

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.282 of 2022

Nitu Devi W/o Vikash Kumar Matrimonial resident of Village- O.P.- Bhelahi, P.S.- Palanwa, District- East Champaran. Parental Address- Her father's Name- Bhola Sah, R/o Village- Kanana, Dumariya, P.S.- Raxaul, District- East Champaran. Appellant/s

Versus

1. Vikash Kumar S/o Ram Awatar Sah Resident of Village- Bhelahi, O.P.- Bhelahi, P.S.- Palanwa, District- East Champaran.
2. Sahim Mian S/o Jameer Mian Resident of Village and O.P.- Bhelahi, P.S.- Palanwa, District- East Champaran.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sunil Kumar No.III, Advocate Mr. Bijendra Kumar, Advocate Mr. Raki Alam, Advocate
For the Respondent/s	:	Mr. Dhannjay Kumar No 2, Advocate Mr. Vikash Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY)
Date : 07-03-2025

The present appeal is preferred against the judgment dated 06.06.2022 of the Ld. Principal Judge, Family Court, East Champaran, Motihari in Matrimonial case No. 468 of 2019 whereby and whereunder the learned Trial Court allowed the divorce petition filed by the respondent no. 1 against the appellant under Section 13 of the Hindu Marriage Act. For the purpose of identifying parties they are referred their ranking as in the Family Court viz, petitioner and opposite party Nos. 1 and 2.

2. The brief facts of the case is that the marriage of



the petitioner Vikash Kumar with opposite party No.1-Nitu Devi was solemnized on 18.05.2012 according to Hindu rites and rituals at the residential house of respondent no.1, Village Kananaa, Dumaria, P.S-Raxaul, District-East Champaran. No dowry was given or taken prior to marriage or after marriage. The opposite party No. 1 went to her matrimonial house after marriage, she was leading her matrimonial life with the petitioner. Opposite party No. 1 blessed with two children from her matrimonial relation with the petitioner, elder son is Bajrangi and her younger son is Mahabali. The character of opposite party No. 1 changed after some time. She was in the habit of disobeying her husband and she was interested in other person and she established sexual relation with another person known as Sahim Mian (opposite party No. 2). The behaviour of opposite party No. 1 was cruel towards her husband. She was caught in compromise position with Sahim Mian on 13.10.2019 at about 4 A.M by some women of his village. They fled away from the place of occurrence. The father of opposite party No. 1 was called for and he was informed about the occurrence and opposite party No. 1 alongwith her two sons went to her paternal house with her father. In this regard, a Panchayati was held and respondent no.2- Sahim Mian admitted the fact before the *Panchayat* and a *Panchnama* was prepared on which respondent



no.2, petitioner and *Panches* put their signature and L.T.I. After marriage, Nitu Devi (opposite party No. 1) was in habit of sexual intercourse with respondent no.2- Sahim Mian. The respondent no.2- Sahim Mian also agreed that if opposite party No. 1- Nitu Devi divorced from the petitioner then he may live with her. The petitioner and the opposite party No. 1 are residing within the jurisdiction of the Family Court and it has been prayed by the petitioner to admit the petition and dissolve the marriage among petitioner and opposite party No. 1 by passing a decree of divorce.

3. The opposite party No. 1-Nitu Devi filed her written statement. It has been contended in her written statement that the contention of the petitioner in Para-1 of the divorce petition is not fully true. It is true that the marriage in between petitioner and opposite party No. 1 was solemnized at Village- Kanana, P.S- Raxaul, District-East Champaran. The contents made in Para-2 of the divorce petition are totally incorrect, the real fact is that at the time of marriage the relatives, father as well as well-wishers of opposite party No. 1 have given cash, ornaments, furnitures, clothes etc, according to their capacity as gift. The contents made in Para-3 and 4 of the divorce petition are true. The contents of Para-5 to 10 of the divorce petition are totally false and concocted, it has been brought on record with a view to get the



