

IN THE HIGH COURT OF JUDICATURE AT PATNA

Sushant Kumar Singh

Vs.

Smt. Arpana Kumari

MISCELLANEOUS APPEAL NO. 433 OF 2011

5 April 2023

(Hon'ble Mr. Justice Ashutosh Kumar and Hon'ble Mr. Justice Satyavrat Verma)

Issue for Consideration

Whether judgment and decree passed in Matrimonial Case No. 691 of 2008 by the learned Principal Judge, Family Court, Patna is correct or not?

Headnotes

Family Courts Act, 1984—Section 19(1)—Hindu Marriage Act, 1955—Section 13—Divorce—denied—cruelty and desertion—burden of proof—conduct of parties—marriage solemnized under Special Marriage Act, 1954—appellant alleged non-consummation, refusal to cohabit, and mental cruelty—respondent denied allegations, asserting love marriage, concealment of relationship due to family pressure, and dowry demands—learned Family Court found no evidence of cruelty or desertion.

Held: appellant failed to prove specific instances of cruelty or desertion—no legal steps taken for restitution of conjugal rights—conduct of appellant, including concealment of marriage and failure to acknowledge respondent publicly, indicated lack of intent to maintain marital relationship—long separation alone not sufficient to constitute cruelty—mental cruelty must be substantiated by conduct rendering cohabitation insufferable—respondent expressed willingness to continue marital relationship and refused alimony—appellant’s conduct found to be the source of mental cruelty—appeal dismissed—judgment and decree of learned Family Court affirmed

Case Law Cited

Samar Ghosh vs. Jaya Ghosh, (2007) 4 SCC 511; N.G. Dastane (Dr.) vs. S. Dastane—**Relied Upon.**

List of Acts

Family Courts Act, 1984; Hindu Marriage Act, 1955.

List of Keywords

Divorce; mental cruelty; cruelty; desertion; marriage; restitution of conjugal rights.

Case Arising From

From judgment dated 30.04.2011 and decree dated 06.05.2011 passed in Matrimonial Case No. 691 of 2008 by the learned Principal Judge, Family Court, Patna.

Appearances for Parties

For the Appellant: Mr. Shiva Shankar Sharma, Advocate; Mr. Rajiv Nayan, Advocate

For the Respondent: Mr. J.S. Arora, Advocate

Headnotes Prepared by Reporter: Abhas Chandra, Advocate

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.433 of 2011

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SUSHANT KUMAR SINGH S/o Sri Shiv Nandan Prasad Singh, resident of
Sri Krishna Nagar, Road No. 23 Police Station Budha Colony, District- Patna,
Pin Code-800001.

... .. Appellant/s

Versus

SMT. ARPANA KUMARI, Wife of Sushant Kumar Singh and D/o late
Gajendra Prasad Resident of C/o Dr. Gajendra Prasad, C.A.-12, P.C. Colony,
Kankarbagh, District- Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Shiva Shankar Sharma, Advocate
Mr. Rajiv Nayan, Advocate
For the Respondent/s : Mr. J.S. Arora, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE SATYAVRAT VERMA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SATYAVRAT VERMA)



Date : 05/04/2023

Heard Mr. Rajiv Nayan, learned counsel for the appellant/husband and Learned Senior Counsel for the respondent/wife Mr. J.S. Arora.

The present appeal is directed against the judgment dated 30.04.2011 and decree dated 06.05.2011 passed in Matrimonial Case No. 691 of 2008 by the learned Principal Judge, Family Court, Patna whereby the Matrimonial Case No. 691 of 2008 filed by the appellant seeking divorce from the respondent on the ground of cruelty and desertion has been dismissed.

Before advertng on the merits of the appeal, it is pertinent to briefly state the facts of the case.

