

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.676 of 2019

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Rupal Chirania @ Rupal Kedia, aged about 28 years, Gender-Female, Wife of Amit Kedia, Daughter of Pradeep Kumar Chirania @ Pradeep Chirania, Resident of Village - Marwari Tola, Ward No. 16, P.O.-Gopalganj, P.S.-Gopalganj, District-Gopalganj (Bihar); currently residing at H.N. 165, Vijay Laxmi Nagar, P.O.-Sitapur, P.S.-Sitapur, Kotwali, Dist.-Sitapur (U.P.).

... .. Appellant

Versus

Amit Kedia, aged about 35 Years, Gender-Male, son of Vinod Kumar Kedia, Resident of Marwari Tola, Ward No. 16, P.O.-Gopalganj, P.S.-Gopalganj, District- Gopalganj (Bihar).

... .. Respondent

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Appearance :

For the Appellant/s : Mr.Dineshwar Pandey, Advocate

For the Respondent/s : Mr.Saurav Anand, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA)

Date: 13-12-2023

Learned counsel for the parties have been heard.

2. The instant miscellaneous of appeal is being filed by the appellant to set aside the judgment dated 17.01.2018 and decree dated 29.01.2018 passed by learned Principal Judge



Family Court, Gopalganj in CIS MM No. 46 of 2014 and old case MM No. 47 of 2014 whereby and where-under the learned Principal Judge Family Court, Gopalganj has been pleased to grant decree of divorce on the grounds of cruelty and desertion in favor of respondent.

3. The marriage among Appellant and Respondent solemnized on 06.02.2013 according to Hindu rites and customs. After *Bidai* the Appellant-Wife went to her matrimonial house but it is alleged that her behavior was not co-operative so as to consummate marital life, the Respondent-Husband and Appellant-Wife failed to fulfill the marital obligation and cohabitation on one or the other pretext.

4. Learned counsel for the Appellant submits that the appellant is legally wedded wife of the respondent and the marriage of the appellant was solemnized on 06.02.2013 at Ambedkar Bhawan at Gopalganj with Hindu rituals. He further submits that the appellant returned back to her matrimonial house and started living and cooperating with the respondent. His family



members, subsequently demanded a sum of Rs. 10,00,000/- (Rupees ten lakhs only) and was arranged by the father of the Appellant. The counsel for appellant submits that the mother-in-law and father-in-law of the respondent were verbally abusing her and younger brother of the Respondent peeping at the appellant with furtive eye.

5. The learned counsel of the Respondent submitted that he is well acquainted with the facts and circumstances of this case and submitted that the appeal filed by the appellant is not maintainable in the eye of law and stated that the appellant has not produced any witness on her behalf and also no documentary evidence was produced to support her claim. He has further submitted that the appellant has filed a maintenance case bearing No. 2810 of 2014 u/s 125 of Cr.P.C. against the respondent in the Court of learned Family Court, Sitapur (U.P) in which the respondent had appeared. He has further submitted that he admits in Paragraph nos. 2 & 3 that no reply was given on that. With regards to



the statements made therein, it is denied by the respondent and stated that the respondent and his family members have not demanded for any amount from the appellant or her parents. Respondent- husband has further submitted that the statements made in paragraph nos. 5,6,7 & 8 need no reply. Furthermore, he denied para 9 and 10 and stated that the appellant herself had left her Matrimonial House without any reason on 02.08.2013 and the family of respondent tried several times to bring her back but she refused to come. With regards to the statement made in para 11, the counsel for the respondent admitted to the same and gave no reply. He has further given no proper reason for statement made in para 12 and wholly prayed for the dismissal of the appeal made by the appellant.

6. The arguments have been completed by only Respondent-Husband in the present matter before the Court of Principal Judge Family Court, Gopalganj vide CIS MM No. 46 of 2014 and old case MM No. 47 of 2014, whereas, the appellant-wife was remained absent before the



learned Family Court.

7. Based on the rival pleadings, the learned Principal Judge, Family Court, Gopalganj framed following issues for determination:

- I. "Whether this M.M case as framed maintainable?*
- II. Whether the applicant got valid cause of action for*
- III. dissolution of marriage or judicial separation?*
- IV. Whether the applicant is entitled to get decree for dissolution of marriage or judicial separation?*
- V. To what other relief or reliefs the applicant is entitled for?"*

8. Dealing with the Issue No. III, learned trial Court (Family Court) recorded his finding that, the appellant-wife was not ready to cohabit with the respondent- husband and marriage has not been conjugated. The Respondent- Husband has supported the pleading of para 7 and 8 of the plaint and stated that marriage between parties has not been conjugated and due to non-co-operation of respondent/appellant the life of the respondent-husband has become miserable. Non-Cooperation



and debar regarding co-habitation for long time, comes under the purview of cruelty, which is the ground for dissolution of marriage. Therefore, the Family Court has appreciated this issue and result has been decided and passed in favor of the respondent- husband.