decree of divorce. The opposite party No. 1 is in collusion with opposite party no. 2- Sahim Mian and he has made false allegation. After being blessed with two children by opposite party No. 1, the petitioner is not interested to live with opposite party No. 1 and he wishes to perform his second marriage and he is torturing and abusing and assaulting opposite party No. 1, despite this, opposite party No. 1 did not leave her conjugal matrimonial house but the petitioner-Vikash Kumar ousted her after snatching her Stridhan. Opposite party No.1 after realising about the fact, became surprised. After marriage, the opposite party No. 1 left for her conjugal house on the next day of marriage. Gradually in the marriage, the petitioner started to pressurize opposite party No. 1 to demand money from her paternal home and on the refusal by opposite party No. 1 she was subjected to mental and physical cruelty. With the conjugal relation of petitioner and opposite party No. 1, two sons were born who are aged about six and four years consecutively. After birth of two sons, the petitioner started demanding one lakh in cash from opposite party No. 1 and due to non-fulfillment of demand of said Rupees One lakh, the petitioner assaulted the opposite party No. 1 and lastly on 13.01.2019 he ousted opposite party No. 1 from her conjugal house after assaulting her. He also snatched her Stridhan. Several attempts were made by opposite



party No. 1 but the petitioner did not agree to keep opposite party No. 1 and he did not agree to live with his wife-opposite party No. 1.

4. Petitioner never takes care of opposite party No. 1. She desires to continue her conjugal rights with petitioner. Both the children are in need of love and affection of their father.

5. The notice was issued against opposite party No. 2, Sahim Mian but he did not appear in this case, neither did he file his written statement.

6. Learned counsel for opposite party No. 1 has submitted that the trial Court ought to have considered the deposition of opposite party no.1 herself wherein she has categorically stated before this Court her defence but the learned Court below has not considered the same and passed the impugned judgment. The learned trial Court has pointed out that on the ground of adultery, there is direct evidence, as P.Ws.-1 & 2 and that both have seen opposite party No. 1 in the compromise position with her villager, namely, Sahim Mian. Whereas, it has been deposed by the several witnesses on behalf of the opposite parties that toilet is made behind the house so that there was no occasion for the ladies to go out to attend nature call.

7. The learned trial court ought to have considered that



the petitioner is not the eye witness to the occurrence nor any document of panchayti was brought on record nor any *panches* have deposed in this case against opposite party No. 1 and that there is no cogent material to prove this case. Vide counter affidavit, the petitioner has submitted that the judgment of the trial Court is well discussed and deserves no interference.

8. The trial Court has framed following issues:

1. whether the petition as filed by the petitioner for divorce is maintainable ?
2. whether the petitioner is entitled to relief as prayed for ?
3. whether the petitioner has any cause of action to file this divorce case ?
4. what is the relief/reliefs, the petitioner is entitled to ?

9. In course of the trial, opposite party No. 1/petitioner have examined altogether three witnesses. They are as follows:

“1. P.W-1 Usha Devi deposed before the court that she is a neighbour of the petitioner Vikash Kumar. She, along with Malti Devi and mother of the petitioner Usha Devi and other women, went in field on 13.10.2019 at about 4 A.M for attending nature call and it is there that she saw that



wife of Vikash Kumar is in a nude state and a compromise position with Sahim Mian and she caught her in that nude state and brought her to the village, and narrated all the facts before Ram Avtar Sah and his sons and Sahim Mian succeeded to flee away. The father of Nitu Devi was called for, she accepted her guilt before her father and she was sent back alongwith her two children to her paternal house. During the course of cross-examination, this witness deposed in para 4 of cross-examination that her husband works in Bhelahi. She does not know the name of paternal house of Nitu Devi. In para 5 of cross-examination this witness deposed that she does not know when the marriage of Nitu Devi was performed, Nitu lived with her husband for the whole year. In Para 6, this witness deposed that Nitu was blessed with two sons, both sons are of Vikash Kumar. In para-7, this witness deposed that distance in between the house of Nitu and Vikash Kumar is about 100 yard. In between their house, the house of other four to five persons exist. In Para-8, she deposed that she has no acquaintance/relation with the wife of Vikash Kumar. In Para 9 of cross-examination, she deposed that she has come to depose on call of Vikash Kumar. In Para 10, she deposed that Vikash Kumar has deserted his wife and children and that she knows it. In Para 11, she deposed that it is not true that she has given a false affidavit. In Para 12, she deposed that Vikash Kumar is not maintaining his wife.

