

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.363 of 2019

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Ram Pravesh Kumar, son of Lal Babu Sah @ Rajesh Bhushan, resident of
Village-Naranga, P.S.-Bela, District-Sitamadhi

... ... Appellant/s

Versus

Amrita Kumari, wife of Ram Pravesh Kumar, resident of Village-
Naranga, P.S.-Bela, District-Sitamadhi

... ... Respondent/s

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Acts/Sections/Rules:

- **Section 9 of Hindu Marriage Act, 1955**
- **Section 19(1) of the Family Court Act, 1984**

Cases referred:

- **Samar Ghose vs. Jaya Ghose reported in 2007
(4) SCC 511**

Appeal - filed against the judgement whereby the matrimonial suit, preferred by the appellant-husband, for a decree of divorce, on dissolution of marriage, on the ground of cruelty and desertion, has been dismissed.

Held - In regard to the allegation of depriving the appellant-husband of the conjugal life by the respondent-wife, it is relevant to find that the appellant-husband has himself pleaded/deposed that they lived like husband and wife during the stay at her matrimonial house and it is also found that when she went back to her parental house, he has not taken any legal steps for restitution of conjugal rights by filing petition under Section 9 of the Hindu Marriage Act. (Para 21)

So far as ground of cruelty is concerned, appellant-husband has failed to prove the cruel behaviour of the respondent towards him and his family members by the strength of cogent, relevant and reliable evidence. 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 towards him. Furthermore, 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. (Para 22)

As far as the allegation of illicit relationship of the respondent-wife with one of her villagers is concerned, the appellant-husband has neither impleaded the alleged adulterer having illicit relationship with his wife nor there is any circumstantial or direct evidence to prove the alleged illicit relationship with the adulterer. The deposition of the witnesses in regard to alleged illicit relationship at best amounts to suspicion and not proof. (Para 23)

Appeal is dismissed. (Para 25)

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... .. Appellant/s

Versus

Amrita Kumari, wife of Ram Pravesh Kumar, resident of Village-Naranga, P.S.-Bela, District-Sitamadhi

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Shashi Bhushan Kumar, Advocate
For the Respondent/s : Mr. Alok Kumar Jha, Advocate

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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 : 17-01-2025

Heard the parties.

2. The present appeal has been filed under Section 19(1) of the Family Court Act, 1984 impugning the judgment dated 29.03.2019 passed by learned Principal Judge, Family Court, Sitamarhi in Matrimonial Case No. 56 of 2013, whereby the matrimonial suit, preferred by the appellant-husband, for a decree of divorce, on dissolution of marriage, on the ground of cruelty and desertion, has been dismissed.



3. The case of the appellant-husband as per petition filed before the Family Court is that the marriage of the appellant-husband with respondent-wife was solemnized on 11.03.2012 as per Hindu Rights and Customs in a temple. After marriage, on 13.03.2012, the appellant-husband went to work in the Indian Railways and his wife-respondent started staying at her matrimonial house. On 20.06.2012 when the appellant-husband came to his house on leave, he found that the behavior of the respondent with her mother-in-law and father-in-law was not cordial. She used to abuse and quarrel with them on trivial issues and always threatened to commit suicide and implicate family members in a murder case. Ultimately, father of the appellant-husband filed an application before the S.H.O, Bela, about the behaviour of the respondent and for their protection. The appellant-husband also tried to convince his wife-respondent but all his efforts went in vein. On 06.08.2012, in the absence of the appellant-husband, the



respondent called her father and uncle and secretly went to her parental house at night with all her belongings, for which the appellant-husband had filed a complaint before the Chief Judicial Magistrate on 08.08.2012 which is pending. The respondent, in the meanwhile filed a case under Section 498(A) of the Indian Penal code against the appellant-husband and other in-laws family members. The appellant-husband also claimed that respondent is in illicit relationship with a person before marriage. She also became pregnant before marriage with another person and when her parents came to know about it, her father wanted to marry the appellant-husband who was working in Indian Railways. The appellant's father was aware of the character of the respondent due to which he flatly refused to marry his son with the respondent. Father of the respondent, thereafter filed a complaint before the Chief Judicial Magistrate, falsely alleging against the appellant-husband that she had become pregnant with the appellant-husband and got her married to the



appellant-husband by applying criminal force. The respondent is living in her parents' house since 06.08.2012 and regularly meets the person with whom she had illegal relationship and mentally harasses the appellant-husband due to which it is difficult to keep her with him and there is no future for him. It was therefore, prayed to pass an order for the divorce in favour of the appellant-husband.

4. After filing of the above case, the O.P./respondent appeared in response to the summon/notice issued by the Court and filed her reply/written statement.

