

(2020) 09 PAT CK 0319

Patna High Court

Case No: Miscellaneous Appeal No. 81 Of 2014

Anita Devi

APPELLANT

Vs

Satish Kumar

RESPONDENT

Date of Decision: Sept. 25, 2020

Acts Referred:

- Indian Penal Code, 1860 - Section 498A
- Dowry Prohibition Act, 1961 - Section 3, 4
- Hindu Marriage Act, 1955 - Section 10, 13, 13(1), 13(1)(ib), 23(2)
- Family Courts Act, 1984 - Section 9

Citation: (2020) 09 PAT CK 0319

Hon'ble Judges: Dinesh Kumar Singh, J; Prabhat Kumar Singh, J

Bench: Division Bench

Advocate: Manoj Priyadarshi, Anil Kumar Singh

Final Decision: Allowed

Judgement

The present Miscellaneous Appeal is directed against the judgment and decree dated 27.7.2013 and 12.8.2013 respectively, passed by the learned

Additional Principal Judge, Family Court, Patna in Matrimonial Case No. 763 of 2012, whereby the marriage between the appellant and the respondent

has been dissolved and a decree of divorce has been passed on the ground of cruelty.

The factual matrix of the case is that the marriage between the appellant wife and the respondent husband was admittedly performed on 13.2.2000

but the appellant wife always treated the respondent husband with cruelty. As a result, the respondent preferred Matrimonial Case No. 763 of 2012

seeking dissolution of marriage on the ground of cruelty and desertion, though it is also alleged that the appellant was in love affair with some person.

The respondent pleaded in the plaint of the matrimonial case alleging that the appellant used to abuse him and his parents. The appellant used to take

William -10 or Mandex and other drugs. On protest being made by the respondent husband, the appellant wife threatened him that she will commit

suicide. The appellant did not allow the respondent to have physical relationship. The appellant admitted that she has relationship with some boy but on

the pressure of the family members, she has been married with the respondent. The appellant left the matrimonial house on 7.3.2000 and since then

she is residing with her parents. The appellant has filed a criminal case being Complaint Case No. 2231C of 2002 with accusation under Section 498A

of the IPC and Sections 3 and 4 of the Dowry Prohibition Act on 23.10.2002 and in the said case the respondent husband had to remain in custody for

about three weeks. The respondent husband initially filed a Judicial Separation Case No. 20 of 2001 under Section 10 of the Hindu Marriage Act

(hereinafter referred to as the Act) before the learned District Judge, Bhojpur for grant of judicial separation.

Later on the same was converted into Matrimonial Case No. 763 of 2012.

The appellant wife appeared in the matrimonial case, filed her written statement claiming that the matrimonial case is not maintainable and the same

has been filed in retaliation to the complaint lodged by the appellant. The appellant was tortured for non-fulfillment of further dowry demand of a Hero

Honda motorcycle and Rupees Fifty Thousand for starting business by the respondent. The appellant claimed neither to have misbehaved or

committed cruelty nor to have taken any drug and there is no proof with regard to that. The appellant is still ready to resume the conjugal life and she

claims to have left the matrimonial house on 1.10.2002. No effort was made to reconcile the issue and the appellant never had any relationship with

any boy and has not made any admission to that effect before the respondent and neither the name of the boy has been disclosed nor he has been

made party to the proceeding.

The learned Family Court framed the following issues:

1. Is the suit as framed maintainable?

2. Has the petitioner got valid cause of action for the suit?

3. Whether the respondent has committed cruelty with the petitioner and his family members?

4. Whether the respondent has deserted the petitioner?

5. Whether the petitioner is entitled for dissolution of his marriage by a decree of divorce?

6. To what relief or reliefs, if any is the petitioner entitled?

The respondent husband examined four witnesses. P. W. 1 Mahakant Prasad, neighbour of the respondent, P.W. 2 Hare Krishan Singh, another

neighbour of the respondent, P.W. 3 Satish Kumar, the respondent husband himself and P.W. 4 Anil Kumar, brother of the respondent husband. To

prove the case of cruelty, the respondent husband has got the certified copy of Complaint Case No. 2232C of 2002 exhibited as Ext. 1 and the copy of

the order dated 19.8.2008 passed by the Patna High Court in Cr. Revision No.551 of 2007 and other certified copies of the petitions and affidavits

have also been exhibited.

