

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.951 of 2018

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Vishal Anand, Son of Late Narayan Prasad, R/o Mohalla- Gayatri Nagar, Road No.2, P.O. and P.S.- Jamalpur, District- Munger.

... ... Appellant

Versus

Shobha Srivastava, Daughter of Late Arun Kumar Srivastava, R/o Mohalla- Shastri Nagar, Loha Factory (Almiraha Factory), Konark Cinema Road, P.O. and P.S.- Kasim Bazar, District- Munger.

... ... Respondent

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Issue for consideration : whether the Family court was justified in dismissing the matrimonial case for dissolution of marriage filed by the appellant on the ground of cruelty and desertion

Marriage was solemnized as per hindu rights and customs -one son was born –allegation of disrespect- matrimonial disharmony started –respondent left the matrimonial home - has the respondent committed the act of cruelty and desertion –no single specific allegation of behavioral misconduct amounting to cruelty -

**Hindu Marriage Act- Section 10(1)(b) – Section 13(1)(i-a) –cruelty-
desertion**

Held :- no single specific allegation of behavioral misconduct amounting to cruelty-Appellant took no step to keep the respondent and the child – not taken any legal step for restitution of conjugal rights -nothing indicates that appellant took any legal step for visitation rights or taking care of child –appellant has not even proved the factum of desertion -Family court has rightly dismissed the matrimonial case of appellant seeking divorce as no specific allegation amounting to cruelty has been made and the factum of desertion has not been proved

Cruelty - Hindu Marriage Act- Section 10(1)(b) -Section 13(1)(i-a)

Held: cruelty may be defined as wilful and unjustified conduct of such a character as to cause danger to life , limb or health badly or mental or as to give rise to reasonable apprehension such a danger [para 9,10]

Desertion-Hindu marriage Act

Held: essential condition of desertion not proved, no animus deserendi on the part of respondent , [para 14]

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Shastri Nagar, Loha Factory (Almiraha Factory), Konark Cinema Road, P.O.
and P.S.- Kasim Bazar, District- Munger.

... .. Respondent

Appearance :

For the Appellant/s : Mr. Ashok Kumar Jha, Advocate
For the Respondent/s : Mr.None

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date:19-02-2024

The present appeal has been directed against the
impugned Judgment dated 13.09.2018 and decree dated
27.09.2018 passed by the learned Principal Judge, Family Court,
Munger in Matrimonial Case No. 66 of 2015, whereby and
whereunder the matrimonial case filed by the appellant for
dissolution of marriage with the respondent has been dismissed.

2. Briefly stated the fact of appellant's case is that
both parties were well acquainted with each other prior to the
date of marriage. It is claimed by the appellant that on
07.07.2018, the marriage was solemnized as per Hindu rites and
customs at Ashok Dham, Lakhisarai with the respondent and



during course of happy conjugal life, one son was born out of their wedlock and after some times matrimonial disharmony started. The appellant has tried his best to reconcile his matrimonial life, but respondent had expressed disrespect towards the appellant and his mother. On 17.04.2013, the respondent fell ill and during course of illness, the appellant asked his mother to render best services to respondent. But, on 21.04.2013 she rudely behaved with the mother of the appellant and began to abuse the appellant and his family members and she left the matrimonial home by saying that she will never return back and she took away all her belongings and son. It is further claimed by appellant that he gave information on 22.04.2013 in the Court of learned C.J.M., Patna that aforesaid occurrence has taken place at Dayanand Complex, Flat No. 303, Gosain Tola, Nehru Nagar, P.S. Patliputra, District-Patna. Since then the respondent is living with her mother at Munger. The respondent also brought the criminal case against the appellant and his family, but she failed to succeed in the said criminal complaint and she did not approach to higher Court. It is claimed by appellant that he tried his best to get the custody of his son, but the same was, vehemently, opposed by the respondent. Finally, it is averred in the petition that on



06.03.2015, appellant approached respondent for amicable settlement and he made a promise that he would maintain the respondent and her child. Despite being the best efforts taken by the appellant, no reciprocity was found from the side of respondent. Hence, the case has been filed.

3. Pursuant to the notice, respondent appeared and Court has taken effort for amicable settlement between both the parties but of no avail.

4. Respondent had filed written statement. She admitted the factum of marriage as well as the birth of son and denied all allegations levelled against her. She is ready to live with appellant alongwith her son and she has given option that if the divorce decree is passed, Rs. Ten Lakh would be given by the appellant to her.

5. Learned counsel for the appellant submitted that he has submitted material exhibits and in the light of said material exhibits the impugned judgment as well as order of decree is not justified and legal in the light of material available on record as the respondent has committed the act of cruelty as well as he has deserted respondent without any reason. Hence, the Judgment of the learned Principal Judge, Family Court, Munger is not justified and legal.



6. From the side of appellant, two witnesses were examined. P.W.1 is appellant himself and P.W.2 is mother of appellant. The appellant has also relied upon certain documents which stands marked as Exhibits 1 to 5. Respondent has not produced any evidence on her behalf. Thereafter, Court recorded finding that the appellant is not entitled to get the decree of divorce on the ground of cruelty and desertion. Being aggrieved with the said finding the appellant has preferred the present miscellaneous appeal.

7. In the light of given facts and circumstances of the case, the question arises:-

whether the appellant has proved the case on the ground of cruelty as well as desertion in the light of given evidence and the materials available on record or not ?

