

**AFR****HIGH COURT OF CHHATTISGARH, BILASPUR**

(Arising out of order dated 06.7.2017 passed by learned Family Court, Bilaspur
in Civil Suit No.216-A/2014)

FAM No. 145 of 2017

- S. Raju S/o Late S. Ramlu, Aged About 46 Years R/o House No. 831/1, Construction Colony Bada Girja Ke Pass, Tarbahar, Bilaspur, Tahsil And District Bilaspur Chhattisgarh.

---- Appellant**Versus**

- Smt. S. Rani W/o Shri S. Raju, Aged About 39 Years R/o At Present Near Vaan Ganga Mela Maidan (Uttari Disha), Post Shahdol, District Shahdol, Madhya Pradesh.

---- Respondent

For Appellant :- Mr. Shailendra Bajpai, Advocate
For Respondent :- Mr. Palash Rajani with Mr. Pankaj Bhaskar,
Advocate on behalf of Dr. Shailesh Ahuja, Advocate

Hon'ble Shri Justice Goutam Bhaduri
Hon'ble Shri Justice N.K. Chandravanshi
Judgment On Board

Per Goutam Bhaduri, J.

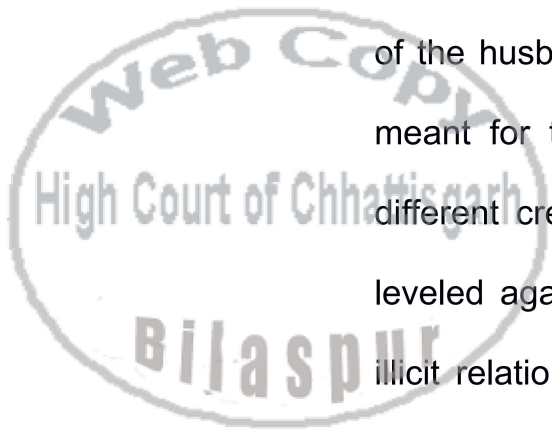
08/4/2022



the appellant/husband for grant of decree of divorce on the ground of cruelty and desertion, was rejected.

3. The appellant/husband pleaded that he was married to the respondent/wife on 31.01.1986 and stayed up till 15.9.2011. The husband is engaged in job of railway guard and it was stated that before filing of the divorce petition, the wife deserted the husband without any lawful cause, from 15.9.2011. The allegation is that wife had availed different loans to the extent of ₹ 10-12 Lacs, without the knowledge of the husband even by placing the ornaments which were meant for the marriage of their daughter as a pledge to different creditors. Further, the allegation which was also leveled against the husband that the husband was having illicit relation with one lady named Tulsa Mahobia, outside the marriage, consequently, it damaged the reputation of the husband in society, amounting to cruelty and therefore, the divorce was claimed for on these grounds.

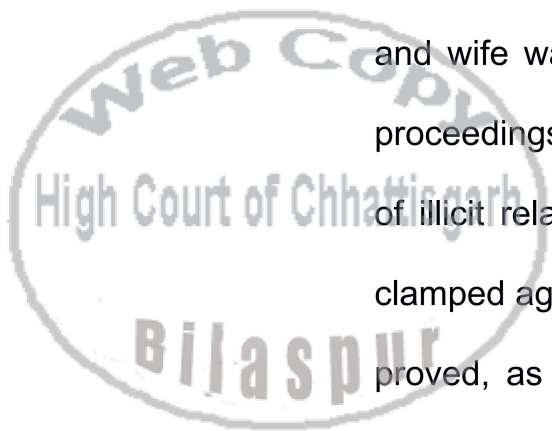
4. The wife denied the allegations of the husband, instead it was stated that since she was subjected to torture for demand of dowry, she was forced to leave the matrimonial house, consequently, she was subjected to cruelty, by the





her, she left the company. As a consequence, the husband would not be entitled for decree of divorce.

5. Learned counsel for the appellant/husband would submit that evidence in this case would reveal that the wife without the knowledge of the husband had pledged the ornaments which were procured for marriage of their daughter and he came to know about this fact when demands were made by different creditors. He would further submit that this act itself would amount to cruelty as the faith between the husband and wife was broken. He would further submit that in the proceedings under Section 125 of the Cr.P.C., the allegation of illicit relation with one lady namely; Tulsa Mahobia was clamped against the husband which was a lie and was never proved, as such, the nature of allegation resulted in huge defamation of the husband in the society, on this ground also the husband was entitled for decree of divorce. He further submits that without any lawful reason, the wife left the company of the husband on 15.9.2011, therefore, both on the ground of cruelty and desertion, the learned Family Court, Bilaspur should have granted the decree of divorce. He further submits that the evidence adduced by the





