

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.560 of 2013

Minakshi wife of Bhoopesh Kumar and D/O Taranand Deo Arvind, a resident of Village+P.O.- Pohaddi Bela, P.S. Ghanshyampur, District-Darbhangha.

... .. Appellant/s(Respondent)

Versus

Bhupesh Kumar son of Shilanath Lal, resident of Mohalla-Kathariya Ghandhi Nagar, P.O. Lakshmi Sagar, P.S. Sadar, District-Darbhangha at present resident of S.N. House, Road No. 13(B) Rajendra Nagar, P.S. Kadamkuan, District-Patna.

... .. Opposite Party(Petitioner)

Appearance :

For the Appellant/s	:	Mr. Girja Nand Prasad, Adv & Mr. Arun Kumar Lal, Adv
For the Respondent/s	:	Mr. Suraj Narain Yadav, Adv & Ms. Annu Shree, Adv

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 22-06-2018

Heard learned counsel for the parties.

2. This miscellaneous appeal has been filed against the judgment and order dated 30.04.2013 passed by the Additional Principal Judge, Family Court, Patna in Matrimonial Case No. 4 of 2005, by which the learned court below granted decree of divorce in favour of respondent-husband.

3. Briefly stated, the facts of the case is that marriage



between respondent-husband and appellant-wife was solemnized on 10.05.1995 at Ramgarh, Hazaribagh, where father of the appellant-wife was posted as Executive Engineer in Electricity Board Office. It has been alleged that after four days of marriage respondent-husband demanded Rs. 5 Lacs cash and other household articles worth Rs. 2,90,000/- from appellant-wife. The family of respondent-husband started abusing and assaulting appellant-wife when demand of dowry was not fulfilled and after retirement of father of appellant-wife, her in-laws demanded Rs. 5 Lacs for purchasing a building in Patna.

4. The respondent-husband has stated in divorce petition that he belongs to a middle class family and has earned status in the society by his own efforts. His father is a teacher in primary school and his mother is a traditional house-wife and all reside in Darbhanga.

5. The father of appellant-wife was Executive Engineer in Electricity Department at the time of her marriage and after retirement they are residing in Gardanibagh, Patna and appellant-wife is also living with them (her parents). The marriage between the parties was negotiated and solemnized when respondent-husband was student of B.E. Final Year, in 1994-95. The appellant-wife could not adjust herself with the



family of the petitioner and started behaving in a cruel manner soon after marriage. Two children, one daughter namely Shigdha aged about 7 years and one son namely Kshitiz aged about 6 years were born out of the said wedlock and they are studying in G.R.D Academy, Dehradun and whole expenses of their education is being met by the respondent-husband. The daughter was born on 14.12.1997 and son on 07.05.1999. It has been further stated by the respondent-husband that he has two younger brother and unmarried sister, who are studying. Respondent-husband was meeting their educational expenses alongwith his father. The parents of respondent-husband often came to Patna and stayed with them.

6. It has been alleged by the respondent-husband that the appellant-wife treated family members of the respondent-husband with cruelty and did not showed respect towards them. The appellant-wife insisted that he should severe all his relations from his family and no amount should be spent upon them. The family members also wanted that the appellant-wife being eldest Bahu in the family should also stay at their native place at Darbhanga and should take proper care of elderly parents and other family members but the appellant-wife never agreed for it. The appellant-wife always used to quarrel with the



family members and used filthy and abusive language and often became violent and also attempted to commit suicide on two occasions, when respondent-husband did not come under pressure of the appellant-wife. She also started misbehaving with the respondent-husband and started quarrelling and using abusive language and even stopped talking. She also started denying marital obligation of wife since January-2000.

7. The appellant-wife without seeking permission from respondent-husband or family members left her matrimonial home and lived for long duration against the wishes of petitioner and lastly left her matrimonial home on 25.12.2001, and thereafter deserted the respondent-husband without any just cause or reason for more than three years and in spite of all efforts being made by the respondent-husband, she refused to come to her matrimonial home and resume matrimonial life, as such the appellant-husband has brought this suit for divorce on the ground of desertion of more than three years and cruelty.

