

IN THE HIGH COURT OF JUDICATURE AT PATNA

Shristi Kumari

vs.

Sandeep Kumar Lohani

Miscellaneous Appeal No.1116 of 2016

11 July 2025

(Hon'ble Mr. Justice P. B. Bajanthri and Hon'ble Mr. Justice S. B. Pd. Singh)

Issue for Consideration

Whether the decree for divorce granted on the grounds of cruelty and desertion by the Family Court, requires interference?

Headnotes

Hindu Marriage Act, 1955—Section 13(1)(i-a)(i-b)—Divorce—cruelty and desertion—dissolution of marriage—marriage of appellant was solemnized with the respondent on 09.06.2009 as per Hindu rites and ceremonies—marriage was duly consummated and a female-child was born out of the wedlock—when the respondent was transferred to another State, there also appellants misbehaved with him and filed a false case under Section 498A of IPC—respondent was acquitted by learned Metropolitan Magistrate—matrimonial relation between the appellant and respondent has already irretrievably broken down and there is no hope of restoration of their conjugal life.

Held: appellant-wife living separately since 31.03.2011 without any reasonable excuse which comes under the purview of the cruelty, and thus, the matrimonial bond is virtually beyond repair—appellant-wife would restrict her case only in respect of enhancement of permanent alimony of Rs. 10,00,000/- in favour of her daughter—learned Family Court has rightly passed a decree of dissolution of marriage between the parties—impugned judgment and decree passed by learned Principal Judge upheld with regard to passing a decree for dissolution of marriage between the parties—quantum of maintenance is subjective to each case and is dependent on various circumstances and factors—Courts to look into factors of 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; period of marriage and such other similar factors—neither appellant-husband nor respondent-wife has filed his/her assets and liability before Principal Judge and without assessing the aspects and without hearing the parties properly, in a flimsy manner, the order for deposit of Rs. 10,00,000/- (Ten Lakhs) in the form of fixed deposit was directed to be deposited in favour of the minor daughter was passed—matter was remanded back to the learned Principal Judge, Family Court, Gaya only with regard to decide the quantum of deposit/maintenance in favour of the minor daughter—appeal disposed off with direction.

(Paras 17, 20, 23, 25)

Case Law Cited

Jagdish Singh vs. Madhuri Devi, **(2008) 10 SCC 497**; Joydeep Majumdar vs. Bharti Jaiswal Majumdar, **(2021) 2 RCR (Civil) 289**; Samar Ghosh vs. Jaya Ghosh, **(2007) 4 SCC 511**; Rajnesh vs. Neha, **(2021) 2 SCC 324**; Aditi @ Mithi vs. Jitesh Sharma, **(2023) SCC Online SC 1451**; Pravin Kumar Jain vs. Anju Jain, **2024 SCC Online SC 3678**—**Referred To.**

List of Acts

Hindu Marriage Act, 1955.

List of Keywords

Divorce, Maintenance, dissolution of marriage, cruelty and desertion, quantum of maintenance

Case Arising From

From judgment and decree dated 30.06.2016 passed by the learned Principal Judge, Family Court, Gaya in Matrimonial Title Suit No. 92 of 2016.

Appearances for Parties

For the Appellants: Mr. Rama Kant Singh, Advocate.

For the Respondents: Mr. Shashikant Amar, Advocate.

Headnotes Prepared by Reporter: Abhas Chandra, Advocate.

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1116 of 2016

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Shristi Kumari Wife of Sandeep Kumar Lohani resident of Village - Pitameshwar, P.S. - CivilLine Gaya, Bihar at present residing at K.P. Lane, Madrasa Ke Pass, P.S. - Kotwali, District - Gaya.

... .. Appellant/s

Versus

Sandeep Kumar Lohani son of Late Shri Gopal Nandan Prasad resident of Satin Credit Care Ltd., 9th Floor, Kanchenjunga Building, Barakhambha Road, New Delhi - 110001.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Rama Kant Singh, Advocate
For the Respondent/s : Mr. Shashikant Amar, 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 : 11-07-2025

Heard the parties.