The appellant filed Matrimonial Case No. 691 of 2008 wherein he pleaded that he was married with the respondent on 28.04.2005 before the Marriage Officer, Patna, in accordance with Special Marriage Act, 1954, the marriage was an inter-caste marriage. The marriage was performed in presence of three witnesses who



signed on the Marriage Certificate as witnesses. After marriage the appellant asked the respondent to accompany him to her matrimonial home which she refused on the ground that she was not mentally prepared for it and will join the matrimonial home only after tying the knot in accordance with Hindu rituals, after getting permission from all her family members. The respondent even refused to put vermilion on her forehead as she did not want to make the marriage public which hurt the feelings of appellant. The appellant and the respondent after marriage never lived together nor had any physical relations i.e., the marriage was never consummated. The family of the appellant was ready to accept the respondent as their daughter-in-law but respondent never showed any interest in coming to her matrimonial home and behaved like a total stranger. Further, the respondent in order to avoid the appellant from accompanying him started giving frivolous reasons that appellant does not have a job and a house in Patna,



as, he was living in a single room of rented house. When the appellant realized that the wife is not interested in renewing the matrimonial ties, he left his research career in October, 2005 and joined UNICEF in November, 2005 to earn money, but it was all in vain as the respondent never made any efforts to join him, which caused him immense mental agony leading to deterioration of health, emotional break down resulting him in leaving the job with the UNICEF. The appellant had also taken a three bedroom flat and wanted the respondent to come and stay with him in order to meet his family members but eventually all his endeavours to revive the matrimonial ties failed. Moreover the father of appellant was abused and driven out from the house of respondent when he made an effort to bring back the respondent.

The appellant despite facing such hostile attitude of the respondent still made an effort to revive the matrimonial ties on 21.05.2006 and thereafter on 18.06.2006, but all his endeavours went in vain. The



appellant even tried to consummate the marriage by going to the house of the respondent but she refused and even spitted venom by saying that she could have been married to an I.A.S. Officer or a doctor, as she deserved a better life.

The mental agony further got aggravated by her conduct when she did not come to the house of the appellant after the death of his grandmother nor participated in any rituals. Accordingly, the appellant approached the respondent seeking her mutual consent for divorce to which she consented and thereafter on 10.04.2008, a petition was filed seeking divorce by mutual consent and the case was numbered as Matrimonial Case No. 177 of 2008, but later, on 25.08.2008, she withdrew her consent alleging that signature was obtained under pressure by confusing her.

From narration of the facts as recorded hereinabove based on the pleadings of the appellant, it becomes clear that right from the date of marriage till



filing of the matrimonial case, the appellant and the respondent never stayed together nor the marriage was consummated, thus, based on the aforesaid pleadings the appellant sought a decree of divorce.

The respondent appeared and filed her written statement denying all the pleadings made in the suit by the husband before the Family Court.

The specific case of the respondent was that the pleadings have been made by concealing relevant facts. The specific case of the respondent is that they were classmates in Post-graduation and fell in love and the appellant gave proposal of marriage to which the respondent agreed, thereafter, the family members of both the parties met each other in December, 2004 for the first time and agreed that, initially, the marriage would be before the Registrar and subsequently the same would be performed as per Hindu rights and customs, thereafter, the status of the respondent as appellant's wife shall be disclosed. Further, it was also



made known to the respondent that appellant's sister is to get married and since the marriage of the appellant with the respondent is an intercaste marriage, hence, the same may affect the future prospect of the sister of the appellant in getting married. Accordingly, the marriage was performed on 28.04.2005 before the Marriage Registrar, Patna where mother of both the parties put their signatures on the Marriage Certificate as witnesses. The respondent always made endeavours to stay with the appellant but she was not allowed to accompany him in view of the condition imposed at the time of marriage that her relationship would be disclosed after the marriage of the appellant's sister. Further, after the retirement of the father of the respondent, noticeable changes were seen in the behaviour of the appellant as the appellant along with his father started demanding a sum of Rs. 11,00,000/- by way of dowry on the plea of appellant's sister marriage which shocked the respondent's family as they were not in a position to



fulfill the said demand. The non-fulfillment of the said demand was followed by threat that she will not be allowed to join the appellant in her matrimonial home. The appellant, thereafter, started emotionally blackmailing her on the ground that he desires to continue with the relationship, but his parents are not willing, as such, in order to satisfy their whims, they should file a petition seeking divorce by mutual consent but the same would never be pursued and believing the words of the appellant, the respondent signed on the petition but later realized that the same was obtained by misrepresentation and fraud thus withdrew her consent. Moreover, the appellant never made any endeavours to bring back the respondent to her matrimonial home, since both the parties were known to each other from before being classmates, as such, they were aware of the condition prevailing in both the houses. The respondent neither insulted the family members of the appellant nor the appellant and his father never came to



her house to take her back to her matrimonial home. The respondent never objected the appellant from making any physical relation as such occasion never arose on account of the conduct of the appellant. More so over they were known to each other from before, as such, question of demeaning the appellant and his father by saying that she could have been married to an I.A.S. or a doctor, simply does not arise as the marriage was a love marriage. The respondent and her mother had gone to visit the grandmother of the appellant when she was admitted in Magadh Hospital, Patna but was warned not to come again.

