

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.420 of 2017

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Manorma Devi W/o Sri Deep Narayan @ Vijay Panjiyar D/o Sri Amarnath Mahto, at present resident of Mohalla- Bakarganj, P.S.- Lahariyasarai, District- Darbhanga.

... .. Appellant/s

Versus

Sri Deep Narayan @ Vijay Panjiyar S/o Sri Surendra Panjiyar At present resident of Mohalla- Hospital Road, Benta, P.O. D.M.C.H. P.S.- Lahariyasarai, District- Darbhanga.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Ranjan Kumar Sinha
For the Respondent/s : Mr.Iqbal Asif Niazi

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE S. B. PD. SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 15-10-2025

Heard the parties.

2. The appellant-wife (Manorma Devi) has come up in this appeal against judgment dated 31.03.2017 and decree dated 13.04.2017 passed by the learned Principal Judge, Family Court, Darbhanga in Matrimonial Case No. 127 of 2011, whereby in a petition filed by the respondent-husband (Deep Narayan @ Vijay Panjiyar) under Section 13 of the Hindu Marriage Act, 1955 (in short 'the 1955 Act') seeking dissolution of marriage by a decree of divorce, the learned Principal Judge granted the decree of judicial separation between the parties under Section 10 of the Hindu Marriage Act.



3. Succinctly, the marriage of appellant-Manorma Devi was solemnized with respondent-Deep Narayan @ Vijay Panjiyar on 07.07.2003 as per Hindu rites and ceremonies. The marriage was duly consummated; and three children were born out of the wedlock.

4. The pleaded case of respondent-husband in his petition filed before learned Family Court is that the marriage of the respondent with the appellant was solemnized as per Hindu rites and rituals at Laheriasarai, Darbhanga on 07.7.2003. In the marriage, the father of the appellant did not pay anything and all the arrangements of marriage were borne by the respondent-husband as the appellant was a beautiful girl and the respondent was liking her. After marriage, at the request of the appellant, the respondent spent a lot of money on the treatment of mother of the appellant. The respondent also provided financial help to the family of the appellant due to their weak financial conditions. Sometimes after the marriage, the respondent came to know that appellant has illicit relationship with a boy of her *Maike*. Somehow, the marriage was consummated and three children were born



out of the wedlock. The appellant remained with the respondent till he has been giving expenses to her parents and when he stopped paying the expenses, then the appellant, under a conspiracy has filed a false case and implicated the father of the respondent. It is further alleged that on 21.03.2010, the appellant, in the absence of father of the respondent went to her *maike* along with her minor child and after taking gold ornaments and cash of Rs. 30,000/- she fled away. Next day, on 22.03.2010, when the father of the respondent went to her *maike* and asked about this fact, then her family members started abusing him and when he made protest then father and brother of the appellant assaulted the father of the respondent on his head. He, thereafter registered Laharia Sarai P.S. Case No. 119 of 2010 on 27.03.2010 under Sections 307, 447, 323, 380, 504, 34 of the Indian Penal Code against the brothers and father of the appellant. It is further alleged that in order to save their skin, the father of the appellant has also filed Complaint Case No. 498 of 2010 on 25.03.2010 which was subsequently converted into Laheria Sarai P.S. Case No. 136 of 2010 on 07.04.2010 under Sections 341, 323, 325,



342, 498(A), 120(B), 504, 34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act. In the aforesaid case, he has made false allegation of demand of dowry and torture against the respondent-husband and other family members. The appellant-wife has also filed Maintenance Case No. 164 of 2010 on 19.08.2010 under Section 125 of the Cr.P.C in which the reconciliation took place and after reconciliation, the respondent took the appellant to her matrimonial house on 19.01.2011 and started living separately from his parents. The respondent made all his efforts to resume the conjugal relation but it was the appellant who did not want to continue any kind of relationship with the respondent and started pressurizing the respondent to withdraw the cases filed by the father of the respondent against her father and brothers. In the year 2011, the appellant has again filed a case bearing Laheria Sarai P.S. Case No. 134 of 2011 under Section 498(A) of the Indian Penal Code on 01.03.2011 against the respondent and other in-laws family members making false and frivolous allegations wherein the respondent and other family members were compelled to take anticipatory bail.



The appellant is a quarrelsome lady and also involved in an illicit relationship with another man and has continuously implicated the respondent in false criminal cases, thereby causing immense mental agony, financial hardship and physical distress. The appellant has willfully deserted the respondent since 2010 and has failed to fulfill any matrimonial obligation. Hence, leaving no other option, the respondent has filed the present divorce petition.

