

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.190 of 2020

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Santosh Kumar Son of Mohan Pandey, Resident of Village-Jalahan, Post
Office-Manglapur, Police Station-Sangrampur, District-East Champaran.

... .. Appellant/s

Versus

1. Nitu Kumari Daughter of Bhuneshwar Dutt Dubey, Resident of Village-
Badiyaria, Police Station-Sangrampur, District-East Champaran.
2. Sohan Pandey, Son of Sashibhushan Pandey, Resident of Village-Ijara
Nawada, Police Station-Sangrampur, District-East Champaran.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Sanjay Kumar Tiwari, Adv.

For the Respondent/s : Mr.Madhurendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 31-07-2024

The present appeal has been directed against the
impugned judgment and decree dated 16.12.2019 passed by the
learned Principal Judge, Family Court, East Champaran, Motihari
in Matrimonial (Divorce) Case No. 301 of 2014, whereby and
whereunder matrimonial case filed by the appellant for
dissolution of marriage with the respondent no.1 has been



dismissed.

2. Briefly stated the fact of the appellant's case is that he is said to have married with respondent no.1 Nitu Kumari as per Hindu Customs and Rites on 25.04.2008 and during course of happy matrimonial life one daughter Nikita, who is aged about 3 year and 6 months and one son, who is aged about 1 year 6 months were born out of their wedlock of both appellant and wife/respondent no.1. It is asserted that the appellant is military man posted at Pathankot and respondent no. 1 is a Block Teacher posted in Sangrampur Block.

3. It is alleged by the appellant that respondent no.1 is said to have illicit relation with respondent no. 2, Sohan Pandey, who is sister's husband of respondent no. 1 since beginning and it is alleged by appellant that respondent no. 1 left the matrimonial house without the consent of appellant and his parents. It is alleged that when appellant asked to leave the said habit, respondent no. 1 filed petition dated 27.02.2012 before the Mohila Police Station, Motihari and when when notice was served upon the appellant and with the help of well-wishers and guardian dispute was compromised on 11.08.2012. It is also alleged that on 26.08.2012 she was living in her paternal house and it has been asserted by the appellant that he has taken best efforts to get the company of respondent no. 1 and appellant has



asserted that he has suffered mental agony on account of cruel behaviour of respondent no. 1 and appellant is not in position to live with respondent no. 1 as she is said to have illicit relation with respondent no. 2. He has stated two dates for cause of action; (i) 26.08.2012 when respondent no. 1 left appellant's house and (ii) 25.10.2014 when respondent no. 1 refused to return to appellant's house.

4. Pursuant to the notice, appellant appeared and Court has taken effort for amicable settlement between both the parties but of no avail.

5. Wife/respondent no.1 filed a written statement in which she has stated the factum of marriage and she admitted that she is a teacher and she added that sufficient dowry amount have been given during the time of marriage and she levelled allegation that her in-laws demanded dowry. It is alleged by the respondent no. 1 that her father-in-law and husband's brother tried to make illicit relation with her and when same was protested they started torturing continuously. She alleged that at one time her pregnancy was aborted on account of the fact that she was carrying female foetus. She was brutally assaulted and ousted from the matrimonial house. She gave birth to a daughter in her Naihar. She made allegation that her belongings have been snatched. She also sent letter to the Commanding Officer of her



husaband but no action was taken. She has admitted birth of a son. She filed criminal case. She has stated in her written statement that Mohan Pandey filed a false criminal case against the father and brother of respondent no. 1 in order to put pressure upon them. After investigation, case was found false and order was made to initiate proceeding against the informant Mohan Pandey under section 182, 211 of the Indian Penal Code for lodging false case and spoiling precious time and work of administration. She has denied the appellant's allegation of illicit relation with Sohan Pandey (respondent no. 2) and she is ready to continue her marriage tie with the appellant. She has added that appellant never went to her house to secure Vidai (departure).

