

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.339 of 2016

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Rajesh Kumar Sharma, aged about 33 years, son of Late Uma Shankar Sharma, resident of village- Aranda, P.S.- M.H. Nagar, District- Siwan.

... .. Petitioner/Appellant/s

Versus

Dropati Devi, daughter of Kino Lal Sharma, resident of village- Aranda, Post-Hasanpura, P.S.- M.H. Nagar, District- Siwan.

... .. Opposite Party/Respondent/s

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Appearance :

For the Appellant/s : Mr.Lalan Kumar, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN)

Date : 26-04-2019

Heard the parties.

2. This Miscellaneous Appeal has been filed for setting aside the judgment and order dated 21.08.2016 passed by Principal Judge, Family Court, Siwan in Divorce Case No. 36 of 2003 rejecting the application of petitioner-appellant under Section 13 of Hindu Marriage Act, 1955.

3. As per divorce petition, marriage between petitioner-appellant and opposite party-respondent was solemnized as per Hindu rites and customs on 10.07.2000 and, thereafter, *Gauna* was performed on 30.04.2003 and the bride (respondent) came to her matrimonial home on 01.05.2003



when it was observed by the family members of some unusual growth in her abdomen creating doubt that she was pregnant. It is alleged in the divorce petition that petitioner had no physical relation with opposite party-wife from the date of marriage till her *Gauna* and that she has been made pregnant by some other person. It is alleged that the opposite party had indulged in adultery. It has further been alleged that opposite party was examined by a doctor on 22.06.2003, who opined that opposite party was carrying a pregnancy of 16 weeks 2 days.

4. Opposite party-wife appeared and denied the allegations and has contended that family members of petitioner-husband were not ready to keep her for non-fulfillment of demand of dowry. It is contended that her father after much difficulty was able to arrange Rs. 45,000/- which was paid to the petitioner and, thereafter, *Gauna* was performed on 30.04.2003. It is contended that the petitioner and his family members demanded more money, the opposite party-wife was tortured and attempt was also made to kill her. It is stated that the petitioner and opposite party are next door neighbours and were on visiting terms and thus the allegations of petitioner becoming pregnant and being medically examined is imaginary and concocted.



5. Five witnesses have been examined on behalf of the petitioner and four documentary evidence, which has been marked as Ext. 1, 2, 3, 3/1 and 3/2 and 4 have been produced by the petitioner. Four witnesses were examined on behalf of opposite party and seven documentary evidences have been produced by her which have been marked as Exts. A and B and C to C/5.

6. P.W. 1 is Vimla Devi, who is a hearsay witness and in her deposition, she has stated that the news of pregnancy is based upon information received from her brother-in-law. P.W. 2 is Sahdeo Prasad, who in his deposition, has stated that after 3 years of marriage, *Gauna* of opposite party was performed and she came to her matrimonial home and after some days, he heard that she was pregnant for which Panchayti was convened. He is also a hearsay witness but could not disclose his source of information. P.W. 3 is Ganesh Dut Sharma, father-in-law of elder brother of petitioner and he has deposed that after 3 years of marriage, *Gauna* of opposite party was performed on 03.04.2003 and she came to her matrimonial home on 01.05.2003 and about 2-3 days, thereafter, he heard that she is pregnant upon which, Panchayti was held and family members of both sides were present and opposite party was medically



examined by lady doctor, Suman of Gopalganj and the medical report was presented in subsequent Panchayti held on 27.06.2003 in which it was found that opposite party is pregnant it was decided that opposite party will go to her parental home. Panchnama dated 27.06.2003 has been marked as Ext. 1.

7. P.W. 4 is Rajesh Sharma, who is the petitioner in this case and has stated that he had no cohabitation or physical relation with opposite party since 10.07.2003, i.e., the date of marriage and until 01.05.2003, when she came to her matrimonial home after *Gauna*. He has further stated that he had gone to his Sasural then on looking to the opposite party, he observed that she was pregnant and symptoms also indicated that she was pregnant and, thereafter, he informed about it to his family members. After 1-2 days, Panchayti was held and it was decided to get the opposite party medically examined. He states that he got her examined at Gopalganj by lady doctor Suman, who in her report, found opposite party carrying pregnancy of 15 weeks and opposite party put her signature on it and the medical report has been marked as Ext. 2. He states that after two days of medical examination, Panchayti was again convened which has been marked as Ext. 3 and signature of Kanhaiya Pandey, brother of opposite party on the Panchnama is



Ext. 3/1. He has accepted that opposite party had instituted a criminal case against him of torture and demand of dowry.

