

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.647 of 2017

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Viahal Kumar @ Guddu S/o Late Indra Mohan Prasad, R/o Thakur Bari Road, Kishanganj, P.S.- Kishanganj, Distt- Kishanganj.

... .. Appellant/s

Versus

Richa Sah @ Gudiya W/o Vishal Kumar, D/o Late Vinod Prasad Sah, Resident of Cinema Road, Gulabbagh, P.S.- Sadar, Distt- Purnea.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Tej Pratap Singh, Advocate

For the Respondent/s : None

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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 : 17-01-2025

Heard learned counsel appearing on behalf of the appellant. However, none appears on behalf of the respondent.

2. The present appeal has been filed under Section 19(1) of the Family Court Act, 1984 impugning the judgment dated 11.04.2017 passed by learned Principal Judge, Family Court, Kisanganj in Matrimonial Case No. 145 of 2012, whereby the matrimonial suit,

preferred by the appellant-husband, for a decree of divorce, on dissolution of marriage, on the ground of cruelty and desertion, has been dismissed and a cost of Rs. 5000/- was imposed on the appellant-husband to be paid to the respondent-wife.

3. The case of the appellant-husband as per petition filed before the Family Court is that the marriage of the appellant-husband with respondent-wife was solemnized on 12.05.2009 at Kishanganj as per Hindu rites and rituals. Since the beginning of marriage, the behaviour of the respondent-wife towards the appellant-husband was not amicable as she was always creating nuisance for going "*Naihar*" (parental place) and she was pressurizing the appellant-husband to sell the property of Kishanganj and to settle at Gulabbagh, Purnea. The respondent-wife conceived in the year, 2010, she went to Gulabbagh and gave birth to one son Tejas on 15.09.2010. After birth of son, the respondent-wife returned back at Kishanganj in the

month of January, 2011 and lived at Kishanganj and when she again conceived, she again pressurized the appellant-husband to go to her parents' place to give birth to second child and despite opposition by the appellant-husband, she left her matrimonial house at Kishanganj and went to her parents' place at Purnea on 14.08.2011 and since then, the respondent-wife deserted the appellant-husband. The appellant-husband made all his efforts to get the respondent-wife returned to her matrimonial house but all his efforts went in vain. The respondent-wife and other in-laws family members also threatened the appellant-husband to implicate in a false case if he does not agree for a permanent alimony. Hence, Matrimonial Case No. 145 of 2012 was filed for dissolution of marriage.

4. After filing of the above case, the O.P./respondent appeared in response to the summon/notice issued by the Court and filed her reply/written statement.

5. In her written statement, the respondent-wife has stated that she got married with appellant-husband and out of the wedlock, two male child were born. She further alleged that just after her marriage, the appellant-husband and all his other family members started passing comments for not bringing articles of gold and silver and they were demanding extra dowry of Rs. 10 lakhs. They started subjecting mental and physical torture and for that the respondent-wife filed a criminal case no. 2453/13 under Section 498(A) of the Indian Penal Code and that case is still pending in the court of S.D.J.M. Patna. All the gifts of marriage were snatched by the appellant-husband at her matrimonial place and she was driven out from the matrimonial place along with her both children. The respondent-wife is leading very painful life at her parent's place and she herself is suffering with mental cruelty and pain. The respondent-wife is of sound mind with her best physical effort and mental status and she is not abnormal and

she is not infected with any disease, therefore, there is no ground of divorce with the appellant-husband. The respondent-wife does not want divorce because she has got two kids from the appellant-husband and she wants to lead her conjugal life with him. At the time of counselling on 18.12.2013 by the court, the respondent-wife also gave her consent that she wants to live with her husband but it was the appellant-husband who was not ready to keep the respondent-wife with him as wife. Such attitude and behaviour of appellant-husband is sufficient to believe that he is not law abiding person and is aggressive. The respondent-wife also denied the allegations that she was creating nuisance for going "*Maike*" and she was putting pressure on appellant-husband to sell property of Kishanganj and settle at Gulabbagh. It is true that respondent-wife gave birth to both her children at her parents' house but that was done with the consent of the appellant-husband. The respondent-wife never forced the appellant-

husband to sell his house at Kishanganj and settle at Gulabbagh, Purnea. She further denied that she deserted the appellant-husband on 14.08.2011 and talked in filthy language with appellant-husband on telephone. She also denied that her mother and brother gave threatening to appellant-husband. She prayed that the matrimonial case of the appellant filed for dissolution of marriage, may be dismissed with cost.

