

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.412 of 2015

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Vijay Laxmi @ Nitu Singh @ Vijaya Laxmi daughter of Anjani Kumar Singh
resident of village Koeriya, P.S. Pipra, District Sitamarhi.

... .. Appellant/s

Versus

Jayant Kumar Singh son of Madhusudan Prasad Singh resident of village -
Bariyarpur, P.S. Rajapakar, District - Vaisahli.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajeev Ranjan
For the Respondent/s : Mr. Shailendra Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)

Date : 25-06-2018

Aggrieved by the judgment and decree dated 08.09.2015, passed in Divorce Case No. 104 of 2009, by learned Principal Judge, Family Court, Vaishali at Hajipur, whereby the Divorce Suit has been decreed in favour of the respondent/petitioner-husband, the appellant wife has preferred this Miscellaneous Appeal under Section 19(1) of the Family Courts Act, 1984. The Court below has also granted a sum of Rs. 2,00,000/- as permanent alimony to be paid by the respondent/petitioner herein, by the judgment and decree under appeal.



2.This appeal was admitted on 28.01.2017, for hearing and lower Court records were called for. Lower Court records have been received which we have carefully perused.

3. We have heard Mr. Rajeev Ranjan, learned counsel for the appellant/opposite party and Mr. Shailendra Kumar Singh, learned counsel for the respondent/petitioner.

4. The marriage between the appellant and the opposite party was admittedly solemnized on 28.01.2007. The respondent/petitioner's case in his petition, seeking divorce, is that the appellant/opposite party is mentally sick and a woman of abnormal behavior. Her behavior, according to the respondent/petitioner, was erratic from the very first day of marriage. The marriage was solemnized at Bariyarpur in the district of Vaishali. Since the respondent/petitioner is a practicing lawyer at Salugara in the district of West Bengal, the appellant/opposite party was taken to Salugara. Noticing her behavior to be abnormal, a physician was consulted on 05.05.2007, who diagnosed to that she was suffering from mental disorder. Upon information in this regard having been sent to the parents of the appellant/opposite party, her father had come and assured him that respondent/petitioner would be fully



cured and would become normal. The respondent/petitioner asserted in his petition that he could not cohabit even for a single day as husband and wife with the appellant/opposite party since she was suffering from 'chronic schizophrenia'. The appellant/opposite party had finally left the matrimonial home for her mother's place on 11.11.2007.

5. The appellant/opposite party filed her written statement, denying the allegation in respect of her behavior or ailment. She denied that she was suffering from any kind of ailment much less mental disorder. She also denied of having ever been treated by any doctor rather she alleged that the respondent/petitioner was, in fact, making demands for dowry.

6. Based on rival pleadings, the Court below framed six issues, including issue nos. III & IV, which are crucial for the present purpose, as under:-

“III- Is O.P. Vijay Laxmi @ Nitu Singh suffering with mental disorder i.e. chronic Schizophrenia, as such, unable to lead the conjugal life with the petitioner ?

IV- Whether actions and behaviour of O.P. due to mental disorder amount cruelty to



the petitioner ?”

7. In support of his case, the respondent/petitioner exhibited following five documents :-

Ext.-1- Prescription of Dr. S.N. Prasad dated 05.05.2007.

Ext.-1/a- Medical prescription dated 20.07.2004 of Dr. K.K. Sinha of Ranchi, described as renowned doctor of Neuro-physiology.

Ext.-1/b- Psychological report of Mano Vikash Kendra Ranchi dated 12.02.2000, in respect of the appellant/opposite party.

Ext.-2- Certified copy of plaint of MJC No. 3849/11 filed before this Court.

Ext.-3- Certified copy of order dated 06.12.2012, passed by this Court.

Ext.-3/a-Certified copy of order dated 12.11.2013, passed by this Court in Criminal Misc. No. 4651/13.

