

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.827 of 2018

=====

Renu Devi @ Pinki wife of Abhijat Kumar @ Pawan @ Pawan Kumar,
Resident of Village- Sikandara, P.O. Pinki, P.S. Silao, District Nalanda, at
present Renu Devi @ Pinki, daughter of Ramashray Prasad, Resident of
Village- Mirdahachak, P.S. Harnaut, District Nalanda.

... .. Appellant/s

Versus

Abhijat Kumar @ Pawan @ Pawan Kumar son of Ganauri Prasad, Resident
of Village- Sikandara, P.O. Pinki, P.S. Silao, District Nalanda.

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ashok Kumar Mishra, Advocate.

For the Respondent/s : Mr. Uma Shankar Sharma, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date : 30-04-2025

Heard both the parties.

2. This Miscellaneous Appeal has been filed against
the judgment/order dated 13.08.2018 and decree dated
18.08.2018 passed by the learned Principal Judge, Family Court,
Nalanda at Bihar Sharif in Divorce Case No. 151 of 2013
whereby the learned Family Court has allowed the divorce case
filed by the respondent-husband under Section 13 (1) (ia) and
(ib) of the Hindu Marriage Act, 1955.

3. The case of the respondent-husband in brief is
that the marriage between the parties was solemnized on
22.03.2009 according to Hindu rites and customs. After marriage



appellant-wife lived together with the respondent-husband for about 30 days, after *bidagari* she went to her parental house with her parents. Gradually, the behaviour and attitude of the appellant-wife changed and she used to be very stubborn. Both the parties, out of their wedlock, were blessed with a female child 'Shreya Kumari' on 31.07.2012, who is presently in the custody and care of appellant-wife. The respondent-husband was subjected to mental and physical cruelty by the appellant-wife and she left the company and society of her husband without his consent. It has been alleged that the appellant-wife refused to make physical relationship with the respondent-husband. On 10.07.2013, the respondent-husband went to bring the appellant-wife back to her matrimonial house, but she refused and hurled abusive language and made false complaint of dowry torture against the respondent-husband. Further, the appellant-wife filed a Complaint Case No. 344(C) of 2014 under Sections 498A, 406, and 34 of Indian Penal Code, 1860 against the respondent-husband and his family members in which they were granted bail, such registration of criminal case is after filing of divorce case in the year 2013. The relationship between the appellant and respondent has been irretrievably broken down and there is no hope of any restoration of their relationship. The respondent-husband sought decree of divorce from the learned Family Court



vide Divorce Case No. 151 of 2013.

4. The appellant-wife appeared and filed written statement wherein she denied the allegations alleged by the respondent-husband. It is stated that she had cordial relationship with in-laws when she stayed at her matrimonial home during initial days of their marriage. It is further stated that the respondent-husband and his family members were not happy with the gifts received at the time of their marriage and they were pressurizing the appellant-wife for dowry of Rs. 5 Lakhs. The respondent-husband got a job as a constable in BMP-6 at Muzaffarpur in the year 2013. Thereafter, she was harassed time and again by the respondent-husband and his family members. The appellant-wife always lived with love and affection with her husband and his family members but was tortured for fulfillment of dowry demand.

5. In view of facts and circumstances and materials available on record learned Family Court, Nalanda at Bihar Sharif noted that both the parties are living separately having no cohabitation between them. It is held that the act of the wife amounts to cruelty and the wife had deserted the respondent-husband so the husband is entitled to a decree of divorce. The marriage is accordingly dissolved and the suit has been decreed vide impugned judgment/order dated 13.08.2018 and decree was



issued on 18.08.2018.

6. It is evident that the relationship between the parties has strained which is marked by frequent discord. Upon bringing the respondent back from her parental home, she stayed with the petitioner for a short period and even during that period, the relationship between them lacked cordiality and harmony, as there was no healthy marital cohabitation and has progressively deteriorated over time. Although a daughter was born out of the wedlock, the parties have been living separately for more than twelve years. They have levelled serious allegations against each other and have been engaged in continuous litigation since their separation. There is a clear absence of intention on either side to resume cohabitation or revive the matrimonial bond. Although, the appellant-wife contended that she wanted to resume her conjugal life. However, due to prolonged separation, nature of disputes, pendency of litigation, and mutual unwillingness to reconcile are sufficient evidence that the marriage has irretrievably broken down.

