

(2004) 11 JH CK 0015

Jharkhand High Court

Case No: A.F.O.D. No. 79 of 2000 (R)

Pushpa Kumari (Smt.)

APPELLANT

Vs

Parichhit Pandey @ Ashutosh

RESPONDENT

Pandey and Another

Date of Decision: Nov. 24, 2004

Acts Referred:

- Hindu Marriage Act, 1955 - Section 9

Citation: (2005) 1 BLJR 486 : (2005) 1 JCR 134 : (2005) 3 RCR(Civil) 131

Hon'ble Judges: Hari Shankar Prasad, J

Bench: Single Bench

Advocate: V. Shivnath and P. Chatterjee, for the Appellant; A.K. Sahani, for the Respondent

Final Decision: Allowed

Judgement

Hari Shankar Prasad, J.

This appeal at the instance of the appellant-respondent No. 1 is directed against the judgment dated 16.6.2000 and decree dated 27.6.2000 passed in Title (Matrimonial) Suit No. 12 of 1996 whereby and whereunder the learned 1st Additional Sessions Judge, Bokaro allowed the suit in favour of the plaintiff and against the appellant-respondent No. 1.

2. The case of the plaintiff-respondent No. 1 in brief is that Parichhit Pandey (c) Ashutosh Pandey (plaintiff) was married to Smt. Pushpa Kumari (appellant-respondent No. 1) according to Hindu rites and customs on 11.5.1995 at Bokaro Steel City at the residence of respondent No. 2. After solemnization of the marriage, the appellant-respondent No. 1 went to her matrimonial house at Gharmandha, Sindri, within the district of Purulia and within two to three days of her marriage, her father brought appellant respondent No. 1 to his residence and thereafter appellant-respondent No. 1 did not return to her matrimonial house.

Plaintiff, thereafter, made several attempts to bring his wife back to his house and even took help of common relation, but of no avail as respondent No. 2 bluntly refused to send her daughter to the plaintiffs house. The last attempt was made on 12.3.1996 by the plaintiff to bring her back but this time also, his attempt failed and so finding no way out, he filed this matrimonial suit u/s 9 of the Hindu Marriage Act for restitution of conjugal right.

3. Respondents appeared and filed written statement alleging inter alia therein that entire allegations are false, misconceived and concocted and those allegations have been denied. Respondent No. 2 denied that he brought his daughter to his house within three or four days after marriage and it is also denied that his daughter ever went to her matrimonial house, but alleged that plaintiff by suppressing material facts has filed this suit. The marriage between the two is admitted. It is further stated that marriage was negotiated one and the own nephew of the respondent No. 2 Mahesh Tiwary who is an Advocate was mediator in negotiation of the marriage. But parents of the plaintiff suppressed the material facts regarding character, status, nature and mental balance of the plaintiff. The fact is that after three days of marriage, it is plaintiff who brought his wife to the house of the respondent No. 2 and left her refusing to take her back unless demand of rupees live thousand and motorcycle is fulfilled. The respondent No. 2 took his daughter on three occasions, but each time respondent No. 1 was subjected to maltreatment, cruelty by her husband and her parents-in-law as well as her brother-in-law who used to torture her both mentally as well as physically on account ,of non- fulfillment of their demand of dowry articles. Plaintiff wrote several letters to the respondent No. 2 regarding fulfillment of dowry articles for better future of his daughter. The appellant- respondent No. 1 was subjected to both mental and physical torture and threats were also issued to her that she would be killed and thrown into well if demand is not fulfilled.