Ext.-4- Certified copy of order dated 23.01.2014, passed by learned Sub-Divisional Judicial Magistrate, Sadar, Sitamarhi, passed in Trial case no. 1638/13.

Ext.-5- Certified copy of F.I.R. of Parihar P.S. Case



No. 134/10.

8. Let be it noted that, in order to prove that the appellant/opposite party was suffering from mental disorder, the respondent/petitioner relied on the prescription of Dr. S.N. Prasad dated 05.05.2007 (Ext.-1), prescription of Dr. K. K. Singh of Ranchi dated 20.07.2004 (Ext.-1/a) and Psychological report of Nitu Singh prepared by Mano Vikash Kendra Ranchi dated 12.02.2000 (Ext.-1/b). These documents were admittedly not denied by the appellant/opposite party before the Court below.

9. The respondent/petitioner got examined five witnesses in support of his case.

10. The appellant/opposite party, on the other hand, also adduced documentary evidence and got exhibited following documents:-

“ Ext.A- Fitness certificate of Vijay Laxmi from Dr. A.N.P. Gupta issued on 21.07.14.

Ext.B- Photo copy of marks sheet of secondary school exam. 1999 of Vijay Laxmi, issued by BSEB, Patna.



Ext. C- Photo copy of marks statement
2002 of Vijay Laxmi issued by BIEC, Patna.

Ext.D- Provisional certificate of Vijay
Laxmi issued by BIEC, Patna.

Ext.E- Migration certificate of Vijay
Laxmi issued by BIEC, Patna.

Ext. F- Marks sheet of B.A. (pass
course exam. 2005) issued by LNMU
Darbhanga.

Ext. G- Photo copy of admission card
of State Council of Educational Research &
Training, Bihar, Patna,-2011 for teacher
eligibility test (BETET).

Ext. H- Marks statement of BETET-
2011.”

11. As is evident from the list of exhibits of the
appellant/opposite party, in order to, contest
respondent/petitioner’s case of mental disorder, she relied on
Ext.A, a fitness certificate.

12. The witnesses who adduced evidence in support
of respondent/petitioner’s case, deposed that her behavior from



the very beginning, was not normal and she, on several occasions attempted to flee away from the house in Salugura.

13. PW-3, the father of the respondent-petitioner in his evidence deposed that the father of the appellant had divulged that the appellant/opposite party was mentally ill much before the marriage and he had consulted Dr. K.K. Sinha of Ranchi and she was examined by Mano Vikash Kendra Ranchi on 12.02.2000. PW-4, Mohan Mahto, a neighbour of the respondent-petitioner also deposed in similar manner.

14. The witnesses of the appellant/opposite party were also examined, who denied the allegation that the appellant/opposite party was suffering from any mental disorder. The father of the appellant/opposite party, was examined as OPW-3 and though he stated in his cross-examination that he had gone to Salugura (Jalpaiguri) on 07.05.2007, voluntarily, but he denied that he remembered the date when he brought back his daughter from Salugura. He also failed to recall the name of the doctors to whom the respondent/petitioner had taken his daughter for her treatment. The appellant/opposite party was examined as OPW-4, who while denying all the allegations in her deposition, accepted in her cross-examination



that her father was called by her father-in-law at Salugura, whereafter her father had taken her back to Salugura.

15. The Court below has found contradiction between the statements of the appellant/opposite party (OPW-4) and her father (OPW-3) on the point of visit of OPW-3 at Salugura. On the one hand the appellant/opposite party (OPW-4) deposed that her father was called by her father-in-law to Salugura, her father (OPW-3) deposed that she had gone to Salugura, voluntarily.

16. Learned Trial Court in the absence of any denial, found the prescriptions of Dr. K.K. Sinha and the report of Mano Vikash Kendra, Ranchi as genuine which supported the case of the respondent/petitioner that the appellant was suffering from mental disorder. It was noticed by the Court below that the appellant/opposite party (OPW-4) and her father (OPW-3), in view of admitted documents exhibited as evidence, had falsely said that the appellant was never examined by any doctor for the treatment of her mental disorder. Based on analysis and appreciation of evidence, the Court below reached a conclusion that the appellant/opposite party was suffering from 'chronic schizophrenia'.



