

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.375 of 2017

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Madhuri Devi Wife of Dileep Kumar Gupta, D/o Virendra Prasad @ Birendra Kumar Gupta @ Binda Sah, R/o Village- Shivpur Mathia, Main Road, Mairwa, P.S.- Mairwa, District- Siwan. At present R/o Main Road Guthani, P.S.- Guthani, District- Siwan.

... .. Appellant/s

Versus

Dileep Kumar Gupta Son of Vishwanath Gupta, R/o Village- Shivpur Mathia Main Road, Mairwa, P.S. Mairwa, District- Siwan.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Sajid Salim Khan, Adv.
	:	Mr. Rampravesh Nath Thakur, Adv.
	:	Ms. Sobia Mustaqe, Adv.
For the Respondent/s	:	Mr. Durgesh Nandan, Adv.
	:	Ms. Kiran Sinha, Adv.
	:	Ms. Manisha Prakash, Adv.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 04-10-2024

The present appeal is directed against the judgment dated 10.01.2017 and decree dated 28.01.2017 passed in Divorce Suit No. 36 of 2011 by the Court of Principal Judge, Family Court, Siwan whereby and whereunder the concerned court dissolved the marriage between appellant and respondent and granted decree of divorce in favour of the respondent by dissolving the marriage between the parties.

2. Briefly stated facts of the present case is that marriage of appellant with respondent was solemnized on



28.02.2008 according to Hindu Customs and Rites at the residence of father's house of appellant situated in village Guthani, P.S. Guthani, District Siwan, Bihar. After solemnization of marriage the appellant went to the house of respondent and they started living as a husband and wife but appellant never became ready for co-habitation. It is asserted by the respondent that one Bablu Kumar aged about 28 years resident of village Guthani, P.S. Guthani, District-Siwan and is next door neighbour of appellant regularly used to visit the house of respondent to meet the appellant, asserting himself to be the well wisher of appellant and her parents. It is alleged that the said person is said to have shown with appellant in objectionable condition. It is further averred that after marriage respondent stayed at her matrimonial house for ten days and she returned to her father's house without consent of respondent and his family members and during the said ten days, Bablu Kumar is said to have visited the house of respondent on several occasions to meet the appellant. It is averred that appellant is said to have illicit relation with said Bablu Kumar prior to the marriage. Behaviour of appellant was not good with the respondent/husband. During stay of appellant at the house of respondent, she has not ready to lead the conjugal life with the



respondent as she had illicit relation with Bablu Kumar. On 10.03.2008 Bablu Kumar and brother of appellant Nagendra Gupta came at the house of respondent to meet the appellant. The appellant left the house of respondent without his consent and she accompanied with Bablu Kumar and her brother with all clothes and ornaments and she is residing at her father's house due to illicit relation with Bablu Kumar. In para 10 of the divorce petition, it has been asserted that respondent tried his best to improve the relation with the appellant but she did not pay any heed as she has illicit relation with said Bablu Kumar. Since 10.03.2008, she never joined the matrimonial home and she has completely deserted the respondent and she has become lady of questionable character. The respondent made several efforts to settle the matter but it was not materialized on account of matrimonial discord and respondent is not in a position to lead matrimonial life with the appellant and respondent has asserted that he is entitled to get divorce on the ground of desertion, cruelty and adultery. The appellant has completely deserted the respondent/husband for continuous period of more than three years and he has also asserted the cause of action arose on 07.03.2011 when appellant finally refused to continue her conjugal life with the respondent.



3. Learned counsel for the appellant submitted that marriage between appellant and respondent was solemnized on 27.02.2009 as per Hindu Rites and Customs but surprisingly respondent in divorce petition mentioned the date of marriage as 28.02.2008 and he has annexed the photocopy of invitation card of marriage as Annexure-2 of memo of appeal. Learned counsel further submitted that false and frivolous allegation has been leveled against the appellant that she was never ready for cohabitation with the respondent and she was having illicit relation with one Bablu Kumar even prior to the marriage. Learned counsel further submitted that allegation leveled by the respondent against the appellant is totally false and fabricated, in fact, appellant does not know any Bablu Kumar but only with intention to malign her image and reputation in the society, he has developed well calculated device for filing the divorce case. Learned counsel further submitted that respondent and family members were harassing and torturing the appellant for non-fulfillment of demand of dowry and there is allegation that respondent and family member refused to keep the appellant without fulfillment of demand of dowry. Thereafter the appellant filed a complaint case in the court of Chief Judicial Magistrate, Siwan vide Complaint Case No. 1629 of 2011 under



Sections 147, 148, 149, 323, 498A, 406 of the IPC and $\frac{3}{4}$ of the Dowry Prohibition Act and cognizance was taken against the respondent and his family members. Learned counsel further submitted that appellant never left the house of the respondent rather she was being driven out from the house of respondent and his family members and appellant is still ready to live with the respondent as a legally wedded wife. In the aforesaid divorce suit filed by the respondent, appellant appeared before the Principal Judge, Family Court, Siwan where the trial court tried to settle the dispute between the parties by settlement where the appellant expressed her desire to live with her husband without any condition but in fact, respondent refused to keep the appellant, which is evident from the order of learned trial court dated 01.05.2012, 08.05.2012, 18.05.2012 and 01.08.2012. In this way, the contention of divorce suit that respondent has taken effective effort to bring the appellant back to her matrimonial home is meaningless and his contention of bringing back to his wife is nothing but merely a defence to seek divorce at one pretext or another in order to overcome his responsibility as a husband. In divorce suit, respondent refused to keep the appellant with him before the Principal Judge, Family Court, Siwan but in Complaint case filed on behalf of



