



2024:CGHC:42296-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on : 20/09/2024

Judgment delivered on :25/ 10 /2024

FA(MAT) No. 132 of 2023

1 -

... Appellant

versus

1 -

... Respondent

For Appellant	:	Ms. Meenu Banerjee, Advocate
For Respondent	:	Mr. B.N. Mishra and Mr. Ganesh Ram Burman, Advocates

Hon'ble Smt. Justice Rajani Dubey,

Hon'ble Shri Justice Sanjay Kumar Jaiswal

C A V Judgment

Per Rajani Dubey, J.

1. This appeal is directed against the judgment and decree dated 05.04.2023 (Annexure A-1) passed by the learned Principal Judge, Family Court Bilaspur, District- Bilaspur (C.G.) in Civil Suit No. 29-A/2021 whereby the application under Section 13(1-A) 13(1B-ii) of the Hindu Marriage Act filed by the respondent/husband for grant of decree of divorce, was allowed.
2. Before learned trial Court, it is an admitted fact that both the appellant and the respondent are governed by the Hindu religion and marriage between the parties was solemnized on 07.02.2016 at Bilaspur in accordance with Hindu rites and rituals.
3. Applicant/respondent herein filed application under Section 13(1-A) 13(1B-ii) of Hindu Marriage Act against the non-applicant/ appellant herein on this ground that the Applicant/respondent has been residing in Delhi since 2005 and is employed in a private company. He lives in a rented house. Non-applicant/appellant is employed as a teacher in Saint Xavier's School. After marriage, the non-applicant went to Delhi for a few days but by quarelling over petty matters, she deprived the applicant of marital happiness. She abandoned the Hindu religion and adopted Christianity. She also suspected the fidelity of the applicant/respondent. Non-applicant/wife did not want to live in Delhi whereas the applicant/husband is the only son in his family. Non-applicant/wife did not follow the Hindu rituals and also threatened the applicant/husband to implicate him in a false case.
4. In her reply, non-applicant/wife denied all the allegations levelled by the applicant/husband against her and stated that the applicant/husband and his family members used to follow the Christianity and due to which, she got acquainted with him. She did not

abandon the traditions of Hindu religion and also she never suspected the fidelity of the applicant/husband. Further, she wants to live with the applicant/husband. She was tortured by the applicant/husband for demand of dowry. The applicant/husband himself abandoned her. She is willing to live in a joint family.

5. Learned trial Court after appreciating the oral and documentary evidence and further on this ground that the non-applicant/wife converted herself from Hindu religion to Christian religion, granted decree of divorce in favour of the the respondent/husband. Hence, this appeal has been filed by the appellant/wife.
6. Learned counsel for the appellant submits that the the impugned judgment and decree dated 05-04-2023 (Annexure A-1) passed by the learned Family Court is bad in law as well as the facts and circumstances of the case, and therefore is liable to be set aside. The learned Family Court did not appreciate the evidence in its proper perspective. Learned Family Court did not consider the statements of the appellant and her witnesses properly which is perverse and against the law. The learned Family Court ought to have considered that only her going to place of Lord Jesus and believing that she would cure from the sick and bad health, is not a ground proving that the appellant/wife has converted herself from Hindu religion to Christian religion.

She further submits that the learned Family Court ought to have considered that as to what is the proceeding of converting from Hindu religion to Christian religion and whether wife/appellant entered to the Baptism Proceeding? "Baptism" is a necessary proceeding in entering Christian religion. It is most important custom of Christianity. But, it was

not proved by the respondent/husband that wife/appellant has entered to the Baptism proceeding. Therefore, the learned Family Court ought to have considered the documents filed by the appellant/wife showing that she is a follower of Hindu religion. Hence, the impugned judgment and decree are liable to be set aside.

Reliance has been placed on the judgment of Hon'ble Supreme Court in the matter of **Dr. Ramesh Yeshwant Prabhoo Vs. Prabhakar Kashinath Kunte and others with another connected matter; (1996) 1 SCC 130, M. Chandra Vs. M. Thangamuthu and another; (2010) 9 SCC 712 and The Commissioner, Hindu Religious Endowments Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt; AIR 1954 SC 282.**

7. Learned counsel for the respondent supports the impugned judgment and decree and submits that the learned trial Court after appreciating the oral and documentary evidence, rightly passed the impugned judgment and decree granting decree of divorce in favour the respondent. This is an admitted position in this case that the marriage between the parties was solemnized as per the Hindu law and rituals but the appellant/wife and her family members are followers of christian religion. He further submits that the learned trial Court after due consideration of all evidence brought before the Court come to the conclusion and passed the judgment and decree dated 05.04.2023 which are well merited and do not call for any interference by this Court.

