

(2012) 03 JH CK 0037

**Jharkhand High Court****Case No:** F. A. No. 139 of 2010 with F. A. No's. 133 With 184 of 2008

Animesh Trivedi

APPELLANT

Vs

Kiran Bagai <BR> Kiran Bagai Vs  
Animesh TrivediRESPONDENT

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**Date of Decision:** March 27, 2012**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 13(1), 13(1A)

**Citation:** AIR 2012 Jhar 115 : (2012) 3 JCR 69 : (2012) 3 JLR 286**Hon'ble Judges:** Prakash Tatia, J; Aparesh Kumar Singh, J**Bench:** Division Bench

**Advocate:** Jay Shankar Pandey in F.A. No. 139 of 2010, Mr. A.K. Mehta in F.A. No. 133 of 2008 and Mr. Dilip Jerth in F.A. No. 184 of 2008, for the Appellant; A. Kumar, Vineet Vashistha in F.A. No. 139 of 2010, Mr. Vivek Kr. Singh, Rajesh Kumar in F.A. No. 133 of 2008 and Mr. A.K. Mehta in F.A. No. 184 of 2008, for the Respondent

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**Judgement**

Aparesh Kumar Singh, J.

These three appeals are arising out of matrimonial suits between the same contesting parties, hence these appeals are being disposed of by this common order. The First Appeal No. 139 of 2010 has been preferred by the appellant-husband against the Judgment dated 20th March, 2010 (decree sealed and signed on 30th March, 2010); passed by Shri Pankaj Srivastava, the Principal Judge, Family Court, Ranchi in Matrimonial Title Suit No. 178 of 2009, preferred by the petitioner-wife, whereby and whereunder the said Court has passed a decree of divorce u/s 13(1A)(i) of the Hindu Marriage Act, 1955 against the husband.

2. Earlier, the respondent-wife had filed a Matrimonial Title Suit No. 53 of 2006 before the Family Court, Ranchi for dissolution of marriage by a decree of divorce u/s 13 (1) (ia) and 13(ia)(ib) of the Hindu Marriage Act, 1955 on the ground of cruelty and desertion. The Matrimonial Title Suit was disposed of vide Judgment dated 19.05.2008 (decree sealed and signed on 29.05.2008) passed by Shree Mushtaq

Ahmed the Principal Judge, Family Court, Ranchi whereby the suit was allowed in part and a decree for judicial separation was granted in favour of the petitioner-wife/respondent herein. The said Court had also ordered that the husband/appellant herein shall have the right to visit his son the last Sunday of the month.

3. The other two appeals have been preferred against the Judgment dated 19.05.2008 (decree sealed and signed on 29.05.2008) in Matrimonial Title Suit No. 53 of 2006. One of the appeals filed by the appellant herein being F.A. No. 133 of 2008 challenging the order of judicial separation and another appeal being F.A. No. 184 of 2008 has been preferred by the petitioner-wife against the same Judgment dated 19.05.2008 in Matrimonial Title Suit No. 53 of 2006 being aggrieved by the judgment of the learned Court below refusing grant of a decree of divorce instead of granting a decree of judicial separation u/s 13(1A)(i) of the Hindu Marriage Act, 1955. During the pendency of the these two appeals i.e. F. A. No. 133 of 2008 and F. A. No. 184 of 2004 before this Court, the respondent-wife preferred a Matrimonial Title Suit No. 178 of 2009 before the Court of Principal Judge, Family Court, Ranchi u/s 13(1A)(i) of the Hindu Marriage Act, 1955 alleging that after passing of the judgment and decree dated 19.05.2008 and 29.05.2008 respectively in Matrimonial Title Suit No. 53 of 2006, there has been no resumption of cohabitation between the parties for the last more than one year after passing of the decree for judicial separation and therefore, the marriage solemnized between the parties on 18.02.2001 be dissolved or a decree of divorce be granted. By the impugned judgment dated 20th March, 2010, the learned Principal Judge, Family Court, Ranchi has decreed the suit of the respondent-wife holding that she is entitled to a decree of divorce u/s 13(1A)(i) of the Hindu Marriage Act, 1955.

