

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.543 of 2012

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Ashish Sharma Baraika @ Ashish Sharma son of Sri Rohit Sharma Baraika,
R/O 281, Damdam Park, 5 No. Tank, Chauthi Mala, Laheri Building, Kolkata
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... .. Appellant/s

Versus

Sumita Sharma, daughter of Sri Sita Ram Sharma, resident of G.C. Banerjee
Road, In The Lane Of Divine School, P.S. Kotwali District - Bhagalpur, Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Vivekanand Vivek
For the Respondent/s	:	Mr. Y. Madhavi

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

And

HONOURABLE MR. JUSTICE S. B. PD. SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 26-11-2024

Heard the parties.

2. The present appeal has been filed under Section 19(1) of the Family Court Act, 1984 impugning the judgment dated 20.06.2012 passed by learned Principal Judge, Family Court, Bhagalpur in Matrimonial Case No. 121 of 2009, whereby and whereunder the marriage between the parties were dissolved and the appellant, herein was directed to pay Rs. 5000/- per month to the opposite party from the date of passing of the judgment.

3. The case of the respondent as per petition filed

before the Family Court is that the respondent got married with the appellant on 20.4.2008 according to Hindu rites and Customs at Kolkata. At the time of marriage, the father of the appellant demanded Rs. 10 lakhs as dowry but with the intervention of relatives of both sides, he agreed for cash of Rs. 4 lakhs and ornaments worth Rs. 6 lakhs. Subsequently, on 03.04.2008 an amount of Rs. 2,73,000/- (*Ext-2*) and on 10.04.2008, an amount of Rs. 1,27,000/- (*Ext-3*) were paid through Bank draft to the appellant. At the time of marriage, gifts worth Rs. 1 lakh were also given. After marriage, the respondent went to her *Sasural* at Kolkata and during her stay at her matrimonial house, she was tortured by her in-laws family members for non-fulfillment of additional Rs. 6 lakhs as dowry. The appellant also told that he would not provide her the status of wife until payment of above amount of dowry. The appellant was torturing the respondent in various ways like not providing food, not establishing physical

relationship and teasing low grade and quality of articles given in marriage. Thereafter the situation became worst and continuity of torture remained. The appellant used to come to home after consuming liquor. He began to assault and started burning her body with cigarette. The medical report of the doctor regarding spot of cigarette fire on the body of the respondent has been marked as *Exts-5 and 5/1*. The appellant is said to have continued torture in various manner to put pressure on her to bring the money. On 30.4.2009, the appellant tried to push down the respondent from the 3rd floor but somehow she prevented herself and informed the said incidence to her father on telephone. The father of the respondent came at Kolkata and filed a case in Kolkata bearing Case No. 65 of 2009 (*Ext-7*) on 6.5.2009 under Sections 498(A), 406, 34, 149, 120(B) of the Indian Penal Code. Thereafter, on 25.05.2009, a *Sanaha* was lodged by the respondent's father informing to the Officer-in-charge regarding threat from an unknown number for

withdrawing the case or to face the consequences(*Ext-6/1*). He has also filed a *Sanaha* on 20.5.2009 against the in-laws family members of the respondent who were alleged to have threatened him for withdrawing the case. The respondent claimed that appellant is having a flat at Kolkata worth Rs. 30 lakhs and runs business in several names which is mentioned in marriage invitation card and the appellant earns Rs. 2 lakhs per month. The appellant has also landed properties worth Rs. 50 lakhs at Jaipur and Vishakhapatnam. Besides these, the appellant runs money lending business and share marketing on-line. The appellant also runs a jewellery shop in partnership with Dinesh Sharma. The said Matrimonial Case No. 121 of 2009 was allowed by the learned Principal Judge, Family Court, Bhagalpur vide judgment dated 20.06.2012 and the marriage between the parties were dissolved and the appellant was directed to pay Rs. 5000/- per month to the respondent from the date of passing of the judgment.