7. It is also relevant to mention here that the respondent-husband stated that subsequent to the decree of divorce granted by the learned Family Court, the respondent-husband entered into his second marriage with Anchal Kumari @ Nitu Kumari on 10.03.2019 and from the second marriage, they



are now blessed with two children. The respondent-husband is paying monthly maintenance of Rs. 10,000/- (Rs. 7,000/- per month to appellant and Rs.3,000/- per month to their daughter) vide order dated 02.05.2018 in Maintenance Case No. 30(M) of 2014. It is further stated that the respondent-husband has deposited Rs. 9,72,000/- out of Rs. 12,70,000/- as total maintenance amount till November, 2024, and the remaining arrears amount is being paid by him monthly. Moreover, the respondent-husband, in compliance of order dated 11.11.2024 by this Court, deposited Rs. 2,00,000/-for educational expenses of their daughter and Rs. 25,000/- for litigation cost in the bank account of the appellant-wife.

8. Learned counsel for the parties conceded that in view of the facts and circumstances of the case, the relationship between the appellant-wife and the respondent-husband has irretrievably broken down. Both the parties are residing separately since more than 12 years and there is no hope of any restoration of their conjugal relationship and Anchal Kumari @ Nitu Kumari's life would ruin. In view of subsequent development, it is in the interest of justice that instead of deciding the appeal on merit this case may be disposed of by granting permanent alimony to be paid to appellant-wife by the respondent-husband. The appellant-wife proposed Rs. 25 Lakhs



as one time settlement amount with respect to her permanent alimony. Learned counsel for the parties submitted to decide the quantum of permanent alimony to be paid by respondent-husband to appellant-wife in the facts and circumstances of the case.

9. In view whereof, the only point to be decided by this Court is *“what is a reasonable amount to be paid by the respondent-husband to the appellant-wife for her claim towards permanent alimony in the facts and circumstances of this case.”*

10. Learned counsel for the appellant-wife submitted that the respondent-husband is employed as a constable and his monthly salary is Rs. 48,567/- and the appellant-wife has no source of income. She is dependent upon the respondent-husband and the minor daughter is residing with the appellant-wife. The respondent-husband being father has legal and moral obligations to maintain his minor daughter and to provide maintenance including her educational and marriage expenses. It is further submitted that the respondent-husband is aged about 36 years, having 24 years of remaining service period, taking his retirement age to be 60 years read with promotion prospects in the service, the proposal of Rs.25 Lakhs as one-time settlement is just and reasonable.

11. Per contra, learned counsel for the respondent-



husband submitted that he has no land property and on partition only 3.5 decimal agricultural land would come into his share. The respondent-husband is presently paying Rs. 10,000/- per month (Rs.7,000/- for appellant-wife and Rs.3,000/- for minor daughter) as their maintenance amount. After decree of divorce, he has again solemnized marriage with Anchal Kumari @ Nitu Kumari from whom they have been blessed with two children and the respondent-husband has to maintain them as well, apart from his old-aged parents. He further submitted that the respondent-husband is ready to make payment of just and reasonable one-time amount with respect to permanent alimony.

12. Section 25 of the Hindu Marriage Act, 1955, provides for the grant of permanent alimony and maintenance to a spouse following the dissolution of marriage to ensure that the spouse who is financially dependent is not rendered destitute or without means of sustenance post-separation. The intent of the legislature in enacting this provision is to offer necessary financial support and social security to the affected spouse. It is not intended to penalize or to impose undue burden on the other party. The relief under Section 25 is thus remedial in nature, aimed at balancing equity and fairness between the parties, keeping in view their respective circumstances. The question arises that what are the factors to be consider for determination



of quantum of permanent alimony.