4. The present appellant-husband has preferred First Appeal No. 139 of 2010 against the impugned judgment dated 20th March, 2010 passed in Matrimonial Title Suit No. 178 of 2009 against the said decree of divorce u/s 13(1A)(i) of the Hindu Marriage Act, 1955.

5. The case of the appellant-husband is that the allegation of desertion and cruelty were not made against him and he had made all efforts to keep a cordial marital atmosphere with the respondent-wife. He being employed in Indian Army was posted at different places and made all efforts to keep his wife and son with him to enjoy the happy married life. The appellant had further denied the allegation of mental and physical cruelty stating that there was nothing to substantiate the claim. The respondent-wife was active member of Army Wives Welfare Association, but at no point of time she made any complaint against appellant of mental and/or physical cruelty. The appellant further states that he had suffered a heart attack and was admitted to Military Hospital, Jammu on 14.12.2002, barely week before the birth of their son, Aryaman. The appellant also denied the allegations that the respondent was thrown out of her matrimonial house or compelling her to send the

son or even of the fact that he threatened her of dire consequences. The appellant stated that four witnesses have been examined including himself and documents have been exhibited marked as Ext. A to Ext. M series whereas nine witnesses have been examined on behalf of the respondent-wife and exhibited documents marked as Ext.1 to Ext.3 series. However, learned Court allowed the respondent-wife to lead the evidences beyond the pleading of the case although, the respondent-wife was not able to produce any evidence to substantiate the claim of cruelty. On the other hand, the appellant has submitted that he produced cogent witnesses to substantiate that the allegation of desertion was totally false in as much as these two had cohabited even beyond 08.02.2004. In the circumstances, the appellant-husband has alleged that the learned Family Court initially did not pass a decree of divorce rather passed a decree for judicial separation and also allowed him to visit his son on last Sunday of the month only, without any further right of visiting or taking son during vacations and other holidays. During the pendency of the First Appeal No. 133 of 2008 by the appellant-husband, the respondent-wife has filed a Matrimonial Title suit No. 178 of 2009 over which the decree of divorce has been granted by learned Family Court, although, the appellant had appeared and contested the suit as being premature and not maintainable at this stage. The appellant submitted that he does not want judicial separation or divorce from the respondent-wife and wants to lead a happy married life with his wife. However, the learned Family Court has passed a decree of divorce by the impugned judgment in favour of the respondent-wife.

6. After hearing both the parties and from carefully perusing the facts of the case including the impugned judgment, it appears that the appellant was married with the respondent-wife as per Hindu rituals and customs on 18.02.2001 at New Delhi. The respondent-wife had preferred a Matrimonial Title Suit No. 53 of 2006 before the Principal Judge, Family Court, Ranchi u/s 13 (1) (ia) and 13(ia)(ib) of the Hindu Marriage Act, 1955 on 24.03.2006 against her husband/the appellant herein for a decree of divorce on the ground of cruelty and desertion. The respondent-wife pleaded that she was subjected to mental and physical cruelty from very beginning of her marriage. It was further alleged by the respondent-wife that the allegation of not bringing dowry was made against her and the appellant-husband used to ill-treat on every small pretext and had also repeatedly hit her on her head and face alleging that he regretted marrying the respondent-wife and wanted her pregnancy aborted as he" was not willing to have a dumb mother for his child. Her husband also hit on her stomach, but however luckily nothing happened. A child was born out of the matrimonial wedlock to the petitioner. She was being constantly taunted by her husband, who decline to spend on her essential requirements. The appellant-husband frequently asked to leave his wife but she did not leave the house, but in order to save her dignity bore all the atrocities and tolerated the same as her parents were old and her father was suffering from fourth stage of cancer. She was hit on 07.02.2004, which resulted in breaking of her spectacles as the

