

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.507 of 2013

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Anamika Kumari @ Nippo, D/o Jyotish Prasad Karn, Resident of Village – Ufrail,
P.S. – Kadwa, District Katihar

.... Respondent 1st set/Appellant

Versus

1. Naveent Kumar S/o Sree Sachidanand Sinha, Resident of Mohalla – Madhubani,
P.S. – K. Hat, District Purnea

.... Petitioner/Respondent 1st Set

2. Shatrughan Sinha @ Jangli S/o Amrit Prasad, Resident of Mohalla – Madhubani,
P.S. – K. Hat, District Purnea

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Appearance :

For the Appellant/s : Mr. Bhola Prasad, Advocate
Mr. Mukesh Kumar Jha, Advocate
For the Respondent/s : Mr. Upendra Prasad, Advocate
Mr. Haricharan Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 08-04-2015

Heard learned counsel for the appellant and Sri Upendra Prasad, Advocate for Respondent no.1 duly assisted by Sri Haricharan Prasad, Advocate, Civil Court, Purnea.

2. Wife is the appellant. She has challenged the impugned judgment dated 12.06.2013 passed by Principal Judge, Family Court, Katihar in Matrimonial Case No. 12 of 2004 whereunder her marriage solemnized with Respondent no.1 has been dissolved under Section 12 (1)(c) of the Hindu Marriage Act, 1955, as it has been held in the impugned judgment that her marriage solemnized with Respondent



no.1 on 19.01.2004 is a nullity for the reason that the consent of his parents was not obtained before performing the said marriage and the marriage was performed by extending threat to him that if he does not perform the rituals of marriage, he may be shot at. Respondent no.1 after performing marriage on 19.01.2004 returned to his parental home on 20.01.2004 at 5:00 P.M., informed his mother about the incident in the same evening but the mother informed his father, who is an Advocate, Civil Court, Purnea, about the occurrence next morning. Respondent no.1 herein also informed his father about the incident in the morning on 21.01.2004 after he completed his Puja and took breakfast. The present suit for divorce was filed after about ten days on 30.01.2004 asserting that before performing the marriage, consent of the parents was not taken. The criminal case asserting that the marriage rituals were performed in the night on 19.01.2004 at the residence of appellant herein by extending threat and coercion was filed after four months on 18.05.2004 vide Complaint Case No. 566 of 2004, which was never sent for registration of First Information Report. From the pleadings made by the appellant herein, it is evident that the marriage rituals were performed in the night of 19.01.2004, but the trial Court disbelieved the story of marriage only on the ground that Pandit who performed the rituals in the night of marriage was not examined on behalf of the appellant herein. The approach of



the trial Court to accept the case of plaintiff-Respondent no.1 herein after rejecting the defence of the wife-appellant appears to be mistaken as in the facts of the present case, it was the duty of plaintiff-Respondent no.1 herein to first establish that marriage was performed under threat and duress. Respondent no.1 herein having volunteered to come to the house of the appellant agreed for the marriage in the night of 19.01.2004 without obtaining consent from his parents. At that time he was adult, as such, nothing prevented him from performing his marriage without consent of his parents. However, in the next evening when he reached home, realized that his action to get married to the wife-appellant may not be appreciated and approved by his parents and just to get out of the situation in deference to the wishes of the parents filed the present case after ten days. The explanation offered by plaintiff-Respondent no.1 herein for the delay of ten days in paragraphs 28 to 34 that his father called for an explanation from Respondent no.2, who was his neighbour and was instrumental in the present marriage and Respondent no.2/defendant no.2 was not coming before him to explain the situation and he had to wait for ten days is no explanation at all. Had the marriage been performed without the consent of the plaintiff any further explanation was not required from Respondent no.2 for instituting the case no sooner plaintiff became free to return to his home in the

evening of 20.01.2004, all the more when his father is a senior practicing Lawyer of Purnea Bar. In this connection, we may notice that the criminal case asserting threat for securing the marriage has been filed after four months of the incident.

3. For the reasons aforesaid, we find that the impugned judgment annulling the marriage of the appellant with Respondent no.1 is wholly devoid of merit and is not only set aside but it is held that appellant is the legally wedded wife of Respondent no.1.

4. Let a decree be prepared accordingly.

5. In the light of judgment and decree respondent no. 1 should take the appellant in the matrimonial fold. In case, respondent no. 1 failed to do so within 30 days from the date of judgment, appellant shall apply before the court below for grant of maintenance. Request for grant of maintenance pendente lite and expenses of proceeding be considered asking the parties to file affidavit of assets, income and expenditure to determine their rights under Sections 24, 25 of the Hindu Marriage Act by applying the principles laid down in sub-section (3) of Section 10 of the Family Courts Act, 1984 which enable the court to lay down its own procedure with a view to arrive at a settlement in respect of the subject matter of the suit or proceedings and to discover the truth of the facts alleged by the one party and denied by the other. In this connection, court below will

also consider the application of Sections 106, 165 of the Indian Evidence Act which inter alia cast burden of proving a fact on the person within whose knowledge such fact is by resorting to the court's power to put questions or order production of documents to discover or to obtain proper proof of relevant facts asking any question which it pleases in any form at any time from any witness or the parties themselves. The court below while asking the parties to furnish affidavit of assets, income and expenditure may ask the parties to furnish information as per the format of affidavit of assets, income and expenditure formulated by Delhi High Court under judgment dated 14.01.2015 in the case of Kusum Sharma v. Mahinder Kumar Sharma in FAO 369/1996. It goes without saying that the court below shall be at liberty to modify the format of affidavit seeking information in the light of the facts of the case.

(V.N. Sinha, J.)

(Ahsanuddin Amanullah, J.)

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