13. The law is now well-settled that there cannot be a fixed formula for determination of quantum of permanent alimony. In the case of **Rajnesh v. Neha** reported in **(2021) 2 SCC 324**, the Hon'ble Supreme Court laid down a detailed and structured framework for determining the amount of maintenance, particularly focusing on the aspect of permanent alimony. The Court outlined a comprehensive set of factors to be considered in such determinations across all matrimonial proceedings. This guiding framework has been subsequently affirmed and reiterated by the Hon'ble Supreme Court in **Kiran Jyot Maini v. Anish Pramod Patel**, reported in **2024 SCC OnLine SC 1724** wherein while discussing the husband's obligation to maintain the wife and the importance of his financial capacity in deciding the quantum, observed under para 26 that:-

“26. Furthermore, the financial capacity of the husband is a critical factor in determining permanent alimony. The Court shall examine the husband's actual income, reasonable expenses for his own maintenance, and any dependents he is legally obligated to support. His liabilities and financial commitments are also to be considered to ensure a balanced and fair maintenance award. The court must consider the husband's standard of living and the impact of inflation and high living costs. Even if the husband claims to have no source of income, his ability to



earn, given his education and qualifications, is to be taken into account. The courts shall ensure that the relief granted is fair, reasonable, and consistent with the standard of living to which the aggrieved party was accustomed. The court's approach should be to balance all relevant factors to avoid maintenance amounts that are either excessively high or unduly low, ensuring that the dependent spouse can live with reasonable comfort post-separation."

14. The Hon'ble Supreme Court, in **Pravin Kumar Jain v. Anju Jain** reported in **2024 SCC OnLine SC 3678**, examined various precedents to clarify the legal position concerning the determination of permanent alimony. The Court emphasized the necessity of considering relevant factors to ensure that the amount awarded is just, fair, and reasonable. In paragraph 31 of the judgment, it has been 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."

15. The Hon'ble Apex Court, taking note of



Rajnesh 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.”*

16. Duration of the marriage is one of the relevant factors in determining the permanent alimony. The conduct of the party seeking the relief is also relevant in determining the quantum of permanent alimony. 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 sub-section 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)

17. In the present case, the parties are living separately for more than 12 years. The respondent-husband is employed as a constable in Bihar Special Armed Police and he earns a monthly salary of Rs.48,567/-. Also, he has no assets in his name except 3.5 decimal agricultural land share in the ancestral land property. Moreover, the appellant-wife is totally dependent upon respondent-husband for her maintenance.

18. It is a well-settled principle of Hindu law that a father has a legal and moral obligation to maintain his unmarried daughter if she is unable to maintain herself. This obligation extends beyond mere subsistence and includes the reasonable expenses of her marriage, which are now recognized as forming part of the concept of 'maintenance'. The right of an unmarried daughter to claim marriage expenses from her father is thus no longer confined to custom or tradition, but has been conferred the status of a legal right. This responsibility is personal in nature



and arises by virtue of the parental relationship itself. Furthermore, a father who resides separately from his wife and daughter cannot, by reason of such separation alone, evade or be absolved of this statutory and moral duty.

19. Accordingly, the respondent-husband shall continue to pay the monthly enhanced maintenance amount of Rs.7,000/- from Rs.3,000/-, w.e.f. 01.05.2025, since 7 years have lapsed from 02.05.2018, the date on which a sum of Rs.3,000/- was awarded vide order dated 02.05.2018 passed in Maintenance Case No.30 (M) of 2014 to the daughter with liberty to file petition for her marriage expenses at the relevant time.

20. Keeping in view of the fact that the appellant-wife is residing separately for last 14 years from respondent-husband and it has not been brought on any documentary evidence to show that she has no any other source of income other than maintenance amount granted by the Court. Considering the financial capacity, age, conduct, obligation and liabilities, period of separation and such other ancillary factors as stated above, we feel it appropriate to grant permanent alimony to the tune of Rs.20 Lakhs to be paid by the respondent-husband as one time settlement with respect to her permanent alimony within a period of four months from the date of passing of this judgment.



21. It is hereby clarified that the aforesaid amount shall not preclude or otherwise affect the right of the daughter of the parties to inherit property, if any, to which she may be legally entitled.

22. Further, it is clarified that arrears amount to be calculated and to be payable to appellant and her daughter for their maintenance in Maintenance Case No. 30(M) of 2014 till the date of this judgment shall be paid by the respondent-husband without fail and at the earliest.

23. This Miscellaneous Appeal stands **disposed of** with aforesaid directions.

24. Pending I.A's., if any, stands disposed of.

(Sunil Dutta Mishra, J)

I am on the same page
(P. B. Bajanthri, J)

(P. B. Bajanthri, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	20.02.2025
Uploading Date	30.04.2025
Transmission Date	NA

