
(2017) 09 JH CK 0020
In the Jharkhand High Court
Case No : 146 of 2016

Rahul Pandey @ Rahul Kumar Pandey APPELLANT
Vs
The State of Jharkhand RESPONDENT

Date of Decision : 18-09-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 498A](#) - Husband or relative of husband of a woman subjecting her to cruelty
[Hindu Marriage Act, 1955](#), [Section 13\(1\)\(i\) \(i-a\)](#) - Divorce

Citation : (2017) 09 JH CK 0020

Hon'ble Judges : Aparesh Kumar Singh, B. B. Mangalmurti

Bench : DIVISION BENCH

Advocate : Satish Kumar Ughal, Tapas Kabiraj, A.K.Chaturvedi, Rajesh Kumar Singh

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment dated 19.07.2016 and the decree following thereupon sealed and signed on 28.07.2016 passed by Shri Bal Mukund Roy, Principal Judge Family Court, Seraikella-Kharsawan in Matrimonial Suit No. 29 of 2010 whereby the suit filed by the appellant/petitioner under Section 13(1)(i) (i-a) of the Hindu Marriage Act was dismissed.

2. The relevant facts of the case in brief are that the appellant Satya Narayan Mahato being husband of respondent Ambika Mahato filed a suit under Section 13(1)(i) (i-a) of the Hindu Marriage Act for a decree of divorce. The marriage between them was solemnized on 03.05.2008 after following the custom prevalent in Hindu society. The further case is that the respondent refused to establish physical relation with the appellant on the ground that she is in love with other person. On enquiry the respondent replied that her parents knowing her love affairs forcibly fixed and solemnized her marriage. To save his social prestige, the appellant tried to begin conjugal life with her. The idea did not click and ultimately he reported the matter to his father who called the parents of the

respondent who came and took back the respondent with them. This time she stayed in the matrimonial house for about six days. In the month of June, 2008 the father of appellant requested the respondent to come on the occasion of the marriage ceremony of Shibani, daughter of Prafulla Mahato, younger brother of father of appellant. She again stayed for six days. The further case is that the marriage was never consummated between the parties although they lived together for some time. The appellant was working as an Electrician and was earning very small amount. Due to non-consummation of marriage, he was suffering with mental agony and was feeling ashamed in the society. In the month of July, 2009 the father of the petitioner went and brought the respondent but she stayed only for five days and during this period also no physical relation could be established. The mother of the respondent came and took her back. The appellant received information from some relatives and unknown persons that the respondent gave birth to a child although her pregnancy and giving birth to a child was never disclosed by the parents of the respondent. It is evident that after solemnization of marriage, the respondent had voluntarily sexual intercourse with her lover or someone else causing mental cruelty upon the appellant. Since the marriage was not consummated from the date of marriage till July, 2009, the decree of divorce was prayed.

3. The case of the respondent as per the averments made in the written statement is that after solemnization of marriage at Jamshedpur according to Hindu rites and customs and after Bidai she came to her matrimonial house where she cohabited with the petitioner. Her parents, after selling their cultivable lands, spent huge amount on the marriage but the appellant's family demanded Rupees Three lakhs as dowry for which she was also being tortured physically and mentally. The respondent became pregnant in her matrimonial house. She was taken to her parents' house on 17.09.2009 while she was pregnant of four months. The appellant's family members were on visiting terms and had also provided some medicines as per the advice of the doctors of Tata Motors Hospital, Telco, Jamshedpur. It was further stated that during the month of November, 2009 the appellant along with his parents and Nanad visited the house of respondent to see her condition and she was further asked by them to come after delivery of child with Three lakhs of rupees. Thereafter the appellant stopped visiting the respondent's house. On 22.03.2010 the respondent gave birth to a male child in Tata Motors Hospital, Telco, Jamshedpur. Presently the respondent along with her minor son are living in her parents' house. The appellant never came to see his minor son or the respondent, although she was performing domestic work as a dutiful housewife and always tried to keep the appellant and his parents happy. Since the appellant's family had assaulted the respondent for non-fulfillment of their demand of Dowry and denied the pregnancy of appellant's child, she had filed a complaint case under Section 498A I.P.C. and Section 3 / 4 of the Dowry Prohibition Act against the appellant, his parents and sister and had also filed a Miscellaneous case demanding maintenance for herself and her minor son. She still wants to resume conjugal

relationship with the husband.

