

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.247 of 2019

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Kiran Devi, wife of Akhilesh Mishra, resident of Village-Sansar Bantaria,
P.S.-Bhore, District-Gopalganj, presently as Daughter of Braj Nandan Shukla,
resident of Village-Khajuraha Mishra, P.S.-Bhore, District-Gopalganj

... .. Appellant/s

Versus

1. Akhilesh Mishra, son of Kanhaiya Mishra, resident of Village-Sansar Bantaria, P.S. Bhore, District-Gopalganj
2. Ashok Sharma, son of Dashrath Sharma, resident of Village-Gareya Khalla, P.S. Gopalpur, District-Gopalganj

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Sanjay Kumar Pandey No.5, Advocate
For the Respondent/s	:	Mr. Ranjan Kumar Dubey, Advocate
		Mr. Kumar Gaurav, Advocate
		Mr. Shanshank Kashyap, Advocate
		Ms. Sheshadri Kumari, 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 : 01-09-2025

Heard the parties.

2. The present appeal has been filed under Section 19(1) of the Family Court Act, 1984 impugning the judgment and decree dated 25.02.2019 passed by learned Principal Judge, Family Court, Gopalganj in M.M Case No. 176 of 2011, whereby the matrimonial suit, preferred by the respondent No. 1, for a decree of divorce, on dissolution of marriage, has been allowed subject to payment of Rs.



2,50,000/- as permanent alimony for life support of the appellant.

3. The case of the respondent No. 1 as per petition filed before the Family Court is that the marriage of the appellant was solemnized with respondent No.1 in the month of May, 2005 as per the Hindu Rites and Custom. After the marriage, the appellant came to her matrimonial house and stayed there for few months and thereafter, she went to her parents' house and stayed there for a year. The respondent-husband and his father made several attempts to take the appellant to her matrimonial house, but all the efforts went in vein. Lastly in the month of June, 2006 the respondent No. 1 went to his *Sasural* along with some relatives on promise of his father-in-law and brother-in-law to sent the appellant with him but she did not come with the respondent No. 1. Later on, the respondent-husband came to know that appellant has illicit relationship with Ashok Sharma (respondent No. 2) who often used to visit the house of the appellant. The respondent-husband also came to know that appellant was pregnant and a female child was born who died just after the birth. The respondent-husband



made several attempts to reconcile the matter with the appellant but all his efforts went in vein. The appellant, thereafter filed Complaint Case No. 2761 of 2009 against the respondent-husband and other family members which was registered as Bhore P.S. Case No. 2 of 2010 under Sections 498(A), 406, 34 of the Indian Penal Code. In the aforesaid case, the respondent-husband and his father were rotting in jail for 6-7 months and ultimately after some time, on the intervention of relatives, a compromise was filed in the said case and appellant came to her Sasural but after sometime, the appellant went away from her Sasural with respondent No. 2. The respondent-husband further alleged that appellant and respondent-husband never cohabited since their marriage and appellant has completely deserted the matrimonial life of the respondent-husband. The respondent-husband, therefore, prayed that the marriage between the appellant and respondent No. 1 be declared dissolved and a decree of divorce be passed in his favour.

4. In response to the summon/notice issued by the Court, appellant/O.P No. 1 appeared and filed her reply/written statement.



5. In her written statement/reply, the respondent No. 1 has stated all the allegations levelled by the appellant against her is false, concocted and without any basis. She has further stated that after the marriage in the year 2005, she went to the house of respondent-husband and started living in her matrimonial house but after sometimes, her in-laws family members started demanding dowry and torture was inflicted for non-fulfillment of dowry demand. The appellant, in the meanwhile, conceived and a female child was born who died after birth. Thereafter, the respondent-husband and other family members started pressurizing the appellant for motorcycle and colour T.V. and ultimately, on 20-04-2009 they badly assaulted and ousted her from the matrimonial house. The father of the appellant and other relatives made several attempts and requested the respondent-husband and other in-laws to keep her at her matrimonial house but they denied to keep her at her matrimonial house. The appellant, thereafter filed Complaint Case No. 2761 of 2009 against the respondent-husband and other family members which was registered as Bhore P.S. Case No. 2 of 2010 under Sections 498(A), 406,



