

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.896 of 2018

Soma Raha @ Soma Aich @ Soma Aice @ Soma Raha Aich D/o Shyamal Aich, W/o Partho Sarthi Raha, Resident of 126 Neeta Lay Apartment, Flat No. 13, Parnashree Palli, Behala, Kolkata- 700060 Presently residing Near Lions Club, NH-31 (Opposite to Navratan Hata), Purnea , P.S. K. Hat, District- Purnea.

... ... Appellant/s

Versus

Partho Sarthi Raha Son of late Panay Kumar Raha, Resident of 126, Neela Lay Apartment, Flat No. 13, Parnashree Palli, Behala, Kolkata- 700060.

... ... Respondent/s

Appearance :

For the Appellant/s : Mr. Mukesh Kumar Jha, Advocate
Mr. Bhola Prasad, Advocate

For the Respondent/s : None

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 learned counsel for the appellant. None appears on behalf of the respondent.

2. The present appeal has been filed under Section 19 (1) of the Family Court Act, 1984 impugning the judgment and decree dated 11.09.2018 passed by learned Principal Judge, Family Court, Purnea in Matrimonial Case No. 93 of 2014, whereby the matrimonial suit, preferred by the appellant, seeking dissolution of marriage, has been dismissed.



3. The case of the appellant as per petition filed before the Family Court is that the marriage of the appellant with respondent was solemnized on 23.04.2000 at Kolkata as per Hindu rights and customs. The marriage was registered under Special Marriage Act. At the time of marriage, the father of the appellant spent Rs. 9 lakhs on articles and sent the same with the appellant. The marriage was consummated and out of the wedlock, a girl-child was born who is now 11 years old. After one year of the marriage, the appellant found the behavior of the respondent towards her was not very good and he had his eyes on the appellant's jewellery and he deceived her and kept her jewellery with himself in the name of keeping it in a bank locker and gradually misused by selling them and also repeatedly pressurized the appellant to ask for money from her father. The appellant is the only daughter of her parents, therefore, they kept fulfilling the demands of the respondent for the appellant's happy married life but respondent's demand kept increasing day by day and when it increased beyond limits, the appellant's father became unable to fulfill the demand, as a result of which, the



respondent started torturing and assaulting the appellant for non-fulfillment of dowry demand. The appellant kept tolerating all the atrocities on herself for the sake of her daughter's future. The respondent always kept lying to her for illegal demands and always kept assuring that her jewellery has been kept in the bank locker. The respondent always ignored appellant's words and never fulfilled his marital obligations. The appellant further alleges that the respondent always contacted her for sexual pleasure and never gave her the respect of a wife and he repeatedly went to her father's house for money. The respondent being husband never behaved well with the appellant and always used to torture and assault the appellant. Her parents and relatives made a lot of efforts to convince the respondent but all their efforts went in vein. She further alleges that being an ideal wife, she kept tolerating all the atrocities of respondent whereas the respondent, in order to hide his wrong conduct, kept tarnishing her reputation by making false allegations against her and kept increasing her mental agony and always kept saying that he cannot maintain marital relations with her. The harassment by the respondent



kept increasing day by day and on 08.03.2013, when the appellant got fed up of the atrocities of respondent and made protest, she was beaten badly with an intention to kill and she was locked in a room. The appellant's parents made a lot of efforts to convince the respondent but he was not ready to live with the appellant and from 10.03.2013 he has completely deserted her. The appellant further alleges that due to the cruel behavior, betrayal, fraud and daily mental torture, it is very difficult to maintain marital relations with the respondent. Hence, the appellant has no other option but to file the present divorce petition for dissolution of marriage with the respondent-husband.

4. The respondent-husband appeared and filed his written statement wherein he has submitted that the instant case is fit to be dismissed as it is not maintainable either in eye of law or on fact. The respondent has married with the appellant under Special Marriage Act and he never demanded any dowry or tortured the appellant-wife for non-fulfillment of dowry demand. The allegation of the appellant-wife in the divorce petition for demand of dowry against the respondent is false, concocted and it was



levelled only in order to get divorce from the respondent. In fact, the father of the appellant deposited a sum of Rs. 25 lakhs in the joint account of the respondent and appellant and thereafter withdrew Rs. 16 lakhs to purchase a flat and when the respondent-husband told the appellant-wife that credit and debit of such a huge money in his account may create a problem in future as income tax department is on vigil of every account, the appellant made quarrel with the respondent, called her father and went along with jewellery, pass-book cheque-book, ATM etc. The respondent is still ready to keep his wife with full dignity and honour. The respondent had never given threat, nor ill behaved, humiliated or quarreled with the appellant or any in-laws family members and all the allegations made against the respondent-husband are fake with a view to take divorce from him. Hence, the divorce petition is liable to be dismissed.

5. During course of trial, altogether two witnesses have been produced on behalf of the appellant-wife which are P.W.1- Shyam Aich (appellant's father) and P.W. 2- Soma Raha @ Soma Aich(appellant herself).



