

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

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

Civil Proceeding No. 239 of 2011

Jyoshna Rani Sahoo,  
W/o-Birendra Sahoo,  
D/o-Bhimsen Sahoo,  
At present staying her father's house  
At Plot No. 453/454, Nayapalli, Nua Sahi,  
Krushnaprasad Basti, P.S.-Nayapalli,  
Bhubaneswar-751012, Dist-Khurda.

... Petitioner

... Versus...

Birendra Sahoo,  
S/o-Pathani Sahoo,  
At-Jayapur, P.O.-Sakhigopal,  
P.S.-Satyabadi, Dist-Puri.

... Respondent

Date of Argument : 28.10.2015

Date of Judgment : 18.11.2015

J U D G M E N T

The petitioner-wife, Jyoshna Rani Sahoo has filed a petition U/s. 13 of the Hindu Marriage Act, 1955 (in short, the Act 1955) praying for a decree of dissolution of her marriage with the respondent-husband, Birendra Sahoo on the grounds of desertion and cruelty.

2. The facts of the case of the petitioner are as follows:-

The marriage of the petitioner with respondent was solemnized as per Hindu Custom and rites at Nayapalli Nua Sahi on 15.02.2002 and they have no issue out of their wedlock. It is the case of the petitioner that after

marriage, they led a happy conjugal life for one month. Thereafter, she was subjected to torture both physically and mentally by the respondent for non fulfillment of their additional demand of dowry. It is further averred by her that she was not given proper food, clothes and medical treatment during her stay in her matrimonial home as well as during her pregnancy. Her parents-in-law had also attempted to miscarriage of her pregnancy by administering both ayurvedic and homeopathic medicines. It is further averred by her that on 30.01.2009 the respondent with the spell of liquor assaulted and abused her in filthy languages and on the next day i.e. on 31.01.2009 the respondent and his family members drove her out from the house. On 28.03.2009 when she returned her matrimonial home, she was not allowed to enter into to their house on the ground that she is a barren lady and that of the second marriage of the respondent with one Saraswati Sahoo daughter of Dushasan Sahoo of village Nahamangapatana under Balanga Police Station in the district of Puri on 26.03.2009. Finding no other alternative, she has lodged an FIR in local police station vide P.S. Case No. 29 of 2009. According to the petitioner, the respondent has blessed with one female child out of the second marriage in District Headquarter Hospital, Puri on 13.02.2010 and in the hospital register they have changed their name as Biresh Sahoo and Sukanti Sahoo in place of their original name as Birendra Sahoo and Saraswati Sahoo respectively. It is further averred by her that she has not brought her clothes, gold and silver ornaments from her matrimonial home. The respondent has not given a single farthing to her since last five months for which she is in starving condition and depending upon her father who is unable to maintain her. According to her, the respondent is running a stationary shop at Sahkhigopal market and is earning Rs. 10,000/- per month. Since the respondent debarred her from marital relationship, it is not possible for her to reside with the respondent and therefore, she has filed this proceeding seeking a decree of divorce on the grounds of desertion and cruelty.

3. The respondent filed his written statement nixing the allegations made

by the petitioner against him. He has averred that the petitioner being an adamant lady who had been born and brought up in the town culture of Bhubaneswar could not adjust herself in the traditional atmosphere in his village. The respondent also did not perform her martial obligation as a Hindu wife and voluntarily left his house. He has further averred that he is running a small betel shop in Sakhigopal market and his monthly income is not more than Rs. 1,000/- and except that he has no other source of income. In fine, he submitted to dismiss the divorce petition.

4. The following points are formulated for determination of the case:-

(i) Whether the respondent deserted the petitioner?

(ii) Whether the circumstances and back grounds depicted in the narration of the petitioner's case constitute cruelty by the respondent on the petitioner and if so, whether the petitioner is entitled for a decree of divorce?

(iii) Whether the petitioner is entitled for any alimony either permanent or monthly if points No. i and ii is answered in her favour?

5. The petitioner in order to prove her case she, herself, has been examined P.W. 1 and her father namely Bhimsen Sahoo as P.W. 2 and placed reliance on one document i.e. Ext. 1 is the copy of the FIR. The respondent chose not to file any evidence or document on his behalf.

**Point No.I**

Whether the respondent deserted the petitioner?

6. The petitioner sought divorce on the ground of respondent's desertion. It is needless to say Section 13(1) (i-b) of the Act, 1955 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-13 of his petition has stated that the respondent deserted him since 12.05.2009. The petition for divorce in this case is presented in the Court on 12.05.2000. Thus, it is clearly established that the petition has been filed before completion of two years from the date as alleged by the petitioner. Therefore, the ground of desertion held not established.

**Point No.II**

Whether the circumstances and back grounds depicted of the narration in the petitioner's case constitute cruelty by the respondent on the petitioner and if so, whether the petitioner is entitled for a decree of divorce?

7. Now the next point for consideration is cruelty. Demanding dowry and non fulfillment thereof subjected to torture both physically and mentally to the petitioner, not providing proper food, clothes, not giving proper medical treatment during her pregnancy, giving roots and leaves to the petitioner by the mother of the respondent after miscarriage, driving her out from the matrimonial home, assaulting and abusing with the spell of liquor and calling the petitioner as barren lady are the circumstances sufficient enough to establish the ground of cruelty. Additionally, the respondent has contacted second marriage to one Saraswati Sahoo during the life time of petitioner is also amounts to mental cruelty. Therefore, the petitioner could establish the ground of cruelty and as such she is entitled to a decree of divorce both on the ground of cruelty.

**Point No. III**

Whether the petitioner is entitled for any alimony either permanent or monthly if points No. (i) and (ii) are answered in her favour?

8. The respondent in his W.S. has admitted that he is running a small betel shop in Sakhigopal market out of which he is getting Rs. 1,000/- per month and except that he has no other source of income. Although the petitioner has stated that the respondent has a stationary shop at Sakhigopal from where he earns Rs. 10,000/- per month yet, failed to file any document to substantiate it. Be that as it may, in view of the admission of the respondent that he is running a small betel shop in Sakhigopal market and earns Rs. 1,000/- per month. Therefore, it cannot be gained said that the respondent has income sufficient enough to support his family. Keeping in view of the family status and spiraling rise of essential commodities in the present day of society, I feel it just and proper to grant monthly maintenance

of Rs. 2,000/- (Rupees two thousands) only, in fact I did the same. Hence, it is ordered;

O R D E R

The petition is allowed on contest 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. The respondent is directed to pay monthly maintenance of Rs. 2,000/- (Rupees two thousands) only to the petitioner since the petitioner was granted interim maintenance of Rs. 1,000/- (Rupees one thousand) only per month, this present maintenance amount shall run from the date of this order. The respondent is also directed to pay litigation expenses of Rs. 3,000/- (Rupees three thousands) only to the petitioner.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 18<sup>th</sup> day of November, 2015.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1        Jyoshna Rani Sahoo

P.W.2        Bhimsen Sahoo

Witnesses examined for the respondent:

None

List of documents by petitioner:

Ext. 1        Copy of the FIR

List of documents by respondent:

Nil

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