

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No. 346 of 2016

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Raju Kumar, son of Sailesh Kumar, resident of Anisabadh(near Telephone Exchange),
Police Station-Beur, District-Patna

... ... Appellant/s

Versus

Smt. Sushila Devi, wife of Raju Kumar, daughter of Sri Om Prakash Yadav, resident of
Village-Sawajpur, Police Station-Jehanabad, District-Jehanabad

... ... Respondent/s

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Family Court Act, 1984---section 19(1)--- Hindu Marriage Act---section 13(1)(i-a)(i-b)---Indian Penal Code---section 498A, 328, 379, 34---Dowry Prohibition Act---Section 3/4---appeal against dismissal of matrimonial suit filed by the Appellant for dissolution of marriage on the ground of cruelty and desertion---Findings: The appellant filed matrimonial suit in the year 2010 seeking dissolution of marriage on the ground of desertion in 2009 and averred in the suit that the respondent-wife resided with him till August, 2009---the matrimonial suit appears to be premature in view of provision (1-b) of sub-Section 1 of Section 13 of the Hindu Marriage Act which lays down that deserting party must have been living separately for two years before filing of suit for dissolution of marriage---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---mere 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---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---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---matrimonial case of the appellant seeking divorce rightly dismissed by the Family Court---appeal dismissed. (Para- 28-30, 33-35)

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... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Santosh Kumar Sinha -2, Advocate
For the Respondent/s : Mr. Siddharth Harsh, 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 : 07-02-2025

Heard the parties.

2. The present appeal has been filed under Section 19(1) of the Family Court Act, 1984 impugning the judgment and decree dated 25.01.2016 passed by learned Principal Judge, Family Court, Jehanabad in Matrimonial Case No. 32 of 2013, whereby the matrimonial suit, preferred by the appellant, seeking dissolution of marriage on the ground of cruelty and



desertion, has been dismissed.

3. The case of the appellant as per petition filed before the Family Court is that the marriage of the appellant with respondent was solemnized on 24.06.2002 as per Hindu Rights and Customs. After marriage, the respondent came to the house of appellant and lived together as husband and wife for two months. During stay at her matrimonial house, the behaviour of the respondent with her husband and other in-laws family members were not amicable during her stay, the respondent always misbehaved, humiliated and rebuked the appellant-husband in presence of his parents and relatives to lower down the reputation of the appellant. Ultimately, the respondent left her matrimonial house in the year 2009 with all her ornaments and since then she has been staying at her parental house. The appellant-husband made all his efforts to reconcile the matter with the respondent-wife but all his efforts went in vein.

4. It is submitted by learned counsel for the



appellant that the Family Court has failed to appreciate the cruelty meted out to the appellant. On this issue learned counsel for the appellant submitted that respondent was not willing to join her matrimonial home and stay in a joint family or stay in the in-law's house. Criminal proceedings were initiated under Section 498 (A) and other allied Sections of the Indian Penal Code against the appellant-husband and other family members. It is also submitted that respondent had also filed a complaint before the employer to take disciplinary action against the appellant-husband.

5. It is submitted that these issues suffice to say that appellant was facing character assassination, humiliation and embarrassment in the family circle and in his work place and in over all in the society and these issues would fall under mental torture and leads to cruelty at the hands of the respondent-wife.

6. It is submitted that having regard to the aforementioned allegations of 498 (A) and other



provisions of Indian Penal Code, complaint before Women Commission as also complaint before the employer would suffice to hold that appellant faced a cruelty at the hands of respondent. Ultimately, on 31.10.2022, the appellant took premature retirement from the service. The same has not been appreciated by the Family Court. In support of the aforementioned contentions, learned counsel for the appellant relied on Apex Court decision in the case of **K. Srinivas Rao vs D.A. Deepa (2013) 5 SCC** Page No. 226 (Para-11,16,27,29 and 34). In the light of these facts and circumstances, learned counsel for the appellant submitted that impugned order dated 25.01.2016 passed in matrimonial (divorce) case no. 32 of 2013 by the Principal Judge, Family Court, Jehanabad is liable to be set aside and to award decree of divorce while dissolving marriage between appellant-husband and respondent-wife which was performed on 24.06.2002.

7. *Per contra*, learned counsel for the respondent-wife has submitted that marriage of respondent with the



appellant was solemnized on 24.06.2002 as per Hindu Rights and Customs. After marriage, the respondent-wife started living in her matrimonial house but after sometimes, the in-laws family members including the appellant started torturing the respondent for non-fulfillment of dowry demand. The in-laws family members also made an attempt to kill the respondent, as a result of which, father of the respondent-wife had filed Beur P.S. Case No. 65 of 2007 on 06.12.2007 against the appellant and his other family members under Sections 498(A), 328, 379, 34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act. In the aforesaid case, a compromise took place since the appellant-husband made an undertaking before the Court below that he would keep her wife (respondent) with full dignity and honour. The respondent-wife, thereafter went to her matrimonial house and started living with her husband and took the responsibility of wife and daughter-in-law in her matrimonial house. But after sometimes, the in-laws



family members including the appellant again started torturing the respondent and she was ultimately ousted from her matrimonial house in January, 2011. The father of the respondent, thereafter again filed Beur P.S. Case No. 30 of 2011 on 03.02.2011 under Sections 498(A)/34 of the Indian Penal Code.