8. The appellant-wife appeared in the divorce case and denied the allegations made by the respondent-husband. She has stated in her written statement that soon after marriage, the respondent-husband and other in-laws started demanding Rs. 5 Lacs and also Rs. 2,90,000/- for household articles and the



respondent-husband, his parents, two Brother-in-Laws and one Sister-in-Law started assaulting appellant-wife after retirement of his father and respondent-husband demanded Rs. 5 Lacs for the purchase of house in Patna and on non fulfilment of which, she was subjected to abuse and assault. The respondent-husband demanded Rs. 1,50,000/- for starting a Coaching Centre at Patna and on refusal by her father she was being tortured and assaulted and threatened that if the said amount will not be paid, she will be killed. The appellant-wife resided with her respondent-husband at their residence in Patna along with other family members till 16.12.2002 and because of non fulfilment of demand of dowry, they tortured appellant-wife and even refused to give food to her.

9. On 04.04.2004 the respondent-husband came to his Sasural and told his Father-in-Law for vidai of appellant-wife on account of Shradh Karm of his grandmother and appellant-wife accompanied respondent-husband to her matrimonial house and participated in Shradh Karm, where she was also mentally and physically tortured by respondent-husband and his family members. The appellant-wife came to know that respondent-husband had relation with one another lady and on protest made by her, she was abused and assaulted.



10. On 06.02.2005, the respondent-husband and his parents ousted appellant-wife from her matrimonial home after assaulting her and snatching gold jewellery valued at Rs. 75,000/- and thereafter on 07.02.2005, respondent-husband filed a complaint case in the court of C.J.M. Darbhanga and thereafter the present divorce petition has been filed. The appellant-wife has denied all the allegations of desertion and cruelty.

11. PW-1 is the respondent-husband, who had stated on oath that the marriage of respondent/husband and appellant/wife was solemnized on 10.05.1995 as per hindu rites and customs in Ramgarh, Hazaribagh. He belongs to a traditional family and his father is a teacher in primary school and his mother is housewife. The father of appellant-wife was Executive Engineer in Electricity Board at the time of marriage and after retirement they settled in Gardanibagh, Patna, and appellant-wife resides with them and still is with them. There was much difference in stature of two families and when the appellant-wife came to his house, she refused to live there and also started misbehaving with his parents. She never respected him or his parents and was not ready to live with the parents of the respondent-husband. Although the respondent-husband remained perturbed from the



behaviour of appellant-wife and tried to convince her but her behaviour became rude and violent day by day and due to her conduct, respondent-husband remained in mental agony. She used to leave her matrimonial home without his permission and went to her parental home at Patna. Two children were born from the said wedlock and both of them are being maintained by him and are studying in Dehradun. He has two brothers and one sister and their academic expenses is being borne by him and his father. The appellant-wife is very ambitious and also refused cohabitation with the petitioner and developed illicit relation with the respondent-husband's brother Amarendra and always threatened that if he refused to continue the illicit relation she will commit suicide. The appellant-wife used to write love letters to her younger brother and when he and other family members came to know about it, he sent his younger brother Amarendra Kumar to Delhi for studies. Thereafter appellant-wife developed illicit relation with his youngest brother and started writing lover letters to him. He came to know that appellant-wife has conspired to kill him and his parents were unhappy from the conduct of appellant-wife. There is no relation between the respondent-husband and appellant-wife since 2001 and thereafter they have never lived together. The



allegation made by appellant-wife against the respondent-husband of demanding Rs. 5 Lacs, Rs. 1 Lacs and other household articles is false and concocted.

12. In his cross-examination, he has stated that he did his engineering in Mechanical Branch in the year 1995 and thereafter started giving tuitions and at present is running Gurukul Tutorial, at Rajendra Nagar, Patna and same is located in his house. He had purchased old house for Rs. 12 to 13 Lacs in 2003 in which 600 to 700 students come for coaching in different batches. There is girls hostel also in the institute. There is a Gurukul Ladies Hostel in Road No. 11 in Rajendra Nagar which is runned by him. In Dehradun he had purchased house in 2004 for Rs. 13 Lacs and the same is vacant. In Darbhanga, he and his father had purchased land and constructed house over it. He has no concern with said house. He has no coaching institute in Darbhanga. In May-2009, Income Tax Department had raided his coaching institute. The raid was conducted in Darbhanga, Dehradun and Patna at his residence. He is running coaching institute since 1995 and his marriage was solemnized on 10th May, 1995. After marriage, appellant-wife came to his house at Darbhanga. He has three brothers and 2 sisters. The appellant-wife lived one to two days gracefully in her



matrimonial home and she is daughter of Executive Engineer and was matric pass at the time of marriage. He has one son and one daughter.