34 of the Indian Penal Code. The respondent-husband, thereafter filed a Divorce case i.e. M.M Case No. 62 of 2009. In the aforesaid case, a compromise took place and the respondent-husband was directed to keep the appellant with full dignity and honour. The appellant went to her matrimonial house and started living there but in the meantime, the respondent-husband got a job in Dubai and again appellant was tortured for demand of dowry. The respondent-husband again filed the present divorce case i.e. M.M Case No. 176 of 2011 on the same very facts.

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

- 1. Whether the case as framed is maintainable?*
- 2. Whether the appellant has cause of action to file this case?*
- 4. Whether the applicant is entitled to get decree for dissolution of marriage against the O.P ?*
- 5. Whether the petitioner is entitled to any other relief or reliefs?*



7. During course of trial, altogether two witnesses have been produced on behalf of the respondent-husband.

8. P.W.1- Akhilesh Mishra is the respondent-husband who has deposed that after marriage, the appellant went to her matrimonial house but thereafter she went to her parents' house. He has made several attempts to bring the appellant to her matrimonial house but all his efforts went in vein. The P.W. 1 further deposed that appellant has illicit relationship with respondent No. 2 and she is not ready to live with him. He, therefore, prays for a decree of divorce.

9. P.W. 2 Kanhaiya Mishra is the father of the respondent-husband who has stated that the marriage of his son was solemnized with the appellant in the year 2005 and after the marriage, she lived in her *Sasural* for about 3-4 months and thereafter, she went to her parents' house. His son made several attempts to bring back the appellant to her matrimonial house but she was not ready to live with her husband. He has further stated that prior to this case M.M. Case No. 62 of 2009 was filed for dissolution of marriage which was compromised and on the basis of said compromise, she came to her *Sasural* and it is wrong to say



that appellant was ousted from her matrimonial house.

10. The appellant-wife has also produced two witnesses in support of her case.

11. O.P.W.-1 Kiran Devi is the appellant herself who has stated that after marriage she went to her *Sasural* but after 3-4 months, the respondent-husband and other in-laws started torturing her and demanded colour T.V. and motorcycle in dowry and for non-fulfillment of the dowry demand, they ousted her from her matrimonial house. She is living in her parents' house since September 2005. She denied to have misbehaved with her in-laws.

12. O.P.W.-2 Braj Nandan Shukla is the father of the appellant who has stated that the marriage of his daughter was solemnized with respondent No. 1 in the year 2005 and after marriage, she went to her *Sasural* but after few days of the marriage, she was tortured for non-fulfillment of dowry demand and ultimately on 20.04.2009, she was ousted from her matrimonial house.

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 and she has deserted him. Accordingly, the Trial Court came to the conclusion that respondent-husband is entitled for decree of divorce on the ground of cruelty as well as desertion and accordingly, the marriage between the appellant and respondent-husband was dissolved by a decree of divorce subject to payment of Rs. 2,50,000/- as permanent alimony for life support of the appellant.

14. Thereafter, being aggrieved and dissatisfied with the aforesaid judgment and decree passed by the learned Principal Judge, Family Court in M.M Case No. 176 of 2011, the present appeal has been filed by the appellant.

15. Learned counsel appearing on behalf of the appellant has submitted that the judgment and decree passed by the learned Family Court is bad and appears to be mechanically passed without application of judicious mind. She has further stated that after the marriage in the year 2005, she went to the house of respondent-husband and started living in her matrimonial house but after sometimes, her in-laws family members started demanding dowry and torture was inflicted for non-fulfillment of dowry demand.



