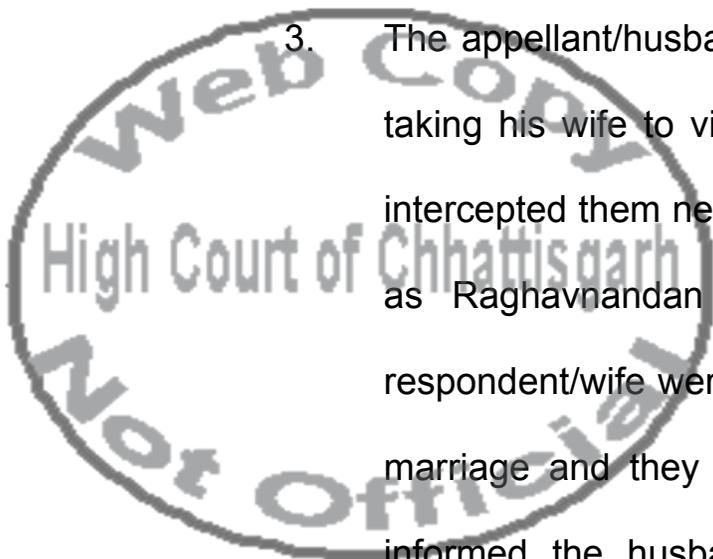
Prashant Kumar Mishra, J.

19-07-2017

1. The appellant – husband has assailed the legality and validity of the impugned judgment whereby the family court has dismissed the suit for grant of divorce under Section 13 (1) (i) of the Hindu Marriage Act, 1955 (for short 'the Act') on the ground that after the marriage the respondent has been living in adulterous relation with one Raghavnandan Sahu.
2. The parties were married at village Potiyadih, Police Station Arjuni, District Dhamtari on 07-05-2011. After the Gauna

ceremony, the wife was brought to her matrimonial house where she stayed for few days but according to the husband she immediately insisted for going back to her parental house/village and in that process she created ruckus in the house and even threatened to commit suicide. After two days, she again insisted for going back to her parental house and retired to bed in a separate room with her paternal grandmother. The husband also alleged that the marriage has not consummated.

3. The appellant/husband has further averred that when he was taking his wife to village Dhamtari on a motorcycle, one boy intercepted them near village Potiyadih and introduced himself as Raghavnandan Sahu. He informed that he and the respondent/wife were in love for about 2 – 3 years prior to the marriage and they still love each other. The defendant/wife informed the husband that she was already married with Raghavnandan in a temple and her present marriage is out of compulsion due to pressure by the relatives because her non-marriage would have created problem for the marriage of her elder brother. It is also averred that after the marriage, the respondent/wife appeared in an examination from Dhamtari College in June, 2011 where Raghavnandan met them and insisted that they should obtain divorce because the respondent Geetanjali is his love. It is specifically pleaded in the application for grant of divorce that Raghavnandan



informed the appellant/husband that he and Geetanjali had visited Gangrel Dam on 07-06-2011 and there they developed physical relation with each other. He also said that thereafter the respondent was carrying pregnancy which was aborted.

4. The respondent/wife denied the allegations on averment that the appellant has made false allegations in collusion with his brother Govind and that all the allegations made in the plaint are concocted and fanciful. She would further plead that frivolous complaint was preferred by the appellant against Raghavnandan Sahu for offence under Section 497 of the Indian Penal Code (for short 'the IPC'), which was dismissed not only by the Trial Magistrate but a revision application preferred by the appellant has also been dismissed by the Sessions Court.
5. Both the parties have led evidence by examining their witnesses while the plaintiff has examined himself as (PW-1), Pyare Lal Sahu (PW-2), Chandramani Sahu (PW-3), Raghavnandan (PW-4). The respondent/wife has examined her witnesses Dhananjay (DW-1), Paras Ram (DW-2), Dwarika Prasad (DW-3) and herself (DW-4).
6. The trial Court has dismissed the suit on findings that the appellant has not been able to prove the commission of adultery by the respondent.
7. Before proceeding to examine the issue fallen for consideration we shall refer to the relevant ground



under Section 13 (1) (i) of the Act and the settled legal position.

