

Chandra Shekhar Ram Vs. Rekha Devi

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Court : Jharkhand

Decided On : Jun-14-2017

Appellant : Chandra Shekhar Ram

Respondent : Rekha Devi

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI First Appeal No. 12 of 2015 ----- (Against the Judgment and Decree dated 08th December, 2014 passed by the learned Principal Judge, Family Court, Garhwa, in M.M. Case No. 06 of 2013) Chandra Shekhar Ram . Appellant -Versus- Rekha Devi Respondent ----- PRESENT HONBLE MR. JUSTICE H.C.MISHRA HON'BLE MR. JUSTICE RATNAKER BHENGRA ----- For the Appellant : : M/S Saibal Mitra, S.T.Sajid Priti Kumari, Advocates For the Respondent: : Mr. Sabyasanchi, Advocate ----- By Court:- Heard learned counsel for the appellant and learned counsel for the respondent.

2. At the very outset it may be stated that during the pendency of the appeal in this Court, efforts were made for amicable settlement of the dispute between the parties at the hands of the trained Mediator at JHALSA and the matter was referred for mediation. The report of the Mediator has been received in this Court which shows that in spite of his best efforts, the matrimonial dispute between them could not be amicably settled and the mediation failed. Hence, we have heard both the parties on the merits of this case.

3. The appellant husband is aggrieved by the Judgment and Decree dated 08th December, 2014, passed by the learned Principal Judge, Family Court, Garhwa, in M.M. Case No. 06 of 2013, whereby the Matrimonial Suit filed by the appellant husband in the Family Court, for dissolution of the marriage between the parties by a decree of divorce, alleging adultery and cruelty against the respondent wife, has been dismissed on contest by the Family Court. 2 4. The facts of this case lie in the short compass. The marriage between the parties and birth of a son out of wedlock are admitted facts in this case. Both the parties were married according to Hindu rites and customs on 20.6.2002 and they were blessed with a son out of wedlock, who was aged about 8 years at the time of filing of the suit in the year 2013.

5. It is alleged in the plaint filed by the petitioner husband that one Sunil Ram started visiting the house of petitioner to meet his wife, which was objected by the husband. A love letter allegedly written by the respondent wife was also found by the husband and upon questioning his wife, the wife stated that she was in love with Sunil Ram and he would marry him. Thereafter she did not allow the petitioner to have any physical contact with her. It is alleged that since the year 2008 the marriage had not been consummated between them and she withdrew from the society of the petitioner without any reasonable cause and left the matrimonial home. It is also stated in the plaint that in the year 2009 the petitioner went o his in-laws' place, by the order of the Court, for bringing her back, but on that occasion also Sunil Ram was present in the house and the petitioner was not allowed to enter the bedroom and the wife refused to come back with the husband. On 5 th March, 2013, the petitioner husband again went to bring back his wife, but again he saw Sunil Ram present in the bedroom of his wife and he was abused in filthy languages and his wife refused to lead the matrimonial life with him. Alleging adultery and cruelty against the wife, the appellant filed the matrimonial suit in the Court below, praying for dissolution of marriage between the parties by a decree of divorce. 3 6. Upon notice, the respondent wife appeared in the Court below and filed her written statement, in which she denied the allegations made against her. It is the specific case of the respondent wife that Sunil Ram is none else but her own maternal uncle (Mama) and, accordingly, alleged allegations with him were also denied. It is the case of the respondent wife that she was being subjected to

cruelty and torture for dowry by her husband and she had been ousted from the matrimonial home, taking her child away, for which she had also filed a criminal case, being Complaint Case No. 18 of 2009, against her husband for the offence under section 498-A of the Indian Penal Code, in which he was also convicted and sentenced.

7. The impugned Judgment shows that on the basis of the pleadings of the parties, issues were framed in the Court below, including the issues related to cruelty and adultery by the wife. Two witnesses were examined on behalf of appellant husband in the Court below, who are P.W.1 Chandra Shekhar Ram, the petitioner himself and P.W. 2 Sunil Ram. The petitioner has supported his case in his evidence and has also proved the letter allegedly written by the wife to the said Sunil Ram, which was marked Ext.1. However, the fact remains that the writing of the said letter had been denied by the respondent wife in her evidence and it is stated that it is not in her handwriting and she had never written such letter. There is no other proof on record about the authenticity of the said letter. In his cross-examination, the petitioner husband has admitted that he had been convicted for the offence under Section 498-A of the Indian Penal Code in the case filed by his wife. He has also admitted that he had also filed a criminal case against his wife for the offence under sections 323 and 379 of the Indian Penal 4 Code. (The said case ended in discharge of his wife and her family members). He has also admitted in his cross-examination that he had never seen his wife and Sunil Ram in any compromising position. Though, he stated in his cross-examination that he had seen Sunil Ram embracing his wife in the bedroom, but there is no such allegation in the plaint filed by the petitioner husband and the Court below has not relied on this evidence, being against the pleadings.