4. On the basis of the pleadings of the parties, following issues were framed for their determination in the suit.

1. Whether the suit is maintainable in its present form and for the reliefs claimed?
2. Whether the plaintiff has any cause of action for the suit?
3. Whether respondent No. 1 had withdrawn herself from the society of the plaintiff and if so, is there any reasonable cause for such withdrawal?
4. Whether the plaintiff is entitled to a decree of restitution of his conjugal right against the respondent No. 1 and for any other reliefs?
5. Issue No. 1 and 2 were decided in favour of the plaintiff. Issue No. 3 and 4 were also decided in favour of the plaintiff.
6. The case of the plaintiff-respondent is that he was married with the appellant-respondent according to the Hindu rites and customs on 11.5.1995 and

appellant-respondent after marriage went to her matrimonial house within two to three days and her father brought her to naihor and ever since then, she did not go to her matrimonial house. Plaintiff made several attempts to bring her back and last attempt was made on 12.3.1996 to bring her back but this time also, his attempt failed. On the other hand, appellant-respondent made out a case that it is wrong to say that respondent No. 2 Nirmal Tiwary brought his daughter (appellant-respondent No. 1) from matrimonial house within three days after her marriage. It is also denied that after going to her parent's house she never went back to her husband's house till date. On the other, it is alleged that this being a negotiated marriage and nephew of Nirmal Tiwary (respondent No. 2) was the mediator and he and his father-in-law have suppressed the fast regarding character, status, nature and mental balance of the plaintiff-respondent. It is alleged that this plaintiff- respondent who after three days of the marriage brought appellant-respondent to the house of her father and left her refusing to take her back unless demand of Rs. 5000/- and a motorcycle was fulfilled. Even thereafter Nirmal Tiwary (respondent No. 2) took his daughter to her husband's house on three occasions but each time, appellant-respondent was subjected to maltreatment, cruelty by her husband, in-laws as well as her brother-in-law who used to torture her both mentally and physically on account of non-fulfillment of their demand of a motorcycle and Rs. 5000/-. It is also alleged that plaintiff-respondent had written several letters to the father of the appellant-respondent for fulfillment of demand of dowry so that his daughter may live peacefully in her sosural and, therefore, such behaviour and fanatic approach towards earthly matters coupled with the language and contents of the letters written by the plaintiff betrays her nature and rustic manners. Since threatenings were also extended to her that she may be killed and thrown into well and, therefore, the plaintiff- respondent is not entitled to any relief.

7. Now the question that arises for determination in this appeal is; whether plaintiff-respondent prayer for restitution of conjugal rights is just and proper; whether allegations levelled by the appellant-respondent about mental and physical torture meted out to her and demand of dowry is true.

8. Both the points are connected with each other, hence they are being taken up together for the sake of convenience. In this connection, both sides led oral and documentary evidence. It is alleged that plaintiff-respondent had written several letters demanding fulfillment of demand of dowry and those letters have been exhibited in this case. Admitted case of the parties is that both husband and wife are living separate from each other and plaintiff-respondent had filed this application for restitution of conjugal rights.

9. Learned Court below has discussed the evidence of both the sides and from the discussion of evidence of appellant-defendant, it appears that the appellant-defendant has- alleged torture and ill-treatment and even physical assault

on the part of her husband (plaintiff-respondent) and she has also categorically stated these things are regular because of non-fulfillment of demand of dowry of Rs. 5000/- and a motorcycle which her father has failed to fulfill. Similar is the evidence of DW 5 who is respondent No. 2 in this very case and he being father of the appellant-defendant has also categorically stated that it is wrong that he brought his daughter to his house after solemnization of marriage on 11.5.1995 within two to three days, but the fact is that his son-in-law brought his daughter back to his place and stayed for one night and he again went back with his daughter and some time after his son-in-law again came with his daughter to his house and left the appellant-defendant at his house but at the same time with the threatening to kill appellant-defendant if demand of Rs. 5000/- and a motorcycle is riot fulfilled. This fact has also been stated by DW 1 who is appellant-defendant in this very case. Both of them have stated that thereafter DW 5 took his daughter to her matrimonial house where she stayed for 25-26 days but during the stay for 25-26 days, torture was meted out to her both mentally and physically by her "sasural" people including her husband and thereafter she was brought to her naihar. The fact is that her father has failed to fulfill the demand of dowry and a motorcycle and she has even been threatened that she may be killed. Although, at the end of her deposition she has expressed her desire to go to her matrimonial house if she is allowed to live there peacefully and with dignity. But by filing this appeal, she has shown her intention that she is not willing to go to her matrimonial house in the face of so many threats to kill her and fulfillment of demand of dowry in the form of payment of Rs. 5000/- and a motorcycle. She has even filed a criminal case at Giridih against her husband and sasural people for torture and demand of dowry and case is still pending.

