

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.593 of 2012

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Bijay Kumar Sharma, S/o Late Shiv Shankar Sharma, Resident of
Village - Parham, Police Station - Naya Ram Nagar, Post Office-
Parham, District - Munger

.... Petitioner -Appellant

Versus

1. Neelu Devi, wife of Bijay Kumar Sharma, Daughter of Sri Ramanand Sharma @ Nandan Sharma, Resident of Village - Parham, Police Station - Naya Ram Nagar, District - Munger
2. Abul Subhan Ujala @ Subhan Mina, son of Late Sulli Mian @ Suleman Mian, Resident of Village - Parham, Masjid Road, Police Station - Naya Ram Nagar, District - Munger

.... Respondents-Respondents

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Appearance :

For the Appellant : Mr. Harswardhan Sahay, Advocate
For the Respondents :

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV ORDER

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 11-02-2015

By judgment, dated 25th July, 2012, and decree, dated 4th August, 2012, passed, in Title Suit (Matrimonial) No.25 of 2006, the learned Principal Judge, Family Court, Munger, has dismissed the application made, under Section 13 of the Hindu Marriage Act, 1955, by the petitioner-appellant seeking dissolution of his marriage with respondent no.1.

2. Aggrieved by the dismissal of his application, seeking dissolution of his marriage with respondent No.1, this appeal has been preferred by the petitioner-appellant.

3. The pleaded case of the petitioner-appellant may be briefly, described as under,

(i) Respondent No.1 is the legally wedded wife of the petitioner, their marriage having been solemnized, on 14th July, 1994, according to Hindu rites and customs and, after their marriage, respondent No. 1 started living with her husband at her matrimonial house and, in course of time, she gave birth to two male and two female babies, the eldest having been born on 18.07.1995 and the youngest one having been born on 15.12.2001.

(ii) Respondent No.1 contested election, in the year 2001, for the office of member of Panchayat and, during the course of election, she developed illicit relation with respondent No.2, who also contested the said election. For the last two-and-half years, she started living with respondent No.2 in the two rooms of the house of the petitioner, whereas the petitioner is himself required to stay at *Durga Sthan (i.e., in the compound of the temple of the deity 'Durga')*. The couple had last cohabited, on 15.02.2004, at the residence of the petitioner,

and since thereafter, respondent No.1 has been living separately as mentioned hereinbefore and respondent No.2 visits and maintains illicit relation with her.

(iii) Respondent No.1 has, thus, *deserted* the petitioner and has also been subjecting him to mental cruelty and in order to harass the petitioner, she has filed a criminal case, which has given rise to Naya Ram Nagar Police Station Case No.34 of 2006 under Sections 498A/323/341/325/504/34 of the Indian Penal Code.

4. The respondent No.1 contested the divorce proceedings by filling her written statement, wherein she submitted, in brief, thus: Following her marriage with the petitioner, she had lived in her matrimonial house and four children were born in their wedlock; but after about 2-3 years of her marriage, the petitioner started raising demand for motorcycle and coloured T.V. and, due to inability of her parents to meet the demands on account of their inadequate financial capacity, the petitioner started harassing her and, on 26.03.2006, the petitioner, his brother and his sister-in-law assaulted respondent No.1 and caused injuries on her person. Left with no option, respondent No.1 left her matrimonial home



and lodged Naya Ram Nagar Police Station Case No.34 of 2006 under Sections 498A/323/341/325/504/34 of the Indian Penal Code and started living at her parental house. In this regard, she has also submitted in her written statement that a non-bailable warrant had to be issued against the petitioner, but he has been absconding and threatening her with dire consequences unless the case is withdrawn and, as a pressure tactics, he has filed the petition, seeking divorce, making false allegations against her character and damaging thereby her image and reputation in the society. She has denied that she has had any illicit relation with respondent No.2 or has had been living with respondent No.2.

5. Having considered the evidence on record and having examined the materials on record, the learned Principal Judge, Family Court, Munger, concluded that the petitioner had failed to prove that respondent No.1 had *deserted* him and/or that he had been subjected to cruelty by respondent No.1 and/or that respondent No.1 had been leading an adulterous life. With the conclusions so reached, learned Principal Judge, Family Court, dismissed the petition for divorce. On the dismissal of the petition for divorce, a decree has accordingly been drawn.

6. Aggrieved by the dismissal of his petition for divorce, the petitioner-appellant is, in appeal, before this Court.

7. We have heard Mr. Harswardhan Sahay, learned counsel, appearing for the sole appellant.

8. While considering the present appeal, it needs to be pointed out that we have carefully examined the materials on record and have found that the learned Principal Judge, Family Court, has minutely gone through the pleadings of the parties and carefully marshalled the evidence on record.

9. What attracts our attention, most prominently, is that the petitioner-appellant came, with an application seeking divorce, alleging, *inter alia*, that he had been *deserted* by respondent No.1 and also that she had been maintaining adulterous relation with respondent No.2. Though he claims to have himself seen, on 15.03.2004, respondent No.2 in naked condition with respondent No.1 at his own house, he could not explain as to why he did not make any complaint to anyone in the year 2004 and why did he wait until the time respondent No.1 lodged a criminal case against him as mentioned hereinbefore and though it is the case of the petitioner-appellant that since 15.02.2004, he had been living at *Durga Sthan*; what has clearly surfaced from the evidence, given by his own witness, is that the petitioner-appellant has a house consisting of three rooms and he sleeps in one of the rooms of his own house.

