



2025:CGHC:44905-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Reserved for orders on : 21.08.2025

Order passed on 03.09.2025

FA(MAT) No. 10 of 2019

1 - Smt. Monika Tamrakar W/o Prashant Kumar Tamrakar Aged About 34 Years D/o Shri Kaushal Kumar Tamrakar, R/o H.No.-19, Harshit Nagar, Raipur, District- Raipur, Chhattisgarh.....(Non Applicant), District : Raipur, Chhattisgarh

... Appellant

versus

1 - Prashant Kumar Tamrakar S/o Shri S. K. Tamrakar Aged About 39 Years R/o Chhattisgarh Nagar, Tikarapara, Raipur, District- Raipur, Chhattisgarh..... (Applicant), District : Raipur, Chhattisgarh

... Respondent(s)

(Cause-title is taken from Case Information System)

For Appellant : Ms. Shrijita Kesharwani, Advocate appearing on behalf of Mr. R. K. Kesharwani, Advocate

For Respondents : Mr. J. A. Lohani, Advocate and Mr. B. M. Roy, Advocate

(Division Bench)

(Hon'ble Smt. Justice Rajani Dubey

Hon'ble Shri Justice Amitendra Kishore Prasad)

C.A.V. Order

Per, Amitendra Kishore Prasad, Judge

- The present appeal is filed under Section 19(1) of the Family Court Act, 1984 arising out of the Judgment and Decree dated 23.08.2019, passed by the learned First Additional Principal Judge, Family Court, Raipur, in H.M.A. Case No. 213/2016, whereby the marriage between the appellant and the respondent has been dissolved.

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signed
by
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KADRI

2. Facts of the case, in a nutshell, are that the marriage between the appellant (Smt. Monika Tamrakar) and the respondent (Shri Prashant Kumar Tamrakar) was solemnized on 28.06.2009 in accordance with Hindu rites and customs. From this wedlock, a male child, Master Samarth Tamrakar, was born on 05.06.2010. The said child is presently residing with his mother, the appellant herein, at her parental home in Bilaspur (C.G.).
3. The respondent / husband filed a petition under Section 13 of the Hindu Marriage Act, 1955, before the learned Family Court, Raipur, seeking dissolution of the said marriage. The grounds taken in the said petition were cruelty and desertion allegedly committed by the appellant. That the appellant / wife contested the said petition by filing her detailed written statement, wherein she categorically denied all the allegations levelled against her by the respondent. Both parties led evidence in support of their respective cases. Witnesses from both sides were duly examined and cross-examined before the learned Family Court. Despite the firm denial of all charges by the appellant and substantial efforts to save the marital relationship, the learned First Additional Principal Judge, Family Court, Raipur, vide Judgment and Decree dated 23.08.2019 passed in H.M.A. Case No. 213/2016, allowed the petition filed by respondent and decreed dissolution of marriage.
4. The respondent, in his petition, made several serious but unsubstantiated allegations against the appellant. He alleged that the appellant constantly provoked him against his parents and insisted that they should live separately, away from the matrimonial home. When

the respondent refused to separate from his parents, it was alleged that the appellant became aggressive, and even physically assaulted him. The respondent further alleged that during her pregnancy, the appellant had allegedly pressured him to terminate the pregnancy and intentionally harmed herself by pressing her abdomen in order to cause a miscarriage. Additionally, it was claimed that the appellant used derogatory language and called the respondent a "Pet Rat" (Paaltoo Choocha) for obeying his parents. The respondent also claimed that he was not informed or invited to any ceremonies following the birth of their child, and that the appellant left for her parental home on 24.08.2010 to celebrate the festival of Teeja, and never returned thereafter.

5. The appellant, on the contrary, denied all such allegations and stated that she was never accepted by her in-laws as a family member. It was further alleged that her husband, the respondent herein, neglected her emotionally and financially, used abusive language, and was often intoxicated. She also asserted that her attempts to restore conjugal rights were met with refusal, and the respondent showed no interest in resuming cohabitation as he was determined to obtain a divorce. The learned Family Court failed to appreciate the evidence and the surrounding circumstances in the proper legal perspective. Despite the lack of any independent corroboration of the claims of respondent, the Court passed the impugned decree in his favour, relying mainly on his allegations. There were no serious or irreconcilable differences between the appellant and the respondent that warranted dissolution of marriage, and yet the Family Court, without any substantial findings or

genuine efforts towards reconciliation or mediation as mandated under law, hastily proceeded to grant the decree of divorce. The appellant has never misbehaved with her in-laws, nor did she ever demand to live separately. The allegations made by the respondent remain unproven. The learned Court below erred in law and fact in decreeing the petition without evaluating the evidence in its totality and without attempting any conciliation or counselling, thereby causing grave miscarriage of justice to the appellant.

