
Nirmal Chandra Dash Vs Smt. Janaki Dash Alias Panda and Others

MATA No. 32 and 33 of 2008

Court: Orissa High Court

Date of Decision: Oct. 12, 2012

Acts Referred:

Hindu Marriage Act, 1955 " Section 13(1)(i)

Citation: AIR 2013 Ori 75

Hon'ble Judges: L. Mohapatra, J; B.K. Misra, J

Bench: Division Bench

Advocate: Dayanidhi Lenka, B.N. Lenka, D.S. Ray, S. Patra and M.R. Lenka, for the Appellant; G.P. Samal, S.K. Biswal, P.K. Panda, D. Bhakta, D. Mishra and S. Mohanty, for the Respondent

Final Decision: Dismissed

Judgement

B.K. Misra, J.

Both these appeals are being disposed of by this common judgment as both the appeals arose out of the common judgment

delivered by the learned Judge, Family Court, Cuttack in Civil Proceeding No. 215 of 2000 and Civil Proceeding No. 62 of 2002. The appellant

in MATA No. 33 of 2008 was the plaintiff in Civil Proceeding No. 62 of 2002 which was filed for dissolving his marriage with the respondent wife

by passing a decree of divorce in the Court of learned Judge, Family Court, Cuttack. The said proceeding was dismissed. Therefore, being

aggrieved, the appellant has preferred the appeal before this Court.

2. In C.P. No. 215 of 2000, the plaintiff wife had prayed for maintenance of Rs. 2000/- per month from the opposite party who is her husband

and the said proceeding was allowed by the learned Judge, Family Court, Cuttack by the impugned judgment wherein the opposite party husband

was directed to pay Rs. 800/- per month to the plaintiff wife from the date of institution of the Civil Proceeding i.e. 21-1-2000. The opposite party

husband being aggrieved by the said judgment has filed MAT Appeal No. 32 of 2008. 4. Bereft of unnecessary details, the case of the plaintiff in

Civil Proceeding No. 215 of 2000 was that she married the opposite party (appellant) according to the Hindu Caste Customs in the month of July,

1983 "and thereafter, they led a happy conjugal life and were blessed with one son and two daughters. According to the petitioner-wife at the time

of marriage the opposite party and his relatives demanded cash of Rs. 10,000/- and a black and white T.V. set. Since the father of the petitioner

was very poor, he could only give Rs. 5,000/- out of the demanded money of Rs. 10,000/- besides other house-hold articles, but could not give

the black and white T.V. It is alleged by the petitioner that since the demands were not fulfilled by her father as demanded by the opposite party

she was subjected to inhuman torture by the opposite party and her mother. But the petitioner was tolerating the torture meted out to her as a

Hindu orthodox Brahmin lady. It is further alleged that the opposite party was a wreck-less person and leading an amorous life to which when the

petitioner protested she was severely assaulted and ultimately the opposite party drove her out of the house in the month of August, 1999 for

which the petitioner came to the village of her father and lived there. It was her further case that when her relatives tried to sort out the problem

they were misbehaved and the opposite party openly declared that he will not keep her (wife petitioner) for a moment and the opposite party did

not allow his children to see their maternal uncle and other relatives. It is the case of petitioner that the opposite party works as a Peon in Ashutosh

College, Calcutta in the State of West Bengal and was drawing Rs. 5,000/-per month and from the landed property the opposite party earns Rs.

30,000/- per year. It is also the case of the petitioner that her father is a poor man having no landed property and she fully depends on her father

and it becomes difficult for her father to maintain her and accordingly she prayed for grant of maintenance of Rs. 2,000/- per month from the

opposite party.

4. The opposite party contested the Civil Proceeding and has filed the written statement wherein while denying the plaint averments in a general

and evasive manner, averred that the petitioner on the night of 1-9-1999 around 11.00 p.m. left his house with cash of Rs. 5,500/- with a brief

case containing her dress materials and ornaments and on coming to know of the said fact in Calcutta he returned back to the village and lodged an

F.I.R. before the Officer-in-Charge, Binjharpur Police Station about the missing of his wife. His further plea is that in course of search it came to

light that the petitioner had illicit relationship with one Santosh Kumar Das and was living in adultery with that man, despite the protest of his mother

and children. It is the further case of the opposite party that the petitioner frankly denied to live with him and expressed her desire to stay with the

said Santosh Kumar Das.