13. He has denied the suggestion of demanding Rs. 5 Lacs and torture for non fulfillment of said demand. The appellant-wife had lodged a case under Section 498A of the Indian Penal Code against him in Darbhanga court and prior to that he has lodged the present divorce case. The native village of the appellant-wife is in Darbhanga and her father has house in Patna also. His ancestral house is in Darbhanga. At present the appellant-wife is residing in her ancestral home at Darbhanga and is Siksha Mitra for last five years. The bail granted to him under Section 498A of the Indian Penal Code was cancelled and Rs. 3500/- was directed to be paid as maintenance to the petitioner by Patna High Court. Children are staying with him and since 2004 they are studying in Dehradun and living in hostel. As per the terms of the order of the High Court after vacation in the School, children were to spend 15 days with respondent-husband and 15 days with the appellant-wife but none came from the side of appellant-wife to take the children. He has good relations with his parents and one of his brother is M.B.B.S while other is B.Tech and doing M.B.A. He used to



give monetary help to his brothers. The appellant-wife had illicit relation with his brother Amrendra Kumar. He came to know about it in the year 2000 and he has love letters with him written by appellant-wife to Amrendra Kumar, which is on record. Amrendra Kumar was sent to Delhi for preparation of medical examination. He has not seen illicit relation from his own eyes but he has inferred on the basis of love letters. The appellant-wife lived only for 15 days in his ancestral home at Darbhanga. Thereafter she lived in Patna till 2001. His brothers used to live with him before marriage and thereafter they were sent to village and he and appellant-wife started living in a separate house. His Father-in-Law had given him cheque of Rs. 5 Lacs and he was given money to purchase house in Patna. On 16.07.2001, he had received 1.5 Lacs by cheque and the same was the payment made against the amount taken by his in-laws. He has denied the suggestion that in 2004 also he demanded Rs. 5 Lacs and after refusal he started torturing appellant-wife. His grandmother died on 04.04.2004, in which appellant-wife also came and he is not ready to keep his wife. He has denied the allegation made by the appellant-wife of cruelty, desertion and adultery as false. By mistake he has filed Matrimonial Case No. 63 of 2005 for grant of divorce but same was withdrawn.



14. PW-2 is Akhilesh Kumar Singh, who on oath has stated that he knows both parties and knows the respondent-husband from 1993-94 and is on visiting terms with his family. The appellant-wife was married on 10.05.1995 and both resided in Patna at Malahi Pakri and he used to come to their house.

15. The behaviour of appellant-wife was not good from beginning, she used to shout upon parents of respondent-husband and frequently showed disrespect to them and was never ready to live with her Father-in-Law and Mother-in-Law. He always tried to make appellant-wife understand but she never agreed and because of her aggressive nature all remained unhappy and under stress.

16. She had developed illicit relation with brother of appellant-wife and she was asked to improve her conduct but she was not ready and thereafter his brother was sent outside. The appellant-wife wanted to kill respondent-husband by poisoning and they are living separately from 2001 and there is threat of life to respondent-husband, if he lived with appellant-wife.

17. In his cross-examination, he has stated that he was appointed as ASI on 24.07.1990 and both parties are known to him from 1995-96. He has friendship with respondent-husband.



He saw appellant-wife for the first time in the year 1997 in her matrimonial home. The appellant-wife was not ready to live with her Mother-in-Law and Father-in-Law. He has no personal knowledge about it but he came to know from respondent-husband. The respondent-husband told him that there is illicit relation between appellant-wife and his brother. The appellant-wife has never misbehaved with him. The appellant-wife had misbehaved with the respondent-husband in his presence in the year 2000. The respondent-husband used to live in Malahi Pakri along with appellant-wife and daughter. The parents of respondent-husband used to live in Darbhanga.

18. PW-3 is Sheela Nath Lal, who is father of respondent-husband. He has stated on oath that appellant is wife of respondent. He was teacher in a primary School whereas father of appellant was Executive Engineer and there was much difference between social status of both the families. The appellant came to her matrimonial home but was never comfortable and did not want to live in her matrimonial home. She always misbehaved with them and he and other family members were pained by her behaviour and he tried to convince her to live properly but it had no effect on her and she became aggressive day by day. The opposite party-appellant went to live



in her parental home. She had also developed illicit relation with his second son and used to write love letters to him. The appellant always misbehaved with his son and used to quarrel with him and his son always remained under stress and strain. He has denied payment of Rs. 5 Lacs and other household articles and to commit torture on appellant for non fulfilment of said demand. The appellant had lodged false and concocted case against him and his other family members as result they have suffered a lot and have to take bail from the court. It is not safe for the respondent to live with appellant as his life will be in danger.

