

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.461 of 2023

Shweta Singh Wife of Pranav Kumar, Resident of Village- Jogiara, P.S.- Jale,
District- Darbhanga, at present residing at C/o and D/o Bijay Kumar Singh
House no. 33, Kidwaipuri, P.S.- Kotwali, District- Patna.

... .. Appellant/Petitioner

Versus

Pranav Kumar Singh Son of Ganesh Singh, Resident of Village- Jogiara, P.S.-
Jale, District- Darbhanga.

... .. Respondent/Opposite Party

Appearance :

For the Appellant/s : Mr.Sahil Kumar
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 12-09-2024

The present appeal has been directed against the
impugned Judgment dated 01.05.2023 and decree dated
09.05.2023 passed by the learned Additional Principal Judge,
Family Court, Patna in Matrimonial (Divorce) Case No. 04 of
2018 whereby and whereunder the matrimonial case filed by the
appellant for grant of decree of divorce has been rejected.

2. Briefly stated the fact of appellant's case is that
appellant filed divorce petition on 03.01.2018 under Section
13(A) of Hindu Marriage Act. The relevant facts are being
projected on the basis of divorce petition wherein it is asserted
by the appellant that marriage of appellant was solemnized with



respondent on 30.11.2024 according to Hindu rites and rituals at House No. 33, Kidwaipuri, P.S. Kotwali, District Patna and it is averred that gifts like 12 gram gold, 500 gram silver, television, fridge, washing machine, other necessary articles and ten lakh rupees were given to respondent at the time of marriage. It is claimed that on 01.12.2014 the appellant came to her husband's house situated at village-Jogiara, P.S.-Jale, District Darbhanga. It is further claimed that respondent started demanding more dowry and the said demand was not being fulfilled by the parents of the appellant, hence she was being assaulted by the respondent and his family members and she was ousted from the house of respondent on 05.12.2014 and it has been claimed that marriage was not consummated. It is further asserted that respondent brought the appellant back with him on 17.01.2015 on the basis of negotiation made by the parents of the appellant. It is further claimed that respondent and his family members started torturing the appellant for demand of dowry. Respondent is said to have refused to make physical relation with the appellant despite being request made by appellant/wife. It is further claimed that appellant was again driven out of the house of the respondent on 20.03.2015 by the respondent and family members and since then appellant was never taken back in spite



of the efforts made by the parents of the appellant. It is claimed that since 20.03.2015 she is living separately from the respondent without any break. It is further claimed that in the month of October, 2017 parents of the appellant contacted the respondent and requested him to keep her daughter with him but respondent clearly refused to keep the appellant/wife. Hence, respondent committed cruelty against the appellant as the appellant was deserted by the respondent since 20.03.2015 without any valid reason and marriage was not consummated.

3. Despite being all the process exhausted by the concerned court, respondent did not appear and divorce case was decided *ex parte*.

4. This court has issued all the necessary processes against the respondent/husband to secure his presence but he did not turn up before this court also.

5. Learned counsel for the appellant submitted that learned concerned court dismissed the divorce petition on the ground that allegations of torture made against the respondent do not fulfill the criterion of cruelty as envisaged in law. He further submitted that concerned court also held that since in her statement before the court, she did not make any statement that her marriage has not been consummated therefore, the said



alleged allegation was not proved. Learned Family court also held that evidence of the appellant does not show that the respondent created any such situation which compelled her to live separately from her husband. He further submitted that being aggrieved and dissatisfied with the judgment and decree passed in Matrimonial Divorce Case No. 04 of 2018, the appellant has filed the present miscellaneous appeal. Counsel of the appellant submitted that in family matters formalities of procedure has not been strictly followed to prove the fact beyond reasonable doubt. Learned counsel for the appellant submitted that respondent attitude can be witnessed that despite being sufficient service issued by the court he did not turn up either before the trial court or before this court. In this way, non-cooperative attitude of the respondent/husband can be taken into account that his conduct is not appropriate to keep his wife at matrimonial home as matrimonial life is nothing but nuptial tie between both the party to lead the conjugal life. Learned counsel further submitted that the respondent did not appear and did not deny any of the statement made by the appellant and there was no reason to disbelieve the statement of appellant and other witness. Learned counsel for the appellant further submitted that appellant has adduced her evidence before the court and she



has stated that the claim in divorce petition is true and she has reiterated that she has been residing separately from her husband on account of torture and she intends to give divorce as her husband used to assault her after taking wine.