6. Learned counsel for the appellant submits that impugned judgment and decree passed by the concerned court is without having any basis and same is not in consonance with the provisions of section 13 of the Hindu Marriage Act and learned court below failed to appreciate that respondent no. 1 withdrew herself from the family of appellant and started living separately at her parental home which is a glaring example of cruelty. Learned court below ought to have considered that respondent no. 1 used to threaten appellant and his family members to implicate in a false case. Learned court below has not considered regarding illicit relation of respondent no. 1 with respondent no. 2.



Respondent no. 1 has filed two frivolous cases which also are examples of committing mental cruelty against the appellant. The court below has not considered the statement of witnesses produced on behalf of the appellant. It is further submitted that the behaviour of respondent no. 1 was not conducive to lead a matrimonial life.

7. From the side of the appellant five witnesses were examined. PW-1 is father of the appellant (Mohan Pandey), PW-2 is Santosh Kumar (appellant), PW-3 is Chandabali Singh, P.W. 4 is Paras Pandey and P.W. 5 is Subhash Pandey. No documentary evidence has been filed on behalf of the appellant.

8. From the side of respondent no. 1 six witnesses were examined. OPW-1 Madan Dubey, OPW-2 Anand Kumar Dwivedi, OPW-3 Nitu Kumari (respondent no. 1), OPW-4 Bhuwaneshwar Dutta Dwivedi, OPW-5 Krishna Kumar Dwivedi and OPW-6 Jitendra Singh. Respondent has produced documentary evidence which are marked as Exhibit-A which is copy of the order passed on 09.06.2015 in Anticipatory Bail Petition No. 1096 of 2015 by the Sessions Judge, Motihari., Exhibit-B, which is Maintenance Case No. 348 of 2014 and Exhibit-C, which is the copy of the F.I.R. of Sangrampur P.S. Case No. 49 of 2015.

9. As per submission and contention of both parties, it



is admitted fact that wife/respondent no.1 is legally wedded wife of the appellant and both were blessed with one daughter and one son. The court recorded the finding that the appellant is not entitled to get the decree of divorce. Being aggrieved with the said finding, the appellant preferred present misc. appeal.

10. In the light of given facts and circumstances of the case, question arises:-

Whether the appellant has proved the case on the ground of cruelty as well as adultery respectively in the light of given evidence and the materials available on record or not?

11. It is necessary to analyze the evidence of PW-2 who is the appellant himself. He has admitted the fact of marriage and birth of one daughter and one son and his wife is a teacher in Govt. School. He has reiterated the fact asserted in the divorce petition. During cross-examination, he has stated that he has not filed any case for restitution of conjugal rights and he would not keep his wife. During cross-examination, he also admitted that after compromise respondent no. 1 went to Pathankot and she went to Pathankot voluntarily. He has stated that he want to keep his children but he has not taken any effort for filing application for seeking guardianship of his children. He has also admitted that he has filed the case for divorce after filing of maintenance



case by the respondent no. 1. His wife (respondent no. 1) has not performed second marriage and he has also not performed second marriage. Both resided together at Pathankot by virtue of the order of Commanding Officer. He has also admitted that during bail application he has not mentioned that respondent no. 1 is said to have illicit relation with Sohan Pandey (respondent no. 2). Other witnesses i.e. P.W. 1, P.W. 3, P.W. 4 and P.W. 5 have reiterated the version of P.W. 2 in their statement regarding marriage, birth of children and allegations made in the petition.

OPW-3 Nitu Kumari (respondent no. 1) has reiterated the factum of written statement regarding marriage, demand of dowry and she has reiterated the version of written statement. She has stated that the reason behind the occurrence is that her father-in-law and husband's elder brother tried to make illicit relation and she has admitted that she always joined her husband at matrimonial house when her husband-appellant came and when he returned back to join his service, she went away to her father's house. In the year 2012, after compromise she went to her matrimonial house for 15 days and when she found danger to her life, she went to her Naihar. Other OPWs have supported the factum of marriage and allegations against the appellant and have reiterated the version of OPW-3.