6. Learned counsel for the appellant submits that the learned Family Court, Raipur has passed the impugned judgment and decree dated 23.08.2019 (Annexure A/1) in an erroneous manner, which is bad in law and liable to be set aside. The findings recorded by the learned Family Court are perverse and not supported by the material on record. The learned Family Court failed to appreciate the evidence in its correct perspective and rendered the judgment without proper application of mind. The statement of witnesses was wrongly interpreted, and the learned Court arrived at conclusions that are unsustainable in law. Consequently, the impugned judgment and decree is illegal, null and void and therefore deserves to be quashed. The appellant has, at no point of time, misbehaved with her in-laws, nor did she provoke her husband to separate from his parents. These vital facts were completely ignored by the learned Family Court. The Court failed to consider the conduct and intention of the appellant in a just and fair manner, which has resulted in grave miscarriage of justice. The learned Family Court, Raipur has not taken into consideration the real facts of the case and has proceeded to pass the impugned

judgment in favour of the respondent without exercising judicial discretion properly. The reasoning adopted by the learned Court reflects a mechanical approach and lack of judicial scrutiny, which renders the entire judgment and decree unsustainable in the eyes of law. The appellant had filed an application before the learned Family Court, Raipur under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. However, this crucial aspect was not considered in a positive or constructive manner by the learned Court. The judgment passed is arbitrary and contrary to the settled principles of law and justice. It is, therefore, prayed that this Court may kindly be pleased to set aside the impugned judgment and decree dated 23.08.2019 (Annexure A/1) passed by the learned Family Court, Raipur, in the interest of justice and equity.

7. Learned counsel for the respondent submits that the marriage between the appellant and the respondent was solemnized on 28.06.2009, and out of their wedlock, a son was born on 05.06.2010. The marriage was initially harmonious, and the parties lived together as husband and wife. However, over time, differences and misunderstandings arose, which ultimately led to the present dispute. The appellant herein, as the non-applicant before the Family Court, Raipur, filed a suit under Section 13 of the Hindu Marriage Act, 1955 seeking divorce on grounds that have been contested by the respondent. It is submitted that the allegations made by the appellant are unfounded and have been disproved during the course of trial. The behavior of appellant was far from conducive to a healthy marital environment. It is submitted that the appellant consistently misbehaved with her in-laws and

created a hostile atmosphere within the matrimonial home. She repeatedly demanded that the respondent live separately from his parents, which caused mental and emotional strain to the respondent as well as his family members. Such conduct on the part of the appellant amounts to cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act. That the cruelty inflicted upon the respondent and his family has been established through the oral testimony of the respondent and his witnesses, which was duly recorded and appreciated by the learned Family Court. The statements made by the witnesses have been corroborated by documentary evidence, particularly the text messages sent by the appellant to the respondent. These messages contain abusive and disrespectful language and clearly demonstrate the intent of appellant to cause mental agony to the respondent. The said messages were placed before the Family Court and remain in the possession of the respondent, thus serving as strong evidence of the malicious and cruel conduct of appellant. The learned Family Court, after hearing the parties and carefully examining the evidence on record, rightly concluded that the conduct of appellant amounted to cruelty, which justified the decree passed on 23.08.2019. The findings recorded by the Court are based on a thorough evaluation of the evidence and are neither perverse nor contrary to law. There is no ground for interference with the impugned judgment and decree by this Court. The Family Court has exercised its judicial discretion judiciously and in accordance with settled principles of law. The appeal filed by the appellant is therefore liable to be dismissed. Learned counsel for the respondent submits that the learned Family Court has acted fairly and impartially, and has passed the impugned judgment in

consonance with the facts and law applicable to the case. The appellant has failed to establish any error or illegality that would justify setting aside the impugned order. In view of the foregoing submissions and the record of the case, it is submitted that the appeal is devoid of merit and deserves to be dismissed in its entirety. This Court may kindly be pleased to reject and dismiss the instant appeal, thereby affirming the judgment and decree dated 23.08.2019 passed by the learned Family Court, Raipur, and grant such other relief as deemed fit and proper in the circumstances of the case.

8. We have heard learned counsel for the parties and also perused the documents enclosed along with the appeal.
9. It is an admitted fact that appellant and respondent were married on 28.06.2009, and a son was born to them on 05.06.2010, who is living with the appellant at her parental home in Bilaspur. The respondent filed a petition under Section 13 of the Hindu Marriage Act, 1955, alleging cruelty and desertion by the appellant. The appellant denied these allegations, asserting she was emotionally and financially neglected, subject to abusive language and intoxicated conduct by the respondent, and that the Court below failed to properly consider her application for restitution of conjugal rights under Section 9, and did not appreciate reconciliation measures.
10. On perusal of the judgment rendered by Family Court, it becomes clear that credible oral evidence was adduced by the respondent in the form of his own testimony, Prashant Kumar Tamrakar (A.W.-1), his father Santosh Kumar Tamrakar (A.W.-2), brother Basant Kumar Tamrakar

(A.W.-4) and uncle Ram Adhar Tamrakar (A.W.-4). Whereas, appellant - Monika Tamrakar (N.A.W.-1) examined herself and defence witness.