From the written statement of the Respondent, it can be culled out that the appellant and the respondent had studied together and were in love, belonged to different caste, thus, the marriage was performed under Special Marriage Act, 1954 and the family members of the appellant had put a condition that since the marriage was an inter-caste marriage, as such, the relationship



had to be concealed till the marriage of the sister of the appellant or else the future of his sister may get jeopardized.

On the basis of the pleadings of the parties, the learned Family Court framed the following issues:-

1. Is the case as framed maintainable?
2. Has the petitioner got valid cause of action for the case?
3. Whether this Court has got valid jurisdiction to try this case?
4. Whether the respondent has treated the petitioner with cruelty as alleged?
5. Whether the respondent has deserted the petitioner for more than two years since preceding the presentation of this divorce case?
6. Whether the petitioner is entitled to a dissolution of marriage tie with the respondent by a decree of divorce?
7. To what other relief/s, if any, is the petitioner or the respondent entitled to?

Both the parties led oral as well as documentary evidences and the learned Family Court having considered the pleadings as well as evidence adduced on behalf of the parties, dismissed the above suits passing the impugned judgment and decree dated 30.04.2011 and 06.05.2011 respectively on the ground



that the husband could not succeed to prove the factum of cruelty and desertion.

The appellant assailed the impugned judgment submitting that the learned court below did not consider the materials available on record in its correct perspective and failed to appreciate that where there is a long period of continuous separation, it may fairly be construed that the matrimonial bond is beyond repair and the marriage becomes a fiction though supported by a legal tie and by refusing to sever that tie, the law in such cases does not serve the sanctity of marriage, on the contrary, it shows scant regards for the feeling and the emotion of the parties and in such situation the obvious conclusion is that it leads to mental cruelty.

The said submission was made by the learned counsel for the appellant taking into account the order dated 10.01.2023 passed in the present case when an attempt was made for reconciliation between the parties where the appellant and the respondent were present in



the Chambers and the husband had shown his complete inability to continue with the marital relationship but stated that he is ready to accept the respondent as a human being, a friend and an acquaintance of yesteryears and is also ready to help her out in case she requires any help in any manner except restitution of conjugal rights. While the respondent had expressed her desire to join the appellant as his wife and was not willing rather was abhorrent of the idea of any monetary compensation in lieu of abandoning the relationship.

Learned counsel further submitted that from the side of the appellant three witnesses were examined i.e. PW-1 Ajay Kumar @ Ajay Govind Bhatt, PW-2 Shushant Kumar Singh (Appellant) and PW-3 Sheo Nandan Prasad Singh (Father of the appellant) and four exhibits were also brought on record from the side of the appellant as detailed in the impugned judgment. From the side of the respondent two witnesses were examined i.e. RW-1 Arpana Kumari (Respondent) and RW-2 Mrinalini Yadav



(Mother of the Respondent) and from the side of the respondent 14 Exhibits were brought on record i.e., from Exhibit 'A' to Exhibit 'M' as detailed in the impugned judgment.

The relevant evidence is of the appellant and the respondent but briefly the Court would record the evidence of the witnesses brought from the side of the appellant and the respondent in order to appreciate the controversy in issue i.e., whether the matrimonial case filed by the appellant could have succeeded on the grounds of cruelty and desertion.

PW-1 Ajay Kumar @ Ajay Govind Bhatt in his examination-in-Chief which was filed on affidavit had stated that he knows both appellant and the respondent and has worked with them on one project Arsenic, the parties got married as per their consent and before the Marriage Officer, Patna on 28.04.2005 in presence of the mother of the respondent and the appellant, one Mukesh Kumar who had come from the side of the



respondent had put their signatures as witnesses on the Marriage Certificate. Moreover, in his cross-examination at Para 4 he has admitted that he has no knowledge as to when and at what time the appellant and the respondent talked to each other and also does not know as to whether the family members of the appellant visited the house of the respondent or not and for how many times.

