

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.402 of 2021

Binay Sharma @ Binay Kumar Sharma Son of Late Narayan Prasad Sharma
Resident of Dina Sah Lane Mundichak, Tilkamanjhi, District- Bhagalpur.

... .. Appellant/s

Versus

Ruhi Sharma Daughter of Binod Sharma Resident of Mohalla- Churihari Tola,
Police Station- Adampur, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Dr. Manoj Kumar
For the Respondent/s : Mr. Ravi Bhushan

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 : 30-06-2025

Heard the parties.

2. The appellant has come up in this appeal against judgment and decree dated 26.03.2021 passed by the learned Principal Judge, Family Court, Bhagalpur in Matrimonial Case No. 207 of 2017, whereby the petition filed by the respondent-wife (Ruchi Sharma) under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (in short 'the 1955 Act') seeking dissolution of marriage by a decree of divorce, has been allowed and the appellant was directed to



make payment of Rs. 15,00,000/-(Fifteen Lakhs) as permanent alimony.

3. Succinctly, the marriage of appellant was solemnized with the respondent on 29th January, 2016 as per Hindu rites and ceremonies. The marriage was duly consummated; however, no child was born from the wedlock.

4. The pleaded case of respondent-wife in her petition under Section 13 (1)(i-a) of the 1955 Act was that her marriage was performed with the appellant on 29.01.2016 in which her parents spent Rs.10-11 Lakh. After marriage respondent went to the house of appellant on 30.1.2016 but appellant instead of establishing normal sex-relation started committing unnatural sexual atrocities and on protest, appellant assaulted and abused her. The appellant, his mother, brother, and *Bhabhi* started torturing the respondent for dowry of Rs.3 Lakhs cash, motor-cycle, Inverter etc. The appellant also prepared videography of respondent of her unnatural sex relation in naked state, hence the respondent left the house of the appellant on 13.06.2016 and came to her parental house. The



respondent, thereafter, filed Complaint Case No. 1030 of 2016 against appellant and his family members on 16.6.2016 under Sections 498A, 377 of the Indian Penal Code and Section 3/ 4 of the Dowry Prohibition Act in which cognizance was taken. It is further alleged that after filing of the complaint, the appellant along with his brother and other two persons arrived at the parental house of respondent and threatened to withdraw the case for which Kotwali (Adampur) P.S. Case No.353/16 was lodged on 24.07.2016 under Sections 341, 447, 323, 504, 506, 34 of the Indian Penal Code. The appellant, in order to save his skin has also filed Complaint Case No.1457 of 2016 which was referred to police station and accordingly Kotwali (Tilkamanjhi) P.S. Case No.80 of 2017 was lodged under Sections 364, 447, 341, 323, 504, 380, 120(B) of the Indian Penal Code and Section 27 of the Arms Act in which, the police, after investigation, submitted final form and did not find the case true as against the respondent's side. The respondent being fed up with the atrocities meted out by the appellant, went to Pune to get commercial education but the appellant also reached there and he assaulted her



and threatened to withdraw the case. The matrimonial relation between the appellant and respondent has already irretrievably broken down and there is no hope of restoration of their conjugal life.

5. The appellant-husband appeared and filed his written statement and has submitted that the instant case is fit to be dismissed as it is not maintainable either in eye of law or on fact. It is pleaded that respondent has been misguided by Vimmi Sharma who has adopted her. Vimmi Sharma has settled the marriage of respondent with the appellant to take undue advantage and take away the entire property of appellant. All the expenses of marriage were borne by family members of appellant. Not only this, the mother of appellant had offered ornaments worth Rs.10 Lakhs to the respondent which were kept by Vimmi Sharma. The appellant has already filed matrimonial case No. 289 of 2016 under section 9 of Hindu Marriage Act for restitution of conjugal rights and thereafter present suit for divorce has been filed by the respondent. The respondent is very ambitious woman and never rendered her good wishes to her husband and in-laws. The respondent also



assaulted her mother-in-law at different times and threatened to transfer the property in her own name. The appellant had never given threat, nor ill behaved, humiliated or quarreled with any in-laws family members and all the allegations made against the appellant-husband are fake with a view to take divorce from him. Hence, the divorce petition is liable to be dismissed.

6. After conclusion of trial, learned Principal Judge, Family Court, Bhagalpur held that respondent-Ruhi Sharma is entitled for a decree of divorce along with permanent alimony. Hence, the marriage between the appellant and the respondent were dissolved and the appellant-husband was directed to make payment of Rs. 15,00,000/-(Fifteen Lakhs) as permanent alimony to the respondent-wife within two months of passing of the order. The appellant-husband, aggrieved by the said judgment of the learned Family Court filed the instant appeal before this Court.

7. The divorce has been granted on the grounds of cruelty and desertion. A perusal of the Impugned judgment would show that the following acts of cruelty and desertion



were considered by the Family Court, as proved:-

a) Cruelty:

(i) From oral and documentary evidence, it is evident that the couple got married about five years back. The marriage took place on 29.01.2016 and they are residing separately w.e.f. 13.06.2016.