5. The appellant-wife has appeared in pursuance to the notice issued to her and filed her written statement. In her written statement, she has denied all the allegations made against her. She has stated that the matrimonial case is not maintainable either on fact or law and the respondent has got no cause of action to file this case. The respondent-husband has no interest to continue conjugal relationship with the appellant. Soon after marriage, the appellant-wife was tortured for demand of dowry. The respondent-husband himself deserted the appellant-wife and did not make any concrete effort to restore the matrimonial relation with the appellant-wife. The appellant had never given threat, nor ill behaved, humiliated or quarreled with any in-laws family



members and all the allegations made against the appellant-wife are fake with a view to take divorce from her. Hence, the divorce petition is liable to be dismissed.

6. In view of facts and circumstances and considering the materials available on record, learned Principal Judge, Family Court, Darbhanga has held that the appellant-wife has not taken any honest effort to continue her matrimonial relationship with her husband, to get the matrimonial dispute settled amicably. Hence, for the peaceful life of both spouses including their family, an order of judicial separation is required and accordingly the matrimonial suit was disposed of by passing order of granting decree of judicial separation under Section 10 of the Hindu Marriage Act. The appellant-wife, aggrieved by the said judgment of the learned Family Court has filed the instant appeal before this Court.

7. Learned counsel for the appellant-wife submits that the learned Family Court has erred in law and facts both in allowing the judicial separation between the parties under Section 10 of the Hindu Marriage Act. Learned counsel has further submitted that the order of judicial



separation was granted on the ground of cruelty, rather the appellant-wife had been treated with cruelty at her matrimonial home and she had only availed her legal remedies by filing cases as regards the cruelty meted out to her and also as regards the demand of dowry by the respondent-husband and his family members, however the same have been wrongly taken against the appellant. It is further submitted that the Family Court has wrongly concluded that the appellant had deserted the respondent-husband, whereas it was the respondent, who had compelled the appellant-wife to leave her matrimonial home. The respondent has alleged the cruelty at the hands of the appellant but no specific date of cruelty/incidence was brought on record. In his divorce petition, the respondent has not brought on record any document to prove his case. The respondent has alleged that his father has sustained injuries at the hands of the father and brother of the appellant but he has not produced any injury report to authenticate his claim. Though the respondent claims that appellant has illicit relationship with with a person of her Maiké but he has not even disclosed the name of that person



which clearly suggests that all the allegations were levelled in order to take advantage in the matrimonial case filed for dissolution of marriage. The appellant has three children and she is still ready to live with the respondent.

8. It is also submitted that no efforts were made by the Family Court to reconcile the matter between the parties. It is therefore contended that the findings returned by the Family Court are not sustainable in the eyes of law.

9. Learned counsel for the respondent-husband submits that the learned Family Court failed to appreciate the evidences brought on record by the respondent supporting the fact that appellant is not fit to carry the matrimonial obligation. Learned counsel further submits that allegation regarding extra marital affair amounts to mental cruelty as same has been held to be a ground of divorce in the matter of *Narendra vs. K. Meena* reported in *AIR 2016 SC 4599*. Parties have not stayed together for the last fifteen years for which it can be reasonably inferred that marriage between the parties is broken down irretrievably and decree of divorce ought to be passed. Learned counsel has further submitted that since the date of judgment dated



31.03.2017 and decree dated 13.04.2017, seven years have already been elapsed and no solution has come out for establishing matrimonial relation or matrimonial obligation by virtue of the said reason the ground of divorce on the basis of mental cruelty is necessary to be allowed. Learned counsel further submitted that parties have been litigating for a long and have lost best part of their life and there is no possibility of living together, so it is necessary to mitigate their mental agony through the decree of divorce. Learned counsel further submitted that under the given facts and circumstances of the case respondent-husband has spent much of his career in litigating against the appellant-wife for getting the decree of divorce. He has suffered lot of mental agony and led a secluded life. Learned counsel for the respondent has submitted that since the purpose of marriage would not be served as both parties are living separately after the year 2010 and even after the order of judicial separation, there was no room for living together, for all practical purposes marriage came to end. Learned counsel for the appellant relied upon the decision of ***Rakesh Raman vs. Kavita*** reported in ***2023 SCC Online SC 497*** in



which it has been observed in para 20(xiv) which reads as under:-

"20(xiv). Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair.

The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

10. Learned counsel for the respondent further submits that in ***Rakesh Raman vs. Kavita (supra)***, the husband got the decree of divorce as he was living separately from his wife since long. In support of his contention, learned counsel for the appellant also cited decision of ***Subhransu Sarkar vs. Indrani Sarkar*** reported in ***2021 SCC Online SC 720***.

