

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.453 of 2013

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Pankaj Kumar, S/o- Nitya Nand Mallick, Resident of Village- Baliari, P.S.- Jhanjharpur, District- Madhubani, presently residing at H.I.G.- 109 Housing Board Colony, Laheriya Saray, Darbhanga

.... Appellant

Versus

1. Smt. Priyaanka Kumari, w/o Pankaj Kumar (Daughter of Late Uma Shankar Lal Das) Resident of Village- Rashidpur, P.S.- Kaluahi, Distt- Madhubani
2. Dhiraj Kumar, son of Shiv Shankar Lal Das, Resident of Village- Rashidpur, P.S.- Baluahi, District- Madhubani.

.... Respondents

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Appearance :

For the Appellant : Mr. Narendra Kumar Sharma, Advocate.

For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

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

Date: 30-04-2015

Heard learned counsel for the appellant husband.

2. By filing this appeal appellant husband has challenged order dated 14.05.2010 passed by Principal Judge, Family Court, Madhubani in Matrimonial Case No. 21 of 2009, whereunder suit filed under Section 13(1) of the Hindu Marriage Act, 1955 praying, inter alia, to pass decree of divorce, dissolving his marriage with sole respondent Priyaanka Kumari has been rejected. Divorce is being sought on the ground that appellant husband (P.W.1),



his driver (P.W.2) saw the wife indulging in sexual intercourse with one Dhiraj Kumar in the night around Holi festival in the year 2008. Earlier thereto parties were married to each other on 21.11.2007. Appellant husband has not even indicated the date of such a serious incident, reported the incident to his parents after about one year. The court below having appraised the evidence of the husband, his driver has concluded that the incident as narrated by the husband, his driver does not appear to be true.

3. Learned counsel for the appellant, however, assailed the finding recorded by the court below with reference to the judgment of this Court in the case of Raj Kumar Jaiswal Vs. Smt. Mamta Jaiswal 2001(1) PLJR 456, another judgment of the Supreme Court in the case of Rishikesh Sharma Vs. Saroj Sharma 2007 (1) PLJR SC 81, submitted that parties are living separately for more than seven years, on that account the decree for divorce is required to be passed.

4. We regret not to accept the aforesaid submission in view of the fact that it is the appellant who having levelled wild allegations against his wife

has forced the wife to live away from him, in the circumstances, the law relied upon by the counsel for the appellant has no application to the facts of the case. The appeal is dismissed with cost of Rs. 1,00,000/- (one lac).

5. Having found no merit in the appeal, there does not appear to be any reason for condoning the delay of more than three years in filing the appeal. Accordingly, Interlocutory Application No. 4156 of 2013 for condoning the delay in filing the appeal is also rejected.

(V.N. Sinha, J)

(Nilu Agrawal, J)

P.K.P.

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