

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.248 of 2010

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Kumari Neelam Devi, wife of Sri Satish Kumar, resident of Village and Police Station-Karpi, District-Arwal, at present residing at Village-Mungila, Police Station-Paliganj, District-Patna

... .. Appellant/s

Versus

Satish Kumar, son of Sri Ram Pravesh Singh, resident of Village and Police Station-Karpi, District-Arwal

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Satyanand Sharma, Advocate
For the Respondent/s : Mr. Shivendra Prasad, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE S. B. PD. SINGH

CAV JUDGMENT

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

Date : 14-10-2025

Heard the parties.

2. The appellant-wife (Kumari Neelam Devi) has come up in this appeal against judgment and decree dated 23.02.2010 passed by the learned Principal Judge, Family Court, Jehanabad in Matrimonial Case No. 21 of 2009, whereby the petition filed by the respondent-husband (Satish Kumar) under Sections 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 (in short 'the 1955 Act') seeking dissolution of marriage by a decree of divorce, has been allowed and divorce stands granted. However, an amount of Rs. 2500/- per month was directed to be paid by the



respondent-husband to the appellant-wife for maintenance of her children.

3. Succinctly, the marriage of appellant- Kumari Neelam Devi was solemnized with respondent-Satish Kumar in the year 1996 as per Hindu rites and ceremonies. The marriage was duly consummated; and one son and one daughter was born out of the wedlock. Third child had died in appellant's womb.

4. The pleaded case of the respondent-husband in his petition filed before the Family Court is that the marriage of the respondent-husband with the appellant-wife was solemnized in the year 1996. The marriage was consummated and out of the wedlock, one female-child and one male-child were born. The respondent-husband was having a joint family consisting old parents and a brother who was in service and living at Rurkhi. The respondent-husband was working as a Constable at Ranchi and he insisted his wife (appellant) to live with him but she was adamant to live at her parents' house. The respondent-husband claims that his wife (appellant) is a woman of questionable character and she herself does not want to live



with him and she deserted the respondent-husband since 2006. The respondent-husband made every efforts to bring the appellant-wife back to her matrimonial house but all his efforts went in vein. Ultimately, finding no other option, the respondent-husband has filed the present divorce petition seeking dissolution of marriage by a decree of divorce.

5. In response to the notices/summons issued to the appellant-wife, she has appeared and filed her written statement. In her written statement, the appellant-wife has denied all the allegations as levelled by the respondent-husband. She denied this fact that she does not want to live with her husband at his place of posting or she does not want to live with his parents. Though she admits to have filed a criminal case against the respondent-husband and other in-laws family members. The appellant-wife during hearing of the Maintenance Case No. 11 of 2009 has suspected that respondent-husband might have performed second marriage and he may oust the appellant-wife and her children from her matrimonial house. The appellant-wife has also claimed for a maintenance of Rs. 10,000/- per month for herself and the maintenance of her two children



as she has been residing at her parents' house and her parents have also no source of income to garnish the needs and requirements of the appellant and her children.

6. In Maintenance Case No. 11 of 2009, the respondent-husband has filed his show-cause claiming that the present maintenance case was filed after filing of the divorce petition. The respondent further submitted that appellant herself does not want to live with the respondent as she has illicit relationship with a male member of her family relation. The respondent-husband is ready to bear the expenses incurred on the education of his children, if they are admitted in the residential school at Jehanabad, Gaya and Patna. The respondent-husband is in government service and without divorcing his first wife, he will not perform second marriage.

7. The respondent-husband has produced five witnesses in order to prove his case. They are P.W. 1 Satish Kumar (appellant himself), P.W. 2 Narayan Singh, P.W. 3 Bipin Kumar, P.W. 4 Ram Pravesh Singh and P.W. 5 Dhananjay Kumar.