5. It is submitted by learned counsel for the respondent that before marriage, a case of rape was filed against the appellant-husband and the marriage was performed in a temple after compromise in the aforesaid case. She admitted that it was a love marriage between the appellant-husband and the respondent. After marriage, the appellant-husband went to his place of



posting and she started living her matrimonial house where she was tortured by her in-laws-family members. The respondent has filed a case of harassment against her in-laws and she has also filed a case of maintenance against her husband in which an order was passed to pay Rs. 5000/- per month. She denies that she used to abuse his in-laws-family members and threatened to commit suicide. She also denies to have any illicit relationship with anyone. The appellant-husband admits that she still ready to live with the appellant-husband as husband and wife.

6. On the basis of the rival contentions of both the parties, following issues were framed in this case by the learned Principal Judge, Family Court:-

(i) Whether the appeal as filed is maintainable ?

(ii) Whether the appellant has got valid cause of action for the appeal ?

(iii) Whether the appeal is barred by law of limitation ?

(iv) Whether the appeal is barred



by the principles of waiver, acquiescence and stoppel ?

(v) Whether the marriage of the parties be declared void in favour of the appellant as against the respondent and a decree of nullity be granted ?

(vi) Whether the appellant is entitled for any relief or reliefs as prayed for?.

7. In order to prove his case, the appellant-husband has examined three witnesses namely Rajesh Bhushan @ Lal Babu (P.W. 1), Ram Pravesh Kumar (P.W. 2) and Ramswarth Sah (P.W. 3) before the Family Court in support of his petition. No documentary evidence has been adduced on behalf of the appellant-husband.

8. P.W. 1 Rajesh Bhushan @ Lal Babu is the father of the appellant-husband who has deposed that respondent-wife has filed a case under Sections 376, 313/511 of the Indian Penal Code against the appellant-husband and marriage was solemnized after compromise in the aforesaid case. He further deposed that



respondent-wife has illicit relationship with many persons though he has not specifically named anyone. This witness has also deposed that his son-appellant works in Railways. This witness further deposed that appellant-husband has performed second marriage but subsequently he denied.

9. P.W. 2 is the appellant-husband himself who has deposed that he works as Signal Teli Communication in Gwalior N.C.R, Railway and the respondent-wife has filed a maintenance case in which he was directed to pay Rs. 5000/- per month as maintenance to the respondent-wife. Though he accepted that he did not appear in the aforesaid case in spite of order of the Court below to appear in person. He deposed that he earns Rs. 42000/- per month as salary. This witness further deposed that after marriage he went to his place of job, thereafter, the respondent-wife used to abuse his family members and threatened them that she would commit suicide. He does not mention the date of settlement with the respondent-



wife and also clarifies that the rape case was earlier filed by the respondent-wife against him and that has been settled on the basis of compromise. He has deposed that he did not try to take the respondent-wife to his workplace and neither he has given respondent's name in his GPF and other funds. He has denied his second marriage and has also denied the suggestion that he wants to divorce respondent-wife after marrying for the second time due to greed of dowry.

10. P.W. 3 is Rameshwar Sah who has supported the claim of the appellant-husband and in his cross-examination, he admitted to have come to the Court for evidence without being summoned and also admitted that he never met the respondent-wife.

11. During trial, the respondent-wife has also adduced three witnesses namely Amrita Kumari (*P.W. 1*), the respondent herself, Rajkishore Sao (*P.W. 2*) and Braj Kishore Das (*P.W. 3*).

12. P.W. 1 Amrita Kumari is the respondent-wife



herself who has deposed that before marriage, a case of rape was filed against the appellant-husband and she became pregnant due to rape and after marriage, the appellant-husband gave her medicine to abort the child and no separate case of abortion was filed and after marriage, on the request of the appellant-husband and his mother, she made a compromise and withdrew the case and also admitted that the marriage was solemnized by garlanding each other where family members and relatives of both sides were present. She admitted that it was a love marriage between the appellant-husband and the respondent-wife. She admitted that they had established physical relations innumerable times from 2009 to 2012 on promise of marriage by the appellant-husband. She admitted that the marriage was solemnized with the consent of the guardians of both the parties. She admits that after marriage, the appellant-husband went to his place of posting and she started living at her matrimonial house. She admits that there is



no physical relationship between them after 2012. She further deposed that she filed a case of harassment against her in-laws and she has also filed a case of maintenance against her husband in which an order was passed to pay Rs. 5000/- per month. She denies that she used to abuse his in-laws family members and threatened to commit suicide. She also denies to have any illicit relationship with anyone. In her cross examination, she admitted that on 09.07.2017, her husband abused and beat her in the court premises, but she did not file any case for it. Further she has also admitted that she does not know with whom her husband was married. She denies the allegation that her jewellery and clothes were taken away and she also denies the allegation that she does not want to live with the appellant-husband. She also voluntarily stated that if her husband takes her away right now, she is ready to go with him but he does not take her.

