

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT

&

HON'BLE SMT. JUSTICE ANURADHA SHUKLA

ON THE 15th OF OCTOBER, 2025

FIRST APPEAL No. 58 of 2020

ABHISHEIKH SHRIVASTAVA

Versus

SMT. DIPAKA KHARE

Appearance:

Shri Pushp Raj Singh Gaharwar - Advocate for the appellant.

None for the respondent.

ORDER

Per. Justice Anuradha Shukla

Appellant/husband is aggrieved of judgment and decree dated 05.12.2019 passed in Civil Suit No.154/2015 by Principal Judge Family Court, Satna whereby his divorce petition filed on the grounds of cruelty and desertion was dismissed.

2. Facts undisputed between the parties are that they were married on 29.11.2008 and respondent wife after staying for a month and half in matrimonial house, went to her parental house in Pratapgarh on 15.01.2009. It is also not denied specifically that on 29.06.2011, she came back to her matrimonial house and lived there until 29.02.2012. Admittedly, she gave birth to a girl child in Rewa on 05.05.2012, but appellant/husband did not visit her on this occasion. It is not in dispute that respondent/wife started a

job in Ankleshwar, Gujrat and filed a case for maintenance under Section 125 Cr.P.C. in the Court of JMFC Ankleshwar, wherein maintenance amounts of Rs.5,000/- and Rs.3,000/- were allowed in favour of respondent/wife and her daughter respectively. It is also not in dispute that a petition under Section 9 of Hindu Marriage Act for restitution of conjugal rights was filed by the appellant/husband, however, he later withdrew it.

3. The grounds raised in the divorce petition are that the behaviour of wife with appellant/husband and his family members was very discourteous; she used to threaten the husband that she would find job in Delhi and live there with her male friend with whom she was still maintaining relationship. After initially staying only for some days in matrimonial house, she came back on 12.06.2012 and stayed this time for almost 8 months, but she never informed the appellant/husband that she was bearing a child and on 29.02.2012 when she finally left the matrimonial house, she did not let him know that her delivery was due in May, 2012. Later, appellant/husband came to know that she gave birth to a girl child in her relative's nursing home in Rewa. It was very disturbing for appellant to know that such important facts like conceiving the child and giving birth to her were kept secret from him. Even after delivery, respondent/wife did not return to matrimonial house and went to her parental house claiming that she would be better looked after there. Appellant and his family members tried a lot to contact her, but they were told not to meddle in her life. Respondent/wife started her job in Gujrat and gave false information about matrimonial disputes to the employers of appellant which led to his termination from service, rendering him jobless.

The health of parents of appellant deteriorated on account of this family stress. Appellant/husband decided to withdraw of his application under Section 9 of Hindu Marriage Act as wife had no interest in restoration of marital ties. A request was therefore made to allow the divorce petition on the grounds of cruelty and desertion.

4. Respondent/wife challenged the divorce petition claiming that she was being harassed to an extent that leaving the matrimonial house was only option for her. She went to her parental house on 15.01.2009 and her relatives met her in-laws; discontent about insufficient dowry was expressed in this meeting by the parents of appellant and demand for further dowry was also made. In the meanwhile, the appellant /husband went Australia and telephonically informed the wife that he had solemnized second marriage over there. He strongly opposed the request of respondent/wife to allow her to join him in Australia. This compelled her to get a job in Delhi. On 12.06.2010, appellant returned to India, but was against of respondent coming back to Satna. She, on her own, came to matrimonial house in August, 2010 and stayed there almost two months, but their relationship continued to languish and threats of divorce continued to be given. Respondent/wife again joined her job and on 29.06.2011 when she, along with her relatives, came back to matrimonial house, was allowed entry only with much resistance. Her subjection to cruelty continued and she was forced to leave the house on 29.02.2012 when she was seven months pregnant. All her belongings, including streedhan, were snatched and when information was sent to appellant and his parents about birth of child, they did not visit

the respondent. Respondent/wife later went to Ankleshwar, Gujrat and joined a very petty job over there; for survival she filed the maintenance petition, which was allowed by the Court. She opposed the divorce petition in terms of these facts.

5. The issues were settled by the learned trial Court on the basis of pleadings and after recording the evidence of both the sides, it dismissed the petition.

6. The grounds raised in the first appeal are that the learned trial Court ignored the relevant evidence and the fundamental facts; dismissed the divorce petition on the emotional grounds and the fact that cruelty was committed by the respondent. It was very conveniently ignored that the marital relationship between the parties had come to an end since 2011, when respondent withdrew from the company of appellant. The findings of the trial Court were perverse and improper on facts also, therefore, a request was made to allow the appeal and by setting aside the impugned judgment and decree, divorce petition should be allowed.

7. Before this Court, learned counsel for the appellant/husband submitted the final arguments, while the counsel for the respondent remained absent and failed to contest the appeal.

8. This fact is not in dispute that respondent/wife is living separately since 29.02.2012 and after this date, she gave birth to a girl child on 05.05.2012. Admittedly, there was no reunion of parties since 29.02.2012, and it is also admitted that neither of the parties visited the house of opponent since then, although they were exchanging some phone calls and messages.

