

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1104 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Madhubani

Saroj Chandra Jha, son of Sri Indra Kant Jha, Resident of Village- Narhi,
Police station- Arer, District- Madhubani.

... .. Petitioner

Versus

1. The State of Bihar
2. Puja Devi, wife of Saroj Chandra Jha, resident of Village - Narhi, Police station- Arer, District- Madhubani., Daughter of Shri Vishnu Kant Jha, Resident of Mohalla Bara Bazar, Ward No.-10, P.S. Town, District- Madhubani.
3. Shitanshu Jha (minor)
4. Sweta Jha (minor)

Both opposite party nos. 3 and 4 are son and daughter of Saroj Chandra Jha, under the Guardianship of mother Puja Devi.

Both are resident of Mohalla- Bara Bazar, Ward No.-10, P.S. Town, District - Madhubani (as per petition filed by O.P. No. 2 in M.R. Case No. 82/2015), but at present both opposite parties no. 3 and 4 are under guardianship of Saroj Chandra Jha (petitioner) and residing at Village- Narhi, Police Station- Arer, District- Madhubani.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. V.N. Prasad Singh, Sr. Advocate Mr. Rajesh Kumar, Advocate
For the State	:	Mr. Shyam Kumar Singh, APP
For the OPP. Party Nos. 2 to 4 :		Mr. Jitendra Kumar, Advocate Mr. Manish Kumar No.13, Advocate Mr. Rohit Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
C.A.V JUDGMENT
Date : 24-10-2024

Heard learned counsel for the petitioner, learned
APP for the State and learned counsel for the opposite party
nos.2 to 4.



2. This revision petition has been filed against the order dated 27.06.2019 passed by the learned Principal Judge, Family Court, Madhubani, in M.R. Case No.82 of 2015, whereby and whereunder the Principal Judge has allowed the petition filed by the opposite party nos. 2 to 4 under Section 125 Cr.P.C. and directed the petitioner to pay an amount of Rs.3,500/- per month to the opposite party no.2 (wife) as maintenance.

3. It is the case of the petitioner that the marriage between petitioner and opposite party no.2 was solemnized according to Hindu rites and rituals on 27.02.2009 and they were blessed with a son and a daughter. The opposite party no.2 filed Mahila P.S. Case No. 15 of 2015 under sections 341, 327, 498(A), 379, 504, 506 and 34 of the Indian Penal Code and under sections 3 and 4 of the Dowry Prohibition Act against her husband (petitioner) and his family members on the allegation that on 30.10.2014 her in laws ousted the opposite party no.2 from her *Sasural* after assaulting and snatching her belongings. Subsequently, M.R. Case No. 82 of 2015 was filed by the opposite party no. 2 against the petitioner on 01.04.2015 and in the said case the petitioner appeared and filed his written statement on 23.03.2017.



4. It is also the case of the petitioner that on 25.07.2017 the petitioner and opposite party no.2 with their consent filed M.M. Case No. 176 of 2017 for divorce under section 13(B) of the Hindu Marriage Act. As per their joint petition for mutual divorce, the petitioner had agreed to pay Rs.1,31,000/, out of which, Rs. 65,500/- was paid on the first motion and remaining amount was to be paid at the time of second motion. It was also agreed that the aforesaid amount would be one-time permanent alimony and the opposite party no.2 will not claim anything thereafter and on the same day, the opposite party no.2 was examined as witness.

5. It is also the case of the petitioner that it was also agreed between the parties that they would get the criminal proceedings disposed by compromise and the opposite party no.2 would withdraw M.R. Case No.82 of 2015. However, the opposite party no.2 after receiving the amount of Rs. 65,500/- in the first motion did not appear in the aforementioned M.M. Case and vide order dated 02.03.2021 the petitioner was directed to deposit rest amount of the permanent alimony of Rs. 65,500/- to the opposite party no. 2, therefore, in compliance of the order dated 02.03.2021 the petitioner deposited the demand draft of Rs.65,500/- on 25.03.2021. Thereafter, the opposite party no.2



filed an application withdrawing her consent from the mutual divorce joint petition and whereafter, the impugned order has been passed by the Principal Judge.

6. It is also the case of the petitioner that the learned Principal Judge has failed to appreciate the fact that on the first motion the opposite party no.2 received the amount of Rs. 65,500/- and thereafter she filed a petition for withdrawal of her consent. He has also ignored the fact that the petitioner is a cook and his income is only Rs.5,000/- per month and the petitioner and opposite party no. 2 with their mutual consent had filed a M.M. Case No.176 of 2017 and as per terms of the said joint petition the opposite party no. 2 had received Rs. 65,500/- at the time of the first motion.

7. The submission of the petitioner is that once opposite party no.2 has agreed and in pursuance thereof, both the parties have filed joint petition for divorce with mutual consent and as per the terms of the said joint petition the opposite party no.2 received Rs. 65,500/- in the first motion, now at this stage, the opposite party no. 2 cannot be entitled for any maintenance and she cannot be allowed to refuse the terms of the joint petition for the mutual divorce.