13. P.W. 2 Rajkishore Sao is the father of the



respondent who has reiterated the same facts in cross-examination which is stated in the cross examination of P.W. 1.

14. P.W. 3 Braj Kishore Das is the uncle of the respondent-wife who has deposed about the love marriage between the parties, the rape case and the marriage after reconciliation through the police station. He deposed that after 7 days of marriage, the appellant-husband went to his place of posting and since then the respondent-wife never went to meet the appellant-husband. He accepted that he was accused in the cases lodged by the father of the appellant-husband. He also denies that respondent-wife used to abuse her in-laws family members.

15. Learned counsel for the appellant-husband, however, assails the impugned judgment on the ground that learned Family Court has not properly appreciated the evidence adduced by the appellant-husband and erroneously dismissed the petition finding no ground



proved. He submits that as per the evidence, the appellant-husband has proved that the respondent-wife has committed cruelty against him because she has deprived him of his marital cohabitation by going back to her parental house. He also submits that as per the evidence on record, the appellant-husband has proved that the wife-respondent has also illicit relationship with a villager and such relationship is a good ground for divorce.

16. It is submitted by learned counsel for the respondent that the allegation of illegal relationship of the respondent with another person is false and baseless. In fact, the respondent-wife used to go to the appellant's village for tuition, during this period, the appellant-husband fell in love with the respondent-wife and on promise to marry, he established physical relationship with the respondent due to which the respondent-wife became pregnant. In the meanwhile, the appellant-husband got a job in the Railways and after getting job,



he refused to marry with the respondent-wife for which respondent's father with the help of *panchayat* made several attempts to get the matter reconciled but appellant's father denied to marry his son with the respondent. Ultimately, the respondent-wife filed Complaint Case No. 336 of 2012 before the Court, as a result of which, the appellant-husband, fearing the danger of losing his job and imprisonment got married with the respondent-wife on 11.03.2012 in a temple in the presence of relatives and well wishers of both the parties. After marriage, the appellant-husband did not take the respondent-wife with him at his place of job. The respondent-wife was thereafter tortured for demand of Maruti Alto car and on not getting the money, the in-laws family members locked her in a room, stopped giving food and water. They anyhow wanted to drive the respondent-wife out of matrimonial home and ultimately on 01.09.2012 they took away all her *stridhan* and driven her out of the house. The father of the appellant-husband



filed an application before the S.H.O, Bela Police Station on 08.07.2012 alleging that respondent-wife used to torture and abuse her in-laws. The appellant-husband has not brought on record any proof with regard to illegal relationship of the respondent with anyone. The respondent-wife has also filed Maintenance Case No. 113 of 2012 whereby the appellant-husband was directed to pay Rs. 5000/- per month on 12.01.2017 but the appellant-husband has not complied the order of the Court below. Thereafter, Execution Case No. 1 of 2018 was filed whereby the Executing Court had issued notice to the appellant-husband for recovery of arrears amount of Rs. 3,95,000/- but the appellant-husband was not appearing in the said case but he was making *pairvi* in the present divorce case. After filing of this divorce petition in 2019, from May, 2021, the appellant-husband is paying Rs. 5000/- per month but he has not paid the due amount as directed by the Executing Court in Execution Case No. 1 of 2018.



17. In pursuance to the direction of this Court, both the appellant-husband as well as the respondent-wife appeared before this Court in person.

18. In view of the rival contentions and the arguments adduced on behalf of the appellant as well as the evidences brought on record, the main points for determination in this appeal are as follows:-

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

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

19. After perusal of the materials available on record and consideration of submissions made by learned counsel for the appellant-husband as well as learned counsel appearing on behalf of the respondent-wife, we find that 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 the respondent-wife.

20. 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.

21. In regard to the allegation of depriving the appellant-husband of the conjugal life by the respondent-wife, it is relevant to find that the appellant-husband has himself pleaded/deposed that they lived like husband and wife during the stay at her matrimonial house and it is



also found that when she went back to her parental house, he has not taken any legal steps for restitution of conjugal rights by filing petition under Section 9 of the Hindu Marriage Act.

22. So far as ground of cruelty is concerned, it clearly transpires that appellant-husband has failed to prove the cruel behaviour of the respondent towards him and his family members by the strength of cogent, relevant and reliable evidence, while burden of prove 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 towards him. Furthermore, 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.

23. As far as the allegation of illicit relationship of the respondent-wife with one of her villagers is concerned, the appellant-husband has neither impleaded the alleged adulterer having illicit relationship with his wife nor there is any circumstantial or direct evidence to prove the alleged illicit relationship with the adulterer. The deposition of the witnesses in regard to alleged illicit relationship at best amounts to suspicion and not proof.

24. 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-husband seeking divorce.



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

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

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