4. Learned Counsel for the appellant submitted that the court below has not considered that the respondent had refused to establish physical relationship with the appellant on the ground that she had a love affair. He further submitted that the court below also had not considered that without establishing the physical relationship how the respondent became pregnant and gave birth to a child. He also submitted that even if the pregnancy is counted as per the evidence of the respondent, then it would come that the birth of child was much before the medical counting of 280 days in ordinary natural course. He also submitted that the court below has failed to consider that the DNA report cannot be relied upon as it might have been managed. The said report was also not proved before the court as no Expert was examined to prove the DNA report. The court below arrived at an incorrect finding by relying on the DNA report and held that the child of the respondent is from the appellant and not from the relationship with some other person.

5. Learned Counsel for the respondent supported the judgment of the court below and submitted that the appellant Satya Narayan Mahato was not examined although he was the best person to prove before the court about non-consummation of marriage. Only two witnesses namely brother-in-law and father of appellant were examined. One of the witnesses PW-1 Rahul Mahato had no knowledge about the DNA test whereas PW-2 Narendra Nath Mahato, father of the appellant had knowledge about DNA test but "in para-12 he has stated that in DNA test it has come that the child is of his son and he has not filed any appeal against it". Lastly he has submitted that on behalf of defence respondent and her father Sanatan Mahato were examined. DW-2 Sanatan Mahato said that due to continuous demand of dowry Appellant has made the allegation of non-consummation of marriage.

6. We have heard the parties. The admitted position in this case is that the marriage was solemnized on 03.05.2008 thereafter she stayed for six days in the matrimonial house. During marriage ceremony of Shibani, daughter of younger brother of Narendra Nath Mahato (father of appellant) again she stayed for five days. It is also admitted by petitioner/appellant that respondent was brought to his house in July 2009 and she stayed there for five days. The respondent gave birth to the male child on 22.03.2010 at Tata Motors Hospital, Jamshedpur. The court below has considered that the appellant Satya Narayan Mahato has not been examined in this case and no documentary evidence is adduced on behalf of appellant. The court below had ordered collection of sample of blood which was sent to Forensic Science Laboratory, Ranchi for DNA test on the petition of appellant but the report was challenged on the ground that it was not properly proved. The court below has referred Section 14 of the Family Courts Act which deals with application of Indian Evidence Act, 1872 that a Family Court may receive as evidence any report, statement, document, information or matter that may, in its opinion, assist it to deal effectually with dispute, whether or not

the same would be otherwise evidence or admissible under Indian Evidence Act, 1872 and has held that in the facts and circumstances of the case the report of SFSL, Ranchi is received as evidence by the court under that provision of the Family Courts Act .

7. The report of Forensic Science Laboratory is not required to be proved by the scientist of the laboratory as held by the Hon''ble Supreme Court in Rajesh Kumar and Anr. Vs. State Govt. of NCT of Delhi reported in 2008(2) Crimes 41 (SC). Therefore, there is no requirement to examine expert witness to prove the report of Forensic Science Laboratory.

8. We cannot ignore that the best person who was to prove the non-consummation of marriage was appellant himself but he did not appear and examined himself to prove his case. The report of DNA test and non-examination of appellant lead to a definite conclusion that the marriage was consummated but in the backdrop of the non-fulfilment of demand of dowry the divorce suit was filed. The court below has rightly dismissed the prayer of appellant.

9. Therefore, in the above circumstances we do not find any occasion to interfere in the impugned judgment.

10. In the result, instant first appeal is dismissed.