

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Miscellaneous Appeal No.513 of 2009**

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Smt. Pushpa Rani, wife of Sri Rajesh Kumar, resident of Shanti Sadan,  
Shanti Marg, Mithapur, P.S. Jakkanpur, District- Patna.

.... .... Appellant

Versus

Sri Rajesh Kumar, son of Late Yog Narayan Prasad, resident of  
Village- Dhanuki Chandpura, P.S.- Benipatti, District- Madhubani  
having local temporary residence at Flat No. 403, Amba Sadan, I.A.S.  
Colony, Kidwaipuri, District- Patna.

.... .... Respondent

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**Appearance :**

For the Appellant : Mr. Binod Singh, Advocate.

Mr. Siddhartha Prasad, Advocate.

For the Respondent : Mr. Uday Shankar Chaudhary, Advocate.

Mr. Jai Kumar Singh, Advocate.

Mr. Alok Kumar, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE V.N. SINHA**

**and**

**HONOURABLE JUSTICE SMT. NILU AGRAWAL**

**C.A.V. JUDGMENT**

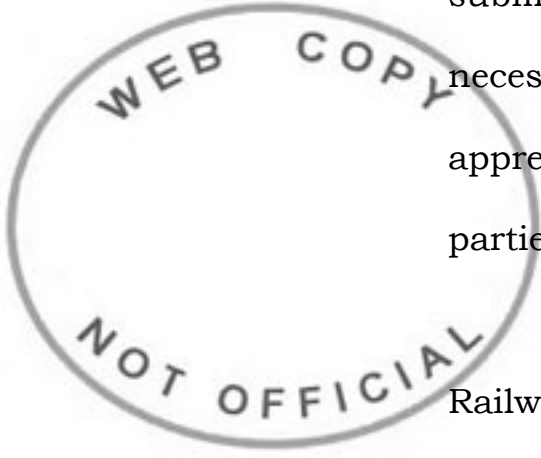
**(Per: HONOURABLE MR. JUSTICE V.N. SINHA)**

**Date: 23-07-2015**

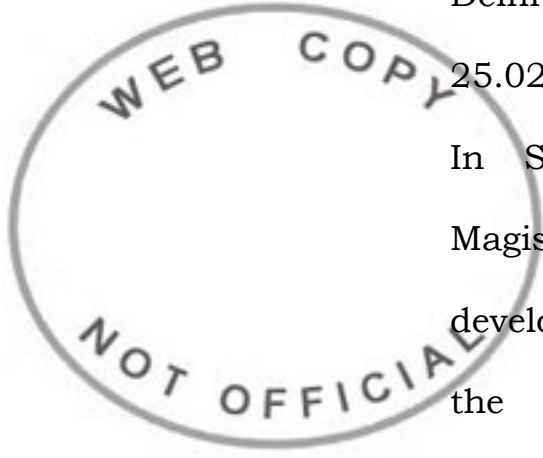
Instant appeal has been filed by the  
appellant-wife against the judgment dated  
11.08.2009, passed by Principal Judge, Family  
Court, Patna in Matrimonial Case No. 567 of 2007,  
whereunder learned Principal Judge held that the  
wife continuously caused mental cruelty to her  
husband and he is entitled for decree of divorce on  
the ground of cruelty and ordered that a decree of  
judicial separation be granted.

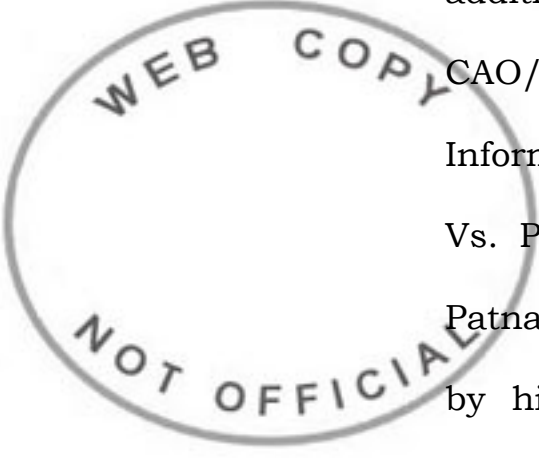
2. Before proceeding to consider the submission made on behalf of the parties, it is necessary to notice few dates, events in order to appreciate the submission made on behalf of the parties.

3. Appellant and respondent joined Indian Railway Accounts Service in the year 1998 and underwent training at Railway Staff College, Baroda, National Institute of Financial Management, Faridabad, Lal Bahadur Shastri National Academy of Administration, Mussoorie, Dehradun and thereafter worked at Danapur. During training and while working both came to know each other well and decided to get married. Their engagement ceremony was performed in July, 2001. In September, 2001 respondent-husband got selected for the Indian Administrative Service and joined Bihar Cadre. Their marriage was performed on 05.06.2002 as per Hindu rites and custom. On 01.06.2004 wife appointed one Harivansh @ Ashish as Bungalow Peon for her official residence at Mugalsarai despite vehement opposition by the husband and his family members causing irretrievable breakdown of their marriage as asserted by husband. On 24.02.2006 wife gave birth to a male



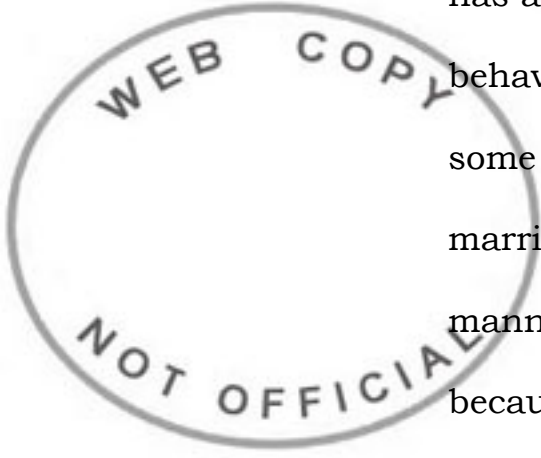
child Master Chaitanya at Ganga Ram Hospital, New Delhi. Husband took paternity leave between 25.02.2006 to 11.03.2006 for looking after the child. In September, 2006 husband became District Magistrate, Madhepura and according to wife developed complex and wanted to put his weight in the family affairs as a District Magistrate. Notwithstanding such complex, wife continued the matrimonial relationship and came to the husband's residence at Madhepura as and when she got opportunity and time to visit Madhepura. According to the husband, wife persuaded him to take homeopathic medicine to enhance his sexual power due to which subcutaneous nodules appeared on his body, which is evident from medical prescription dated 01.10.2006 (Exhibit-15). In March, 2007 birthday party of Master Chaitanya was celebrated in Madhepura residence of respondent and many officers, relatives and friends of both the parties attended the function. In 2007, wife was transferred to Bhubaneshwar when her son was 11 months old. Considering the requirement of conjugal life she challenged the order of transfer in Central Administrative Tribunal and subsequently she was

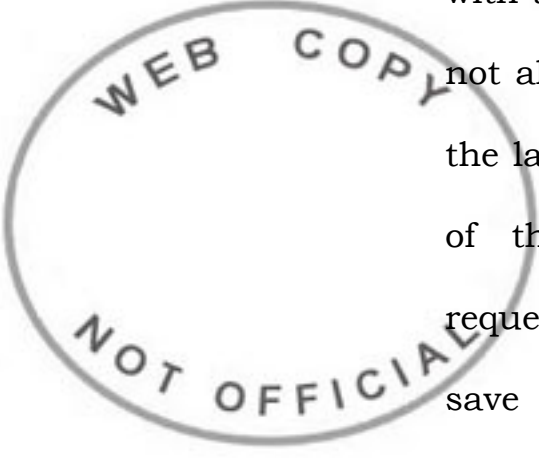




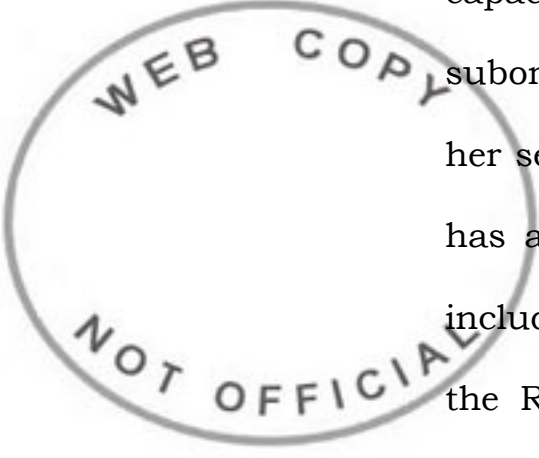
asked by the Ministry of Railways to look after the additional charge of the post of Dy. FA and CAO/Madhepura. On 20.09.2007 husband filed Informatory Petition No. 3291(M)/07 (Rajesh Kumar Vs. Pushpa Rani) before Chief Judicial Magistrate, Patna informing the court about the threat extended by his wife. On 04.10.2007 husband again filed Informatory Petition No. 3452(M)/07 (Rajesh Kumar Vs. Pushpa Rani) before Chief Judicial Magistrate, Patna informing the court about the threat extended by his wife. On 26.10.2007 wife was apprehended undertaking unauthorized travel in Rajdhani Express vide vigilance trap, which is evident from photo copy of Hindustan Times, H.T. Nation (Exhibits-1, 1/A). On 08.11.2007 husband again filed Informatory Petition No. 3800(M)/07 (Rajesh Kumar Vs. Pushpa Rani) before Chief Judicial Magistrate, Patna informing the court about the threat extended by his wife and also filed Matrimonial Case No. 567 of 2007 in the court of Principal Judge, Family Court, Patna under Sections 13, 13(1)(i-a), 13(1)(i-b) of the Hindu Marriage Act seeking dissolution of his marriage with the wife on the ground of desertion and cruelty.

4. In Paragraph 3 of the plaint husband has asserted that after solemnization of the marriage, behaviour of his wife remained congenial with him for some time but after few months from the date of marriage she started behaving in an indifferent manner as she was having superiority complex because she posed herself to be a high ranking officer and belonging to superior caste. She behaved with the husband and his family members very roughly, though husband requested her to behave properly and discharge marital obligations, but to no avail. In Paragraph 4 of the plaint husband asserted that even after passage of five years and five months of his marriage and repeated requests by him, the wife has not chosen to visit his residence, even for short intervals. He also stated in the same paragraph that as and when he visited wife's residence at Mithapur, Patna, she did not behave properly and remained indifferent, projected herself busy with other important outdoor activities and generally used to stay outside her residence late night on the pretext of essential parties, whereas husband continued to wait for her at home. In Paragraph 5 of the plaint husband asserted that during the entire period of five



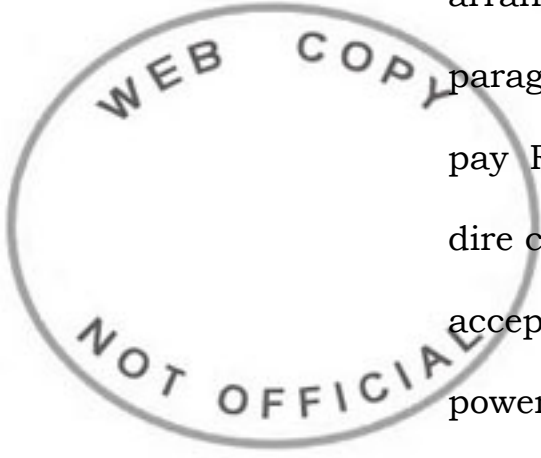


years and five months of marriage, his wife stayed with the husband for only about ten months and has not allowed him any sort of physical relationship for the last two years and three months. In Paragraph 6 of the plaint husband stated that he always requested the wife to behave in a proper manner to save the conjugal life and to discharge marital obligations but she remained adamant. He also stated in the same paragraph that wife never attended to her ailing mother-in-law and always stayed at her parents' house in Mithapur, Patna after solemnization of marriage. In Paragraph 7 of the plaint, husband asserted that his wife's behaviour towards him and his ailing mother is cruel as she is in the habit of humiliating them in front of outsiders. In Paragraph 8 of the plaint husband has asserted that the wife has deserted him and remained cruel in her behaviour towards him. In the same paragraph he also stated that the wife is in the habit of remaining out of house till late night and whenever he requested her to mend her ways, she threatened him of dire consequences, if he puts any such question regarding her life style. In the same paragraph husband has stated that he has learnt



from reliable sources that the wife in her official capacity is also in the habit of being cruel to her subordinates in office and has been disrespectful to her senior officials. In the same paragraph, husband has also asserted that there are several complaints including vigilance cases pending against the wife in the Railway Administration. In Paragraph 9 of the plaint husband stated that because of the behaviour of appellant wife, the very purpose of marriage has been frustrated and the husband having no other alternative began to negotiate with the wife for dissolution of marriage to avoid any further mental agony and torture. In Paragraphs 10 to 13 of the plaint husband stated that during initial negotiation wife agreed in principle for divorce but demanded exorbitant amount of Rs. 15,00,000/- (fifteen lacs), which according to husband was not possible to be arranged by any Government servant. In this connection, husband also stated in the same paragraph that as his marriage was solemnized without any consideration and the wife herself was a senior Class-I Government Officer getting salary higher than the husband and all movable and immovable properties was acquired after marriage in

her name, it was not possible for the husband to arrange such exorbitant amount. In the same paragraph husband also stated that on his refusal to pay Rs. 15,00,000/- the wife threatened him with dire consequences if her demand for settlement is not accepted and said that she being a senior and powerful Class-I officer has got powerful and influential friends and will institute false criminal cases against him about which husband has already submitted information through Information Petitions filed in the court of C.J.M., Patna. In Paragraph 14 of the plaint husband asserted that he came to Patna on 06.11.2007 for attending official Panchayat Election meeting and during his stay at Patna he again initiated talk with the help of common friend and relatives for dissolution of marriage on the ground of irretrievable breakdown of marriage as also on the ground of cruelty and desertion. The respondent, however, again reiterated her previous demand for payment of Rs. 15,00,000/-, which the husband refused, whereafter the wife again threatened him with dire consequences including filing of false criminal cases lodged on behalf of some female members of her parental family to tarnish his



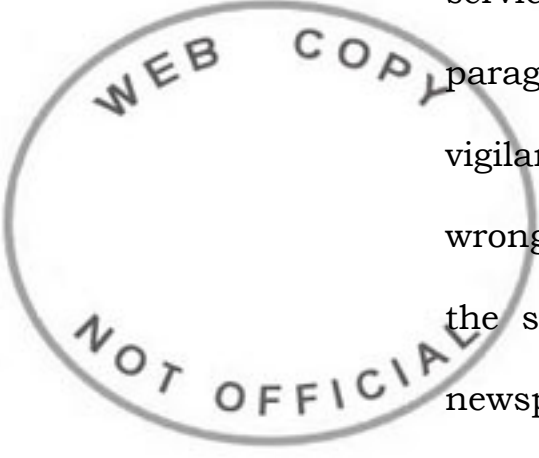
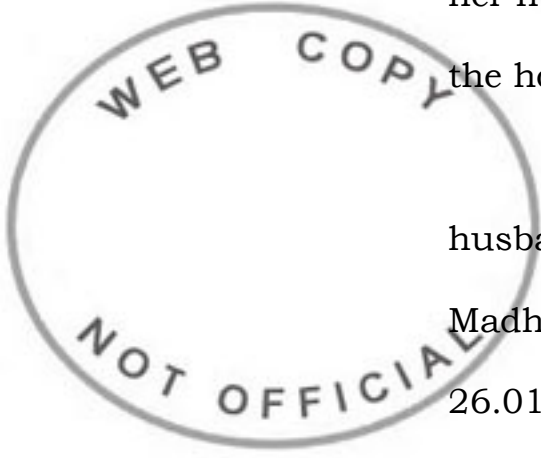
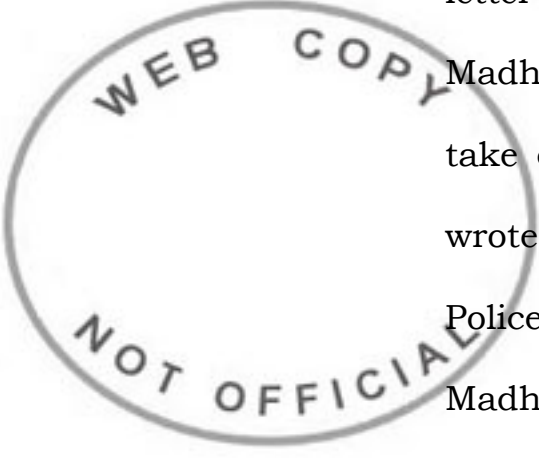


image and that she would ensure that his bright service career is completely ruined. In the same paragraph husband again asserted that several vigilance cases are pending against his wife for her wrong doings in discharge of her official duties. In the same paragraph he also stated that from the newspaper Hindustan Times he has come to learn that during the night between 17<sup>th</sup>-18<sup>th</sup> October, she was apprehended red handed by Railway Vigilance Squad travelling in A.C. -1 coach in Rajdhani Express without proper authority. It is also stated in the same paragraph that the aforesaid conduct of the wife has put the petitioner in a serious mental agony and is causing problem in his day-to-day life. Having come to learn of the said conduct husband again requested the wife not to behave in such an erratic and irresponsible manner, whereafter the wife again threatened him of dire consequences if he ever discussed her conduct. Not only that she also told that she has got powerful politicians including criminals with the help of whom she would finish him, whereafter the husband filed the present case on 08.11.2007. According to wife she came to know about the divorce case in December, 2007,

whereafter she went to Madhepura on 25.01.2008 at her husband's residence but was not allowed to enter the house and had to spend the night in the car.

