



2026:CGHC:26143-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 91 of 2023

1 - Smt. Devki W/o Vinay Sethiya Aged About 24 Years R/o Sundipara, Village-Nangur, Tahsil- Jagdalpur, District- Bastar, Chhattisgarh

... Appellant(s)

versus

1 - Vinay Sethiya S/o Late Budhson Sethiya Aged About 27 Years R/o Jadigudipara, Kaikagarh, Police Station- Parpa, District- Bastar, Chhattisgarh

... Respondent(s)

For Appellant (s)	: Shri Pushpendra Kumar Patel, Advocate
For Respondent(s)	: None

**DB : Hon'ble Shri Justice Parth Prateem Sahu
Hon'ble Shri Justice Sachin Singh Rajput**

Judgment on Board

25/06/2026

Per Sachin Singh Rajput, J.

Parties are referred to as appellant/wife and respondent/husband in this case.

1. The appellant/wife has filed this appeal under Section 19 (1) of the Family Courts Act, 1984 being aggrieved by the impugned judgment and decree dated 13/12/2022 passed by the learned Judge, Family Court, Jagdalpur, District – Bastar (CG) (for short 'Family Court') in Civil Suit No.11A/2020.



2. By the impugned judgment, learned Family Court has passed the decree of divorce in favour of the respondent/husband allowing an application under Section 13 (1) (i-a)(i-b) of the Hindu Marriage Act, 1955 (for short 'the Act of 1955') and dissolved the marriage between the parties solemnized on 08/05/2016.

3. The respondent/husband filed an application under Section 13 (1) (i-a)(i-b) of the Act of 1955 seeking decree of divorce against the appellant/wife. As per pleading in the application, the parties are governed by Hindu law. They were married on 08/05/2016 according to Hindu social rights and rituals. They were not blessed with any child as after marriage till the application is filed, no cohabitation has taken place between them. It is further pleaded that the appellant/wife resided with the respondent/husband in his house, however, he was deprived with physical pleasure by the appellant/wife. In the wedding night, when the respondent/husband touched the appellant/wife, she started shouting and used words like lustful person, sex starved etc. however, just for the sake of pride of his family, he somehow managed his disrespect. He showed his affection to the appellant/wife, however she never fell for him and always avoided him and kept distance with him. She used to complain about the respondent/husband to her family members. By way of avoidance and disregard, the appellant/wife was giving mental cruelty to the respondent/ husband. Whenever he tried to maintain physical relationship, she denied the same, thus, on account of mental trauma, he could not have any job and at present, he is jobless. He is not having any source of income, however, he is managing himself from the little income of his father. Whenever the appellant/wife and respondent/husband were alone in the home, she used to lock herself in other rooms and on being called, she used to start shouting and started threatening the respondent/husband. She never slept with the respondent/husband.

4. The behaviour of the appellant/wife became extremely volatile. She used to threaten the respondent/husband of dire consequences and also threatened him by showing hard object. Thus, under extreme adverse conditions, the respondent/husband had to live with the appellant/wife. Whenever, he tried to hold her in his arms, she used to scratch him by her nails and wound him by biting. Thus, the appellant/wife inflicted physical injury on him. After passing considerable period of marriage, the family member used to taunt him as he could



not become a father, upon which the appellant/wife stated that the respondent/husband is not capable to become a father. She never misses an opportunity to publicly humiliate the respondent/husband by which, he was publicly mocked that he cannot father a child. It is the further pleading of the respondent/husband that since 02/01/2019, the appellant/wife is residing in her maternal home. As the appellant/husband, after sufficient period of marriage, was deprived of sexual pleasure from his wife rather he was subjected to avoidance, assault, abuse, mock, humiliation, taunting etc., he is entitled for decree of divorce.

5. The appellant/wife filed a written statement and denied the averments of the claim application. It was pleaded that sufficient dowry was given including a motor cycle, silver-gold ornaments, furniture etc., even then, the respondent/husband and his parents demanded silver and gold ornaments and other articles from her and used to trouble her. The respondent/husband used to assault the appellant/wife when she refused to give dowry. On account of assault made by the respondent/husband and his parents, she went to her parents' house and started living there. She tried to lodge report of the incident in the police station then she was sent to Women's Cell, Jagdalpur where a report was written. After writing a report, counseling was performed after which she wanted to live with the respondent/husband, however, injustice was done to her and a notice under Section 155 of CrPC was given to her. The appellant/wife still wants to reside with the respondent/husband however, he is not inclined to live with her. The respondent/husband has 5-6 acres of irrigated agricultural land and is earning Rs.20,000/- by working in other private institutions. Thus, prayed for dismissal of the application for divorce.