17. The Trial Court disbelieved the fitness certificate (Ext.-A) in support of the appellant/opposite party's claim that she was fit on the ground of vagueness inasmuch as it did not disclose the disease in respect of which, she was being given certificate nor the period during which she was under treatment.

18. Based on the evidence as discussed above, the Court below has held that the appellant/opposite party is suffering from 'chronic schizophrenia'. The Court below has also recorded while discussing the evidence on record that it could not be reasonably expected for the respondent/petitioner to live with the appellant/opposite party and the conduct of the respondent also amounted to cruelty.

19. Mr. Rajeev Ranjan, learned counsel appearing on behalf of the appellant/opposite party, pressing the appeal, has submitted that the finding recorded by the Court below that appellant was suffering from mental disorder, based on the prescription of a Homeopath doctor K.K. Sinha and status report of Mano Vikash Kendra, Ranchi, is wholly erroneous and perverse. He contends that none of the doctors were examined nor author of the status report (Ext.1/b), was examined and in



that background, the said documents should not have been taken in evidence by the Court below. He, however, agrees that the said documents presented by the respondent/petitioner were not denied by the appellant/opposite party before the Court below. He, however, argues that even if it is accepted that the appellant/opposite party was suffering from 'chronic schizophrenia', that simply could not have been ground for dissolution of marriage in view of clear language of Section 13(1)(iii) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'). To buttress his contention he has placed reliance on Supreme Court's decision in case of **Ram Narain Gupta Vs. Smt. Rameshwari Gupta (AIR 1988 SC 2260)**. According to him, requisite decree of mental disorder alone, would only justify dissolution of marriage. He has next submitted that in the absence of necessary averment as contemplated under Section 7(g) of the Family Court Act (Patna High Court Rule), the plea could not be upheld. He contends that it was mandatory for the respondent to have pleaded that mental disorder of the appellant was of such a kind and to such an extent that the respondent/petitioner could not reasonably be expected to live with the appellant/opposite party.



20. Mr. Shailendra Singh, learned counsel appearing on behalf of the respondent/petitioner, on the other hand, while defending the impugned judgment and decree, has submitted that the respondent had specifically pleaded chronic mental disorder of the appellant/opposite party and cruelty meted out by her to the respondent/petitioner and his family members. In the said background, he has submitted that the Court below has granted decree for dissolution of marriage on the ground of mental disorder after recording a finding that it could not be reasonably expected for the respondent/petitioner to live with the appellant/opposite party. He has placed reliance on Supreme Court's decision in case of **Vinita Saxena Vs. Pankaj Pandit** reported in **2006 (3) PLJR SC 29**, to contend that ground for grant of divorce on the plea of mental insanity is different than cruelty. According to him, the respondent/petitioner was able to prove that he suffered cruelty by and at the behest of the appellant/opposite party who suffered from chronic mental disorder. Reliance has also been placed by him on another decision of Supreme Court in case of **K. Srinivas Rao Vs. D.A. Deepa** reported in **2013 (1) PLJR (SC) 321**, to contend that this is an admitted fact that at least for last 11 years, the parties are living separately and though



irretrievable breakdown of marriage is not a ground for divorce in 'the Act', nonetheless, since the marriage is beyond any scope of restoration on account of bitterness, no interference with the judgment of the Court below is needed.

