

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.990 of 2018

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Nitu Kumari Daughter of Sri Abhay Prakash Mandal, Resident of Mohalla -
Ishaqchak (Pasi Tola), P.S. Isaqchak, District- Bhagalpur.

... .. Appellant/s

Versus

Munna Prasad Singh Son of Sri Raj Kishore singh, Resident of Village -
Nandanchak, P.S. Gaurichak, District - Patna, Present Address - Electricity
Board, Sabour Grid, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Ranjan Kumar Jha, Advocate
Mr. Rana Pratap Singh, Advocate
For the Respondent/s : Mr.Rajesh Kumar, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 18-09-2025

Heard the parties.

2. The appellant-wife (Nitu Kumari) has come up in this appeal against judgment and decree dated 25.08.2018 passed by the learned Principal Judge, Family Court, Bhagalpur in Matrimonial Case No. 368 of 2014, whereby the petition filed by the respondent-husband (Munna Prasad) under Section 13 of the Hindu Marriage Act, 1955 (in short 'the 1955 Act') seeking dissolution of marriage by a decree of divorce, has been allowed and he was directed to pay Rs. 2 lakhs to the appellant-wife as permanent



alimony.

3. Succinctly, the marriage of appellant-Nitu Kumari was solemnized with respondent-Munna Prasad Singh on 01.03.2012 as per Hindu rites and ceremonies. The marriage was duly consummated; however, no child was born out of the wedlock.

4. The pleaded case of respondent-husband in his petition filed before learned Family Court is that respondent is Government Servant and working as Junior Engineer in the Electricity Department of Government of Bihar and presently posted at Sabour in Bhagalpur. At the time of marriage, the respondent was posted in Bettiah, hence, after marriage, the respondent took the appellant at his place of posting at Bettiah and they both started living a happy married life for some days. Thereafter, the appellant went with her father along with all her belongings to Bhagalpur. The respondent made several attempt to bring the appellant back to her matrimonial house but all his attempts went in vein since appellant refused to join him. Ultimately the respondent filed a case on 17.07.2012 under Section 9 of the Hindu Marriage Act for restitution of conjugal life. In



the aforesaid case, in spite of service of notice and gazetted publication, the appellant did not appear before the Family Court. Hence, learned Principal Judge, Family Court, Bettiah passed the order on 18.12.2013 directing the appellant to join the respondent within two months. Several months have elapsed but the appellant did not choose to join her husband. In the meanwhile, she has filed Complaint Case No. 2273 of 2012 on 04.10.2012 under Section 498(A) and other provisions of the Indian Penal Code. She has also filed Miscellaneous Maintenance Case No. 154 of 2012 under Section 125 of the Cr.P.C claiming maintenance in which learned Principal Judge, Family Court, Bhagalpur allowed ad-interim maintenance of Rs. 3000/- per month on 03.09.2013. The case was decided on 25.08.2018 and since then the respondent was directed to pay Rs. 10000/- per month as maintenance to the appellant-wife. The respondent-husband made every possible efforts to bring the appellant-wife back to her matrimonial house but all his efforts were went in vein. The matrimonial relation between the appellant and respondent has already irretrievably broken down and there is no hope of restoration of their



conjugal life.

5. The appellant-wife has appeared in pursuance to the notice issued to her and filed her written statement. In her written statement, she has denied all the allegations made against her. She has stated that the matrimonial case is not maintainable either on fact or law and the respondent has got no cause of action to file this case. The respondent-husband has no interest to continue conjugal relationship with the appellant. Soon after marriage, the appellant-wife was tortured for two *katthas* of land in Bhagalpur. The respondent-husband himself deserted the appellant-wife and did not make any concrete effort to restore the matrimonial relation with the appellant-wife. The appellant had never given threat, nor ill behaved, humiliated or quarreled with any in-laws family members and all the allegations made against the appellant-wife are fake with a view to take divorce from her. Hence, the divorce petition is liable to be dismissed.

6. In view of facts and circumstances and materials available on record, learned Principal Judge, Family Court, Bhagalpur has held that the respondent-



husband has made out a case for divorce and accordingly the suit has been decreed on contest under Sections 13 of the Hindu Marriage Act and the marriage solemnized on 01.03.2012 between the parties was dissolved in Matrimonial Case No. 368 of 2014. The appellant-wife, aggrieved by the said judgment of the learned Family Court has filed the instant appeal before this Court.

7. 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. Learned counsel has further submitted that the divorce petition has wrongly been allowed on the ground of cruelty, rather the appellant-wife had been treated with cruelty at the hand of the respondent-husband and she had only availed her legal remedies by filing cases as regards the cruelty meted out to her and also as regards the demand of dowry by the respondent-husband and his family members, however the same have been wrongly taken against the appellant. It is further submitted that the Family Court has wrongly concluded that the appellant had deserted the respondent-husband, whereas it was the



respondent, who had compelled the appellant-wife to leave her matrimonial home. It is further submitted that after decree of divorce by the Family Court, the respondent-husband has performed second marriage on 10.06.2019.

8. It is further submitted that no efforts were made by the Family Court to reconcile the matter between the parties. It is therefore contended that the findings returned by the Family Court are not sustainable in the eyes of law.