Reliance has been placed on the judgment of Hon'ble Supreme Court in the matter of **Perumal Nadar (dead) by LRS Vs. Ponnuswami; 1970(1) SCC 605; S. Anbalagan Vs. B. Devarajan**

and others; (1984) 2 SCC 112 and Sujatha Vs. Jose Augustine;1994 SCC OnLine Kar 397.

8. Heard counsel for the parties and perused the material placed on record.
9. It is evident from the trial Court record that it is an admitted position that the marriage between the parties was solemnized on 07.02.2016 in accordance with Hindu rites and rituals at Bilaspur. Respondent filed application under Section 13(1-A) 13(1B-ii) of Hindu Marriage Act for decree of divorce against his wife/appellant. On the basis of pleadings made by the parties, learned trial Court framed the following issues:-

क.	वाद प्रश्न	निष्कर्ष
1.	क्या गैर याचिकाकर्ता पत्नी ने उभयपक्ष के विवाह के अनुष्ठापन के पश्चात अर्जीदार पति के साथ कूरता का व्यवहार किया है?	प्रमाणित नहीं
2.	क्या गैर याचिकाकर्ता ने अर्जी पेश किये जाने से अव्यवहित कम से कम दो वर्ष की निरंतर कालावधि तक अर्जीदार को अभित्यक्त कर रखा है?	प्रमाणित नहीं
3.	क्या प्रतिवादी किश्चियन धर्म में सम्परिवर्तित हो जाने के कारण हिंदू नहीं रही?	प्रमाणित
4.	सहायता एवं व्यय	दावा डिक्री

10. Learned trial Court after appreciating the oral and documentary evidence found that the respondent/ husband failed to prove issue Nos. 1 and 2 in his favour but succeed to prove issue No. 3, and, therefore, the learned trial Court granted the decree of divorce in favour of the respondent/husband.
11. It has been argued by learned counsel for the appellant that the conversion and belief both are different things and if any Hindu person used to got to the Ajmer Sharif with belief and faith and in the said

Dargah offering the cloth, so it could not be presumed that the said person has converted from Hindu religion to Muslim religion. Appellant also used to go to Church for prayer but she never converted from Hindu religion to Christian religion and respondent/husband has failed to prove this fact that the appellant has converted from Hindu religion to Christian religion.

12. Counsel appearing for the appellant filed some judgments with regard to anti-conversion laws and also other related documents.

13. **Section 13(1B-ii) of Hindu Marriage Act, 1955** provides that a divorce can be granted if one spouse ceases to be Hindu and converts to another faith without the consent of the other.

14. Now we have to consider this fact that whether finding recorded by the learned trial Court is according to facts and circumstances of the case as well as law or not?

15. It is clear from the statement of respondent/husband that he is a follower of Hindu religion and all the rituals of Hindu religion are performed in his house. He is the elder son of his parents and he has to perform the festivals and rituals of his house. The appellant/wife does not accompany him in any worship or religious programme. She called the Hindu religion hypocrisy and also mocked at the same. He is saddened by this kind of behavior of the appellant and felt ashamed in front of the people of the house and society.

16. According to the respondent, on 26.12.2017, a social meeting was held at Bilaspur in which family members were present. In the said meeting, the appellant/wife refused to go with the respondent. On 03.06.2018, family and community members went to the native place of the appellant to bring her back where social meeting was held in which she refused to live with the respondent.

17. Ram Kumar Chandra, who is father of the respondent also supported the statement of the respondent/husband and he filed the document (Ex.P/3) regarding the social meeting wherein he admitted his signature from B to B part. In his cross-examination, he denied this suggestion that the appellant did not sign anywhere in Ex.P/3 in the said meeting. He denied this suggestion that the signature of the appellant was forged from C to C part of Ex.P/3.
18. Appellant- Neha Chandra (N.A.W.-1) denied all allegations in his affidavit filed under Order 18 Rule 4 of C.P.C., however, in para 17 of her cross-examination, she admitted that “यह कहना सही है कि देवीनगर बिलासपुर स्थित प्रार्थना भवन में जानती हूं। शादी के पहले मैं इस प्रार्थना भवन के बारे में जानती थी और वहां जाती थी।”

In para 19, she admitted that, “ यह कहना सही है कि दवाई लेने से जब उल्टी होने लगा तो मैं दो बार जल का सेवन की देवीनगर में प्रार्थना होती है और कोई अस्वस्थ हो तो उसके स्वस्थ होने के लिए जल इत्यादि का सेवन कराया जाता है। यह कहना सही है कि देवीनगर स्थित प्रार्थना भवन ईसाई धर्म के लोग चला रहे है। मेरी आस्था उक्त प्रार्थना भवन में है और मैं इसीलिए वहां जाती हूं। गवाह स्वतः कहती है कि शादी के पहले भी मैं वहां जाती थी। मुझे उक्त प्रार्थना भवन से बहुत फायदा हुआ है।”

She denied this suggestion that she does not follow Hindu rituals and does not eat *prasad* of Hindu Puja, however in para 28, she admitted that it has been more than 10 years since she joined the prayer meeting and it has been more than 10 years since she has not done *puja*.

