

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.245 of 2022

Akhilesh Choudhary, Son of Sri Bindeshwar Choudhary, resident of Village and P.O.- Kakraul, P.S.- Rahika, District- Madhubani.

... .. Appellant/s

Versus

Chanda Choudhary, Wife of Akhilesh Choudhary, daughter of Sri Viveka Nand Mishra, resident of Village - Nayagaon, P.S. - Raiyam, District - Darbhanga.

... .. Respondent/s

Appearance :

For the Appellant/s : Mrs. Anju Jha, Adv.

For the Respondent/s : Mr. Shashikant, Adv.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)

Date : 28-08-2025

Heard Mrs. Anju Jha, learned counsel for the appellant and Mr. Shashikant, learned counsel for the respondent.

2. The present Miscellaneous Appeal has been preferred against the judgment dated 29.04.2022 passed by the learned Principal Judge, Family Court, Madhubani in Matrimonial Case No. 43 of 2017, by which the Matrimonial Suit filed by the present appellant was dismissed. Aggrieved by the said judgment, the appellant has preferred this appeal.

3. The appellant, who was the petitioner before the Family Court, is the husband of the respondent. He filed his Matrimonial Suit under Section 13(1)(i-a) & (iii) of the Hindu



Marriage Act, 1955 (hereinafter referred to as the 'H.M. Act'). The appellant mainly alleged cruelty on the part of the respondent and claimed that her behaviour was completely abnormal towards him and his parents. As per the appellant, he had noticed this abnormal behaviour before the second marriage (Dviragamana) of the respondent. However, her parents explained that it was due to her being the eldest child and receiving excessive affection, which led to behavioural changes.

3.1. According to the appellant, the second marriage (Dviragamana) of the respondent into his house took place on 23.11.2013, after which her abnormal behaviour was observed by him and his family members. He subsequently took the respondent to a psychiatrist in Darbhanga for treatment, and her treatment commenced. The respondent gave birth to a child on 29.11.2014. Thereafter, upon returning to the matrimonial home, she allegedly began torturing and teasing the appellant and his family members, neglected her medicines, frequently threw it away, and made noise. The appellant also alleged that the respondent had earlier attempted to commit suicide. On 11.03.2016, the respondent left the appellant's company with her parental family members without his consent, and during her departure, she and her family members allegedly misbehaved with him.



4. In response, the respondent stated in her written statement that after the second marriage, she was treated properly until April 2014, but thereafter, the appellant started demanding a sum of ₹2,00,000/- (rupees two lakhs) from her. When her parental family expressed their inability to fulfill the demand, the appellant and his family members began torturing her. She gave birth to a child in November 2014 at her parental home, and after seven months, returned to her matrimonial home, where she was again subjected to harassment. On 11.03.2016, her parents rescued her after receiving information, and during that time, the appellant allegedly became angry and ousted her after snatching her ornaments. The respondent also alleged that the appellant had developed an illicit relationship with his brother's wife.

5. The learned Family Court framed six issues, among which Issue Nos. 2, 3, and 5 were the most crucial, relating to the grounds on which the appellant sought a divorce decree and the defences taken by the respondent. The trial court decided these issues against the appellant and concluded that he did not have a cause of action and that his suit was not maintainable. After examining the evidence produced by both parties, the trial court held that the appellant failed to prove the alleged cruel behaviour and mental illness of the respondent.



5.1. As both the spouses have been living separately for about nine years, this Court provided them an opportunity to explore a settlement on the point of permanent alimony and directed the matter to be listed on 20.08.2025, requiring both parties to appear in person in Chambers. Pursuant to the direction, both parties appeared with their respective counsel, however, no amicable settlement could be reached. Then, we heard both parties briefly and reserved our judgment on the merit of this appeal.

6. The main ground taken by the appellant for seeking dissolution of the marriage is cruelty. According to the appellant, the respondent's behaviour was not normal from the beginning of the marriage, and she suffered from a mental illness for which she was treated in Darbhanga by a psychiatrist. The appellant stated that the respondent did not take her medicines properly and sometimes threw them away. His claim is based primarily on the mental cruelty allegedly inflicted on him due to respondent's behaviour.