appellant caught her neck and pushed her to the cupboard. On coming to know of the same, the respondent-wife was taken by her father with her infant son and since then, she is residing at Delhi with her parents. The appellant-husband did not pay any penny for livelihood of the respondent-wife and their son since 08.02.2004. Thereafter, the respondent-wife is working as Human Resources Manager in Premsons Maruti Udyog Private Limited, Ranchi. On the basis of the aforesaid facts and reasons, the respondent-wife preferred the Matrimonial Title Suit No. 53 of 2006 seeking for dissolution of her marriage with the appellant-husband on the ground of cruelty and desertion. The respondent/appellant herein appeared and filed written statement admitting marriage with petitioner/respondent herein and residing with her as husband and wife and birth of a child out of their matrimonial wedlock, but challenged the jurisdiction of the Family Court, Ranchi. The respondent/ appellant herein denied the allegation of cruelty, desertion and assault and submitted that he is always taking proper care of his wife and his son. The husband categorically denied causing mental and physical cruelty of his wife by filing detail written statement.

7. Learned Family Court thereafter framed following five issues for consideration, which is as under:-

I. Is the suit, as framed, is maintainable?

II. Has the Petitioner cause of action for the suit?

III. Whether the petitioner has subjected to mental and physical torture by the respondent?

IV. Whether the Respondent has deserted the Petitioner and her minor Son?

V. Whether petitioner is entitled for the reliefs claimed?

8. On the basis of the pleading of both the parties, the respondent-wife examined nine witnesses including herself and exhibited documents marked as Ext.1 to Ext. 3 series and on behalf of the appellant, four witnesses were examined including himself and exhibited documents marked as Ext. A to Ext. M series.

9. Learned Family Court thereafter proceeded to decide the issue relating to the allegation of mental and physical torture by her husband and also the allegation that her husband had deserted his respondent-wife and minor son. The learned Family Court has taken into account that the respondent-wife was thrown out from her matrimonial home on 08.02.2004 and her father took her to Delhi and an information was given to the Joint Police Commissioner on 25.05.2004 indicating that the petitioner/ respondent herein informed the Women Cell Authority of Joint Police Commissioner Office, Delhi regarding the atrocities committed upon her. The petitioner (P.W. 2) herself deposed that while they were staying at Army Mess for 3-4 months after marriage. Respondent/appellant herein used to give only one meal from Kitchen and used to point out that she eats too many biscuits from meal and

even during the course of her pregnancy her husband used to hit on her face and head because she could not properly drive and regretted marrying her and was asked to abort her pregnancy taunting her being a brainless mother. She had also deposed that respondent/appellant herein pushed her against the cupboard and hold her neck, broke her spectacles and was about to hammer her. She had further deposed in her cross-examination that her husband taunted her that her parents has not given fridge. She also explained that since her husband was not taking proper care of her and her child hence, she refused the desire of husband for second child. It has been further stated in her cross-examination that she lastly resided with her husband at Alwar and after 08.02.2004 she never stayed with him although he had come time and again to Ranchi, but did not stay with her. She also stated in cross-examination that her husband did not treat her properly and always abused and assaulted her. P.W. 1 is Dr. Lalit Kapoor, who is brother-in-law of the petitioner/respondent herein, who had also supported her allegation and stated that her husband used to scold her and call her stupid and lazy. P.W. 3, Raksha Bagai, mother of the petitioner/respondent herein has also deposed that soon after the marriage her daughter informed her that her husband abused her and blamed her for causing him to have a heart attack. She also supported, the allegation of the petitioner/respondent herein that the husband had squeezed her throat and thrown her against cupboard to which bruises were visible on her neck and arms. P. W. 4 is Madhu Gupta, she deposed that on several occasions she heard Aryaman's father (appellant herein) shouting loudly on the petitioner/respondent herein. P.W.5 is Gulshan Rai Bagai, a relative of the Petitioner has also deposed that in September, 2002 Kiran/respondent herein had phoned him from STD booth from Jammu to wish his younger daughter for examination. When he asked her how she was keeping, she started crying. Although, she was reluctant to give any details, he pressurized her till she confided that her husband was mistreating her and that he would even hit her. She begged me not to tell all these to her parents as it would upset them. He has further deposed that on another occasion when he went to Delhi at their house, he found that her husband abused her saying that she did not work hard and did not know how to dress or behave like an officer's wife. He again stated that the biggest mistake of his life was to marry with her as she ruined his health and social standing. In cross-examination, he also deposed that petitioner/respondent herein had told him that her husband assaulted her. P.W. 6 Punit Kumar Poddar, colleague of the petitioner/respondent herein has also deposed that on one occasion he found that her husband had suddenly come to the her house and trying to wake up the child and her mother, who were sleeping and also slapped her. P.W.8, Sandeep Kaur, is colleague of the petitioner/respondent herein, has also supported the case of the petitioner/respondent herein relating to repeatedly taunting her and calling her stupid. P.W. 9, the elder sister of the petitioner/respondent herein has stated that during his visit to Ranchi, petitioner/respondent herein with her husband visited her for meeting and on that occasion her husband remarked this witness that the Bagai family background was uncultured compared to his as the Bagais had