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

1. Whether the suit as framed is maintainable?

2. Whether the applicant has cause of action and right to sue?

3. Whether the applicant is liable to get divorce on the ground of desertion and who is responsible for desertion from the company of other?

4. Whether the appellant was tortured by the respondent?

5. Whether the respondent's cruel behaved with the appellant is sufficient for dissolution of marriage?



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

9. During course of trial, altogether three witnesses have been produced on behalf of the appellant which are PW-1 Shailesh Kumar, PW-2 Sanjay Kumar and PW-3 Raju Kumar(appellant).

10. Apart from the above oral evidence of the witnesses, some documentary evidences have been produced on behalf of the appellant.

Ext-1- CC of deposition of witness Dr. Shanti

Rai in Sessions Trial No. 441/09

Ext-2- Petition of petitioner in Sessions Trial No. 441/09

11. On behalf of the respondent/opposite party, three witnesses have been produced which are O.P.W-1 Omprakash, O.P.W-2 Shyamdev Yadav, O.P.W-3 Sushila Devi (respondent).

12. Apart from the above oral evidence, some documentary evidences have also been exhibited on behalf of the respondent/opposite party.

Ext.-A, petition of Shailesh Kumar



Ext.-B, statement of appellant

*Ext.-C, CC of Beur P.S case No.
30/11*

*Ext.-D, CC of Beur P.S case No.
65/07*

*Ext-D/1, CC of charge-sheet in Beur
P.S case No-65/07*

*Ext.-E, CC of diagnosis of
respondent.*

*Ext.-F, CC of order-sheet of
Sessions Trial No. 444/09*

*Ext-G, CC of Session Case No.
444/09*

13. 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 as well as deserted by the respondent and the suit filed by the appellant is not maintainable and also the appellant has no valid cause of action to file the instant case. Accordingly, the Court below came to the conclusion that the appellant was not entitled for decree of divorce on the ground of cruelty as well as desertion



and the suit was accordingly dismissed.

14. Thereafter, being aggrieved and dissatisfied with the aforesaid judgment and decree passed by the learned Court below in Matrimonial Case No. 32 of 2013, the present appeal has been filed by the appellant.

15. Learned counsel appearing on behalf of the appellant has submitted that the judgment and decree passed by the learned Court below is bad and appears to be mechanically passed without application of judicious mind. The respondent had deserted the appellant since 2009. The appellant made several attempts to bring back the respondent to her matrimonial house but the respondent was not interested to continue matrimonial relationship with the appellant, rather the respondent was engaged in filing false and frivolous cases against the appellant and other in-laws family members.

16. The law regarding grant of divorce on the basis of cruelty by one or the other spouse has been elucidated by the Hon'ble Supreme Court in number of cases. The



same are extracted as follows:

17. The Supreme Court in the case of **V. Bhagat Vs. D. Bhagat**, reported in **AIR 1994 SC 710**, has held that, mental cruelty in Section 13(1) (i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in



another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

18. Yet again the Supreme Court in ***Parveen Mehta Vs. Inderjit Mehta***, reported in ***AIR 2002 SC 2582***, has held thus : “21. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behavior by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be



appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other”.

19. In the case of ***A. Jayachandra Vs. Aneel Kaur***, reported in ***AIR 2005 SC 534***, the Supreme Court has held that, the expression ‘cruelty’ has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such



character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and



wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence, the courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

20. In the case of ***Naveen Kohli Vs. Neelu Kohli***, reported in ***AIR 2006 SC 1675***, the Supreme Court has held that, the word “Cruelty” has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily



established. But the absence of intention should not make any difference in the case. There may be instances of cruelty by unintentional but inexcusable conduct of any party. The cruel treatment may also result from the cultural conflict between the parties. Mental cruelty can be caused by a party when the other spouse levels an allegation that the petitioner is a mental patient, or that he requires expert psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations, and to crown it all, to allege that he and all the members of his family are a bundle of lunatics. The allegation that members of the petitioner's family are lunatics and that a streak of insanity runs through his entire family is also an act of mental cruelty.

21. In the case of ***Ramchander Vs. Ananta***, reported in **(2015) 11 SCC 539**, the Supreme Court has again held that instances of cruelty are not to be taken in isolation but cumulative effect of facts and circumstances emerging from evidence on record and



then drawing a fair inference whether plaintiff has been subjected to mental cruelty due to conduct of other spouse has to be culled out.