6. The respondent, however, neither examined any witness nor produced any document.

7. After conclusion of the trial, the learned Principal Judge, Family Court came to the conclusion that the appellant has not proved her case and the suit was accordingly dismissed.

8. Thereafter, being aggrieved and dissatisfied with the aforesaid judgment and decree passed by the learned Principal Judge, Family Court, Purnea in Matrimonial Case No. 93 of 2014, the present appeal has been filed by the appellant.

9. It is submitted by learned counsel for the appellant that the Family Court has failed to appreciate the cruelty meted out to the appellant. The appellant-wife had married with the respondent on 23.04.2000. The marriage was consummated and out of the wedlock, a girl-child was born. The respondent-husband had a greedy eye on the property of appellant's father as appellant was the only daughter of her parents. Hence, soon after marriage, he started torturing the appellant for non-fulfillment of dowry demand. The father of the appellant spent approximately 10



lakhs at the time of marriage and after marriage also, he fulfilled all his demands in his best possible ways but when he was unable to fulfill his demand, torture was inflicted upon his daughter (appellant) and ultimately, she was thrown out of her matrimonial house on 10.03.2013. The parents and relatives of the appellant-wife made all efforts to reconcile the issue with the respondent, but all their efforts went in vein as the respondent-husband denied to keep the appellant with him. Finding no other alternative, the appellant-wife has filed the present divorce petition.

10. This Court, vide order dated 14.05.2019 had issued notices to the respondent and thereafter on many occasions, the notices were issued to the respondent-husband. The notices were validly served but the respondent-husband did not appear to contest the case.

11. In view of the submissions made on behalf of the appellant and 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, Purnea is just,*



proper and sustainable/tenable in the eyes of law.

12. The appellant has prayed in Matrimonial Case No. 93 of 2014 for dissolution of marriage on the ground of cruelty and desertion.

13. 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.

14. 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.

15. 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 Narain 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."

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. While dismissing the divorce petition, it was not considered by the Family Court that the couple have been living separately for about five years and this long



separation has in fact put them in such a situation that matrimonial bond has broken down beyond repair. It was further observed that 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.

18. Accordingly, we find that the appellant-wife has been able to prove the ground of cruelty.

19. So far as ground of desertion is concerned, it has come in the evidence of the appellant-wife (PW-2) that marriage of the appellant with respondent was solemnized on 23.04.2000 and after marriage, they started living as husband and wife and a female-child was born out of the wedlock. The appellant (P.W. 2) further deposed that on 08.03.2013, the appellant-wife was brutally assaulted by the respondent-husband. She thereafter called her father and on 10.03.2013 she has been residing at her parental house. The respondent, in the meanwhile, did not make any efforts to bring the appellant back to her matrimonial house. Although after two years of filing of the divorce petition, the respondent has filed Matrimonial Case No. 6 of 2016 for



restitution of conjugal rights but due to non-appearance of the respondent, the same was dismissed on 28.02.2022 which clearly suggests that restitution petition was filed by the respondent with a *mala fide* attempt to frustrate the claim of the appellant.

20. Despite of filing written statement, the respondent-husband has not produced any witness or document to prove his pleadings and controvert the case of the appellant-wife. So, there is nothing on the record to disbelieve and discard the evidence of appellant-wife.

21. The respondent-husband had put the relationship to a permanent end and had not made any concrete efforts to bring the appellant-wife back to her matrimonial house. The factum of separation, intention to bring cohabitation to a permanent end, goes to establish that respondent has deserted the appellant continuously for a period of more than two years. So also on the ground of desertion, the appellant is entitled to get decree of divorce.

22. 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



appellant, 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 respondent-husband though has filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights but that petition was filed after two years of filing of the divorce petition and that too, the restitution petition was dismissed for default due to non-appearance of the respondent. Before this Court also, notices were issued to the respondent and it was validly served. The respondent was granted many opportunities to appear and contest his case but he choose not to appear before this Court which clearly suggests that he is no more interested to pursue the case. Hence, in the absence of respondent, we have no other option but to go with the arguments advanced on behalf of the appellant-wife.

23. Accordingly, the judgment and decree dated 11.09.2018 passed by learned Principal Judge, Family Court, Purnea in Matrimonial Case No. 93 of 2014 is hereby set aside and the marriage between the appellant-



wife and respondent-husband is hereby dissolved by a decree of divorce.

24. It is made clear that the appellant-wife has limited her prayer only with regard to dissolution of marriage. Hence, if she is desirous for any permanent alimony, she is free to file appropriate application before appropriate forum.

25. The Registry is directed to prepare the decree of divorce accordingly.

26. Accordingly M.A. No. 896 of 2018 stands allowed.

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

(S. B. Pd. Singh, J)

(P. B. Bajanthri, ACJ)

Shageer/-

AFR/NAFR	AFR
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