8. P.W. 5 is Ajay Sharma and has in his deposition supported the case of petitioner. In his cross-examination, he has stated that Panchayti was held on 27.05.2003 in which Panchnama was prepared and it was resolved in the Panchayati that since opposite party is pregnant, she will go to her parental home and he was present at Gopalganj when opposite party was medically examined by the doctor.

9. Opposite party no. 1 Anurudh Ji Prasad, is a retired Army Personnel and has stated that marriage was solemnized between the parties on 10.07.2000 and petitioner's side demanded one Hero Honda Motorcycle and one lakh rupees at the time of marriage, however, due to intervention of well-wishers and community members, the marriage was solemnized but Bidai was not done because of non-fulfillment of demand of dowry for three years and petitioner used to visit his Sasural and in January, 2003, father of opposite party had given Rs. 75,000/- and, thereafter, Rs. 45,000/- on 20.04.2003 where she was kept properly for 2-3 months and, thereafter, further money was demanded for which opposite party and her family showed their inability upon which she was ousted from her matrimonial



house. He has heard that petitioner has solemnized second marriage.

10. Opposite Party no. 2, Shankar Ji Sah has stated in his deposition that both sides are well known to him and she also resides at the same place and has further stated that after marriage, opposite party was not being taken to her matrimonial home because of non-fulfillment of demand of motorcycle and rupees one lakh as such, *Gauna* was performed after three years and, thereafter, she was again ousted from her matrimonial home for non-fulfillment of demand of dowry.

11. P.W. 3 Kanhaiya Kumar Pandey is the brother of opposite party who has stated about the marriage being solemnized on 10.07.2000 and that the petitioner and his family members demanded rupees one lakh fifty thousand and Hero Honda Motorcycle and other article. He states that rupees one lakh and motorcycle was given at the time of marriage, however, for non-fulfillment of demand of other articles, the opposite party was not taken to her matrimonial home for 3 years and it is after making payment of Rs. 75,000/- on 16.01.2003 and Rs. 45,000/- on 20.04.2003 that opposite party was taken to her matrimonial home on 30.04.2003 but there was further demand made and for non-fulfillment of which, the



opposite party was abused, assaulted, and driven out from her matrimonial home. He states that he went to her sister's matrimonial house where he was forced to sign along with opposite party on blank paper.

12. On considering the evidences adduced by the parties before the Family Court and on consideration and appreciation of such evidences, the Family Court has come to conclusion that petitioner/appellant has failed to prove the allegation of adultery against opposite party on which ground divorce was sought and dismissed his divorce petition.

13. We have heard learned counsel for the parties, perused the materials on record and also gone through the evidences adduced by the parties before the Family Court and on its consideration, we also arrive at the same conclusion that petitioner/appellant has failed to prove the allegation of adultery as against opposite party/wife.

14. In support of his contention, appellant has relied upon the judgment in the case of **Rishikant Sharma vs. Saroj Sharma**, reported in **PLJR (2009), SC 81**, however, same is not applicable in facts and circumstances of present case as discussed above.

15. Even otherwise in a case of divorce based on



grounds of adultery, the paramour against whom adultery is alleged, is a necessary party and in absence of whom, the case cannot proceed. In the present case, the petitioner has not made or even named the alleged paramour against whom allegation of illicit relation has been levelled against opposite party/wife which is an essential prerequisite to an allegation of adultery. On this account also, the divorce petition was fit to be rejected.

16. For the reasons stated above, we find no merit in this Miscellaneous Appeal which is dismissed accordingly.

17. Let the lower court records be returned to the court below in sealed cover forthwith.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

Nasimul/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04-05-2019
Transmission Date	N/A