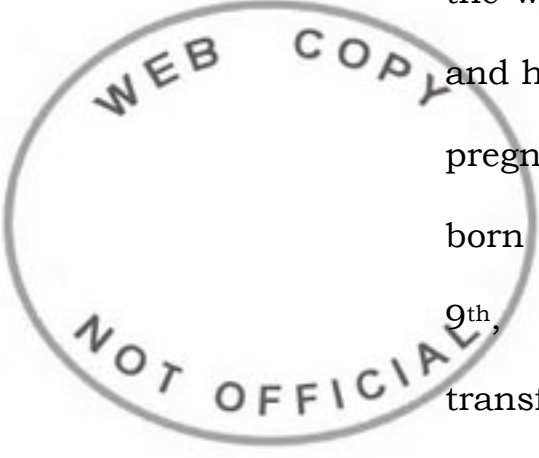
5. From the evidence led on behalf of the husband it further appears that wife came to his Madhepura official residence in the morning of 26.01.2008 and created ruckus as also violently attempted to disrupt the Republic Day Flag Hoisting making allegation of harassment, torture etc. against the husband to not only the senior officials serving under the husband including Superintendent of Police, Madhepura but also to the press and media which was carried live on National T.V. Channel causing embarrassment, mental agony to the husband. The Chief Secretary, Bihar made inquiry about the incident dated 26.01.2008 in response where to husband submitted his version under letter dated 28.01.2008. Wife also wrote letter dated 28.01.2008 to the Chief Secretary, Bihar about the incident. According to husband, Bihar Administrative Service Association held meeting at Madhepura on 28.01.2008 in which wife's action of manhandling, abusing official and staff at the District Magistrate's residence on 26.01.2008 was condemned and





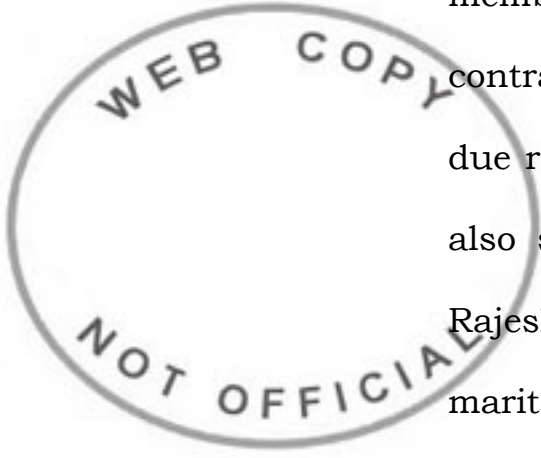
resolution for legal action passed. Husband wrote letter dated 28.02.2008 to Superintendent of Police, Madhepura for providing him adequate security to take care of the violent behaviour of the wife. Wife wrote letter dated 02.03.2008 to Superintendent of Police, Madhepura asserting that she came to Madhepura on 01.03.2008 but gate of District Magistrate's residence was not opened. Family Court, Patna under order dated 05.03.2008 directed to publish notice in the newspaper for appearance of the wife in the matrimonial case. Wife wrote letter dated 29.03.2008 to Superintendent of Police, Madhepura complaining against her husband.

6. The wife appeared in Matrimonial Case on 25.04.2008. On the same day reconciliation for settlement of the matrimonial dispute between the parties was held in the chamber of Principal Judge, but failed. On 01.07.2008 wife filed written statement praying, inter alia, for dismissal of the matrimonial case. In Paragraph 5 of the written statement it is stated that the parties were married according to Hindu rites and customs at New Patna Club, Patna on 5<sup>th</sup> June, 2002. On the next day i.e. 6<sup>th</sup> June, 2002 wife went to her husband's house where their

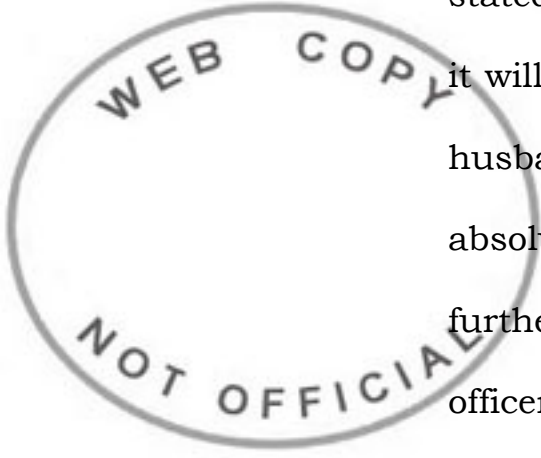


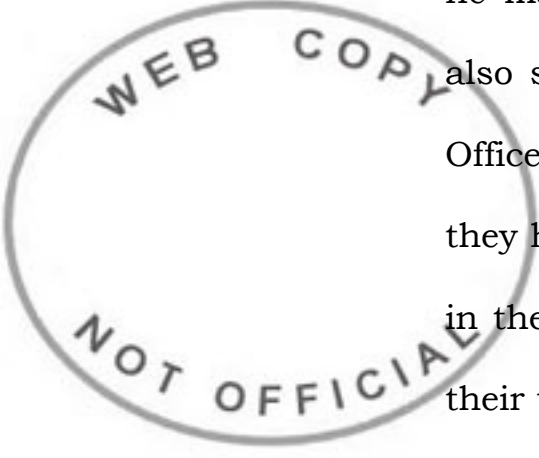
marriage was consummated. In Paragraphs 6, 12 of the written statement wife has stated that while she and her husband were posted at Hajipur, she became pregnant and a male child Chaitanya Rajesh was born at New Delhi on 24.02.2006. Prior thereto on 9<sup>th</sup>, 10<sup>th</sup> September, 2005 the husband was transferred and promoted as District Magistrate, Sheikhpura and that he took paternity leave from 25.02.2006 to 11.03.2006 after birth of the male child on 24.02.2006 to look after the infant. According to wife, aforesaid fact will show that there was no difference between her and the husband and they were happily living together. In Paragraph 14 of the written statement wife has denied the allegations made in Paragraph 3 of the petition as absolutely false, concocted and has been made with a view to malign her and to make out the grounds for divorce. In the same paragraph she has further stated that the allegation that she developed superiority complex is far from truth and clarified that husband being posted as District Magistrate can never be inferior in rank to the wife as selection examination for I.A.S. category is the highest amongst the different All India Services. The wife also stated in the same paragraph

that she never behaved roughly with the family members of her husband and the allegations to the contrary are far from truth as she always gave them due regard and devotion. In the same paragraph she also stated that the birth of male child Chaitenya Rajesh indicates that she was discharging her marital obligation. In Paragraph 15 of the written statement wife has denied the allegations set out in Paragraph 4 of the petition and further stated that husband himself wanted to put his weight as District Magistrate and without giving any specific facts about the conduct of the wife has made general statement that the wife did not behave properly rather remained indifferent in discharge of her marital obligations. In the same paragraph wife has further stated that statement made in the written statement would indicate that she has not been indifferent in discharge of her marital obligation. In the same paragraph she has also raised a question as to why husband in his entire petition has not mentioned about the birth of the male child Chaitenya Rajesh and with reference to the said omission has questioned her husband about his intention and responsibility to bring up and maintain



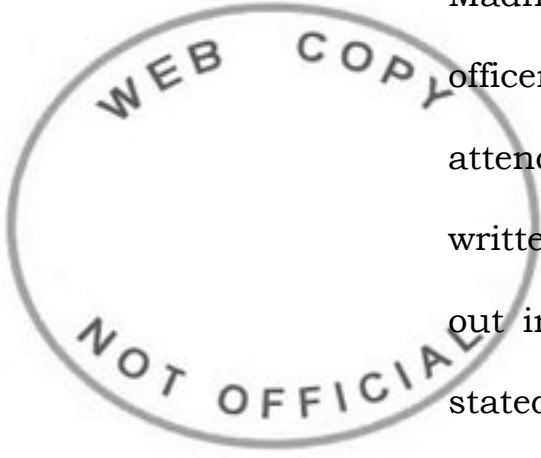
the child and has further stated that from the facts stated in earlier paragraphs of the written statement it will appear that she has been regularly visiting the husband and the allegations to the contrary is absolutely false. In the same paragraph she has further stated that both husband and wife being officers cannot get leave, as and when desired as they have to perform their onerous duties first but whenever any of them got time, they visited each other's place and led conjugal life, may be for a short period. It has also been stated in the case history that as and when husband was waiting for posting, both husband and wife led conjugal life at Mugalsarai at stretch. It has also been stated in the same paragraph that earlier when the husband was posted at Arrah and the wife was posted at Mugalsarai, she used to visit her husband as a daily passenger, which is indicative of the fact that she was always devoted to her husband and wanted to live with him as a lawfully married wife. In the same paragraph she has also stated that it is absolutely false to state that she attended any late night party and submitted that such allegation is absolutely false against the moral of a public servant and the wife

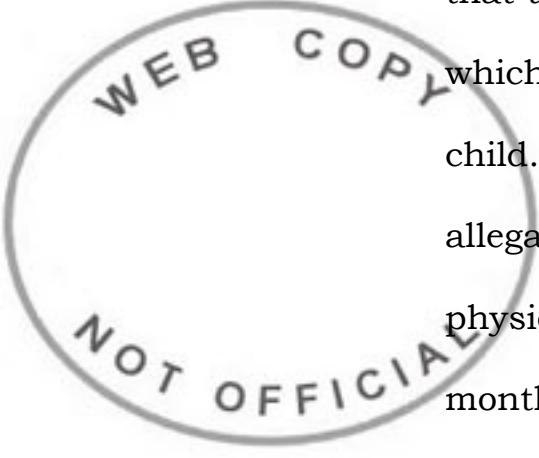




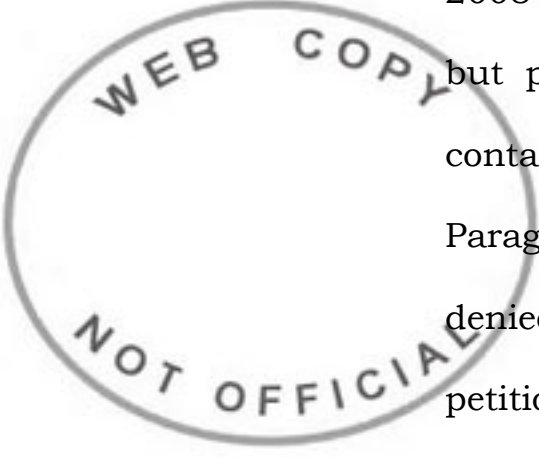
puts the husband to strict proof and in case of failure he may be adequately dealt with by the court. She also stated in the same paragraph that the Railway Officers seldom have time for the night parties since they have to remain in their offices or in the field late in the night and whenever they get time, they spend their time with their families at their residence. In the same paragraph she has taken strong exception to the statement that she was attending late night parties and with due respect has submitted that as she had an infant, who required breast feeding, where was the time for her to attend the late night parties and has further stated that she being the mother had to look after the child and there cannot be any substitute for her and has again reiterated that husband is shirking the responsibilities of a father towards his son. In the same paragraph she has stated that as and when she visited Madhepura, as per the requirement child was taken to Madhepura Government Hospital on number of occasions. In the same paragraph she also stated that both the husband and the wife arranged the birth day party of the child at Sheikhpura residence of the husband in the year 2006 and after one year

another birthday party was held for the child at Madhepura in March, 2007 in which many important officers, relatives and the friends of the parties attended such function. In Paragraph 16 of the written statement wife has denied the allegation set out in Paragraph 5 of the petition and has further stated that she has already stated in earlier paragraph of the written statement about the manner in which she discharged her marital obligations as and when she got opportunity to do so and resided with the husband before and after the birth of the child. She also stated in the same paragraph that it was not possible for the husband and wife to reside together in view of the nature of their service which they are supposed to perform but she always spent time with the husband whenever she got the opportunity to do so. She also stated in the same paragraph that her husband never asked her to leave her service. Had he said so on any occasion, respondent would have given an active consideration to that also. In the same paragraph she further stated that if the husband so desires, she is willing to resign her service so that she can continuously stay with the husband but in that case she has to be



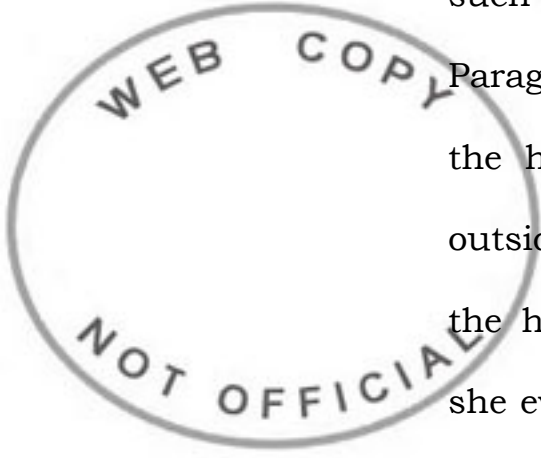


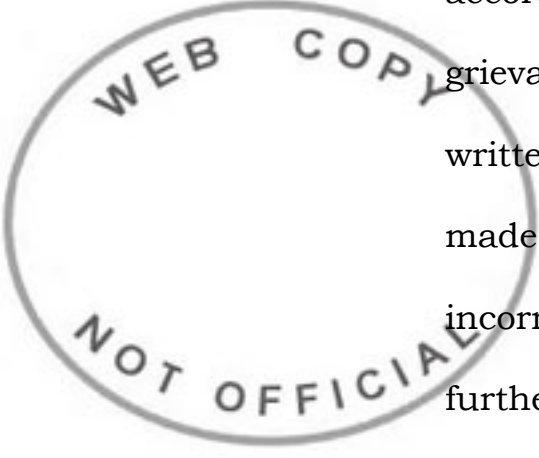
given security for herself and the child in the sense that thereafter the husband should not take any step which may amount to abandoning the wife and the child. In the same paragraph she denied the allegation that she did not allow the husband physical relation for about last two years and three months and stated that such allegation is baseless and false. She also stated that she has been frequently going to Madhepura and further stated that she also went to Madhepura on 01.03.2008 with her child but the gate of the residence of the husband was not opened under his orders and the wife and the child were not allowed to enter the bungalow. She had to wait in her car for the whole night between 01,02.03.2008 about which she made complaint to the Superintendent of Police, Madhepura on both the days and undertook to produce the complaint with acknowledgment at the time of hearing. In Paragraph 17 of the written statement wife stated that similar treatment was meted out to her in January, 2008 when she was not allowed entry at the residence of the husband but was driven out by the husband and his mother using filthy language. In the same paragraph she also



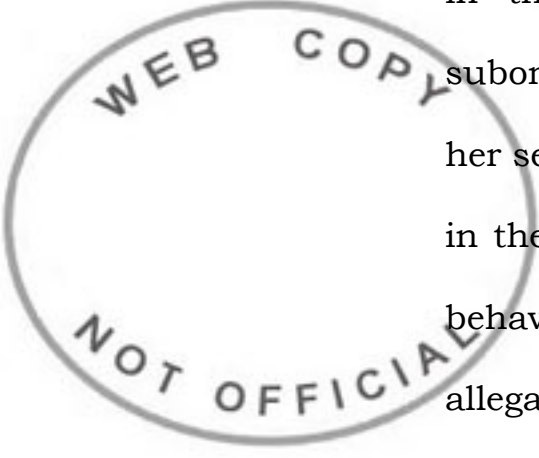
stated that it is only from the last week of March, 2008 that the husband is refusing to meet the wife but prior thereto the parties had regular physical contact whenever they got opportunity. In Paragraphs 18, 20 of the written statement wife has denied the allegation set out in Paragraphs 6, 7 of the petition as false and submitted that in the said paragraph husband has made vague statement without any specific fact being stated about the non-performance of the marital obligation by the wife and stated that she does not wish to repeat the same old facts which she has already stated earlier in the written statement but denied the allegation levelled against her. In the same paragraph she also stated that the allegation that wife is not attending to her old ailing widow mother-in-law is absolutely false and denied. In this connection, she has stated that her widow mother-in-law was appointed in Central Bank of India, Sitamarhi on compassionate ground after the death of her husband i.e. the father-in-law and she met her always and performed the duty of a dutiful daughter-in-law. In this connection, in the same paragraph wife further stated that the mother-in-law of the wife is presently posted at Central Bank

of India, Sitamarhi Branch and with reference to such fact submitted that the allegation set out in Paragraphs 6, 7 of the petition that she humiliated the husband and her family members in front of outsiders is absolutely false and fabricated and put the husband to strict proof of such allegation that she ever humiliated him. In the same paragraph wife has further stated that perhaps husband has developed other interest for which he is neglecting her and has filed the divorce petition with false and concocted allegations. In Paragraph 19 of the written statement wife denied the allegation that after her marriage she resided in her parents' house at Mithapur as absolutely wrong. In this connection, she stated that she stayed with her husband at different places of posting as stated in the earlier paragraphs of the written statement but for the present wife is residing at her parents' house since the husband has refused to permit her to live with him. In this connection, she also stated that the husband has purchased Flat No. 403 in Uma Sadan, I.A.S. Colony, Kidwaipuri, Patna, which is kept under his lock and key and wife being the legally married wife, be handed over the key of the said flat



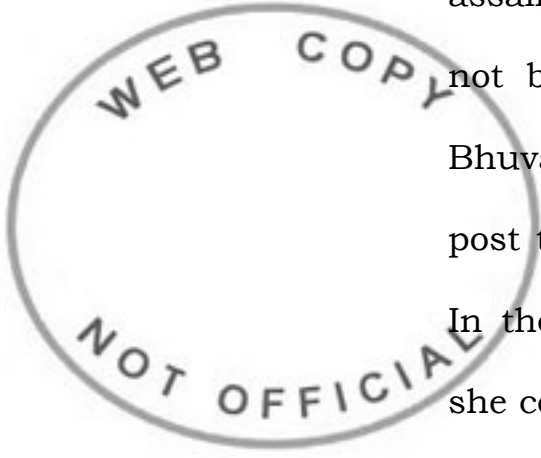


so that she can live in the flat with her child which according to her is the proper recourse for the grievance of the husband. In Paragraph 21 of the written statement wife has denied the statement made in Paragraph 8 of the petition as derogatory, incorrect and false. In the same paragraph she further stated that she has already dealt with the allegation about attending the late night parties in the foregoing paragraphs of the written statement and, as such, she does not wish to further comment upon the same. In the same paragraph she further stated that she never threatened the husband and is unable to appreciate the type of threat which she can extend to the husband. In the same paragraph she also stated that it was the husband who did not allow the wife and the child to enter his official residence at Madhepura for which she made complaint to Superintendent of Police, Madhepura fully knowing well that Superintendent of Police was under the District Magistrate, Madhepura. She also stated in the same paragraph that the husband was aware about her life style as both were acquainted to each other prior to their marriage and put the husband to strict proof about the source from which he could get

