

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

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

Civil Proceeding No. 751 of 2011

Priti Dash, aged about 28 years,
W/o-Biswajit Mohapatra,
Qrs. No. IVA-18/3, Unit-II, Bhubaneswar,
(Near Hanuman Temple), P.O.-Unit-II,
New Capital, Bhubaneswar,
Dist-Khurda.

At present:- D/o-Trilochan Dash,
Qrs No. 2RB-1, Unit-III, Bhubaneswar,
P.O.-P.M.G., Bhubaneswar, P.S.-Kharavel Nagar,
Bhubaneswar, Dist-Khurda.

... Petitioner

... Versus...

Biswajit Mohapatra, aged about 31 years,
S/o-Bidyadhar Mohapatra,
Qrs. No. IVA-18/3, Unit-II, Bhubaneswar,
(Near Hanuman Temple), P.O.-Unit-II,
New Capital, Bhubaneswar, Dist-Khurda
At present working as Production Officer,
Macleods Pharmaceutical Limited,
At/P.O./P.S.-Daman, Gujrat.

... Respondent

Date of Argument : 08.12.2014

Date of Judgment: 22.12.2014

J U D G M E N T

This order arises out of a petition u/s. 13 of the Hindu Marriage Act, 1955 praying for a decree of dissolution of marriage of the petitioner with the Opp. Party on the grounds of desertion and cruelty.

2. The admitted facts of the case of the parties are that their marriage was solemnized at Bhubaneswar in the residence of the petitioner on 29.06.2011 at Unit-III, Bhubaneswar and after marriage, the respondent left for his

service place on 14.07.2011 and since 01.08.2011 they have been living separately.

3. The specific case of the petitioner is that at the time of marriage, her father had given cash of Rs. 1,85,000/-, 10 tolas of gold ornaments along with other household articles. After marriage, they have consummated their marriage at Qrs No. IVA-18/3, Unit-II, Bhubaneswar allotted to the mother of the respondent. According to the petitioner, after seven days stay in her in laws house, the respondent and his family members started torturing on her both physically and mentally taking some plea or other. At the time of negotiation before marriage, it was decided there that the petitioner will live with the respondent at his service place at Daman. After marriage, when the respondent decided to go to his service place alone leaving her alone in Bhubaneswar on 14.07.2011, she asked him about her journey with him, the respondent after hearing it became furious and denied to take her with him, rather advised her to stay with his family members and to serve his family members and assured her to take her after two months. On 14.07.2011 the respondent went to his service place leaving her in his house and thereafter the family members of the respondent started torturing her both physically and mentally and on silly matters scolded her in presence of their relatives and other outsiders and did not allow her to talk to with her parents and other family members and whenever anybody from his family members wanted to contact with her, her-in-laws allow her to talk with her family member on the loud speaker mode. The respondent after going to his service place, he contacted her for only three to four occasions over phone and on every occasion she requested to the respondent to convince his family members not to torture on her but the respondent used to advice her to serve his family members as to their satisfaction by showing her fault. When she asked the respondent to take her to his service place, the respondent replied that in the month of May or December, 2012, he may come to Bhubaneswar but he did not take her to his service place rather advise her to remain with his parents and to serve them to their satisfaction. On 24.07.2011 when being tortured by

her in-laws, she contacted the respondent over phone, one Hindi speaking lady received the phone call and on being asked by her identity, she identified herself as the wife of the respondent and at this moment the respondent snatched away the phone from that lady and abused her and directed her not to make any further call to this phone and disconnected the phone from his side. Thereafter when again she tried to contact to the respondent, the said phone was switched off and subsequently the respondent changed his number and from that date the respondent has not kept any contact with her. From the above mentioned incident, she became sure that the respondent has kept a concubine there at his service place and thereby cheating her. It is further case of the petitioner that when she intimated the said fact to the parents of the respondent, they stated that there is no harm if the respondent has kept a concubine there and also advised her to serve them being the daughter-in-law leaving the aspiration to leave with the respondent at his service place. It is further averred that while she was suffering from severe gastritis her in-laws on 01.08.2011 took her to her house and left her in front of the gate. Several attempts have been made from the side of the petitioner to settle the dispute but all were in vain. Since the torture and cruelty became unbearable, she has filed this proceeding for decree of divorce on the grounds of cruelty and desertion.

