

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.368 of 2021

Sanjay Kumar Son of Baleshwar Singh, Resident of Mohalla - Sanchipatti
P.S.- Hajipur, District - Vaishali.

... .. Appellant/s

Versus

Smt. Nilam Devi daughter of Birendra Prasad Singh, Resident of Village -
Sultanpur, P.S.- Vaishali, District - Vaishali, at present residing At and P.O. -
Kitadih, Jamshedpur, Distt.- East Singhbhum, Jharkhand.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Abhinay Raj, Advocate
For the Respondent/s : Mr. Arun Kumar No. 1, Advocate

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-husband (Sanjay Kumar) has come up in this appeal against judgment and decree dated 20.01.2021 passed by the learned Principal Judge, Family Court, Vaishali at Hajipur in Matrimonial Case No. 80 of 2018 whereby the petition filed by the appellant-husband (Sanjay Kumar) under Section 13(1)(i-a) & (i-b) of the Hindu Marriage Act, 1955 (in short 'the 1955 Act') seeking dissolution of marriage by a decree of divorce, has been dismissed.

3. Succinctly, the marriage of appellant- Sanjay



Kumar was solemnized with respondent- Nilam Devi on 21st November 1997 as per Hindu rites and ceremonies. The marriage was duly consummated and out of the wedlock, a female-child namely Supriya Kumari was born on 11.12.1999, who is living with her mother/respondent.

4. The pleaded case of appellant-husband in his petition filed under Sections 13 (1)(i-a) (i-b) of the 1955 Act is that the marriage of the appellant with the respondent was solemnized on 21.11.1997 as per Hindu rights and customs. The marriage of the appellant with the respondent was arranged one and there was no exchange of dowry and it was solemnized in a very simple manner. The appellant was working in Railway at Mumbai on the post of Stenographer. Hence, after staying few months at the matrimonial house, the respondent went along with the appellant at his place of posting at Mumbai. The respondent was a very high ambitious lady and when the appellant used to go on his duty then respondent used to move hither and thither and on query, she used filthy words against the appellant. In the year 2001, the respondent joined acting training class at Mumbai against the will of the appellant. It



is also stated that the father of appellant was suffering from Liver cancer and he came to Bombay for his treatment in the year 2001, the behavior of the respondent was not well and she did not look after properly to him. She wanted to live in Bombay and to work in film as actress. She also did not want to give birth the another child. In the year 2003, the appellant was transferred from Bombay to Hajipur. The respondent did not want to come from Mumbai to Hajipur but anyhow, she came to Hajipur. In her matrimonial house, the behaviour of the respondent with her husband and other in-laws family members was very cruel and she did not take interest in house work rather she used to quarrel with appellant's sister and mother. In the year 2008, the appellant started a Beauty Parlor for the respondent in the name and style of "Glorious Beauty Parlor". The respondent also did not care of her daughter and engaged herself in other activities. Hence, the appellant kept his daughter in Residential School Akashara in Hajipur. It is further alleged that on 25.07.2009, the appellant was brutally assaulted by the respondent and her family members and respondent went away along with valuable articles for which the



appellant-husband has filed Hajipur P.S. Case No. 415 of 2009 on the same very day, for the offences punishable under Sections 341, 342, 323, 448, 504, 420, 498/34 of the Indian Penal Code. It is further submitted that after filing of the above case by the appellant, on 28.07.2009, the respondent has filed Complaint Case No. 2450 of 2009 against the appellant and other in-laws family members under Sections 498(A), 406, 379/34 of the Indian Penal Code and Section 5 of the Dowry Prohibition Act. The above complaint was referred to the police giving rise to Hajipur P.S. Case No. 440 of 2009.

5. It is further submitted by learned counsel for the appellant-husband that on 10.08.2009, the appellant has filed Divorce Case No. 125 of 2009 for dissolution of marriage on the ground of adultery and desertion which was dismissed. Against the order of dismissal, the appellant has filed M.A. No. 145 of 2009 before this Hon'ble Court which was also dismissed on 09.02.2015 as the person with which adultery was alleged, was not made party. The respondent has also filed Maintenance Case No. 145 of 2009 which was allowed and the appellant was directed to



pay Rs. 14,000/- per month to the respondent-wife. The appellant is continuously paying Rs. 14,000/- per month to the respondent-wife. The appellant and respondent are living separately since 26.07.2009. The matrimonial relation between the appellant and respondent has already irretrievably broken down and there is no hope of restoration of their conjugal life.

6. The respondent-wife was noticed/summoned but she did not appear to contest her case. Hence, notice was published in the daily newspaper for her appearance but again she did not appear, hence, vide order dated 17.05.2019, the case was fixed for *ex-parte* hearing.

7. In view of facts and circumstances and materials available on record learned Principal Judge, Family Court, Vaishali at Hajipur held that the appellant-husband has not been able to prove his case against the respondent-wife which was filed to get decree of divorce under Sections 13(1)(1-a)(i-b) of the Hindu Marriage Act, 1955 and the divorce petition was dismissed. The appellant-husband, aggrieved by the said judgment of the learned Family Court, has filed the instant appeal before this Court.



