

FA(MAT) No.283 of 2023



AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No.283 of 2023

Reserved on 27.06.2025

Delivered on 15/07/2025

1 - Govind Narayan S/o Late Harmesh Singh Sharma Aged About 41 Years R/o Bazar Para, Ward No. 14, Netaji Marg, Janjgir, Tahsil Janjgir, District Janjgir-Champa (C.G.) (Plaintiff)

... Appellant(s)

versus

1 - Smt Rakhi Choubey W/o Shri Govind Narayan Aged About 36 Years R/o Radha Nagar, P.O. Krishna Nagar, Dhamni, Tahsil Ramanujganj, District Balrampur Ramanujganj (C.G.) (Defendant)

... Respondent(s)

For Appellant(s) : Mr. Anish Tiwari, Advocate

For Respondent(s) : Mr. Santosh Kumar Pandey, Advocate

(Division Bench)

Hon'ble Smt. Justice Rajani Dubey

Hon'ble Shri Justice Amitendra Kishore Prasad

C A V Order

Per. Amitendra Kishore Prasad, J.

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Additional Principal Judge, Family Court, Janjgir (C.G.) dated 22.09.2023 (Annexure A/1) in Civil Suit No.133-A/2022, whereby the Trial Court had dismissed the application of appellant-husband seeking divorce under Section 13 of the Hindu Marriage Act, 1955.

2. In this case, it is an admitted fact that the marriage between both parties was solemnized on **02.06.2013** at Radhanagar Post, Krishnanagar, Tehsil Ramanujganj, District Balrampur (Chhattisgarh). It is also admitted that the appellant had filed a petition under Section 10 of the Hindu Marriage Act, 1955 against the respondent-wife. However, as the applicant-husband did not pursue the matter, the petition was dismissed by the trial Court.

3. Facts of the present case, in brevity, is that respondent-wife is the legally wedded wife of the appellant-husband, and they have no children from their marriage. After the wedding, the appellant-husband was posted at Charcha Colliery, Baikunthpur, about 200 Km from the respondent-wife's parental home. The respondent stayed briefly at her in-laws' house but repeatedly returned to her parental home. She allegedly pressured the appellant-husband to either get transferred to her village or quit his job and threatened

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a dispute arose involving allegations of an affair, causing social humiliation for the appellant-husband. The respondent-wife then left without informing him and later filed a false molestation report, which she withdrew. Despite occasional short stays with the appellant-husband, the respondent-wife mostly lived separately. In 2015, a family dispute led to a police report by the respondent's brother-in-law. She also filed a false complaint in 2016, briefly reconciled, and then left again. After the appellant-husband's transfer to Champa in June 2016, she stayed with him for a week in 2017. Since then, there has been no physical relationship between them. The appellant-husband alleged that the respondent-wife refused to leave her Anganwadi job and has been mentally and physically harassing him. Therefore, he has filed this instant divorce appeal.

4. In her written statement, the respondent-wife party has denied all the facts except the admitted ones, and stated that the appellant-husband is seeking divorce solely because he is unable to fulfill his marital duties towards the respondent-wife. She has expressed her willingness to live with the appellant-husband. Therefore, this appeal is liable to be dismissed.

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husband under Section 13 of Hindu Marriage Act, and the said application was dismissed by the trial Court.

6. Mr. Anish Tiwari, Learned counsel for the appellant-husband submits that the trial Court has erred in law while not considering the vital evidence in this matter. The factum of cruelty has duly been proved by the appellant-husband, however, it has been illegally not considered by the Family Court. There is specific allegation made by the husband that respondent-wife is not willing to cohabit with the husband. He goes on to submit that he has filed an application under Section 9 of the Restitution of Conjugal Rights only upon assurance of respondent-wife, he has withdrawn the application on 25.06.2014. The respondent-wife making false allegation with regard to illicit relationship of the appellant-husband with one neighbourhood lady, the respondent-wife herself has left the company of her husband in the year of 2014. He would further submit that in the year of 2015 a social meeting was held in presence of her brother-in-law (*Jijaji*) of the wife, namely, Om Prakash Tiwari in which the respondent-wife quarreled and assaulted her own brother-in-law due to which he has lodged a report against her in the concerned police station.

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and her sister. Since the month of May-June, 2017, they are living separately and they are not having any physical relations since then. The respondent-wife, in her written statement, has denied the allegations made by the appellant. However, she has categorically asserted that the marital relationship could not be consummated due to the reason that the appellant-husband's incapacity to engage in sexual relations, alleging that he is impotent. She has categorically stated that since the husband is not capable of maintaining the matrimonial relations as such he has filed this application for seeking decree of divorce.

8. Learned counsel for the respondent-wife submits that no case is made out for grant of a decree of divorce and prayed that according to the written statement of the respondent-wife the Court may call for the medical report of the parties. The learned Family Court after framing the issues and after considering the documents filed by the parties and further taking in consideration the pieces of evidence available on record has rightly dismissed the application filed by the appellant-husband stating that the appellant failed to prove the allegations of cruelty and desertion against the respondent-wife. The husband was having onus to prove his case which he could not prove consequently the

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9. We have heard learned counsel for the parties and perused the material available on record.
10. It is not in dispute that the marriage between both parties was solemnized on 02.06.2013 at Radhanagar Post, Krishnanagar, Tehsil Ramanujanj, District Balrampur (Chhattisgarh). From a perusal of the application seeking divorce, it appears that the husband has made specific allegations regarding cruelty committed by the wife and has also stated that the wife is unwilling to maintain matrimonial relations with him. She did not reside continuously with the appellant-husband but stayed with him only for a limited period. The respondent-wife allegedly pressured the appellant-husband either to get a transfer near her parental home or to leave his job and live with her. Since the wife is working as an Anganwadi Karyakarta and the husband as a Shiksha Karmi, she has shown unwillingness to stay with the appellant-husband.
11. When the wife refused to cohabit with the husband, he filed an application under Section 9 of the Hindu Marriage Act, 1955. However, upon receiving an assurance from the respondent-wife that she would resume cohabitation, the husband withdrew the

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and incapable of establishing matrimonial relations with her. Despite such allegations, the husband attempted to resolve the matter amicably. The husband's version is supported by the evidence of AW-02, as well as the documents related to the earlier application filed under Section 9 of the Hindu Marriage Act, 1955. Upon a thorough review of the written statement filed by the respondent-wife, it is evident that she made serious allegations of impotency against the husband, which became the ground for the husband seeking a decree of divorce.