9. Before reaching the finding by this Court, there were various unsuccessful attempts of reconciliation between the husband and wife which is evident from several orders of this Court as well as the Family Court.

10. On the basis of pleadings of the parties, the following points are formulated for determination of the present appeal:-

(I) Whether the respondent/husband is entitled to the decree of divorce on the ground of cruelty?

(ii) Whether Judgment and Decree of the Family Court is in order or not?

11. On perusal of trial Court record, total four witnesses were examined by the respondent/husband before the trial Court, appellant-wife has not adduced any evidence in



support of her pleadings. The respondent/petitioner has proved exhibit-1, certified copy of order dated-26.03.2015 passed in 2089/2014 regarding interim maintenance, exhibit-2 the certified copy of complaint case no-1677 of 2014 and exhibit-3 is notice issued by the Lok Adalat, Sitapur to Respondent-husband.

12. Witness no.1 Amit Kedia in paragraph 1 of his examination-in-chief stated that Rupal Chirania is his wife, who was married to him on 06.02.2013. After marriage she came to his house. She stayed with him for six months, meanwhile she went to her parental home on three occasions. While she used to stay with him, she used to quarrel with him frequently and used to threaten to kill herself in stabbing. She did not want to have physical relations with him. But no whisper of the date, time of cruelty was made, which is also clear from examination of witness no. PW-2 Govind Goenka and PW-3 Chedi Prasad, that there was no statement of any cruelty. Under these circumstances, the petitioner/respondent is not entitled to get decree of divorce on the basis of



cruelty.

13. As far as the relief sought by the Appellant-wife in her pleadings, she has not produced any witness on her behalf and also no documentary evidence was produced to support her claim in her written statement-cum-counter claim under Order VIII Rule 1 and Rule 2 of CPC.

14. In this regard, we consider it necessary to mention the provision of Section 13(1) (ia) of the Hindu Marriage Act, which is as follows:

“Section 13. Divorce.- (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party--

(i).....

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty;

or”

15. The **Hon’ble Supreme Court**, in para 4 of **Sobha Rani Vs. Madhukar Reddi** as reported in **AIR 1988 SC 121**, has observed that



the word 'cruelty' has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty.

First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment in the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired



into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

16. The Hon'ble Apex Court in para 5 of **Shobha Rani case (supra)** has further observed that it will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. The Judges and lawyers, therefore, should not import their own notions of life. They may not go in parallel with them. There may be a



generation gap between them and the parties. It would be better if they keep aside their customs and manners. It would be also better if they less depend upon precedents. Each case may be different. They deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful realm of cruelty.

17. The Hon'ble Supreme Court, in para 17 of the **Shobha Rani** case (**supra**) has also observed that the context and the set up in which the word 'cruelty' has been used in the section, it appears that intention is not a necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should



not make any difference in the case, if by ordinary sense in human affairs, that act complained of could otherwise be regarded as cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or willful ill-treatment.

18. The **Hon'ble Apex Court** in **Gananath Pattnaik Vs. State of Orissa** as reported in **2002(2) SCC 619** has observed that the concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. "Cruelty" for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case.

19. In para 10 of **Ramchander Vs. Ananta** as reported in **2015(11)SCC 539**, Hon'ble Supreme Court has observed that 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.

20. Keeping in view of the Judicial Pronouncements, one has to consider the evidence in matrimonial disputes. As such, we find that nothing has been proved by the Respondent-husband, which may be construed as cruelty in the strict sense of the term as provided under Section 13 of the Hindu Marriage Act. The Respondent-Husband, has failed to prove any misconduct on the part of the Appellant-Wife which could be considered grave and weighty giving reasonable apprehension to him of such a danger which could make it unsafe for him to continue the matrimonial life with the Appellant-Wife, and as such no cruelty is found to have been committed by the Appellant-Wife towards the Respondent-Husband. Hence, this point is decided against the Respondent-husband and in favour of the Appellant-wife.

21. In the light of the finding, it is needless to say that the Respondent-husband is not entitled to decree of divorce against the



Appellant-wife, because he has failed to prove the ground of cruelty to get decree of divorce against the Appellant-wife.

22. In view of the aforesaid findings, we are of considered opinion that the impugned judgment is not sustainable in the eye of law. Accordingly, the impugned judgment dated 17.01.2018 and decree dated 29.01.2018, passed by learned Family Court, Gopalganj in CIS MM No. 46 of 2014 and old case MM No. 47 of 2014 are set aside.

23. Parties shall bear their own costs.

24. The Miscellaneous Appeal No. 676 of 2019 stands allowed.

25. Let decree be drawn accordingly.

(Ramesh Chand Malviya, J)

(P. B. Bajanthri, J)

Brajesh Kumar/-

AFR/NAFR	
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