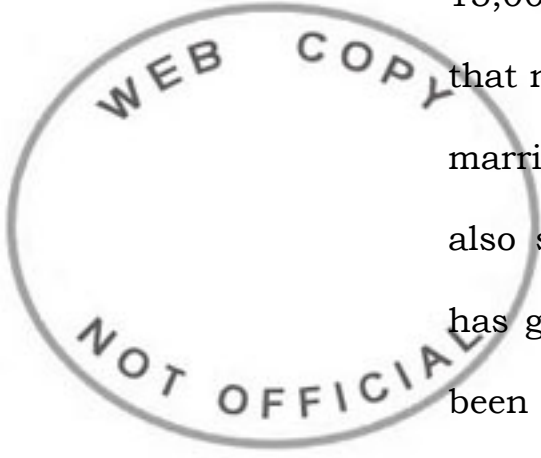


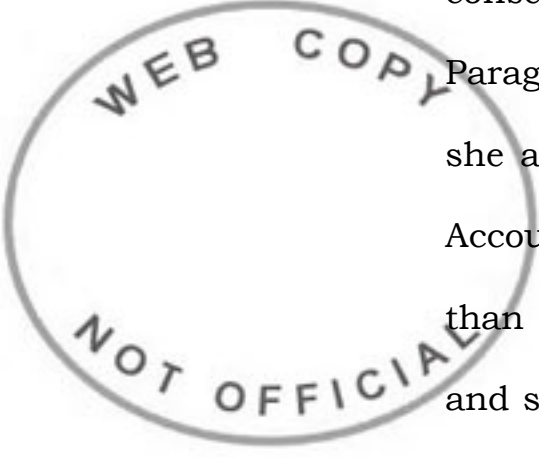
the information that the wife in her official capacity is in the habit of behaving with cruelty with her subordinates in office and was also disrespectful to her senior officers. In this connection, she has stated in the same paragraph that the allegation about her behaviour with the junior, senior officers is a serious allegation and she has got the right to know the source from where husband could gather such false information. As regards the vigilance cases pending against her, the wife stated in the same paragraph that until the date of the written statement she has no knowledge about the vigilance cases and put the husband to strict proof about the number of vigilance cases mentioned in Paragraph 8 of the petition. In Paragraph 22 of the written statement wife denied the allegation set out in Paragraph 9 of the petition and further stated that according to her there has been no occasion for her to imagine that her marriage has been ruined. In the same paragraph she further stated that it is the husband who has discarded her and further stated that in the year 2007 when her son was seven months old, she was transferred from Hajipur to East Coast Railway, Bhuvaneshwar and she filed an application before

Central Administrative Tribunal, Patna Bench assailing the transfer order on the ground that it may not be possible for her to look after the child at Bhuvaneshwar and Government rules required to post the husband and wife at one place, if possible. In the same paragraph she has further stated that she could not get any help from the husband in filing the application before the Tribunal but then she thought that he must have been occupied with his busy schedule of official work and due to that he could not help her in approaching the Tribunal but after filing of the matrimonial case she understood that it was deliberate on the part of her husband to ignore her for the reasons best known to him. In the same paragraph she further stated that Railways asked her to take additional charge of the post of Dy. FA & CAO/Madhepura also. In Paragraph 23 of the written statement wife has denied the allegation set out in Paragraph 10 of the petition and submitted that the occasion to negotiate for dissolution of marriage never arose between her and the husband. In this connection, she further stated that husband has deliberately with ill motives has stated that during the negotiation wife agreed in principle for

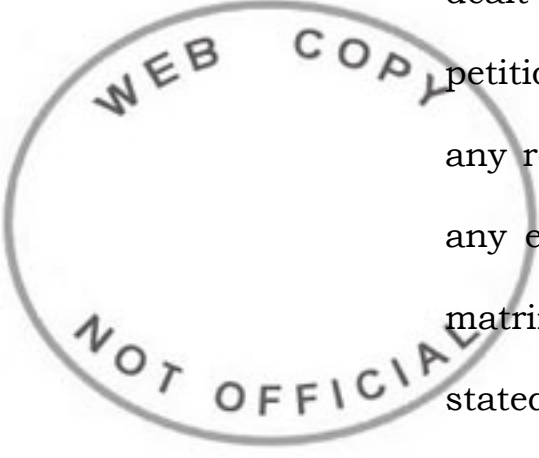


divorce but demanded exorbitant amount of Rs. 15,00,000/-. In this connection, she also pointed out that no such meeting or negotiation for dissolution of marriage was ever held. In the same paragraph she also stated that the entire jewellery which the wife has got from her marriage from both the sides have been retained by her mother-in-law. In this connection, she also stated that she did not wish to make such statement and reserved the right to make such statement at any subsequent stage. In the same paragraph she also admitted that her marriage with Rajesh Kumar was solemnized in the most ideal manner but also stated that the marriage was not without consideration and submitted that many high dignitaries and personalities attended the marriage and if required, those persons can be called to testify before the court. In Paragraph 24 of the written statement wife stated that at the time of her marriage she was given a Santro Car by her father together with one piece of land measuring about four kathas which was also purchased by her after getting financial help from her father for which declaration has been made by her before the Railway authorities. In the same paragraph she further stated that she



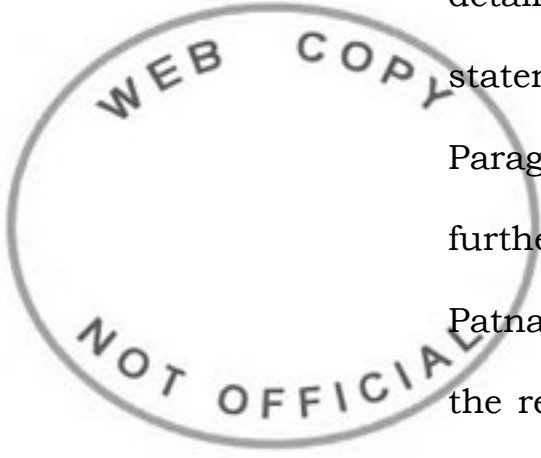


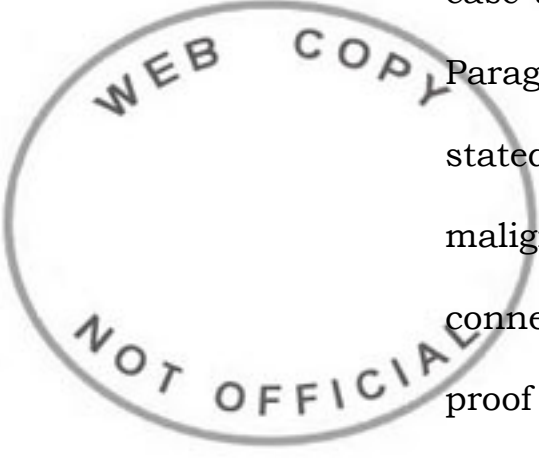
never threatened her husband with dire consequences and denied the allegations levelled in Paragraph 10 of the petition. In the same paragraph she asked the Hon'ble court to consider whether an Accounts Officer in Railways can be more powerful than the District Magistrate of a particular district and submitted that District Magistrate is also known as Collector who is incharge of collecting revenue in the district and has also overall responsibility of maintaining the law and order situation and in such circumstances, posed the question as to how the wife could threaten I.A.S. husband with filing of criminal case when she herself saw that her complaint made to Superintendent of Police, Madhepura was not considered and in this background submitted that the allegation levelled against her in Paragraph 10 of the petition is absolutely false and concocted including the statement that she would get the petitioner implicated by some female members and her parents to tarnish his image. In Paragraph 25 of the written statement wife stated that the allegation set out in Paragraph 11 of the petition are repetitions and she does not wish to make any repetition in reply as the same has already been dealt with by her



earlier. In Paragraph 26 of the written statement wife dealt with the statement made in Paragraph 12 of the petition and submitted that on no occasion there was any reconciliation proceeding between the parties or any efforts made by the husband to reconcile their matrimonial dispute. In this connection, she also stated that husband has not given any specific instance of irritational behaviour of the wife rather made uniform statement which he has repeated in several paragraphs. In Paragraph 27 of the written statement wife has dealt with the allegations made in Paragraph 13 of the petition and submitted that she has got no knowledge of the same but she can now very well presume that husband being a District Magistrate in order to prejudice the Court has deliberately filed Information Petition anticipating that he may be made an accused under Section 498(A) of the Penal Code and different provisions of the Dowry Prohibition Act. In this connection, in the same paragraph she further stated that it is the husband who tortured the wife in so many ways mentally and physically and the wife has not taken any legal action against him in anticipation that his attitude will change towards her in future. In this

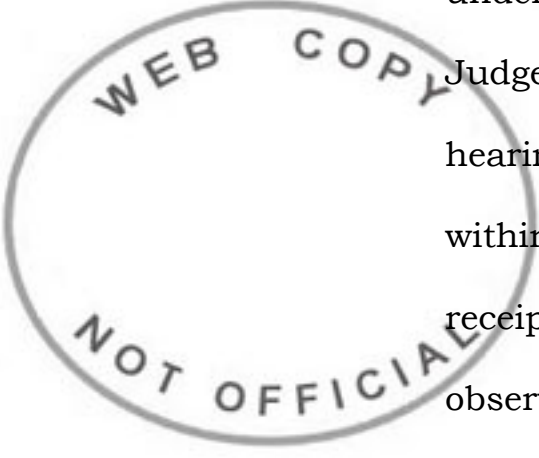
connection also she reserved her rights to give a detailed reply. In Paragraph 28 of the written statement wife has denied the averments made in Paragraph 14 of the petition as absolutely wrong and further submitted that as and when husband visited Patna she along with her son came to meet him in the rest house of Audit and Account Office which is opposite to the Circuit House at Bir Chand Patel Marg, Patna but the husband refused to meet her. In the same paragraph she has further stated that she failed to understand as to why husband is always saying that she demanded Rs. 15,00,000/-. In this connection she also stated that the husband has repeated his earlier statement of threat being extended by the wife without giving details of any specific incident. In the same paragraph she has also dealt with the allegations levelled against her that on 17<sup>th</sup> -18<sup>th</sup> October in the night she was caught red handed by the Railway Vigilance Squad travelling in A.C.-I coach of Rajdhani Express without proper authority which caused serious mental agony to the husband. In this connection, the wife has stated that in the night between 17<sup>th</sup>-18<sup>th</sup> October, she was travelling on duty with proper authority and on the





date of the written statement there is no vigilance case against her and denied the averments made in Paragraph 14 of the petition as false and further stated that such statements are being repeated to malign her as also to prejudice her case. In this connection also she has put the husband to strict proof of his statements. In Paragraph 29 of the written statement wife has stated that the husband filed petition before the Court on 30.01.2008 seeking a direction that wife may be prevented from coming to his residence which is absolutely against the provisions of law and thereby causing mental torture to the wife. In Paragraph 30 of the written statement wife has requested the court that in view of the fact stated in the written statement divorce petition is fit to be dismissed with heavy cost and husband be directed to live with the wife and give her full status of wife along with their son Chaitanya Rajesh.

7. Family court heard both the parties on 22.07.2008 and restrained them from visiting the house of each other during the pendency of the matrimonial case without express permission and consent of each other. The wife challenged the order dated 22.07.2008 in High Court by filing Civil



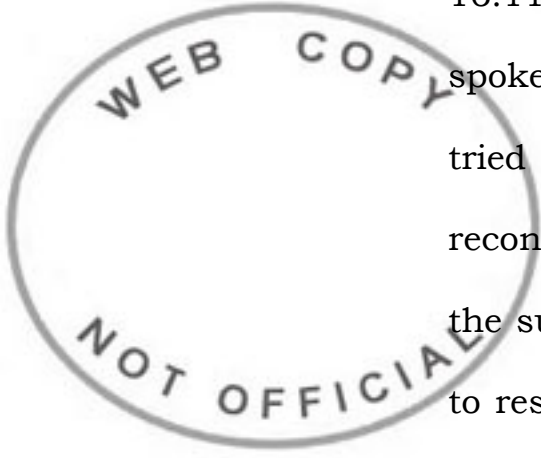
Revision No. 1181 of 2008 which was disposed of under order dated 12.01.2009 directing Principal Judge, Family Court, Patna to conduct day-to-day hearing in the matrimonial case and deliver judgment within a period of three months from the date of receipt/production of a copy of the order with further observation that if any party will not cooperate, the court below will record reasons and will proceed to decide the matter. In case for any reason hearing is not concluded within the time granted by this Court, the court below will submit report explaining the reasons for not completing the trial. In the light of the order dated 12.01.2009, Principal Judge proceeded with the trial and accepted the examination-in-chief of the husband, his mother, P.Ws. 1, 2 on affidavit and thereafter both were cross-examined by the counsel for the opposite party on 09.03.2009 and 23.03.2009 respectively. P.W. 3 Sunil Kumar Jha, Executive Magistrate, Madhepura also filed his examination-in-chief on affidavit and was cross-examined on 26.03.2009. P.W. 4 Vijay Prakash filed his examination-in-chief on affidavit and was cross-examined on 30.03.2009. Wife adduced evidence of R.W. 1 Surya Prakash Narayan,

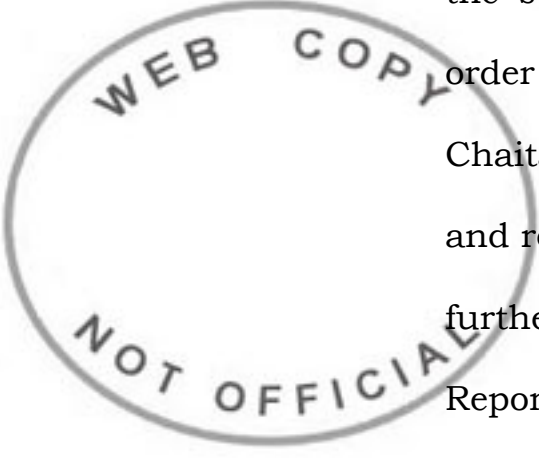
Railway Staff, R.W. 2 Dr. Jalendra Prasad, brother-in-law of the husband, R.W. 3 Mahendra Prasad, own maternal uncle of the respondent, father of Harivansh @ Ashish, whom she appointed as bungalow peon, R.W. 4 Ranvir Kumar Sinha, her father and herself as R.W. 5.

8. Learned Principal Judge having considered the pleadings and the evidence of the parties pronounced judgment dated 11.08.2009 holding that the wife has been cruel to the husband and granted decree of judicial separation.

9. By filing the present appeal wife has challenged the said judgment and decree dated 11.08.2009. During the hearing of this appeal, appellant appeared before this Court personally on 06.11.2009 and with reference to Paragraph 4 of the memo of appeal submitted that she is willing to resign her job if the husband is willing to keep the marriage intact. She further submitted that it has become more imperative because her son is 2 ½ years old. This Court having noted the aforesaid submission observed in its order dated 06.11.2009 that it is one of those cases where effort on the part of the Bench may bring about reconciliation between

the parties and adjourned the proceedings to 16.11.2009 in Chambers. On 16.11.2009 the Court spoke to both the parties separately in camera and tried to impress upon them the efficacy of reconciliation. On 16.11.2009 also the Court noted the submission of the appellant that she is prepared to resign her job for the sake of her marriage and in the light of such statement of the wife the Court further noted in its order of the same day that it will be open for the parties to give a fresh thought for reconciliation. The Court again took up the matter on 18.11.2009 and observed that it is provisionally of the view that D.N.A. test of the child along with parents may be done and under order dated 14.12.2009 directed the Civil Surgeon, Patna to collect the samples as per the protocol for D.N.A. of the appellant, respondent and their son Chaitanya Rajesh to ascertain the paternity of the boy. In the light of the order dated 14.12.2009 parties as also Chaitanya Rajesh furnished their D.N.A. to Civil Surgeon, Patna who sent them to Central Forensic Science Laboratory, Kolkata and Centre for D.N.A. Finger Printing and Diagnostics, Hyderabad. Reports from the aforesaid two Institutes were received and

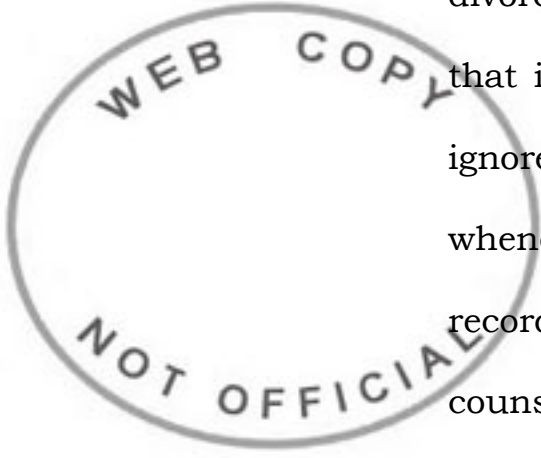




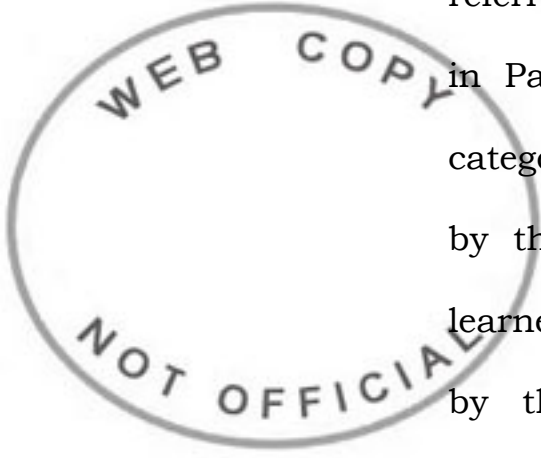
perused by the Court under order dated 12.09.2012, the substance of the two reports noted in the said order wherefrom it appears that D.N.A. of Master Chaitanya Rajesh matched with that of the appellant and respondent. From the order-sheet of the appeal it further appears that after receipt of the D.N.A. Test Report also the Court attempted to resolve the matrimonial dispute between the parties which could not succeed and the matter was admitted for hearing on merits.