6. On the basis of above broad pleadings, learned Family Court framed following issues -

<u>Issue</u>	<u>Conclusion</u>
i. Whether the applicant has been subjected to cruelty by the non-applicant after marriage by depriving him of marital happiness?	Proved
ii. Whether the applicant has been subjected to cruelty by the non-applicant after marriage by using abusive language, abusing, assaulting	Proved



- and threatening him?
- | | | |
|------|--|---------------------------------------|
| iii. | Whether after marriage, the applicant and his family members brutally beaten up the non-applicant while demanding dowry? | Not proved |
| iv. | After marriage, has the applicant thrown and abandoned her? | Not proved |
| v. | Is the applicant entitled to obtain a decree of divorce against the non-applicant? | Yes |
| vi. | Relief and expenses? | Petition allowed according to para 27 |

7. The respective parties led their evidence to prove the pleadings. On assessment of the material available on record, learned Family Court allowed the application filed by the respondent/husband and granted decree of dissolution of marriage by the impugned judgment and decree which led to filing of this appeal.

8. Learned counsel for the appellant/wife argued that the impugned judgment and decree passed by the learned Family Court is illegal, perverse, erroneous and contrary to law. It is further argued that the learned Family Court erred in granting decree of divorce without any proof of cruelty by the appellant/wife. Learned Family Court has appreciated the evidence of the parties to its proper perspective. He further submits that from the evidence on record, it is quite vivid that the appellant/wife is willing to reside with the respondent/husband which has been overlooked by the learned Family Court. Thus, he submits that the impugned judgment and decree deserves to be set aside by allowing the appeal.

9. Despite service, none appeared on behalf of the respondent/husband.

10. We have heard learned counsel for the appellant/wife and perused the records including the impugned judgment with rapt attention and utmost circumspection.

11. The question before this Court is as to whether the learned Family Court was justified in granting decree of dissolution of marriage and the findings recorded by the learned Family Court can stand to the scrutiny of this Court.

12. The respondent/husband has filed the application for divorce mainly on the



ground of cruelty which also included mental cruelty. The defence put forth by the appellant/wife is that rather she was subjected to cruelty by the respondent/husband and his family members on account of demand of dowry and she was thrown out from the house and thus, the respondent/husband deserted her.

13. Decision of Hon'ble Supreme Court in the case of **Samar Ghosh vs. Jaya Ghosh** reported in **(2007) 4 SCC 511** lay down the parameters to constitute mental cruelty and held that mere trivial instances involving minor clashes between the spouses would not amount to mental cruelty. Mere unhappiness and dissatisfaction of one party at the instance of other cannot by itself constitute cruelty warranting dissolution of marriage.

14. In the light of above authorities, facts of this case needs to be examined thoroughly. Issue No.1 is with regard to cruelty meted out by the appellant/wife to the respondent/husband by depriving him from marital pleasure whereas issue No.2 is with respect to cruelty meted out by the appellant/wife to respondent/husband using filthy language, assault, threatening etc. The burden to prove this issue was upon the respondent/husband.

15. Learned Family Court also placed reliance on the decision of the Supreme Court in the case of **Samar Ghosh** (supra) and **K.Shriniwas Rao vs. D.A. Deepa** Civil Appeal No.1794/2013 passed on 22/02/2013. The respondent/husband examined himself as PW4. In his evidence under Order 18 Rule 4 CPC, he deposed in the line of pleadings. Perusal of statement of witness clearly indicates that whenever, he tried to make physical relationship with the appellant/wife, she denied the same. The evidence further states that whenever the respondent/husband tried to hold the appellant/wife, she used to injure him by biting and scratching by nails on his face. The evidence also suggests that when the family did not increase after passing of sufficient time of marriage, respondent/husband suffered taunting by the family members. He has also stated that the appellant/wife used to taunt him saying that he is not capable of becoming a father. The evidence also suggests that the respondent/husband was publicly humiliated by the appellant/wife. The evidence further states that the appellant/wife misbehaved with the family members of the respondent/husband and her nature was always aggressive. It has come on record that since



02/01/2019, the appellant/wife is residing in her maternal home and for all these years, the respondent/husband was deprived of marital pleasure, cohabitation and was subjected to avoidance, assault, abuse using filthy words etc. On cross examination of this witness, no credible facts have been brought on record.