4. It is submitted by learned counsel for the

appellant that the judgment and decree passed by the learned Principal Judge, Family Court is erroneous and fit to be set aside. The case of the respondent against the appellant is based on cruelty and demand of dowry, but in the entire record, not a single evidence has been produced to prove that any demand was ever made on behalf of the appellant. So far as the claim of the respondent that an amount of Rs. 2,73,000/- (*Ext-2*) and Rs. 1,27,000/- (*Ext-3*) were paid on 03.04.2008 and 10.04.2008 respectively through Bank draft to the appellant as dowry, the aforesaid payment was made as expense on marriage as per the culture prevalent in the *Marwari Community* since the marriage was performed at Kolkata itself. The injury report (*Ext-5 and 5/1*) of the respondent claiming burning spot by cigarette appears to be not trustworthy, as the cause of action arose at Kolkata itself, an F.I.R was filed there, but injury report was prepared at Bhagalpur which creates doubt about the authenticity of the injury report. The learned Court below

has also erred in allowing the maintenance of Rs. 5000/- per month to the respondent without appreciating the monthly income of the appellant. The respondent though claims that appellant earns Rs. 2 lakhs per month and engaged in many types of business setup, but she has not brought on record any document to prove the income of the appellant or any property registered in the name of the appellant. In fact, the appellant is engaged in a private job and getting a paltry amount of Rs. 4200/- per month. The appellant made several attempts to settle the dispute with the respondent, but all his efforts went in vein. The learned Court below has also failed to appreciate the evidence of the appellant's side and without considering the cross-examination of the witnesses came to a wrong conclusion of granting divorce and allowing permanent alimony. Now, the respondent has re-married on 07.12.2014 and presently she is living in Andhra Pradesh. A true copy of the wedding card and marriage certificate have been annexed and marked as

Annexure-B series of the counter affidavit which has been filed on behalf of the respondent herself.

5. It is submitted by learned counsel for the respondent that marriage between the appellant and the respondent are admitted. At the time of marriage, the respondent's side had transferred an amount of Rs. 4 lakhs in the account of the appellant as dowry and in the marriage itself, an ornament worth Rs. 6 lakhs and gifts worth Rs. 1 lakh were given to the appellant. The respondent made several efforts to reconcile the issue with the appellant but due to the torture and assault, the matrimonial relationship could not be continued. The respondent has also brought on record copy of the F.I.R, copy of *Sanha* entry, injury report, pay-in-slip of the amount which were transferred to the appellant to prove her case. The respondent further submits that learned Principal Judge, Family Court had dissolved the marriage and directed the appellant to pay Rs. 5000/- per month as a permanent alimony but till date, not a single penny

has been given by the appellant to the respondent. Though, the respondent admits that after dissolution of marriage, she has re-married on 07.12.2014.

6. Considering the rival submissions of both the parties, this Court finds that the appellant solemnized marriage with the respondent on 20.04.2008. At the time of marriage, an amount of Rs. 4 lakhs (*Exts-2 and 3*) was transferred in the account of the appellant. The respondent's side has also filed Case No. 65 of 2009 (*Ext-7*) against the appellant and other family members under Sections 498(A), 406, 34, 149, 120(B) of the Indian Penal Code which suggests that matrimonial relationship between the appellant and the respondent was not cordial and lastly it could not sustain. Now, the respondent has re-married again on 07.12.2014. Hence, now there is no scope of settlement of matrimonial dispute and setting aside the impugned judgment will serve no purpose.

7. In that view of the matter, the judgment and

decree passed by the learned Principal Judge, Family Court, Bhagalpur in Matrimonial Case No. 121 of 2009 is upheld with a modification to the extent that the appellant is directed to make payment of Rs. 5000/- per month as directed by learned Principal Judge, Family Court, Bhagalpur from the date of passing of the judgment till the date of re-marriage of the respondent.

8. Accordingly Miscellaneous Appeal No. 543 of 2012 stands disposed of.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

AFR/NAFR	NAFR
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