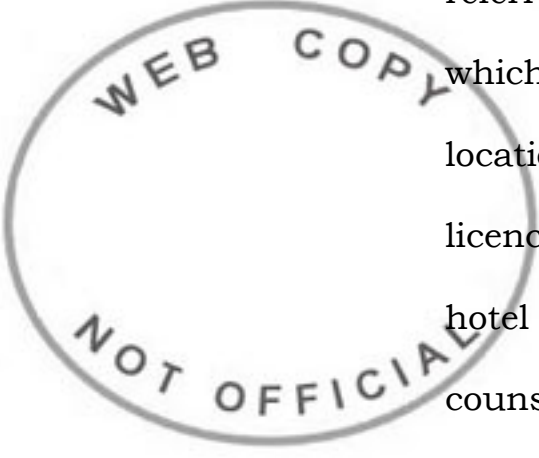
10. Learned counsel for the appellant has assailed the findings recorded in Paragraph 64(i) of the impugned judgment (at Page-40 of the brief) that it is well established that the wife intentionally ignored living with the husband at regular interval whenever she got time with reference to the contrary finding recorded in Paragraph 41 (at Page 29 of the brief) where learned Principal Judge held that husband failed to establish the factum of separation as well as separation for a continuous period of two years immediately preceding presentation of the divorce petition on 08.11.2007. It is submitted that if the husband has failed to establish factum of separation from the wife for a continuous period of

two years preceding presentation of the petition for divorce on 08.11.2007, the finding in Paragraph 64(i) that it is well established that the wife intentionally ignored living with the husband at regular interval whenever she got time, appears to have been recorded without any basis as according to learned counsel there was no material before the learned Principal Judge to conclude that the wife intentionally ignored living with the husband at regular interval when she got time. In this connection, it is submitted that if both the husband and wife are Government, Railway servant, then the question of intentionally ignoring to live together is a misconceived assumption of fact which is devoid of any merit. It is also submitted that the evidence on record indicate that the wife tried her best to live together whenever she found time. She challenged her transfer order before Tribunal. She used to travel from her place of posting to the place of posting of her husband in order to live together with him. The evidence on the point has not been disbelieved and according to learned counsel, the same has not been considered by the court below.



11. Learned counsel for the appellant next referred to the findings recorded by the court below in Paragraphs 42, 43 where the court below has categorized 14 and 6 instances of cruelty perpetrated by the wife on the husband. In this connection, learned counsel also referred to the findings recorded by the court below in Paragraph 51 onwards including Paragraph 55 and the evidence of P.W. 1 husband, P.W. 4 Vijay Prakash which according to learned counsel for the appellant was erroneously found reliable by the court below in the light of the evidence of R.W. 4 Ranvir Kumar Sinha, father of the wife as he also deposed that his daughter attended party. According to counsel for the appellant the court below committed serious error in considering the deposition of P.W. 4, who according to learned counsel is a chance witness and had seen the wife in Kunal Hotel in May, 2005 and in Maurya Hotel in July, 2005 which is evident from Paragraphs 2, 3 of his examination-in-chief but according to learned counsel from perusal of cross-examination of P.W. 4 it does not appear that there is any proof that he deals in diamond and had any occasion to be present in Hotel Kunal, Maurya in May, July, 2005



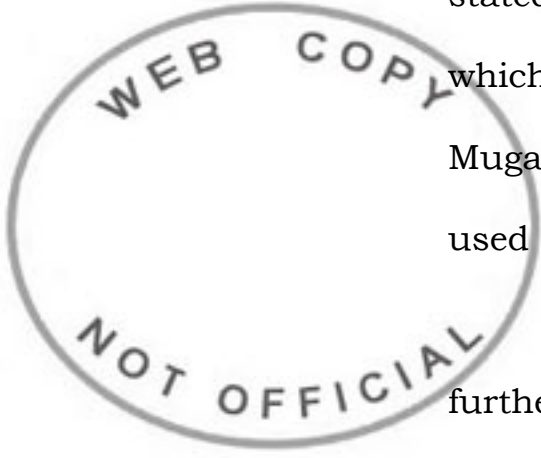


respectively. In this connection, learned counsel also referred to that part of the evidence of P.W. 4 from which it appears that he is not even aware about the location of Kunal Hotel and the fact that hotel has licence to sell liquor and how he came to visit the hotel is also not explained. In this connection learned counsel further referred to such part of the evidence of P.W. 4 where he stated that he met the appellant wife in Patna Club and then changed the name of the Club to New Patna Club. In view of the aforesaid discrepancy in the evidence of P.W. 4, according to learned counsel his evidence is not trustworthy.

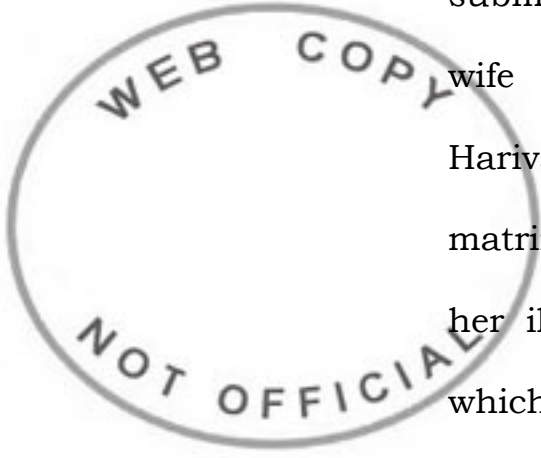
12. Learned counsel for the appellant explained the evidence of R.W. 4, father of the wife and submitted that he deposed in Paragraphs 4 to 8 of his examination-in-chief on affidavit that his daughter discharged the matrimonial obligation sincerely. No allegation regarding her character was made until 2007. Even thereafter the husband has not made any complaint against her. He also stated that they used to live with each other as and when both got opportunity to live together. The father further denied that his daughter returned late in the night after attending party and taking liquor. In

Paragraph 4 of the cross-examination father clearly stated that his daughter attended official functions which used to be held in the Railway Club, Mugalsarai and not in private building and which used to end by 8:00 P.M.

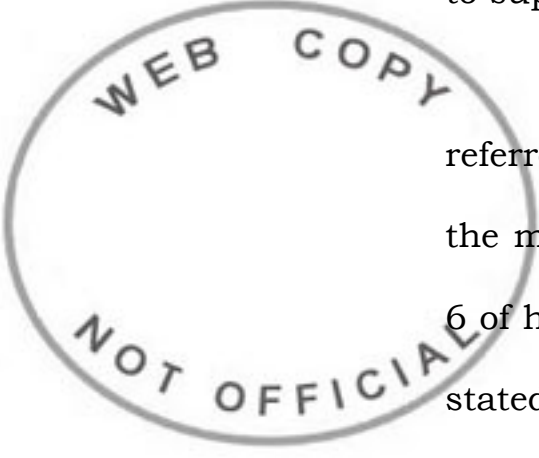
13. Learned counsel for the appellant further submitted that even assuming the evidence of P.W. 4 that he had seen the wife in Hotel Kunal, Hotel Maurya in May, July, 2005, respectively, to be true but male child having been born to the wife out of the wedlock on 24.02.2006 whereafter husband took paternity leave for 15 days and celebrated his first birth day in presence of friends, relatives of both the parties in March, 2007, the allegation of May, July, 2005 will have no bearing on the question of cruelty because subsequently male child was born out of the wedlock as conclusively proved by the D.N.A. Test Report received from two different Government Institutions of repute, the allegation of wife having been seen by P.W. 4 in Hotel Kunal, Hotel Maurya in May, July, 2005 respectively will have no bearing on the issue and submitted that the same is fit to be ignored.



14. Learned counsel for the appellant next submitted that the allegation of illicit relation of the wife with one Harivansh is concerned, the said Harivansh having not been made party in the present matrimonial case and there being no pleading about her illicit connection with Harivansh in the plaint which was drafted by the appellant as he has put his signature over the same, ought not to have been taken into account by the learned Principal Judge for concluding that the wife lived with Harivansh Prasad @ Ashish from 2004 to 2007 causing mental agony and torture to the husband. According to learned counsel such consideration is wholly illegal, unjust and contrary to the established norms, law. In this connection, he also referred to the evidence of the husband (P.W. 1) where he admitted that he does not know who appointed Harivansh Prasad @ Ashish. Learned counsel for the appellant further pointed out from the evidence of P.W. 1 that he also does not know whether his wife was the appointing authority of Bungalow Peon or not. In this connection she also referred to the admission of P.W. 1 in Paragraph 7 of his deposition and submitted that the Principal



Judge ought not to have relied upon such admission to support his finding on the issue of cruelty.



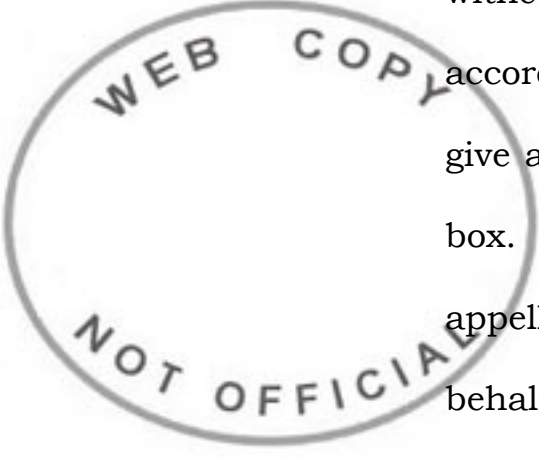
15. Learned counsel for the appellant also referred to the evidence of R.W. 3 Mahendra Prasad, the maternal uncle of the husband in Paragraphs 5, 6 of his deposition and submitted that he has clearly stated that his sister (P.W. 2) and her son (P.W. 1) has not made any complaint about the character, nature of the daughter-in-law, wife respectively. Learned counsel for the appellant further submitted that the Principal Judge failed to appreciate the contents of the evidence of R.W. 3 Mahendra Prasad and thereby erred in recording the finding with respect to cruelty on the part of the wife. She also submitted that the trial court failed to appreciate the contents of the evidence of the wife while recording the finding on the issue of cruelty and thereby the impugned judgment is vitiated.

16. Learned counsel for the appellant further submitted that evidence of P.W. 4 Vijay Prakash ought not to have been considered as he failed to establish that he worked as a diamond dealer and further for the reason that Maharana and Vijendra who were present along with P.W. 4 Vijay

Prakash have not been examined to corroborate his evidence.

17. Learned counsel for the appellant further submitted that there is serious contradiction in the evidence of P.Ws. 1, 3 about the manner of incident that allegedly took place at Madhepura on 26.01.2008 after the filing of the divorce petition as husband (P.W. 1) has not deposed that he was slapped by the wife but P.W. 3 has stated in his evidence that wife did slap the respondent.

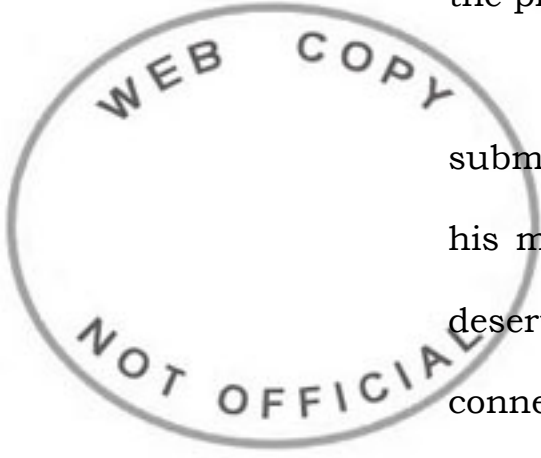
18. Learned counsel for the appellant finally submitted that the findings arrived at by the learned Principal Judge on the basis of the evidence beyond pleadings is fit to be rejected as such finding is illegal, unjust and contrary to the provisions of Order VI Rule 7 and Order XIV Rules 3, 5 C.P.C. In this connection learned counsel further submitted that the subsequent facts stated from the mouth of the witnesses but not inserted in the petition by way of amendment as permissible under Order VI Rule 15 C.P.C. cannot be accepted in evidence as Rule 7 provide that no evidence shall be accepted beyond the pleadings. Facts disclosed from the witness box cannot be made basis for granting divorce as the wife

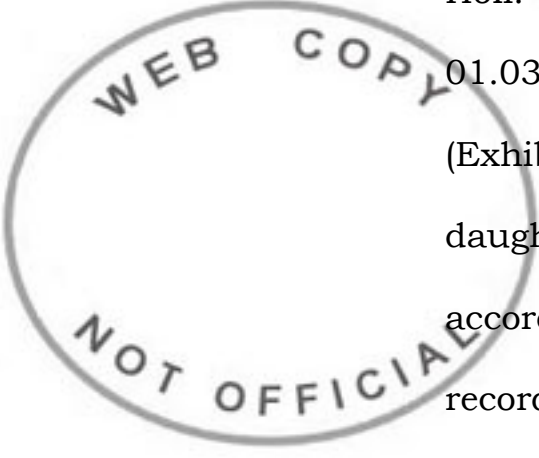


had no opportunity to deny the facts stated from the witness-box and was taken by surprise and according to learned counsel, this Court should not give any weight to the facts stated from the witness-box. In this connection, learned counsel for the appellant submitted that the witnesses examined on behalf of the husband asserted from the witness box that the wife used to return drunk from late night party. She appointed Bungalow Peon Harivansh Prasad @ Ashish who is maternal brother of her husband and a man of ill repute, he also had illicit connection with the wife of his cousin Kishori and she is living adulterous life with him. Wife and Harivansh assaulted the husband, also called him “Napunsak, Namard”. Wife used to give homeopathic medicine to improve “Paurish Kshmta” of the husband which caused several glands (guilti) in his body. After posting of the husband as District Magistrate, Madhepura, the wife disturbed the flag hoisting function on 26.01.2008 and also gave fist blow to Sri Sunil Kumar Jha, a Magistrate posted under the husband, cannot be taken into account for approving the findings rendered by the court below

as the wife had no opportunity to deny those facts in the pleadings.

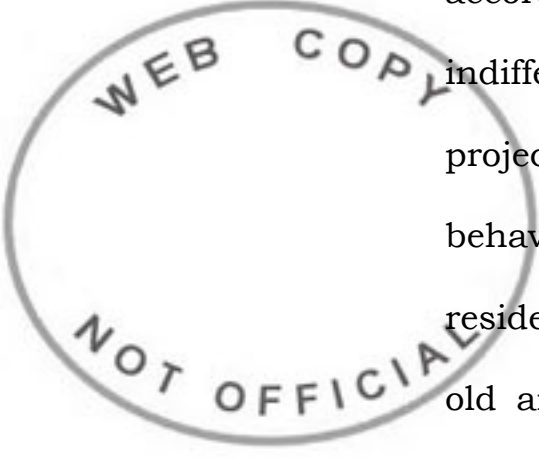
19. Learned counsel for the appellant next submitted that from the evidence of the husband and his mother (P.Ws. 1, 2) it does not appear that wife deserted the husband for two years. In this connection, it is pointed out that the marriage was solemnized on 05.06.2002. The child was born out of the wedlock on 24.02.2006 in Ganga Ram Hospital, New Delhi, whereafter husband took paternity leave from 25.02.2006 to 11.03.2006 to attend the child as would appear from his evidence in Paragraph 4 of his cross-examination and photograph (Exhibit-A). The suit was filed on 08.11.2007 i.e. within two years of the birth of the child. From the evidence of husband (P.W. 1) Paragraph 4 it is evident that he took paternity leave on the birth of his son while he was District Magistrate, Sheikhpura. In Paragraph 5 of the cross-examination husband has further admitted that respondent is his wife and her son is also his son. With reference to the evidence of the mother of husband (P.W. 2) Paragraph 4 learned counsel for the wife submitted that her mother-in-law admitted in Paragraph 4 of her evidence that the daughter-in-law





came to Madhepura in March, 2007 at the time of Holi. In Paragraph 3 mother-in-law admitted that on 01.03.2007 a party was arranged. Photographs (Exhibit-A/1 to A/3) indicate that mother-in-law, daughter-in-law and the child joined the party and according to learned counsel there is no evidence on record to establish desertion at the instance of the daughter-in-law, as there is nothing on record to prove the factum of separation and intention to stop cohabitation permanently for two years. In this connection, learned counsel referred to the evidence of the wife (R.W. 5) who denied the allegation of desertion in Paragraphs 17, 19, 20 and 30 and stated that she either lived in the Government quarter or with her husband at his place of posting.

20. Learned counsel for the appellant next submitted that the allegation of cruelty raised by the husband is completely vague as hardly any material particulars i.e. date, time and place including actual words spoken or incident constituting cruelty has been mentioned though Rule 8 framed by the High Court require every original petition to state such fact giving details of the occasion and the place where such cruelty was committed by one spouse on the



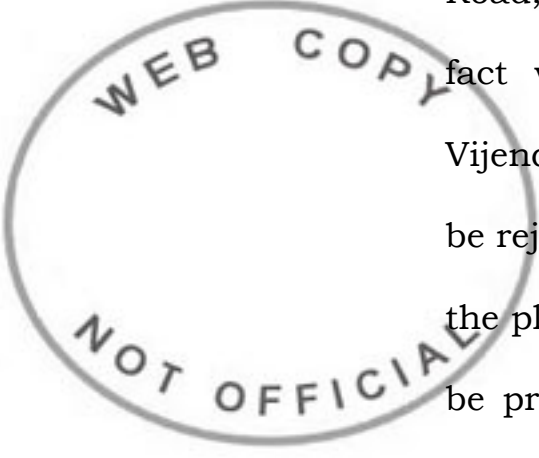
other. In this connection, it is submitted that according to the husband, wife behaved roughly, indifferently with the husband, his family members projecting her superiority complex. She also did not behave properly with the husband at her father's residence in Mithapur as also did not attend to her old ailing widow mother-in-law and humiliated the husband, his family members in front of outsiders and others. It is submitted that material particulars constituting allegations of cruelty having not been mentioned it is not appropriate for the trial court to record finding of cruelty against the wife.