The appellant wife also examined seven witnesses. O.P. Witness No. 1 Shakuntla Devi, own sister of the appellant, O.P. Witness No 2 Kiran Devi

and O.P. Witness No. 3 Ravindra Kumar Sharma, neighbours of the appellant, O.P. Witness No. 4 Bindeshwar Prasad, maternal uncle of the

appellant, O.P. Witness No. 5 Anita Devi, appellant herself, O.P. Witness No. 6 Tetri Devi, neighbour of the appellant and O.P. Witness No. 7 Vinay

Kumar Yadav, the brother of the appellant wife.

The learned Additional Principal Judge, Family Court found that on the ground of desertion the marriage could not be dissolved as the marriage

between the parties was admittedly performed on 13.2.2000, initially the matrimonial case for judicial separation was filed on 27.4.2001 and

subsequently vide order dated 5.11.2011 the case was converted into divorce case. Hence, it was contrary to the provision under Section 13(1)(i-b) of

the Act which mandates that the marriage can be dissolved by a decree of divorce on the ground that the other party has deserted the petitioner for a

continuous period of not less than two years immediately preceding the presentation of the petition. In the present case, admittedly, within one year the

case for judicial separation was filed which was ultimately converted into a divorce case.

So far as the question of cruelty is concerned, it has been decided by the learned Additional Principal Judge, Family Court in favour of the respondent

husband on the ground that by filing criminal case by the appellant wife he was compelled to remain in custody for twenty days and during the

proceeding of the complaint case the complainant wife created nuisance in the concerned court and above all, they are residing separately since more

than twelve years and hence, all these facts suggest that the appellant wife has been cruel to the respondent husband.

The finding recorded in paragraph 19 of the impugned judgment is as follows:

“In this case admittedly both the parties are living separately for more than 12 years and admittedly there is no any relationship of husband and

wife in between the parties for the last one decade. As per statements of respondent's witnesses, respondent bears good behaviour and peace

loving lady, then the question arises why both the parties are living separately for the last several years. In this case the respondent filed a criminal

case under Section 498(A) of the IPC against the petitioner for want of illegal demand of money, but the respondent chased the petitioner to the

Hon'ble High Court Patna where the privilege of bail was cancelled because of non-compliance of the order by the petitioner and the petitioner

remained in jail for more than 20 days and lastly got the privilege of bail from the Supreme Court. During the course of hearing of Complaint Case No.

2231(C) of 2002 respondent misbehaved with the petitioner and created nuisance in the court as Ext.3 and 4 go to show. Meaning thereby the

relationship in between the parties was not cordial and day by day became strained more and more and the respondent did not leave any stone

unturned to get the petitioner harassed. These facts itself goes to show that the conduct of the respondent was/is cruel against the petitioner. These

conduct of the respondent corroborates the facts placed by the petitioner that the respondent abused them in filthy languages and quarrel in family on

petty matter and did not allow the petitioner to cohabit with her, whatever the reason may be.

Learned counsel for the appellant submits that the marriage has been dissolved contrary to the evidence on record. No instance of cruelty has been

given. The learned Court below has failed to consider that there is no claim of physical torture, rather it is a mental torture and all the instances which

have been considered for causing mental cruelty to the respondent husband are subsequent to the filing of the matrimonial case. The respondent did

not take any effort to reconcile the issue. Specific case of the appellant wife in written statement is that she is ready to resume the conjugal life and

the witnesses adduced on her behalf, particularly, O.P. Witness No. 4, the maternal uncle of the appellant wife and O.P. Witness No. 7, the brother of

the appellant have deposed that the appellant is still ready to resume the conjugal life.