12. From perusal of evidence adduced by PW-2 it is



crystal clear that appellant has not taken any effort to bring his wife back to his house. He has stated two dates regarding the cause of action : (i) 26.08.2012 when respondent no. 1 left appellant's house and (ii) 25.10.2014 when respondent no. 1 refused to return to appellant's house, but there is no specific averment in the petition regarding the date, time, place of occurrence that his wife has committed the act of cruelty against the appellant. He has only made bald allegation against respondent no. 1 action which is not supported by any cogent evidence. During cross-examination, he has himself admitted that he is not ready to keep his wife. He has one son and one daughter. In the plaint, there is no specific date regarding the birth of one daughter and one son. When he himself has asserted that he is not ready to keep his wife during cross-examination, then, his self asserted statement to keep his wife in the plaint is totally contradictory and he framed a calculated device to settle the score by way of allegation. He himself has admitted that he is ready to keep his children but he has not taken any effort for filing application for seeking guardianship of his children and this divorce petition has been filed when maintenance case has been filed by the wife-respondent no.1. In this way, it is crystal clear that divorce petition is after thought device to take a legal recourse against the wife. He has made allegation that wife



(respondent no. 1) is said to have illicit relation with someone who is relative of respondent no. 1. The conduct of wife with regard to respondent no. 2 has not been specifically mentioned as to whether or when the conduct of wife is such that inferences can be drawn by the appellant that wife is said to have illicit relation with respondent no. 2. On the other hand, respondent no. 1 is ready to live with appellant. She has pointed out that the sole reason to keep herself separate from the appellant's house is that her father-in-law and elder brother of the husband used to make indecent behaviour which compels her to leave the matrimonial house. From the evidence of appellant, it is also crystal clear that she joined appellant at Pathankot, the place of posting, voluntarily. In this way the contentions of wife is quite appropriate that she is ready to live with her husband and if husband is available, then, in that situation she has no problem to live in her matrimonial house.

13. From perusal of record, it is crystal clear that the conduct of appellant indicates that he has not taken any genuine steps to bring his matrimonial home to normalcy as the respondent no. 1 is comfortable to reside at Pathankot, which is the place of posting of the appellant, and she has not expressed any unhappiness when she was staying at Pathankot rather the husband-appellant has filed the present divorce case when



maintenance case was filed by the respondent no.1. In other words, the divorce petition is the outcome of maintenance case. The appellant has no problem, rather he has taken a calculated method just to overcome the maintenance case. The appellant has sought divorce on two grounds of cruelty and adultery and appellant himself has not pointed out any particular circumstance with regard to specific date, time and place regarding allegation of adultery and cruelty. In this way, the statement of all the witnesses are vague and full of infirmities and the ground of cruelty cannot be taken into account as same is superficial in nature which is found in the petition of the appellant. The statement of witnesses are just like parrot version who are said to have heard that wife is said to have illicit relation with respondent no. 2. Only bald statements has been given by the appellant in the plaint regarding the cause of action that on 26.08.2012 respondent no. 1 left appellant's house and on 25.10.2014 respondent no. 1 refused to return to appellant's house as the same are totally contradictory with the evidence adduced by appellant himself during cross-examination to the effect that he is not ready to keep his wife.

14. It is pragmatically and prudently understood that the Hindu marriage is sacrament tie between the parties and the matrimonial tie cannot be destroyed at the cosmetic allegation



which has no deep rooted connectivity on the basis of material available on record. Unfortunately, the sacred union is subject to various disagreements due to which the matrimonial disputes arise between husband and wife. When there is no alternative remedy, parties choose to dissolve the marriage.