come as refugees after the partition of the country and that was why he did not like to spend time with petitioner and he family and wished had he married someone else. She also deposed that on second occasion, her husband lost his temper and after altercation he slapped her wife and was going to hit her. She has also deposed that in his presence respondent/appellant herein called his wife as woman of loose character and also called stupid, dishonest and ugly.

10. On the other hand, the husband/appellant herein examined four witnesses and also filed bunch of documentary evidences, which have been brought on record in order to refute the allegation of taunting the petitioner for wearing spectacles and filed photographs at the time of marriage and after marriage. R.W.1. Smt. Uma Devi, mother of the Respondent/appellant herein deposed that as per her knowledge there was good relationship between the respondent/appellant herein and petitioner/ respondent herein. She has also stated that both the family having good relation and she was liking her daughter-in-law as her son and respondent/appellant herein never assaulted her daughter-in-law. R.W. 2, Anurag Trivedi, is brother of the respondent/appellant has also deposed that cordial relation between his brother and the petitioner/respondent herein and infact after the death of respondent's father in February, 2005, he alongwith his brother and mother went to Ranchi to console the family and on that occasion his brother stayed with petitioner/respondent herein in a separate room at elder sister's house situated at Bariatu Housing Colony. R.W. 3, Lt. Colonel Sunil Kumar Gupta, who is friend of respondent/appellant herein deposed that he knowing the family affairs of the respondent/appellant herein and also deposed that there was good and cordial relation between the parties. R.W. 4 is respondent/ appellant herein had also denied the fact of assault, taunting or calling the petitioner/respondent herein as lazy and the fact of desertion alleged by her on 08.02.2004. He has also stated that even after 08.02.2004, time and again he met with his wife and lived with her as husband and wife and during his temporary duty he went for outing with her and produced photographs Exhibit E/1 to E/2 and its series including the photographs of September, 2004 when he was alongwith his son Arayaman at New Delhi. Appellant has further deposed that after the death of her father, he came with his family members to console her families and later on in September, 2005, he also visited Ranchi and enjoyed with her. Exhibit E/6 is photographs of the month of September, 2005 and in the same, it is shown that his son Arayaman is going to School and parents are accompanying him. During cross-examination, he stated that he never wants to divorce his wife at any cost and wants to live with her.