It is further submitted by the learned counsel for the appellant that the irretrievable breakdown of marriage is not a ground of dissolution of marriage

under Section 13 of the Act, yet the marriage has been considered to be irretrievably broken down. The respondent was in jail since he failed to

comply the order of the Court of payment of maintenance amount and litigation cost, which he undertook to pay, as a result his bail was cancelled and

ultimately, he was granted bail by the Hon'ble Supreme Court on the condition that the respondent husband will pay Rupees One Thousand to the

appellant wife per month.

Learned counsel for the respondent submits that the respondent husband was tortured and there is specific instance to that effect. The appellant wife

misbehaved not only with the respondent husband, but also with his parents. The appellant used to consume drugs and she never allowed the

respondent to have physical relationship as she remained at her parents house. Hence, the impugned judgment does not need any interference.

Having heard learned counsels for the parties, this much is an admitted position that the marriage was performed between the appellant and the

respondent on 13.2.2000. The respondent husband initially filed Judicial Separation Case No. 20 of 2001 for grant of judicial separation on 27.4.2001

i.e. within fourteen months of the marriage. Subsequently, vide order dated 5.11.2011 the said case was converted into a Divorce case on filing of the

amendment by respondent husband.

Section 10 of the Act deals with the option of judicial separation which allows either party to a marriage to present a petition praying for a decree for

judicial separation on any of the grounds specified in sub-section(1) of Section 13 of the Act or any one of the grounds specified under sub-section (2)

thereof. Section 13(1)(i-b) of the Act clearly suggests that on the ground of desertion the dissolution of marriage can be claimed if the other party has

deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. Meaning thereby, the

application for judicial separation was not maintainable in the present case, in view of the embargo under Section 13(1)(i-b) of the Act, hence, the

learned Court below has rightly rejected the claim of the respondent husband for dissolution of marriage on the ground of desertion.

So far as cruelty is concerned, the cruelty has not been defined in the Act. The concept of cruelty and its effect vary from individual to individual as

has been held in the case of Gananath Pattnaik Vs. State of Orissa, reported in (2002) 2 SCC 619. Paragraph 7 of the judgment reads as follows:

“7. The concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such

person belongs. “Cruelty” for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or

abnormal behaviour may amount to cruelty and harassment in a given case.

Cruelty can be physical and mental both. It is difficult to prove mental cruelty by direct evidence as the mental cruelty is the state of mind and feeling

caused to one side with the behaviour and conduct of the other side.

In the present case, from perusal of the evidence adduced, it appears that the respondent husband has not alleged any physical cruelty but only a

mental cruelty and to prove the same, it is said that the behaviour of the appellant wife was not good with the respondent and his parents, the appellant

wife used to consume certain drugs, but the time and date of such misbehaviour has not been mentioned, nor any witness has suggested like that. Out

of four witnesses, P.Ws 1 and 2 are neighbour of the respondent husband who are hearsay witnesses. In a matrimonial suit the best witnesses are

family members, but the only family member apart from the respondent husband, is P.W. 4 Anil Kumar, the brother of the respondent husband. P.W.

1 and P.W. 4 in their evidence have stated that the appellant wife remained in the matrimonial house only for 22 days. No medical opinion has been

brought on record to prove that the appellant wife used to consume certain drugs. So far the issue of cruelty by filing criminal case under Section

498A of the IPC is concerned, that may not be considered as cruelty. Moreover, the criminal case was filed subsequent to the filing of the matrimonial

case for judicial separation and the bail of the respondent husband was cancelled due to default in complying the order of the Court.

It is well settled law that no party can be permitted to carve out issues for destroying the institution of marriage on frivolous ground. Day to day wear

and tear cannot be treated as cruelty. So far as mental cruelty is concerned, in the case of Samar Ghosh Vs. Jaya Ghosh, reported in (2007) 4 SCC

511, the legislature has been carved out indicating the instances of mental cruelty. Paragraph 101 of the judgment reads as follows:

“101. 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)***

(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)-(ix)***

(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)-(xiii)***

(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.