19. In his cross-examination he has stated that appellant lived with him in her ancestral home for four days i.e. from 11.05.1995 to 15.05.1995. She always misbehaved with him. She used to stay in her ancestral house while going to her matrimonial home. He tried to convince appellant but nothing positive happened. He has not seen writing love letters by appellant. In the year 2000, he saw such letter for the first time. The said letter was seen by many persons. Only one letter was received which was sent to Jai Shankar Kumar, his son by the appellant and at that time he was studying in Class-X and he was about 14 years of age. He has denied demand of Rs. 5 Lacs



and other household articles for which criminal case under Section 498A of the IPC was filed in Darbhanga by appellant which is still continuing. He has denied of committing any assault on account of non fulfilment of demand of dowry. One son and one daughter was born from the said wedlock and both are studying in Dehradun. They are studying in Class-6 and Class-7. The appellant is living separately since 2001. In 2004 the appellant was called. The respondent runs coaching institute and raid was conducted by Income Tax Department on 27.05.2009 in Darbhanga also.

20. PW-4 is Jai Shankar Kumar, brother of respondent-husband. He has stated that they are middle class family and his father is teacher in primary school and has since retired. Whereas appellant comes from affluent family. His brother has good academic record and runs coaching institute. He, his brother, sister and parents reside in their ancestral house in their native village and only respondent lived in Patna and runs coaching institute. Appellant was arrogant and never respected his brother. From the date of marriage behaviour of appellant was not proper and she used filthy language against family members and also misbehaved with them. Petitioner and their father used to meet the expenses of their studies and thereafter



he came to Patna to live together. The appellant did not want to live in their native village. The appellant did not like her in-laws who stayed in Patna and also prevented respondent-husband to give any monetary support to the family members. He and his brother Amrendra Kumar after doing matriculation started to live in Patna with his brother. The appellant developed illicit relation with Jai Shankar Kumar and thereafter with him. He saw Jai Shankar Prasad in compromising position with appellant and thereafter he returned to Darbhanga and thereafter appellant wrote a letter to him disclosing her love for him which was written by blood and the same has been marked as exhibit. After his return to village, his brother also came to village and thereafter left for Delhi for medical preparation. When they were living in native village relatives of appellant came to their village and fired upon brother and father but they managed to escape and FIR was registered and they were sent to jail. A conspiracy was also hatched in the year 2003-04 to kill his eldest brother by poisoning but the said conspiracy was unearthed and his brother was saved. Appellant is living separately since 2001 after leaving her children and thereafter she is residing with her parents.

21. In his cross-examination, he had stated that he has



done his MBA and at present is not employed. His elder brother is 10 years older than him and he runs one coaching centre since 1994-95 and he has good income. He started living with his brother from 1997 and lived with him till 1999 to 2001. He was preparing for engineering. His father was a teacher in primary school and he retired in 2007. He has two sister and elder sister is married. However, younger sister is still unmarried. The appellant established physical relation with him which remained for two years. First time physical relation was made in October-1999 and he did not disclose such relation to his parents or his brother. The appellant had also developed physical relation with Amrendra Kumar and he has seen them in compromising position in November-December-2001 and after which she has physical relation with him also. She had also illicit relation with driver Jitendra and one Sharma Jee. He came to know about it in January-2002 and after knowing all this he started avoiding appellant. After disclosure of letter everything came in open. He said that the letter was kept in his brief-case which was kept in Darbhanga. He has denied that all the allegations made by him is concocted and false and letter is forged letter. The appellant lodged a criminal case against family members which is still pending. The opposite party-appellant left her matrimonial



home in 2004.

