

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.345 of 2021

Priyanka Pandey @ Priyanka Devi Daughter of Jugal Kishor Pathak, Resident of Village-Sundrapur, P.S.-Kesariya, District-East Champaran.

... .. Appellant/s

Versus

Abhishek Pandey Son of Shri Kaushal Kishor Pandey Resident of Village -Hansi Malahi, P.S.-Bhagwanpur District-Vaishali.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Rajesh Ranjan

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY)

Date : 07-03-2025

The present appeal is directed against the judgment dated 04.03.2020 and decree dated 16.03.2020 passed in Matrimonial (Divorce) Case (suit) No. 59 of 2018 by Shri Anil Kumar Sinha, Principal Judge, Family Court, Vaishali at Hajipur (hereinafter to be referred to as ‘the impugned judgment’) whereby and whereunder the learned Trial Court had dissolved the marriage and allowed the divorce case filed by the respondent on the ground of desertion and cruelty.

Case of the Respondent

2. Briefly stated the facts of the present case is that the appellant is legally wedded wife of the respondent and out of



the wedlock, she gave birth of a male child on 14.11.2016 at her parental house. It is stated that during her stay at Kolkata where father of the respondent was working, the behaviour of the appellant was not normal and whenever she went to attend nature call in the toilet, she used to sit there for about an hour. It is also stated that she always used to talk on mobile and on query, she disclosed that she was in love with a boy with whom she wanted to marry but her father has married with the respondent against her will. Although the respondent asked her to forget the past and to continue with his conjugal life. It is further stated that she committed cruelty with his parents and refused to cook for them. The appellant was again taken to Kolkata on 02.08.2017 where she allegedly tried to commit suicide. She also tried to assault the respondent. In the meantime, the marriage of the younger sister of the respondent was settled in Lucknow. However, the appellant insisted upon going to her parental house and called her father. It is further stated that the brother of the appellant along with six other unknown persons came and manhandled the respondent and his father. The respondent allegedly collected her articles and went away to her parental house. The respondent stated that he tried his best to bring back the appellant but she refused. Finally on



11.02.2018, she refused to come to her sasural.

Case of the Appellant

3. As per the written-statement, the suit of the plaintiff/respondent is not maintainable and is fit to be dismissed. It has been admitted that the defendant/appellant is legally wedded wife of the respondent and his father was working as a Security Guard at Kolkata, where the plaintiff's father was living along with the plaintiff/respondent at residence of Estate Manager Flat, Woodland and Syndicate, Alipur Road, Kolkata and has good relationship with the plaintiff and his family. It is also admitted that out of the wedlock, she gave birth of a male child on 14.11.2016 at her parent's house. Other statements and allegations made in the plaint has been denied by the defendant. It has been stated that the respondent has demanded a Alto Car in dowry and on non-fulfillment of demand of dowry she was ousted from her matrimonial house on 13.11.2017. So, the plaintiff has filed the present case to save his skin from the case of dowry. It has been stated that the appellant is ready and willing to lead the conjugal life with the plaintiff and has prayed to dismiss the suit.

4. Learned counsel for the appellant has submitted that



the trial Court had committed a grave error of law and facts by holding that the appellant has deserted the respondent for more than two years i.e. from 13.11.2017. A bare perusal of the provisions as contained in Section 13 (I-b) of the Hindu Marriage Act, it is apparent that the period of desertion should not be less than 2 years immediately preceding the presentation of the petition. In the present case, the petition was presented on 28.02.2018 barely after three months from the date of alleged desertion. Thus the petition for divorce on the ground of desertion itself was not maintainable. From perusal of the materials on record, it is apparent that the respondent treated the appellant with cruelty and threw her out of her matrimonial home. Thus, the respondent himself was responsible for forcing the appellant to leave him her parental house. She has not been living with her father on her own choice rather she has been forced by the respondent to live separately. It has also been argued by the learned counsel for the appellant that though there are two grounds for divorce in the written petition of the respondent, learned trial Court has disbelieved the ground of cruelty and has found that only the ground of desertion has been proved by the respondent.

5. In the counter affidavit, the respondent has submitted



that the trial Court has rightly observed that the appellant has deserted him and the judgement and decree suffer from no illegality or irregularity.

6. In trial Court following issues were framed:

(1) Is the suit, as framed maintainable?

(2) Whether the applicant has got valid cause of action and right to sue ?

(3) Whether the behaviour of opposite party is cruel towards the applicant and his family members ?

(4) Whether the applicant has been deserted by the opposite party ?

(5) Whether the applicant is entitled to get a decree of divorce against the opposite party ?

(6) To what other relief/relieves, the applicant is entitled.

7. Applicant/respondent has examined altogether three witnesses. They are following:-

1. Abhishek Pandey (P.W.-1)

2. Kaushal Kishore Pandey (P.W.-2)

3. Meera Pandey (P.W.-3)

(i) Abhishek Pandey (P.W.-1) has stated in his cross-examination that after the marriage, he lived with his wife at Kolkata till four months and after that she asked him to sent her back to her parent's house otherwise she will commit suicide,



the nature of his wife cruel and abnormal. She told him that she does not want to marry to him. In the year, 2016, she gave birth of a male child at her parent's house and on 07.08.2017. She came back and again she started threatening him that she will commit suicide and once she has tried to commit suicide she used to caught his collar and she has not attended the marriage ceremony of his sister. He has also filed a suit for Restitution of Conjugal Right but she did not agree to come back.