There is nothing on record to suggest that it was impossible for the respondent husband to live with the appellant.

The very limited period of stay of the appellant wife at the matrimonial house suggests that it was too early to claim judicial separation on the ground

of cruelty and desertion. The meticulous analysis of the materials on record suggests that the present case does not come within the purview of the

instances enumerated in the case of Samar Ghosh (supra) with regard to mental cruelty.

In the case of K. Srinivas Rao Vs. D.A. Deepa, reported in (2013) 5 SCC 226 c, certain more grounds have been added as instances of mental cruelty,

like, making unfounded indecent defamatory allegation against the spouse or his or her relatives in the pleadings, filing of complaints or issue notices or

news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the

court against the spouse may amount to mental cruelty. Paragraph 16 of the judgment reads as follows:

“16. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh [(2007) 4 SCC 511] , we could add a few more. Making unfounded

indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which

may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the

spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.

The present case also does not come under any of the instances of mental cruelty as enumerated in above quoted judgments.

Hence, in view of this Court, the evidence with regard to the cruelty has not been appreciated in its true perspective and hence the ground of cruelty

has not been proved by the evidence on record.

It is also apt to consider that in the present case, matrimonial proceeding got initiated within a little over one year of the marriage and delay in disposal

of the matrimonial case cannot give a rope for dissolving the marriage. However in the case of K. Srinivas (supra), the Hon'ble Supreme Court

suggested that the idea of pre-litigation mediation and such mediation can be had by resorting to the provision of Section 9 of the Family Courts Act.

Paragraph 46.1 of the judgment reads as follows:

“46.1. In terms of Section 9 of the Family Courts Act, the Family Courts shall make all efforts to settle the matrimonial disputes through mediation.

Even if the counsellors submit a failure report, the Family Courts shall, with the consent of the parties, refer the matter to the mediation centre. In such

a case, however, the Family Courts shall set a reasonable time-limit for mediation centres to complete the process of mediation because otherwise the

resolution of the disputes by the Family Court may get delayed. In a given case, if there is good chance of settlement, the Family Court in its

discretion, can always extend the time- limit.”

Section 9 of the Family Courts Act, 1984 casts the duty upon the Family Court to persuade the parties to arrive at a settlement in respect of the

matrimonial dispute. Section 9 of the Family Courts Act reads as follows:-

“In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the

nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or

proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit. -(1) In

every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and

circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and

for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.

(2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties,

the Family Court may adjourn the proceedings for such period as it think fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of any other power of the Family Court to adjourn the

proceedings.

From the above provision, it is crystal clear that in every suit or proceeding, the Family Court has to take effort at the first instance where it is possible

to do so consistent with the nature and circumstances of the case, and to assist and persuade the parties in arriving at a settlement in respect to the

matrimonial dispute.

Section 23(2) of the Hindu Marriage Act, 1955 also casts a duty upon the Court to bring about reconciliation.

Section 23(2) of the Hindu Marriage Act, 1955 reads as follows:-

“Before proceeding to grant any relief under this Act, it shall be the duty of the Court in the first instance, in every case where it is possible so to

do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties:

Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii),

clause (iii), clause (iv), clause(v), clause(vi) or clause (vii) of sub-section (1) of Section 13.

There is nothing on record to suggest that any effort was made by the learned Additional Principal Judge, Family Court to get the issue reconciled

between the parties before deciding the issue on merits.

In view of the discussions made above, we are of the considered opinion that the marriage has been dissolved contrary to the evidence on record. As

a result, the impugned judgment and decree dated 27.7.2013 and 12.8.2013 passed by the learned Additional Principal Judge, Family Court, Patna in

Matrimonial Case No. 763 of 2012 is set aside.

Accordingly, this Miscellaneous Appeal is allowed. Let the decree be prepared accordingly.