5. In Civil Proceeding No. 62 of 2002 the case of the plaintiff husband while admitting his marriage with the respondent wife in July, 1983,

contended that they are blessed with a son and two daughters. The case of the plaintiff husband further reveals that he was working at Calcutta in

the State of West Bengal but his family members like his mother, wife and three children were residing in his native village Kantipur in the district of

Jaipur. He has admitted that he was working as a low paid class-IV employee in Calcutta. His wife defendant No.1 was an arrogant lady having

no respect for the mother-in-law and she was a promiscuous lady which was not to the liking of his mother. It is the further case of the plaintiff that

the defendant No. 1 used to entertain male persons in the house, talks to them till late hours in the night despite the protest of her mother-in-law as

well as the children. His further case is that on receipt of telephonic message about his mother's illness when he reached his village learnt from his

mother and children that defendant No. 1 has left the house on 1 -9-1999 with cash of Rs. 5,500/- ornaments and other dress materials. The

plaintiff searched for his missing wife but when could not get any trace of her lodged an F.I.R. in Binjharpur Police Station seeking police help to

trace his wife. Plaintiff alleges that his wife had illicit relationship with Santosh Kumar Das and on the night of 1-9-1999, his wife had left the house

for an unknown destination and thereafter there was no trace of Santosh Kumar Das also. But on getting information that the defendant-wife was

staying in her father's house at Kapila some gentlemen proceeded to Kapila for an amicable settlement between him and the defendant, but the

defendant openly gave out that she would desire to stay with Santosh Kumar Das and not to live with him. Accordingly, it is the case of the plaintiff

(appellant) that when there has been no cohabitation between him and the defendant No. 1 wife since 1999 and that the defendant No. 1 is living

in adultery, it would not be possible on his part to live with his wife and accordingly prayed for dissolution of marriage by a decree of divorce.

6. The defendant No. 1 wife contested the Civil Proceeding No. 62 of 2002 by filing her written statement wherein she denied the plaintiff averments

about the allegation that she was an arrogant and promiscuous lady and was misbehaving with her mother-in-law and children. On the other hand,

she has denied the allegation of her illicit relationship with Santosh Kumar Das and she denied to have left the house in the company of Santosh

Kumar Das for an unknown destination as alleged. On the other hand, it is her specific case that she was subjected to torture inhumanly for non-

fulfillment of the dowry by the petitioner and her mother and when she also protested against the affairs of the petitioner with another lady she was

forcibly driven out of the matrimonial house for which she had to take shelter in her father's house where she is leading a life of destitute having no

means to maintain her and accordingly she prayed that the petitioner's suit be dismissed with cost.

7. Santosh Kumar Das the alleged adulterer filed his separate written statement wherein he denied the allegation of having any illicit relationship

with defendant No. 1, who is the wife of the petitioner and it is his specific case that the plaintiff because of political differences had strained

relationship with him and with an intention to take revenge and to defame him has foisted the case against him. It is also his case that he is married

having three children and the allegation levelled against him by the plaintiff are bundle of falsehood and therefore the suit of the plaintiff should be

dismissed.

8. Civil Proceeding No. 62 of 2002 and Civil Proceeding No. 215 of 2000 were tried analogously and disposed of by a common judgment which

is impugned in both the appeals. From the side of the petitioner husband four witnesses were examined and besides that Ext. 1 i.e. copy of the

F.I.R. lodged before the Officer-in-Charge, Binjharpur Police Station by the petitioner husband on 2-9-1999 has been admitted into evidence.

The respondent wife got herself examined in support of her case as O.P.W.1. The learned Judge, Family Court, Cuttack after examining the cases

of the parties and analyzing the evidence on record dismissed the Civil Proceeding No. 62 of 2002 filed by the husband as the plaintiff husband

could not substantiate that his wife was living in adultery but however the learned Judge, Family Court, Cuttack allowed the prayer of the wife for

maintenance in Civil Proceeding No. 215 of 2000. Both the findings of the Court below are under challenge in this appeal before us.

9. We have heard learned counsel for the respective parties in detail. Perused the impugned judgment and made a thread bare analysis of the

evidence tendered by the respective parties in support of their case. In the instant case, it is admitted that the marriage between the appellant and

respondent took place in July, 1983 and after marriage they led a happy conjugal life and blessed with a son and two daughters. It is the further

admitted case of the parties that the appellant Nirmal Chandra Dash was working as a Class-IV employee in Calcutta, West Bengal. It is also an

admitted fact that the respondent wife is living in his house with her parents in village Kapila under Binjharpur Police Station. When the appellant in

Civil Proceeding No. 62 of 2002 had sought for dissolution of his marriage with the defendant No. 1 on the ground that his wife was living in

adultery with one Santosh Kumar Dash and the defendant No. 1 was having affairs with several persons despite the protest of her mother-in-law

and her children, the onus is very heavy on him to establish that his wife was living in-adultery which is a ground for divorce. We are very

conscious of the position of law that an act of adultery is a secret act. It is extremely difficult to get direct evidence and if Courts insist on direct

evidence in proof of adultery, it may well amount to denial of legitimate protection of marital rights. Proof of actual adultery is not necessary and

circumstantial evidence which lends to an inference of adultery is sufficient. The degree of proof need not reach certainty but it must carry a high

degree of probability.