22. PW-5 is Amrendra Kumar who is younger brother of respondent. The marriage of appellant was solemnized with the petitioner at the time he was final year student of engineering. His father was teacher in primary school and they used to live in their native village. Respondent was preparing for engineering in Patna and opened engineering coaching institute in Patna. Respondent used to give monetary help to both of his younger brother and parents. The appellant was arrogant and did not pay any respect to her in-laws and used abusive language against them. She did not like to stay with her in-laws in her house in Patna. She also raised objection for granting monetary help to her family members by the respondent. The appellant did not want to live in village. She used to leave her matrimonial home and went to her parental home frequently without permission of respondent. The appellant had developed illicit relation with him and his younger brother. Once his younger brother Jai Shankar came to house and saw them in compromising position thereafter Jai Shankar left the house and went to native village and thereafter appellant started writing love letters to Jai Shankar Prasad and wrote 'I Love You' from her blood and he has proved the diary in which the appellant had described her



relation with them and the same was exposed after the letter and diary came in the hands of his father. He thereafter went to his native village and from there to Delhi for preparation of medical examination. The appellant has left the company of respondent since December-2001 after leaving her children and went to her parental house and is residing there since then. In 2003 she had hatched a conspiracy to kill the respondent by administering poison but somehow he was saved.

23. In his cross-examination he had said that he passed the matriculation in the year 1992 from Darbhanga and did +2 in the year 1994 from Darbhanga and thereafter for preparation of medical in the year 1995 he came to Patna. He was admitted to medical college in 2005 and lived there till 2011. Respondent provided monetary help to him for his medical education. Petitioner-respondent was married in the year 1995 to appellant and at that time he was aged about 16 to 17 years. The appellant when came to her matrimonial home she looked down upon the family of respondent and their economic condition was not very well. The family members were disappointed with the behaviour of appellant and at the time of marriage, respondent was residing in Mahendru and after 2, 3 years he went to Kankarbagh. Behaviour of appellant was not good with his



parents but his relation with appellant was normal. The appellant made physical relation with him and in 1996 they developed physical relation and the same remained for three to four years. My brother started coaching institute. He has denied the suggestion that the allegation made by him against the opposite party-appellant is concocted and false and whatever statement he has made is at the instance of his elder brother.

24. Appellant-wife in her deposition stated that marriage between her and respondent was solemnized in the year 1995. Her husband was a student of final year in Patna Engineering College and he was also running coaching classes in the name of Gurukul Tutorials. Coaching institute was being run in tenanted premises and he resided also in tenanted premises. Subsequently, he shifted his coaching institute in Rajendra Nagar and Doctors colony. She used to live with her husband. One daughter and one son was born out of the said wedlock and at that time his Father-in-Law was a teacher. Her Father-in-Law, Mother-in-Law and Brother-in-Law used to live in Darbhanga in the ancestral house. When she lived in Patna with her husband, her Father-in-Law and Mother-in-Law used to come there and she used to respect her in-laws and took care of their needs. It is wrong to allege that she provoked her Brother-in-Law for



physical relations. The exhibited letters has not been written by her and those are forged and fabricated. On demand made by her respondent-husband, Rs. 4,00,000/- by way of cheque dated 21.02.2001 was given by his father to respondent-husband and subsequently a cheque of Rs. 1,50,000/- dated 16.07.2001 was given by her father to run the coaching institute on demand made by respondent-husband. She was sent to ancestral village of respondent-husband and pressure was build to bring more dowry and on account of non fulfilment of which she was tortured and abused and her precious belongings were also snatched and she was ousted from the house and thereafter she came to Patna. In the year-2004, her husband came to attend the shradh ceremony of his grandmother and also brought petitioner from her parental home from Patna and panchayati was held in which the parents of husband accepted their mistake and assured that in future such thing will not happen.

25. The respondent-husband thereafter again demanded sum of Rs. 5 Lacs for construction of a coaching institute from his father who expressed his inability to pay the said amount and thereafter she was abused and assaulted and also her vein of hand was cut which resulted in profuse bleeding. They also stopped her food and was subjected to mental and physical



torture and she was ousted from the house on 06.02.2005 and she went to her uncle's residence in Darbhanga and there also her husband came and threatened to kill her.

26. She filed complaint case on 07.02.2005 against her husband, Mother-in-Law, Father-in-Law both Brother-in-Law and Sister-in-Law being Case No. 147 of 2005 under Section 498A of the Indian Penal Code and same is still pending.

27. The bail of the respondent-husband was granted on the condition that he will pay Rs. 3500/- per month as maintenance to the appellant and for 15 days the children will live with the respondent-husband and 15 days with the appellant-wife in Summer Vacation.

