

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.412 of 2024

Rajani Ranjan, son of Kailash Prasad Sah, resident of Village - Pranpur Berai,
P.S. Hajipur Sadar, District - Vaishali at Hajipur.

... .. Appellant/s

Versus

1. Roma Kumari Wife of Rajani Ranjan, Resident of Village - Pranpur Berai,
P.S. Hajipur Sadar, District - Vaishali at Hajipur, presently residing at
Village- Bakhari Barai, P.S.- Rajapakar, District - Vaishali at Hajipur.
2. Ajay Bihari Prasad Singh, Son of Shivji Prasad Singh, Resident of Village
and P.O. Nainha, P.S. Hajipur Sadar, District - Vaishali at Hajipur, presently
working as Niyojit Teacher, Utkramit Madhya Vidyalaya, Pranpur Berai,
P.O. Sadar, P.S. Sadar Hajipur, District - Vaishali at Hajipur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vijay Kumar Singh, Advocate
For the Respondent/s	:	None

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 : 18-06-2025

Heard learned counsel for the appellant. None
appears on behalf of respondents in spite of valid service of
notice.

2. The present appeal has been filed under Section
19(1) of the Family Court Act, 1984 impugning the
judgment and decree dated 18.03.2024 passed by learned
Principal Judge, Family Court, Hajipur, Vaishali in
Matrimonial (Divorce) Case No. 386 of 2019, whereby the



matrimonial suit, preferred by the appellant, for a decree of divorce, on dissolution of marriage, has been dismissed.

3. The case of the appellant as per petition filed before the Family Court is that the marriage of the appellant was solemnized with respondent No.1 on 23.06.2004 as per the Hindu Rites and Custom. Out of the wedlock two children were born. The respondent No. 1 was cruel and indisciplined since the inception of marriage. She used to misbehave with the appellant and other in-laws family members. She did not used to cook food on time and also used to abuse and misbehave with her in-laws family members and the appellant as well. The respondent No. 1 is a teacher and used to stay out of her matrimonial house for long hours after the school. She has developed illicit relationship with one Ajay Bihari Prasad Singh (respondent No. 2), who is also a teacher in her school and gave birth to the child of respondent No. 2. The respondent No. 2 has also filed Divorce Case No.183/2013 for divorcing his wife because of his affair with the respondent No. 1. The appellant has no relationship with the his wife-respondent No. 1 since four years, prior to the filing of the divorce



petition before the Family Court. The appellant, therefore, prayed that the marriage between the appellant and respondent No. 1 be declared dissolved and a decree of divorce be passed in his favour.

4. In response to the summon/notice issued by the Court, respondent/O.P appeared and filed her reply/written statement.

5. In her written statement/reply, the respondent No. 1 has stated that the appellant and his family members tortured her for non fulfilment of demand of dowry, for which she has lodged a case against him and his family members. The appellant did not use to spend any amount on his family and it was the respondent No. 1 who was looking after the children. In fact the appellant is engaged in an illicit relationship and is also habitual drunkard. The house of the appellant was constructed by respondent No. 1 but she has been ousted along with her minor children from her matrimonial house. The respondent No. 1 denies to have any illicit relationship with any person.

6. On the basis of the rival contentions of both the parties, following issues were framed in this case by the



learned Trial Court :-

1. Whether the case as framed is maintainable?

2. Whether the appellant has cause of action to file this case?

3. Whether the behaviour of the opposite party was cruel towards the applicant ?

4. Whether the applicant has been living in adultery as alleged ?

5. Whether the applicant is entitled to get a decree of divorce against the O.P?

6. Whether the petitioner is entitled to any other relief or reliefs?

7. During course of trial, altogether six witnesses have been produced on behalf of the appellant which are P.W.1- Rajni Ranjan(appellant himself), P.W. 2-Kallu Paswan, P.W. 3- Hira Lal Paswan (co-villager of the appellant). P.W.4-Umesh Sah(co-villager of the appellant), P.W.5-Kailash Prasad Sah (father of the appellant), P.W.6-Pankaj Kunar(co-villager of the appellant).

8. The respondent No. 1 did not produce any documentary or oral evidence.

9. After conclusion of the trial, the learned Principal Judge, Family Court has held that appellant has not proved



that he was subjected to cruelty at the hands of the respondent No.1 as well as adultery by the respondent No. 1 and the case filed by the appellant is not maintainable and also the appellant has no valid cause of action to file the instant case. Accordingly, the Trial Court came to the conclusion that the appellant was not entitled for decree of divorce on the ground of cruelty as well as adultery and the suit was accordingly dismissed.

10. Thereafter, being aggrieved and dissatisfied with the aforesaid judgment and decree passed by the learned Principal Judge, Family Court in Matrimonial (Divorce) Case No. 386 of 2019, the present appeal has been filed by the appellant.

11. Learned counsel appearing on behalf of the appellant has submitted that the judgment and decree passed by the learned Family Court is bad and appears to be mechanically passed without application of judicious mind. The witnesses who have appeared on behalf of the appellant have stated that since the inception of marriage, the behaviour of respondent No. 1 towards her husband and other in-laws family members was very cruel and she



always used to misbehave with them. She used to assault the children for no reason. She used to talk on Mobile Phone with one staff of her school and when the appellant asked her to stop talking with the said person then she threatened to kill him. She used to stay out of her matrimonial house for 2-3 days and used to abuse and assault the appellant and his family members. The respondent No. 1 has illicit relationship with respondent No. 2 and she left her matrimonial house because of her affairs with respondent No. 1. At present she is staying with the respondent No. 2 in adultery and has given birth to a child also.