P.W. No.2 Malti Devi deposed before the court that she is neighbour of Vikash Kumar. On 13.10.2019 at about 4 A.M in the morning she alongwith the mother of Vikash Kumar and others went in the field for natural call. Nitu Devi was nude and in compromise position with Sahim Mian. They all caught her and brought her in the village and she disclosed all the facts



before Ram Avtar Sah and his sons and villagers. Sahim Mian succeeded to flee away from the spot. The father of Nitue Devi was called for. Nitu Devi accepted her guilt before his father thereafter she alongwith her two minor children went to her paternal house. During the course of cross-examination, this witness deposed in Para 4 that Vikash Kumar, Sahim Mian and she herself belong to the same village. Two other houses are existing in between the house of her and Vikash Kumar. In Para 5 she deposed that the relation in between her and Vikash Kumar is good. Both are neighbour to each other. In Para 6 this witness deposed that she could not say the date of marriage and birth dates of two sons of Vikash Kumar. In Para 7 this witness deposed that Vikash Kumar is not willing to keep his wife. In Para 8 this witness deposed that she is not a literate lady but she has dictated the affidavit. The affidavit was dictated on the date of occurrence. In Para 9 this witness deposed that it is not true that she has given false affidavit.

P.W.- 3 Vikash Kumar (petitioner himself) deposed before the court that Nitu Devi is his legally wedded wife. Nitu Devi blessed two sons from her matrimonial life. The names of their two sons is Bagrangi and Mahabli aged about 8 years and 6 years consecutively. The witness further deposed that his neighbour Usha Devi, Malti Devi and his mother Usha Devi alongwith other ladies of the village went in the field for natural call on 13.10.2019 at 4 A.M in the morning, they have seen that his wife Nitu Devi is in nude and compromise position with Sahim Mian. They caught her and they brought Nitu Devi in the village and disclosed all facts before his father Ram Avtar Sah, his brother and other villagers. Sahim Mian succeeded to flee away from the village. The father of Nitu Devi, Bhola Sah came at his door. Nitu Devi accepted her



guilt before her father. Nitu went to her paternal house alongwith her stridhan and both children. Thereafter he filed this divorce petition no.468/19 on 13.11.2019 before this Court. After service of notice, Nitu Devi filed a criminal case on 30.03.2020 before the S.D.J.M, Raxaul bearing no.69/20, u/s 498-A, 323 of the I.P.C only with a view to pressurize the petitioner. Nitu Devi is still in contact with Sahim Mian through mobile and told him that she will get the maintenance from him and she will live with Sahim Mian. He is under mental coercion due to the bad character of Nitu Devi. The marriage of Nitu Devi was performed as an ideal marriage. Nothing was given and taken as Dowry on the occasion of marriage. During the course of cross-examination, this witness deposed in Para 7 that it is not true that no occurrence took place as levelled by him. In Para 8 this witness deposed that it is true that the witnesses of occurrence are his villagers. In Para 9 this witness deposed that he is not ready to keep his wife at any condition. In Para 10 this witness deposed that it is not true that he has given false evidence.”

10. As against this, opposite party/appellant has also examined three witnesses. They are as under:

“O.P.W. No.1 Nitu Devi (O.P/respondent herself) appeared before the court and she deposed that her marriage with petitioner was performed on 24.04.2012 with Hindu rites and rituals. After marriage she went to her Sasural and she was performing her matrimonial obligations. She blessed two sons with her matrimonial relation with petitioner. The petitioner, his mother and other family members were compelling her to demand Rupees One lakh from her paternal house to open a vegetable shop at Bhelahi market. This witness told to the



petitioner that how her father can give such amount, he had already spent as per his capacity and he fulfilled the demand as required by the petitioner. The petitioner and his family members were taunting her and they used to abuse and pass derogatory words towards her mother and father and petitioner has threatened her that he shall give divorce to her. So many girls are ready to marry with him. He has all means and he can do whatsoever he thinks. Having knowledge of the financial condition of her paternal house and keeping in view the pitiable economic condition of her paternal house she did not disclose the demand of petitioner to her mother and father. The family members of her paternal house also tried to pacify the matter at her matrimonial house. Lastly due to non-fulfillment of the demand of petitioner, on 13.01.2019 on Sunday at about 8 A.M in the morning her husband Vikash Kumar after consulting with his family members badly assaulted to her and snatched her stridhan and ornaments of Rupees One lakh and ousted her alongwith her two minor children. She went to her paternal home and she disclosed all the happenings with her parents and she also disclosed to her parents that her husband is not ready to keep her without fulfillment of their demand of Rupees One lakh. She was hopeful that after passing six months to one year his anger will be subsided and he will agree to take her but he is in more anger due to non- fulfillment of demand. She sent her family members to her matrimonial house and tried to pacify the matter and she was not willing to file the case because after filing of the case their matrimonial relation may be disturbed. Behind the backside of the house of the petitioner toilet is situated. All the ladies members of his family go to use the toilet



for natural call. She has no knowledge about those persons and villagers who have made false allegations against her, they are not known to her. She became acquainted with their names after filing of this case. Her husband is willing to perform his second marriage after desertion from her, although, she is willing to live with her husband alongwith children, the children are in need of love and affection of their mother and father. She is unskilled, poor and helpless lady, the petitioner is in touch of another lady and due to this reason, he deserted her and her minor children since last three years and he is not taking care of her and her minor children. Her husband's economic condition is good, he runs shop and also from agricultural product his economic condition is sound and due to sound economic position the villagers are in their collusion and they have made false allegations against her.