8. The respondent-husband has also brought on



record some documentary evidence which are:-

Ext-1 List of family members

Ext-1/A Medical Certificate of mental treatment at P.M.C.H

Ext. 1/B Reservation of cancellation ticket

Ext. 1/C Photocopy of reservation ticket

Ext. 1/D Compromise petition between Rampravesh Sharma and Baijnath Sharma dated 22.11.2008

Ext. 1/E Cancellation of reservation ticket

Ext. 1/F Photocopy of reservation ticket

Ext-1/G The application of form of T.H. Nursery School .

9. The appellant-wife has also examined four witnesses in support of her case who are O.P.W 1 Baijnath Sharma, O.P.W. 2 Rabindra Sharma, O.P.W. 3 Nityanand Sharma and O.P. No. 4 Kumari Neelam Devi (appellant herself).

10. The appellant-wife has not produced and exhibited any document in support of her case.

11. In view of facts and circumstances and



materials available on record, learned Principal Judge, Family Court, Jehanabad allowed the divorce petition and dissolved the marriage of the respondent-husband with the appellant-wife by a decree of divorce. The appellant-wife, aggrieved by the said judgment of the learned Family Court has filed the instant appeal before this Court.

12. Learned counsel for the appellant-wife submits that the learned Family Court has erred in law and facts in allowing the divorce petition filed by the respondent-husband. Learned counsel has further submitted that the divorce petition has wrongly been allowed on the ground of cruelty and desertion without hearing her averments. It is further submitted that the Family Court has wrongly concluded that the appellant had deserted the respondent-husband, whereas it was the respondent, who had deserted her and now he has remarried. The appellant-wife is dependent on her parents who are old aged persons and does not have any source of income. The daughter of the appellant is of marriageable age and she has to spent a handsome money on her marriage. The respondent-husband is paying a meager amount of Rs. 4000/- per month as



maintenance to both her children. The appellant-wife is still unmarried, however, respondent-husband has remarried with another girl. It is therefore contended that the findings returned by the Family Court are not sustainable in the eyes of law.

13. It is submitted by learned counsel for the respondent-husband that after marriage, the appellant-wife lived with the respondent-husband for sometimes and during this period two children were born out of the wedlock. Thereafter, she started using tactics to go to her parents' house without any reasonable cause. The respondent-husband made all his efforts to bring the appellant-wife back to her matrimonial house but all his efforts went in vein. Subsequently, the respondent came to know that appellant was having illicit relationship with another person of her family relation and this was the reason she did not want to live at her matrimonial house or at the place of posting of the respondent. The respondent-husband has further submitted that when the pressure was mounted upon the appellant-wife to lead conjugal live with the respondent-husband, she filed a criminal case against



the respondent and other in-laws family members levelling false and frivolous allegation of torture and assault for demand of dowry. The respondent-husband, therefore, filed the present divorce petition seeking dissolution of marriage which was allowed by the learned Family Court. The respondent further asserted that after decree of divorce, he has performed second marriage.

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

15. 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?"

16. 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..."

17. 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..."

18. 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..."

19. On the anvil 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 appellant and respondent are living separately for about 20 years. The appellant-wife is residing along with both of her children whereas the respondent-husband has re-married and living along with his wife and three children. 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.

20. Now, it is relevant to mention para 2 of our previous order dated 22.04.2025 which is extracted hereunder:-

“Learned counsel for the respective parties, on instruction, submitted that parties are prepared for amicable settlement. To that effect, they are hereby directed to prepare deed of settlement and place it on record on the next date of hearing. ”

21. In view of forgoing discussion, we conclude that both the parties are not longer interested to continue the matrimonial relationship with each other and both are ready for dissolution of marriage.



22. Accordingly, the judgment and decree dated 23.02.2010 passed by the learned Principal Judge, Family Court, Jehanabad in Matrimonial Case No. 21 of 2009, allowing dissolution of marriage by a decree of divorce, is hereby upheld.

23. Before we part with this order, it is apposite to take notice here that while granting the decree of divorce, the learned Family court has not granted anything to the appellant-wife towards Permanent Alimony. 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."