2. The appellant has come up in this appeal against judgment and decree dated 30.06.2016 passed by the learned Principal Judge, Family Court, Gaya in Matrimonial Title Suit No. 92 of 2016, whereby the petition filed by the respondent-husband under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 (in short 'the 1955 Act') seeking dissolution of marriage by a decree of divorce, has been allowed and the respondent-husband was directed to deposit Rs. 10 lakhs as fixed deposit in favour of his minor



daughter Ananya for her marriage and other purposes which was to be withdrawn by her at the time of any exigency with the permission of the Court.

3. Succinctly, the marriage of appellant was solemnized with the respondent on 09.06.2009 as per Hindu rites and ceremonies. The marriage was duly consummated and a female-child was born out of the wedlock.

4. The pleaded case of respondent-husband in his petition filed under Sections 13 (1)(i-a)(1-b) of the 1955 Act was that his marriage was performed with the appellant-wife on 09.06.2009 as per customs and traditions prevailing in the community in presence of their elders and well wishers without any dowry. At the time of marriage, the respondent-husband was working at Gurgaon while the appellant-wife was working in Bank of Baroda at Muzaffarpur, Bihar. The appellant-wife got herself transferred at Gurgaon Branch of her bank and kept working there till March, 2010 and they enjoyed their married life at Gurgaon until the parents-in-law of the respondent-husband started unnecessary interfering in their marital life with an intention to reside permanently with



them. However, the respondent-husband tried his best by providing all domestic comforts, but their interference in the marital life of both parties, created more misunderstanding in between them. It has further been pleaded that the appellant-wife took maternity leave from 08-03-2010, in her 7th month pregnancy, extended up-to 31-03-2011 and the respondent-husband provided all necessary comforts to her during her pregnancy and on 15th May, 2010, she gave birth to a female child namely Ananya at Apollo Cradle Hospital, Gurgaon, where all the expenditures worth Rs. 1 lakh was incurred by the respondent-husband himself. The appellant-wife always tried to stay her parents at her matrimonial home as per her parent's wish and after the birth of the baby-girl their interference increased. On several occasions, the appellant-wife threatened him that she would take a separate house near her work-place and would live with her parents separately, if he does not agree to keep her parents at his house. The appellant-wife always followed blindly the advice of her mother which was against his wishes. In September, 2010, the respondent-husband had to shift to



Hyderabad to join as Operations Head at M/S Spandana Sphoorty and he joined there and on his request appellant-wife also joined him at Hyderabad in the month of October, 2010 during her leave. It has been further pleaded that in his new job at Hyderabad, his work timing and commitments at work had increased and the appellant-wife, instead of understanding the changed situation, started suspecting and casting baseless aspersions on his character. On the night of 04-02-2011, the appellant-wife along with her mother argued with the respondent using abusive language and raised baseless serious questions on his character. The appellant-wife left her matrimonial house on 31-03-2011 with all her belongings along with daughter Ananya and she has also taken away the golden ornaments worth Rs. 15 lacs of respondent's mother along with his personal belongings in his absence:

5. The further pleaded case of the respondent-husband is that after leaving the matrimonial house on 31.03.2011, the appellant-wife has filed Madhopur P.S. Case No. 184 of 2011 on the same very day i.e. 31.03.2011 against his husband (respondent) under Section 498(A) of



the I.P.C making frivolous allegation of demand of dowry and torture for non-fulfillment of dowry demand. Due to filing of false and frivolous case against him by the respondent, he suffered mental agony. Ultimately, the respondent-husband was acquitted by learned IXth Metropolitan Magistrate, Kukatpally at Miyapur vide judgment dated 17th June, 2024 in Madhopur P.S. Case No. 184 of 2011 with an observation that prosecution has failed in all aspect to prove the guilt of accused (respondent) for the charge under Section 498(A) I.P.C. The respondent-husband has also filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights before the Family Court, Ranga Reddy District, Andhra Pradesh vide FCOP No. 1068/ 2011 on 12-08-2011 and on non-appearance of the appellant-wife when the case was fixed for *ex-parte* hearing, then she filed T.P. No. 695/2012 before the Hon'ble Supreme Court for transfer of the case to Gaya, Bihar. The Hon'ble Apex Court has dismissed the transfer petition and FCOP No. 1068/2011 was decreed for Restitution Of Conjugal Rights. The appellant-wife never taken a single step to save their marital life but she