During the course of cross-examination, this witness deposed in Para 12 that her marriage was performed in the year, 2012 and she has blessed with two sons they are of 7 years and 6 years old. In Para 13 this witness deposed that till eight years of her marriage her matrimonial life was happy thereafter on 13.10.2019 some dispute arose in between her and her husband. In Para 14 this witness deposed that it is not true that she was caught in compromise position with Sahim Mian on 13.10.2019 in the morning and she was brought before the villagers by the village women Malti Devi and Usha Devi. In Para 15 she deposed that it is not true that her father came on the same day and she confessed her guilt before the villagers and thereafter she went to her paternal house alongwith her belongings and children. In Para 16 this witness deposed that it is not true that she has



filed two cases against Vikash Kumar after filing of divorce petition by Vikash Kumar. In Para 17 she deposed that it is not true that she filed false affidavit and it is not true that she has given false evidence.

O.P.W. No.2 Shambhu Sah appeared before the court and deposed that the marriage in between the parties was performed on 24.04.2012 with Hindu rites and rituals. Nitu Devi blessed two sons from her matrimonial relations with Vikash Kumar. Vikash Kumar and his family members were demanding Rupees One lakh from Nitu Devi to open vegetable shop and Vikash Kumar also told to Nitu Devi that if she will not give the money then she will not be in well position. This witness further deposed that Vikash Kuamr is a rich person having landed property and he also runs vegetable shop from which he earns Rs.30,000/- per month. Vikash Kumar has filed this case against Nitu Devi with false allegations.

During the course of cross-examination, in Para 7 of his cross-examination this witness deposed that Nitu Devi is his own sister. The matrimonial life of Nitu Devi was well till 2 to 3 years after her marriage but thereafter some dispute arose in between them. In Para 8 this witness deposed that it is not true that Nitu Devi was caught on spot in compromise position with one Sahim Mian and she was caught by the women of neighbour so Vikash Kumar deserted her, and a Panchayati was held in the village where Nitu Devi confessed her guilt but she was not pardoned by her husband Vikash Kumar and Nitu went to her paternal house alongwith her belongings with her father. In para 9 this witness deposed that it is not true that he has



given false affidavit, In Para 10 this witness stated that he has not given false evidence.

O.P.W. No.3 Bhola Sah appeared before the court and deposed that on 24.04.2012 the marriage of Nitu Devi was performed with Hindu rites and rituals. After marriage she went to her matrimonial house and she was performing her matrimonial obligations. She blessed two sons from her matrimonial relations. The husband of Nitu Devi and his family members were demanding Rupees One Lakh prior to one year from Nitu Devi to open a vegetable shop at Bhelahi market and they were pressurizing on Nitu Devi to fulfill the said demand. Nitu Devi has stated them that how his father will give such amount because he has already spent more than his capacity at the occasion of her marriage, the loans of marriage is still unpaid. The husband of Nitu Devi and his family members were taunting to Nitu Devi that she is daughter of beggar and they also threatened her that she will be divorced and several girls are ready to marry with Vikash and they have sufficient money, they can do whatsoever they think, no one can prevent them. Lastly on 13.11.2019 at about 8 A.M Vikash in conspiracy with his family members badly assaulted Nitu Devi and he snatched her Stridhan of about Rupees One Lakh and ousted her and her two minor children from her matrimonial house. After having knowledge of the incident as given by Nitu Devi, he went to her matrimonial house and tried to pacify the matter but they were not agree to keep Nitu Devi without fulfillment of their demand. The toilet is situated behind the backside of the house of petitioner. The villagers who have leveled false allegations against opposite party No. 1- Nitu Devi, he has no



knowledge about them neither he has seen them. He came to know the names of both persons during the course of this case. Nitu Devi is unskilled, poor and helpless woman. The petitioner is in illicit relation with another lady so he is forgetting his wife and his children and since three years he is not taking care of his wife and children. The husband of Nitu Devi is well to do from the agricultural land and also from running of shop, he has good earning. Due to influence of money the petitioner filed this case with false allegation against Nitu Devi.