6. The contention of divorce petition has been reiterated during the evidence adduced by the appellant herself. PW-2 reiterated the petition of divorce regarding the marriage and gift and he has corroborated the statement of PW-1 that she joined her matrimonial home on 17.12.2014 but respondent and his family members began to torture. Finally on 03.01.2018 the case of divorce was filed and both are living separately since 20.03.2015. He also reiterated that claim of divorce petition is true. In this way, both witnesses have supported the version of the facts as reiterated in the divorce petition.

7. From the side of appellant, two witnesses have been examined. AW-1 is appellant herself and AW-2/ Vijay Kumar Singh is father of the appellant. The appellant has also filed marriage card which stands marked as Exhibit 1 and couple photograph of marriage which stands marked as Exhibit 2.

8. It is necessary to analyze evidence adduced by two witnesses examined on behalf of the appellant.

9. Appellant has been examined on 02.12.2019 as AW-



1 and she has given the statement on oath. During examination in chief, her evidence is precise and concise which consists of four paragraphs. In para 1, she has stated that appellant married with respondent on 30.11.2014 at Patna according to Hindu customs and rites and she has no any issue from her marriage. She has reiterated that ten lakh rupees in cash, 12 *bhar* gold, 500 gram silver, television, fridge and all household articles were given by her father to her in-laws as gifts and after marriage she went to her matrimonial home on 01.12.2014 with her husband. In para-2 she has stated that she intends to give divorce to her husband as her husband used to assault her after taking wine. He used to torture and demand dowry and abused her parents and her also due to which she was mentally harassed. In para 3 she has stated that she has been residing separately since four years from her husband on account of torture. In para 4 she has stated that claim made in divorce petition is true.

10. Vijay Kumar Singh, who is the father of the appellant has been examined on 21.01.2021 as AW-2. His evidence is also very precise and concise. His evidence has been recorded in one paragraph. He has supported and reiterated the factum of marriage and he has stated that appellant is her daughter and also reiterated the gifts items which were given at



the time of marriage and after marriage she went to sasural where respondent and family members demanded dowry and began to torture the appellant due to which she returned back to her *Maike* on 05.12.2014. Appellant joined matrimonial home on 17.12.2014 after negotiation and after that respondent and his family members began to torture and she returned back to her father's house/maike on account of torture. AW-2 and his family members tried to pacify the respondent but of no avail and on 03.01.2018 divorce case was filed. There was no issue from the conjugal life of appellant and respondent. Since March, 2015 the appellant and respondent are living separately. AW-2 has pointed out that reason behind filing the said case was on account of torture as well as drinking habit of respondent. He has reiterated that claim of divorce filed by the appellant is true.

11. From the statement made by the AW-1 and AW-2 it is clear that divorce petition was filed on 03.01.2018. After marriage appellant joined the matrimonial home on 01.12.2014 but respondent and his family members started torturing the appellant for dowry and appellant was being mentally harassed and appellant and her parents were being abused. Appellant has clearly stated that she has been residing separately from her husband since four years on account of torture of husband



though the appellant's epigrammatic approach of adducing evidence reflects the crux of divorce petition. AW-2/ father of the appellant has reiterated the factum of marriage and in similar way, he has supported and corroborated that the appellant and respondent are living separately since March, 2015 on account of torture. He has also stated that on 17.12.2014, appellant joined the matrimonial home but she was being harassed by the respondent and his family members and she returned back to the house of AW-2 (father of the appellant). He has also supported that appellant has been residing separately from her husband and both AW-1 and AW-2 have claimed that divorce petition is true. In this way, both witnesses have supported and corroborated the divorce petition.

12. From perusal of the record, it transpires that notice has been issued by the Additional Principal Judge, Family Court but respondent did not turn up before the concerned court. Again service of notice and substituted service of notice have been taken into account by this court to secure the presence of respondent but respondent did not turn up before this court also. The concerned court has dismissed the divorce petition on the ground that appellant has failed to prove the case. The concerned court has dismissed the divorce petition on technical



ground that she has never raised any grievance before any appropriate forum or thana or any competent court regarding the cruel conduct of her husband. The appellant and other witnesses have not pointed out what conduct were committed by the respondent and family members by which appellant was being tortured. Only statement delivered by the appellant was to the effect that respondent used to drink wine and it was never told by the appellant that respondent used to assault her after taking wine and it was not found that continuous said conduct of respondent was causing bad effect upon physical and mental health of the appellant and the allegation of said conduct between husband and wife amounts to dispute regarding trivial matter and same cannot be taken into account as cruelty, though it has been stated in divorce petition that marriage has not been consummated but during evidence, she has not stated that marriage has not been consummated.