attempted to resist all the positive steps taken by the respondent-husband to save their marital life and the appellant-wife caused severe and permanent damage to the reputation and social status of the respondent-husband. There is no co-habitation between the parties since 31-03-2011 as to when she deserted the respondent-husband without any reasonable excuse. The matrimonial relation between the appellant and respondent has already irretrievably broken down and there is no hope of restoration of their conjugal life.

6. The appellant-wife appeared and filed her written statement. The pleading of the appellant-wife in brief is that the marriage of the appellant with respondent was solemnized according to Hindu rites and rituals on 09-05-2009 at Mahuri Mandal Gosaibag, Gaya. At the time of marriage, she was posted at Muzaffarpur in Bank of Baroda, whereas the respondent-husband was posted at Gurgaon. The parents and she herself applied for her transfer in Gurgaon, where her husband (respondent) was posted. The appellant gave birth to a female child on 15-05-2010 at Apollo Cradle Hospital and they jointly met the expenses



during the birth of Ananya. The parents of the appellant-wife also looked after her and her newly born baby and they never made any attempt to cause disturbance in the marital relations of their daughter. It has been further pleaded that the respondent-husband got himself transferred to Hyderabad in September, 2010 and started living there. The respondent-husband mercilessly assaulted the appellant-wife without any reason due to which she was compelled to lodge Madhopur P.S. Case No. 184 of 2011 against the respondent-husband and when the appellant-wife found her life unsafe then she came back to Gaya and started work in the Bank. The respondent-husband by giving wrong address has filed a case under Section 9 of Hindu Marriage Act, 1955 for restitution of conjugal rights and got *ex-parte* order in his favour. He also got himself acquitted in Madhopur P.S. Case No. 184 of 2011 as there was no one to contest in favour of the appellant-wife as appellant-wife was not able to contest the case from Gaya. The minor child Ananya is suffering from many ailments and the respondent-husband never took the responsibility as father nor provided financial assistance for her minor-child for



treatment at Hyderabad. After the marriage, the appellant-wife came to know that the respondent-husband was previously married with Mrs. Shally Seth D/o Narendra Kumar and falsely obtained a decree of divorce in September, 2007 against her.

7. After conclusion of trial, learned Principal Judge, Family Court, Gaya held that respondent-Sandeep Kumar Lohani is entitled for a decree of divorce. Hence, the marriage between the appellant and the respondent were dissolved and the respondent-husband was directed to fix Rs. 10,00,000/-(Ten Lakhs) as fixed deposit in favour of his minor daughter Ananya for her marriage and other purposes. The appellant-wife, aggrieved by the said judgment of the learned Family Court filed the instant appeal before this Court.

8. The divorce has been granted on the grounds of cruelty and desertion. A perusal of the Impugned judgment would show that the following acts of cruelty and desertion were considered by the Family Court, as proved:-

a) Cruelty:

(i) From oral and documentary evidence, it is



evident that the couple got married about seven years back. The marriage took place on 09.06.2009 and they are residing separately w.e.f. 31.03.2011.

(ii) Admittedly, the parties got separated on 31.03.2011 and appellant-wife has filed Madhopur P.S. Case No. 184 of 2011 against her husband (respondent).