11. From perusal of the impugned judgment, it appears that learned Family Court had carefully discussed the evidences adduced on behalf of the petitioner's wife/respondent herein and her husband on the question of cruelty as well as on desertion. The Family Court has appreciated the evidences adduced by the petitioner/respondent herein as also by her husband and arrived at a finding that the appellant-husband had slapped the petitioner/respondent herein on several

occasions and used filthy language to her. During the course of learning of the car driving, he slapped her face and hit on her stomach when she was pregnant. The learned Family Court had come to conclusion that the allegation of cruelty and desertion are substantiated by the evidences produced on behalf of the respondent-wife. However, the learned Family Court was not convinced that the respondent-wife has been able to make a case of desertion on the part of her husband as admittedly the husband was ready to keep the respondent-wife at any cost and was not willing to divorce her. The learned Family Court has thereafter taken into account the educational qualifications, family background of the parties and come to a definite conclusion that such act of slapping and repeated taunting made against the appellant is incident of cruelty in matrimonial relationship as petitioner is a well educated woman having educated father and family members, lived in an environment in which using filthy words to her and her family members are sufficient to make out a case of cruelty. Such acts have caused sufferance to the family members as per environment in which the wife was reared up and such repeated act of slapping, taunting, cruelty, calling lazy, liar and slapping in presence of family member and using filthy language, had led to such an impact that the respondent-wife may not live further with the respondent-appellant herein because of the repercussion upon her mentally and psychologically. Learned Family Court was therefore, satisfied that a case of cruelty has been made out on the part of the petitioner-wife for which she was entitled to a decree for judicial separation. The learned Family Court instead of allowing the suit for a decree of divorce, proceeded to grant a decree of judicial separation by allowing the suit in part against the husband, who is appellant herein.

12. After carefully considering the case of the appellant along with the evidences on record and after perusing the impugned judgment, we have come to a definite conclusion that the respondent-wife had been able to make out a case of cruelty against her husband, which led to passing of the impugned judgment on 19.05.2008 and allowing the suit of the respondent-wife in part by a decree for judicial separation in her favour. The appellant has failed to make out any infirmity in the impugned judgment passed by the learned Family Court. The respondent-wife thereafter preferred a Suit i.e. Matrimonial Title Suit No. 178 of 2009 before the Family Court, Ranchi for dissolution of marriage by a decree of divorce on the ground that there has been no resumption of cohabitation between the parties for the last more than one year after passing of the decree for judicial separation by the Family Court, Ranchi in the Matrimonial Title Suit No. 53 of 2006 vide order dated 19.05.2008. The learned Family Court after carefully perusing the facts of the case and taking into account that there has been no resumption of cohabitation allowed the instant Matrimonial Title Suit No. 178 of 2009 by passing a decree of divorce u/s 13(1A)(i) of the Hindu Marriage Act, 1955. The learned Family Court has further declared that the marriage between the parties has been dissolved by a decree of divorce pursuant to the order dated 20th March, 2010.

13. In the aforesaid facts and circumstances of the case, we find that the impugned judgment and decree passed by the learned Family Court dated 20th March, 2010 in Matrimonial Title Suit No. 178 of 2009 does not suffer from any infirmity and the instant appeal preferred by the appellant is fit to be dismissed. Hence, First Appeal No. 139 of 2010 is dismissed.

14. Accordingly, the First Appeal No. 133 of 2008 is also dismissed for the same reasons as indicated above.

15. However, as indicated in the order dated 21.11.2008 passed in F. A. No. 133 of 2008, we deem it proper that appellant shall have right to visit and meet his son at least two days in a month i.e. Saturday and Sunday. Besides this, he shall have also right to visit and meet his son on the occasion of Birthday of his son and Holi and Depawali after giving prior information to the respondent about the date when he is likely to come to see his son.

16. However, the First Appeal No. 184 of 2008 preferred by the respondent-wife is rendered infructuous as her prayer for dissolution of marriage by a decree of divorce has already been allowed by the judgment dated 20th March, 2010 passed in Matrimonial Title Suit No. 178 of 2009 and accordingly, it is dismissed as infructuous. The parties, are left to bear their own cost.