8. Section 13 (1) (i) of the Act provides that any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party, after solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse. The word “adultery” has not been used in the provision yet in common parlance the ground under this sub-clause is popularly referred as ground of adultery. The necessary ingredient to prove the matrimonial offence of adultery is that other party had voluntary sexual intercourse with any person other than his or her spouse. Therefore, to bring home this matrimonial offence, the plaintiff has to prove that the spouse has performed sexual intercourse with any other person.

9. In **Ginesi v. Ginesi**¹ it is held that in a matrimonial case the same strict proof is required of adultery as is required in criminal cases in connection with criminal offences properly so called. Referring to **Churchman v. Churchman (1)**² it is held that for proving adultery, the standard of proof is a high one. Adultery cannot be inferred on shadowy material, but on the reasoning of proving beyond reasonable doubt.

1 [1947] 2 All ER 438

2 [1945] 2 All ER 195

10. In **England v. England**³ it is held that there is no rule of law that evidence of the conjunction of strong inclination with opportunity raises an irrebuttable presumption that adultery has been committed.
11. In **Bastable v. Bastable and Sanders**⁴ it is held that bearing in mind the high standard of proof required in a divorce suit on the ground of adultery on the principle that 'in proportion as the offence is grave so ought the proof to be clear', the husband was denied divorce on the ground of adultery as he had not adduced evidence sufficient to discharge the onus on him and had not proved adultery between the wife and the co-respondent, suspicion not being enough. The said judgment further observes that 'in the present case, what is charged is 'an offence'. True, it is not a criminal offence; it is a matrimonial offence. It is for the husband petitioner to satisfy the court that the offence has been committed. Whatever the popular view may be, it remains true to say that in the eyes of the law the commission of adultery is a serious matrimonial offence. It follows, in my view, that a high standard of proof is required in order to satisfy the court that the offence has been committed'.
12. In **Smt. Chandra Mohini Srivastava v. Shri Avinash Prasad Srivastava and Another**⁵ the Supreme Court held that mere fact that some male relation of the wife has written letters to

3 [1952] 2 All ER 784

4 [1968] 3 All ER 701

5 AIR 1967 SC 581

her does not necessarily prove that there was any illicit relationship between the writer of the letters and the married woman who received them. The Supreme Court refused to allow divorce on the ground of adultery.

13. In **Dr. A.R. Aruna Kumar v. Smt. Nalini**⁶ the High Court of Karnataka held that spouse is not entitled to a decree on the ground of adultery merely on the basis of suspicion that the wife might be having some affair or adulterous relation.

14. The evidence available in the present case is required to be tested on the above principle settled by the Supreme Court as also in some English cases. The evidence put forth by the appellant is in the nature of bald allegation that the wife had previous interaction or affair with one Raghavnandan Sahu. His witnesses have also tried to depose that the wife had interaction with Raghavnandan. However, the evidence adduced by the appellant is too sketchy and haphazard. There is no whisper in entire evidence that the respondent/wife had voluntary sexual intercourse with Raghavnandan Sahu at any point of time. Even if the entire evidence is accepted, the basic ingredients of sub-clause (i) of Section 13 (1) of the Act is not satisfied.

15. The main thrust of the appellant's evidence is on the admission made by the respondent/wife about her interaction or relation with Raghavnandan and more particularly the

6 AIR 2003 Karnataka 25

utterances or statement made by Raghavnandan to the appellant when all three met in the college where the wife had gone to appear in an examination in the month of June, 2011. However, when the wife as well as Raghavnandan who appeared as plaintiff's witness were cross-examined, both of them, stoutly denied to have made any such statement to the appellant.

16. If the above piece of suspicion raised by the appellant on his wife is not sustained, there is absolutely no other evidence even to raise suspicion on the wife that she had any kind of relationship with Raghavnandan Sahu. It appears highly probable that the appellant was raising a false plea of adultery against his wife. Admittedly, the criminal complaint case preferred against Raghavnandan Sahu for offence under Section 497 of the IPC has already been dismissed by the Magistrate and is affirmed in revision by the Sessions Court.

17. Based on the above discussion, in our considered view, the trial Court has not committed any illegality nor the judgment suffers from any infirmity. The appeal deserves to be and is hereby dismissed.

Sd/-
JUDGE
(Prashant Kumar Mishra)

Sd/-
JUDGE
(Arvind Singh Chandel)