

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.957 of 2010

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Afira Bano @ Sabina Naz, wife of Md. Basir, resident of Village- Sheikh Mohalla,
P.S. Mufassil Siwan, District- Siwan, presently residing at Station Road, Gopalganj,
P.O. & P.S. Gopalganj, District- Gopalganj.

.... Appellant

Versus

Basir Alam, son of Manir Mian, resident of Village- Sheikh Mohalla, P.S. Mufassil
Siwan, District- Siwan.

.... Respondent

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Appearance :

For the Appellant : Mr. Y.V. Giri, Senior Advocate.
Mr. Vikas Ratan Bharti, Advocate.

For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

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

Date: 06-02-2015

Appellant wife has challenged judgment dated 23rd July, 2010 passed in M.M. Case No. 74/2008, whereunder Principal Judge, Family Court, Gopalganj has refused her request to grant divorce on the ground of cruelty, desertion.

2. It appears prior to the filing of the present divorce case appellant had filed a criminal case under Section 498A of the Penal Code and Dowry Prohibition Act in which she also prayed for grant of maintenance. The 498A case is pending till date vide Complaint Case No. 372 of 2005 giving rise to Trial No. 830 of 2008 in the court of learned S.D.J.M., Gopalganj. Request for grant of

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maintenance was rejected, against which wife, children preferred Criminal Revision No. 1580 of 2010 which was dismissed under order dated 16.05.2014. Request for grant of divorce has been rejected on the ground that in the written statement respondent husband has asserted that it is the wife who has deserted him as she is in adulterous relationship with one another whose name is mentioned in the written statement filed in the court below in the present matter.

3. In view of the facts stated above, we are satisfied that appellant wife has not been able to establish cruelty on the part of her husband, the respondent. In the circumstances, we have no option but to dismiss the present appeal. Dismissal of the present appeal will not be a ground for dismissing complaint in criminal matter(s) filed by either of the parties.

(V.N. Sinha, J)

(Ahsanuddin Amanullah, J)

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

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