4. The respondent in his written statement has admitted the marriage with the petitioner but denied all the allegations made by the petitioner against him. He has further stated that all the allegations are baseless and imaginary. He has further stated that after marriage, he went to his service place on 14.07.2011 and it was difficult on his part to take the petitioner to his service place as he was residing in a joint mess. It is the further case of the respondent that during their short span of stay, the petitioner was falling ill and his parents took her to a specialist doctor for treatment and thereafter, the parents of the petitioner took her to their house on 01.08.2011. He has further stated that the petitioner has left his house according to her own will and in spite of this, he is ready to take back the petitioner. The respondent

has denied any illicit relationship with others.

5. From the aforesaid rival pleadings of the parties, 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?

6. The petitioner in order to buttress her case she, herself, has been examined as P.W.1 and her father as P.W. 1 and relied on two documents i.e. Ext. 1 is the Bio Data of the respondent, Ext. 2 is the list of clothes. The respondent in order to nix the allegation of the petitioner he, himself, has been examined as R.W. 1 and his father as R.W. 2 but did not chose to adduce any documentary evidence in their support.

7. The petitioner in her evidence has stated that the respondent has been torturing her both physically and mentally and has deserted her on 01.08.2011. She has stated that the respondent has got no physical relationship since 14.07.2011 from the date when he left for his service place. Further the petitioner has stated that the respondent is living with a concubine to which, she came to know from telephonic call. P.W. 2 the father of the petitioner has supported the averments and the evidence deposed by the petitioner. Nothing substantial has been brought out from the evidence of P.W. 1 and 2 during their cross examination by the respondent.

8. The respondent in his evidence has denied to have received any dowry and gold ornaments of 10 tolas. The bride side had not given any cash to me for the dress material and also had not given a single pie towards bata kharcha. They had taken to the shop and purchase the dress material. On 11.07.2011, he had gone to the parental home of the petitioner being invited by her father as Juain dakara and that was his first visit and again on 24.10.2011, he had gone to the parental home of the petitioner and that was his last visit and he had not made any visit to the parental home of the petitioner in the interregnum period as he was not at Bhubaneswar. The respondent in his evidence though denied to have tortured the petitioner but no where he has stated that he took sufficient initiation for continuance of their marital relationship. Nowhere he has stated that after marriage, he took

any physical relationship with the petitioner. R.W. 2 being the father of the respondent corroborated the evidence of the R.W. 1.

9. 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-10 of his petition has stated that the respondent deserted her since 01.08.2011. The petition for divorce in this case is presented in the Court on 29.08.2011. 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.

10. Now the next point for consideration is cruelty. Admittedly, there has been no cohabitation between the parties since 01.08.2011. It is clearly established that the respondent without any rhyme or reason willfully withdrew the 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 as result of his extramarital relation with another lady at his leaving place. The result, is frustration and misery to the petitioner due to denial of normal sexual life and hence cruelty. 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 woman'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 woman's brain, develops his character and trebles her vitality. It must be recognized that nothing is more fatal to marriage than disappointment in sexual intercourse. Keeping a concubine, living with a mistress and not taking care of the wife which are emerged out from the evidence P.W. 1 are circumstances of the cruelty and therefore, the petition of the petitioner

deserves merit to be allowed. Hence, it is ordered;

O R D E R

The petition of the petitioner is allowed on contest without cost. 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 22nd day of December, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Priti Dash
P.W. 2 Trilochan Dash

Witnesses examined for the respondent:

R.W.1 Biswajit Mohapatra
R.W. 2 Sri Bidyadhar Mohapatra

List of documents by petitioner:

Ext. 1 Bio Data of the respondent written by her father
Ext. 2 List of clothes.

List of documents by respondent:

Nil.

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