

**Court No. - 39****Case :-** FIRST APPEAL No. - 137 of 2011**Appellant :-** Smt. Arti Tiwari**Respondent :-** Sanjay Kumar Tiwari**Counsel for Appellant :-** Jainendra Kumar Mishra**Counsel for Respondent :-** K.K. Tripathi, Pawan Kumar Rao, Sheo Ram Singh**Hon'ble Saumitra Dayal Singh, J.****Hon'ble Donadi Ramesh, J.**

1. Heard Sri Jainendra Kumar Mishra, learned counsel for the appellant and Sri Pawan Kumar Rao, learned counsel for the respondent.

2. Present appeal has been filed under Section 28 of the Hindu Marriage Act, 1955, arising from judgment and order dated 23.03.2011 passed by Additional Principal Judge, Family Court, Kanpur Nagar in Matrimonial Suit No. 367 of 2006 (Sanjay Kumar Tiwari Vs. Smt. Arti Tiwari), whereby the Hindu marriage performed between the parties has been dissolved.

3. In brief, it may be noted that the marriage between the parties was solemnized on 2.3.2000. At that time, the appellant was working as Class-III employee at the Rajkiya Bachat Karyalaya, at Bareilly. His father and siblings were residing at their house at Unnao. The family of the appellant belongs to Kanpur Nagar. According to the respondent/husband, the appellant resided at her matrimonial home for a few days, but raised complaint of not feeling safe in the company of only male family members of the respondent, his mother having died almost 20 years earlier. Occasioned by that, the respondent took the appellant to the city of

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his work, at Bareilly. Even there, the appellant, did not stay for long. She now cited reasons to stay at Kanpur Nagar as she was a practising advocate. Thus, the appellant is described to have left for Kanpur Nagar. However, intermittent cohabitation of the parties at Bareilly, Kanpur Nagar and Unnao, during that period, is not disputed. Then, according to the respondent, he applied for and consequently, was transferred to Kannauj. This transfer, respondent had sought only to make it possible for the respondent to stay at Kanpur Nagar with him. Upon being thus transferred, the respondent took up a rented accommodation at Kanpur Nagar and he used to commute to Kannauj from there every day. However, the appellant still did not stay with him for long. Though intermittently, the appellant did stay with the respondent at his rented premises, she preferred to stay at her parental house. In that context, it is the further case of the respondent that the appellant wanted the respondent to stay with her at her parental home at Kanpur Nagar. When the appellant did not agree to live with the respondent at the rented accommodation taken by him at Kanpur Nagar, he vacated that premises and started staying at Unnao, at his parental home from where too he could easily commute to Kannauj, in connection with his work.

4. In the meantime, a girl child had born to the parties on 5.9.2002. She would be 22 years of age, today. Subsequently, proceedings came to be instituted by the appellant under Section 125 Cr.P.C., wherein monthly maintenance at the rate of Rs. 6000/- per monthly has been awarded to the appellant. That amount is being paid by the respondent.

5. In the above background, it is the case of the respondent that the appellant finally parted company with the respondent in January,

2003.

6. The above is the brief narration of the case set up by the respondent - as to desertion.

7. It is also the case of the respondent that the appellant offered cruel behaviour towards all family members of the respondent, from very beginning. Not only she would use harsh words and abusive language in normal household affairs, it was specifically stated by the respondent that the appellant wanted the respondent to abide absolutely, by her wishes. Failing that she threatened to level false allegations against the respondent and his father, including allegation of illicit relationship between the respondent and his real sister. While no such case was ever lodged by the appellant and no such complaint appears to have been made by the appellant to any authority, at the same time, it is on record that after the institution of the divorce suit on 01.08.2006, the appellant instituted Criminal Case No. 687 of 2006 on 14.11.2006 i.e. after three months of the institution of the divorce case. Remarkably, though allegations of demand of dowry and cruelty were made in the First Information Report, there is no prior complaint or First Information Report of such allegation ever made by the appellant, over six years of marriage between the parties.

8. While the parties were at variance as to the facts pleaded in the plaint, upon perusal of the record, it does transpire that the plaint was amended and through that amendment both - as to the date of separation (January, 2003) and allegation of cruelty occasioned by lodging of criminal case were specifically pleaded.

9. As to evidence, both parties led oral and documentary evidence. By way of oral evidence, the respondent was examined as PW-1

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and his father as PW-2. In defence, the appellant was examined as DW-1. All witnesses were subjected to detailed examination.

