

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.433 of 2014

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Krishna Murari Sinha son of Baijnath Prasad Resident of Near S.B.I. Officer's Colony, Devi Mandap Road, Ratu Road (Near Nalini Complex) Hehal, P.S. - Sukhdeo Nagar, District and Town Ranchi

.... Appellant

Versus

1. Smt. Asha Sinha son of Late Jageshwar Prasad Mehta, Wife of Krishna Murari Sinha Resident of Village - Bharaopar, P.S. - Laheri, Dist.- Nalanda
2. Kedar Nath Sinha son of Late Somar Mahto Resident of Village - Bargaon, P.S. - Nalanda, District - Nalanda

.... Respondents

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Appearance :

For the Appellant	:	Mr. Bachan Jee Ojha, Advocate Mr. Umesh Prasad, Advocate
For the Respondents	:	Mr. Arvind Kumar Tiwary, Advocate Mr. Manoj Kumar Singh, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date: 21 -07-2017

This Miscellaneous Appeal has been filed by the appellant-husband against the judgment and order dated 11.06.2014 passed by the Principal Judge, Family Court, Nalanda, Bihar Sharif, in Divorce Case no. 114 of 2005 whereby and whereunder the family court has dismissed the divorce petition filed by the appellant-husband under Section 13(i) of the Hindu Marriage Act.

2. The brief fact in the present appeal is that the appellant-husband had married respondent-wife on 24.06.1988 according to Hindu rites and customs. The appellant-husband is the



resident of village-Kahuara, P. S. Nardiganj, District- Nawada. After marriage the respondent-wife started living with appellant-husband at village-Kahuara. The case of the appellant is that the behaviour and conduct of respondent-wife made life of appellant/husband miserable and it became impossible for the appellant-husband to stay with respondent-wife. The divorce petition has been filed by the appellant-husband on the grounds of (i) adultery (ii) desertion (iii) mental disorder (iv) cruelty.

3. The trial court in paragraph-2 of its impugned judgment dated 11.06.2014 has given details of the appellant-husband's case on the basis of which he was seeking divorce from the respondent-wife. Paragraph-2 of the judgment is quoted below :-

“Para-2- As per petition dated 25.06.2005 of the petitioner Krishna Murari Sinha, the fact of the case is that he got married with O.P. Smt. Asha Sinha on 24.06. 1988 according to Hindu religion and rites. The plaintiff is resident of village Kahuara, P.S. Nardiganj, Distrit-Nawadah (Bihar). It was an arranged marriage. So when after the marriage, o.p. Smt Asha Sinha started living with the plaintiff at village Kahuara. Then he came to know that she is suffering from mental depression because she was using filthy and dirty language regarding sex, not only in bed room, but also publicly. The plaintiff-petitioner and the respondent/opposite party live together for about a year but was married life was unhappy due to mental torture given by the respondent to the plaintiff. The O.P. No.1 always used to suspect the character of the plaintiff and used to watch day to day affair. She alleged that the plaintiff has got illicit relation with his Bhabhi, namely, Sunaina Devi. She used to state that Smt. Sunaina Devi is a prostitute and plaintiff is a dog. She also



used to state that they were having sexual relation regularly. It has also been alleged that O.P. No. 1 was having illicit sexual relation with her Bahnoi Sri Kedar Nath Sinha, who is O.P. No. 2 and is resident of village Bargaon P.S.-Nalanda, District-Nalanda where O.P. No. 1 used to visit regularly in the gap of two to three months and they were having sexual intercourse knowing the fact that O.P. No. 1 is lawfully wedded wife of petitioner. It has also been alleged that on 04.01.2004 O.P. No. 2 Kedar Nath Sinha came at Ranchi and threatened the plaintiff to kill him if he object his relation with O.P. No. 1 Asha Sinha. Several time he came at Ranchi and gave some threatening. She used to threat that the petitioner has kept Sunaina Devi who is a prostitute and so threatened to be nude in public. She would go naked in police station, she would walk naked in public with red flag and would raise slogan against the petitioner. It has also been stated that the marriage took place in the year 1988 but the O.P. has not spent a period of 15 months altogether with the petitioner. Even the O.P. No. 1 refused to have sexual intercourse with the petitioner and used filthy language against him whenever the petitioner tried to have sexual intercourse. The O.P. No. 1 assaulted him and tried to injure his male organ. It has also been stated that after February, 2000 the O.P. No. 1 visited the place of petitioner at Ranchi several times on some gap but she never allowed him to have sexual intercourse. The petitioner tried to have sexual intercourse for a child but she did not allow him due to her mental depression. It has also been alleged that she used to say that the petitioner is Namard. The petitioner is a Government servant working in the post office. It has been stated that he has become tired due to cruelty committed by O.P. No. 1 on account of mental depression. He has been deeply hurt regularly due to non-corporation in sexual relation for procuration of children. She has deserted him since February, 2000. It has been stated that the cause of action arose on 17.02.2005 when O.P. No. 1 compelled the petitioner to send her Maike at village- Bharoapar, P.S. Laheri, District-Nalanda, otherwise she will commit suicide in the house. She also stated



that she would never come against at Ranchi. She deserted the petitioner on 17.02.2005. The petitioner is living in Ranchi. The plaintiff has claimed relief that his marriage with O.P. No. 1 Asha Devi be dissolved and decree of divorce may be passed in his favour.”