13. From perusal of the impugned judgment itself, the court has not considered the aspect of family matter where strict proof cannot be taken into account where facts asserted in the petition are corroborated by the appellant herself and other witness. The crux of the matter is that the appellant is seeking divorce on the ground of cruelty. She has put forth her grievance



before the Family Court who is handling the family dispute with regard to divorce and same is sensitive matter. The court has already issued all the process to secure the presence of the respondent but respondent did not turn up before this court or trial court and the fact asserted by the appellant in her divorce petition has not been denied by the respondent, then, court cannot act as a party. The court has to weigh the facts asserted in the divorce petition and the evidence adduced by the parties. In the present case, appellant himself has asserted that she has joined matrimonial home and she has reason to leave the matrimonial home on 20.03.2015 and no effort has been made by other party to restore the conjugal life and she has been living separately since 20.03.2015.

14. Learned counsel for the appellant submitted that she has been residing separately from her husband since 20.03.2015 and divorce petition was filed on 03.01.2018 and divorce petition has been dismissed in the year 2023 which clearly indicates that both parties are living separately for more than 8 years. In this context, we can say that the respondent has not taken pain to get his wife back since the date of separation and both witnesses have stated that claims made in divorce petition are rightful claim of the appellant. In family matters, the



proof cannot be put into category of beyond reasonable doubt but it can be put into the category of preponderance of probability.

15. Appellant is having age of 35 year at the time of filing present miscellaneous appeal and her age at the time of filing divorce petition is 30 year and she has lost her precious and valuable time in fighting litigation against the respondent who has no care for her wife. In order to escape from the liability of being a husband, he failed to appear either before Family Court or before this Court.

16. Matrimonial life where both party normally lead to live a happy conjugal life. Both party take care of other. There may be some quarrel but said quarrel may not be extended to that extent where one has nothing to do with other for so many years. In such a matrimonial life the very purpose of conjugal life has no meaning at all where one is not taking care of other. In several cases, party to the matrimonial dispute does not take interest to litigate on several forums, in that situation, party by filing divorce petition tried to end the matrimonial life which is very relevant in the present case. The appellant has filed divorce petition where she has asserted the matrimonial dispute regarding the conduct of her husband as to how she has left the



matrimonial home, though, she has joined but lastly she left and she does not want to continue her life in pendulum over all time to come. The span of life cannot be expanded and in said span of time, she has spent more or less six years in litigation of divorce petition and husband has not taken care to secure her presence and apathy of husband towards the appellant/wife causing mental agony for so many years is an example not to lead happy conjugal life rather a relation is being carried as loaded bearing unit. For such marital life the divorce is remedy on the ground of cruelty.

17. In light of ground of cruelty, it is necessary to get the interpretation of Hon'ble Supreme Court in the case of ***Dr. N.G. Dastane vs. Mrs. S. Dastane*** reported in ***AIR 1975 SC 1534***. The word "Cruelty" has been interpreted that what act constitutes cruelty, which is a ground of 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(1)(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;”

18. 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 not been 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 the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse.

19. The crux of the various decisions of the Hon’ble Supreme Court on the interpretation of the 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 merits.

20. It is necessary to quote Hon'ble Supreme Court judgment passed in ***Roopa Soni vs. Kamalnarayan Soni*** reported in ***2023 SCC OnLine SC 1127***. In para 5, 6 and 9 of the said judgment the Hon'ble Supreme Court has held as under:-

"5. The word 'cruelty' under Section 13(1)(ia) of the Act of 1955 has got no fixed meaning, and therefore, gives a very wide discretion to the Court to apply it liberally and contextually. What is cruelty in one case may not be the same for another. As stated, it has to be applied from person to person while taking note of the attending circumstances.

6. In Vishwanath Agrawal v. Sarla Vishwanath Agrawal, (2012) 7 SCC 288 this Court sufficiently sets out: |

"22. The expression "cruelty" has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.

9. This concept of "social justice adjudication" has been elaborately dealt with by this



Court in *Badshah v. Urmila Badshah Godse*, (2014) 1 SCC 188:

"14. Of late, in this very direction, it is emphasised that the courts have to adopt different approaches in "social justice adjudication", which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:

"It is, therefore, respectfully submitted that 'social context judging' is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the Judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication."