8. Learned counsel for the opposite party nos. 2



to 4 submits that a Divorce Case was filed on mutual consent bearing M.M. Case No. 176 of 2017 on the ground that the opposite party no.2 is ready for one time settlement on payment of Rs.1,31,000/- and in the first Motion of divorce case, the petitioner has given Rs. 65,000/- to the opposite party no.2 in the Court premises, which has been accepted by the opposite party No.-2 and at the time of second motion she did not appear in the Court and filed an application that she is not ready to abide by the terms of the compromise. The sole ground of the petitioner is that the opposite party No. 2 had entered into compromise and received the amount of Rs. 65,500/- during the first motion but subsequently she had been not appeared, and therefore, the second motion amount has not been paid to her. The ground of the petitioner itself shows that the compromise failed.

9. Learned counsel for the opposite party nos. 2 to 4 further submits that a petition dated 23.04.2019 was filed by the opposite party No.2 in M.M. Case No.176 of 2017 stating that she wants to stay with the minor children along with the petitioner as wife and husband. She further stated in her petition that petitioner, his parents and his brother have always threatened, pressurized and tortured her for the second motion in



Court campus and under these circumstances she wants to withdraw her consent under the joint petition for mutual divorce.

10. It has been submitted by learned counsel for the opposite party nos. 2 to 4 that sub-section (2) of the 13-B of Hindu Marriage Act, 1955 itself contemplates the withdrawal of the consent by one of the parties. Therefore, if one of the party, at any stage, withdraws his/her consent, the Court cannot pass any order binding upon either party. In the present case, the opposite party No.2 withdrew her consent prior to the second motion, so the compromise and the joint petition is not binding upon her.

11. In support of the aforesaid submissions, learned counsel for the opposite party nos. 2 has placed reliance upon the decision of the Hon'ble Supreme Court rendered in the case of *Smt. Sureshta Devi vs. Om Prakash* reported in *1991 SCC (2) 25*.

12. It has been argued by learned counsel for the opposite party nos. 2 to 4 that on 22.09.2023 the petitioner has filed a Matrimonial (Divorce) Case No.281 of 2023 u/s 13(i-a) (i-b) of the Hindu Marriage Act, 1955 for dissolution of the marriage, in which opposite party No. 2 has received notice and



this fact of filing a separate petition for decree has been clandestinely suppressed by the petitioner.

13. I have considered the submissions of the parties and perused the materials on record.

14. The two grounds raised by the petitioner for challenging the order of maintenance dated 27.06.2019 is that the petitioner and the opposite party no.2 had moved a joint application under section 13-B of the Hindu Marriage Act for divorce by mutual consent and that after the first motion the opposite party no.2 has received the payment of Rs.65,000/-. Thereafter the opposite party no.2 has withdrawn her consent before the second motion. The petitioner has submitted that once the parties had decided to part their ways by filing divorce by mutual consent and the first motion having been granted, the opposite party no.2 could not have withdrawn the consent for divorce more so after the first motion and therefore she could not be granted any maintenance.

15. In the case of *Smt. Sureshta Devi vs. Om Prakash* reported in *(1991) 2 SCC 25* the issue before the Hon'ble supreme Court was whether a party to a petition for divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955 can unilaterally withdraw the consent or



whether the consent once given is irrevocable. Paragraph nos.13, 14 and 15 of the aforesaid judgment reads as under:-

“13. From the analysis of the Section, it will be apparent that the filing of the petition with mutual consent does not authorise the court to make a decree for divorce. There is a period of waiting from 6 to 18 months. This interregnum was obviously intended to give time and opportunity to the parties to reflect on their move and seek advice from relations and friends. In this transitional period one of the parties may have a second thought and change the mind not to proceed with the petition. The spouse may not be party to the joint motion under sub-section (2). There is nothing in the Section which prevents such course. The Section does not provide that if there is a change of mind it should not be by one party alone, but by both. The High Courts of Bombay and Delhi have proceeded on the ground that the crucial time for giving mutual consent for divorce is the time of filing the petition and not the time when they subsequently move for divorce decree. This approach appears to be untenable. At the time of the petition by mutual consent, the parties are not unaware that their petition does not by itself snap marital ties. They know that they have to take a further step to snap marital ties. Sub- section (2) of Section 13-B is clear on this point. It provides that "on the



motion of both the parties.... if the petition is not withdrawn in the meantime, the Court shall pass a decree of divorce. What is significant in this provision is that there should also be mutual consent when they move the court with a request to pass a decree of divorce. Secondly, the Court shall be satisfied about the bonafides and the consent of the parties. If there is no mutual Consent at the time of the enquiry, the court gets no jurisdiction to make a decree for divorce. If the view is otherwise, the Court could make an enquiry and pass a divorce decree even at the instance of one of the parties and against the consent of the other. Such a decree cannot be regarded as decree by mutual consent.