(iii) The Hon'ble Apex Court in "Jagbir Singh v. Nisha", (2015) 9 RCR (Civil) 873, "Rishipal v. Luxmi Devi", (2009) 4 RCR (Civil) 811, "Dharampal v. Smt. Pushpa Devi", 2004 RCR (Civil) 717, "Major Ashish Poonia Mrs. Nilima Poonia"; "Mangayakarasi v. M. Yuvaraj" (2020) 3 SCC 786, "K. Srinivas Rao v. D.A. Deepa", (2013) 5 SCC 226 and "K. Srinivas v. K. Suneetha" (2014) 16 SCC 34, has held that making unfounded allegations and filing false complaints against the spouse or his relatives amount to cruelty to the other spouse and held that acquittal of respondent-husband and his mother in criminal case filed by appellant in fact goes to show that respondent-husband has indeed faced matrimonial cruelties at the hands of appellant-wife.

(v) It was observed by the Family Court that the



couple have been living separately for about five years and this long separation has in fact put them in such a situation that matrimonial bond has broken down beyond repair. It was further observed that there are no chances of the couple living together and such a marriage is now unworkable and can be a source of great misery for the parties, if allowed to be continued.

9. Accordingly, it was concluded that the respondent-husband has been able to prove the ground of cruelty.

b) Desertion:

(i) The Family Court observed that the respondent-wife left her matrimonial house on 31.03.2011 and since then they are living separately. There was no effort on the part of appellant-wife to return to fold of respondent-husband. Though the respondent-husband has filed a petition under Section 9 of the Hindu marriage Act for restitution of conjugal rights but all his efforts went in vein since the appellant-wife did not appear to contest that case.

(ii) It was concluded that the appellant-wife had put the relationship to a permanent end and had not joined



the respondent-husband. She has not filed any case under Section 9 of the 1955 Act for restitution of conjugal rights. Hence, it is evident that the factum of separation, intention to bring cohabitation to a permanent end, goes to establish that appellant-wife has deserted the respondent-husband continuously for a period of more than two years.

10. In the aforementioned circumstances, present appeal has been filed before this Court.

11. Learned counsel for the appellant-wife has submitted that the learned Family Court has erred in law and facts in allowing the divorce petition filed by the respondent-husband. The respondent-husband is cruel in nature and he can not tolerate any one who is against his high ambitions and to achieve his goal he used to brutally assault the appellant-wife, who was compelled to lodge Madhopur P.S. Case No. 184 of 2011 against him and to save her life, she left Hyderabad and returned to Gaya along with her minor child Ananya. The respondent-husband also concealed this fact that before marrying with the appellant, he had solemnized his first marriage with Shelly Seth. The petitioner clandestinely filed a case under Section 9 of



Hindu Marriage Act, 1955 for restitution of conjugal rights at Hyderabad mentioning wrong address/details of the appellant-wife wherein the appellant could not appear and the case was heard *ex-parte* and decreed in favour of the respondent-husband.

12. We have heard the parties and perused the paper-book as well as the impugned judgment.

13. The following question arises for consideration before this Court: "Whether the decree for divorce granted on the grounds of cruelty and desertion by the Family Court, requires interference?"

14. In **"Jagdish Singh v. Madhuri Devi", (2008) 10 SCC 497**, the Hon'ble Supreme Court while considering the scope of interference by first appellate court, observed as under:-

"24. It is no doubt true that the High Court was exercising power as first appellate court and hence it was open to the Court to enter into not only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a re-hearing of the main matter and the appellate court can re-



appraise, re-appreciate and review the entire evidence "oral as well as documentary" and can come to its own conclusion.

25. At the same time, however, the appellate court is expected, nay bound, to bear in mind a finding recorded by the trial court on oral evidence. It should not forget that the trial court had an advantage and opportunity of seeing the demeanour of witnesses and, hence, the trial court's conclusions should not normally be disturbed. No doubt, the appellate court possesses the same powers as that of the original court, but they have to be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the trial court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of the trial court in appraisal of evidence is erroneous, contrary to well-established principles of law or unreasonable..."