4. **Adultery** - The first ground on which the divorce petition was filed is the allegation of adultery against the respondent-wife that she had illicit relation with her brother-in-law, i.e., Kedar Nath Sinha (who is made opposite party no. 2 here). In spite of notice served, he had not contested the matter before the family court. However, he has appeared before this Court. In the divorce petition the appellant-husband has alleged that the respondent-wife was living in adultery with respondent no. 2 who is none else but her brother-in-law. It was alleged in the divorce petition that the respondent-wife in every 2/3 months went to the house of Kedar Nath Sinha, her brother-in-law and she had illicit relation with him. The specific instance of adultery that appellant-husband saw respondent-wife in compromising position on 04.01.2004 in Ranchi has been disbelieved by the family court. The trial court has meticulously examined the issue of adultery and has come to a definite finding that the ground of adultery as alleged by the appellant-husband is not established. After going through divorce petition, written statement and evidences led by both the parties, we concur with the finding of the family court that the accusation of



adultery as alleged by the appellant-husband is not proved.

5. **Desertion** - The second ground on which the appellant-husband has sought divorce was desertion. From the records of the case, it is apparent that after filing of the complaint case by the respondent-wife, the appellant-husband gave an undertaking before the court that he would take and keep the respondent-wife with dignity and honour and family life with the respondent-wife will be resumed and on such undertaking given before court the appellant-husband took his wife to Ranchi and family life and co-habitation were resumed at Ranchi and only on 25.06.2005 on account of differences with appellant-husband, she returned to her Maiké and thereafter appellant-husband filed the divorce petition at Ranchi in 2005 whereupon on the petition of respondent-wife before the Apex Court the divorce case was transferred to the family court at Nalanda at Biharsharif, as such, the mandatory requirement of desertion of two years prior to filing of Divorce Case is not fulfilled and desertion is not established.

6. **Mental Disorder** - The third ground on which the appellant-plaintiff sought divorce was mental disorder of respondent-wife. It was alleged that respondent-wife was suffering from mental depression. The family court has held that although appellant-husband has stated that respondent-wife was suffering from mental depression and he got treated her at Ranchi but no prescription of



any doctor or hospital regarding treatment was produced before the Court. Mental disorder should be of such a kind and to such an extent that petitioner cannot reasonably be expected to live with the respondent. The family court has disbelieved the allegation of mental disorder of respondent-wife and we concur with the finding arrived by the family court.

7. **Cruelty** - In paragraph-2 of the impugned judgment the family court has noted instances of cruelty as given by the appellant-husband in order to seek divorce on the ground of cruelty. But strangely the family court has neither discussed nor given any finding with respect to cruelty.

8. The Apex Court in paragraph-10 of its judgment reported in (2015) 11 SCC 539 (Ramchander v. Ananta) has defined cruelty, which is quoted below :-

“Para-10- The expression “cruelty” has not been defined in the Hindu Marriage Act. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes a reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Cruelty can be physical or mental. In the present case there is no allegation of physical cruelty alleged by the plaintiff. What is alleged is mental cruelty and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. It is settled law that the instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the other



spouse. In the decision of Samar Ghosh case this Court set out illustrative cases where inference of “mental cruelty” can be drawn and they are only illustrative and not exhaustive.”

8. (i) The first instance of cruelty as enumerated by the appellant-husband in his divorce petition is that respondent-wife was of highly suspicious nature and she used to level frivolous and serious allegation against him regarding his character and about his illicit relation with bhabhi, namely, Sunaina Devi. She used to call his bhabhi as prostitute and the petitioner as a dog. Now it is well established that accusation of having illicit relation or extra marital affairs is assault on character, honour and reputation of a person and if same has been leveled in a reckless manner and could not be substantiated by the party making such allegation amounts to cruelty. Although such accusation made by the appellant-husband has been cited as one of the grounds of cruelty but in her written statement filed before the family court the respondent-wife has accepted that she has made such accusation against the appellant-husband. However, in order to substantiate her claim although she has been examined as a witness before the family court, only a vague statement has been made that she has seen the appellant-husband with his bhabhi, namely, Sunaina Devi, in a compromising position two or three times. She has failed to give any date or time or place when she saw both of them in a compromising position. She has



