

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.307 of 2015

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Sangita Kumari, wife of Surendra Kumar Himansu, daughter of Binod Yadav, resident of Village-Tahbal Bigha, P.O-Chhoriyari, P.S.-Makdumpur, District-Jehanabad, at present, residing at Village-Alua Bigha, P.S.-Makdumpur, District-Jehanabad

... .. Appellant/s

Versus

1. Surendra Kumar Himansu, son of Ram Dahin Yadav, resident of Village-Tahbal Bigha, P.O-Chhoriyari, P.S.-Makdumpur, District-Jehanabad
2. Shailendra Kumar @ Akash Kumar, son of Sheojanam Yadav, resident of Village-Tehbal Bigha, P.S-Makhdumpur, District-Jehanabad

... .. Respondent/s

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with
CRIMINAL REVISION No. 584 of 2015

Arising Out of PS. Case No.- Year-1111 Thana- District-

=====

Sangita Kumari, wife of Surendra Kumar Himansu, daughter of Binod Yadav, at present residing at Village-Alva Bigha P.S.-Makdumpur, District-Jahanabad.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Surendra Kumar Himansu, son of Ramdahin Yadav, resident of Village-Tahbal Bigha, P S.-Makdumpur, District-Jehanabad, posted in Air-force Station Kanpur, Chakeri, Uttar Pradesh

... .. Respondent/s

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with
CRIMINAL REVISION No. 618 of 2015

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Surendra Kumar Himanshu, son of Ram Dahin Yadav, resident of Village-Tahbal Bigaha, P.S.- Makhdumpur, District- Jehanabad

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sangita Kumari, daughter of Binod Yadav, resident of village- Alua Bigha, P.S.- Makhdumpur, District- Jehanabad



... .. Respondent/s

Appearance :

(In Miscellaneous Appeal No. 307 of 2015)

For the Appellant/s : Mr. Uday Kumar, Adv

For the Respondent/s : Mr.

(In CRIMINAL REVISION No. 584 of 2015)

For the Petitioner/s : Mr. Uday Kumar, Adv

For the Respondent/s : Mr. Lalan Kumar, APP

(In CRIMINAL REVISION No. 618 of 2015)

For the Petitioner/s : Mr. Dr. Binay Kumar Singh, Adv

For the Respondent/s : Mr. H.A. Khan, APP

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 : 26-03-2025

In these bunch of cases, the issues are common and interrelated, as such, all have been heard together and are being disposed of by this common judgment. The reliefs sought by the appellant/petitioner are as under:-

2. Miscellaneous Appeal No. 307 of 2015 (Sangita

Kumari versus Surendra Kumar Himansu)

“That instant appeal is being preferred against the decree of dissolution of marriage dated 08.05.2015 passed by the learned Principal Judge, Family Court, Jehanabad in Matrimonial Case No. 66/2023 whereby and where under the learned Principal Judge, Family Court, Jehanabad has been pleased to decree the Matrimonial Suit No. 66/2023 in



favour of plaintiff (Respondent here) without considering the legal aspects and the reply filed by the appellant.”

3. Criminal Revision No. 584 of 2015(Sangita Kumari versus Surendra Kumar Himansu)

“That this revision application is being filed on behalf of the petitioner against the order dated 08.05.2015 passed by the learned Principal Judge, Family Court, Jehanabad in Maintenance Case No. 81 of 2014 whereby and whereunder the learned Principal Judge, Family Court, Jehanabad has been pleased to allow the maintenance only Rs. 5000/- per month whereas demand of petitioner is Rs. 20,000/- per month for her livelihood.”

4. Cr. Revision No. 618 of 2015(Surendra Kumar Himanshu versus The State of Bihar & Ors)

“That the revision petition is directed against the order dated 08.05.2015 passed by learned Court of Principal Judge, Family Court, Jehanabad in Maintenance Case No. 81/2014 filed under Section 125 Cr.P.C by opposite party no. 2 whereby and whereunder learned Court has been pleased to direct the petitioner to pay Rs. 5000/- as



maintenance to the opposite party no. 2 on or before 15th of each successive month from the date of the order and in default to pay the same, the opposite party no. 2 may move before the court to get the same through the process of law.”

Miscellaneous Appeal No. 307 of 2015

5. Heard the parties.

6. The present appeal has been filed under Section 19(1) of the Family Court Act, 1984 impugning the judgment dated 08.05.2015 passed by learned Principal Judge, Family Court, Jehanabad in Matrimonial Case No. 66 of 2013, whereby the matrimonial suit, preferred by the respondent-husband, for a decree of divorce, on dissolution of marriage, has been allowed.