the appellant, respondent thought that he may get in trouble and adverse order may be passed against him and as such he became ready to keep the appellant with him and accordingly, a compromise petition was filed by both the parties before the learned S.D.J.M., Siwan on 17.12.2014 and thereafter appellant started living with the respondent as a husband and wife. It is necessary to assert that appellant started living in her matrimonial home and respondent assured her that he will not pursue divorce case before the Family Court and he asked the appellant not to pursue the criminal case. Accordingly, the appellant was not pursuing complaint case before the learned S.D.J.M., Siwan as she was residing at her matrimonial home but very cleverly the respondent, although, he was keeping the appellant in his house but pursuing his divorce case before the Family court, Siwan by suppressing this fact that appellant was residing with him and obtained a decree of divorce from Principal Judge, Family Court, Siwan by misleading the court and since the appellant was residing in her matrimonial house and respondent had assured that he will not pursue the divorce case and as such no one was appearing on behalf of the appellant in both the cases before the trial court and the respondent got order in his favour after misleading the Family



Court, Siwan. Learned counsel further submitted that in view of the compromise petition dated 17.12.2014 the respondent kept the appellant for more than a year and subsequently, in the year 2016 on the occasion of Holi asked the appellant to go to her father's house on the pretext that he has to go outside in connection with business and appellant believing him went to her father's house and after lapse of many months when respondent did not take the appellant in matrimonial house and kept on giving assurance that he will take her after some time because he used to stay outside in connection with business. Thereafter, appellant suspected foul play on the part of the respondent then on 13.02.2017 sent his brother to the court to get information with regard to the cases, then, she came to know that respondent has obtained decree of divorce from the learned trial court by keeping the appellant in dark and thereafter appellant obtained the certified copy of the order passed by the learned Principal Judge, Family Court, Siwan, then, she came to know the misdeed committed by the respondent. Learned counsel for the appellant submitted supplementary affidavit to bring on record compromise petition dated 17.12.2014 filed in the court of learned S.D.J.M., Siwan in T.R. No. 2550 of 2014 and the order sheet to show that after filing compromise



petition, the appellant was taken to her matrimonial house by the respondent and started living as husband and wife and thereafter appellant left making *pairvi* in the criminal case before the learned S.D.J.M., Siwan and on the other hand, respondent was keeping the appellant in his house but he was pursuing divorce case before the Family Court, Siwan by suppressing the fact that appellant was residing with him and photocopy of said compromise petition along with order sheet from 04.01.2014 to 25.05.2015 has been annexed as Annexure-4 Series to the memo of appeal.

4. Counsel for the respondent submitted that three witnesses have been examined on behalf of the respondent to support his case and the concerned court has passed the judgment and decree of divorce on the ground of desertion and cruelty which is based on the material available on record and same is justified and legal. Hence, no interference is needed.

5. On 09.09.2024 the following order has been passed:-

The respondent is not present in Court obviously for the reason that he is in judicial custody in connection with Complaint Case No. 1629 of 2011 under sections 147, 148, 149, 323, 498A, 406 of the Indian Penal Code & 3/4 of the Dowry Prohibition Act.



2. The respondent has given a proposal for one time permanent alimony for a sum of Rs. 30 lakhs and the same is not acceptable to the appellant. On instruction, learned counsel for the respondent submitted that they are prepared to pay sum of Rs. 10 lakhs.

3. Be that as it may, perusal of the dates and events read with the records, it is clear case of abusing the process of the court of law on behalf of respondent. For example, divorce petition was filed by him in the year 2011 on the file of Principal Judge, Family Court, Siwan vide Divorce Suit No. 36 of 2011. It was decided on 10th January 2017 (ex parte). In the meanwhile, appellant-Smt. Madhuri Devi initiated criminal proceeding under section 498A I.P.C. against the respondent in which respondent cleverly proceeded to have a compromise with the appellant on 17.12.2014 to the extent that he has taken the appellant to his home (matrimonial home) as if they have compromised the matrimonial issue. Thereafter, he has obtained decree of divorce (ex parte) on 10th January, 2017. On this issue, respondent is liable for criminal proceedings under section 340 of the Cr. P.C. corresponding to section 379 of Bhartiya Nagrik Suraksha Sanhita, 2023. He has to file his affidavit as to why he shall not be subjected to criminal proceedings for abusing the process of the Court of law.



4. List this matter after three weeks i.e. on 30.09.2024. Personal appearance of appellant stands dispensed till further orders.

6. From perusal of the record, it transpires that compromise petition dated 17.12.2014 filed in the court of learned S.D.J.M., Siwan in T.R. No. 2550 of 2014, annexed at supplementary affidavit filed on behalf of the appellant bears the signature of both parties. From perusal of said compromise petition, it transpires that congenial relation has been established between appellant and respondent alongwith family members and appellant was allowed to live with respondent with all care and love. The appellant has faced no problem and there is no grievance against respondent/accused persons and hence, appellant wants to withdraw Trial No. 2550 of 2014. In the light of aforesaid facts and circumstances, the contention of appellant's counsel is quite tenable and sustainable that respondent has misled the court in order to obtain judgment and decree of divorce against the appellant.

7. Keeping in view the facts and circumstances of the case, argument advanced on behalf of both parties as well as discussion made above, the appellant has made out a case so as to interfere with the impugned judgment dated 10.01.2017 and



decree dated 28.01.2017 passed in Divorce Suit No. 36 of 2011 by the learned Principal Judge, Family Court, Siwan. Accordingly, impugned judgment dated 10.01.2017 and decree dated 28.01.2017 passed in Divorce Suit No. 36 of 2011 is hereby set aside. Accordingly, the present M.A. No. 375/2017 is allowed.

8. Pending I.A., if any, stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

Amitkumar/
shahzad

AFR/NAFR	AFR
CAV DATE	30.09.2024
Uploading Date	04.10.2024
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