further stated that her appellant-husband was working in Postal Department and was posted at Ranchi and she used to live in the ancestral house at Nawada with other family members. She has further stated that when appellant-husband used to come to his ancestral house at Nawada, she found that her husband showed intimacy towards his bhabhi and therefore she presumed that her husband had illicit relation with his bhabhi. She has further stated in her deposition that she lived in her sasural at Nawada only for one year and her husband and other family members behaved well with her but later on their behaviour with her changed. We have examined the evidence led on behalf of the parties and deposition of witnesses on this issue and come to the conclusion that the respondent-wife has miserably failed to substantiate her allegation against the appellant-husband of having illicit relation with his bhabhi, namely, Sunaina Devi and leveling such allegation without any basis is cruelty, however, at the same time husband has also levelled charges of adultery but has miserably failed to prove that. Apart from the above, the conduct and subsequent act of the appellant suggest that he had condoned the act of cruelty by resuming the cohabitation.

8. (ii) The second instance of cruelty as alleged by the appellant-husband and noted in detail at paragraph-2 of the impugned judgment is that the respondent-wife always refused



intercourse with the petitioner and used to assault the appellant-husband on his private part when desire of intercourse was made by the petitioner. The denial of sexual intercourse by wife for a long time without sufficient reason amounts to cruelty. In the present case the appellant-husband has alleged that the respondent-wife refused intercourse with him and his desire of having children with wedlock was never accomplished. It is also an admitted fact that out of their wedlock no child was born. This fact also supports the case of the appellant-husband that the respondent-wife refused intercourse with him and used to utter abusive language with him whenever such desire was made by the appellant-husband. Although the respondent-wife in her written statement as well as in her deposition before the family court has denied such allegation, the fact remains that as per her own statement she stayed at the matrimonial house only for one year and according to appellant-husband the total span of married life was for a period of fifteen months. The respondent-wife used to leave her matrimonial house without sufficient reason. Although a vague statement of torture has been made but no specific nature of torture has been spelt out. The behaviour and conduct of respondent-wife and her abusive language and refusal to have intercourse with appellant-husband amounts to cruelty and same cannot be regarded as wear and tear of family life.

9. Although the appellant-husband has filed divorce



petition on the ground of cruelty also and in his divorce petition as well as evidence led by him instances of cruelty have been made out and a number of incidents were mentioned therein but unfortunately the family court has not discussed or dealt with the issues of cruelty and no finding on this issue has been recorded by the family court. However, on the basis of the divorce petition, written statement filed by the respondent-wife and evidences led by both the parties, we find that the appellant-husband has made out a case of cruelty against the respondent-wife.

10. It is an admitted fact that marriage was solemnized on 24.06.1988 and the husband and wife had strained relation and same reached breaking point when the respondent-wife filed a complaint case being Complaint Case No. 1034C of 2000 against the appellant-husband under Section 498-A of the Indian Penal Code after 12 years of marriage. The copy of the complaint case has not been made available either before the family court or before this Court. As such, it can not be known what were the allegations made in the complaint case filed under Sections 498-A of the IPC. But the appellant-husband instead of seeking dissolution of marriage solemnized second marriage with Mamta Devi which is void and punishable under Section 494 of the IPC. The respondent-wife filed a case under Section 494 of the IPC against the appellant-husband in 2001 and both cases are pending before the criminal court and from



the records it appears that appellant-husband appeared in the Complaint Case No. 1034C of 2000 on 05.09.2001 and gave undertaking before the said court that he will take his wife at his place of posting, i.e. Ranchi and would keep her with dignity and honour. Pursuant to such undertaking given by the appellant-husband he took the respondent-wife to Ranchi and co-habitation and married life was resumed. It further appears from the records of this case that respondent-wife went to her Maik in the year 2003 to attend shradh of her Bahnoi and thereafter returned to Ranchi with appellant-husband to live with him and she remained at Ranchi till 25.06.2005 when on account of differences with her husband she again returned to her Maik and started living there. She had also filed a case for maintenance being Misc. Case no. 92 of 2007 in the year 2007 and getting maintenance of Rs. 8,000/- per month by order dated 24.09.2012. From the conduct on the part of the appellant-husband it is established that the cruelty on the part of the respondent-wife was condoned by the husband by resuming co-habitation till 25.06.2005 the date of alleged separation and, as such, this Court comes to a finding that earlier aberration on the part of the respondent-wife stands condoned by the subsequent conduct of the appellant-husband. As such, no decree of divorce can be granted on the ground of cruelty as alleged by the appellant-husband in view of Section 23(b) of the Hindu Marriage Act. The family court has



taken note of the facts that vital facts have been suppressed by the appellant-husband, this is one of the reasons of refusal by the family court to grant any relief to the appellant-husband and this Court also concurs with the said finding of the family court.

11. For the reasons, as stated above, the Miscellaneous Appeal filed on behalf of the appellant-husband is devoid of merit and is accordingly dismissed.

(S. Kumar, J)

Dr. Ravi Ranjan,J : I agree.

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(Dr. Ravi Ranjan, J)

sudip/-

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