11. Prashant Kumar Tamrakar (A.W.-1) in his evidence has stated that the appellant misbehaved with his parents, demanded to live separately, and insulted him by calling him a “pet rat.” He also alleged that she tried to harm the fetus during pregnancy and deserted him permanently in August 2010. He submitted a text message (Exh. P-7) from the appellant supporting his claims. Santosh Kumar Tamrakar (A.W.-2) corroborated the version of respondent, stating that the appellant frequently quarreled with the family, disrespected elders, and left the matrimonial home without cause. He supported the claim of her refusal to adjust in a joint family. Basant Kumar Tamrakar (A.W.-3) testified that the appellant often threatened the family with false complaints, used abusive language, and prevented the respondent from fulfilling his duties toward his parents. He also supported the desertion claim. Ram Adhar Tamrakar (A.W.-4) confirmed that the appellant behaved disrespectfully during family events and insisted on living separately. He stated that despite efforts by elders for reconciliation, she remained uncooperative and refused to return. Whereas, appellant - Monika Tamrakar (N.A.W.-1) denied all allegations and claimed she was mistreated by her husband and in-laws. However, in cross-examination, she admitted sending the message asking the husband to leave his parents and also admitted that she had not returned to the matrimonial home after August 2010 except briefly in 2011.
12. The respondent testified that soon after marriage, the appellant displayed hostility toward him and his parents, frequently going to her

parental home without notice, instigating fights, demanding that he purchase a separate house and live away from his parents. When he refused, she allegedly became aggressive and assaulted him, even in the presence of his mother. He further alleged that during her pregnancy the appellant tried to coerce an abortion, banging her abdomen, while insulting him as his parents' "pet rat," and failed to invite him to postnatal ceremonies. These witnesses corroborated his account, lending greater credence to the allegations of cruelty. In her testimony, the appellant denied engaging in such conduct, stating she never misbehaved with her in-laws, never instigated separation, and never pressured for a miscarriage. However, cross-examination revealed crucial admissions. She acknowledged having sent a text message, Exhibit P-7, in which she stated "if you leave your parents and stay with me, respond; otherwise don't ask." Though styled as conditional, this message confirms her insistence on the respondent abandoning his parents. This conduct cannot be considered benign; rather, it belies the claim of innocence and instead underscores mental cruelty, particularly in the context of Indian joint family values, where compelling a spouse to forsake his parents is held as cruelty.

13. Regarding desertion, there was no plausible justification offered by the appellant for her prolonged stay at her parental home after leaving the matrimonial abode on 24.08.2010, following the festival of Teej. The evidence of respondent, which was largely unchallenged, established she did not return, except for a brief reprieve from mid-October to early November, 2011 during a community reconciliation meeting at Dudhadhari Math, and thereafter remained away. The appellant

confirmed this fact in cross-examination. The Court correctly found that as of the filing date of the petition (21.04.2016), the appellant had deserted the respondent continuously for well over two years, satisfying the statutory threshold for desertion under Section 13(1)(ib).

14. The plea of appellant that her pending restitution petition under Section 9 should have influenced the outcome is legally unsound and factually unsupported. No order on that petition was placed before the Family Court, and even if it had been, a pending application does not override established findings of cruelty and desertion. The court had ample evidence before it and rendered findings after evaluation. In sum, the conclusions arrived at by the Family Court are neither perverse nor unsustainable. The oral testimonies of the respondent and his family, the documentary evidence of coercion, and castigation of the appellant lie squarely within the legal framework of cruelty. The own admissions made by appellant through cross-examination, including acknowledgement of her desertion, further validate the case of respondent. Consequently, this appeal must fail. In view of foregoing discussion, we conclude that the husband has proved his case for the grant of decree of divorce on the ground of cruelty and desertion and wife has failed to prove her case for Restitution of Conjugal Rights.
15. So far as the issue of alimony is concerned, we have considered the documents in the form of affidavits filed in accordance with the principles laid down in **Rajnesh v. Neha**, reported in **2021 AIR 569 SC**. Both parties have filed their respective affidavits. According to the affidavits, the appellant-wife is earning Rs. 46,941/- per month and is employed as a Teacher (Librarian) with the Government of

Chhattisgarh, whereas the respondent-husband is earning Rs. 35,000/- per month and is employed as an Accountant at the Chhattisgarh State Sahakari Bank Maryadit, Raipur. The wife has the responsibility of looking after their son, Samarth Tamrakar, who is approximately 12 years old. She currently receives Rs. 1,000/- for her personal maintenance and Rs. 6,000/- for the maintenance of her son. Considering the overall circumstances of the case, including the nature of the employment of wife and her responsibility to maintain and educate her son, and further noting that the husband is an accountant in the District Cooperative Bank, Raipur, we deem it appropriate to grant permanent alimony in the sum of Rs. 5,00,000/-. This amount shall be in addition to the maintenance awarded under Section 125 of the Code of Criminal Procedure.

16. The judgment and decree of the Family Court, Raipur dated 23.08.2019 are hereby affirmed. The marriage between the parties stands dissolved. The respondent shall pay Rs. 5,00,000/- as permanent alimony to the applicant within a period of six months from the date of receipt of copy of this judgment.
17. Accordingly, the appeal is **dismissed**.

Shayna

Sd/-
(Rajani Dubey)
Judge

Sd/-
(Amitendra Kishore Prasad)
Judge