

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.360 of 2015

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Arvind Kumar Prasad, son of Sri Rajendra Prasad at present residing at A-71,
Gurudwara Road, Mohan Garden, P.S. Uttam Nagar, New Delhi.

.... Appellant

Versus

Geeta Prasad Wife of Arvind Kumar Prasad, Daughter of Sri Maheshwar Das,
residing at M.I.G. Flat No 287, Lohiya Nagar, P.S. - Kankarbagh, District- Patna.

.... Respondent

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Appearance :

For the Appellant : Mr. Sunil Srivastava, Advocate

For the Respondent : Mr. Prafull Chandra Jha, Advocate
Mr. Sameer Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE VIKASH JAIN

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIKASH JAIN)

Date: 15.03.2017

The present miscellaneous appeal has been filed against the judgment and decree dated 18.08.2015 passed by the learned Additional Principal Judge, Family Court, Patna in Matrimonial Case No. 559 of 2007, inter alia, dismissing the prayer for dissolution of marriage by decree of divorce under Section 13 of the Hindu Marriage Act, 1955 (for short, "the Act").

2. The short facts of the case are that the appellant was married to the respondent on 15.05.1997 at Latehar, Jharkhand as per Hindu rites and customs, after which the appellant returned to Delhi and the respondent stayed at her parental home at Patna. After about two years of marriage, *Gauna* (second marriage) was performed in the



month of November, 1999 and the respondent came to reside with the appellant at Delhi.

3. According to the appellant, from the very beginning the respondent did not allow the appellant to even touch her and further threatened that she would run out of the house in order to insult the appellant. As such there had been no physical relationship nor consummation of marriage between the parties since their marriage was solemnized. There had been a complete suppression about the respondent's mental status and attitude by the respondent and her parents and thus they committed fraud with him. Despite the appellant trying to pacify her, the respondent's behaviour did not change resulting in considerable mental cruelty and torture to the appellant and his family members. The respondent further threatened to implicate the appellant and his family members in false cases if the husband's unwanted approaches continued. She stated that she did not like him as the appellant was of dark complexion, used to stammer and was still unemployed. Being the daughter of a Deputy Superintendent of Police in Bihar Police, she claimed to be living a luxurious life before the marriage but had been married to a *Kangal* (pauper). She claimed to have affinity for a boy named Pinku and declared herself as widow, having washed off her vermilion and broken her bangles. On one occasion, upon being scolded by her father, she jumped from the second floor of her parental house and



suffered fracture of her leg.

4. The respondent, on the other hand, denied all the allegations. The appellant was unemployed until the time *Gauna* was performed and the respondent went to live with him in Delhi. Subsequently in the year 2000, he joined as Probationary Officer with Dena Bank and thereafter the appellant and his family members began to torture her with demand for dowry. Feeling apprehension from the appellant and his family members, the respondent's father moved Bihar Rajya Mahila Aayog, Patna and Case No. 580 of 2005 was registered and summons issued. A compromise was arrived at before the Enquiry Officer on 10.11.2005 by which the parties agreed to live together. The respondent later instituted Kadam Kuan P.S. Case No. 139 of 2006 against the appellant and his family members, alleging offences under Sections 498A/34 the Indian Penal Code, Sections 3/4 of the Dowry Prohibition Act and Sections 4/5 of the Dain Act at Kadam Kuan (Kankerbagh) Police Station, Patna, in which the appellant was convicted under Section 498A IPC and awarded rigorous imprisonment for three years and fine of Rs.10,000/- and in default of payment of fine, to undergo imprisonment for six months. The other accused persons, however, were acquitted of the charges. The appellant filed Criminal Appeal No. 112 of 2012 against his conviction which was allowed, while Criminal Appeal No. 125 of 2012 filed by the respondent against the judgment of acquittal of the other



accused persons was dismissed. Criminal Revision No. 381 of 2015 was then filed by the respondent against the judgment passed in both the Criminal Appeals. A petition under Section 9 of the Act was also filed by the respondent for restitution of conjugal rights which was registered as Matrimonial Case No. 129 of 2006 on grounds of desertion. The appellant, however, responded that it was not possible to live with the respondent and prayed for rejection of the restitution petition of the respondent. The Divorce Case in Matrimonial Case No. 559 of 2007 as well as the restitution petition in Matrimonial Case No. 129 of 2006 were disposed of together by a common order by which the divorce case of the appellant was dismissed and the restitution petition of the respondent was allowed.