15. In the several judgments of Hon'ble Supreme Court, the ground of cruelty has been discussed in the interpretation of Hon'ble Supreme Court in the case of ***Dr. N.G. Dastane vs Mrs. S.Dastane*** reported in ***AIR 1975 SCC 1534***. The word "Cruelty" has been interpreted that what act constitutes cruelty, which is a ground for dissolution of marriage may be defined as willful and unjustified conduct of such a character as to cause danger to life, limb or health badly or mental or as to give rise to reasonable apprehension such a danger. Under statutory provision of Hindu Marriage Act under Section 10 (i) (b) of the Act what constitute cruelty must depend upon the term of this statute, which provides:

"10.(1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition to the District Court praying for a decree for judicial separation on the ground that the other party-

(b) has treated the petitioner with such



cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party;”

16. In the case of ***V.Bhagat vs D. Bhagat*** reported in ***1994 AIR 710*** the concept of cruelty has been examined through referring the case of ***Shobha Rani v. Madhukar Reddi*** reported in ***(1988) 1 SCC 105***. The word “Cruelty” has been not defined in the Hindu Marriage Act, it has been used in Section 13 (1)(i-a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or 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, it is a question of fact and degree. If it is mental, the enquiry must begin as to nature of the cruel treatment and then as to impact of such treatment on the mind of 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 conduct and its effect on the complaining spouse.

17. The crux of the various decision of the Hon’ble Supreme Court on the interpretation of word “Cruelty” is that it has to be construed and interpreted considering the type of life the



parties are accustomed to; or their economic and social conditions and their culture and human values to which they attach importance. Each case has to be decided on its own merit.

18. In the present case, appellant has self asserted in the petition that respondent no. 1 has left the matrimonial house and he made efforts to bring his wife to matrimonial home, but during cross-examination he has himself stated that he is not ready to keep his wife and he has admitted that the maintenance case has been filed earlier to the present divorce petition. In this way, divorce petition is after thought device of the appellant. In matrimonial relation, reciprocity is essential conduct to take the benefit to which he is seeking. Husband himself has asserted during cross-examination that he is not ready to keep his wife, then, his self asserted statement in the divorce petition that he has taken efforts to bring his wife back, has no meaning at all when he has not taken any legal remedy for restitution of conjugal rights. His self asserted statement in the divorce petition is totally contradictory to the evidence adduced by himself in the cross-examination. His divorce petition is consequential conduct of appellant after filing of maintenance case as same is evident from his cross-examination. His self asserted version is quite contradictory in his pleading as he has not taken pain to reconcile the matrimonial relation though his wife is also ready to live with



him and he has also asserted that wife has not performed second marriage with anyone. He has also not taken any effort to seek the guardianship of two children. When the responsibility of maintenance is imposed, just in order to escape from the responsibility of maintenance, he has sought remedy of divorce.

19. On the factum of cruelty, statement of P.W. 2 is quite vague. No prudent man can draw inference from the allegations made in the divorce petition as they are quite based on surmises and conjectures and allegation of adultery is totally calculated method just to save the skin from maintaining the wife. Not a single circumstance has been pointed out with regard to date, time and place as to what constitutes cruelty committed by the respondent no. 1 against the appellant.

20. In the present case, we are assessing the fact of the present case upon touch stone of ground of cruelty. We do not find any solitary circumstance, where it is found that the appellant has proved the case where cruelty is constituted in the light of statutory provision as mentioned above. In daily life numerous incidents have taken place but all cannot be taken into account, which is reasonably wear and tear of married life, which can be ignored.

21. On all counts keeping in view discussion made in foregoing paragraphs, we find that there is no merit in the present



appeal warranting any interference in the impugned judgment.

The Family Court has rightly dismissed the matrimonial case of appellant seeking divorce. The present appeal is dismissed accordingly, affirming the impugned judgment and order of decree.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

mcv/-

AFR/NAFR	AFR
CAV DATE	23.07.2024
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