During the course of cross-examination, in Para 10 this witness deposed that Nitu Devi is his daughter. He has two daughters, Nitu Devi is elder and his younger daughter is also married in Nepal. In Para 11 this witness deposed that Nitu Devi was living with her husband till eight years of her marriage happily but after eight years of her marriage Vikash Kumar filed this divorce case. In Para 12 this witness deposed that it is not true that allegations made in the divorce case is true. In Para 13 this witness deposed that he has no knowledge about the alleged incident date i.e., 13.10.2019, when Nitu Devi came to his house then he came to know that Vikash assaulted her and ousted her from her matrimonial house. In Para 14 this witness deposed that it is not true that Nitu Devi confessed her guilt, he voluntarily came back with Nitu Devi and her children with sweet will. In Para 15 this witness deposed that it is true that all contents of affidavit was read over to him. In Para 16 this witness deposed that it is not true that all contents of affidavit is false.”

11. No documentary evidence was adduced from



either parties.

12. Petitioner has filed the case before the trial for obtaining the decree of divorce on the basis of adultery only. On this ground the only pleading in the petition of the petitioner is that on 13.10.2019 at about 4:00 in the morning, opposite party No. 1, Nitu Devi was seen by the village women in a compromise position with one of the villagers, namely, Sahim Mian who is opposite party no. 2 of this case.

13. The learned trial Court has held that in divorce petition, the name of eye witness is not disclosed as to who has seen the occurrence. It is only stated in divorce petition that the appellant was seen and caught red handed while establishing physical/illicit relation with the respondent no. 2, Sahim Mian which was seen by some women and men but the same was not disclosed. It is further stated in the divorce petition that the father of the appellant was also reported and a panchayti was also held before the Panches. P.W.- 3 is the respondent himself, and he has stated in his examination in chief that on 13.10.2019 at about 4:00 a.m. his neighbour Usha Devi, wife of Jagdish Prasad, Malti Devi, wife of Prayag Das, and his mother, namely, Usha Devi have seen the appellant in compromise position with one co-villager, namely, Sahim Mian. P.W.-1, Usha Devi, neighbour of the petitioner/respondent and P.W-2 & 4 are the co-villagers



who are stated to have seen the alleged occurrence. Vikash Kumar, the petitioner is not the eye witness rather he has come to know about the occurrence from other Aws. From his evidence, it is clear that his mother, Usha Devi has also seen the occurrence but the said Usha Devi has not come to depose before the Court . In divorce petition, nobody is mentioned as the eye witness of the occurrence.

14. The proceeding before the family court is purely of a civil nature and in civil cases petitioner has to first of all plead his case and on the basis of the pleading he has to prove his case. In this case, though it is alleged that the opposite party no. 2 was seen in a compromise position by the villagers in the morning at about 4:00 a.m. but names of eye witness were not disclosed in the divorce petition. At the stage of trial, the story has been developed and witnesses have come to support the petitioner Vikash Kumar. The petitioner-Vikash Kumar who also happens to be one of the witnesses has stated that his mother has also seen the occurrence, but it is very strange that even the mother of the petitioner has not come forward to support the case of the petitioner and the case which has been set up by the petitioner for alleging adultery against opposite party No. 1 seems to be quite absurd. The story which has been propounded is not palpable as any woman who is having an illicit relation



with anybody will not indulge in such activities in open field. The story is highly improbable. The petitioner has not properly pleaded the case of adultery. His pleadings are vague on the point of adultery and the evidences are merely developments to satisfy the cause of the petitioner. Moreover, non-examination of the mother of the petitioner itself shows that even his family members are not ready to support that opposite party No. 1 was having adulterous behaviour. The trial Court has not considered this aspect of the matter.

15. Considering the above facts and circumstances of the case as well as the materials on record, Judgment dated 06.06.2022 passed in Matrimonial Case No. 468 of 2019 on the file of learned Principal Judge, Family Court, East Champaran, Motihari is set aside and the present M.A. No. 282 of 2022 stands allowed.

Jagdish/-
Shubham/-

(P. B. Bajanthri, J)

(Ashok Kumar Pandey, J)

AFR/NAFR	NAFR
CAV DATE	08.01.2025.
Uploading Date	
Transmission Date	