learned counsel for the respondent/wife would submit that the order of the learned Family Court, Bilaspur is well merited. They would further submit that the judgment passed by the Judicial Magistrate in the proceedings under Section 125 of the Cr.P.C. would reveal that the husband was in illicit relation with a lady namely; Tulsa Mahobia which was not rebutted. Consequently, there were sufficient reasons for the wife to leave the company of the husband and there was no willful desertion. They would further submit that the proceedings during the conciliation would also reveal that the wife was willing to join the company of the husband and therefore, the desertion was not proved. They would further submit that though the oral statements were made that the wife has obtained loan in absence of knowledge of the husband but this fact has not been proved before the Court and accordingly, the order of the learned Family Court is well merited and do not call for any interference.

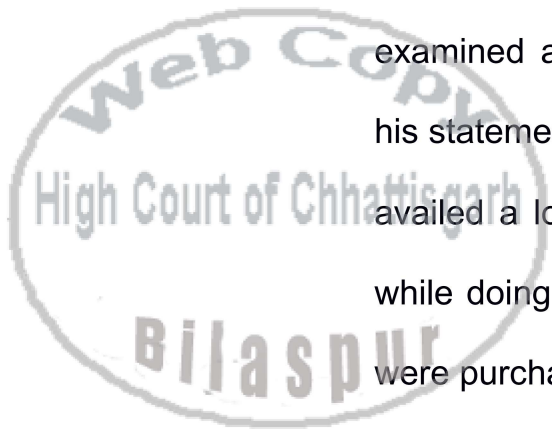
7. We have heard learned counsel for the parties and perused the evidence available on record.

8. Primarily, the husband filed the petition for divorce, on the



when he enquired the issue from the wife she got agitated and left the house on 15.9.2011. The application also contains pleading that in a proceeding for claiming maintenance, the wife has alleged that the husband was having illicit relation with third lady out of marriage which had diminished and defamed the image of the husband in society.

9. The husband examined himself as PW1 and son namely; S. Vimal Kumar and daughter namely; Kumari S. Kavita were examined as PW2 and PW3 respectively. The husband in his statement contended that wife without his knowledge has availed a loan of ₹ 10-12 Lacs to pass to her mother and while doing so she had even pledged the ornaments which were purchased for the marriage of their daughter. He came to know of the fact when the creditors knocked his door. He further asserted that when the issue was enquired from the wife she got agitated and left the house without any reason on 15.9.2011. The son S. Vimal Kumar PW2 has stated that his maternal grandmother and aunt always asked for financial help from his mother and while doing so the mother pledged the ornaments of her daughter which were meant





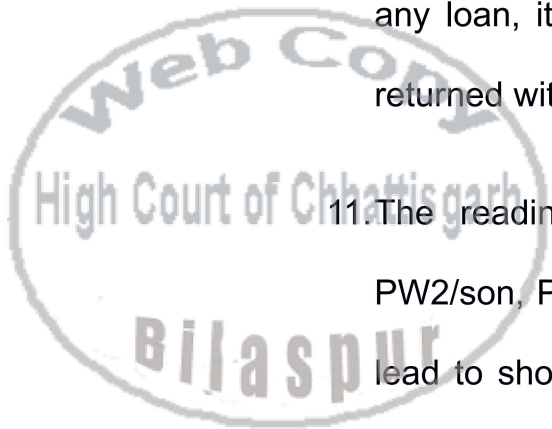
mother pledged the ornaments which were purchased for her marriage to the creditors. In cross-examination of the husband, no rebuttal has come up to deny pledge of ornaments that she has obtained the loan by pledging the ornaments of the daughter. Likewise, in the cross-examination of the son, he has also disclosed the fact that he came to know that the ornaments of his sister which were purchased for the marriage were kept under pledge and according to his estimation ₹ 10-12 Lacs were obtained as a loan. The daughter PW3 Kumari S. Kavita in her cross-examination stated that she was a party to the incident while the ornaments were purchased for her marriage and stated that for making those purchases, she normally was with her parents and she has seen the bills. On a specific suggestion given to the children also that mother has not obtained any loan, it was denied.

10. In the cross-examination of the husband/appellant, about one creditor namely; Vijay Jheersagar, came to know. His name was not stated as a creditor in examination-in-chief, it was at the behest of the wife that the name was disclosed. Vijay Jheersagar was examined as PW4, he also contended



ground that husband needs it for household support and it would be returned within 01 or 2 months. Having believed and knowing each other, he advanced the amount of ₹ 25,000/-. Subsequently, when the amount was not returned after 01 or 2 months he went to the house of the appellant S. Raju and demanded the money back, wherein, he came to know that husband was not in know of the fact that such loan was availed by his wife. In the cross-examination, though the suggestion was given that she has not availed any loan, it was denied on the assurance that it would be returned within 1 or 2 months.