9. According to appellant/husband, their separation came to pass when wife left the matrimonial house without giving any details about her future plans or even destinations. Contesting this submissions, the respondent/wife has asserted that she was forcibly thrown out of the house, though she was having seven months old pregnancy. According to her she was being continuously subjected to cruelty on account demand of dowry and was being compelled to do household work unabatedly. As we know, Section 9 of Hindu Marriage Act makes it incumbent on the deserting party to prove that there was justifiable reason for withdrawing from the company of other spouse, and, in this case, this burden lies upon the respondent/wife.

10. From the statements and documentary evidence submitted on her behalf, it is evident that no police report or complaint was made by the respondent/wife regarding demand of dowry, her harassment for this demand, and for that matter, forcibly throwing her out of the matrimonial house. Making allegations is the easiest adventure, but proving them is a burdensome task. We are alive to the fact that on making false allegations, the other spouse may be exposed to shame, ridicule, persecution and also penal liability. Therefore, heavy burden lies upon the spouse to be sensitive and careful while making any such allegations against the other spouse, but from the statements recorded before the trial Court, it can be figured out that respondent/wife was making these allegations very casually. She even failed to give details of circumstances which she was being subjected to face, on account of dowry harassment. The reason for not making the police report or complaint for dowry harassment rested on the fact that she was not interested

in damaging her matrimonial relationship any further, but this explanation does not befit in the circumstances of the case. If she was not keen to report the matter of dowry harassment, she was equally not keen to file a petition of Section 9 of Hindu Marriage Act for obtaining a decree of restitution of conjugal rights. Instead she filed a petition for maintenance and also another petition under the Protection of Women from Domestic Violence Act. It is difficult to understand how these two petitions were helpful in strengthening the marital ties and accordingly, explanation offered by her for not reporting the alleged crime of dowry harassment, appears to be delusivE.

11. From the overview of facts stated on oath, it appears that respondent/wife was expecting the appellant/husband to visit her place and persuade her to restore the matrimonial relationship. Her inordinate insistence gives an impression that her inflated ego was restraining her to restore the marital ties while she herself had left the matrimonial house. This egoistic approach cannot be accommodated under the provisions of Hindu Marriage Act and in these conditions, a cold shoulder given by husband, in not requesting her to come back to the matrimonial house, would not place any guilt intent on him in the separation of parties.

12. On the basis of foregoing discussion, we come to the conclusion that respondent/wife was guilty of deserting the appellant/husband without any reasonable cause and the trial Court failed to appreciate the evidence on this point in correct perspective, when it held that the appellant/husband was to be blamed for not visiting the house of Delhi or the parental house of respondent/wife for bringing her back. The trial Court wrongly placed

emphasis on deciding which of the two parties was non-responsive in restoration of ties while emphasis should have been on the fact which of the two parties deserted the other without any reasonable cause. Therefore, we hold that the divorce petition deserves to be allowed on the ground of desertion.

13. The other ground contested was cruelty. The trial Court divided this ground into 9 sub-grounds and after discussing them individually, in its final opinion, husband failed to prove any of these aspects of cruelty. We notice that the trial Court ignored to appreciate that it could also have been an attribute of cruelty that wife was making allegations of dowry harassment and also of solemnization of second marriage by husband during his stay in Australia. We have already discussed that no reliable evidence was led by the wife to prove that she was being subjected to dowry harassment. In the case of **Mr. Rani Narsimha Sastry vs. Rani Suneela Rani, (2020) 18 SCC 247**, Hon'ble Apex Court was of the opinion that when a spouse faces false allegation of dowry harassment, it cannot be accepted that he was not subjected to any cruelty. We also find that wife has very deftly made an allegation of second marriage by the appellant by claiming that she was informed of this marriage by the appellant himself, although, she has admitted that appellant returned from Australia singly. In the case of **V Bhagat vs. D Bhagat (1994) 1 SCC 337**, the Hon'ble Apex Court considered that the allegations of adulterous course of life made against the spouse as a feature of cruelty contemplated under Section 13(1)(ia) of the Hindu Marriage Act. The Court further held that in a mental cruelty of such nature,

the parties cannot reasonably be expected to live together.

14. In marital relationship mutual trust is the golden thread that weaves affection and admiration in the life of married couples and it gets impaired when unfounded and defamatory allegations are made by one against the other. In the light of unfounded accusations made in this case by respondent/wife, regarding her subjugation to dowry harassment and solemnisation of second marriage by appellant/husband, we hold that the divorce petition deserves to be allowed on the ground of cruelty as well.

15. In terms of aforesaid discussion, the appeal is allowed on both of the grounds i.e, desertion and cruelty.

16. Consequently, setting aside the impugned judgment and decree and the divorce petition is allowed and the marriage solemnized between the parties on 29.11.2008 is dissolved.

17. Decree be drawn accordingly.

(VISHAL DHAGAT)
JUDGE

(ANURADHA SHUKLA)
JUDGE

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