10. Section 13 (1)(i) of the Hindu Marriage Act, 1955 was amended in the year 1976. After the amendment in 1976, it is sufficient to prove that

the wife had voluntary sexual intercourse with any person other than the spouse and a single act is sufficient to prove the ground of divorce.

Sanjukta Padhan Vs. Laxminarayan Padhan and Another, .

11. Coming to the evidence as led by the petitioner - husband admittedly the most competent person, who would have been the best person to

speak about the adulterous life of the defendant No. 1 is the mother of the petitioner-husband who was present when the defendant No. 1

allegedly left the house in, the company of Santosh Kumar Das on 1-9-1999 around 11 p.m. For reasons best known, to the petitioner though the

specific case of the petitioner husband is that when his wife, was entertaining persons in the house till later hours in the night without listening to the

protest of his mother, such an vital witness, has been withheld from dock without any explanation whatsoever in that regard. In our opinion, this

casts a serious reflection on the case of the appellant-husband. Admittedly, the husband (appellant) was not present on 1-9-1999 in his village and

was at Calcutta as it is evident from the case of the appellant and his evidence that on receipt of information about the illness of his mother when he

reached his house on 2-9-1999 found his wife absent and on his query his mother and children informed him that the respondent had left the house

accompanied by Santosh on 1-9-1999 night. P.W. 1 had lodged one report at Binjharpur police station and the copy, of the said report has been

proved as Ext. 1 by P.W. 1 during his evidence. P.W. 1 deposed that he could come to know that his wife residing in her father's house and

intimated the said fact to police. It is also his evidence in examination in chief that the gentlemen namely, Ranjan Kumar Das, Bhabagrahi Das and

Promod Kumar Das tried to settle the differences in between them but his wife told them not to return to the, matrimonial house but to stay with

Santosh, Kumar Das. P.W. 1 also deposed that he does not want to keep his wife as she was living in adultery. Ext. 1 which was lodged on 2-

9-1999 by P.W. 1 nowhere discloses that the defendant No. 1 (wife) had left the house on the night of 1-9-1999 with Santosh Kumar Das. The

evidence of P.W. 2 who is the son of the petitioner as well as defendant in para 7 deposed that he had not seen his mother going with Santosh

Kumar Das on 1-9-1999 night. Therefore, the evidence of P.W. 2 in examination in chief that his mother Janaki Das left the house with Santosh

Kumar Das of their village cannot be believed. P.W. 3 is the daughter of the petitioner as well as the defendant and she has also deposed that her

mother left the house on 1-9-1999 during night hours around 11.00 p.m. but very surprisingly in her evidence she has not breathed a word if her

mother left their house in the company of Santosh Kumar Das on the night of 1-9-1999 i.e. around 11.00 p.m. P.W. 2 the son of the plaintiff in his

evidence deposed that Santosh Kumar Das is his agnatic uncle and his house is adjacent to their house and both of their family observe birth and

death ceremonies of each other. P.W. 2 simply deposed that his mother had attachment towards Santosh and he had seen Santosh sleeping on the

same bed along with his mother and gossiping, which he had informed to his father and grand mother. In his cross examination this P.W. 2

deposed that his mother was never going out along with Santosh and her mother was going to her maternal uncle's house prior to the incidents and

four to five days after the incident her mother was traced in the house of her father". P.W. 3, the daughter of the parties deposed that she had seen

her mother gossiping with Santosh Kumar Das who is the agnatic brother of her father and she suspected that her mother and Santosh had bad

relationship which she informed to her grand mother and father. P.W. 4 is the brother-in-law of P.W. 1 who deposed that he came to know that

the wife of Nirmal Das had left the house and gone away for which F.I.R. was lodged about the missing of Janaki. P.W. 4 deposed that they got

information that the wife of Nirmal was in her father's house and subsequently when he along with five other persons wanted to settle the dispute