Appellant/wife admitted this fact that the family members of the respondent/husband came to her maternal home. She also admitted this fact that she lived with the respondent/husband only for 1 year out of 6 years. Appellant/wife also admitted that she was present in social

meeting dated 03.06.2018 and admitted that the signatures of the people present in the meeting were mentioned in Ex.P/3.

19. Vivek Chandel (N.A.W-2) who is brother of the appellant/wife also admitted this fact that her sister- Neha Chandra (appellant/wife) and he used to go to the prayer place in Bilaspur and they both have spiritual faith in the said prayer. Before 2011 when they lived with their family in Balco, they used to go to the prayer place and in the said prayer place, Christian prayers were offered. In para 13, he admitted that, “यह कहना सही है कि मेरी बहन के ससुर ने हमको यह बताया था कि पूजा में बैठने के लिए कहां गया था जिसके लिए उन्होंने मना कर दिया था और कहां कि इसे अभी ले जाईये और आचरण सुधार कर लाईये।”

In para 19, he admitted this fact that, “यह कहना सही है कि मुझे इस बात की जानकारी है कि कोरोना काल के समय वादी के दादा जी का देहांत हुआ था। मैं यह जानता कि वादी का परिवार संयुक्त परिवार है। यह कहना सही है कि वादी के दादाजी के देहांत के समय मैं, प्रतिवादी एवं मेरे परिवार से कोई नहीं गया था। यह कहना सही है कि प्रतिवादी मुझे अपने ससुराल के बारे में जो महत्वपूर्ण बातें हैं वह बताती थी, व प्रकरण के बारे में पूरी बात बताती है। यह कहना सही है कि प्रतिवादी को अक्टूबर 2017 को लाने के बाद से आज दिनांक तक प्रतिवादी सहित हम पूरा परिवार वादी के घर नहीं गये है। गवाह स्वतः कहता है कि उक्त दिनांक को प्रतिवादी के ससुर द्वारा कहा गया था कि समझाईश देने के पश्चात ही लेकर आना, इसलिए हम लोग नहीं गये।”

He also admitted that, “यह कहना सही है कि मेरे परिवार द्वारा किसी भी तरीके से सामाजिक पहल नहीं की गयी है। ”

20. Relevant portion of Ex.P/3 reads as under:-

2. विवाह के बाद से ही श्री आनंद कुमार चंद्रा की (बहु) श्रीमति नेहा चंद्रा हिन्दू धर्म विरुद्ध आचरण कर रही है इसाई धर्म प्राथना में लिप्त है। आज भी यह करते रहने के लिए हठ पर अड़ी है जिससे पति, पत्नि एवं परिवार के बीच कलह एवं दूरिया बढ़ गई है। आज के बैठक में जो परिस्थितियाँ निर्मित

हो रही है वह उक्त घटनाक्रम की सच्चाई को स्पष्ट एवं सही साबित करती है।

21. Conclusion part of the said meeting (Ex.P/3) is as under:-

अतः नेहा चंद्रा उनके माता पिता, परिवारजन को एक अंतिम अवसर दिया जाना चाहिए जिससे बेटी को समझाकर ससुराल भेज सके। आज दिनांक 03/06/2018 से तीन माह के भीतर यदि सभी परिवार वाले मिलकर अपने पुत्री को समझाने में असफल रहते हैं व नेहा चंद्रा नहीं समझना चाहती है तब दोनों पक्ष अपने-अपने बच्चों के भविष्य के लिए न्याय संगत फेसला लेने के लिए स्वतंत्र रहेंगे।

इसके साथ ही यह बैठक समाप्त की गई।

22. Ex.D/1 and D/2 are the letters which were written by the appellant/wife to the President of Chhattisgarh Mahara (Jharia) Welfare Association Bilaspur (Chhattisgarh) alleging some allegations against the respondent/husband and his family members.

23. Close scrutiny of oral and documentary evidence and admission of appellant/wife in her statement makes it clear that she regularly visited the Church and since 10 years, she has not followed the Hindu religion and also did not take part in Hindu Puja.