8. The other witness examined on behalf of appellant husband in the Court below is P.W. 2 Sunil Ram, who is the brother-in-law of the petitioner. This witness has admitted that Sunil Ram, with whom the adultery is alleged by the petitioner husband, is none else than the maternal uncle of the respondent wife and, as such, this witness has supported the case of the respondent wife that Sunil Ram was none else than her maternal uncle. Though this witness has stated that there was illicit relationship between the respondent wife and Sunil Ram, but he has

admitted in his cross-examination he had never seen them in objectionable condition, and the alleged love letter was not recovered in his presence nor he had read it.

9. Three witnesses were examined on behalf of the respondent wife in the Court below, including the respondent herself, who was examined as D.W.-1. In her evidence, she has denied the letter to be written by her, which was marked Ext.1, and she has reiterated that Sunil Ram is her own maternal uncle. She has also stated that she was being subjected to cruelty and torture, including assaults, for demand of dowry, for which she filed the criminal case C-18 of 2009 for the offence under Section 498-A of the Indian Penal Code, in which her husband was convicted and sentenced. She has proved the certified copy of the judgment, which was marked Ext-A. She has also stated that now her husband has married another lady. She has also proved the certified copy of the order passed by the competent Court by which she and her family members were discharged in the criminal case filed by her husband, which was marked Ext-C. She has stated that she was turned out of her matrimonial home taking her child away from her. The other two witnesses examined on her behalf, are her parents, who have also supported her case.

10. On the basis of the evidence on record, learned Court below found that the appellant husband has not been able to prove the case of adultery and cruelty against the wife, and has dismissed the suit on contest.

11. Learned counsel for the appellant has submitted that impugned Judgment and Decree passed by the Court below, are absolutely illegal and cannot be sustained in the eyes of law. It is submitted that appellant had been able to prove the cruelty and adultery on the basis of the evidence brought in the Court below and admittedly it is a case in which both the parties are living separately since the year 2008 itself. It is submitted that this itself amounts to cruelty against the husband, as in-spite of taking two attempts for bringing his wife back to the matrimonial home, she refused to come back. Learned counsel accordingly, submitted that the impugned Judgment and Decree are fit to be set aside, and the suit is fit to be decreed.

12. Learned counsel for the respondent wife, on the other hand, has opposed the prayer and submitted that on the basis of the evidence on record, the appellant has miserably failed to prove the allegations against the respondent wife. The person with whom the 6 adultery is alleged is the own maternal uncle of the wife, and no act of adultery has been proved. The alleged cruelty by the wife is also not proved, rather it is a case in which the wife had been subjected to cruelty and torture for demand of dowry by the husband, and turned out of the matrimonial home. It is submitted that the suit has been rightly dismissed by the learned Court below.

13. Having heard learned counsels for both the parties and upon going through the record, we find that the suit has been filed mainly on two grounds. First ground is the alleged adultery with Sunil Ram and Ext.1, which is said to be a letter written by the respondent wife to said Suni Ram. In the evidence adduced by the petitioner himself in the Court below, it is an admitted fact that said Sunil Ram is none else than the own maternal uncle of the respondent wife and it is also admitted position that there is no allegation that the respondent wife and Sunil Ram were ever seen in any compromising position. Simply talking with her maternal uncle cannot make out a case of adultery. The writing of the letter is completely denied by the respondent wife and she has stated that this letter is not in her hand writing and it was never written by her. There is no other proof of the said letter on record.

14. As regards the second ground, i.e., cruelty also, we find from the record that it was the wife who was being subjected to cruelty by the appellant-husband and if the wife is living separately from her husband, it is the husband, who is solely responsible for the same. The criminal case filed by the respondent-wife for the offence u/s 498 A of the Indian Penal Code has ended in conviction of the appellant husband. The evidence on record also shows that the appellant-husband had also filed a criminal case against his wife and her other family members for the offence under sections 7 323 and 379 of the Indian Penal Code, which ended in their discharge, and this was also proved in the Court below. This itself is a cruelty by the appellant husband himself on the respondent wife. Indeed it is also stated by the respondent wife in her evidence that she had been subjected to

cruelty and torture for demand of dowry by the husband, and turned out of the matrimonial home, taking away her child, and during the pendency of the case, the husband has married another lady.

15. Thus, from the evidence on record, it is apparently clear that the appellant had neither been able to prove the charge of adultery, nor the allegation of cruelty against the respondent wife in the Court below .

16. In that view of the matter, we do not find any illegality in the impugned Judgment and Decree dated 08 th December, 2014, passed by the learned Principal Judge, Family Court, Garhwa, in M.M. Case No. 06 of 2013, whereby the suit has been dismissed on contest.

17. There is no merit in this appeal and the same is accordingly, dismissed. Let the Lower Court Record, called for in this case be sent back along with a copy of this Judgment. (H.C.Mishra, J.) (Ratnaker Bhengra, J.) Jharkhand High Court Dated 14th June,2017 Sharda/Nibha

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