15. Further, the concept of cruelty within the meaning of Section 13 (1)(i-a) of the Hindu Marriage Act has been explained by the Hon'ble Supreme Court in case of **"Joydeep Majumdar v. Bharti Jaiswal Majumdar"**,



(2021) 2 RCR (Civil) 289, by observing as under: -

"10. For considering dissolution of marriage at the instance of a spouse who allege mental cruelty, the result of such mental cruelty must be such that it is not possible to continue with the matrimonial relationship. In other words, the wronged party cannot be expected to condone such conduct and continue to live with his/her spouse. The degree of tolerance will vary from one couple to another and the Court will have to bear in mind the background, the level of education and also the status of the parties, in order to determine whether the cruelty alleged is sufficient to justify dissolution of marriage, at the instance of the wronged party..."

16. In "**Samar Ghosh v. Jaya Ghosh**", (2007) 4 **SCC 511**, Hon'ble Supreme Court gave illustrative cases where inference of mental cruelty could be drawn even while emphasizing that no uniform standard can be laid down and each case will have to be decided on its own facts.



"85. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind.



The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) 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.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels,



normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few Isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have Intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental



cruelty..

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(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..."

17. On the anvil of the aforesaid principle of Hon'ble Apex Court when we examine the present case in the light of the evidences adduced on behalf of the parties, it becomes clear that appellant-wife is living separately since 31.03.2011 without any reasonable excuse which comes under the purview of the cruelty and thus the matrimonial bond is virtually beyond repair. So, in this circumstance, if divorce is not granted, it will not serve the sanctity of



marriage.

18. Moreover, this Court vide order dated 24.09.2024 had directed the appellant to file interlocutory application for amendment of the appeal since learned counsel for the appellant, on instruction, has submitted that appellant would restrict her case only in respect of enhancement of permanent alimony of Rs. 10,00,000/- in favour of her daughter. The relevant paragraph of the order reads as under:-

“4. At this stage, learned counsel for the Appellant, on instruction, submitted that Appellant would restrict her case only in respect of enhancement of permanent alimony of Rs. 10,00,000/- in favour of her daughter. Perusal of the pleadings, nowhere it is stated that present appeal is for enhancement. Having regard to the length of pendency of the present appeal, Appellant is permitted to file interlocutory application for amendment of present appeal.”

19. In view of forgoing discussion, we conclude that respondent-husband has made out a case for grant of decree of dissolution of marriage on the ground as



mentioned under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955."

20. Considering the totality of circumstances, in our considered view, learned Family Court has rightly passed a decree of dissolution of marriage between the parties and we see no reason as to why, the findings as given by the learned trial Court should not be upheld. So, the impugned judgment and decree dated 30.06.2016 passed by learned Principal Judge, Family Court, Gaya in Matrimonial Title Suit No. 92 of 2016 is hereby upheld with regard to passing a decree for dissolution of marriage between the parties.

21. Before we part with this order, it is apposite to take notice here that while granting the decree of divorce, without assessing the assets and liabilities of the parties, learned Family court has directed the respondent-husband to deposit Rs. 10,00,000/-(Ten Lakhs) as fixed deposit in favour of his minor daughter-Ananya as neither appellant nor respondent has filed their assets and liabilities statement nor it was required by the learned Principal Judge, Family Court while making order to deposit Rs. 10 lakhs in favour



of his minor daughter namely Ananya.

22. Here it is pertinent to refer to Section 26 of the 1955 Act, which reads thus:

"26. Custody of children. In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made:"

23. 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; period of marriage and such other similar factors. Neither appellant-husband nor respondent-wife has filed his/her assets and liability before Principal Judge, Family Court, Gaya and without assessing the aforesaid aspects and without hearing the parties properly, in a flimsy manner, the order for deposit of Rs. 10,00,000/-(Ten Lakhs) in the form of fixed deposit was directed to be deposited in favour of the minor daughter of the respondent-husband vide order 30.06.2016. What is the basis of arriving at that conclusion is not clear from the impugned judgment. The grant of permanent alimony to the wife/dependents should be directed after assessing the social, financial status of both the parties and also after appreciating the burden of liabilities incurred either on husband or wife in light of Hon'ble Supreme Court decision in the case of ***Rajnesh vs. Neha*** reported in ***(2021) 2 SCC 324*** read with ***Aditi @***