5. We have heard learned counsel for the parties and have considered the materials on record. It is not in dispute that the parties were married in 1997 at Latehar, Jharkhand and *Gauna* was performed in November, 1999. The assertion of the appellant that there had been no cohabitation between the parties from the very beginning has not been controverted in the reply filed on behalf of the respondent. Thus there has been no consummation of marriage at all. So also the various allegations with regard to erratic, cruel and torturous behaviour of the respondent, as alleged by the appellant, have not been controverted, rather, counter allegations have been made by the respondent. It is apparent from the undisputed facts that



though marriage was solemnized between the parties two decades ago, they have never lived harmoniously as husband and wife. Litigations have been going on for more than a decade. In such a situation, there can hardly be said to have existed a marriage worth its name. Apart from the complaint made before the Bihar Rajya Mahila Aayog, Patna, the respondent went one step further by instituting a case under Section 498A/34 of the IPC in which ultimately all the accused persons, except the husband, were acquitted of the charges and the husband's conviction was later set aside in appeal. This clearly amounts to cruelty and torture by the respondent upon the husband and her family members. This Court fails to understand what the respondent expects to gain from a decree of restitution with all the acrimony and animosity generated between the parties through multifold litigations, which have dragged on through the years. It is also not clear why the respondent is pursuing her Revision applications opposing the acquittal of the appellant and his family members on the one hand, while simultaneously seeking restitution of conjugal rights on the other. Why she opposes divorce is not understood.

6. From the evidence of various witnesses such as D.W. 1 Dharmendra Kumar, D.W. 2 Maheshwar Das as well as D.W. 3 Geeta Prasad (respondent), it transpires that the appellant has since married another lady, namely, Jyoti Kumari, and a son, Vihan, has



been born out of that wedlock. It further transpires from the cross-examination of the appellant that an allegation was also made against him to the effect that he had inclination towards his Bhabhi (elder sister-in-law) Sushama Prasad and that he had illicit relation with her prior to marriage, all of which was denied by him. So also he denied the suggestion that he had been seen leaving his Bhabhi's room at night or that he assaulted the respondent when she raised objection in that regard. Such unsubstantiated scandalous allegation by the respondent clearly amounted to cruelty. Similarly, the suggestion that the appellant's mother had performed second marriage with the appellant's father and, that too, without having been granted divorce from her first husband implying thereby that the appellant was an illegitimate son, has been denied by the appellant and such unsubstantiated scandalous allegations on the part of the respondent would undeniably constitute an act of torture and mental cruelty inflicted upon the appellant.

7. This Court is, therefore, of the view that it was the respondent who has inflicted cruelty upon the appellant and the learned trial court has erred in holding otherwise. The judgment and decree dated 18.08.2015, passed by the learned Additional Principal Judge, Family Court, Patna in Matrimonial Case No. 559 of 2007, is accordingly set aside and the appeal stands allowed. Let decree of divorce accordingly be issued. Consequently, the application for



restitution of conjugal rights becomes infructuous and the application stands dismissed as such.

No order as to costs.

(Vikash Jain, J)

Navaniti Prasad Singh, J I agree

B.T/-

(Navaniti Prasad Singh, J)

AFR/NAFR	AFR
CAV DATE	09.02.2017
Uploading Date	15.03.2017
Transmission Date	N.A.