21. Learned counsel for the appellant with reference to the evidence of the husband submitted that while deposing in Court he introduced new dimension to the case and alleged adultery, which is not there in the pleading, though from his evidence it appears that he was aware about the adulterous relationship of his wife with his maternal brother Harivansh. Aforesaid fact has not been mentioned in the divorce petition nor Harivansh has been impleaded as a co-respondent, which is mandatory as per Rule 16 of the Hindu Marriage Act framed by the High Court and for such omission, the allegation

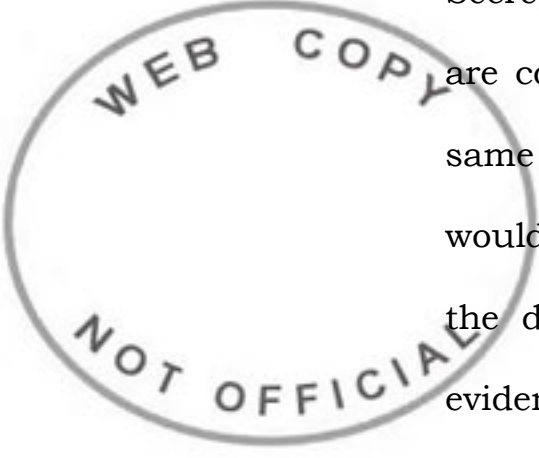
of adultery levelled against the wife cannot be considered. It is well known that plea not raised in pleading, defect cannot be cured by leading evidence about such plea and for such submission reliance is placed on the judgment of the Patna High Court in the case of **Smt. Ramsurat Devi Vs. Smt. Satraji Kuer and others AIR 1975 Patna 168 Paragraph 13.**

22. It is further submitted that the evidence of the husband (P.W. 1) in Paragraphs 5, 8 of his examination-in-chief that his wife ill treated, assaulted him and led adulterous life with Harivansh whom she appointed Bungalow Peon in 2004 as also refused to remove him cannot be accepted as no such plea has been mentioned in the pleading though the husband was being ill treated, assaulted and ignored from 2003 after he completed the training and was posted as S.D.O.

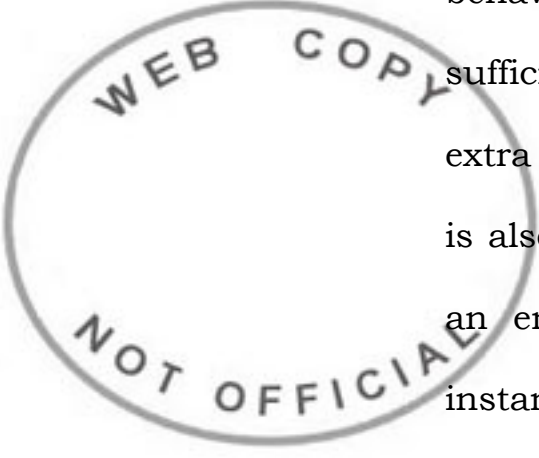
23. Learned counsel with reference to the evidence of the husband in Paragraph 12 submitted that he was aware about her habit to return drunk from late night parties from 2003 itself while she remained posted at Mugalsarai and that he also learnt such fact from P.W. 4 Vijay who had seen her



attending late night party in Hotel Kunal, Jamal Road, Patna in which she became drunk and such fact was also communicated to the husband by Vijendra and Maharaja (both not examined), is fit to be rejected as those facts have not been mentioned in the plaint and there is no occasion for P.W. 4 Vijay to be present in the late night party in which he had seen wife becoming drunk. In this connection learned counsel for the appellant also referred to the evidence of R.W. 1 in Paragraph 5, R.W. 2 Paragraph 10, R.W. 4 Paragraph 8, R.W. 5 Paragraph 41 in which allegations of adultery and of becoming drunk in late night party has been denied and submitted that those allegations are afterthought and have been raised, when the husband felt that his petition has no sufficient ground, he made wild allegations from the witness-box. Learned counsel for the appellant also denied the allegations levelled by the husband (P.W. 1) in his examination-in-chief that his wife was found travelling in October 2007 in A.C.-I coach in Rajdhani Express without proper authority for which vigilance case was instituted and that she disturbed the flag hoisting function on 26.01.2008. In this connection with reference to Exhibit-2 letter dated



28.01.2008 written by P.W. 1 himself to the Chief Secretary, Bihar it is submitted that the allegations are concocted and this Court may not rely over the same as prescription (Exhibit-H/2) dated 26.01.2008 would show that her son was ill and she had gone to the doctor which fact she had also stated in her evidence. As regards the evidence of P.W. 3 learned counsel for the appellant submitted that he being under direct subordination of P.W. 1, his evidence that wife gave fist blow to P.W. 1 on 26.01.2008 at the time of flag hoisting function may not be accepted as the wife was not allowed to attend such function and she was attending to her ailing son. It is submitted that the relationship between the husband and wife was cordial until March, 2007 when the first birthday party of their son was organized at Madhepura, which is evident from Exhibit-A series, Photographs and Exhibit-D, D/1, C.D. of videography, photographs. Placing reliance on the judgment of the Calcutta High Court in the case of **Smti Ananta Vs. Ramchander AIR 2009 Calcutta 167** learned counsel submitted that calling husband *Dhobi* or *Dhobi Ka Aulad* is not such a calling which will make the life of the husband and wife miserable



as the same may expose the wife of intemperate behaviour and lack of culture but such calling is not sufficient to dissolve their marriage. Allegation of extra marital affairs raised by the wife but not proved is also not sufficient ground to grant divorce putting an end to the long standing relationship, in the instant case, of seven years. Further placing reliance on the judgment of the Supreme Court in the case of **Samar Ghosh Vs. Jaya Ghosh (2007) 4 SCC 511** it is submitted that the same was also considered by the Calcutta High Court in the case of **Smti Ananta Vs. Ramchander (supra)** and with reference to the said judgment it is submitted that after taking into consideration the entire matrimonial life of the parties, the mental pain, agony and suffering has to be ascertained and with reference to the said judgment it is submitted that from the facts alleged and proved in the instant case it does not appear that parties suffered acute mental pain and agony. The treatment complained of by the husband is not sufficient to establish a case of cruelty against the wife.

24. Learned counsel for the appellant also referred to the judgment in the case of **Suman Kapur**

**Vs. Sudhir Kapur 2009(1) PLJR 146 (SC), R.**

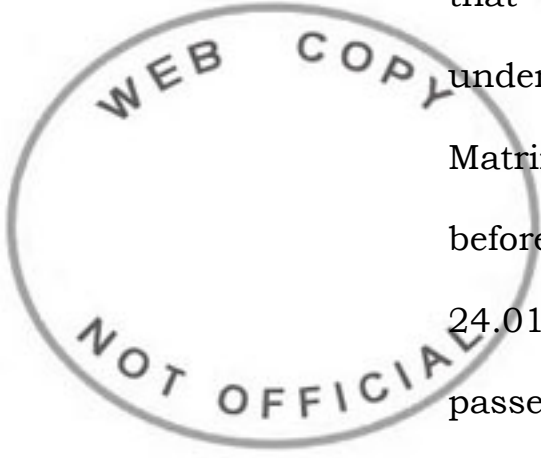
**Balasubramanian Vs. Smt. Vijayalakshmi**

**Balasubramanian 1999(3) PLJR 8 (SC) and**

submitted that the facts pleaded and established in the present case does not make out any case for grant of relief prayed for by the husband and the judgment and order dated 11.08.2009 granting judicial separation impugned in the present appeal is fit to be set aside.

25. Learned counsel for the respondent husband, however, submitted that after expiry of the mandatory period of one year of judicial separation respondent husband filed Matrimonial Suit No. 646 of 2010 in Family Court, Patna for grant of decree of divorce under Section 13 (1-a)(i) of the Hindu Marriage Act. Said matrimonial suit was transferred to Family Court, Allahabad by the Supreme Court under order dated 23.09.2011 passed in Transfer Petition (C) No. 612 of 2011. The Family Court, Allahabad after hearing the parties disposed of the suit under judgment/decreed of divorce dated 24.01.2013 by an ex parte order. The respondent husband after expiry of the limitation period again married on 12.05.2013 and a daughter was born out

of the said marriage. In July, 2013 husband learnt that wife filed Miscellaneous Case No. 11 of 2013 under Order IX Rule 13 C.P.C. for restoration of the Matrimonial Suit No. 646 of 2010 and filed objection before the Family Court that divorce decree dated 24.01.2013 may not be set aside as the same was passed after considering her written statement dated 04.04.2011 and after giving ample opportunities on various dates, in the circumstances is not ex parte but such submission was rejected. The husband challenged the rejection by filing appeal before the High Court, Allahabad, which is still pending. The wife has also filed Civil Misc. Writ Petition No. 2636 of 2013 before the High Court, Allahabad, which is also pending. In the light of the aforesaid facts it is submitted that subsequent to decree of judicial separation, which is under challenge in the instant appeal, final decree of divorce has already been granted by competent court in favour of the husband and writ petition arising out of the concerned decree of divorce and subsequent restoration of the matrimonial suit is presently pending before the Allahabad High Court. In the aforesaid background it is further submitted that the entire matrimonial

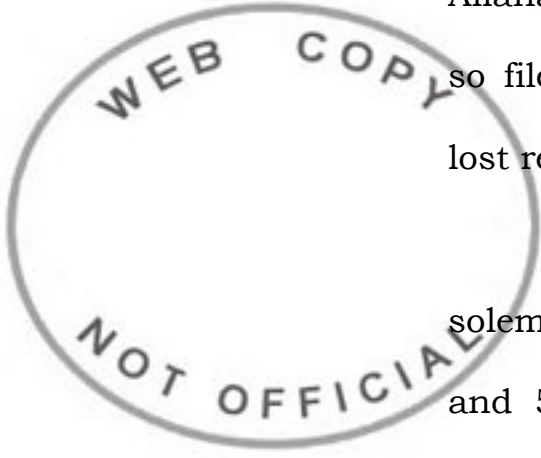


matter between the parties was transferred to Allahabad by the Supreme Court on Transfer Petition so filed by the wife herself, the present appeal has lost relevance and has become infructuous.

26. It is further submitted that after solemnization of marriage a period of about 5 years and 5 months passed and during that period the husband repeatedly requested the wife to visit his place of residence for short intervals but she did not care at all, flatly refused and condemned the request made by the respondent.

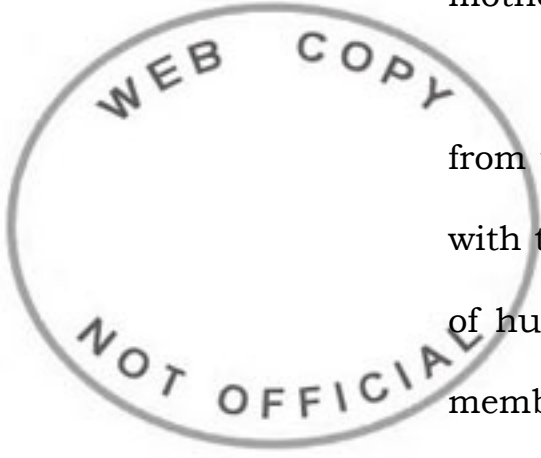
27. It is further submitted that whenever respondent husband visited wife's place of residence, she did not behave properly, remained indifferent, presented herself busy with outdoor activities and generally used to stay outside home late night in the name of essential parties, whereas the husband waited for her at her residence.

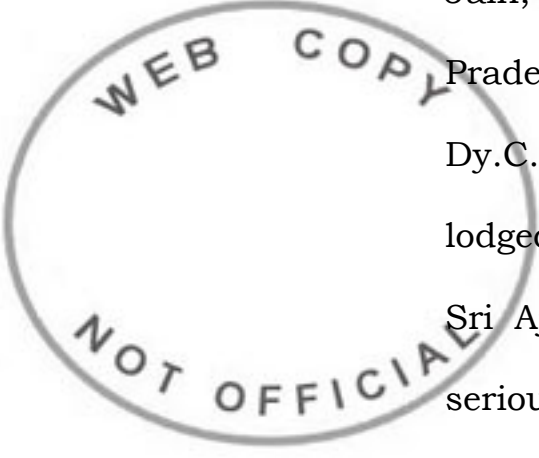
28. It is further submitted that out of the aforesaid period of five years and five months the wife remained with the husband for only about ten months in all but even during that period did not allow him any sort of physical relation in last two years and three months. In this context husband



requested the wife to attend to her ailing old widow mother but she never attended her.

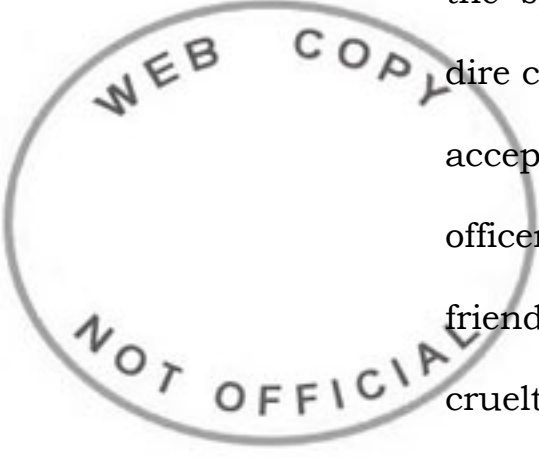
29. It is further submitted that right from the beginning wife behaved with serious cruelty with the husband and she has also been in the habit of humiliating, abusing the husband and his family members in front of outsiders. The wife completely deserted the conjugal life of the husband and remained cruel in her behaviour towards the husband. It is again submitted that she has been in the habit of remaining out of house till late night and whenever the husband requested her to mend her ways, she used to threat the husband to give serious lesson if he puts any such question regarding her life style in future. It is further submitted that husband came to know from reliable sources that wife in her official capacity has also been in the habit of misbehaving with her subordinates and superiors. It is further submitted that number of complaints including vigilance cases are pending in Railway Department, which is a matter of record damaging the general public image and reputation of the husband. In this connection reference is made to Exhibit 23, a detailed inquiry report dated 16.10.2002





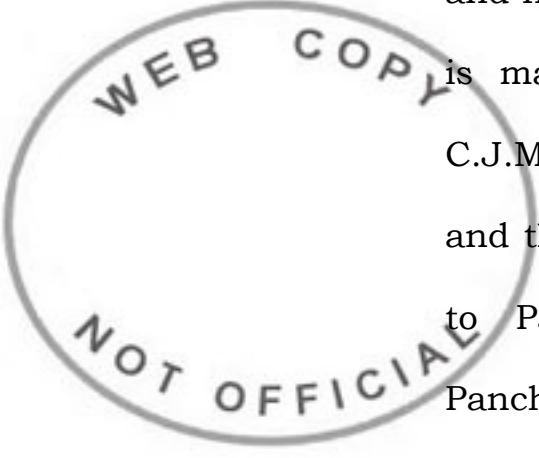
of the Railway Administration conducted by Smt. V. Jain, Senior System Manager, Chairperson Sri Pradeep Kumar, D.G.M. (G), Member, Sri P.K. Sinha, Dy.C.A.O. (G), Patna in the matter of complaint lodged by wife Pushpa Rani against Sri Ajit Kumar Mishra, A.D.A.O., Danapur making serious allegations including sexual harassment. The Inquiry Report in conclusion states “the Committee is of the opinion that the extent of sexual harassment reported by Smt. Pushpa Rani cannot be verified because of the reasons as stated in the foregoing paragraphs”. With reference to the said report learned counsel for the husband states that the same establishes harsh conduct and cruel nature of Pushpa Rani in her official functioning as well.

30. It is further submitted that because of unbearable situation created by the wife the very purpose of marriage being badly ruined, frustrated, the husband having no option, alternatively began to negotiate with the wife with the help of parents, relatives, common friends for divorce to avoid any further mental agony and torture. During initial negotiation, the wife agreed in principle for divorce but she vehemently demanded exorbitant amount of



Rs. 15 lacs which the husband refused, upon hearing the said refusal wife threatened the husband with dire consequences if her demand for settlement is not accepted and she being a senior powerful Class-I officer with high political connection and official friends will institute false criminal cases alleging cruelty, physical violence, dowry etc. against him and his family members. She further threatened that she would even institute false criminal cases lodged on behalf of some female members of her parents' family to tarnish the image of the husband and that she would ensure that his bright service career is ruined. In this connection, reference is made to Exhibit-6, written complaint made by the wife dated 28.01.2008 to Chief Secretary, Bihar containing wild and baseless allegations regarding character etc. of the husband with sole intention to tarnish his image in the eyes of his superior authorities, to humiliate him and to damage his service career.

31. Learned counsel further submitted that as and when the husband tried to settle the matter regarding divorce through talks, negotiations the wife threatened him to either accept her monetary demand and settle, otherwise, she would



lodge false criminal case of harassment against him and his family members. In this connection reference is made to the Informatory Petitions filed before C.J.M., Patna giving details of negotiation for divorce and the threats extended by her. The husband came to Patna on 06.11.2007 for attending official Panchayat Election meeting and during his stay at Patna again talk was initiated with the help of common friends, relatives regarding divorce but the wife repeated her threats, which is also on record, Exhibit-7A-C series and 8A-C series, bearing Informatory Petition Nos. 3291 of 2007, 3452 of 2007, 3800 of 2007 respectively. In this regard it is further submitted that several complaints including vigilance cases are pending against the wife for her wrong doing in discharge of official duty in the Railway Department, which is a matter of record. In this regard it is also mentioned that in daily newspaper Hindustan Times, Patna Edition dated 26.10.2007 one news item stated that on 17<sup>th</sup>-18<sup>th</sup> October, 2007 night Pushpa Rani was caught red handed by Railway Vigilance Squad travelling in A.C.-I coach of Rajdhani Express without proper authority. Her said misconduct damaged the general

reputation and official dignity of the husband.