6.1. Undoubtedly, cruelty includes both physical and mental cruelty. However, it is a settled principle of law that for dissolving the marriage on the ground of cruelty, the petitioner is bound to prove that the impact of the alleged cruel treatment of opposite party is such of nature that it has created a reasonable



apprehension in his/her mind that continuing the marital relationship with opposite party would be harmful or injurious to him/her. But mere abnormal or unpleasant behaviour on some occasions cannot be treated as cruelty under section 13(1) of HM Act unless it leads to such a fear. This depends on the facts and circumstances of each case. In this regard, we would like to refer to the observations of the Hon'ble Apex Court in the case of **A. Jayachandra vs. Aneel Kaur** reported in **(2005) 2 SCC 22**. The relevant paragraphs Nos. 10, 12 and 13 of the said judgment are reproduced as under : -

“10. The expression “cruelty” has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship



like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

12. To constitute cruelty, the conduct complained of should be “grave and weighty” so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than “ordinary wear and tear of married life”. The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the court that the relationship



between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

13. The court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.”



The aforesaid principles were reiterated by the Hon'ble Apex Court in the case of **Samar Ghosh vs. Jaya Ghosh** reported in **(2007) 4 SCC 511**.

7. Further, the Hon'ble Apex Court in the case of **Shobha Rani vs. Madhukar Reddi**, reported in **(1988) 1 SCC 105**, held that the test for cruelty is whether the conduct of the respondent is such that the petitioner cannot reasonably be expected to live with the respondent.

8. It is an admitted position that a male child was born from the wedlock of the appellant and respondent on 29.11.2014. The respondent's second marriage into the matrimonial home was in November 2013, and the appellant filed his suit in 2017 just after the respondent filed a maintenance case in 2016 against him. Between 23.11.2013 and 2016, the appellant took no legal action to dissolve the marriage despite claiming that he and his parents were aware of the respondent's alleged abnormality from the beginning. This conduct and inaction on the appellant's part weakens his case, which was rightly considered by the trial court.

8.1. Regarding the respondent's alleged mental illness, the appellant submitted some medical prescriptions only (Exhibits 1 to 1/C) purportedly in respect of respondent's treatment.



However, these documents do not give the detail of any specific diagnosis and merely shows prescribed medicines. Moreover, the appellant did not produce the doctor who is said to have treated the respondent. Thus, these vague prescriptions cannot be accepted as proof of a specific mental illness. Even assuming abnormal behaviour during the relevant period, there is no evidence of persistent or continuous abnormality. Moreover, failure to take medicine or throwing it away does not establish such kind of cruelty sufficient to create a reasonable apprehension in the mind of the appellant that cohabitation and together living with the respondent would be harmful or injurious to the appellant.

9. In ocular evidence, the appellant examined four witnesses, including himself. PW-2 (Bindeshwar Chaudhary) and PW-3 (Govind Chaudhary) are close relatives and thus, interested witnesses. Their testimonies are insufficient to establish the alleged cruelty or mental illness.

9.1. PW-2, the appellant's father, admitted in cross-examination that the respondent never assaulted him, although she once threw his clothes and spoke loudly on the phone. He also admitted that she greeted him respectfully with "Pranaam" word. These behaviours of the respondent are not enough to justify divorce.



10. The appellant (PW-1) stated in his cross-examination that although his child was born on 29.11.2014, he learned about the birth only 4–5 days later and he did not visit the child. This conduct of the appellant shows his own negligent attitude towards both his child and his wife.

11. The fourth witness, Md. Taiyyab (PW-4), is not a reliable witness regarding the alleged behaviour of the respondent. His house is located 100–150 meters away from the appellant's, so it is implausible that he could be fully aware of the couple's private domestic affairs. The trial court rightly disbelieved his testimony.

12. The respondent herself appeared as a witness and supported her version. She denied all allegations, and the appellant could not extract any supporting facts during her cross-examination or from respondent's other witnesses.

13. Accordingly, we find that the appellant failed to prove the grounds he relied upon for seeking divorce from the respondent. The learned Family Court correctly appreciated the evidences in light of the pleadings, and there is no illegality in the trial court's findings. We see no reason to interfere with the conclusions on Issues No. 2, 3, and 5. Therefore, the appellant had no valid cause of action, and his suit was rightly dismissed.



14. In the result, we find this appeal to be devoid of merit, hence it stands dismissed.

(Shailendra Singh, J)

I agree.

(P. B. Bajanthri, J)

annu/-

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