

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.678 of 2014

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Sanjay Choudhary @ Sanjay Jaiswal Son of Mahendra Prasad @ Jaiswal @ Mahendra Choudhary R/o Tarapur (Rajguru), P.S. Tarapur, District Munger..... Appellant

Versus

Anjali Devi Wife of Sanjay Choudhary @ Sanjay Jaiswal, D/o Ram Prasad Choudhary R/o Rajguru Tarapur, P.S. Tarapur, District Munger, at present residing at Village Pupari, P.S. Pupari, District Munger Respondent

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Appearance :

For the Appellants :Mr. Harshwardhan Sahay, Advocate
For the Respondent :Mr. Uday Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

(Per: **HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA**)

Date: 19-12-2016

The instant miscellaneous appeal is directed against the judgment and decree dated 06.08.2014 passed by learned Principal Judge, Family Court, Munger in Matrimonial Case No. 1030 of 2013 / 177 of 2012 in the matter of Sanjay Chaudhary @ Sanjay Jaiswal Vs. Anjali Devi whereby and whereunder the suit was dismissed ex-parte. The petitioner is the appellant and the opposite party is the respondent herein.

2. The appellant-petitioner had filed the matrimonial case before the Principal Judge, Family Court, Munger under Section 13 of Hindu Marriage Act for dissolution of his marriage with the respondent-opposite party by decree of divorce.

3. Briefly stated, the case of the appellant was that he was married with the respondent on 22.06.1998 at village Pupari and



subsequent to marriage the opposite party joined the matrimonial home of the petitioner at Raj Guru Tarapur, District Munger. Out of the wedlock a baby girl was born on 21.02.2002 but since the beginning of 2003 the behaviour of respondent changed and she started misbehaving and abusing the petitioner and his family members as a result of which the petitioner's brother started living separately in a rented house, petitioner also somehow managed a rented house to live along with the respondent and minor daughter. Father and brother of respondent came to Tarapur and suddenly the respondent with all her belongings including ornaments and the daughter left the house of the petitioner on 30.06.2003 and since thereafter, whenever the petitioner went to meet her he was not allowed by the respondent and her relatives and even he was not allowed to enter the house of the respondent and was abused and threatened to be killed. The respondent filed Criminal case bearing No. 198C of 2003 on 4th July, 2003 under Section 498 A IPC against all the family members of the petitioner. She also filed Misc. Case No. 21 of 2003 for maintenance and Misc. Case No. 25 of 2005 for interim maintenance. Again she filed Complaint Case No. 85C of 2005 against same set of accused and cognizance in this case was also taken under Section 498A of the Indian Penal Code and that Complaint Case 85C of 2005 was quashed by this Court in Cr. Misc. No. 17101 of 2009 and in Complaint Case No. 198C of 2003 compromise was filed on



22.01.2005 but thereafter, the respondent was not prepared to accompany the petitioner because she was pregnant and gave birth to a male child after seven months of compromise and since 30.06.2003 respondent never lived with the appellant and this goes to show that the respondent is living in adultery. The respondent has deserted for more than two years since 30.06.2003 and further denial of sex and causing mental and physical agony to the petitioner amounts to cruelty. On notice, respondent appeared. However, at the stage of reconciliation she stopped attending the case hence, the case proceeded ex-parte. The petitioner examined two witnesses. PW 1 is the petitioner himself and pw 2 Uma Shankar Jaiswal. Besides the oral evidence the petitioner also exhibited following documents:

- (i) Ext. 1 is the certified copy of order dated 25.09.2012 passed by this Court in Cr. Misc. No. 17101 of 2009 whereby Complaint Case No. 85C of 2005 was quashed.
- (ii) Ext. 2 is the certified copy of petition of Complaint Case No. 85C of 2005.
- (iii) Ext. 3 is the certified copy of bail order dated 07.01.2005 passed in Complaint Case No. 198C of 2003 by learned S.D.J.M, Sitamarhi whereby the petitioner and his family members were granted bail on the basis of compromise.