Reference in this regard is made to Exhibit-1/1-A

and 25. Exhibit 1/1-A is newspaper clipping of

Hindustan Times dated 26.10.2007 containing news

item "ECR Officer caught flouting railway rules",

giving details of vigilance raid during night between

17<sup>th</sup>-18<sup>th</sup> October in which Pushpa Rani was caught

red handed by Railway Vigilance Squad travelling in

A.C.-I Coach of Rajdhani Express without proper

authority. Exhibit 1/1-A is corroborated by Exhibit

25 information obtained under R.T.I. from Railway

Board to prove that Pushpa Rani was caught

unauthorized travelling by Vigilance Team of Railway

Board in Rajdhani Express during the night between

17<sup>th</sup>-18<sup>th</sup> October, 2007 and that vigilance

investigation is under progress in connection with

Vigilance Case No. 2007/V2/ECR/24. Exhibit 1/A

also indicate that the Eastern Central Railway Officer

Pushpa Rani caught flouting Railway rules is the wife

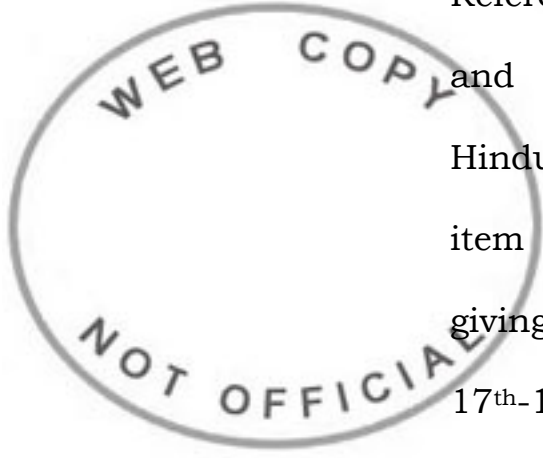
of an I.A.S. Officer of Bihar Cadre. The above

documentary evidence clearly establish that Pushpa

Rani by her unlawful act/wrong doings caused

humiliation and damage to the general reputation of

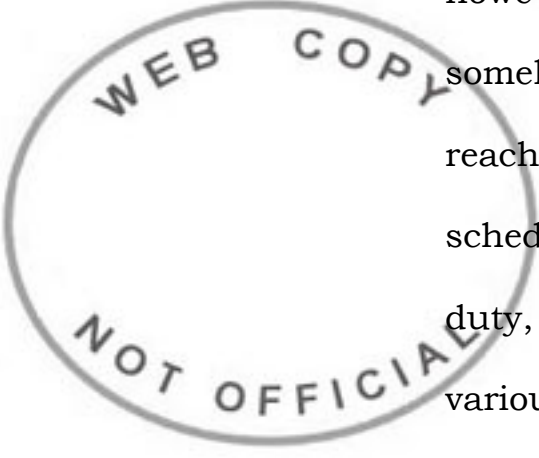
the husband in the estimation of general public



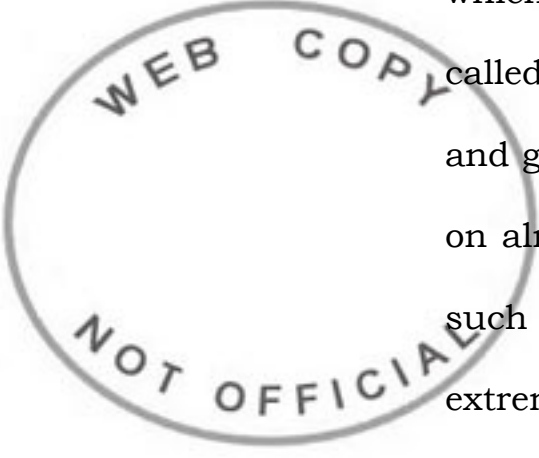
which is substantial mental cruelty to him though she denied the said allegation in her written statement but subsequently proved by the documents.

32. Learned counsel for the husband also submitted that in December, 2007 Pushpa Rani went to Sitamarhi and threatened her mother-in-law to withdraw the matrimonial suit filed by her son otherwise false case shall be lodged against the husband and his entire family.

33. Learned counsel further submitted that Pushpa Rani forcibly entered Madhepura official residence of her husband on 26.01.2008 at about 8:00 A.M. when husband was about to hoist the National Flag, she began abusing him in front of officials, staff and general public gathered for flag hoisting. She also forcibly tried to stop the husband from leaving for attending the main district level flag hoisting function scheduled for 9:00 A.M. also ransacked the kitchen, threw utensils and publicly threatened that if the said divorce suit is not withdrawn, she would poison the husband this way or that way. In continuation of her aggressive and violent mood she even slapped the husband in front

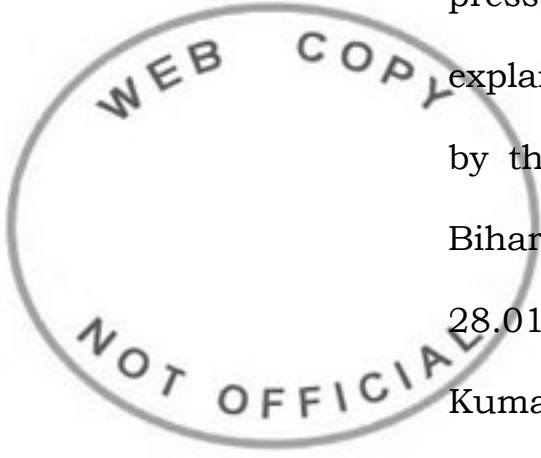


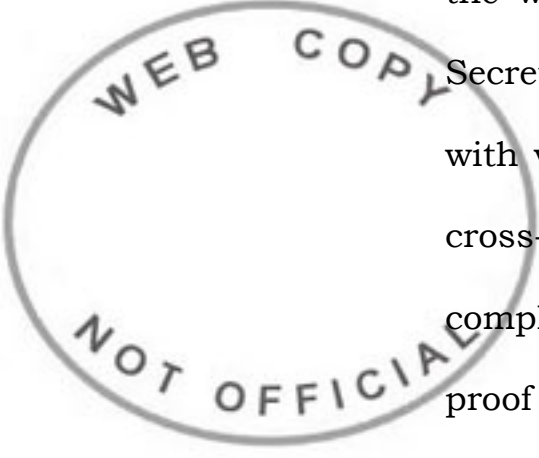
of the officials and staff present. The husband, however, with the help of staff and officials present somehow managed to escape from her clutches and reach the venue for district flag hoisting function scheduled at 9:00 A.M. and discharged his official duty, though she continued to chase the husband in various other offices where the flag hoisting ceremony took place subsequently as per the district schedule and abused him using filthy language in front of the gathered crowd. Her aggressive and violent behaviour not only caused serious fear of life and limb in the mind of husband but also damaged the general reputation of the husband in the eyes of general public, and also caused serious humiliation to the husband amounting to severe mental cruelty to the husband. Throughout the day she continued to roam around in Madhepura District Headquarter Town and in league with anti-social elements and local education mafia against whom the husband had taken strict professional action. She made false allegation against the husband alleging that she is being kept captive, beaten and tortured by the husband. In this context she not only gave statement to the newspaper press men, but also made wild and



baseless allegation live in T.V. news channel as well, which is a matter of record. She even voluntarily called press personnel to the official D.M. residence and gave her visuals and statements which came live on almost all news channels. It is submitted that all such overt acts of the wife is manifestation of extreme cruel behaviour towards the husband. Above stated cruel actions of the wife caused serious damage to the reputation of the husband causing public humiliation to him which is mental cruelty of the highest order and beyond reasonable degree of condonation. In this connection reference is made to Exhibit 1B/1C/1D/1E/2-6 which fully establish the above stated averments of the husband. Exhibit 1B/1C/1D are newspaper cuttings of Dainik Jagaran, Hindustan dated 28.01.2008 containing the news item about the false allegation made by the wife that she is being kept captive, beaten and tortured by the husband. Exhibit 1/E is newspaper cutting dated 28.01.2008 regarding the proceeding of meeting of Madhepura Unit of Bihar Administrative Service Association in connection with physical assault on Sri Sunil Kumar Jha, Executive Magistrate by wife on 26.01.2008. Exhibit-2 is letter written by the

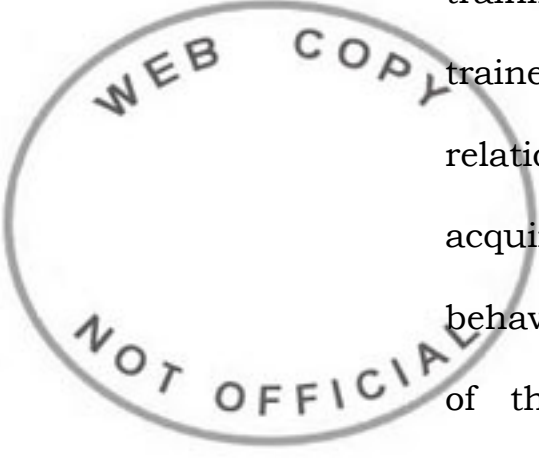
husband to the Chief Secretary, Bihar clarifying the press reports in newspapers and T.V. channels explaining the allegations made and visuals shown by the wife. Exhibit-3 is copy of the proceeding of Bihar Administrative Service Association held on 28.01.2008 to condone physical assault on Sri Sunil Kumar Jha, Executive Magistrate by the wife on 26.01.2008. Exhibit-4 dated 27.01.2008 is the report of the Medical Officer, Madhepura addressed to Officer-in-Charge, Sadar P.S., Madhepura stating that Pushpa Rani, wife of Rajesh Kumar, District Magistrate, Madhepura was examined in his Government Quarter on 27.01.2008 at 1:00 P.M. and found no injury on her person. Exhibit 5 is letter to Superintendent of Police dated 28.02.2008 by the husband to provide adequate security in context of violent behaviour of the wife which is also corroborated by Exhibit-6. Document admitted by the wife clearly shows that the wife knowingly and intentionally during the pendency of the matrimonial suit did overt acts amounting to cruelty towards husband. The wife assaulted the husband and P.W. 3 Sunil Kumar Jha. The evidence of P.W. 3 and mother-in-law of the wife (P.W. 2) also support the





incident of 26.01.2008. With reference to Exhibit-6, the written complaint filed by the wife to the Chief Secretary alleging illicit relationship of the husband with various females it is submitted that wife in her cross-examination accepted that Exhibit-6 is her complaint made on sheer suspicion without any proof whatsoever which also clearly establish the case of the husband and such type of act of the wife as stated in Exhibit-6 is her own admission of cruelty towards the husband.

34. It is further submitted by the husband that wife filed her written statement on 01.07.2008 in which she admitted that the marriage was solemnized on 05.06.2002 whereafter she went to the house of the husband but statement of facts related to the case thereafter is imaginary, false and counter claims made by her only to prejudice the court. It is submitted that in the written statement wife has claimed that both she and her husband worked together in Railways and knew each other well and her father negotiated the marriage and that both the parties knew about the nature of each other. It is submitted that wife has failed to adduce any credible evidence to substantiate, establish the above



claim. The fact remains that while undergoing training at any Institute with hundreds of other trainee officers one cannot develop intimate relationship to such an extent that one trainee will acquire full knowledge about nature, temperament, behaviour of other trainees. The claim to the contrary of the wife is far from truth. Further cross-examination of P.W. 2 falsify the above stated concocted, imaginary claim of the wife.

35. Learned counsel further submitted that in the written statement wife has claimed that she and her husband were leading a happy married life. The statement is completely untrue and has been only made to prejudice the court. In this context, the wife has failed to adduce any evidence to substantiate above stated claim, allegation. It has been established through evidence, witnesses on behalf of the husband that after few months of the marriage the married life has been marred by desertion and cruel behaviour of the wife and the husband tried to save the marriage till end but to no avail and the wife being the wrong doer should not be allowed to take advantage of law. It is further submitted that in the written statement wife has

tried to claim that she stayed with the husband for certain specific period between 2002-2003. In this connection, she has failed to adduce any credible evidence to substantiate her claim.

36. In the written statement wife has further claimed about her visiting Madhepura and staying together in Circuit House at Patna and Hajipur, which is also completely untrue and has been made only to prejudice the court. The wife has failed to adduce any credible evidence to substantiate her aforesaid claim. In this connection it is submitted that husband by adducing reliable evidence has established that from the beginning of 2004 after appointment of Harivansh Prasad @ Ashish Kumar, son of P.W. 3 as Bungalow Peon at Mugalsarai, both wife and Harivansh Prasad @ Ashish Kumar were residing together in the official bungalow of the wife despite vehement objection from the husband and his family members and the marital relation between the husband and wife remained continuously strained and irreversible. After her transfer to Hajipur wife has continuously stayed with her parents at Mithapur, Patna with active support of her Bungalow Peon Harivansh Prasad @ Ashish Kumar

who abused and thrashed the husband number of times whenever he tried to dissuade her not to continue with her adulterous relationship and cruel behaviour.

37. Learned counsel further submitted that in the written statement the wife tried to claim that she got pregnant during the above stated period of cohabitation and further claimed that during the period of her maternity leave she stayed at Sheikhpura with the husband, which is incorrect as during the said period she has not been staying with the husband. It is submitted that wife has failed to adduce any credible evidence to substantiate and establish the above stated claim/allegation. In this connection the wife has filed various medical prescriptions of self, child, issued by one Shakuntala Memorial Hospital, Sheikhpura, Exhibit-M, M/1 and M/2. A close look of the three documents signify that they have been obtained deceitfully after the institution of this case with a view to support her above stated claim that she has been regularly staying with the husband to mislead the court. Exhibit-E is Driving Licence of the wife issued by D.T.O. Sheikhpura dated 17.05.2006 indicating her

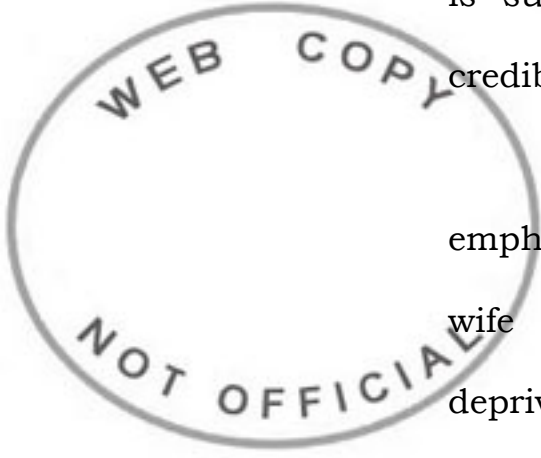
address Shanti Sadan, Shanti Marg, Mithapur, Patna, which is indicative of the fact that she continuously reside with her parents at Mithapur, Patna.

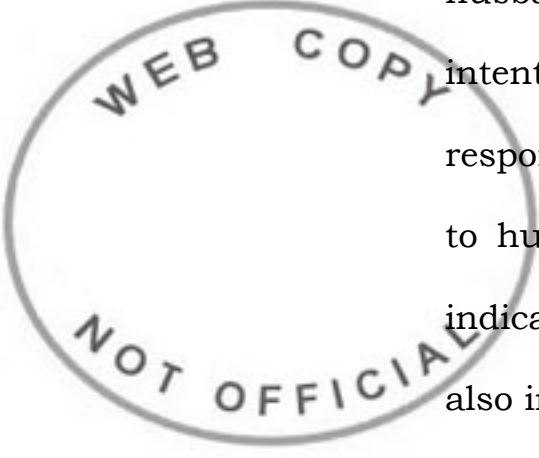
38. Learned counsel for the husband also disputed the claim of the wife about her becoming pregnant through her husband and submitted that in fact she tricked the husband into the story of artificial insemination to which husband agreed with only intention of saving the marriage but subsequent events belied the hope of the husband and the apparent adulterous behaviour of the wife continued unabated and the so-called Bungalow Peon Harivansh Prasad @ Ashish Kumar continued to stay with her in the name of performing the job of Bungalow Peon. In this connection reference is also made to Exhibit-22 read with her admission in cross-examination which clearly establish that the said Bungalow Peon stayed with her from 2004 till 2007.

39. Learned counsel further submitted that wife also tried to claim that the husband is a senior officer than her and that she has never misbehaved with his family members and that the birth of the child is indicative of the fact that she was

discharging her marital obligation. In this context it is submitted that wife has failed to adduce any credible evidence to substantiate her claim.

40. Learned counsel further emphasized that it has already been submitted that wife had completely deserted the husband and deprived him of conjugal life just after few months of the marriage and the factum of artificial insemination belies her claim of discharging marital obligation. As regards the claim of seniority it is submitted that wife is 1997 batch of Indian Railway Accounts Service and the husband is 2001 batch I.A.S. and that both the services are Group 'A' service of Government of India, equivalent in all respect including scale of pay. Further so far seniority in Grade is concerned, husband in 2009 was still in Senior Scale whereas the wife held higher J.A.G. Grade for the last couple of years. Ill behaviour of the wife with the family members of the husband is established with respect to Exhibit-6, whereunder she has made false and baseless allegation against her mother-in-law. As regards the circumstance of child's birth is concerned, the same has already been explained. It is further submitted that after institution of the divorce



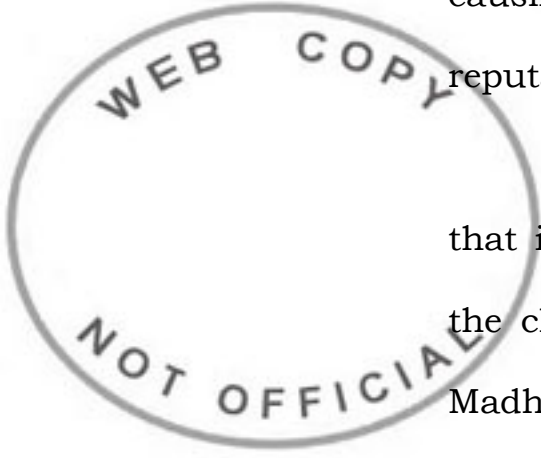


suit she has suddenly added first name of the husband as surname of the child which indicates her intentional deceitful behaviour and lack of responsible approach in judicial process. According to husband Exhibit-H series submitted by the wife indicate the original name of the child Chaitanya is also indicative of the mischief of the wife.