12. In her testimony, the wife also stated that she came to know about the husband's alleged incapacity for physical relations from the beginning of the marriage. However, she admitted that she did not inform anyone about it. She also categorically admitted that there is no medical evidence to support the claim of impotency. A complaint was lodged at the police station, in which she admitted that the complaint was filed due to harassment by the husband and his sister.

13. Upon perusal of the wife's evidence, it is an admitted position that the husband and wife have not been living together since 2017, and since then, they have not shared any matrimonial life.

brought on record by the respondent-wife to support the claim of impotency.

14. An unfounded allegation of impotency can constitute a ground for divorce under the Hindu Marriage Act, 1955, specifically under the concept of cruelty. Making such allegations, particularly without any supporting evidence, can be considered mental cruelty, which is recognized as a valid ground for divorce. If one spouse makes a baseless claim about the other's impotency, it may cause significant emotional distress, humiliation, and irreparable damage to the accused spouse's reputation and mental well-being. It is important to note that cruelty in this legal context does not necessarily require physical abuse or violence. Mental cruelty, including false and unfounded accusations, can be sufficient grounds for the dissolution of marriage. When a spouse is accused of impotency, the burden of proof lies with the accuser. They are required to substantiate the claim with credible evidence. If they fail to do so, and the allegation remains unproven, it is deemed unfounded. Such an unfounded accusation can have a severe impact on the accused spouse, leading to emotional trauma and social stigma. In several judgments, courts have held that false and malicious allegations, particularly those attacking a

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without any evidence and remains unproven, it amounts to mental cruelty, and the aggrieved spouse may seek divorce on this ground.

15. As regards the wife's allegation against the appellant-husband that he is impotent, such a baseless and unfounded claim amounts to cruelty. These accusations not only cause severe mental agony but also tarnish the appellant's reputation and prestige among his friends, the public, and society at large.

16. The Hon'ble Apex Court in the Case of **V. Bhagat Vs. D. Bhagat**¹ as observed under :-

“Mental cruelty in Section 13(1)(ia) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in

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not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."

17. Further, in **Samar Ghosh Vs. Jaya Ghosh**², the Hon'ble Supreme Court outlined illustrative cases where mental cruelty can be inferred. The same facts were discussed by a Division Bench of this Court in **Devki Nandan Das Vs. Smt. Manorama Das**³. Relevant paragraphs from these judgments are quoted below:

- **Samar Ghosh (supra)**

"101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is

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cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

- **Devki Nandan Das:**

“16. Considering the aforesaid principle and the conduct of the respondent with respect to the matrimonial duties and obligations, this Court finds that a false allegation of torture and impotency would never be tolerated by a reasonable man and it amounts to mental cruelty. The respondent herself left the matrimonial house voluntarily after making such allegations, therefore, the relationship has deteriorated to such an extent that matrimonial bond is beyond repair. The marriage between the parties has become a fiction though supported by a legal tie by refusing to sever that tie, the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.”

18. The above-mentioned paragraphs provide insight into the Court's perspective on mental cruelty in matrimonial disputes.

19. In light of the aforesaid principles as laid down by the Hon'ble Supreme Court, as well as the order passed by the Division Bench of this Court, it is quite evident that in the present case, the respondent-wife has made allegations against the husband without any proper foundation. In her written statement as well as

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credible evidence, particularly medical evidence. If a wife makes allegations regarding the physical or sexual incapacity of her husband without substantiating it, such conduct certainly amounts to serious mental cruelty. It is also apparent that the wife has not been living with the appellant-husband for a long time without any lawful reason, and further, no child has been born out of their wedlock. These crucial aspects were not properly considered by the learned Family Court, and without assigning cogent reasons, the application seeking divorce was dismissed, even though both grounds, **cruelty** and **desertion**, were duly proved by the appellant-husband.

20. An unfounded allegation of impotency clearly falls within the scope of *cruelty* as defined under Section 13(1)(ia) of the Hindu Marriage Act, 1955. The baseless nature of the allegation itself constitutes mental cruelty, warranting the dissolution of the marriage. In addition, the wife has made a serious allegation regarding the husband's illicit relationship with a neighboring woman, which is false and falls under the category of grave cruelty. Therefore, the Family Court erred in rejecting the appellant husband's application for divorce on this ground and also it has committed grave illegality in holding that the

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21. In view of the above, we are of the considered opinion that the appellant has successfully proved the grounds as contemplated under the **Hindu Marriage Act**, and therefore, the findings recorded by the Family Court are not sustainable and are liable to be set aside.

22. Consequently, the appeal is **allowed**, and the impugned order is hereby set aside. The marriage solemnized between the parties on **02.06.2013** is **dissolved by a decree of divorce**.

23. The parties shall bear their own costs. Decree be drawn accordingly.

Sd/-
(Rajani Dubey)
Judge

Sd/-
(Amitendra Kishore Prasad)
Judge

Digitally
signed by
ABHIGYA
SAXENA
ABHIGYA
SAXENA
Saxena