21. In the present case, the appellant is aged about 35



years and she has already lost nine years in litigation but husband has not even appeared either before this court or before trial court since the filing of divorce petition dated 03.01.2018 which clearly indicates that respondent has no emotional feelings towards the appellant and since the filing of present divorce petition, six years have elapsed and the respondent did not turn up before this court to defend his case and appellant has filed the case for reason that she suffered harassment and torturous behaviour meted out to her by respondent and his family members. She has reiterated that she has joined matrimonial home and again she left matrimonial home on account of harassment and torturous behaviour by the respondent and his family members and appellant being wife has no option rather to file divorce petition and respondent has not shown any positive attitude to secure the presence of his wife in matrimonial home. One cannot deny the neglecting attitude of the respondent-husband towards the appellant-wife and for the purpose of matrimonial life both parties should live together and to share the feeling of each other and there is long period of continuous separation and since the date of appellant left the matrimonial home up to filing of present miscellaneous appeal eight years have lapsed. Respondent/husband has not appeared



before the court to defend his case nor has he shown any positive attitude and the allegation made by the appellant/wife is still un rebutted. The standard of proof is not required strictly in family law. Here, the court has to satisfy the facts and circumstances of the case on the preponderance of probability. Here one party/wife approached the court and made allegation of cruelty and torture against second party/husband for demand of dowry and she has reason to leave the matrimonial home and she joined matrimonial home on 17.12.2014 on the basis of negotiation but again she was harassed and tortured for the reason of demand of dowry and she permanently left the matrimonial home on 20.03.2015 and since then she has not returned to the matrimonial home. Being a wife appellant approached the court for filing divorce petition. On the issuance of notice husband did not turn up before the court and husband/respondent has not rebutted the ground of allegation made in the divorce petition and appellant herself along with AW-2 proved her case that she has been residing separately and she has reason to live separately and husband has not shown any positive attitude to take care of his wife. So far as the filing of divorce petition is concerned, same has been filed on 03.01.2018 and since then six years have been elapsed.



22. In the present case, the appellant has stated that there is no issue between both the parties after solemnization of marriage.

23. It is necessary to quote ***Samar Ghosh vs. Jaya Ghosh*** reported in ***(2007) 4 SCC 511*** wherein it has been observed by the Hon'ble Supreme Court that the Court has to decide as to what would constitute cruelty under Section 13(1)(i-a) of the Hindu Marriage Act. An important guideline in the above decision is on the approach of a Court in determining cruelty. What has to be examined here is the entire matrimonial relationship, as cruelty may not be in a violent act or acts but in a given case has to be gathered from injurious reproaches, complaints, accusations, taunts etc. The Hon'ble Supreme Court at para 41 of the said judgment relied on the definition of cruelty in matrimonial relationships in Halsbury's Laws of England which is reproduced here:-

" The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or



conduct as having or lacking the nature or quality which renders them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse.

24. In the present case, it is generally understood that there cannot be a nuptial tie where one is there, another has left whereas husband and wife are the subject of nuptial tie and the mutual presence of both are required to fulfill the needs of relation to pursue the matrimonial life. In the present case, husband is not found on any occasion even for defending his case, then, pragmatically and prudently it cannot be presumed that he can show scant regard for the feelings and emotions of



the appellant. In such like situation it may lead to mental cruelty. Even he cannot share the emotional burden of his wife who is physically absent since 20.03.2015.

25. In the present case, the concerned court adopted very hyper technical and pedantic approach in declining the decree of divorce as the concerned court has not taken into account that since the date of filing of divorce petition or after issuance of notice, he has not taken pain to defend his case. Even he has not taken any effort to get his wife back through filing petition under Section 9 of the Hindu Marriage Act and the concerned court while passing the order has not taken into account the contents and allegation made by the appellant-wife and same is corroborated by the evidence in the precise and concise manner but crux of the matter is that appellant-wife has reason to live separately which has not been rebutted and same is reiterated by the appellant's father/AW-2.

26. In this way, appellant has made out a case so as to interfere with the impugned judgment dated 01.05.2023 and decree dated 09.05.2023 passed by the Additional Principal Judge, Family Court, Patna. Accordingly, impugned Judgment dated 01.05.2023 and decree dated 09.05.2023 is set aside. Accordingly, marriage of the appellant and sole respondent held



on 30.11.2014 at House No. 33, Kidwaipuri, P.S. Kotwali,
District Patna stands dissolved from this day. The present M.A.
No. 461 of 2023 stands allowed.

27. Office is directed to prepare decree of divorce
accordingly.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	AFR
CAV DATE	29.08.2024
Uploading Date	12.09.2024
Transmission Date	12.09.2024