10. On the other hand, witnesses examined on behalf of the plaintiff-respondent including plaintiff have denied the allegation made by the appellant-defendant and her father. Witnesses appearing on behalf of the plaintiff-respondent have stated that demand of dowry of Rs. 5000/- and a motorcycle has been made and these allegations are false and further that the father-in-law of the plaintiff-respondent wants to keep his son-in-law as gharjamai but plaintiff does not like to live in his sasural as gharjamai and that is why his wife is not being allowed to go to her matrimonial house and she is also not willing to go to her matrimonial house.

11. The learned Court below has scrutinized the letters alleged to have been written by plaintiff-respondent to his father-in-law and signature and hand-writing appearing on the letters have been denied by the plaintiff-respondent and since these letters have been marked exhibits without any objection. Learned Court below has discussed these exhibits. From plain reading of the exhibits marked on behalf of defendants it is clear that demand of Rs. 5000/- and a motorcycle has been made but learned Court below has further found wording of the letters as of sympathetic nature and for betterment of the appellant-defendant. But the fact is that demand of Rs. 5000/- and a motorcycle appears to have been made by these letters.

12. In spite of so much evidence brought on record - this way or that way learned Court below has allowed the prayer of the plaintiff-respondent and decreed the Suit for restitution of conjugal rights. Question that arises is that on 11.5.1995 marriage was solemnized between the parties and marriage was negotiated one and soon after 3-4 months trouble -started over cordial relationship between husband and wife which led to filing of criminal case by wife against her husband and others and plaintiff-respondent has filed Title Matrimonial suit for restitution of conjugal rights u/s 9 of the Hindu marriage Act. It shows that in such a short period of their marriage, both sides came to such a stage that wife filed a case against her husband and others and her husband filed a case against wife and evidence which has come on record and that clearly goes to show that some sort of maltreatment, torture and cruelty was being meted out on appellant-defendant, as a result of which she withdrew from the society of her husband. There is no such allegation on behalf of the plaintiff-respondent that she is a lady of easy virtue and has been living in adultery with other persons and that she has married another person and further that her father wants to marry her at some different places. But only because of the fact that his father-in-law wants to keep him as gharjamai and that is why all these differences have been allowed to crop up between the parties. In the present society, particularly when parties are middle-class persons it is very difficult to perform marriage of the daughter and when marriage has been solemnized, then it will be more difficult for the parents of the daughter to allow marriage to break because of the difficulties that the parents of the daughter face in settling or performing marriage and they will never try that their daughter be allowed to break her marriage with her husband and they will try to ask her to bear the trouble till she can bear but when water goes high above the head, then in such a situation even daughter or bride revolts and refuses to live with her husband and then parents come to their rescue being father and mother of the daughter. In the instant case, what I find is that learned Court below has dealt with evidence In detail no doubt, but he has gone on positive side of the case of the plaintiff; rather balancing the evidence of both the sides in proper way.

13. In the present society, it is very difficult to force any person to live according to the desire of the other and, therefore, the Section 9 of the Hindu Marriage Act for restitution of conjugal rights is loosing its force because even if the prayer of restitution of conjugal rights is allowed, this decree cannot be enforced against the desire of the wife who does not want to live with her husband: But in the instant case, what I find is that appellant-respondent has already filed a case u/s 498A, IPC and under Dowry Prohibition Act against her husband and-in-laws. In these circumstances if the prayer for restitution of conjugal rights is allowed, it will amount to demolish the case of appellant-defendant and if she has filed case in the Court on the ground of cruelty and demand of dowry and when this fact has come on record, prayer for restitution of conjugal rights cannot at all be allowed because there are always danger that wife may be put to another trouble in other form. It is

altogether different matter but in the instant case, evidence is otherwise and, therefore, I am of the view that this appeal is fit to be allowed.

14. In the result, this appeal is allowed and the judgment and decree of the learned Court below is hereby set aside. However, there will be no order as to costs.