7. The case of the respondent-husband as per petition filed before the Family Court is that the marriage of the respondent-husband with appellant-wife was solemnized on 11.07.2000 as per Hindu Rights and Customs and after marriage, they lived together as husband and wife for about three months. After marriage, the respondent-husband came to know that the appellant-wife



was in close proximity with his co-villager who has been made party as respondent No. 2. The respondent No. 2 always used to come to the house of the respondent-husband and he never objected as he considered it as a social visit. One day, when the respondent-husband returned to his home, he found the appellant-wife and respondent No. 2 inside the house with the outer door bolted from inside. The respondent-husband tried his best to convince his wife (appellant) not to indulge with respondent No. 2 but his advice was not followed by the appellant-wife. The respondent-husband also advised respondent No. 2 not to indulge with the appellant-wife but he also did not follow his advice. On 27.11.2012, when the respondent-husband returned back from the market, he found his bed-room locked from inside. On alarm raised, the appellant-wife and respondent No. 2 came outside the room in a very ashamed condition. The respondent-husband caught the appellant-wife and respondent No. 2 red handed living in adultery. Thereafter, the appellant-wife filed Complaint Case No. 1055 of 2012 on 09.01.2013 which was transmitted to Mahila P.S. Case No. 12 of 2013 on 04.02.2013 under



Section 498(A) of the Indian Penal Code against the respondent-husband and her other in-laws family members for the alleged allegation of torture and demand of dowry. After knowing the aforesaid illicit relationship of the appellant-wife and her filing a false criminal case against the respondent-husband and other in-laws family members, it was not possible for the respondent-husband to live with the appellant-wife. Hence, he filed Matrimonial Case no. 66 of 2013 for dissolution of marriage against the appellant-wife.

8. After filing of the above case, the appellant-wife appeared in response to the summon/notice issued by the Court and filed her reply/written statement.

9. It is submitted by learned counsel for the appellant-wife that marriage between the appellant-wife and the respondent-husband was solemnized as per Hindu rights and rituals on 11.07.2000 and after marriage the appellant-wife went to her matrimonial house and peacefully lived for some times, but thereafter her in-laws family members started torturing her for non-fulfillment of dowry demand. The torture further became intensified when her husband



(respondent No.1) got an appointment in AIR Force. The appellant-wife informed to her parents regarding torture by her in-laws and her parents also tried to pacify the matter but all their efforts went in vein. Ultimately, the appellant-wife informed to Jehanabad Mahila Police Station regarding torture and demand of dowry. On the intervention of the police, the matter was compromised and the appellant-wife went to her matrimonial house, however, after some times, she was again tortured by her in-laws family members including the respondent No.1. The appellant-wife, thereafter filed Complaint Case No. 1055 of 2012 on 09.01.2013 which was registered as Mahila P.S. Case No. 12 of 2013 on 04.02.2013 under Section 498 (A) of the Indian Penal Code. The appellant-wife is always ready to live with her husband (respondent No. 1) but it is the respondent No.1 who does not want to live with the appellant. The respondent No. 1 also undertook before this Hon'ble Court in a bail petition, to keep the appellant-wife with full dignity and honour but he has not complied the undertaking given before this Hon'ble Court. The appellant-wife further submitted that she bears a good character and



adultery has been alleged by the respondent-husband only to get divorce from the appellant-wife.

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

1. Whether the case as framed is maintainable?

2. Whether the petitioner has cause of action to file this case?

3. Whether the petitioner was subjected to cruelty by the opposite party.?

4. Whether the appellant is entitled for the decree of dissolution of marriage?

5. Whether the petitioner is entitled to relief as claimed for?

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

11. During course of trial, altogether four witnesses have been produced on behalf of the respondent-husband which are P.W. 1 Ram Dahin Yadav (father of respondent-husband), P.W. 2 Surendra Kumar Himanshu (respondent-husband), P.W. 3 Sona Devi and P.W. 4, Sukhendra Kumar (brother of respondent-husband).

12. On behalf of the appellant/O.P., four witnesses



have been produced who are O.P.W. 1 Saroj Devi (mother of appellant), O.P.W. 2 Vinod Yadav (father of appellant), O.P.W. 3 Shambhu Kumar (uncle of appellant) and O.P.W. 4 Sangita Kumari (appellant herself).

13. After conclusion of the trial, the learned Principal Judge, Family Court has held that respondent-husband has proved that he was subjected to cruelty at the hands of the appellant-wife as well as deserted by the appellant-wife and the case filed by the respondent-husband is maintainable and also the respondent-husband has valid cause of action to file the instant case. Accordingly, the Family Court came to the conclusion that the appellant was entitled for decree of divorce on the ground of cruelty as well as desertion and the suit was decreed accordingly and the marriage between the appellant-wife and the respondent-husband was dissolved by a decree of dissolution of marriage.