From the evidence of this witness, one thing is clear that the appellant and the respondent were known to each other from before and the marriage was consented.

The PW-2 (Appellant) in his examination-in-chief which was filed on affidavit verbatimly repeated what was pleaded in the suit as recorded hereinabove. The PW-2 in his cross-examination at Para 4 admitted that he did not file any application seeking restitution of his conjugal rights against the respondent, further, at Para 5 he has admitted that he never disclosed to his employer



whether he is married or not, at Para 6 of his cross-examination, he stated that he never made any endeavours to get the name of his wife recorded in the voter list, further at Para 9 of his cross-examination he has admitted that he never made any effort for getting the respondent name added as nominee in his bank account or insurance policy. Further, at Para 15 he stated that he disclosed about the marriage to only few members of his family and that he had filed a petition seeking divorce by mutual consent in which the respondent filed a petition stating that consent was obtained by fraud and putting pressure upon her, as such, the case was dismissed.

From the evidence of PW-2, it is clear that although he has stated that he had made all endeavours to renew his matrimonial ties, his conduct reflects to the contrary, as he never made an attempt to bring back the respondent to the matrimonial home by filing an application seeking restitution of conjugal rights. His



conduct also reflects that he never intended to make his relationship with the respondent public, as he did not include respondent's name in any documents as afore-noted.

At this stage, the learned Senior counsel submits that the appellant had got his passport made after marriage showing himself as unmarried, this clearly demonstrates that he was not serious in restituting his conjugal ties with the respondent.

Though, this submission of the learned Senior counsel has not been rebutted by the appellant's counsel, but it was submitted by him that the appellant did not disclose about his relationship as he was never asked by his employer.

The PW-3 (father of the appellant) had also filed his examination-in-chief on affidavit in which he has stated that the appellant had disclosed to him that he wanted to marry the respondent and had also disclosed her caste. He also stated that in his family, inter-caste



marriage is not an issue as he himself has married a woman from a different caste and even his elder son got married to a girl of different caste. Further, it was stated that he had met the respondent and his mother but the brother of the respondent had not come and he had permitted them to get married in accordance with Hindu rituals. The mother of the respondent insisted on performing a registered marriage, and thereafter, a marriage be performed in accordance with Hindu rituals and only then the relationship would be disclosed in the society. Father of the appellant agreed to this, accordingly the registered marriage was performed on 28.04.2005. At the time of marriage the respondent was present along with her mother and from side of the appellant, the appellant and his mother were present, and appellant's father was awaiting the arrival of his son and daughter-in-law, but the respondent did not come home after registration of the marriage and on asking the appellant disclosed that the respondent was adamant



to disclose the marriage only after the marriage was performed in accordance with Hindu rituals and after seeking permission from other family members. It was also stated by him that on 15.01.2006 he along with appellant had gone to the house of the respondent for bringing her back but he was abused and treated with cruelty and the endeavours of the appellant to bring back the respondent to her matrimonial home got failed.

PW-3 in his cross-examination and Para 2 has admitted that he was not present at the time of registration of marriage and he did not arrange the reception of the couple or inform his relatives. The appellant also did not feel the necessity to take any legal recourse for resumption of his conjugal relations with respondent. At Para 3 of his cross-examination he stated that the marriage of his daughter was not an inter-caste marriage.

From the evidence of PW-3, two things manifest, that inter-caste marriage in the family was not a bar,



and he did not make any positive endeavours to bring the respondent back home or advised the appellant to seek legal course for restituting his conjugal rights, especially when inter-caste marriage was not a bar in the family.

Thereafter, the evidence of the respondent and her witness was taken. RW-1 (respondent) also submitted her examination-in-chief on affidavit in which her plea in the written statement was nearly produced in verbatim.