41. Learned counsel for the husband further submitted that in the written statement wife has stated that the Railway Officer seldom gets time for the night parties as they have to remain in the office or in the field till late in the night and with reference to the said statement it is submitted that the same corroborates the allegation made in the plaint that she did not behave properly either, remained indifferent, showed herself busy with outdoor activities and she used to stay outside of home late night in the name of essential parties. (read so-called official party function) whereas the husband waited for her at her residence. In this connection reference is also made to the cross-examination of P.W. 4, which clearly indicate that wife remained outside of home late night in the name of essential parties and behaved in extreme perverted

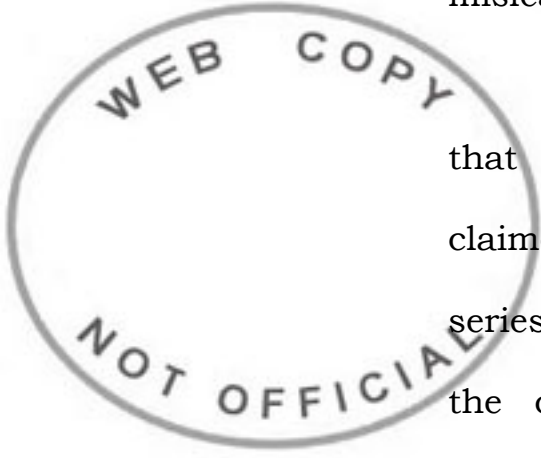
manner after consuming toxic drinks in such parties causing mental agony and damaging their reputation.

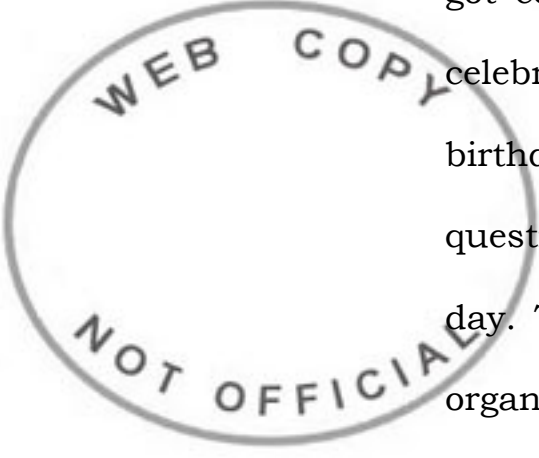
42. Learned counsel further submitted that in the written statement wife has claimed that the child was being taken to Government Hospital, Madhepura when she visited Madhepura with the child on number of occasions but the fact remains that after March, 2007 she visited Madhepura only after institution of the divorce suit to issue threats regarding institution of false criminal cases against the husband if the said divorce suit is not withdrawn. To substantiate the aforesaid allegations husband has relied on the medical prescription of the child marked Exhibit H, H/1, H/2, close examination whereof indicate that in Exhibit H the whole prescription is in blue ink whereas date 31.12.2007 at the bottom is written by the wife in black ink in her own handwriting whereas Exhibit H/2 is on plain paper with the whole prescription in blue ink whereas name of doctor Amarnath Singh, Madhepura at the bottom is written by the wife in her own handwriting in black ink which is indicative of the deceitful conduct of the wife in course of judicial



proceeding and establish her deceitful conduct to mislead the court by relying on forged documents.

43. Learned counsel further submitted that wife in her written statement has further claimed with reference to photograph (Exhibit-A series), video C.D. (Exhibit-D) that birthday party of the child was celebrated in the year 2006 at Sheikhpura and in March, 2007 at Madhepura but such claim is not correct in view of the strained relationship between the spouse. There could not have been any thought of arranging personal function and the claim is purely imaginary. In this connection husband has stated that District Magistrate being entrusted with the job to ensure coordination among various functionaries and Institutions, there is administrative protocol to periodically arrange official get-together in which judicial, administrative, police officials and other important local persons are invited. A similar official get-together was arranged at Madhepura in the evening of 01.03.2007, just before Holi to thank the officials for their hard work in ensuring free and fair Intermediate examination at Madhepura for the first time. The wife suddenly arrived on 01.03.2007 and





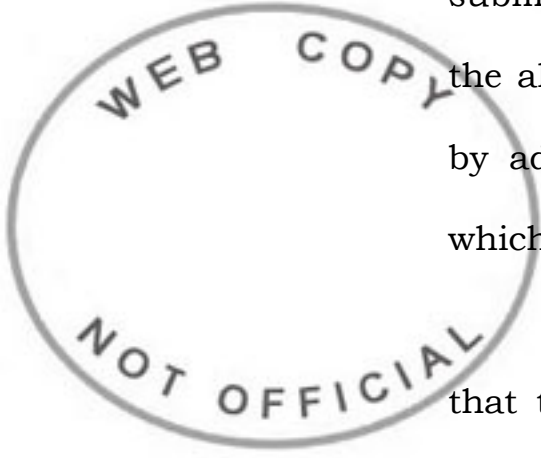
without knowledge or concurrence of the husband got certain things arranged to show as if it was to celebrate the birthday of the child though his birthday is on 24<sup>th</sup> February and there was no question of the same being celebrated on some other day. The wife having joined the official get together organized by the husband he had no option but to behave normally owing to official decency. With reference to the aforesaid incident it is submitted that the incident is indicative of the inappropriate behaviour of the wife of misusing the expenditure of district administration for her personal use and it also might have brought bad name to the husband in the eyes of his subordinate officials of the district as the husband in his capacity has always strived to have very strict and disciplined approach towards non-use of official machinery for personal benefit.

44. Learned counsel for the husband further submitted that wife has stated in her written statement that “it so appears may be that the respondent has developed any other interest..... has filed the present divorce petition....” But has not adduced any evidence to substantiate the same as also had not put any question to the husband in his

cross-examination about the same. It is also submitted that wife has also not been able to deny the allegations levelled by the husband in the plaint by adducing any credible evidence to the contrary which is a matter of record.

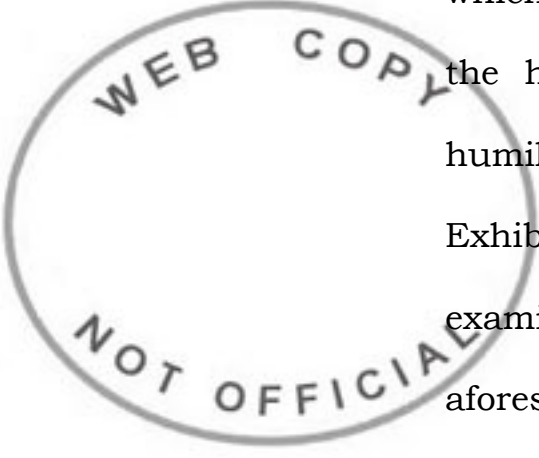
45. Learned counsel further submitted that the wife in her written statement has put the husband to strict proof to prove about the persons before whom she humiliated him. In this connection, husband in his examination-in-chief has substantiated his aforesaid claim by asserting that she not only called him impotent but also manhandled him with active support of her Bungalow Peon Harivansh Prasad at her residence. In this connection he also referred to Paragraph 7 of the cross-examination of the husband (P.W.1) read with Paragraph 5 of the examination-in-chief and Paragraph 6 of cross-examination of P.W. 2 read with Paragraph 2 of examination-in-chief and Paragraph 3 of cross-examination of P.W. 3 read with Exhibit-6 to substantiate the claim of public humiliation and thrashing.

46. Learned counsel for the husband next referred to the claim of the wife about the





jewellery and other movable and immovable property and submitted that wife has failed to adduce any evidence to substantiate, establish the claim and further stated that the marriage was without any consideration (dowry whatsoever) and all the jewellery given to the wife in the marriage and all the movable, immovable property acquired after the marriage has been in the name and exclusive possession of the wife. It is also submitted that one Fiat car of her father-in-law has been forcibly seized by the wife and parked in front of her house at Mithapur which is indicative of her cruelty towards sentiment of the husband and his family. Learned counsel with reference to the evidence of the husband (P.W.1) Paragraphs 1 to 14 of his examination-in-chief submitted that he has fully supported his case and reiterated the same also in the cross-examination. He has stated that wife assaulted him regularly and in Paragraph 8 of cross-examination he has further stated that on 26.01.2008 wife had beaten him in front of other staff and officials, which is established from her written complaint (Exhibit-6) submitted by her before the Chief Secretary containing wild and baseless

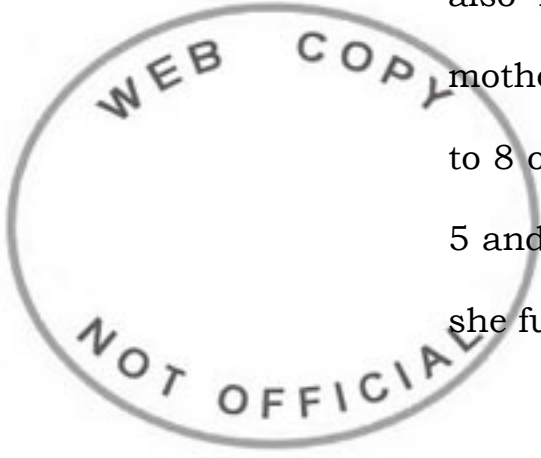


allegations regarding character etc. of the husband which showed intention of tarnishing the image of the husband in the eyes of his superior and to humiliate him to damage his service career. Said Exhibit-6 has been admitted by the wife in her cross-examination. It is submitted with reference to the aforesaid fact that P.W. 1 has been able to prove his case by stating in his evidence regarding the demand of Rs. 15 lacs by the wife as settlement for dissolution of marriage and that she used to humiliate him by calling impotent and that she used to give him poisonous substance in the name of homeopathic medicine for increasing his sexual power which caused serious health problem and that as a result of intake of the said substance large number of subcutaneous nodules is still present in his body. Exhibit-15 is the prescription of the husband dated 01.10.2006 indicating serious health problems resulting from homeopathic medicine being given by the wife to the husband in the name of increasing sexual potency and with reference to the said prescription inference is drawn by the husband that his life was in danger in the company of the wife.

47. Learned counsel for the husband also referred to the evidence of P.W. 2 Tara Devi mother/mother-in-law of the parties in Paragraphs 1 to 8 of the examination-in-chief and Paragraphs 2, 3, 5 and 6 of her cross-examination and submitted that she fully supports the case of the husband.

48. Learned counsel for the husband also referred to the evidence of P.W. 3 Sunil Kumar Jha, Deputy Collector, who was posted in Madhepura as Executive Magistrate in January, 2008 (Paragraphs 2-5 of the examination-in-chief and paragraphs 2, 3 of the cross-examination) and with reference to the said evidence stated that the allegation that wife assaulted the husband on 26.01.2008 in public view is fully substantiated.

49. Learned counsel for the husband further referred to the evidence of P.W. 4 Vijay Prakash, independent witness who knew both the parties Paragraphs 2, 3 of the examination-in-chief and Paragraphs 3, 4 and 5 of cross-examination and submitted that the same clearly establish and proves the case of the husband about wife remaining outside her house till late night in the name of parties. It is submitted that P.W. 4 remained unshaken in his



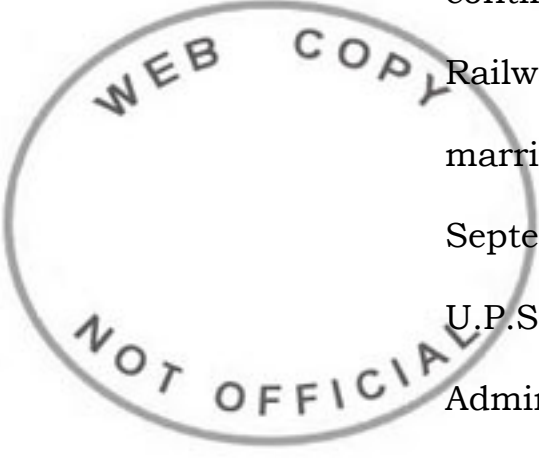
cross-examination and reiterated in Paragraph 4 of his cross-examination the incident of 21.05.2005 when he had come to meet the husband at Hajpur in his office and on 23.05.2005 informed him about the incident. In this connection learned counsel for the husband also referred to the evidence of R.W. 4, father of the wife (Paragraph 4 of his cross-examination) in which he has admitted that the wife attended night parties at Railway Club/Rest House at Madhepura.

50. In support of his case learned counsel for the respondent has relied on the judgment in the case of Subhash Chandra Das Chowdhury Vs. Sandhya Das Chowdhury A.I.R. 2009 (NOC) 498 Calcutta, M.K. Malhotra Vs. Smt. Kirti Malhotra A.I.R. 1987 Delhi 266, Smt. Neelu Kohli Vs. Naveen Kohli A.I.R. 2004 Allahabad 1, Jaishree Mohan Otavnekar Vs. Mohan Govind Otavnekar A.I.R. 1987 Bombay 220, Smt. Vimla Ladkani Vs. Dr. Chandra Prakash Ladkani A.I.R. 1996 Madhya Pradesh 86, Harbhajan Singh Monga Vs. Amarjeet Kaur A.I.R. 1986 Madhya Pradesh 41, Smt. Parimi Mehar Seshu Vs. Parimi Nageswara Sastry A.I.R. 1994 Andhra Pradesh 92, Smt. Shanti Devi Vs. Raghav Prakash



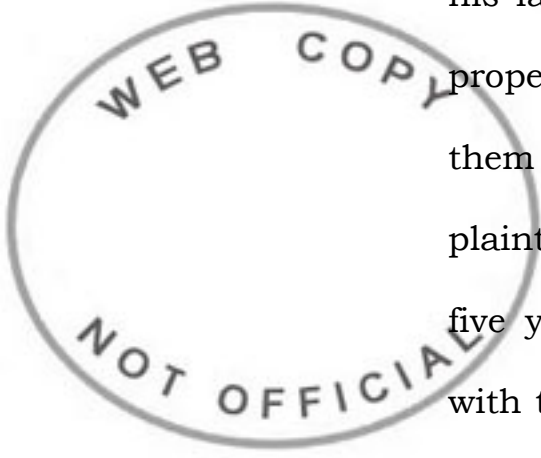
A.I.R. 1986 Rajasthan 13, V. Bhagat Vs. Mrs. D. Bhagat A.I.R. 1994 Supreme Court 710, Smt. Shakuntala Kumari Vs. Om Prakash Ghai A.I.R. 1981 Delhi 53, Smt. Kamini Gupta Vs. Mukesh Kumar Gupta A.I.R. 1985 Delhi 221, M/s. Ganesh Trading Co. Vs. Moji Ram A.I.R. 1978 SC 484, Smt. Savitri Balchandani Vs. Mulchand Balchandani A.I.R. 1987 Delhi 52, Dr. N.G.Dastane Vs. Mrs. S. Dastane A.I.R. 1975 SC 1534, Sujata Uday Patil Vs. Uday Madhukar Patil 2007 A.I.R. SCW 896, Reynold Rajamani and another Vs. Union of India and another (1982) 2 SCC 474, K. Srinivas Rao Vs. D.A. Deepa 2013 A.I.R. SCW 1396, Gurbux Singh Vs. Harminder Kaur 2010 A.I.R. SCW 6160, Vishwanath Sitaram Agrawal Vs. Sau. Sarla Vishwanath Agrawal A.I.R. 2012 Supreme Court 2586, S.P. Chengalvaraya Naidu Vs. Jagannath A.I.R. 1994 Supreme Court 853.

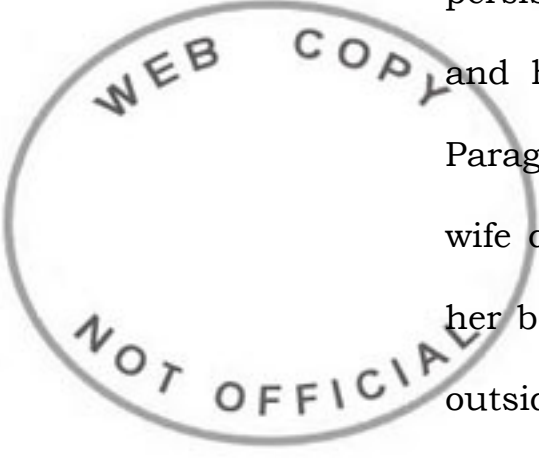
51. In view of the rival submissions we have gone through the pleadings and the evidence adduced by the parties. It is evident that parties knew each other from 1997-98 when both were selected for Indian Railway Accounts Service and underwent training together. After completing the



training both joined Railway Accounts Service and continued to know each other. While both served the Railway Accounts Service, they decided to get married and were engaged in July, 2001. In September, 2001 husband again appeared in U.P.S.C. examination and got selected for Indian Administrative Service, Bihar Cadre and resigned from the Railway Accounts Service. Both were married on 05.06.2002. In 2004 wife was posted at Mugalsarai where she appointed Harivansh Prasad @ Ashish as Bungalow Peon on 01.06.2004 despite so-called vehement opposition from her husband and his family members. Husband filed the present matrimonial case on 08.11.2007 under Section 13(1)(i-a) and 13(1)(i-b) of the Act praying, inter alia, to grant decree of divorce on the ground of cruelty and desertion asserting ill treatment of self and his family members with reference to the facts stated in Paragraph 3 to 14 and which have been summarized by the court below in Paragraph 42 of its judgment. It appears in Paragraph 3 of the plaint husband has asserted that after sometime of the marriage wife began to behave indifferently as she suffered from superiority complex and behaved roughly with the

husband, his family members though husband and his family members always requested her to behave properly and discharge marital obligation towards them but she never cared. In Paragraph 4 of the plaint husband asserted that even after passage of five years, five months of the marriage wife stayed with the husband for only about 10 months and she has not allowed the husband any physical relationship for the last two years, three months. In Paragraph 5 of the plaint husband asserted that even after passage of five years, five months of the marriage and repeated request of the husband, wife refused to visit his parental home even for short interval. She flatly refused such request made by the husband. In the same paragraph it is further averred that the husband made repeated request to the wife to behave properly and to discharge her matrimonial obligation so that the marriage may be saved but she remained indifferent. In Paragraph 6 husband asserted that the wife never attended to her ailing mother-in-law and continued to stay at her parents' house in Mithapur, Patna. In Paragraph 7 of the plaint husband asserted that right from the beginning wife remained cruel with her old ailing

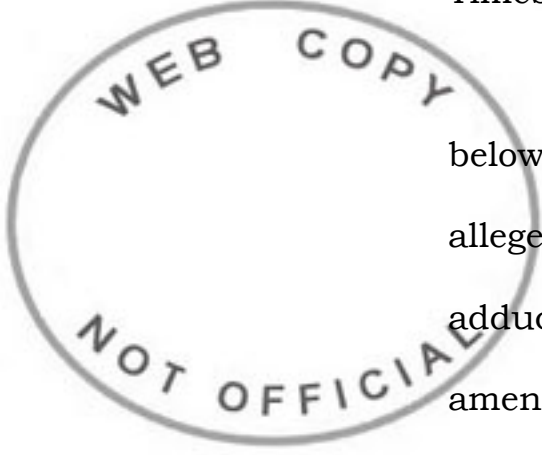


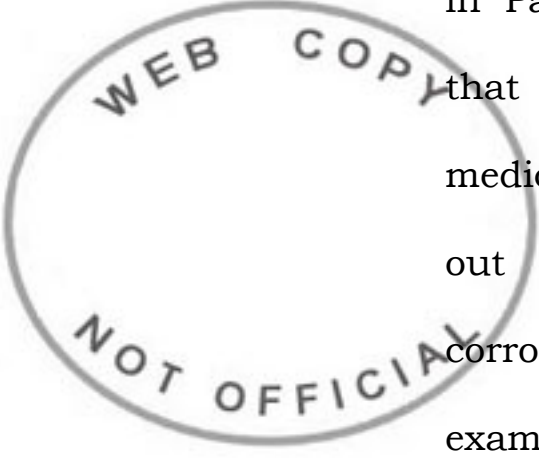


mother-in-law and other members of the family and persisted with her habit of humiliating the husband and his family members in presence of others. In Paragraph 8 of the plaint the husband asserted that wife denied him conjugal life and remained cruel in her behaviour. She is also in the habit of remaining outside home till late night and as and when husband requested her to mend her ways, she threatened the husband to give him serious lesson if any question regarding her life-style is raised in future. In Paragraph 9 of the plaint husband asserted that the wife in her official capacity is also in the habit of misbehaving with her subordinates. In Paragraphs 10, 11, 12 and 13 of the plaint husband asserted that on his failure to pay Rs. 15 lacs towards final settlement of the matrimonial dispute the wife threatened him with dire consequences, institution of false criminal case and asserting such fact he filed Informatory Petition before C.J.M., Patna. In Paragraph 14 of the plaint husband asserted that he came to learn about her official misconduct of unauthorized travel during the night between 17<sup>th</sup>-18<sup>th</sup> October, 2007 in A.C.-I Coach of

Rajdhani Express from Newspaper "Hindustan Times".