28. Her respondent-husband is still running a coaching institute and also runs a girls hostel and with one girl namely Shweta of Sitamarhi, he had developed illicit relation and on objection being made by appellant regarding illicit relation, she was assaulted.

29. In her cross-examination, she stated that the respondent-husband is running the coaching institute prior to the marriage. The coaching institute flourished day by day and large number of students got admitted there. In 1998 they used to live in Kankarbagh in a tenanted premises and thereafter shifted to



Rajendra Nagar. In Rajendra Nagar coaching institute was shifted on the land purchased by the respondent-husband. Criminal case lodged under Section 498A of the IPC, is prior to the divorce case. She did not lodge any complaint with respect to torture and abuse prior to 2005. When she was ousted on 06.02.2005 from her matrimonial home after assault she lodged criminal case under Section 498A of the Indian Penal Code in Darbhanga. She did not get treated in Government hospital and she has no injury report but she was treated by a private Doctor. She does not have any documentary evidence regarding payment Rs. 5 Lacs. She is in job since 2007.

30. DW-1 Md. Ubaid, in his deposition stated that he retired in the year 2006 from Jharkhand State Electricity Board and thereafter residing in Patna, and he knows the appellant-wife Meenakshi, whose nick name is Pinky. He also knows the father of the appellant-wife Tara Chand Dev Arvind and both have old relations and are on visiting terms. The appellant told him that her in-laws used to assault her and also demanded dowry and stopped food to her and ousted her after assault.

31. DW-2 is Bhola Rai, who in his deposition stated that appellant and his family is known to him from 1992 to 1997 as he is Electrician (Bijli Mistri) in Ramgarh and he was also



present during marriage in 1995 in Ramgarh and was also engaged in making arrangement for marriage. After 1998, he came to his village and living there. He came to know from the father of the appellant in the year 2002, that she was being tortured. He used to have talk with her and she told that her in-laws behaviour was not good and they used to demand dowry and also tortured her.

32. In the year 2004, the husband took her to attend the shardh ceremony of his grandmother and ousted Meenakshi from matrimonial home and since then she is living in her parental home.

33. DW-3 is Sanjeev Kumar, who is brother of appellant and in his deposition, he stated that he is younger brother of appellant and denied that his sister ever insulted her in-laws rather in-laws of his sister always misbehaved with her and asked to bring dowry from her parent. Respondents pressurized his appellant-sister to bring Rs. 5 Lacs from her father to purchase house in Patna since his father had retired, he was unable to give said amount upon which her sister was stopped food and assaulted and mentally tortured. Her sister used to say all these things to him. Her sister Meenakshi filed a case under Section 498A of the IPC against her in-laws. The respondent-



husband had illicit relation with Shweta Kumari of Sitamarhi. He has no personal knowledge whatever he has stated but he was informed about assault, torture and demand of dowry by the appellant.

34. DW-5 is Tara Chand Dev Arvind, father of the appellant, who in his deposition stated that marriage was solemnized on 10.05.1995 in Ramgarh, Hazaribagh, where he was posted as Executive Engineer in the Electricity Board and he retired on 01.01.2001. Soon after marriage her in-laws started demanding Rs. 5 Lacs and Colour T.V., Fridge and utensils and he gave a cheque of Rs. 4 Lacs on 21.02.2001 and thereafter her daughter was pressurized for more money and for which she was abused and assaulted and he gave a cheque of Rs. 1,50,000/- on 16.07.2001 to the respondent-husband to purchase land in Patna to run a coaching institute. Still thereafter the respondents used to demand money but he showed his inability to pay more money and thereafter her daughter was refused food and assaulted and subjected to mental and physical torture. Her daughter was sent to the native village where she was subjected to torture for demand of dowry. The respondent took the appellant to attend shradh ceremony of her grandmother but she was tortured, assaulted and ousted from the house and thereafter



she came to her parental house and on 07.02.2005 in the court of Chief Judicial Magistrate, Darbhanga a criminal case under Section 498A of the Indian Penal Code was instituted. The anticipatory bail of the respondent-husband was refused by lower court but in High Court, he was granted bail on the condition that children shall live with him for 15 days during vacation but the same was not honoured by the respondent-husband. The allegations made against the appellant is false. She came to know about illicit relation of respondent-husband with one Shweta of Sitamarhi who was residing in the girls hostel, but he has no evidence to support such allegation. He has no written document of payment of dowry and torture on appellant for non fulfilment of said demand.