The appellant, in the meanwhile, conceived and a female child was born who died after birth. Thereafter, the respondent-husband and other family members started pressurizing the appellant for motorcycle and colour T.V. and ultimately, on 20-04-2009 they badly assaulted and ousted her from the matrimonial house. The father of the appellant and other relatives made several attempts and requested the respondent-husband and other in-laws to keep her at her matrimonial house but they denied to keep her at her matrimonial house. The appellant, thereafter filed Complaint Case No. 2761 of 2009 against the respondent-husband and other family members which was registered as Bhore P.S. Case No. 2 of 2010 under Sections 498(A), 406, 34 of the Indian Penal Code. The respondent-husband, thereafter filed a Divorce case i.e. M.M Case No. 62 of 2009. In the aforesaid case, a compromise took place and the respondent-husband was directed to keep the appellant with full dignity and honour. The appellant went to her matrimonial house and started living there but in the meantime, the respondent-husband got a job in Dubai and again appellant was tortured for demand of dowry. The



respondent-husband again filed the present divorce case i.e. M.M Case No. 176 of 2011 on the same very facts.

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 suit filed for dissolution of marriage.

17. In view of the rival contentions, evidences and the arguments adduced on behalf of both the parties, 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 after consideration of submissions made by learned counsel for the appellant and the respondents as



well as materials available on record, we find that respondent-husband has deposed in his evidence that appellant-wife always used to make quarrel with him and his family members but no any specific instance of date has been mentioned in the plaint as well as in his evidence. He has also admitted in his evidence that prior to filing of this divorce case, there were no relationship between the appellant and respondent No. 1. The respondent-husband has also not brought on record any proof regarding illicit relationship of appellant with respondent No. 2. The respondent-husband has also not brought on record any cogent and reliable evidence which could show that appellant and respondent No. 2 are living in adultery. The respondent-husband has also not filed petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights which would reflect that he was interested to resume conjugal life with the appellant. The respondent-husband has also not explained as to why he has filed second divorce petition with same allegation as records show that before filing of the present divorce petition, the respondent-husband has also filed M.M Case No. 62 of



2009 which was compromised. So far as allegation of adultery is concerned, the record clearly suggests that only in order to make a legal ground in the divorce case, these baseless allegations have been levelled by the respondent-husband.

19. 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.

20. 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 live which happens in day-to-day live would not be adequate for



grant of divorce on the ground of mental cruelty.

21. 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."

22. After going through the above entire documentary and oral evidence adduced on behalf the parties, it is crystal clear that respondent-husband has failed to prove the cruel behaviour of the appellant towards him



and his family members by the strength of cogent, relevant and reliable evidence, while burden of proof of cruelty rests upon the respondent-husband. Not even single incident with reference to specific date of alleged cruelty has been urged in the plaint before the Family Court. Moreover, wife (appellant) is still ready to live with the respondent-husband. Furthermore, alleged 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.

23. Thus, considering the above entire aspects of this case and evidence adduced on behalf of both the



parties, we find that respondent-husband has failed to prove the allegation of cruelty, much less, the decree of cruel behaviour of appellant which is legally required for grant of decree of divorce under section 13(1) (ia) of the Hindu Marriage Act.

24. So far as ground of adultery is concerned, adultery may be defined as the act of a married person having sexual intercourse with a person of opposite gender other than the wife or husband of the person. Under the present Hindu Marriage Act, adultery is laid down as one of the grounds for divorce or judicial separation.

25. The essential ingredients in an offence of adultery are that: (i) There should be an act of sexual intercourse outside the marriage, and (ii) that such intercourse should be voluntary.

26. The respondent-husband has not brought on record any proof to show that appellant was having illicit relationship with the respondent No. 2 nor he has proved that they were living in adultery and only in order to make a valid ground in the divorce petition, these allegations were levelled against the appellant without any supporting



material evidence.

27. Accordingly, the judgment and decree dated 25.02.2019 passed by the learned Principal Judge, Family Court, Gopalganj in M.M. Case No. 176 of 2011 is set aside and M.M. Case No. 176 of 2011 stands dismissed.

28. M.A No. 247 of 2019 is accordingly allowed.

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

(S. B. Pd. Singh, J)

(P. B. Bajanthri, ACJ)

Shageer/-

AFR/NAFR	AFR
CAV DATE	10/07/2025
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