8. During the course of trial, the appellant-husband has examined three witnesses which are P.W-1 Sanjay Kumar (appellant himself), P.W-2 Dilip Kumar Sah and P.W-3 Rakesh Kumar Sinha.

9. The appellant has also brought the following documentary evidence on record.

(i) Ext-1 is C.C. of F.I.R. of Town Hajipur P.S. Case No. 440/2009.

(ii) Ext-1/1 is C.C. of F.I.R. of Town Hajipur P.S. Case No. 415/2009.

(iii) Ext.-2 is C.C. of chargesheet of Town Hajipur P.S. Case No. 440/2009

(iv) Ext-3 is C.C. is Judgement passed in Tr. No. 934/2017, State versus Sanjay Kumar and others passed by Learned S.D.J.M., Vaishali at Hajipur dated 12.09.2017.

(v) Ext.-4 is C.C. of arrest memo of Virendra Prasad Singh and others in Town Hajipur P.S. Case No. 415/2009.

(vi) Ext.-5 is C.C. of order from 10.07.2009 to 04.08.2009.

(vii) Ext.-6 is C.C. of Complaint of Misc. case no. 145/2009, Nilam Devi versus Sanjay Kumar filed in the court of Learned Family Court, Jamshedpur.



(viii) Ext.-7 is C.C. of order passed in Misc. Case no. 145/2009 dated 24.07.2016.

(ix) Ext.-8 is photocopy of Voter information of Nilam Kumari.

(x) Ext.-9 is Original Certificate issued by Anwar Faizabadi film acting insitute in the name of Nilam Kumari.

(xi) Ext.-10 to 10/9 is Original receipts issued by Akshara in the name of Supriya Kumari on different dates.

(xii) Ext. 3/01 is C.C. of Judgement passed in Divorce case no. 125/2009 dated 14.09.2012 by the Principal Judge, Family Court Vaishali.

(xiii) Ext.- 11 is C.C. of order dated 09.02.2015 passed by The Hon'ble High Court, Patna in Misc. Appeal No. 844/2012.

10. Since the respondent did not appear to contest her case, hence, she has not produced any evidence in support of her case.

11. A division Bench of this Court while hearing M.A. No. 844 of 2022 which was filed by the appellant against the judgment and decree dated 14.09.2012 passed in Divorce Case No. 125 of 2009 has observed that appellant



has failed to establish the ground of adultery and desertion for grant of dissolution of marriage. The relevant portion of the judgment dated 09.02.2012 reads as under:-

“3. It appears, allegation of adultery has been levelled against the opposite party-respondent without even impleading the man who is said to have been in adulterous relationship with opposite party-respondent. In such circumstances, the allegation of adultery could not have been established and the court below, in our opinion has rightly chosen to reject the ground of adultery for dissolution of marriage between the appellant and the respondent. The other ground for dissolution of marriage i.e. desertion also does not appear to be made out as there is no evidence on record to even indicate that it was the respondent who left the matrimonial home out of her own accord.

4. In such circumstances, we have no option, but to dismiss the appeal, which is, accordingly, dismissed.”

12. The present divorce petition has been filed on the ground of cruelty. and desertion. A perusal of the Impugned judgment would show that the following acts of



cruelty and desertion have emerged before the Family Court.

a) Cruelty:

(i) From oral and documentary evidence, it is evident that the couple got married about 28 years back. The marriage took place on 21.11.1997 and they are residing separately w.e.f. 25.07.2009.

(ii) Admittedly, the parties got separated on 25.07.2009 and after leaving the matrimonial house, the respondent-wife has filed Complaint Case No. 2450 of 2009 against the appellant's side which was registered as Hajipur P.S. Case No. 440 of 2009 in which the appellant-husband was acquitted (Ext-3). The appellant-husband has also filed Hajipur P.S. Case No. 415 of 2009 against the respondent-wife and her other family members.

(iii) The respondent-wife in her complaint petition 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 respondent-wife had taken undue advantage of her position as a wife and had dragged appellant-husband and his family



members into unnecessary litigation by getting false FIR lodged against them. It is to be noted here that in spite of giving several opportunities, neither respondent-wife appeared before the Family Court nor produced any evidence on her behalf.

(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 held that acquittal of appellant-husband and other family members in criminal case filed by respondent-wife in fact goes to show that appellant-husband has indeed faced matrimonial cruelties at the hands of appellant-wife.

(v) The appellant and respondent have been living separately for about 18 years and this long separation has in



fact put them in such a situation that matrimonial bond has broken down beyond repair. There are no chances of the couple living together and such a marriage is now unworkable and can be a source of great misery for the parties, if allowed to be continued.

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

14. The following question arises for consideration before this Court: "Whether in the present situation, the divorce petition filed by the appellant-husband on the ground of cruelty has any relevance keeping in view the facts and circumstances of the case.

15. 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..."

16. 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..."

17. 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. The appellant-husband has been acquitted in a criminal case filled by the respondent-wife (Ext-3). Admittedly, the appellant is paying interim maintenance per month to the respondent. There is long separation of 28 years between the parties and allowing them to continue their matrimonial relationship after such a



long span of time will not be proper for both the parties.