14. Thereafter, being aggrieved and dissatisfied with the aforesaid judgment and decree passed by the learned Court below in Matrimonial Case No. 66 of 2013, the present appeal has been filed by the appellant-wife.



15. Learned counsel appearing on behalf of the appellant-wife 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 learned Principal Judge has not considered the fact that marriage of the appellant-wife with the respondent-husband was solemnized in the year 2000 and since then there is no complaint regarding the illicit relationship of the appellant-wife with the respondent No. 2 and after expiry of twelve years of marriage, a matrimonial suit was filed by the respondent-husband making allegation about bad character of appellant-wife though respondent-husband has no valid legal evidence to prove his case. Learned Principal Judge has also not considered this fact that said Matrimonial suit was filed by the respondent-husband after institution of Mahila P.S. Case No. 12 of 2013 by the appellant-wife against the respondent-husband and other in-laws family members which reflects that only to save his skin, the respondent-husband has filed the Matrimonial Suit for dissolution of marriage. Learned Court below has not considered the fact that there is much contradiction in the



statement of the witnesses adduced by the respondent-husband. The respondent-husband has also not produced any legal evidence to prove the cruelty done by the appellant-wife. The Principal Judge has also committed a grave mistake in allowing the Matrimonial suit by ignoring this fact that appellant-wife was always ready to live with the respondent-husband and he has not produced any legal valid document nor any evidence to prove the alleged allegation of adultery, cruelty or desertion against the appellant-wife.

16. *Per contra*, learned counsel appearing on behalf of the respondent-husband 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 allowed the matrimonial suit and rightly dissolved the marriage by a decree of dissolution of marriage.

17. In view of the rival contentions and the arguments adduced on behalf of the appellant-wife and respondent-husband as well as the evidences brought on



record, 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.

18. After perusal of the materials available on record and consideration of submissions made by learned counsel for the appellant-wife and respondent-husband, we find that respondent-husband has not adduced any legal documentary evidence or any other evidence to prove that appellant-wife had illegal relationship with Shailendra Kumar (respondent No. 2). Though P.W. 1 Ram Dahin Yadav has deposed in his examination-in-chief about illegal relationship of his daughter-in-law (appellant-wife) with Shailendra Kumar (respondent No. 2) but in his cross-examination at para-6, this witness has deposed that Shailendra Kumar (respondent No. 2) is his nephew and he has never seen the appellant-wife and Shailendra Kumar (respondent No. 2) in compromising position. He has also deposed that he has not



registered any complaint against respondent No. 2 when he came to know about the illegal relationship of respondent No. 2 with his daughter-in-law (appellant) nor he has called for any *Panchayati* in this regard which suggests that for getting benefits in matrimonial suit filed for dissolution of marriage, false allegation of illicit relationship has been developed against the appellant-wife.

19. The respondent-husband has been examined as P.W. 2, who has deposed during trial in his cross-examination that he has no documentary proof regarding illegal relationship of appellant-wife with respondent No. 2 nor he has filed any complaint against respondent No. 2 for adultery against his wife (appellant). He has also not explained as to why matrimonial case was filed after 12 years of marriage and that too after filing of a complaint by the appellant-wife against the respondent-husband and other in-laws family members. The respondent-husband (P.W. 2) has deposed in para 16 of his cross-examination that on 27.11.2012 he came to know about the illicit relationship of appellant-wife and respondent No. 2 when he had seen them in a compromising position, but he has not filed any



complaint against respondent No. 2 for adulterary or rape. Further in para 17 of his cross-examination, P.W. 2 has deposed that before filing of the present suit, appellant-wife had filed a case against the respondent No.1 and other in-laws family members which suggests that to settle the score with his wife (appellant), respondent No. 1 has filed a suit for dissolution of marriage against the appellant.

20. P.W. 3 Sona Devi has deposed in para 7 of her cross-examination that on 27.11.2012 when the respondent-husband caught the appellant-wife and respondent No. 2 in compromising position she was there but no other family member of respondent-husband was present there, however, P.W. 4 Sukhendra Kumar, who is brother of respondent-husband has deposed a contradictory statement in para 9 of his cross examination that he was present on 27.11.2012 when his brother (respondent-husband) caught the appellant-wife and respondent No. 2 in compromising position. She has further deposed in para-8 of her cross examination that earlier also the in-laws family members of the appellant-wife used to stop the respondent No. 2 from coming into their house which suggests that they were



aware about the illegal act of appellant-wife with respondent No. 2, but they have not filed any complaint against the appellant-wife or respondent No. 2 and suddenly after filing of Mahila P.S. Case No. 12 of 2013 by the appellant-wife, the respondent-husband has filed matrimonial suit for dissolution of marriage.