24. The Hon'ble Supreme Court in the case of **Rajnesh v. Neha** reported in **(2021) 2 SCC 324**, provided a comprehensive criterion and list of factors to be looked into while deciding the question of permanent alimony. This judgment lays down an elaborate and comprehensive framework necessary for deciding the amount of maintenance in all matrimonial proceedings, with specific emphasis on permanent alimony and the same has been reiterated by Hon'ble Supreme Court in **Kiran Jyot Maini v. Anish Pramod Patel** reported in **2024 SCC OnLine SC 1724**.

25. The Hon'ble Supreme Court in the case of **Pravin Kumar Jain v. Anju Jain** reported in **2024 SCC OnLine SC 3678** has taken note of the various judgments to clarify the position of law with regard to determination of



permanent alimony and the factors that need to be considered in order to arrive at a just, fair, and reasonable amount of permanent alimony. In para 31 it is held as under:

“31. There cannot be strict guidelines or a fixed formula for fixing the amount of permanent maintenance. 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; and such other similar factors. This position was laid down by this Court in Vinny Paramvir Parmar v. Paramvir Parmar, and Vishwanath Agrawal v. Sarla Vishwanath Agrawal.”

26. The Hon’ble Apex Court, taking note of Rajnish v. Neha (supra) and Kiran Jyot Maini (supra), in



para 32 of Pravin Kumar Jain (supra) laid down the following eight factors to be looked into in deciding the quantum:

“i. Status of the parties, social and financial.

ii. Reasonable needs of the wife and the dependent children.

iii. Parties’ individual qualifications and employment statuses.

iv. Independent income or assets owned by the applicant.

v. Standard of life enjoyed by the wife in the matrimonial home.

vi. Any employment sacrifices made for the family responsibilities.

vii. Reasonable litigation costs for a non-working wife.

viii. Financial capacity of the husband, his income, maintenance obligations, and liabilities.

These are only guidelines and not a straitjacket rubric. These among such other similar factors become relevant.”

27. It is pertinent to mention here that duration of the marriage i.e., how long the marriage existed is also a



relevant factor in determining the quantum of permanent alimony. Generally, marriages that lasts more than 10 years are entitled to be granted a lifetime alimony. The Hon'ble Supreme Court in Rajnesh v. Neha (supra) in para 74 observed that:-

“74. In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid.”

(emphasis supplied)

28. The conduct of the party seeking the relief is also relevant. The three-judges Bench of Hon'ble Supreme Court in the case of Sukhdev Singh v. Sukhbir Kaur reported in 2025 SCC OnLine SC 299, observed in para 26 as under:

“26.We must note that subsection 1 of Section 25 uses the word “may”. A grant of a decree under Section



25 of the 1955 Act is discretionary. If the conduct of the spouse who applies for maintenance is such that the said spouse is not entitled to discretionary relief, the Court can always turn down the prayer for the grant of permanent alimony under Section 25 of the 1955 Act. Equitable considerations do apply when the Court considers the prayer for maintenance under Section 25. The reason is that Section 25 lays down that while considering the prayer for granting relief under Section 25, the conduct of the parties must be considered.”

(emphasis supplied)

29. 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.

30. Keeping in view the totality of circumstances and to do justice to the parties, we are of the considered view that while keeping it open to the appellant-wife to



institute her claim for grant of permanent alimony before the court of competent jurisdiction, we deem it appropriate to grant some amount towards Interim permanent alimony subject to any final decision to be taken by the concerned court on an application to be filed under section 25 of the 1955 Act by the appellant-wife.

31. Be it stated, while granting permanent alimony, no arithmetic formula can be adopted as there cannot be mathematical exactitude. It shall depend upon the status of the parties, their respective social needs, the financial capacity of the husband and other obligations. In "Vinny Parmvir Parmar v. Parmvir Parmar", (2011) 13 SCC 112: (2011) 3 RCR (Civil) 900: 2011 (4) Recent Apex Judgments (R.A.J.) 357, while dealing with the concept of permanent alimony, this Court has observed that while granting permanent alimony, the Court is required to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to be when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living



condition of the other party.