22. The principle is, thus, settled that whether in the facts and circumstances of a given case, the petitioner has been able to make out a case of grant of divorce on the ground of cruelty would depend upon the nature of pleadings and evidence in that case and there can be no straitjacket formula nor an exhaustive list of instances can be prepared, where cruelty is said to have been committed by one or other party to the marriage. Cruelty can also not be inferred by applying any formula because the said question is to be determined keeping in view the social status of the parties, their financial and other conditions, the atmosphere and the kind of employment or vocation which they carry out would all be important to interfere whether on the given set of allegations it has become difficult for the petitioner to live with the other side and the behaviour of such degree which amounts to



the cruelty.

23. The aforementioned observations of the Apex Court has some bearing on the present case to the extent that respondent-wife tarnished the character of the appellant-husband in the working place and so also in the society and it amounts to cruelty meted out to the appellant.

24. Due to the above allegations and initiation of cases against the appellant by the respondent would fall under the definition of cruelty meted out to the appellant.

25. The Family Court has failed to appreciate the aforementioned issues of unnecessarily initiating criminal proceedings by the respondent against the appellant and registering complaint to appellant's employer which has tarnished the image of the appellant at his working place. These are the elements of cruelty and it has hurt mentally to the appellant. The Family Court has not taken note of the fact that respondent's intention was not to join her husband in the light of two



criminal cases initiated against her husband. Even to this day, she has not made any efforts to withdraw those allegations. In other words, she has adhered to the arm twisting method instead of resolving in a polite manner. Further it is to be noticed that they are living separately from 2009 and we are in the month of December, 2024. The appellant is not willing to condone the lapses or allegations levelled by the respondent, even though respondent is prepared to give up her allegations at this hour. The leveling of false allegation by one spouse to the other having alleged illicit relations with different person outside the wedlock amounted to mental cruelty. Social torture by anyone of the spouses to the other, found to be as the mental torture and cruelty. It is also sufficient that if the cruelty is of such type that it becomes impossible for spouses to live together. Therefore, it is a marriage irretrievably broken down during the period from 2009 to this day in the light of institution of criminal proceedings and complaint to the employer.



26. Learned counsel appearing on behalf of the respondent 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.

27. 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.

28. After perusal of the materials available on record and consideration of submissions made by learned counsel for the appellant as well as learned counsel appearing on behalf of the respondent as also the



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 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. He has also admitted in his evidence that prior to filing of this divorce case, father of respondent-wife has filed Beur P.S. Case No. 65 of 2007 against the appellant and other in-laws family members and in this case, the appellant undertook to keep the respondent as wife with full dignity and honour but after sometimes, again the respondent was tortured for non-fulfillment of dowry demand and ultimately, she was ousted from her matrimonial house. The appellant filed matrimonial suit in the year 2010 seeking dissolution of marriage on the ground of desertion in 2009 and averred in the suit that the respondent-wife resided with him till August, 2009. Hence, on this ground only, the matrimonial suit appears



to be premature in view of provision (1-b) of sub-Section 1 of Section 13 of the Hindu Marriage Act which lays down that deserting party must have been living separately for two years before filing of suit for dissolution of marriage. P.W. 1 Shailesh Kumar who is father-in-law of the respondent has deposed in his examination-in-chief that appellant brought the respondent-wife in his house on 30.09.2010 and kept her comfortably but suddenly her father came and took her with him on 02.01.2011 which completely negates the accusation of the appellant-husband that respondent-wife deserted him since 2009.

29. 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.

30. 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.

31. 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."

32. During course of argument, it was argued on behalf of the appellant that false case was instituted by the respondent but it is pertinent to mention here that learned Additional Sessions Judge, Vth, Patna in Sessions Trial No. 444 of 2009/4610 of 2014 had found the appellant guilty for the offences punishable under Section 498(A) of the Indian Penal Code and he was convicted to



undergo rigorous imprisonment for a year in connection with Beur P.S. Case No. 65 of 2007 but ultimately, the appellant was acquitted by a coordinate Bench of this Hon'ble Court vide judgment dated 29.06.2017 passed in Cr. Appeal (SJ) No. 398 of 2015. So, merely acquittal is not *if so facto* proves that the said criminal case was falsely instituted. Moreover, no court had observed that the above case was falsely instituted.

33. 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 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. Not even single alleged incident with reference to 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.

34. 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.

35. So far as ground of desertion is concerned, it has come in the evidence of the appellant-husband (PW-3) that respondent had deserted him in the year 2009 but in para 17, he has deposed that he went to his father-in-law place in the year 2010 and stayed therein for 15 days. P.W. 1 in his evidence has also deposed that appellant brought his wife (respondent) in his house on 30.09.2010 and kept her comfortably but suddenly father of the respondent came on 02.01.2011 and took the respondent with him from her matrimonial house. So, on the ground of desertion also, the appellant is not entitled to get any decree of divorce. Thus, the appellant-husband has also failed to prove that the respondent-wife has deserted the appellant-husband.

36. 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.

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

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

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CAV DATE	12/11/2024
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