24. Hon'ble High Court of Karnataka in the matter of **Sujatha Vs. Jose Augustine; 1994 SCC OnLine Kar 397** held in para 6 as under:-

"6. The parties to the marriage admittedly hail from Emakulam and Alappuzha Districts of the States. There is no case for the parties that the marriage among Latin Christians in the concerned locality as governed by any particular enactment. The decision reported in Leelamma v. Dilip Kumar ((1992) 1 KLT 651) would show that Indian Christian Marriage Act in force in other parts of the country has not been extended to the areas falling within the jurisdiction of the erstwhile High Courts of Travancore and Travancore-Cochin and that it is the Canon Law that would govern the marriage among the

Christians in those areas to which Indian Christian Marriage Act has not been made applicable. In the above decision after a detailed discussion with reference to the decisions of the Supreme Court and the authoritative text books on the subject it has been laid down that to be a Christian one must truly profess the Christian faith. The fact that one has underwent the ceremony of baptism may not by itself be sufficient to hold that one has become a Christian. The fundamental thing to be established before one can be held to be Christian is that the person concerned truly believes in and professes the Christian faith.”

25. Hon’ble Apex Court in the matter of **Lily Thomas Vs. Union of India;**

LAWS(SC)-2000-5-113 held in paras 30, 31 and 32 as under:-

“(30.) Now conversion or apostasy does not automatically dissolve a marriage already solemnized under the Hindu Marriage Act. It only provides a ground for divorce S. 13. The relevant portion of S 13 provides as under:

13. Any marriage solemnized, whether before or after the commencement of this Act. may on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

- (i).....
- (ii) has ceased to be a Hindu by conversion to another religion,
- or
- (iii) to (ix).....”

(31.) Under S. 10 which provides for judicial separation, conversion to another religion is now a ground for a decree for judicial separation after the Act was amended by Marriage Laws (Amendment) Act. 1976. The first marriage, therefore, is not affected and it continues to subsist. If the 'marital status is not affected on account of the marriage still subsisting, his second marriage qua the existing marriage would be void and in spite of conversion he would be liable to be prosecuted for the offence of bigamy under S. 494.

(32.) Change of religion does not dissolve the marriage performed under the Hindu Marriage Act between two Hindus. Apostasy does not bring to an end the civil obligations or the matrimonial bond, but apostasy is a ground for divorce under S. 13 as also a ground for

judicial separation under S. 10 of the Hindu Marriage Act. Hindu law does not recognise bigamy. As we have seen above, the Hindu Marriage Act, 1955 provides for "Monogamy." A second marriage, during the life time of the spouse, would be void under Ss. 11 and 17, besides being an offence."

26. In light of above, in the present case, it is clear that at the time of marriage, both the parties were of Hindu religion. In Hinduism, the wife is regarded as the "Sahadharmini" (Equal Partner in Dharma), meaning she shares in the spiritual duties and righteousness (dharma) alongside her husband. This concept underscores the wife's essential role in fulfilling religious obligations, particularly in the performance of rituals, where her presence is indispensable. This principle is deeply rooted not only in texts like the Mahabharata and Ramayana but also in the Manu Smriti, which explicitly states that a man cannot perform a yajna (यज्ञ) without his wife, as the yajna (यज्ञ) remains incomplete without her.
27. The idea that a wife is a vital partner in spiritual and religious duties is fundamental to every Hindu household. In the present case, the Respondent/husband has clearly stated that the Appellant/wife not only refused to perform puja with him but also disrespected Hindu gods, rituals, and the sacred prasada. The Respondent, being a devout Hindu and the elder son of his family, is obligated to perform several important rituals for himself and the members of his family. The Appellant/wife, by her own admission, has not engaged in any form of puja for the past 10 years and instead attends church for her prayers.
28. It is important to note that this is not a case of a marriage between individuals of two different religions, where a mutual understanding of faith practices would be expected. Here, the Respondent has argued

that the Appellant repeatedly demeaned his religious beliefs, insulted his gods, and humiliated him. In our view, such behavior from the wife who is expected to be the "Sahadharmini"-amounts to mental cruelty towards a devout Hindu spouse. However, since the Respondent husband has not challenged the family court's findings regarding cruelty, no further observations on this matter are required. The learned Trial Court has rightly decided Issue No. 3 in favor of the husband/respondent on the basis of oral and documentary evidence of both the parties.

29. In view of above discussion, we are of the considered opinion that the finding recorded by the learned trial Court is just, proper and in accordance with the provisions of Hindu Marriage Act and does not call for any interference by this Court.

30. Accordingly, the appeal being without any substance is liable to be and is hereby **dismissed**.

31. Respondent/husband is directed to pay an amount of Rs.5 lacs to the appellant/wife as a permanent alimony.

32. Let a decree be drawn up accordingly.

Sd/-

(Rajani Dubey)
Judge

Sd/-

(Sanjay Kumar Jaiswal)
Judge