12. In their cross-examination the witnesses have stated that at the time of marriage the respondent no.1 was not in service. The son Yash Raj is staying with the appellant whereas daughter Trishala is staying with her mother. They have denied the suggestion that the appellant used to demand dowry from the respondent no.1. They have denied the information regarding taking of loan by respondent No. 1 for construction of the house of the appellant.



13. The learned counsel for the appellant has further submitted that at present the respondent Nos. 1 and 2 are living as husband and wife. The respondent No. 2 has also filed a Divorce Case against his wife because of his illicit relationship with respondent No. 1. Therefore, the allegations of cruelty and adultery both stands established.

14. *Per contra*, learned counsel appearing on behalf of the respondents has submitted that the impugned judgment and decree is just legal and in accordance with law. The learned Trial Court has rightly appreciated the evidence adduced on behalf of both the parties in the right perspective and has correctly dismissed the suit for divorce filed on behalf of the appellant.

15. In view of the rival contentions, evidences and the arguments adduced on behalf of both the parties, the main points for determination in this appeal are as follows:-

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

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



16. After perusal of the materials available on record and consideration of submissions made by learned counsel for the appellant and the respondents as well as materials available on record, we find that appellant-husband has deposed in his evidence that respondent-wife always used to make quarrel with him and his family members but no any specific instance of date has been mentioned in the plaint as well as in his evidence nor he has made any complaint before any authority prior to filing of this case. He has also admitted in his evidence that prior to filing of this divorce case, for the last four years, there were no relationship between the appellant and respondent No. 1 as husband and wife but he has not explained under which circumstance, he has waited for four years to file the divorce petition. The appellant has also not brought on record any proof regarding illicit relationship of respondent No. 1 with respondent No. 2. The appellant has also not brought on record any cogent and reliable evidence which could show that respondent No. 1 and respondent No. 2 are living in adultery. The appellant has also not filed petition under Section 9 of the Hindu Marriage Act for restitution of



conjugal rights which would reflect that he was interested to resume conjugal life with the respondent No. 1. The appellant though alleges that respondent No. 1 and respondent No. 2 are living in adultery and a child/daughter was born, which he claims is illegal but neither he has made any effort to make a DNA test of female child nor he had filed any such petition before any authority or court, which clearly suggests that only in order to make a legal ground in the divorce case, these baseless allegations have been levelled by the appellant.

17. 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 cruelty is such of character and conduct as cause in mind of other spouse a reasonable apprehension that it will be harmful and injurious for him to live with O.P.- respondent.

18. 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 live which happens in day-to-day live would not be adequate for grant of divorce on the ground of mental cruelty.

19. In this context, we are tempted to quote the golden observation made by the Hon'ble Apex Court during decision in case of Narain Ganesh Dastane vs. Sucheta Naraih Dastane reported in, AIR 1975, 1534, which are as follows:-

"One other matter which needs to be clarified is that though under Section 10(1) (b), the apprehension of the petitioner that it will be harmful or injurious to live with the other party has to be reasonable, it is wrong, except in the context of such apprehension, to import the concept of a reasonable man as known to the law of negligence of judging of matrimonial relations. Spouses are undoubtedly supposed and expected to conduct their joint venture as best as they might but it is no function of a court inquiring into a charge of cruelty to philosophise on the



modalities of married life. Some one may want to keep late hours of finish the day's work and some one may want to get up early for a morning round of golf. The court cannot apply to the habits or hobbies of these the test whether a reasonable man situated similarly will behave in a similar fashion. "The question whether the misconduct complained of constitutes cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an Individual under one set of circumstances may be extreme cruelty under another set of circumstances". The Court has to deal, not with an ideal husband and ideal wife (assuming any such exist) but with the particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to draw their differences, their ideal attitudes may help



them overlook or gloss over mutual faults and failures."

20. After going through the above entire documentary and oral evidence adduced on behalf the appellant-husband, it is crystal clear that appellant-husband has failed to prove the cruel behaviour of the respondent No. 1 towards him and his family members by the strength of cogent, relevant and reliable evidence, while burden of proof 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 No.1 towards him. Not even single incident with reference to specific date of alleged cruelty has been urged in the plaint before the Family Court. Moreover, wife (respondent No. 1) is still ready to live with the appellant. Furthermore, alleged 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.

21. Thus, considering the above entire aspects of this case and evidence adduced on behalf of both the parties, we find that appellant has failed to prove the allegation of cruelty, much less, the decree of cruel behaviour of respondent which is legally required for grant of decree of divorce under section 13(1) (ia) of the Hindu Marriage Act.

22. So far as ground of adultery is concerned, adultery may be defined as the act of a married person having sexual intercourse with a person of opposite gender other than the wife or husband of the person. Personal laws all around the world condemn adultery and it is considered as a ground for divorce or separation. Under the present



Indian personal laws, adultery is laid down as one of the grounds for divorce or judicial separation.

23. The essential ingredients in an offence of adultery are that: (i) There should be an act of sexual intercourse outside the marriage, and (ii) that such intercourse should be voluntary.

24. The appellant has not brought on record any proof to show that respondent No. 1 was having illicit relationship with the respondent No. 2 nor he has proved that they were living in adultery and only in order to make a valid ground in the divorce petition, these allegations were levelled against the respondent No. 1 without any supporting material evidence.

25. 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..."

26. 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 seeking divorce.

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

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

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