16. Apart from this, Smt. Suruchi Sethiya (PW1) corroborated the statement of respondent/husband. She has deposed that the appellant/wife used to quarrel with her husband and her mother-in-law and used to utter filthy language against his in-laws outside the house. On being asked to come inside the house, she assaulted the respondent/husband and torn out of his clothes. From the statement of this witness, it is also apparent that the appellant/wife used to shout in the entire vicinity and used to say that the respondent/husband is willing to have physical relationship with her however, she is not interested in any physical relation with the respondent/husband. This was told by the appellant/wife to her brother-in-law. Thereafter, she went along with her brother-in-law without telling the respondent / husband and his mother. In cross-examination, this witness has stated that her house is 50 meters away from the house of respondent/husband. She has denied suggestion that she is not aware as to what was happening in the house of the appellant rather stated that the appellant/wife used to hurl abuses and her behaviour with the mother-in-law is not good. She has stated that the appellant/wife is residing in the maternal home for about two years. In the cross-examination, she stood firm with the fact that the appellant/wife stated that the respondent/husband is willing to have physical relationship with her, however, she is not inclined to have physical relation with him and left with her brother-in-law in a vehicle. Almost identical statement has been given by Smt. Sangita Sethiya (PW2). She also deposed with regard to the bad behaviour of the appellant/wife. She also states that her house is near to the house of respondent/husband and she can hear the voice clearly and knows the fact with regard to abuse, assault, tearing of clothes of respondent/husband. This witness also stated that the appellant/wife has terrorized the respondent/husband and his family members by her behaviour. Nothing significant is available in the cross-examination of this witness.

17. Likewise Somsingh (PW3) also deposed that there is a dispute among the appellant/wife and the respondent/husband and he is aware about it. Smt. Urmila Sethiya (PW5) and Devki Sethiya (PW6) also deposed in the same line with



regard to the behaviour of the appellant/wife.

18. From the assessment of evidence of these witnesses, the factum of nature of the appellant/wife is visible. Her behaviour towards her husband is evident that she did not allow the respondent/husband to have physical relationship with her. The factum of misbehaviour, taunting, abusing and causing physical harm by scratching by nails and biting by teeth is also reflected.

19. Learned Family Court has assessed the evidence so brought meticulously and decided issue No.1 and 2 in favour the respondent/husband.

20. Issue No.3 and 4 is in respect of cruelty on account of demand of dowry meted out by the respondent/husband to the appellant/wife and also deserting her by pulling out of her house. These issues were found to be not proved by the learned Family Court. These issues have been framed on the basis of pleadings of the appellant/wife. Thus, the burden to prove the same was upon the appellant/wife.

21. Learned Family Court while deciding these issues held that the appellant/wife has leveled an allegation that she was thrown out of the house by her in-laws on account of demand of dowry however she has admitted in her cross examination that the father of the respondent/husband had already died prior to her marriage. Thus, it cannot be stated that the factum of cruelty on account of demand of dowry is not proved. Learned Family Court also found that as to whether the mother-in-law of the appellant/wife subjected her to cruelty on account of demand of dowry was reported to the police station by the appellant/wife, however, no copy of report was presented in the case. Learned Family Court also observed that no application was made by her in the social meeting. Thus, decided the issue against the appellant/wife.

22. Thus, from the evidence as discussed above and in the light of the judgment passed in the case of **Samar Ghosh** (supra), it is quite vivid that the respondent/husband was deprived of marital pleasure including cohabitation for a long time by the appellant/wife. She humiliated, taunted, assaulted him, created scene in vicinity, raising question about manliness of his husband which caused



mental and physical trauma to him. The evidence also suggests that since 02/01/2019, the appellant/wife left the house of respondent/husband and there has been no relationship for a long period of time rather there has been no cohabitation since the marriage. The witnesses of the respondent/husband clearly deposed the same in detail though the appellant/wife stated in her statement that she became pregnant and was forced to consume abortion pills and was being subjected to cruelty by the respondent/husband and his mother, however the same was disbelieved by the learned Family Court as in the cross-examination of this witness, she has not clearly disclose that as to in which month, she became pregnant. She has also not filed any medical report, documents etc. in this regard. She also admitted that she has not informed in the society nor any family member with regard to pregnancy. She did not submit any document with regard to lodging of report of cruelty in the police station. She further admitted that she has left her husband's house since 3 years and never met him and also admits separation with her husband from 02/01/2019. Thus, the overall analysis of the evidence of the respective parties would irresistibly lead to only conclusion that the respondent/husband was subjected to mental and physical cruelty by the appellant/wife and the evidence available on record clearly fall within the parameters as laid down by the Supreme Court in the case of **Samar Ghosh** (supra). The learned Family Court on due appreciation of evidence granted decree of divorce by recording a finding which does not require any interference by this Court. Thus, the appeal fails and is dismissed. Decree be drawn accordingly. No order as to cost.

Sd/-

(Parth Prateem Sahu)
JUDGE

Sd/-

(Sachin Singh Rajput)
JUDGE