(ii) Admittedly, the parties got separated on 13.06.2016 and they were engaged in filing cases against each other as respondent-wife has filed Complaint Case No. 1030 of 2016, Kotwali (Adampur) P.S. Case No.353/16 whereas appellant-husband has filed Kotwali (Tilkamanjhi) P.S. Case No.80 of 2017.

(iii) The Hon'ble Apex Court in "Jagbir Singh v. Nisha", (2015) 9 RCR (Civil) 873, "Rishipal v. Luxmi Devi", (2009) 4 RCR (Civil) 811, "Dharampal v. Smt. Pushpa Devi", 2004 RCR (Civil) 717, "Major Ashish Poonia Mrs. Nilima Poonia"; "Mangayakarasi v. M. Yuvaraj" (2020) 3 SCC 786, "K. Srinivas Rao v. D.A. Deepa", (2013) 5 SCC 226 and "K. Srinivas v. K. Suneetha" (2014) 16 SCC 34, has held that making unfounded allegations and filing false complaints against



the spouse or his relatives amount to cruelty to the other spouse and held that acquittal of respondent-husband and his mother in criminal case filed by appellant in fact goes to show that respondent-husband has indeed faced matrimonial cruelties at the hands of appellant-wife.

(v) It was observed by the Family Court that the couple have been living separately for about five years and this long separation has in fact put them in such a situation that matrimonial bond has broken down beyond repair. It was further observed that there are no chances of the couple living together and such a marriage is now unworkable and can be a source of great misery for the parties, if allowed to be continued.

8. Accordingly, it was concluded that the respondent-wife has been able to prove the ground of cruelty.

b) Desertion:

(i) The Family Court observed that the respondent-wife left her matrimonial house on 13.06.2016 and since then they are living separately. There was no effort on the part of respondent-wife to return to fold of



appellant-husband. Though the appellant-husband has filed a petition under Section 9 of the Hindu marriage Act for restitution of conjugal rights but all his efforts went in vein since the respondent-wife was not agree to live with the appellant.

(ii) It was concluded that the respondent-wife had put the relationship to a permanent end and had not joined the appellant-husband. She has not filed any case under Section 9 of the 1955 Act for restitution of conjugal rights. Hence, it is evident that the factum of separation, intention to bring cohabitation to a permanent end, goes to establish that respondent has deserted the appellant continuously for a period of more than two years.

9. In the aforementioned circumstances, present appeal has been filed before this Court.

10. Learned counsel for the appellant-husband submits that the learned Family Court has erred in law and facts in allowing the divorce petition filed by the respondent-wife. It is further submitted that much prior to filing of the instant Divorce case, the appellant-husband had filed Matrimonial Suit No. 289 of 2016 against the



respondent-wife for restitution of conjugal rights under section 9 of the Hindu Marriage Act and on coming to know about said case, the respondent has filed Matrimonial Case No. 207 of 2017 for a decree of divorce. The appellant has further submitted that the respondent-wife, during pendency of the Matrimonial Case No. 207 of 2017 has performed second marriage on 10.07.2019 with one Awadhesh Kumar Jha. Hence, she is not entitled to get single farthing from the appellant towards alimony.

11. We have heard learned counsel for the appellant and perused the paper-book as well as the impugned judgment.

12. The following question arises for consideration before this Court: "Whether the decree for divorce granted on the grounds of cruelty and desertion by the Family Court, requires interference?"

13. In **"Jagdish Singh v. Madhuri Devi", (2008) 10 SCC 497**, the Hon'ble Supreme Court while considering the scope of interference by first appellate court, observed as under:-

"24. It is no doubt true that the High



Court was exercising power as first appellate court and hence it was open to the Court to enter into not only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a re-hearing of the main matter and the appellate court can re-appraise, re-appreciate and review the entire evidence "oral as well as documentary" and can come to its own conclusion.

25. At the same time, however, the appellate court is expected, nay bound, to bear in mind a finding recorded by the trial court on oral evidence. It should not forget that the trial court had an advantage and opportunity of seeing the demeanour of witnesses and, hence, the trial court's conclusions should not normally be disturbed. No doubt, the appellate court possesses the same powers as that of the original court, but they have to be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the trial court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of the trial court in appraisal of evidence is



erroneous, contrary to well-established principles of law or unreasonable..."

14. Further, the concept of cruelty within the meaning of Section 13 (1)(i-a) of the Hindu Marriage Act has been explained by the Hon'ble Supreme Court in case of "**Joydeep Majumdar v. Bharti Jaiswal Majumdar**", **(2021) 2 RCR (Civil) 289**, by observing as under: -

"10. For considering dissolution of marriage at the instance of a spouse who allege mental cruelty, the result of such mental cruelty must be such that it is not possible to continue with the matrimonial relationship. In other words, the wronged party cannot be expected to condone such conduct and continue to live with his/her spouse. The degree of tolerance will vary from one couple to another and the Court will have to bear in mind the background, the level of education and also the status of the parties, in order to determine whether the cruelty alleged is sufficient to justify dissolution of marriage, at the instance of the wronged party..."