14. Sub-section (2) requires the Court to hear the parties which means both the parties. If one of the parties at that stage says that "I have withdrawn my consent", or "I am not a willing party to the divorce", the Court cannot pass a decree of divorce by mutual consent. If the Court is held to have the power to make a decree solely based on the initial petition, it negates the whole idea of mutuality and consent for divorce. Mutual consent to the divorce is a sine qua non for passing a decree for divorce under Section 13-B. Mutual consent should continue till the divorce decree is passed. It is a positive requirement for the court to pass a decree of divorce. "The consent must continue to decree nisi and must



be valid subsisting consent when the case is heard". [See (i) Halsbury Laws of England, Fourth Edition Vol. 13 para 645; (ii) Rayden on Divorce, 12th Ed. Vol. 1 p. 291 and (iii) Beales v. Beales, 1972] 2 All E. R. 667 at 674]"

16. In the case of **Smruti Pahariya v. Sanjay Pahariya**, reported as **(2009) 13 SCC 338**, a three Judges Bench of the Hon'ble Apex Court, while approving the ratio laid down in the case of **Sureshta Devi (supra)** has held in para 43 as under:-

"43. In our view it is only the mutual consent of the parties which gives the court the jurisdiction to pass a decree for divorce under Section 13-B. So in cases under Section 13-B, mutual consent of the parties is a jurisdictional fact. The court while passing its decree under Section 13-B would be slow and circumspect before it can infer the existence of such jurisdictional fact. The court has to be satisfied about the existence of mutual consent between the parties on some tangible materials which demonstrably disclose such consent."

17. Further, in the case of **Hitesh Bhatnagar vs Deepa Bhatnagar** reported as **2011 (5) SCC 234** the Hon'ble



Supreme Court had upheld the law laid down in ***Sureshta Devi*** (supra) and held in paragraph nos. 14 and 15 as under:-

“14. The language employed in Section 13B(2) of the Act is clear. The Court is bound to pass a decree of divorce declaring the marriage of the parties before it to be dissolved with effect from the date of the decree, if the following conditions are met:

- a. A second motion of both the parties is made not before 6 months from the date of filing of the petition as required under subsection (1) and not later than 18 months;*
- b. After hearing the parties and making such inquiry as it thinks fit, the Court is satisfied that the averments in the petition are true; and*
- c. The petition is not withdrawn by either party at any time before passing the decree;*

In other words, if the second motion is not made within the period of 18 months, then the Court is not bound to pass a decree of divorce by mutual consent. Besides, from the language of the Section, as well as the settled law, it is clear that one of the parties may withdraw their consent at any time before the passing of the decree. The most important requirement for a grant of a divorce by mutual consent is free consent of both the parties. In other words, unless there is a complete agreement



between husband and wife for the dissolution of the marriage and unless the Court is completely satisfied, it cannot grant decree for divorce by mutual consent. Otherwise, in our view, the expression “divorce by mutual consent” would be otiose.”

18. The principle laid down in the case of ***Hitesh Bhatnagar*** (supra) has been followed by a coordinate Bench of this Court in the case of ***Smt. Anupama Devi @ Anupama versus Shailendra Kumar Dubey (C.W.J.C. No.2299 of 2016)***.

19. In view of law laid down by the Hon’ble Supreme Court in the case of ***Smt. Sureshta Devi vs. Om Prakash; Smruti Pahariya vs. Sanjay Pahariya and Hitesh Bhatnagar vs. Deepa Bhatnagar (supra)***, it is clear that in a proceeding for divorce by mutual consent the parties can withdraw the consent for divorce at any point of time between the first motion and second motion. The consent can be withdrawn even after the first motion and if the same is withdrawn the contesting party cannot assert that the divorce has to be granted on the basis of mutual consent as if the consent once given is irrevocable. In the present case also, after the withdrawal of the consent by the opposite party no.2, the divorce by mutual consent, could not be granted and therefore,



the Principal Judge, Family Court, has rightly considered the case of the opposite party no.2 for grant of maintenance and has found that the wife is unemployed and therefore, granted a meagre amount of Rs.3,500/- per month as maintenance to the opposite party no.2. Further, it has been pointed out by learned counsel for the opposite party no.2 that the divorce case vide Matrimonial (Divorce) case No.81 of 2023 for dissolution of marriage is pending adjudication.

20. In view of the above, I do not find any illegality in the impugned order of the Principal Judge, Family Court by which maintenance amount of Rs.3,500/- per month has been fixed by passing a well-reasoned order.

21. In view of the aforesaid discussions, this petition is dismissed.

(Sandeep Kumar, J)

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AFR/NAFR	N.A.F.R.
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