

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.41 of 2024

Prabhat Kumar S/o Late Narayan Prasad, Resident of Govindpur, P.S.-Fatuha,
District-Patna-803201.

... .. Appellant/s

Versus

1. Rinki Devi S/o Shiv Pd. Gupta, Resident of Ram Lakhan Path, Road No. 8,
P.S.-Kankarbagh, District-Patna.
2. Rohit Kumar, S/o Ganga Kumar, Mohalla-Ashok Nagar, P.S.-Kankarbagh,
District-Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Tilak Sao, Advocate
Mr. Bipin Kumar, Advocate
Ms. Priyanka, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

and

HONOURABLE MR. JUSTICE RANA VIKRAM SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date: 20-08-2026

1. This is an appeal filed by the husband of the
respondent, being aggrieved by and dissatisfied with the
Matrimonial (Divorce) Suit No. 756 of 2008, whereby and
whereunder, the learned Principal Family Court at Patna
dismissed the suit on contest.



2. The appellant filed the above-mentioned suit, praying for dissolution of marriage by divorce against his wife, stating, inter alia, that his marriage with the respondent was solemnized on 19th of June, 2007. After marriage, on 20th June, 2007, the respondent came to her matrimonial home. On the very first day in her matrimonial home, the respondent denied to consummate the marriage with the appellant. The appellant stated the said fact to the parents of the respondent when they came on 21st of June, 2007 to attend the reception ceremony of the bride to the house of the appellant. On that day, the appellant came to know that marriage of the respondent was forcibly solemnized with the appellant. On 20th of July, 2007, the father of the respondent took her to his house. During her stay at her matrimonial home, the appellant came to know that the respondent had previous relationship with one Rohit Kumar and she used to talk with Rohit Kumar several times. On 19th of August, 2007, the appellant brought his wife-respondent to his house but the respondent started quarreling with him and insisted him to divorce her. She also threatened to commit suicide, if the husband refused to divorce her. On 3rd of December, 2007, the Opposite Party filed an application for divorce in the Permanent Lok Adalat,



Patna. The said application was registered as L.A. No. 432 of 2007. Subsequently, the said application was withdrawn by the respondent. After few days, the respondent started to put pressure upon the appellant to allow her to talk to Rohit Kumar. On 30th of April, 2008, an attempt of settlement was made in presence of local Panchayat, parents of the respondent and the appellant. The matter was settled temporarily in Panchayat. The respondent resisted the appellant from establishing any physical relationship with her. She had illicit relationship with one Rohit Kumar and on 21st of July, 2008, she flatly refused to stay with the appellant. Since then, the respondent deserted the appellant. Thus, the suit for divorce was filed on the ground of cruelty and desertion.

3. The respondent contested the said suit by filing written statement.

4. The respondent denied all the allegations made out against her by her husband in the plaint. Specific case of the respondent is that the appellant filed the suit for divorce only to put pressure upon the parents of the respondent to meet the illegal demand of dowry. The respondent was driven away by her matrimonial relations including her husband after



physically assaulting her, as a result of which, she has been staying at her paternal home. It is also contended by the respondent that in order to dissolve the marital tie, the appellant concocted a false story of illicit relationship of the respondent with another person. All other allegations made out by the appellant was specifically denied by the respondent.

5. On the basis of the pleadings of the parties, the Trial Court framed as many as five issues. They are:

- (i) Is the suit maintainable?;
- (ii) Has the petitioner / applicant any cause of action to file the suit for dissolution of marriage by divorce?;
- (iii) Is the petitioner entitled to get a decree of divorce on the ground of cruelty, desertion and adultery by the respondent?;
- (iv) Is the respondent entitled to permanent alimony?; and
- (v) Is the suit liable to be dismissed?; and to what other relief or reliefs the petitioner is entitled to.

6. The parties led evidence in course of trial of the suit. On behalf of the appellant, the petitioner himself was examined as P.W. 1. One Pankaj Kumar and one Ranjeet



Kumar deposed as P.W. 2 and P.W. 3. A series of documents were marked exhibits. The respondent did not come forward to contest the suit and during trial, no evidence was adduced on behalf of the respondent. She also did not file any document.