8. It is necessary to analyze the evidence adduced by P.W.1, who is the appellant himself. In his evidence, he has asserted the factum of petition, but during course of examination, he has admitted that he is not ready to keep his wife as well as his child and P.W.2 has also supported the factum of P.W.1 and she has also stated during the cross-examination that she is not ready to keep the appellant's wife. Though, both the P.Ws. stated that they have reason not to keep the respondent and the child. The reasons stated by both the



P.Ws are quite vague as they have not stated solitary circumstance which amounts to cruelty.

9. In light of ground of cruelty, it is necessary to get the interpretation of Hon'ble Supreme Court in the case of ***Dr. N.G. Dastane vs. Mrs. S. Dastane*** reported in ***AIR 1975 SC 1534***. The word "Cruelty" has been interpreted that what act constitutes cruelty, which is a ground of dissolution of marriage may be defined as willful and unjustified conduct of such a character as to cause danger to life, limb or health badly or mental or as to give rise to reasonable apprehension such a danger. Under statutory provision of Hindu Marriage Act under Section 10(1)(b) of the Act what constitute cruelty must depend upon the term of this statute, which provides:

"10. (1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition to the District Court praying for a decree for judicial separation on the ground that the other party—

(b) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party;"

10. In the case of ***V. Bhagat vs D. Bhagat*** reported in ***1994 AIR 710*** the concept of cruelty has been examined through referring the case of ***Shobha Rani v. Madhukar Reddi*** reported in ***(1988) 1 SCC 105***. The word "Cruelty" has not been defined in the Hindu Marriage Act, it has been used in Section



13(1)(i-a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse.

11. The crux of the various decisions of the Hon'ble Supreme Court on the interpretation of the word "cruelty" is that it has to be construed and interpreted considering the type of life the parties are accustomed to; or their economic and social conditions and their culture and human values to which they attach importance. Each case has to be decided on its own merits.

12. In the present case, the appellant has self asserted in the petition that he tried his best to get the custody of his son and approached respondent for amicable settlement but no



reciprocity was shown from the side of the respondent. But from the perusal of the evidence available on record during course of divorce proceeding, there is nothing on record which indicates that appellant has sought any legal step either for visitation right or taking care of child. Even he has not taken legal step for restitution of conjugal rights but in the divorce petition he has asserted that he tried his best to reconcile the matrimonial dispute. During the course of adducing evidence before the court the appellant himself has stated that he is neither ready to keep his wife nor his son. His self asserted version in divorce petition is quite inconsistent with the evidence adduced during divorce proceeding. In this way, the statement of appellant is quite contradictory and even he has not stated solitary circumstance which amounts to cruelty. P.W.-2 who is mother of the appellant has also supported the version of appellant in toto during adducing evidence. The allegation made by the appellant against the respondent is quite vague. Not a single specific allegation of behavioral misconduct amounting to cruelty has been made either in pleading or evidence with reference to date, place and nature of the cruelty rather in the petition, appellant himself has stated that respondent joined the matrimonial home in the need of hour when she fell ill. The self asserted and bald



statement of appellant is quite contradictory in the sense that one cannot have cold and hot breath at one at the same time.

13. In the present case, we are assessing the fact of the present case upon the touch stone of ground of cruelty. We do not find any solitary circumstance, where it is found that the appellant has proved the case where cruelty is constituted in light of statutory provision as mentioned above. In daily life numerous incidents have taken place but all cannot be taken into account, which is reasonably wear and tear of married life, which can be ignored.

14. When we are referring the ground of desertion, we find that there are two kinds of desertion:-

(i) actual desertion and (ii) constructive desertion.

In the case of desertion, it is settled by the Hon'ble Supreme Court through judicial pronouncement and it has been interpreted that (what could be said to be "Desertion" in the divorce proceedings filed under Section 13 of the Hindu Marriage Act, 1955). The expression "Desertion" has come up under the judicial scrutiny of Hon'ble Supreme Court in *BipinChandra JaiSinghBai Shah vs. Prabhavati* (AIR 1957 SC 176) which was considered in the case of *Lachman UtamChand Kirpalani vs. Meena alias Mota* (AIR 1964 SC



40). In *BipinChandra JaiSinghBai Shah* (*supra*) it has been held that if a spouse abandons the other in a state of temporary passion, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion. The Hon'ble Supreme Court collating the observations made in the earlier decisions, stated its view as under:-

“Collating the aforesaid observations, the view of this Court may be stated thus: Heavy burden lies upon a petitioner who seeks divorce on the ground of desertion to prove four essential conditions, namely, (1) the factum of separation; (2) animus deserendi; (3) absence of his or her consent; and (4) absence of his or her conduct giving reasonable cause to the deserting spouse to leave the matrimonial home.”

15. From the perusal of evidence adduced during the course of trial, the appellant has not proved even the factum of desertion. He has only given a statement that on 21.04.2013 respondent left her matrimonial house and appellant filed the case on 01.04.2015 which hardly covers two years as even the divorce petition has not fulfilled the criteria of statutory period. Even the appellant has himself stated that he is not ready to keep his wife. Then how he can take the benefit at his own fault who himself is not ready to keep his wife.

16. From the perusal of evidence of appellant, he



himself has stated that he is not ready to keep his wife on the basis of bad conduct and said allegation is quite vague and not specific with regard to time and place and there is no solitary circumstance which constitutes cruelty. From the perusal of record, there is no material to prove that there was animus deserendi on the part of respondent. In this way, the ground of desertion cannot be proved in the light of aforesaid facts and circumstances of the case as well as materials available on record.

17. On all counts keeping in view the discussions made in foregoing paragraphs, we find that there is 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. The present appeal is dismissed accordingly, affirming the impugned judgment and order of decree.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

Manish/
Amit/Shahzad

AFR/NAFR	A.F.R.
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