21. We must at the outset, express our view that we do not find any infirmity in the finding recorded by the Court below on first part of issue no. III, i.e. appellant is suffering from mental disorder i.e. 'chronic schizophrenia'. This is for the apparent reason that medical prescription of Dr. K.K. Sinha of Ranchi dated 20.07.2004, was admitted by the appellant/opposite party, in the absence of denial of the said document. We have perused the said prescription (Ext. 1/a) in which the appellant/opposite party's mental disorder has been diagnosed a 'chronic schizophrenia'. There is psychological report dated 12.02.2000 of Manu Vikash Kendra, Ranchi, which was also not denied by the appellant. It was the respondent/petitioner's case that the appellant/opposite party was taken to Homeopath Dr. S.N. Prasad on 05.05.2007, for treatment of her mental disorder. The said medical prescription dated 05.05.2007 (Ext.-1), is also not denied.

22. We agree to the legal proposition put-forth by



Mr. Rajeev Ranjan, learned counsel for the appellant, that in the absence of any finding that the mental disorder is of such kind and to such an extent that a person seeking dissolution of marriage on that ground cannot be reasonably expected to live with the respondent/petitioner, a marriage cannot be dissolved under Section 13(1)(iii) of 'the Act'. The position is clear from the language of Section 13(1)(iii) of 'the Act', which has been dealt with by Supreme Court in detail in case of **Ram Narain Gupta Vs. Smt. Rameshwari Gupta** (supra), wherein the Supreme Court made a significant observation that for the purpose of Section 13(1)(iii), 'schizophrenia' is what 'schizophrenia' does. The Supreme Court further held in case of **Ram Narain Gupta Vs. Smt. Rameshwari Gupta** (supra), that burden of proof of existence of the requisite degree of mental disorder is on the spouse raising such claim. There can be no gainsaying that in order to make out a case for dissolution of marriage under Section 13(1)(iii) of 'the Act', the mental disorder must be of such kind and extent that makes the petitioner difficult to live with the respondent as husband and wife. In the present case, we find that the respondent/petitioner led evidence in respect of abnormal behavior of the appellant/opposite party. In our view, the Court below has duly



discussed the evidence on record that behavior of the appellant with the respondent, was such which amounted to mental cruelty and thus, constituted ground for dissolution of marriage.

23. Mr. Shailendra Singh has rightly relied on Supreme Court's decision in case of **Vinita Saxena Vs. Pankaj Pandit** (supra), paragraph 33 of which reads thus:-

“33. In our view, the trial Court failed to appreciate the uncontroverted evidence of the appellant who had proved the case on the every count. It has been established beyond doubt by the Medical doctors who had deposed as witnesses and brought the original medical record of the respondent that the respondent is suffering from mental disorder. Further ground for grant of divorce on the plea of mental insanity/mental disorder is different than cruelty. The appellant, in our view, had proved beyond doubt that the respondent suffered from mental disorder and that the appellant suffered cruelty by and at the behest of the respondent.”

24. Further, we are persuaded to form the opinion that the marriage in the present case is ‘beyond repair’, an expression used by Supreme Court in case of **K. Srinivas Rao**



Vs. D.A. Deepa (supra). The Supreme Court in the said case observed in paragraph 26 that a marriage which is dead for all purposes cannot be revived by the Courts verdict, if the parties are not willing. Explaining further, the Supreme Court observed that case of 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.

25. We have not found much force in the submission made on behalf of the appellant, while placing reliance on this Court's decision in case of **Birju Kumar** (supra) since upon perusal of the petition, seeking divorce, we find that there has been substantial compliance of Rule 7(1)(g) of the Family Court Act (Patna High Court Rule).

26. Before we part with, we must not fail to consider the plea of the appellant/opposite party's counsel that the amount of sum of Rs. 2,00,000/- as alimony is meager, considering the status of the respondent. The submission is not convincing in the absence of any material shown to this Court in respect of respondent/petitioner's ability to pay and the standard of his actual living. We, therefore, do not find any merit in this



appeal. The impugned judgment and decree do not suffer from any infirmity, requiring this Court’s interference. Taking into account facts and circumstances in totality and in view of the discussions as above, this appeal is dismissed.

27. The parties shall bear their own costs.

28. Let the L.C.R. be returned to the Court concerned in sealed cover forthwith.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.07.2018
Transmission Date	