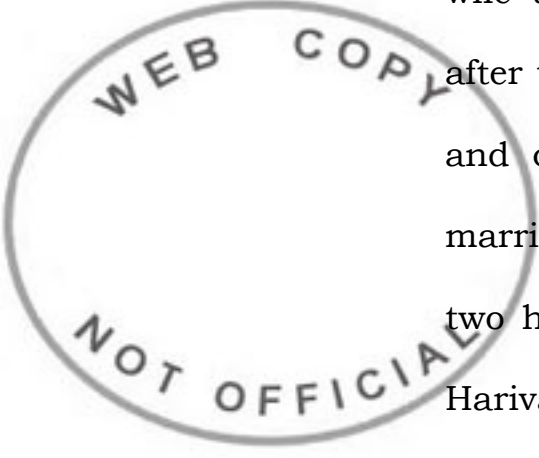
52. In Paragraph 43 of the judgment court below has noted further facts which have not been alleged in the petition but asserted in the evidence adduced on behalf of the husband without seeking amendment of the petition inserting those facts. Reference in this connection is made to the evidence of husband (P.W. 1) in Paragraph 3 where he has stated that wife used to return drunk late in the night, which fact has also been corroborated by P.W. 4 in Paragraphs 3, 4. Husband further asserted in Paragraph 3 of his examination-in-chief that wife appointed his cousin Harivansh Prasad @ Ashish Kumar, a man of ill repute as he had illicit connection with the wife of one Kishori, as her Bungalow peon. Husband further asserted in Paragraphs 3, 5 of his examination-in-chief that his wife and aforesaid Harivansh Prasad @ Ashish Kumar both assaulted, called him impotent and Namard, which fact has also been corroborated by his mother (P.W. 2) in Paragraph 4 of her



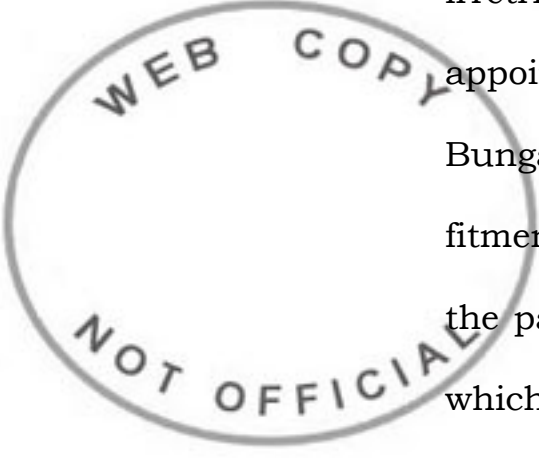


examination-in-chief. Husband further asserted in Paragraphs 3, 5 of his examination-in-chief that wife used to administer homeopathic medicine due to which several glands (gilti) came out on his body which fact has also been corroborated by P.W. 2 in Paragraph 4 of her examination-in-chief. Husband further asserted in Paragraph 11 of his examination in chief that on 26.01.2008 he served as District Magistrate, Madhepura and while he was about to unfurl the National Flag wife attempted to disturb, stop him from unfurling the National Flag and also thrashed Sunil Kumar Jha (P.W. 3) with fist. Husband further asserted in Paragraph 5 of his examination-in-chief that he saw the wife in objectionable position with Haribansh Prasad @ Ashish Kumar.

53. The Family Judge appears to have been impressed by the aforesaid assertions of the husband and has concluded that the facts set out in Paragraphs 3 to 14 and deposed in court and noted in Paragraph 43 of judgment tantamount to cruelty.

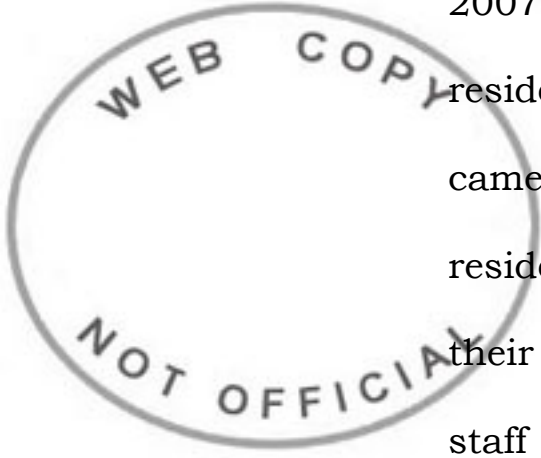


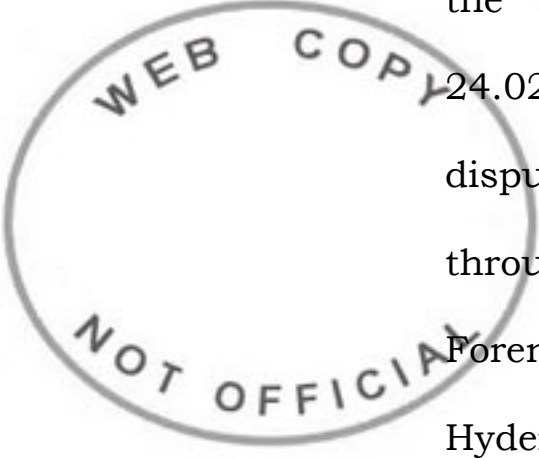
In this connection we may like to mention that both wife and husband knew each other from 1997-98 after they were selected for Railway Accounts Service and continued to know each other until they got married on 05.06.2002. The relationship between the two have remained smooth until the wife appointed Harivansh Prasad @ Ashish, the maternal brother of the husband as Bungalow Peon, whereafter there may have been strain in the relationship but such strain did not prohibit the parties from discharging matrimonial obligation and cohabiting with each other as a son was born out of the wedlock on 24.02.2006. The husband took paternity leave thereafter for the period between 25.02.2006 to 11.03.2006. Even thereafter the parties continued to meet each other as would appear from the fact that they jointly attended get-together in March, 2007 on the eve of Holi at Madhepura and earlier at Sheikhpura residence of the husband. The get-together was also an occasion to celebrate the birthday of their son as would appear from Photographs (Exhibits A/1 to A/20 series). The photographs clearly indicate that husband is not only enjoying the company of his son but also that of the



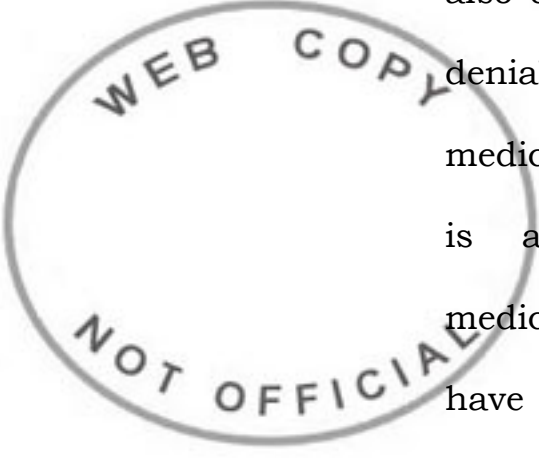
wife. The assertion of the husband that there was irretrievable breakdown of marriage after appointment of Harivansh Prasad @ Ashish as Bungalow Peon by the wife on 01.06.2004 is a fitment of imagination of the husband as thereafter the parties have not only cohabited with each other, which is evident from the birth of the child on 24.02.2006 but have also enjoyed each other's company until 08.11.2007, the date on which divorce case was filed or in any case until March, 2007 when they joined each other in the get-together organized on the occasion of Holi to celebrate the 2<sup>nd</sup> birthday of the child at Madhepura. Evidence of the husband, his mother (P.Ws. 1, 2) to the contrary adduced to establish cruelty is not to be relied upon in view of the categorical denial of the charge by the wife in her evidence, especially for the reason that neither the husband nor his mother has even indicated the harsh words spoken by the wife against them on any particular occasion. There is only bald statement made by the two that the wife has become indifferent, suffered from superiority complex and she behaved roughly with them. The evidence of mother-in-law (P.W. 2) in Paragraph 4 of her examination-in-

chief is that on the occasion of Holi in March, 2007 she had come to meet her son in his official residence at Madhepura, where the wife also came, and, asked the staff present at the residence to bring the household goods but on their refusal to do so she abused not only the staff but also her husband as well. On the intervention of P.W. 2 wife stated that she committed a big mistake in getting married to her son and further asserted before those present including the husband, staff that her son is impotent, Namard, which prompted P.W. 2 to ask her about the paternity of the child then wife claimed that she has arranged from outside. The claim of the husband and his mother that the wife appointed Harivansh Prasad @ Ashish Kumar as bungalow peon at Mugalsarai on 01.06.2004 which led to breakdown of marriage together with the allegation that the wife and Harivansh Prasad @ Ashish Kumar not only called the husband impotent but also assaulted him cannot be accepted as such important fact



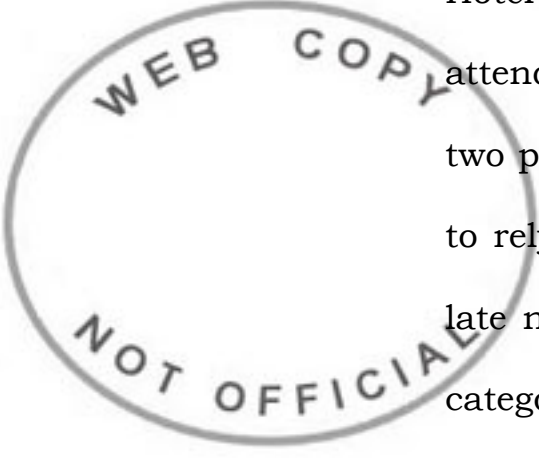


has not been stated in the plaint and further that the paternity of Master Chaitanya born on 24.02.2006 through the husband has not been disputed in the plaint and has been confirmed through D.N.A. report received from the two Forensic Science Laboratory, Kolkata and Hyderabad. In this connection, it would be noticed that the aforesaid facts have not been stated in the plaint, which was filed on instructions from the husband as also under his signature. In the circumstances, there is no difficulty in concluding that the facts deposed in the evidence but not pleaded in the plaint and noticed by the court below in Paragraph 43 of its judgment, is nothing but afterthought only with a view to obtain relief prayed for in the divorce case. Further case of the husband that the wife asked him to take homeopathic medicine to increase his sexual power which resulted in formation of subcutaneous nodules on his body, as would appear from prescription dated 01.10.2006 (Exhibit-15) and that husband was asked by Dr. S.K. Jha, M.D.



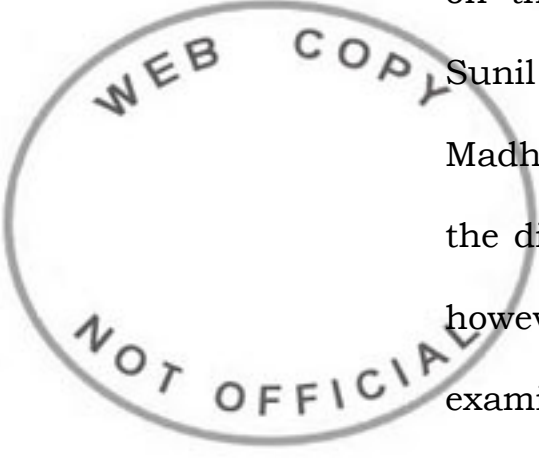
(T.S.M.A.) not to consume homeopathic medicine is also of no relevance to us in view of the categorical denial of the wife and the fact that homeopathic medicine does not have reaction, on the person who is administered such medicine. Homeopathic medicine may not cure the ailment but will never have adverse reaction on the person who has consumed the same. The grievance of the husband that wife is not looking after her ailing mother-in-law at his parental home in Sitamarhi may also not persuade us to maintain the decree of divorce as we are satisfied that the wife on account of her official position as Class-I Railway Officer has not only to take care of the child but has also to discharge official duty and find time for the husband and to adjust her official, family obligation and visit the husband at his place of posting if the two are posted at different places.

54. Reliance placed by the husband over the evidence of Vijay Prakash (P.W. 4) that his wife attended late night party in Hotel Kunal, Hotel Maurya in May, July 2005 in which she also consumed intoxicant is misplaced in view of the fact that P.W. 4 has neither indicated the occasion on

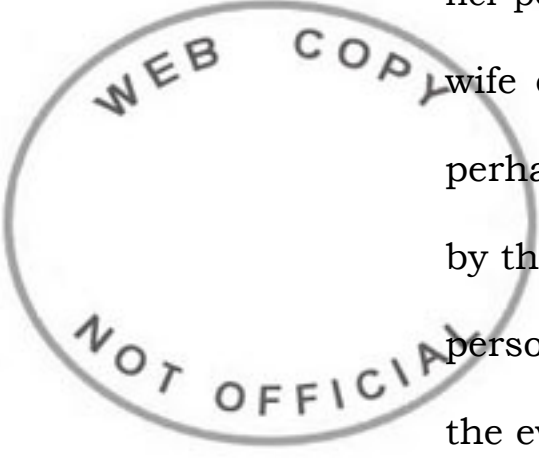


which the two parties were organized in Hotel Kunal, Hotel Maurya nor indicated the type of guest who attended those parties nor his relevance to attend the two parties. In the circumstances, it may not be safe to rely on his evidence that wife attended those two late night parties and took intoxicant in view of her categorical denial about attending those parties and consuming the intoxicant drinks. Reliance placed by the husband on the evidence of his father-in-law (R.W.4) to prove the fact that wife was attending late night parties during her posting at Mugalsarai is also misplaced as father-in-law (R.W.4) has categorically stated in Paragraph 4 of his cross-examination that wife used to visit the official parties held in Railway Club, Mugalsarai which used to end by 8:00 P.M. and as and when husband used to be available, he used to accompany the wife in those parties and in his absence R.W. 4 himself accompanied the wife in those parties.

55. In Paragraph 43 of his judgment learned Principal Judge has noted the allegation of assault made by the wife on the person of the husband in public view in the morning of 26.01.2008 while he was about to unfurl the National Flag at his



official residence around 8:00 A.M., placing reliance on the deposition of husband (P.W.1) and P.W. 3 Sunil Kumar Jha, Executive Magistrate, posted at Madhepura though such fact has not been pleaded in the divorce petition by seeking its amendment. Wife, however, has explained in Paragraph 25 of her cross-examination that she did visit Madhepura on 25.01.2008, met her husband in his official residence in the same evening and was also provided meal in her room courtesy the husband. In the same paragraph she further denied that she ever created any nuisance either at the official residence of her husband at 8:00 A.M. or in any other official function presided by her husband in the morning of 26.01.2008. Learned counsel in this connection has further referred to the contradiction in the manner of assault on the person of the husband by the wife in the morning of 26.01.2008. In this connection, we also noticed the report of the Medical Officer, Sadar Hospital, Madhepura dated 27.01.2008 (Exhibit-4), duly countersigned by Civil Surgeon, Deputy Superintendent Bulbul Sinha and Sulochana Devi, A.N.M., wherefrom it appears that wife was examined on 27.01.2008 in the Government quarter on



27.01.2008 at 1:00 P.M. and no injury was found on her person. The occasion to medically examine the wife on 27.01.2008 in the Government Quarter, perhaps D.M.'s residence is attempt to establish by the husband that no incident of assault on the person of wife by the husband had taken place in the evening of 26.01.2008 as stated by the wife in her representation dated 28.01.2008 (Exhibit-6) addressed to the Chief Secretary, Bihar. The allegation to the contrary levelled by the husband and his subordinate Executive Magistrate (P.W. 3) that the wife assaulted the husband in the morning of 26.01.2008 while he was about to unfurl the National Flag at around 8:00 A.M. does not inspire confidence in us to maintain the decree of divorce in view of categorical evidence of the wife in Paragraph 43 of her examination-in-chief and Paragraph 23 of her cross-examination as also the fact that she has expressed her willingness to resign her class-I job and lead the life of a housewife exclusively devoted to her husband, son and mother-in-law as also other

family members. The impugned judgment and decree of judicial separation is set aside.

56. The appeal stands allowed.

(V.N. Sinha, J)

I agree  
Nilu Agrawal, J

(Nilu Agrawal, J)

P.K.P./A.F.R.

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