18. In view of forgoing discussion, we conclude that appellant-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." Hence, the impugned judgment and decree is set aside and the decree of divorce is granted to the appellant-husband.

19. So far as grant of permanent alimony to the respondent-wife is concerned, learned counsel for the appellant-husband has submitted that appellant is ready to pay a sum of Rs. 15 lakhs to the respondent-wife as permanent alimony whereas the respondent-wife is not agree with Rs. 15 lakhs and she suggested for a sum of Rs. 80 lakhs plus 18 kattha of land for permanent alimony. Here, it is relevant to quote our earlier order dated 07.04.2025:-

“2. Today, learned counsel for the respondent, on instruction, submitted that respondent is demanding a sum of Rs. 80 lakhs plus 18 kattha of land, more than that with her qualification as graduate and she is



maintaining her daughter. On the other hand, learned counsel for the appellant, on instruction, submitted that she is earning a handsome and appellant is paying monthly maintenance of Rs. 14,000/-. In this backdrop, appellant gave a counter proposal for a sum of Rs. 15 lakhs and it would be too meager. Having regard to the fact that qualification read with status of the respective parties and they have a daughter, therefore, settlement between the respective parties is impracticable, resultantly, matter is required to be adjudicated on merits.”

20. Before we part with this order, 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."

21. The Hon'ble Supreme Court in the case of **Rajnesh v. Neha** reported in **(2021) 2 SCC 324**, provided a comprehensive criterion and list of factors to be looked into while deciding the question of permanent alimony. This judgment lays down an elaborate and comprehensive framework necessary for deciding the amount of maintenance in all matrimonial proceedings, with specific emphasis on permanent alimony and the same has been reiterated by Hon'ble Supreme Court in **Kiran Jyot Maini v. Anish Pramod Patel** reported in **2024 SCC OnLine SC 1724**.

22. The Hon'ble Supreme Court in the case of **Pravin Kumar Jain v. Anju Jain** reported in **2024 SCC**



OnLine SC 3678 has taken note of the various judgments to clarify the position of law with regard to determination of permanent alimony and the factors that need to be considered in order to arrive at a just, fair, and reasonable amount of permanent alimony. In para 31 it is held as under:

“31. There cannot be strict guidelines or a fixed formula for fixing the amount of permanent maintenance. 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; and such other similar factors. This position was laid down by this Court in Vinny Paramvir Parmar v. Paramvir Parmar, and Vishwanath Agrawal v. Sarla Vishwanath Agrawal.”



23. The Hon'ble Apex Court, taking note of Rajnesh v. Neha (supra) and Kiran Jyot Maini (supra), in para 32 of Pravin Kumar Jain (supra) laid down the following eight factors to be looked into in deciding the quantum:

“i. Status of the parties, social and financial.

ii. Reasonable needs of the wife and the dependent children.

iii. Parties' individual qualifications and employment statuses.

iv. Independent income or assets owned by the applicant.

v. Standard of life enjoyed by the wife in the matrimonial home.

vi. Any employment sacrifices made for the family responsibilities.

vii. Reasonable litigation costs for a non-working wife.

viii. Financial capacity of the husband, his income, maintenance obligations, and liabilities.

These are only guidelines and not a straitjacket rubric. These among such other similar factors become relevant.”



24. It is pertinent to mention here that duration of the marriage i.e., how long the marriage existed is also a relevant factor in determining the quantum of permanent alimony. Generally, marriages that lasts more than 10 years are entitled to be granted a lifetime alimony. The Hon'ble Supreme Court in Rajnish v. Neha (supra) in para 74 observed that:-

“74. In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid.”

(emphasis supplied)

25. The conduct of the party seeking the relief is also relevant. The three-judges Bench of Hon'ble Supreme Court in the case of Sukhdev Singh v. Sukhbir Kaur reported in 2025 SCC OnLine SC 299, observed in para 26 as under:



“26.We must note that subsection 1 of Section 25 uses the word “may”. A grant of a decree under Section 25 of the 1955 Act is discretionary. If the conduct of the spouse who applies for maintenance is such that the said spouse is not entitled to discretionary relief, the Court can always turn down the prayer for the grant of permanent alimony under Section 25 of the 1955 Act. Equitable considerations do apply when the Court considers the prayer for maintenance under Section 25. The reason is that Section 25 lays down that while considering the prayer for granting relief under Section 25, the conduct of the parties must be considered.”

(emphasis supplied)

26. Accordingly, we deem it fit and proper to remand the matter back to the learned Principal Judge, Family Court, Vaishali at Hajipur only with regard to decide the quantum of permanent alimony. The Court below is expected to direct the appellant-husband and respondent-wife 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.

27. In view of the above discussions, M.A. No. 368 of 2021 is hereby disposed of.

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

(S. B. Pd. Singh, J)

(P. B. Bajanthri, ACJ)

Shageer/-

AFR/NAFR	AFR
CAV DATE	24/07/2025
Uploading Date	18/09/2025
Transmission Date	N/A