32. Be that as it may, it is the duty of the Court to see that the wife lives with dignity and comfort and not in penury. The living need not be luxurious but simultaneously she should not be left to live in discomfort. The Court has to act with pragmatic sensibility to such an issue so that the wife does not meet any kind of man-made misfortune.

33. This Court finds that respondent-husband was serving as a Constable and thereafter as a Block Development Officer. It is admitted fact that appellant-wife has been living separately from her husband for a long period of time and both her children are living with her which shows her solidarity with her own children. The appellant-wife has not performed second marriage. Both of her children are more than 20 years of age and we find it difficult to understand how she could maintain her children with a meager amount of Rs. 2500/- per month as interim maintenance which was awarded to the children's maintenance. The pain and grief she meted out during this period is easily understandable. The appellant has no other source of income and she is getting a maintenance amount



of Rs. 4,000/- per month as awarded by the Family Court in Maintenance Case No. 11 of 2009. On the other hand, the respondent-husband has re-married and is leading a conjugal life with her second wife.

34. This Court, while hearing the present petition has observed in para 2, 3, and 5 of the order dated 12.11.2024 which reads as under :-

“2. The present appeal is of the year 2010. Respondent was in service as a Constable, thereafter, he was selected and appointed to the Class II post (BDO). He has been removed from service on certain alleged allegations. Be that as it may, he is not maintaining his wife and children properly from the inception. Even though children are aged about twenty plus, irrespective of that it is learnt that he was paying a meager sum of Rs. 2,500 to 4,000/.

3. In order to show bona fide that respondent-Sri Satish Kumar's intention is to maintain the wife and children, for the time being, he is hereby directed to pay a sum of Rs. 5 lakhs to his wife-appellant Kumari Neelam Devi. In this regard the appellant is hereby directed to furnish bank



account details to the respondent or his counsel through her counsel within a period of two weeks. Thereafter, respondent-Sri Satish Kumar will remit the aforementioned amount in the appellant's bank account within a period of two months.

*5. In the meanwhile, the respondent is hereby directed to file assets and liabilities in the form of affidavit in the light of the Hon'ble Supreme Court decision in the case of **Rajnesh Vs. Neha and another** reported in **(2021) 2 SCC 324** read with **Aditi @ Mithi Vs. Jitesh Sharma** reported in **2023 SCC Online SC 1451** so as to ascertain his capacity for permanent alimony to settle the score between the parties."*

35. We have also observed in para 2, 3 and 4 of the order dated 06.05.2025 which reads as under:-

" 2. Appellant Kumari Neelam Devi offered for permanent settlement for a sum of Rs. 20,00,000/- (twenty lakh) for which respondent Satish Kumar offered a sum of Rs.6,00,000/- (six lakh).

3. It is impracticable for settlement for the reasons that there is huge difference between the offer and counter offer. Hence,



matter is required to be adjudicated on merits.

4. The present Miscellaneous Appeal No. 248 of 2010 is one of the oldest Family Court matter. Therefore, we request the respective counsels to prepare and peruse the Family Court Record and address their argument on merits on the next date of hearing.”

36. The appellant as well as the respondent have filed their assets and liabilities by way of supplementary affidavit, in pursuance to the direction of this Court.

37. Accordingly, after going through the entire facts of this case, we deem it appropriate to grant an amount of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) towards Permanent Alimony to be paid by respondent-husband to the appellant-wife. Let the said amount be paid by respondent-husband to the appellant-wife within a period of three months from today; failing which the said amount shall carry simple interest @ 6% *per annum*. The amount of Rs. 5,00,000/-(Five Lakhs) paid by the respondent-husband to show his *bona fide* during pendency of the present appeal



will be set off against the aforesaid amount.

38. Accordingly M.A. No. 248 of 2010 stands disposed of with the aforesaid direction. No order as to costs.

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

(S. B. Pd. Singh, J)

(P. B. Bajanthri, CJ)

Shageer/-

AFR/NAFR	AFR
CAV DATE	03/07/2025
Uploading Date	14/10/2025
Transmission Date	N/A