Janaki did not concede and he was informed by Nirmal that Janaki had left with Santosh. Thus, P.W. 4 being a vital witness for the petitioner has

not supported the evidence of P.W. 1 that when they tried to settle the differences, the defendant refused to return to the house of P.W. 1 and

wanted to stay with Santosh Kumar Das. O.P.W. 1 the wife, in her evidence stoutly denied of having any relationship with Santosh Kumar Das

and it is her evidence that at the time of her marriage with the petitioner (P.W. 1) there was demand of cash of Rs. 10,000/- and a T.V. set, but

only Rs. 5,000/- was paid. Thus for non payment of balance amount of Rs. 5,000/- she was being assaulted by her husband and she was driven

out of the house in August, 1999 with a direction to return with a T.V. set and balance cash of Rs. 5,000/-. O.P.W. 1 deposed that her husband

was serving in Ashutosh College, Calcutta, West Bengal and drawing salary of Rs. 7,000/- besides he has income of Rs. 30,000/- per annum from

his landed property. It is her further evidence that she does not have any income and depends on her father and therefore she require Rs. 2,000/-

per month to maintain herself. Since in this case the appellant seeks dissolution of his marriage with the respondent on the ground of adultery, the

same requires high standard of proof than mere preponderance of probabilities.

12. In the instant case from the evidence as laid by the petitioner-husband (appellant) there is absolutely no evidence to show that the defendant

No. 1 wife was found in a compromising position with Santosh Kumar Das in her bed room or people of the locality or the village had seen them

moving together on the night of 1-9-1999 and they were found living together in a house. The evidence of P. Ws. 2 and 3 cannot be believed to

draw presumption that the defendant No. 1 was living in adultery. The Court cannot act on surmises or conjectures. Further, though the petitioner

tried to establish that his wife was found in the house of one Pada Dash in village Singhpur but the evidence on record shows that neither P.W. 1

nor P. Ws. 2 to 4 had ever gone to Singhpur to verify if Janaki was staying in the house of Pada Dash. Thus the aforesaid fact also cannot be

believed.

13. As we find the learned Judge, Family Court, Cuttack has elaborately discussed the" evidence on record and has assigned good reasons for not

accepting the case of the petitioner-husband, who had sought for dissolution of his marriage with the respondent by a decree of divorce. We

concur with the findings of the learned Judge, Family Court, Cuttack that the petitioner has failed to establish his case for dissolution of marriage on

the ground of adultery. The evidence which has been led are not acceptable and therefore cannot be believed.

14. Now coming to the question of payment of maintenance to the wife, it is found that admittedly the respondent-wife is living in the house of her

father since 1999. Admittedly, the appellant-husband has brought a serious charge against his wife that she was an unchaste woman and living in

adultery which charge he has failed to establish. This Court in the case of Smt. Pramila Dei alias Kuni Vs. Sanatana Jena, has held that when an

allegation of unchastity is made against the wife and payment of maintenance is sought to be avoided on the ground of her living in adultery but the

plea fails, such plea by itself is sufficient to entitle her to live apart from her husband. Such allegation by the husband against the wife causes mental

anguish of the deepest character which makes living together incompatible. P.W. 1 has specifically deposed in his evidence that he does not want

to keep his wife as she is living in adultery. There is no Evidence from the side of the present appellant to show if he had ever gone to the house of

his father-in-law to bring back his wife or he had paid anything towards the maintenance of his wife who was unable to maintain her being

dependent on her father. O.P.W.1, namely the respondent-wife"s case is that because of non-fulfillment of the demand made by her husband at the

time of her marriage she was assaulted and tortured by P.W. 1 and ultimately she was driven out of the house in August, 1999. As I have already

mentioned above the written statement filed by the present appellant as opposite party in Civil Proceeding No. 215 of 2000 regarding the alleged

torture meted out to the petitioner-wife on demand of dowry, there is no specific denial and the written statement is evasive in nature. It is admitted

by the appellant in his evidence that he was working as a Peon in Ashutosh College, Calcutta in the State of West Bengal and was getting more

than Rs. 4,000/- per month as salary and he has Ac. 0.10 gunths of land. Learned Judge, Family Court, Cuttack by considering each and every

aspect of the evidence and cases of the parties while disposing of Civil Proceeding No. 215 of 2000 directed the opposite party, namely, the

present appellant to pay Rs. 800/- per month to his wife from the date of institution of the Civil Proceeding i.e. 21-1-2000 subject to adjustment of

interim maintenance paid, if any, Civil Proceeding No. 62 of 2002. The amount awarded as maintenance does not appear to be high and excessive

keeping in view the present market index. Thus, grant of Rs. 800/- per month to the wife by the appellant does not call for any interference and

accordingly, the same is maintained. Therefore, for the aforesated reasons we see no reason to interfere with the impugned judgment of the

Judge, Family Court, Cuttack rendered in Civil Proceeding No. 215 of 2000 and Civil Proceeding No. 62 of 2002. Accordingly, both the appeals

having no merit stand dismissed.

L. Mohapatra, J.

I agree.