

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.367 of 2018**

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Ranjeet Kumar Son of Sri Ram Prakash Singh, Resident of Mhalla- Rajapur Mainpura House No. 1090/2, 'Meena Sadan' East Side of Vishal Bajrang Bali Temple, Police Station- Patliputra, Patna, District- Patna.

... .. Appellant/s

Versus

Kanchan Gangotri W/o Ranjeet Kumar, D/o Sri Arun Chaudhary, Resident of Mohalla- Nabiganj, Chapra, Police Station Bhagwan Bazar, District- Chapra, Saran.

... .. Respondent/s

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**Appearance :**

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| For the Appellant/s  | : | Mr. Ranjeet Kumar (in person)<br>Mr. Akhileshwar Kumar Shrivastva, Advocate |
| For the Respondent/s | : | Mr. Shekhar Singh, Advocate   |

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA**

**and**

**HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)**

**Date : 03-12-2019**

Heard the appellant who appears himself as well as learned counsel appearing for the respondent on the point of admission and, in our view, this appeal can be decided on admission stage itself without calling for the lower court record.

This appeal has been preferred against the impugned judgment and decree dated 26.03.2018 passed by learned Principal Judge, Family Court, Saran at Chapra in Divorce Case No. 201 of 2015 by which and whereunder learned Principal Judge, Family Court decreed the above-stated Divorce Case No. 201 of 2015 filed by respondent and, accordingly, dissolved the marriage of appellant with respondent by passing a decree of



divorce.

The appellant being aggrieved by the above-stated impugned judgment and decree preferred this appeal under Section 19(1) of the Family Court Act.

The respondent/petitioner filed the above-stated divorce case against appellant/opposite party under Section 13 of the Hindu Marriage Act on the ground of cruelty and she pleaded in her petition that her marriage was solemnized with appellant/opposite party on 15.02.2009 according to Hindu rites and rituals, but subsequently, she was subjected to cruelty and harassment in various ways by the appellant/opposite party as well as his family members. However, she gave birth to a child out of the aforesaid wedlock, but subsequently, she became bound to file complaint case bearing Complaint Case No. 3045 of 2014 against the appellant/opposite party as well as his family members before the court of Sub-Divisional Judicial Magistrate, Chapra for the offence punishable under Section 498(A) and other minor sections of the Indian Penal Code. She further claimed that she was driven out from her matrimonial home by her husband and in-laws and, thereafter, she filed above-stated Divorce Case No. 201 of 2015.

The appellant/opposite party appeared before the



court below and filed written statement challenging the maintainability of Divorce Case No. 201 of 2015 on various grounds. The appellant/opposite party averred several ornamental objections in his reply and specific pleading of the appellant/opposite party was that he never ill-behaved with the respondent/petitioner rather the respondent/petitioner was herself a lady of questionable character, but even then he was ready to keep the respondent/petitioner along with his son. However, the appellant/petitioner specifically pleaded at para 13 of his written statement that if respondent/petitioner is not ready to live with him and she wants to dissolve the marriage, he has no objection, but in that circumstance, the respondent/petitioner shall not be entitled for any maintenance and she shall hand over the son to him.

On the basis of aforesaid pleadings, the learned Family Judge framed following issues:-

- (i) whether the case, as framed, is maintainable?
- (ii) whether the petitioner has got valid cause of action for filing of case?
- (iii) whether the opposite party is subjected to cruelty to the petitioner?
- (iv) whether the opposite party has deserted the



petitioner since 5.10.2014?

(v) whether the petitioner is entitled to get decree of divorce against the O.P.?

(vi) to what relief or reliefs, the petitioner is entitled too?

The learned Principal Judge dealt with all the issues and found that the respondent/petitioner succeeded to prove that she was subjected to cruelty and desertion by the appellant/opposite party and furthermore, the learned Principal Judge found that the appellant/opposite party has admitted in his written statement for dissolution of marriage and on the above-stated grounds the learned Principal Judge decreed the suit of the respondent/petitioner.

The appellant who is appearing in person, submits that the learned Principal Judge failed to appreciate the evidences available on the record in right perspective and so far as the so-called admission of appellant/opposite party regarding the dissolution of marriage is concerned, the same was conditional, but the learned Family Judge taken the above-stated so-called admission of the appellant/opposite party in isolated manner without fulfillment of remaining conditions attached with the aforesaid admission of the appellant/opposite party. He



further submits that as a matter of fact, there was ample material on the record to show that the respondent/petitioner herself put the appellant/opposite party into cruelty, but even then the appellant/opposite party is ready to keep the petitioner/respondent with him.

On the other hand, learned counsel appearing for petitioner/respondent supports the impugned judgment arguing that the learned Principal Judge has rightly passed the decree of divorce in favour of petitioner/respondent. He further submits that the petitioner/respondent does not want any maintenance from the appellant/opposite party, as she is competent to maintain herself as well as her child. He further submits that so far as the child of appellant and respondent is concerned, admittedly, the said child is still minor and he has been residing with the petitioner/respondent. He further submits that no doubt, learned Principal Judge has not given any finding regarding the custody of the aforesaid child, but admittedly, the appellant/opposite party has not filed any petition for custody of the child. He also submits that so far as institution of criminal case is concerned, the petitioner/respondent left the aforesaid case and the same stood dismissed for want of proper *pairvi*.

Having heard the contentions of the parties, we went



through the impugned Judgment as well as the photocopy of petition and written statement which have been annexed with this memo of appeal. Furthermore, we find that both parties led their respective evidences before the Principal Judge Family Court and the witnesses examined on behalf of petitioner/respondent, supported her case, whereas witnesses examined on behalf of appellant/opposite party supported his case, but the appellant/opposite party did not adduce any evidence to show that the petitioner/respondent was leading the life of adultery. Now, it is well settled principle of law that false allegation of adultery against the wife is amount to cruelty. Moreover, the appellant/opposite party himself admitted in his written statement that he does not have any objection, if the decree of divorce is granted in favour of petitioner/respondent with certain conditions. Therefore, in our view, the learned Principal Judge has rightly passed the decree of divorce dissolving the marriage of appellant and respondent, and, there is no scope to interfere into the findings recorded by learned Family Judge while passing the impugned judgment.

However, it is made clear that the petitioner/respondent shall not be entitled for any maintenance from appellant/opposite party in view of the affidavit filed on



behalf of respondent/petitioner on 26.11.2019 before this court in which at para 3 of the aforesaid affidavit, it has specifically been averred that the respondent/petitioner is not claiming any alimony/maintenance from the appellant. Apart from this, learned counsel for the respondent/petitioner has submitted that respondent/petitioner shall not claim any alimony/maintenance for her in future.

So far as question of custody of minor child is concerned, the appellant/opposite party shall be at liberty to take recourse of law and, if he does so, the aforesaid point shall be decided by the concerned court in accordance with law, and, this order shall not cause any prejudice at the time of consideration of custody of the child.

In view of the aforesaid discussion, this appeal stands dismissed and the impugned judgment dated 26.03.2018 is hereby confirmed.

**(Hemant Kumar Srivastava, J)**

**(Prabhat Kumar Singh, J)**

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