11. In order to prove his case, the respondent-husband only himself has examined as P.W. 1. No documentary evidence has been produced on behalf of the



respondent-husband.

12. The appellant-wife has also examined two witnesses which are O.P.W. 1 Manorma Devi (appellant herself) and O.P.W. 2 Amarnath Mahto. She has also not produced any documentary evidence.

13. We have heard learned counsel for the appellant and perused the concerned record of Family Court as well as the impugned judgment.

14. From perusal of the case records, it appears that decree of judicial separation between the appellant and the respondent has been granted by the learned Family Court on the ground of cruelty and desertion.

15. 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.

16. 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.

17. 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."

18. After going through the impugned judgment, it is crystal clear that respondent-husband has failed to prove the cruel behaviour of the appellant towards him and his family members by the strength of cogent, relevant and reliable evidence, while burden of proof of cruelty rests upon the respondent-husband of this case, because, he has sought relief of divorce on the basis of cruel behaviour of the appellant towards him. Not even single incident with reference to specific date of alleged cruelty has been urged in the plaint before the Family Court. 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.

19. Moreover, it is specifically pleaded in the petition of the respondent-husband that his father was brutally assaulted at the hands of the appellant's family members and for which a criminal case was also registered and subsequently counter case was registered on behalf of the appellant's side, but neither the father of the respondent has been examined in the trial nor any chit of paper of the above case has been filed. So, virtually, no any oral or documentary evidence has been produced on behalf of the respondent in support of the aforesaid pleaded facts.

20. Thus, considering the above entire aspects of this case and evidence adduced on behalf of both the parties, we find that respondent-husband has failed to prove the allegation of cruelty, much less, the decree of cruel



behaviour of appellant.

21. So far as ground of desertion is concerned, it is the case of the respondent-husband that appellant-wife has deserted the respondent-husband since 2011 and since then she has been living along with her children at her *Maike*. The respondent-husband made all his efforts to bring back the appellant-wife to her matrimonial house but she was not agree to come with the respondent, hence, ultimately, the respondent has filed the present Divorce Petition. Here it is important to refer Section 13 of the Hindu Marriage Act:-

(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party--

[(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years



immediately preceding the presentation of the petition; or]

(ii) has ceased to be a Hindu by conversion to another religion; or

[(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

22. The learned Principal Judge, Family Court has also observed in his judgment that keeping in view the facts and circumstances of the case, both parties are directed for a judicial separation for few months. Para 10 of the said judgment reads as under:-

“ Under the facts and circumstances of the case it is evident that the Opposite party/wife does not take any honest effort to continue her matrimonial relation with her husband, to get the matrimonial dispute settled amicably. Hence, for the peaceful life of both spouses including their family it is expedient to live separately for some months within stipulated period as per the law required till the period where both the



spouse keep faith between each other and without having any good faith, both the spouse cannot enjoy their matrimonial life peacefully and prior to holding faith between both the spouse it is expedient to remain separate life of both of them for their better future for time being and also in view of future prospect of their three children who have to live at some time in one side and at the other time in the other side which show that both the spouse have made the present and future prospect of the aforesaid three children in hell and also in much doldrum along with both the spouse themselves having the same situation of their life and later on, they both have option to materialize their matrimonial dispute with the help of their parents, if they both so like. Thus, an order for Judicial separation is required to pass and as such, the aforesaid issue No. ii to vi are disposed of accordingly as discussed above.”

23. From perusal of the record, it clearly transpires that just after few months of the alleged desertion by the appellant-wife, the respondent-husband has filed the present Divorce Petition which clearly indicates that respondent-



husband did not make reasonable efforts to settle the dispute with her wife (appellant) and hurriedly filed the divorce petition. The learned Family Court also did not take a pain to reconcile the matter/dispute between the parties and without considering the period of alleged desertion, has order for a judicial separation without considering the fact that appellant has three children and in the absence of their father, the future of their children would be at stake as appellant is a housewife and she does not have any source of income.

24. 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. Under the present Hindu Marriage Act, adultery is laid down as one of the ground for divorce or judicial separation.

25. 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.

26. The respondent has not brought on record the



name of adulterer or any proof to show that appellant was having illicit relationship with any person 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 appellant without any supporting material evidence.

27. Hence, after going through the entire facts and evidence of both the parties, the judgment dated 31.03.2017 and decree dated 13.04.2017 passed by the learned Principal Judge, Family Court, Darbhanga in Matrimonial Case No. 127 of 2011, is hereby set aside.

28. Accordingly M.A. No. 420 of 2017 stands allowed.

29. Pending I.A(s), if any, stand disposed of.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, CJ)

Shageer/-

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