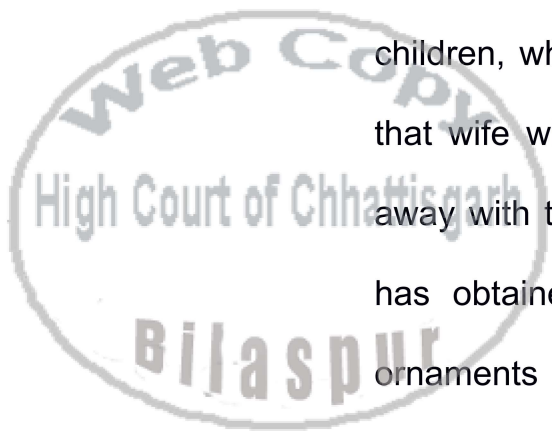
11. The reading of the said statements of PW1/appellant, PW2/son, PW3/ daughter and PW4/ creditor together would lead to show that the wife in absence of knowledge of the husband has availed the loan from third party. In a normal household of the Indian society, the narrative made by the son and daughter that the ornaments were purchased for the ensuing marriage of the daughter appears to be more logical. It is obvious that during the marriage ceremony in the Indian household, the presentation of the ornament is normally done for which the parents starts the effort, from an





that wife had obtained the loan without the knowledge of the husband.

12. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other spouse. Cruelty normally has to be distinguished from the ordinary wear and tear of family life and naturally it cannot be adjudged on the basis of the sensitivity of a particular person. The conduct of the wife which has been projected and incidentally the children, who have supported such fact against the mother that wife without the knowledge of the husband has done away with the security of the marriage of the daughter and has obtained amount from the creditor by pledging the ornaments meant for the marriage of the daughter would certainly cause apprehension & fear and create financial pressure on the mind of the father as we cannot also forget the hard reality which exists in the society to present a girl during the marriage with ornaments. Consequently, if a spouse by her own conduct, in such a way without caring about the future of the daughter, parts with the ornaments which were meant for the marriage, it will be within the ambit





Family Court, Shahdol. The facts narrated in the Exhibit P1 are not disputed by the parties. The order records that wife alleged in the year 2009 that the husband has developed illicit relation with one lady namely; Tulsa Mahobia, who is neighbor and she was kept by him for three days and used to sleep in the bedroom while the wife was made to stay outside. The order further reflects that she mentioned this fact that she came to know about the illicit relation of the husband with the neighbor in the year 2010, when she recovered a letter addressed by the husband to such lady.

The said letter has not been produced in this case. The order further records that husband of Tulsa Mahobia is a doctor and whenever she used to visit she used to visit with her husband. The order would reflect that the Family Court, Shahdol came to a finding that because of such allegation she has sufficient apprehension and cause to stay away and amount was granted under the maintenance. The husband in turn has vehemently rebutted the allegations and explained that without any sufficient cause his character has been assassinated which in turn resulted in the defamation of his image. In examination-in-chief, in the divorce petition, the wife contended that without permission of the husband





repeated the fact that she was subjected to torture mentally and physically as such she was compelled to stay away. In her cross-examination, she stated that though the allegation of dowry was made but no report was ever made about demand of dowry.

14. The statement given by the wife before the Family Court, Shahdol in the proceedings under Section 125 of the Cr.P.C. and the statement given by the wife at Family Court, Bilaspur, in a divorce petition, shows that there is no consistency. Before the Family Court, Shahdol, the primary allegation of the wife was that she was forced to leave the house of the husband for the reason that husband was having an illicit relation with the lady outside the marriage, whereas before the Family Court, Bilaspur, the wife contended that she was forced to live separately as she was subjected to torture for demand of dowry. With regard to extra marital affair of the husband, we do not find any reliable evidence on record as statement of the wife itself is inconsistent. It is obvious that to suffer an allegation pertaining to once character of having an extra marital affair is quite tortuous for any person and whereas inconsistently





15. In a matter of extra marital affair allegation, the Hon'ble Supreme Court dealing with the said issue in the matter of **Narendra Vs. K. Meena**, reported in **AIR 2016 SC 4599** redirected the view taken in the matter of **Vijaykumar Ramchandra Bhate V. Neela Vijaykumar Bhate**, reported in **AIR 2003 SC 2462** and held that when the assassination of character is made by either of the parties it would constitute a mental cruelty for which a claim for divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 would be sustainable. The Hon'ble Supreme Court held thus at para 13 :