6. In view of the rival contentions and the arguments adduced on behalf of the appellant as well as the evidences brought on record, the main points for determination in this appeal are as follows:-

(i) Whether the appellant is entitled to the relief sought for in his appeal.

(ii) Whether the impugned judgment of Principal Judge, Family Court, Patna is just, proper and sustainable/tenable in the eyes of law.

7. None appears on behalf of the respondent-wife. Hence, the matter is decided ex-parte.

8. The appellant-husband has given much

emphasis on the ground of cruelty for seeking decree of divorce against the respondent-wife. The appellant-husband has submitted in para 3 of his petition for divorce that behaviour of respondent-wife since beginning was not amiable with the appellant-husband since she was always creating nuisance for going “*Naihar*” (parental place) and she was pressurizing to the appellant-husband to sell the property of Kishanganj and settle at Gulabbagh, Purnea. It appears from the entire case of the appellant-husband that only on the occasion of delivery of second son, the respondent-wife put pressure on appellant-husband to send her at her parents’ place and despite denial by the appellant-husband, she left the house of appellant-husband with her mother on 14.08.2011. But while considering the evidence of respondent-wife who has examined herself as D.W.1, it appears that she has stated in para 1 of her evidence that at the time of delivery of both the children, the appellant-husband himself had hired

vehicle and left the respondent-wife at her parents' house. However, such single act or instance on the part of respondent-wife can never be treated as cruelty for the purpose of divorce. Further, the appellant-husband has stated in para 4 of his deposition that respondent-wife was not ready to live peacefully in her matrimonial house at Kishanganj which clearly shows that the appellant-husband has not come with any specific ground of cruelty by respondent-wife. Further, the appellant-husband in para 6 of his evidence has stated that since 14.08.2011, the respondent-wife deserted the appellant-husband and even on telephonic conversation she used filthy languages against the appellant-husband which is duly recorded by him. The appellant-husband further deposed that the respondent-wife is a woman of rough tongue and she used to talk with such abusive words which a reasonable man cannot tolerate and such behavior and conduct of respondent-wife was amounting to the gross mental cruelty to the

appellant-husband. A C.D. of the mobile communication made between the appellant-husband and the respondent-wife and text copy of the C.D. have also been brought on the record on the basis of formal evidence of P.W. 5 Subrato Ray as Ext 1 and 1/A. During cross-examination, P.W. 5 has stated in para 5 that he has no any degree or technical qualification of preparing C.D. from mobile which clearly suggest that it is a very weak kind of evidence and until it is not confirmed by the competent technician that the sound is original sound of the person, the evidence cannot be taken as legally admissible evidence against the person whose sound is in dispute. In this case, it is also relevant that the respondent-wife herself has admitted in her evidence that her husband used to force her to abuse and he used to record those abusive words on his mobile. She has further denied this fact that she ever told her husband that she is not ready to live with him and she wants alimony. She has very clearly stated in

para 2 of her deposition that she wants to reside with her husband at his house. It also appears from the case record that at the time of counselling before the Mediation Centre, she also agreed and expressed her desire that she wants to reside with her husband-appellant.