15. In "**Samar Ghosh v. Jaya Ghosh**", (2007) 4 **SCC 511**, Hon'ble Supreme Court gave illustrative cases where inference of mental cruelty could be drawn even while emphasizing that no uniform standard can be laid down and each case will have to be decided on its own facts.

"85. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other



party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to



mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few Isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly if



the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have Intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty..

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty..."

16. On the envil of the aforesaid principle of



Hon'ble Apex Court when we examine the present case in the light of the evidences adduced on behalf of the parties, it becomes clear that there is long separation between the parties and the matrimonial bond is virtually beyond repair and in this circumstance, if divorce is not granted, it will not serve the sanctity of marriage. The appellant-husband has also filed a petition before learned Principal Judge, Family Court that he has no objection, if decree of dissolution of marriage is passed in favour of the respondent-wife. The aforesaid averment of the appellant also finds mentioned in its order dated 12.01.2021 of the Trial Court. The appellant has also stated before this Court in para 11 of his memo of appeal that he has filed a petition that decree of divorce be passed in favour of the respondent.

17. In view of forgoing discussion, we conclude that respondent-wife has made a ground for grant of decree of dissolution of marriage on the ground as mentioned in Section 13(1)(i-a) of the Hindu Marriage Act, 1955."

18. Considering the totality of circumstances, in our considered view, learned Family Court has rightly



passed a decree of dissolution of marriage between the parties and we see no reason as to why, the findings as given by the learned trial Court should not be upheld.

19. Before we part with this order, it is apposite to state here that while granting the decree of divorce, without assessing the assets and liabilities of the parties, learned Family court has awarded Rs. 15,00,000/-(Fifteen Lakhs) to the respondent-wife towards Permanent Alimony as neither appellant nor respondent has filed their assets and liabilities statement nor it was required by the learned Principal Judge, Family Court while granting permanent alimony of Rs. 15 lakhs in favour of the respondent-wife.

20. This Court, vide order dated 10.02.2025 had directed both the parties to file their assets and liabilities statement. The office note dated 02.05.2025 suggests that neither appellant nor respondent has brought on record their assets and liabilities statements.

21. Here it is useful to refer to Section 25 of the 1955 Act, which reads thus:

*"Section 25. Permanent alimony
and maintenance: (1) Any Court*



exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the appellant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant (the conduct of the parties and other circumstances of the case), it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent."

22. In the light of the language used in Section 25 of the 1955 Act, it is clear that claim under Section 25 of the Act has to be made on an application furnishing all details regarding his or her own income or other property. Further an opportunity has to be given to the other side to put forth his/her defence.



23. The quantum of maintenance is subjective to each case and is dependent on various circumstances and factors. The Court needs to look into factors such as income of both the parties; conduct during the subsistence of marriage; their individual social and financial status; personal expenses of each of the parties; their individual capacities and duties to maintain their dependents; the quality of life enjoyed by the wife during the subsistence of the marriage; period of marriage and such other similar factors. Neither appellant-husband nor respondent-wife has filed his/her assets and liability before Principal Judge, Family Court, Bhagalpur and without assessing the aforesaid aspects, in a flimsy manner, permanent alimony of Rs. 15 lakhs was directed to be paid to the respondent-wife, which is not sustainable in the eye of law. The grant of permanent alimony should be directed after assessing the social, financial status of both the parties and also after appreciating the burden of liabilities incurred either on husband or wife in light of Hon'ble Supreme Court decision in the case of *Rajnish vs. Neha* reported in (2021) 2 SCC 324 read with *Aditi @ Mithi vs. Jitesh*



Sharma reported in ***(2023) SCC OnLine SC 1451*** read with ***Pravin Kumar Jain vs. Anju Jain*** reported in ***2024 SCC OnLine SC 3678***.

24. Be that as it may, Section 25 of the 1955 Act itself envisages that the wife can initiate proceedings for grant of permanent alimony even after the decree of divorce. Therefore, the court does not become *functus officio* with the passing of the decree and continues to have jurisdiction to award alimony even thereafter.

25. Accordingly, we deem it fit and proper to remand the matter back to the learned Principal Judge, Family Court, Bhagalpur only with regard to decide the quantum of permanent alimony. The Court below is expected to direct the appellant-husband and respondent-wife to file details regarding their assets and liabilities in light of Hon'ble Supreme Court decision in the case of ***Rajnesh vs. Neha*** reported in ***(2021) 2 SCC 324*** read with ***Aditi @ Mithi vs. Jitesh Sharma*** reported in ***(2023) SCC OnLine SC 1451*** read with ***Pravin Kumar Jain vs. Anju Jain*** reported in ***2024 SCC OnLine SC 3678*** and after analyzing their assets and liabilities, pass appropriate order



with regard to the permanent alimony within a period of three months from the date of passing of the judgment. Both parties are directed to co-operate in expeditious disposal of the above matter. In case of non-appearance of either party, proper order shall be passed in accordance with law.

26. In view of the above discussions, M.A. No. 402 of 2021 is hereby disposed of.

27. Pending I.A(s), if any, stand disposed of.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

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