(ii) Kaushal Kishore Pandey P.W.-2, father of the respondent. He has also supported the case of the respondent in his examination in chief. He has stated that the appellant used to talk on mobile for two hours more and on being objected she became anger and she used to to caught ear of his wife and his collar also. He has further stated that she refused to participate in the marriage of his daughter and called her father, who came with unknown persons enter into his house and the defendant went away with them. In his cross-examination, he has stated that he has informed the police regarding the occurrence committed by her father. He has also stated that the appellant has lodged a criminal case for demand of dowry.

(iii) Meera Pandey (P.W.-3) is the mother of the respondent. She has stated that the appellant used to sit in



bathrooms till hours and she has stated that she used to love another person and her parents have forcibly married with the respondent and she used to caught collar of the respondent. She has stated at paragraph-3 of the cross-examination that the father of the appellant came there along with 10 unknown persons and have went away with his daughter and all her belongings.

8. The appellant/opposite party has examined altogether two witnesses. They are following:

1. Priyanka Pandey D.W.-1

2. Jugal Kishore Pathak D.W.-2

(i). D.W.1 Priyanka Pandey is the defendant herself. She has denied all the allegations in her examination-in-chief. She has not stated anywhere in her examination-in-chief that her husband and in-laws have ever demanded dowry or torture her for non-fulfillment of demand of dowry and torturing her and for her maintenance.

(ii). D.W.2 Jugal Kishore Pathak is father of the defendant. He has stated that after the marriage Abhishek Pandey, the plaintiff and his parents started demanding Rs. 5,00,000/- and an Alto Car and on denial they assaulted the defendant and tortured her and on 13.09.2017 he went to the



matrimonial house of his daughter and requested them and has paid them Rs. 2,00,000/- but they told that his daughter is not beautiful nor modern and if he will not pay the whole amount divorce case will be filed against her daughter and on 13.11.2017 the plaintiff and his parents have assaulted his daughter and ousted her from his matrimonial house. He has stated in his cross-examination that his daughter Priyanka has filed a dowry and a case for maintenance against her husband in the Motihari Court and since 13 Nov. 2017 his daughter Priyanka is living separately from Abhishek.

9. Apart from this the applicant/respondent has adduced following documentary evidences which are given as under:

Ext. 1 :- Photo copy of notice issued by learned Principal Judge, Family Court, Motihari, East Champaran.

Ext.2 :- Photocopy of plaint of Maintenance Case No. 145 of 2018.

Ext. 3 :- Photocopy of plain of Informatory petition No. 1646 of 2016.

Ext. 4 :- Photocopy of petition of Kaushal Kishore pandey dated 13.11.2017 addressed to the Officer in- charge, Alipore Police Station, Kolkata-27. Ext. 3/A :- Photocopy of the plaint of Informatory Petition No. 4238/17.



10. As trial Court has disbelieved the theory of cruelty and has only decreed the case on the basis of desertion, only issue before this Court is whether the respondent is able to prove the ground of desertion and second whether he is entitled for any relief or not ?

11. From perusal of the trial Court Judgment and the application of the respondent, it is clear that the trial Court has relied exhibits-3 & 4 and has come to the conclusion that the respondent had deserted him on 13.11.2017 and that as she is living separately from that date, the trial Court has presumed that desertion has been proved by the respondent/applicant. It is the admitted fact that the appellant has gone with her father on 13.11.2017 and from that date she is living at her paternal house. From perusal of the evidence of the witnesses produced by the parties, it is clear that as per the evidence of the witnesses of applicant/respondent, it is clear case that the appellant has gone with her father on 13.11.2017 with her own choice whereas the evidence of the opposite party/appellant shows that she was being ousted from the matrimonial house by the respondent. In any view of the matter, if it is presumed that the appellant has gone with her father on 13.11.2017 and has gone to her paternal house on the same day and after that



she has not returned to her matrimonial house then also having regard to the provisions of Section 13(1-b) of the Hindu Marriage Act which provides that 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-b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. From perusal of these provisions, it is clear that the completion of the period of two years will be counted on the date of presentation of petition. From perusal of the Matrimonial (Divorce) Case No. 59 of 2018, it is clear that the divorce petition was presented on 28.02.2018. As per the case of the applicant/respondent, the appellant/Opposite party has deserted him on 13.11.2017 so, it is clear that on the date of the presentation of the petition, the total period of desertion was three months and odd days. It is clear from the above discussions that the learned trial Court has not considered the evidence of the parties in view of the provisions of Section 13 (i-b) of the Hindu Marriage Act and has not counted the period



of desertion accordingly. The view taken by the trial Court that applicant has been able to prove that the opposite party has deserted him is *prima facie* erroneous.

12. In view of the discussions made in foregoing paragraphs and the facts and circumstances of the case, the Principal Judge, Family Court has committed error in dismissing the appellant’s Matrimonial (Divorce Case No. 59 of 2018). Therefore, judgment dated 04.03.2020 passed by the learned Principal Judge Family Court, Vaishali at Hajipur is hereby set aside and present M.A. No. 345 of 2021 stands allowed.

(P. B. Bajanthri, J)

(Ashok Kumar Pandey, J)

Jagdish/-
shubham/-

AFR/NAFR	NAFR
CAV DATE	08.01.2025.
Uploading Date	18.03.2025
Transmission Date	18.03.2025