9. P.W.1 Kamal Ray is the friend of appellant-husband who, in his cross-examination at para 15, has deposed that he does not know the reason of dispute and quarrel in between appellant-husband and the respondent-wife. Further in para 17, he deposed that he cannot say the internal reason of the quarrel between husband and wife. However, in his examination-in-chief, P.W. 1 has supported the case of appellant-husband and stated in para 4 that behaviour of the respondent-wife was never good with the family members of appellant-husband. He further stated in para 7 that he learnt that respondent-wife is now not ready to reside with the appellant-husband in any circumstance and she wants

divorce after getting a *lum-sum* amount of alimony. In para 8, he has deposed that the respondent-wife has also filed a criminal case of dowry against the family members of the appellant-husband.

10. The evidence of this witness does not appear to be trustworthy and reliable as this witness is not competent to say that the respondent-wife wants divorce from the appellant-husband and there is no basis of his evidence on the above facts. The witness has not stated that on any occasion, he heard any abusive word from the mouth of respondent-wife.

11. P.W.2 Subhash Prasad has also supported the case of the appellant-husband and deposed in his examination-in-chief that he is cousin brother-in-law of appellant-husband. From the entire cross-examination of this witness also, it does not appear that what was the actual reason of the quarrel between the appellant-husband and the respondent-wife. The witness has also not stated that on any occasion, the respondent-wife

used abusive words for the appellant-husband or any other members of the family of the appellant-husband.

12. P.W.3 Rattiram Sonar is also stranger to the family of appellant-husband who has deposed the same thing which were deposed by the P.Ws 1 and 2. He has deposed in his cross-examination at para 14 that due to being neighbour shopkeeper, he usually indulged in the family matters of the appellant-husband. He has stated in para 16 that on one occasion, respondent-wife and appellant-husband were quarreling with each other and they were abusing to each other and when he interfered, the respondent-wife told him that it is the internal matter of her and her husband and he should not interfere in her internal matter. It does not appear from the evidence of this witness that how the respondent-wife misbehaved with this witness. Further it also appears from para 16 of evidence of this witness that the appellant-husband and respondent-wife, both are abusing to each other and therefore, considering the

evidence of this witness also it does not find force regarding the ground of cruelty only on the basis of using some abusive words by respondent-wife to the appellant-husband.

13. It further appears that no any other family member of the appellant-husband has turned up to support the case of cruelty as against the appellant-husband by the respondent-wife. It has also come in the evidence that two own brothers of appellant and two brothers-in-law of the appellant-husband also resides at Kishanganj but none of them have come to support the case of appellant-husband. Therefore, in the light of these evidences, learned Court below was of the opinion that the behaviour of the respondent-wife should not be taken seriously to that extent that it may be a ground of cruelty for the purpose of divorce.

14. So far as the ground of desertion is concerned, from the entire case of the appellant-husband, it appears that only on one occasion on

14.08.2011, the respondent-wife left the house of the appellant-husband despite opposing by the appellant-husband and on that occasion, she was carrying her second pregnancy and she left the house of the appellant-husband with her mother to give birth to her second child at her mother's place. The appellant claimed that after birth of second child, the appellant-husband went at his in-law's place and he was tortured there and in-laws of the appellant-husband told him to leave the place of respondent-wife. The appellant-husband has supported this fact in para 9 of his examination-in-chief and stated that due to that event, his confidence lost and he decided that now he has no other alternative than to give divorce to the respondent-wife. In his cross-examination, the appellant-husband has deposed in para 18 that now he is not ready to keep his respondent-wife with him nor he is ready for any compromise. He has further deposed in para 19 that he is ready to keep both his sons with him but he is not

ready to keep his wife on any condition.

15. The learned Court below, after considering the evidence of respondent-wife on the point of desertion found that she has stated that it is not the fact that on the occasion of delivery of both sons, she went to her “Maike” despite objected by the appellant-husband. The real fact is that the appellant-husband himself hired the vehicle and left her at her parents’ house. She has stated in para 5 of her cross-examination that her second son took birth on 09.12.2012 and after his birth, she resided at parents’ house for about five to six months and she has stated in para 6 that on last occasion on 20.11.2012, she left the house of appellant-husband as at that time, her second son was ill and she came to Purnea for his treatment and she always visits to the house of the appellant and appellant-husband does not allow to stay her at her matrimonial house.