(iv) Ext. 4 is the certified copy of compromise petition filed in the court of learned S.D.J.M., Sitamarhi in Complaint Case No.198C of 2003.

4. The learned Principal Judge, Family Court, Munger after considering the evidences available on record dismissed the matrimonial case ex-parte holding that the respondent has not deserted the petitioner, the petitioner has failed to prove the ground of adultery as there is no pleading in the plaint leading adulterous life by the respondent and further the petitioner has also failed to prove the cruelty.

5. Heard learned counsels for the parties. On behalf of appellant it is submitted that the ground of adultery is mentioned in the plaint but in spite of that the learned court below has wrongly held that there is no ground in the pleading regarding adulterous life of respondent. The ground of desertion is also well proved and further the ground of cruelty is also well proved.

6. On the other hand, learned counsel for the respondent has argued that the learned Principal Judge, Family Court, Munger has rightly dismissed the suit as no ground of divorce has been proved by the petitioner even ex-parte.

7. From perusal of the record it reveals that vide order dated 08.03.2016 the delay in filing of the appeal was condoned subject to payment of Rs. 7,000/- as litigation expenses to be paid to the respondent within one month. The petitioner filed



receipt regarding payment of litigation cost of Rs. 7,000/- and then the case was listed for hearing under Order 41 Rule 11 of the C.P.C. Vide order dated 20.06.2016 the matter was referred to Mediation Centre, Patna High court and the parties were directed to appear before the Co-ordinator of the Mediation Centre on 4th July, 2016 with direction to submit the report by 18th of August, 2016. Accordingly, the Mediator's report has been received which is kept on the record. From perusal of the Mediator's report it reveals that after the mediation the parties were ready to live separately and further were ready for acceptance of consented divorce on the payment of full and final settlement amount of Rs. 11 lacs and that amount of Rs. 11 lacs inclusive of the arrears of maintenance in case No. 21 of 2003 before Principal Judge, Family Court, Sitamarhi and the petitioner has agreed to pay Rs. 11 lacs in easy installments of six months, out of which Rs. 2,50,000/- shall be paid on 16th of August, 2016 through demand draft in the name of respondent Anjali Devi in her bank account. But at the time of execution the respondent started weeping and refused to sign the agreement. Hence, mediation failed.

8. After hearing the learned counsels for both the parties and after perusal of the record, it is apparent that the respondent has filed two criminal cases bearing no. 198C of 2003 and 85C of 2005 in the court of Sitamarhi out of which Complaint Case No. 85C of 2005 was quashed by this Court vide order dated



25.09.2012 in Cr. Misc. No. 17101 of 2009. The Apex Court in the case of **K. Srinivas ..Appellant versus K. Sunita. Respondent reported in (2014) 16 Supreme Court Cases page 34** has been pleased to hold that filing of false criminal complaint against the husband and family members under Section 498A read with other allied sections of the Indian Penal Code constitutes matrimonial cruelty. In the present case also the respondent has filed earlier Complaint Case No. 198C of 2003 and again Complaint Case No. 85C of 2005 against same set of accused persons including the petitioner and his family members and that case was quashed by this Court which attained its finality and, as such, the respondent has treated the petitioner with cruelty and on this ground alone the marriage solemnized between the parties is fit to be dissolved.

9. The finding of the learned Principal Judge, Family Court, Munger appears erroneous in law and accordingly it is set aside. In the result, on the ground of cruelty the marriage solemnized between the parties on 22.06.1998 is hereby dissolved. So far as payment of permanent alimony is concerned, the appellant-petitioner shall pay Rs. 11 lacs by way of permanent alimony to the respondent-opposite party, this will include the arrears of maintenance also after adjusting any amount already paid

10. Accordingly, this miscellaneous appeal is allowed on contest but under the facts and circumstances without cost. The



petitioner shall pay the aforesaid amount of permanent alimony within six months from today to the respondents either through bank drafts or direct credit to the bank account of the respondent.

(Jitendra Mohan Sharma, J)

Navaniti Prasad Singh, J: I agree.

(Navaniti Prasad Singh, J)

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AFR/NAFR	NAFR
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