

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.268 of 2011

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Md. Tarannum Faiji Khan, son of Md. Mobin Khan, resident of village Kaler, P.O. and P.S. Kaler, District Arwal (Old Jehanabad)

.... Appellant/s

Versus

Mohsina Rafique @ Gajala Zafar, resident of village Pura Kothi, P.O. Belaon, P.S. Kaler, District Arwal (Old Jehanabad). Address for correspondence : Assistant Teacher, Sri Ramkrit High School, At, P.O. & P.S. Kaler, District Arwal

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rashid Izhar, Advocate
 Mr. Sharad Shekhar, Advocate
 Mr. Rashid Rais, Advocate
 Mr. Tabish Sharfuddin, Advocate
For the Respondent/s : Mr. (Dr.) Amrendra Kumar, Advocate
 Mr. Ravi S. Pankaj, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 01-09-2016

We have heard Sri Rashid Izhar, learned counsel for the appellant, the husband, and Dr. Amarendra Kumar, learned counsel for the sole respondent, the wife.

This appeal arises out of the judgment dated 22.02.2011, passed by the learned Principal Judge, Family Court, Jehanabad in Matrimonial Case No. 121/2009 whereby the appellant's application for restitution of conjugal rights has been rejected. It is not in dispute that the parties were married according to Muslim customs on 04.12.2004. They have two minor children; one son and one daughter. The husband is a Class-IV employee in the



Railways, posted at Muri in the State of Jharkhand. He has a railway quarter also allotted to him. It appears that the wife, who was a graduate and also had B.Ed. degree, has now got a job as Assistant Teacher in a Government High School at their native place itself i.e. village Kaler in the district of Arwal, which was originally their matrimonial home. Apparently, incompatibility between the two started with the fact that the wife was not ready to move out of the village where she was Assistant Teacher and to go and live with her husband, who was a Class-IV employee in the Railways. Similarly, the husband even though a Class-IV employee was not ready to give up his job and come and live in the village with his wife. The children, for some time, were being looked after by their maternal grand parents. The differences continued to increase and, ultimately, the present case was instituted by the husband, which, as noted above, was dismissed. Hence, this appeal.

From the order-sheet of this appeal, it appears that efforts were made by the Court to unite the two, but for the reasons noted above, it simply could not work out. The wife refused to go and live with her husband and vice-versa. For last seven years they have been living separately. Court requested the learned counsels first to try and bring about their conciliation so that the two could unite and live with their children, which failed. Counsels then



agreed to work a mutually acceptable agreement to separate and start their lives again. Both the counsels, who are present in Court, state that the parties have agreed mutually for dissolution of their marriage. In support thereof, they have individually signed an agreement, which has been filed in Court in the shape of an agreement along with the application signed by both the lawyers as well. Paragraph 5 of the joint compromise petition signed by both the parties and by both the lawyers is quoted hereunder :

“5. That now with the intervention of well wisher, friends, and the counsels of both the parties the appellant and the respondent in their free state of mind and without any pressure and undue influence have resolved the mutual dispute in the following terms of the compromise :-

(a) The appellant and the respondent have agreed to finally separate their life from the conjugal relationship to each other with all legal consequences. The mutual relationship of husband and wife have now ceased to exist between both the parties and both become stranger to each other.

(b) For one time settlement nothing is due to be paid by the appellant and the liability of “Dain Mohar”(Dower) amount of Rupees 11,000/- (Eleven Thousand) is already paid the same vide by the Bank Draft number 802981 dated

17.08.2016 issued by Union Bank of India, Branch Muri. Before the aforesaid payment appellant has already returned all the articles to the respondent by the way of stridhan and the presents given by her "Naihar" people. Both the parties agreed that they have no grievance about this exchange of articles.

(c) The respondent has nothing to return to the appellant and parties have no grievance/ claim against each other in any manner in their future life.

(d) Both parties also agreed to keep custody of both children with their mother/ Respondent and the appellant will never claim custody of both children before any competent forum in future.

(e) Both parties also agreed that whenever the appellant(father) desired to meet Fahad Zargam & Ghashmira Rafique (son and daughter) the Respondent shall not restrain him but he will not take away both children from out of the station, where they resides.

(f) The respondent is an employee of government of Bihar as such no amount remains pending for maintenance with the appellant.

(g) It is further agreed that both the parties shall withdraw and will be under obligation to withdraw their complaint and other cases, if any, filed earlier either in civil or in the criminal courts, which is not in the knowledge of either

party. This shall automatically stand withdrawn.

(h) It is also agreed between the parties that no party shall interfere in the life of each other henceforth.

(i) The respondent has filed two cases against appellant vide Complaint Case No. 1194/2009 which is pending before the learned S.D.J.M., Arwal and Kaler P.S. Case No. 38/2009 pending before the learned C.J.M., Arwal. Respondent prays before this Hon'ble Court to quash both the cases and in alternate also undertake to take all steps to withdraw both cases.

(j) Both the parties undertake that this is the full and final settlement between themselves and there remain no claim ever in future or present against each other and the Respondent will have no demand, claim entitlement or maintenance ever in future.

(k) It is also agreed that none of the party shall make claim against each other in any manner either in personal or self earned or ancestral property."

The parties are agreed to abide by the same.

In view of the aforesaid, the relief claimed by the husband is modified to the relief of dissolution of marriage, which is not opposed by the wife. Accordingly, in terms of the agreement, as noted above, the marriage between the appellant and the respondent

is dissolved. The parties will be bound by the terms as agreed between them as quoted above.

Let it be noted that there are two criminal cases that have been instituted by the wife as against the husband and others, which is mentioned in paragraph 5(i) above. Keeping in view the larger interest, as between the parties, the two criminal cases are quashed. The courts below shall not, in any manner, proceed with those two cases. It is hoped that as the parties could not peacefully live together, now that the marriage stands dissolved, they would live and let others live peacefully.

This appeal is, accordingly, allowed in the terms aforesaid.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh/NAFR

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