7. It appears from the lower court records that the respondent filed a suit for divorce in the Permanent Lok Adalat, Patna, which was withdrawn. The order passed by the Permanent Lok Adalat, Patna is marked as Exhibit-1. Exhibit-2 is the application filed by the respondent for divorce and Exhibit-2A is another application filed by the respondent for withdrawal of the case. Exhibits-4 and 5 are the statement made by the respondent. The appellant also submitted copy of formal FIR of Kankarbagh P.S. Case No. 3 of 2009, certified copy of Misc. Case No. 15422 of 2010, copy of the complaint bearing No. 578(c) of 2015, photographs of marriage, photocopy of an affidavit executed by Santosh Kumar. It is found from the pleadings of the appellant that he prayed for divorce against the respondent, especially on two grounds, namely cruelty and desertion. With regard to the plea of desertion, the provision of law contained in Section 13 (1) (i-b) envisages that either of the party has deserted the petitioner



for a continuous period of not less than two years immediately preceding the presentation of the petitioner.

8. According to the appellant, the respondent deserted him on or from 21st of July, 2008. The divorce case was filed on 17th of December, 2008, i.e., within five months from the alleged date of desertion. Therefore, the suit for divorce on the ground of desertion is premature and not maintainable according to the provisions of the Statute. Therefore, the appellant cannot get any decree on the ground of desertion.

9. The learned Principal Judge discussed in detail the evidence on record. On the point of cruelty, in nutshell, the following has been recorded by the learned Principal Judge, Family Court, Patna:

“Issue No. 5 involves grounds of cruelty, illicit relationship, and desertion. Since Issues No. 3 and 7 were decided against the applicant, and they failed to prove these grounds by preponderance of evidence, the applicant is not entitled to a divorce decree. Consequently, the suit is liable to be dismissed. The applicant's evidence has been discussed earlier, and there is no need to repeat it. Law



also states that no party can benefit from their own wrongdoing, and the suit was not brought with clean hands.”

10. We have perused the impugned judgement, passed by the learned Principal Judge, Family Court at Patna. The learned Trial Judge discussed the issue on cruelty allegedly perpetrated by the respondent upon the appellant. From the evidence of the appellant, it is ascertained that after few days of marriage, he could understand that his wife has illicit relationship with one Rohit Kumar and the appellant disclosed the said incident to the parents and other family members of the respondent on 21st of June, 2007. They assured him that they would look into the matter and in future the respondent would not maintain any relation with the said Rohit Kumar. However, the respondent did not mend herself. It is further ascertained from the evidence of the appellant in the Trial Court as P.W. 1 that both the parties filed an application for mutual divorce under Section 13 (b) of the Hindu Marriage Act and the said case was, subsequently, withdrawn by the respondent. Lion's share of the evidence of the appellant relates to the incident of alleged illicit relationship of his wife with one Rohit Kumar. Over the said



issue, a village settlement was held in presence of the family members of both the parties. In spite of the said settlement, the respondent went on maintaining contact with the said Rohit Kumar. The story of cruelty started from paragraph 15 of the evidence of P.W. 1 when P.W. 1 stated that the respondent did not allow him to share bed with her. The denial of maintaining normal relationship between husband and wife caused mental cruelty to him. The appellant tried to make his wife understand the importance of maintaining normal relationship of husband and wife on 21st of July, 2008 for the last time but the respondent left her matrimonial home and took shelter in her paternal home. The evidence of other witnesses on behalf of the appellant is not even corroborative in nature because relationship of husband and wife inside the four corners of closed room cannot be known to the outsiders.

11. On perusal of the evidence of P.W. 1, we find that P.W. 1 failed to lead positive evidence against his wife on cruelty within the meaning of Section 13(1)(1-a) of the Hindu Marriage Act.

12. For the reasons stated above, we do not find any ground to interfere with the impugned judgement passed by the learned Principal Judge, Family Court at Patna in Divorce



Case No. 756 of 2008, dated 7th of October, 2023.

13. The instant appeal is accordingly dismissed on contest.

14. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

(Rana Vikram Singh, J)

skm/-

AFR/NAFR	NAFR
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