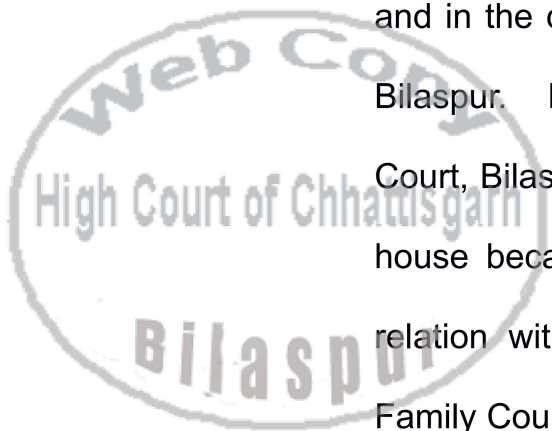
"13.....The position of law in this regard has come to be well-settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross examination





consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible.”

16. Now coming back to the point of desertion, the wife has made inconsistent statements in proceedings under Section 125 of the Cr.P.C. before the learned Family Court, Shahdol and in the divorce petition before the learned Family Court, Bilaspur. In the divorce petition before the learned Family Court, Bilaspur she alleged that she was forced to leave the house because of the fact that husband was having illicit relation with one Tulsa Mahobia whereas in the learned Family Court, Bilaspur she contended that she was forced to live away from the husband for the reason that she was subjected to cruelty for demand of dowry. The evidence would show that the wife left the company of the husband on 15.9.2011, though in her deposition in the divorce case she stated that she is ready and willing to stay with the husband but allegations of demand of dowry and torture and the fact of illicit relation with a lady outside marriage was





sent their son and daughter to Shahdol to bring her back but eventually, all failed. The order under Section 125 of the Cr.P.C. dated 06.12.2013, Exhibit P1 records that there was sufficient reason for the wife to stay away. In view of allegation and counter allegation by the parties, it appears that the said findings have not been disturbed/ subjected to challenge before the higher forum. In absence thereof, we would not like to deliberate on this issue, on the ground of desertion.

17. Applying the aforesaid ratio to the facts of this case, we are inclined to hold that parting away the ornaments by pledging without knowledge of husband, which were meant for marriage of daughter and further the unsubstantiated allegations leveled by the wife, assassinating the character of the spouse/husband would amount to a mental cruelty to husband. Therefore, for the reasons as stated in **Narendra** (supra), the marriage deserves to be and is hereby dissolved by a decree of divorce on the ground stated in Section 13(1)(i-a) of the Hindu Marriage Act, 1955.

18. Now coming back to the permanent alimony, the statement of the husband in the cross-examination in the year 2016,



a considerable hike in the cost of living. Taking into such fact, we deem it proper to grant an amount of ₹15,000/- per month to the wife as a permanent alimony, which in turn would be adjustable to any amount paid under Section 125 of the Cr.P.C.

19. With the aforesaid observations and directions, the appeal is allowed to the extent indicated above, leaving the parties to bear their own cost(s).

A decree be drawn accordingly.

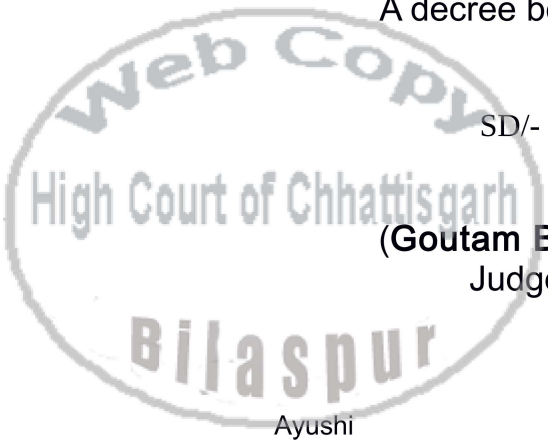
SD/-

(Goutam Bhaduri)
Judge

SD/-

(N.K. Chandravanshi)
Judge

Ayushi



**Head Note**

FAM No.145 of 2017

Pledge of ornaments, kept for marriage of daughter, and use of consideration for self without knowledge of husband would amount to cruelty.

Levelling of extra marital affair allegation on husband by wife without any evidence without substantiating the same would also amount to cruelty.

पुत्री के विवाह के लिए रखे गये आभूषणों को पति की जानकारी के बिना गिरवी रखना तथा उसके प्रतिफल का स्वयं के लिए उपयोग करना, कूरता की श्रेणी में आयेगा ।

किसी साक्ष्य को प्रमाणित किए बिना पत्नी द्वारा पति पर विवाहेत्तर संबंध के आरोप लगाना भी कूरता की श्रेणी में आयेगा ।