Mithi vs. Jitesh Sharma reported in ***(2023) SCC OnLine SC 1451*** read with ***Pravin Kumar Jain vs. Anju Jain*** reported in ***2024 SCC OnLine SC 3678***. The relevant paragraphs of the judgment passed in the case of ***Rajnesh vs. Neha (supra)*** reads as under:-

*“27. Section 20 of HAMA provides for maintenance of children and aged parents. Section 20 casts a statutory obligation on a Hindu male to maintain an unmarried daughter, who is unable to maintain herself out of her own earnings, or other property. In *Abhilasha v. Parkash and Ors.*, a three-judge bench of this Court held that Section 20(3) is a recognition of the principles of Hindu law, particularly the obligation of the father to maintain an unmarried daughter. The right is absolute under personal law, which has been given statutory recognition by this Act. The Court noted the distinction between the award of maintenance to children Under Section 125 Code of Criminal Procedure, which limits the claim of maintenance to a child, until he or she attains majority. However, if an unmarried daughter is by reason of any physical or mental abnormality or injury, unable to maintain herself, Under Section*



125(1)(c), the father would be obligated to maintain her even after she has attained majority. The maintenance contemplated under HAMA is a wider concept. Section 3(b) contains an inclusive definition of maintenance including marriage expenses. The purpose and object of Section 125 Code of Criminal Procedure is to provide immediate relief to the wife and children in a summary proceeding, whereas Under Section 20 read with Section 3(b) of HAMA, a much larger right is contemplated, which requires determination by a civil court.

28. *Section 22 provides for maintenance of dependants. Section 23 provides that while awarding maintenance, the Court shall have due regard to the criteria mentioned therein:*

23. Amount of maintenance.-

(1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so, the court shall have due regard to the consideration set out in Sub-section (2) or Sub-section (3), as the case may be, so far as they are applicable.

(2) In determining the amount of



maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to--

(a) the position and status of the parties;

(b) the reasonable wants of the claimant;

(c) if the claimant is living separately, whether the claimant is justified in doing so;

(d) the value of the claimant's property and any income derived from such property, or from the claimant's own earning or from any other source;

(e) the number of persons entitled to maintenance under this Act.

(3) In determining the amount of maintenance, if any, to be awarded to a dependant under this Act, regard shall be had to -

(a) the net value of the estate of the deceased after providing for the payment of his debts;

(b) the provision, if any, made under a will of the deceased in respect, of the dependant;

(c) the degree of relationship between the two;



(d) the reasonable wants of the dependant;

(e) the past relations between the dependant and the deceased;

(f) the value of the property of the dependant and any income derived from such property, or from his or her earnings or from any other course;

(g) the number of dependants entitled to maintenance under this Act.

35. The amended Section 125 reads as under:

125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,



a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in Clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allow for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim



maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation. For the purposes of this Chapter,-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or Interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of



each month's allowance for the maintenance or the Interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this Section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due: Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this Section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation-If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be a just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or interim maintenance and expenses of proceeding, as the case may be, from her



husband under this Section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this Section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

(emphasis supplied)”

24. Accordingly, we deem it fit and proper to remand the matter back to the learned Principal Judge, Family Court, Gaya only with regard to decide the quantum of deposit/maintenance in favour of the minor daughter-Ananya. The Court below shall direct the respondent-husband and appellant-wife to file details regarding their assets and liabilities in light of Hon’ble Supreme Court decision in the case of ***Rajnesh vs. Neha*** reported in **(2021) 2 SCC 324** read with ***Aditi @ Mithi vs. Jitesh Sharma*** reported in **(2023) SCC OnLine SC 1451** read with ***Pravin Kumar Jain vs. Anju Jain*** reported in **2024 SCC OnLine**



SC 3678 and after analyzing their assets and liabilities, pass appropriate order within a period of three months from the date of passing of the judgment. Both parties are directed to co-operate in expeditious disposal of the above matter. In case of non-appearance of either party, proper order shall be passed in accordance with law.

25. In view of the above discussions, M.A. No. 1116 of 2016 is hereby disposed of.

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

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

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