21. P.W. 4 Sukhendra Kumar is the brother of respondent-husband who has deposed in para-11 of his cross-examination that before filing of a suit for dissolution of marriage by the respondent-husband, appellant-wife has filed a criminal case against the respondent-husband and other in-laws family members.

22. Learned Principal Judge has not considered the deposition of O.P.W-1 Saroj Devi who is mother of the appellant-wife who has deposed in para 8 of her cross-examination that after marriage the appellant-wife went to her matrimonial house and resided there for about three months. The appellant-wife, thereafter, came to her parental house but thereafter her in-laws never came to see the appellant-wife. She further deposed in para 8 of her cross-examination that after compromise in Mahila Police Station,



the appellant-wife was brought to her matrimonial house on 25.09.2012 and on 27.11.2012 an allegation was levelled against the appellant-wife that she was caught with respondent No. 2 in compromising position without any cogent and relevant material evidence, which suggests that respondent-husband was not interested to continue his matrimonial relationship with the appellant-wife and as soon as she forced upon the respondent-husband to carry his matrimonial obligation, he used tactics to come out from the matrimonial obligation by claiming adultery/illegal relationship of the appellant-wife with respondent No. 2 though without having any legal documentary proof.

23. 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.

24. 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 life which happens in day-to-day live would not be adequate for grant of divorce on the ground of mental cruelty.

25. 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."

26. After going through the above entire documentary and oral evidences adduced on behalf the appellant-wife, it is crystal clear that learned Principal Judge has committed an error in allowing the matrimonial suit filed on behalf of the respondent-husband for dissolution of marriage as the respondent-husband has failed to prove the cruel behaviour of the appellant-wife towards him and his family members by the strength of cogent, relevant and reliable evidence, while burden of prove of cruelty rests upon the respondent-husband of this case, because, he has sought relief of divorce on the basis of cruel behaviour of the appellant-wife 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 illicit relationship/ adultery of appellant-wife with respondent No. 2 has no legal value as the said allegation has not been corroborated



with any cogent, oral and documentary evidence. 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.

27. So far as ground of desertion is concerned, it has come in the evidence of the respondent-husband (PW-2) that appellant-wife was caught in compromising position with respondent No. 2 at her matrimonial house which suggests that appellant-wife was residing with him in her matrimonial house. So, on the ground of desertion also, the appellant is not entitled to get any decree of divorce.



28. Thus, considering the above entire aspects of this case and evidence adduced on behalf of both the parties, we find that learned Principal Judge, Family Court, Jehanabad has not appreciated the evidence adduced on behalf of the appellant-wife in right perspective while allowing the Divorce petition in favour of the respondent-husband. We find that respondent-husband has failed to prove the allegation of cruelty, much less, the decree of cruel behaviour of appellant-wife which is legally required for grant of decree of divorce under section 13(1) (ia) of the Hindu Marriage Act as also the respondent-husband has failed to prove that the appellant-wife has deserted the respondent-husband. The respondent-husband has also failed to brought on record any proof regarding adulterous life or illegal physical relationship of the appellant-wife with respondent No. 2.

29. Hence, we find merit in the present appeal warranting interference in the impugned judgment.

30. Accordingly, the order dated 08.05.2015 passed by learned Principal Judge, Family Court, Jehanabad in Matrimonial Case No. 66 of 2013 allowing the decree of



dissolution of marriage between the appellant-wife and respondent-husband, is set aside.

31. The present appeal stands allowed.

Criminal Revision No. 584 of 2015(Sangita Kumari versus Surendra Kumar Himansu)

32. The present revision application has been filed by the petitioner-Sangita Kumari against the order dated 08.05.2015 passed by the learned Principal Judge, Family Court, Jehanabad in Maintenance Case No. 81 of 2014 whereby and whereunder the learned Principal Judge, Family Court, Jehanabad has been pleased to allow Rs. 5000/- per month to the petitioner as maintenance.

33. The petitioner is at liberty to file appropriate application before appropriate forum for enhancement of maintenance amount which was allowed by the Principal Judge, Family Court, Jehanabad.

34. Accordingly, the present revision petition stands disposed of.

Cr. Revision No. 618 of 2015(Surendra Kumar Himanshu versus The State of Bihar & Ors)

35. Since the judgment of learned Principal Judge,



Family Court, Jehanabad in Matrimonial Case No. 66, annulling the marriage between the appellant-wife and respondent-husband has been set aside, the present revision petition has no leg to stand.

36. Accordingly, Cr. Revision No. 618 of 2015 stands dismissed.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

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CAV DATE	22/11/2024
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