10. In the evidence of the plaintiff, he did make specific assertion of the appellant having refused to live at his parental home at Unnao for reason of only male family members being present. He further established that on such concern being voiced by the appellant, he started residing with the appellant at Bareilly, where he was posted at that time. He also proved that at Bareilly, the appellant raised a new issue that she wanted to practice law at Kanpur Nagar. On objection raised by the respondent to not part company, she threatened the respondent to lodge false cases making allegations against his father and also against the respondent of immoral conduct. In those circumstances, the respondent further proved that the appellant came back to Kanpur Nagar, to live with her parents. Thereafter, the respondent further proved that he applied for and obtained transfer to Kannauj to be able to live with the appellant. Thereafter, the respondent further proved that he took up a rented accommodation at Kanpur Nagar, only to keep his matrimonial relationship with the appellant, intact. In that the respondent also proved that though the appellant resided with the respondent intermittently, for sometime and used to cohabit him at the rented accommodation taken by him, but she refused to live with him over any duration of time or in continuity. As to the rented accommodation, the respondent specifically proved the address, name of the landlord as also the rent paid. Thereafter, the respondent also proved that he vacated the rented accommodation and started living at Kannauj with his parents after the appellant refused to live with him at Kanpur Nagar, thus, making it clear to him that the appellant only wanted to reside with her parents where she also wanted the respondent to reside with

her.

11. During his extensive cross-examination, the above noted aspects proven by the respondent during his examination-in-chief were not controverted or doubted. We have made reference to those facts to bring out the extent to which the efforts had been made by the respondent to prove desertion offered by the appellant. In absence of any doubt being raised during the extensive cross-examination of the respondent, we do not find any error in the finding of the learned Court below to believe the testimony of the respondent. Sitting in first appeal, we are ourselves inclined to draw firm conclusion that the appellant had no will or desire to live in matrimony with the respondent either at his parental home or at his place of work, or even otherwise at Kanpur Nagar. She only desired to stay at her parental home.

12. Then, as to cruelty, while that fact allegation made by the respondent that the appellant had threatened to lodge false criminal case involving allegations of character assassination of the respondent's father and also involving false allegation of illicit relationship between the respondent and his sister, no such allegation appears to have been actually made by the appellant to any authority. To that extent, the allegation of cruelty remains not proven.

13. At the same time, there is nothing to doubt that the testimony of the respondent that threats and rude conduct were offered by the appellant to the respondent. Even if that be not enough to infer cruelty as may lead to dissolution of the marriage, at the same time, there can be no denial to the fact that for six years of their marriage, the appellant did not make any complaint involving allegation of demand of dowry or cruelty arising therefrom - either

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to the police authorities or to any Court or to the departmental authorities of the respondent. In fact, it is the case of the appellant that she always wanted to cohabit with the respondent and that she used to visit the respondent both at Bareilly and at Kanpur Nagar (at his rented premises). It is her case that the respondent turned her out in August, 2006. During that long period of 6 years, there was no criminal case lodged by the appellant. Even upon that forcible separation attributed to the respondent occasioned by demand of dowry, the appellant did not lodge any criminal case with any promptitude.

14. We have noticed, the criminal case was lodged on 14.11.2006, i.e. three months after the divorce suit had been instituted by the respondent. According to the respondent, the criminal case was lodged by the appellant solely upon receipt of notice in the divorce case proceeding. That fact was also proven by the respondent during his evidence. However, no doubt or contradiction arose during his cross-examination as may lead us to infer that the criminal case was instituted independent of the divorce case filed by the respondent.

15. Then, we may also notice that in the criminal case, the respondent and his family members was first acquitted. However, it is not disputed to the appellant that she appealed against the order of acquittal and secured conviction of the respondent and his brother-in-law. Consequently, the respondent and his brother-in-law were confined in jail for more than a month, whereafter they have been bailed out upon orders passed by this Court in Criminal Revision proceeding.

16. Seen in that light, there is no contradiction in the stand of the respondent in having first stated (during the course of proceeding

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under Section 125 Cr.P.C.) that he wanted to revive his matrimonial relationship with the appellant and in having later changed that stand during the divorce case proceeding - to state that he was unable to now reconcile his differences with the appellant so as to revive their matrimonial relationship. He further stated that having suffered confinement in jail and having remained suspended from service for two years, (for reason of wrongful conviction obtained by the appellant), he was not in a position to revive his matrimonial relationship with the appellant.

17. In face of Criminal Revision proceeding pending, against the order of conviction passed in the appeal proceedings, we are not recording any firm conclusion with respect to falsity or otherwise the allegations made in the criminal case, at the same time, in the context of facts and circumstances proven in this case, the critical element of cruelty is found in existence. Desertion suffered over long years in a young marriage, accompanied with harsh words spoken and complete lack of desire and effort on part of the deserting spouse to cohabit as also lodging of criminal case alleging demand of dowry only after institution of divorce case proceeding by the other spouse and pursuing it in appeal to secure conviction (after initial acquittal) does indicate in any case, the marriage between the parties is irretrievably broken down.

18. In view of our findings that the appellant had deserted the respondent and had never desired to revive her matrimonial relationship, when time existed and further in view of our findings that the above facts were accompanied with cruelty to the extent noted above, no room exists to offer any interference in the order passed by the learned Court below, that too about 21 years of separation suffered by the parties.

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19. In view of the facts noted above we do not find it a fit case to provide for permanent alimony. The daughter born to the parties has attained the age of majority.

20. Accordingly, the appeal is dismissed. No order as to costs.

**Order Date :- 4.9.2024**

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**(Donadi Ramesh, J.) (S.D. Singh, J.)**