9. We have heard learned counsel for the appellant and respondent and perused the paper-book as well as the impugned judgment.

10. 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?"

11. 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 13 years back. The marriage took place on 01.03.2012 and they are residing separately just after few months of marriage.

(ii) Admittedly, the parties got separated in July, 2012 and after filing of the restitution case by the respondent-husband, the appellant-wife had filed a criminal case bearing Complaint Case No. 2273 of 2012. The appellant-wife has also filed Miscellaneous Maintenance Case No. 154 of 2012 in which she is getting maintenance of Rs. 10,000/- per month.

(iii) The appellant-wife in her written statement has not been able to give any specific instance of maltreatment on account of demand of dowry or alleged cruelty and in absence thereof, it was inferred that the appellant-wife had taken undue advantage of her position as a wife and had dragged respondent-husband and his family members into unnecessary litigation by getting false criminal case against them.

(iv) 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 in the present case, it clearly shows that respondent-husband has indeed faced matrimonial cruelties at the hands of appellant-wife.

(v) It was observed by the Family Court that the appellant-wife has filed a case bearing Misc(Maintenance) Case No. 154 of 2012 under Section 125 Cr. PC against the respondent-husband and in that case it was ordered that Rs. 10,000/- could be paid by the respondent-husband to the appellant-wife as an interim maintenance. Hence, in the light of the income of the respondent-husband, he was directed to pay Rs. 2,00,000/-(Two Lakhs) to the appellant-wife as permanent alimony within two months from the date of passing of the judgment.

12. Accordingly, it was concluded that the



respondent-husband has been able to prove his case and decree of divorce has been granted to him.

b) Desertion:

(i) During the course of trial, it appears that the allegation of the appellant-wife that she has been shunted out of matrimonial house due to demand of dowry has not been proved. The respondent-husband has filed a matrimonial case for restitution of conjugal rights and the same was allowed but the appellant-wife did not take any effort to return to her matrimonial house. She had deserted the respondent only after few months of marriage and during this span of six years, there was no effort on the part of the appellant-wife to return to the respondent-husband.

(ii) It also appears from the evidence 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 Hindu Marriage Act, 1955 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 respondent-husband without reasonable cause



continuously for a period of more than two years. Thus, respondent-husband proved the ground of desertion.

13. 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..."

14. 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..."

15. 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..."

16. On the envil 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 there is long separation between the parties and the matrimonial bond is virtually beyond repair and in this circumstance, if divorce is not granted, it will not serve the sanctity of marriage.

17. In view of forgoing discussion, we conclude that respondent-husband has made a ground for grant of decree of dissolution of marriage on the ground as mentioned in Section 13(1)(i-a) of the Hindu Marriage Act, 1955."

18. 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



recorded by the learned Trial Court should not be upheld. The point of determination is answered accordingly and the impugned judgment and decree of divorce passed in favour of respondent-husband is hereby upheld.

19. Before we part with this order, it is apposite to state here that while granting the decree of divorce, without assessing the assets and liabilities of the parties, learned Family court has awarded Rs. 2,00,000/- (Two Lakhs) to the appellant-wife towards Permanent Alimony as neither appellant nor respondent has filed their assets and liabilities statement nor it was required by the learned Principal Judge, Family Court while granting permanent alimony of Rs. 2 lakhs in favour of the appellant-wife. Here it is useful to refer to Section 25 of the 1955 Act, which reads thus:

"Section 25. Permanent alimony and maintenance: (1) Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the appellant for her or his maintenance and



support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant (the conduct of the parties and other circumstances of the case), it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent."

20. In the light of the language used in Section 25 of the 1955 Act, it is clear that claim under Section 25 of the Act has to be made on an application furnishing all details regarding his or her own income or other property. Further an opportunity has to be given to the other side to put forth his/her defence.

21. 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, Bhagalpur and without assessing the aforesaid aspects, in a flimsy manner, permanent alimony of Rs. 2 lakhs was directed to be paid to the appellant-wife, which is not sustainable in the eye of law. The grant of permanent alimony 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 *Rajnish 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.

22. Be that as it may, Section 25 of the 1955 Act itself envisages that the wife can initiate proceedings for grant of permanent alimony even after the decree of divorce. Therefore, the court does not become *functus*



officio with the passing of the decree and continues to have jurisdiction to award alimony even thereafter.

23. Accordingly, we deem it fit and proper to remand the matter back to the learned Principal Judge, Family Court, Bhagalpur only with regard to decide the quantum of permanent alimony. The Court below is expected to direct the appellant-wife and respondent-husband to file details regarding their assets and liabilities in light of Hon'ble Supreme Court decision in the case of ***Rajnish 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 with regard to the permanent alimony within a period of three months from the date of production/receipt of a copy of this 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.

24. It is made clear that till passing of the order of



permanent alimony, the interim maintenance as granted by the Family Court to the appellant-wife shall remain continue.

25. In view of the above discussions, M.A. No. 990 of 2018 is hereby disposed of with litigation cost of Rs. 25,000/-(Twenty Five Thousands) to be paid by the respondent to the appellant within a period of three months from today.

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

(S. B. Pd. Singh, J)

(P. B. Bajanthri, ACJ)

Shageer/-

AFR/NAFR	AFR
CAV DATE	31/07/2025
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