10. Coming to the witnesses of the petitioner-

appellant, it may be noted that PW 1, who claimed that respondent No.1 had been maintaining illicit relation with respondent No.2, has admitted, in his cross-examination, that he had never seen them involved in any act of immorality.

11. So far as PW 2, mother of the petitioner-appellant, is concerned, she has also alleged that respondent No.1 maintains relationship with respondent No.2; but in her cross-examination, she has admitted that she does not live with her son and that without wearing spectacles, she cannot even see beyond five cubits. She has also not been able to explain as to why she had not raised any hue and cry, when she had found her daughter-in-law having adulterous relation with her alleged paramour.

12. So far as PWs 3, 4 and 5 are concerned, they are co-villagers of the petitioner-appellant. Amongst these three witnesses, PW 3 is the one, who has deposed that one day, he had gone to the house of the petitioner-appellant and saw through the window of the house, petitioner-appellant's wife in compromising position with respondent No.2. He has clarified, in his evidence, that he saw through the window, because the glass of the window was lying broken. The learned Court below has rejected the evidence of PW 3 as wholly untrue and, for rejection of this witness's evidence, the reasons assigned read, "*In his cross-examination he has admitted that*



there are only three rooms in the house of the petitioner and petitioner lives in the front room and only through that room one can go to the next rooms. He had further stated that when he had visited the house of the petitioner, petitioner was not present in the house. He has also stated that there is one window in the room of Bijay Kumar Sharma and opposite the window there is wall in which there is no window. Here it is very difficult to believe the witness seeing the scene of adultery because as per his own evidence petitioner was living in front room and one can go to other rooms only through this room but when he had visited the house of Bijay Sharma, Bijay Sharma was not present there. Then how could he see anything in other rooms? Moreover, as per his own evidence, opposite the window of the room of petitioner there is wall and there is no window in that wall. Then again, how can he see anything happening in the room next to the room of the petitioner."

13. We find no flaw in the analysis of evidence of PW 3 by the learned Court below and we find that the learned Principal Judge, Family Court, has correctly come to the conclusion that PW 3 was a witness, whose evidence was unworthy of trust.

14. Though PW 4 also, as indicated above, gave evidence that the couple has been living separately for the last four years and respondent No.2 frequently visits the house of

respondent no.1, he, in his cross-examination, admits that even the petitioner-appellant lives in a separate room in the same house. Belying, thus, the claim of the petitioner-appellant that he spends his nights at *Durga Sthan*.

15. Turning to the evidence of PW 5, we find that he makes the same accusations, in his evidence, as the other witnesses, that respondent No.1 maintains adulterous relation with respondent No.2 and he, too, had seen them in naked condition. He, however, admits that he is a rickshaw-puller and that he returns to his house by about 9 PM. How could he see respondent No. 1 and 2 in naked condition remains a mystery and his evidence has, therefore, been rightly disbelieved by the learned Court below.

16. As against such a poor quality of the evidence, which have been adduced by the petitioner-appellant, the evidence, given by his wife, i.e., respondent No.1, was that she has had no relationship with respondent No.2, the accusations made against her are false and that it is the petitioner-appellant, who had been subjecting her to cruelty for her inability to meet demands for valuable articles like motorcycle and T.V.

17. The learned Court below took note of the fact that in his application seeking divorce, the petitioner-appellant had claimed that respondent No.1 had developed love affairs



since the year 2001 with respondent No.2, when she was contesting election for the office of Member of the Panchayat; but in his evidence, the petitioner-appellant claims that his wife has been living separately since 02.02.2004 in adultery. While he admits that he last cohabited with his wife on 15.02.2004 and, then, started sleeping at *Durga Sthan*, his witnesses admits that the petitioner-appellant lives in one of the rooms of his own house. The learned Court below has also taken note of the fact that if the petitioner-appellant had seen his wife in compromising position with her paramour on 15.03.2004, as alleged by him, why did he not lodge any case against her and why did he wait for two years and filed the case on 01.04.2006 soon after his wife lodged the criminal case aforementioned alleging that she was being subjected to cruelty by her husband.

18. The learned Court below, thus, concluded that the petitioner-appellant had miserably failed to prove that he was subjected to cruelty by his wife and/or that she had deserted him.

19. In the result and for the reasons discussed above, we do not find that the conclusions, reached by the learned Principal Judge, Family Court, Munger, suffer from any infirmity, legal or factual, and we see no reason to interfere with the conclusions so reached upon threadbare discussion of

the respective cases of the parties, the evidence on record and the law relevant thereto.

20. Situated thus, we find no merit in this appeal and the appeal is, therefore, dismissed with cost of Rs.5,000/- to be paid to the respondent No.1 herein.

(I. A. Ansari, J.)

Chakradhari Sharan Singh, J.: I agree.

(Chakradhari Sharan Singh, J.)

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