16. The term desertion has not been defined

under the Hindu Marriage Act but for the complete desertion under the act there must be an intention on the part of the deserting spouse never to return to the matrimonial home and such desertion must be without the consent on the part of the person deserted. There must also be the intention to abandon and withdraw from cohabitation.

17. In this case, the reason for the respondent-wife to go to her parents' house was because of the respondent-wife carrying second pregnancy as earlier, she delivered her first child at her parents' house, therefore, her convenience for delivery of son at her parents' house should not be ignored by the appellant-husband and such act of the respondent-wife should never be treated as desertion of the appellant-husband.

18. For strict proof of the desertion, there must be *animus deserandi* on the part of respondent-wife and in the entire circumstances and the facts

brought before the court, learned Court below did not find any *animus deserendi* on the part of the respondent-wife and the respondent-wife still visits at the house of the appellant-husband and she was always ready to reside with appellant-husband and therefore, learned Court below did not find any force on such ground also and dismissed the matrimonial case filed for dissolution of marriage.

19. Learned counsel for the appellant-husband, however, assails the impugned judgment on the ground that learned Family Court has not properly appreciated the evidence adduced on behalf of the appellant-husband and erroneously dismissed the petition finding no ground proved. He submits that as per the evidence, the appellant-husband has proved that the respondent-wife has committed cruelty against him because she has deprived him of his marital cohabitation by going back to her parental house. He also submits that as per the evidence on record, the appellant-

husband has proved that the respondent-wife has deserted him since 2012 and always used abusive and filthy languages against him and other family members.

20. After perusal of the materials available on record and consideration of submissions made by learned counsel for the appellant-husband, we find that so far as, the ground of cruelty for taking divorce is concerned, the word 'cruelty' has not been defined in specific words and language in the Hindu Marriage Act, 1955, but it is well settled position that for grant of decree of divorce, the nature of cruelty should be of such a character which causes in mind of other spouse a reasonable apprehension that it will be harmful and injurious for him to live with the responden-wife.

21. It is observed by the Hon'ble Apex Court in leading case of Samar Ghose vs. Jaya Ghose reported in 2007 (4) SCC 511 that a 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. More trivial irritations, quarrel, normal wear and tear of the married life which happens in day-to-day live would not be adequate for grant of divorce on the ground of mental cruelty.

22. In regard to the allegation of depriving the appellant-husband of the conjugal life by the respondent-wife, it is relevant to consider here that the appellant-husband has himself pleaded and deposed that they lived like husband and wife during her stay at her matrimonial house and it is also considerable fact here that when the respondent-wife went back to her parental house, the appellant-husband has not taken any legal steps for restitution of conjugal rights by filing petition under Section 9 of the Hindu Marriage Act.

23. After appreciating the above discussed facts, it clearly transpires that appellant-husband has failed to prove the cruel behaviour of the respondent-

wife towards him and his family members by the strength of cogent, relevant and reliable evidence, while burden of prove of cruelty rests upon the appellant-husband of this case, because, he has sought relief of divorce on the basis of cruel behaviour of the respondent-wife towards him. Furthermore, certain flimsy act or omission or using some threatening and harsh words may occasionally happen in the day-to-day conjugal life of a husband and wife to retaliate the other spouse but that cannot be a justified/sustainable ground for taking divorce. Some trifling utterance or remarks or mere threatening of one spouse to other cannot be construed as such decree of cruelty, which is legally required to a decree of divorce. The austerity of temper and behaviour, petulance of manner and harshness of language may vary from man to man born and brought up in different family background, living in different standard of life, having their quality of educational qualification and their status in society in which they

live.

24. Hence, we find no merit in the present appeal warranting any interference in the impugned judgment. The Family Court has rightly dismissed the matrimonial case of the appellant-husband seeking divorce.

25. The present appeal is dismissed accordingly, affirming the impugned judgment.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

AFR/NAFR	AFR
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