35. On the basis of evidence adduced on behalf of the respondent-husband, it is apparent that PW-1 father of the plaintiff was a school teacher and his mother housewife whereas father of defendant was Executive Engineer and defendant was brought up in affluent family and there was disparity of economic and social status between the families. The marriage was solemnized when respondent-husband was student of final year of engineering and he had many obligations and liabilities of the family after doing his B.E. course. He started a coaching



institute on his own without any support from his family and soon the coaching institute flourished and he was having good income from his institute. He wanted that his wife should show due respect to his parents and love and affection to his brothers and sisters but she failed to discharge her obligation as Daughter-in-Law and never paid due regard to her in-Laws and never cared about their welfare and well being. It has come in the evidence that she always insisted that he should be separated from his parents and brothers and should not spent any amount of his earning on them for which this petitioner was not agreeable and that caused dispute between them and relations between husband and wife became strained and the appellant wife did not improve her behaviour, as such the relations kept on deteriorating day by day. The appellant-wife was sent to native village of her in-laws but she could not live there and started abusing her in-laws and refused to take care of them and when it came to the knowledge of petitioner, he brought appellant to his residence at Patna where his two brothers and sisters were living and were preparing for competitive examinations, however, she developed physical relation with her Brother-in-Law which was admitted by both the brothers in their deposition and one had to send to Delhi for medical preparation



and subsequently he qualified and became Doctor, and has supported the case of his brother and allegations made against the appellant. Similarly, the younger brother also qualified in the engineering test and was admitted to engineering college and he has also supported the case of his brother and allegations made against the appellant was correct. Due to strained relations, two children born out of the wedlock had to be kept in boarding school at Dehradun and all expenses on their teaching were being met by respondent-husband and she was very careless and never cared about the career of their children. It has further come in evidence that a criminal case was filed against respondent-husband in which all the family members were roped in by the complainant-appellant without any reason as there was no allegation of any demand of dowry or torture against the appellant and only because she was unable to give due respect to family members and perform her obligations of of wife and failure of which resulted in strained relations between the parties and she made all the family members accused in said complaint case and thereafter it became difficult for the respondent to maintain and keep the matrimonial relation with his wife.

36. In the written statement filed by the appellant wife,



she has alleged illicit relation of respondent-husband with Shweta Kumari of Sitamarhi but has failed to establish any illicit relation with her husband-respondent and making allegation of extra marital relation without any evidence to substantiate, such allegation itself amounts to cruelty and appellant-wife failed to establish or to bring any evidence in support of such allegation and same amounts to mental cruelty and such reckless allegations effects reputation of a person in society.

37. Evidence have been adduced on behalf of the defendants and all other witnesses except the defendant herself, have no personal knowledge of any demand of dowry, torture or assault on the appellant-wife they have gathered this information on the basis of statement made by appellant-wife and his father. The appellant has not brought any evidence of demand of dowry, torture or assault committed by the respondent-husband on her and all allegations are vague and omnibus in the written statement as well as evidence of defendant-wife before Family Court. The trial court after scrutinizing all the evidence on record adduced by both parties has come to the conclusion that respondent-husband has made out a case for grant of divorce on the ground of cruelty.



38. It is true that in the year 2004 respondent-husband had took appellant-wife to her matrimonial home to attend the Shradh Ceremony of Grandmother of respondent-husband and his said conduct will amount to condonation of past misconduct but it also proved to be a futile attempt and short-lived as differences and discord between the parties could not be patched up and appellant-wife again left matrimonial home and thereafter lodged criminal case against her husband and in-laws in the year 2005.

39. The appellant-wife and respondent-husband are living separately for more than 15 years. The separation has created an unbridgeable distance between the two. The Apex Court in case of **K. Srinivas Rao Vs. D.A. Deepa reported in (2013) 5 SCC 226**, has held as follows:-

“We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their



springing back to life on account of artificial reunion created by the court's decree.”

40. This Court does not find any error in the judgment and order passed by the Family Court and evidence has been properly appreciated and sound reasons have been given for grant of divorce, as such this Court is not inclined to interfere in the order passed by the Family Court and accordingly, this miscellaneous appeal stands dismissed.

(S. Kumar, J)

Dr. Ravi Ranjan, J.: I agree

(Dr. Ravi Ranjan, J)

ranjan/-

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