

IN THE COURT OF THE JUDGE, FAMILY COURT,
BHUBANESWAR.

Present : Shri Pravakar Mishra, OSJS(SB),
Judge, Family Court, Bhubaneswar.

Civil Proceeding No. 268 of 2012

Ranjan Kumar Jena, aged about 27 years,
S/o-Biswanath Jena,
At/P.O.-Atri, P.S./Via.- Baghamari
Dist-Khurda
AT present-Sankareswar Nagar Basti,
P.O.-Klathia,
P.S.-Khandagiri, Bhubaneswar,
Dist-Khurda.

... Petitioner

... Versus...

Sasmita Behera, aged about 23 years,
W/o- Ranjan Kumar Jena,
D/o- Bati Behera,
At-Koshasingha, P.O.-Arakhapatar,
Via/P.S.-Harbhanga,
Dist-Boudh.

... Respondent

Date of argument : 16.09.2014

Date of Judgment: 30.09.2014

J U D G M E N T

This order arises out of a petition u/s. 13 (1) (i-a) and (i-b) of the Hindu Marriage Act, 1955 praying for a decree of dissolution of marriage of the petitioner with the respondent on the grounds of desertion and cruelty.

2. The facts of the case of the petitioner are that he married to the respondent as per Hindu rites and customs at AMOFOI at Dharmavihar, Bhubaneswar on 31.10.2009 under Special Marriage Act vide marriage certificate No. 3771 dated 31.10.2009 without knowledge of his family and relatives, except his maternal aunt and after marriage, both of them resided at

Kolothia and during their stay the respondent always demanded cosmetics, hotel food and gold ornaments which is not possible as he is a mere tractor driver for which the respondent threatened him to file false cases against him and his family members. The respondent without intimating him left his house and remained absent six to seven days in a month and being asked to her, she replied that he should not interfere in her personal matter. He has averred that in the month of February, 2010 when he was sleeping in the mid night the respondent left his house and later rescued on the way by Khandagiri Police and gave her in Zima of the petitioner. On 23.04.2011 the respondent again left his house when he was on duty but he could not trace her out but on 29.04.2011 all on a sudden Mahila Police of Bhubaneswar arrested him and on being asked they disclosed that the brother of the respondent lodged an FIR against him U/s. 498(A), 120(B), 323, 366, 506 read with Section 34 IPC and 4 D.P. Act. He has further averred that while he was in jail custody on 09.12.2011 the respondent along with her so called brother went to his native village and threatened to his father and brother and threatened to lodge false case against the entire family if they will not accept her as their daughter-in-law/sister-in-law and also threatened to execute one agreement with her regarding to accept her and out of fear his father executed one agreement with the respondent. He has averred that in the criminal case he was acquitted by the Hon'ble A.C.J.M.-cum-A.S.J, Bhubaneswar and after the acquittal the respondent remained with him without doing any household work and during her stay she asked him to bring lunch and dinner from hotel. On 23.04.2012 at about 9.30 P.M. the respondent ordered him to bring mutton curry and chapatti from nearby hotel and when the petitioner showed his inability, the respondent scolded him and left his house and when he searched her, he saw that the respondent was sitting back side of a motor cycle of a known person. Finding no other way he went to the police station to lodge an FIR but the police refused to accept his complaint. Four days after his brother got one mobile call from one known person that the respondent was with him at Saliasahi under Nayapalli Police Station and after getting

such information from his brother, the petitioner did not trace her and after fifteen days he got information from the village of the respondent that the respondent was in her native village. On 15.06.2012 after getting such information he send his relatives and well wishers to her village for negotiation and to return back to the respondent but the respondent along with her family members refused to return back to the company of the petitioner. Since 23.04.2012 they have no physical relationship between them and there is no chance of their reunion, hence the petition for passing a decree of divorce.

3. The respondent did not enter contest the petition and therefore, is set ex-parte.

4. The question that requires to be adjudicated is whether, there exists any desertion and cruelty on the part of the respondent to allow the divorce petition?

5. The petitioner in order to prove his case he, himself, has been examined P.W. 1.

6. The petitioner sought divorce on the grounds of respondent's desertion and cruelty. It is needless to say Section 13(1) (i-b) of the Act, 1954 provides that the other party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. The petitioner at paragraph-14 of his petition has stated that the respondent deserted her since 23.04.2012. The petition for divorce in this case is presented in the Court on 24.07.2012. Thus, it is clearly established that the petition has been filed before completion of two years from the date as alleged by the petitioner. Thus, the ground of desertion held not established.

7. Now the next point for consideration is cruelty. Admittedly, there has been no cohabitation between the parties since 23.04.2011. From the unchallenged evidence of the petitioner, it is clearly established that the respondent without any rhyme or reason willfully with draws cohabitation with the petitioner. There is no evidence on record that denial of sexual intercourse is the result of sexual weakness of the respondent disabling her from having a sexual union with the petitioner but it was willfully refused by

the respondent. The result is frustration and misery to the petitioner due to denial of normal sexual life and hence cruelty. Marriage without sex is an anathema. Sex is the foundation of marriage and without a vigorous and harmonious sexual activity it would be impossible for any marriage to continue for long. It cannot be denied that the sexual activity in marriage has an extremely favourable influence on a man's mind and body. The result being that if he does not get proper sexual satisfaction it will lead to depression and frustration. It has been said that the sexual relations when happy and harmonious vivifies a man's brain, develops his character and trebles his vitality. It must be recognized that nothing is more fatal to marriage than disappointment in sexual intercourse. Hence, it is ordered:

O R D E R

The petition is allowed ex-parte in favour of the petitioner. A decree of divorce is passed and the marriage between the petitioner and the respondent is hereby declared dissolved with effect from the date of decree.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 30th day of September, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Ranjan Kumar Jena

Witnesses examined for the respondent:

None

List of documents by petitioner:

None

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.