The RW-1 in her examination-in-chief at Para 4 stated that her father-in-law came to her house in December, 2004 and made it clear that the marriage would be a registered marriage and the marriage in accordance with the Hindu rituals would be performed only after the marriage of the appellant's sister. She stated that after marriage she came to the house of the appellant and remained there as husband and wife but on the same day she was dropped to her parental home



and thus denied the suggestion that she did not remain with her husband even a single day. At Para 5 of her cross-examination, she has stated that she visited the house of the appellant at Krishna Nagar 3-4 times, but was not permitted to stay on the ground that she will be allowed to stay with the appellant only after the marriage of his sister. In the same para, she also deposed that the marriage was consummated. On this, the learned counsel for the appellant submits that the respondent falsely stated that the marriage was consummated when from perusal of her pleadings in the written statement and the examination-in-chief, it would manifest that such plea was not taken. At Para 6, 7 and 8 she has stated that she has put vermilion and had come to Court, the appellant was on visiting term to her house and had visited Magadh hospital to see the ailing grandmother of the appellant who died in December, 2007. She was never called for the last *Darshan* of his grandmother nor was informed about



the marriage of her sister-in-law by the appellant. At para 10 of her cross-examination she denied the suggestion that the allegation of demand of dowry was baseless and also denied the suggestion that the appellant along with his father had come to her house on 15.01.2006 where they were humiliated. At para 12 of her cross-examination she denied the suggestion that she gave consent for seeking divorce by mutual consent.

From perusal of her evidence, it becomes clear that the respondent has been able to substantiate her case that it was the appellant who had caused her immense mental trauma and physical torture and further left her to lead a humiliated life before the society on the pretext that the relationship will get disclosed only after marriage of his sister.

It absolutely does not stand to reason as to why the respondent after marrying the appellant would not have accompanied him to her matrimonial home, when



inter-caste marriage in the family was not a bar, and the conduct of the appellant in not seeking any legal remedy for restituting his conjugal rights despite his father and brother having performed an inter-caste marriage also gives an impression to this Court that the appellant after marriage for some ulterior reason was not willing to revive his matrimonial ties nor intended to disclose the relationship in the society as he had not made any endeavours to put the name of the respondent on any documents as afore-noted.

The RW-2 also submitted her examination-in-chief on affidavit wherein she stated that the facts similar to what has been stated by the respondent. At para 7 she stated that at the time of marriage of the appellant's sister, a demand of Rs. 12 lakhs by way of dowry was made, and it was said that after the marriage of the appellant's sister only the marriage of the appellant and the respondent would be performed in accordance with the Hindu rituals. She stood the test of cross-



examination as there is nothing in her cross-examination to controvert the statement made in her examination-in-chief.

After going through the evidence on record of the parties, the Court comes to a considered conclusion that right from the beginning the appellant was not interested in reviving his matrimonial ties and thus he never made any positive efforts to bring back the respondent to the matrimonial fold by resorting to legal remedies. The Court fails to appreciate that if, contention of the appellant is true and that he made sincere efforts to revive his matrimonial ties and the respondent was adamant in not reuniting, then why he did not approach the Court of competent jurisdiction under Section 9 of the Hindu Marriage Act, 1955. It also does not stand to reason that as to why the appellant never made the respondent nominee in his bank account and in the life insurance document, and thus this amply demonstrates his conduct. From the



evidence on record, it cannot be culled out that any evidence has come from the side of the appellant specifying specific instances of cruelty, though, it has come in evidence of PW 2 and 3 that they were abused and humiliated when they had gone to fetch the respondent to her home, but what kind of abuse was hurled and the manner in which they were humiliated is not disclosed, which further gives an impression that only efforts were being made to make out a case for divorce based on cruelty and desertion.

The Supreme Court in Samar Ghosh Vs. Jaya Ghosh 2007 (4) SCC 511, after analyzing various cases under the British, Canadian and American laws and taking reference of the cases decided by the Supreme Court in N.G. Dastane (Dr.) Vs. S. Dastane and various other cases came to a conclusion that mental cruelty is not a static concept and there could be no straitjacket formula or fix parameters for finding out as to what is mental cruelty. Only instances could be recounted,



which cannot ever be exhausted. Some of the instances, which has been found to display mental cruelty are when it would not be possible for the spouses to live with each other without undergoing acute mental pain, agony and sufferings, or when it is found that the wrong party cannot reasonably be asked to put up with the conduct of the other party or continue to live with him/her. The Supreme Court was categorical enough in holding that mere coldness or lack of affection cannot amount to cruelty. Even frequent rudeness of language, petulance of manners, indifference and neglect would not construe mental cruelty unless it reached a degree which would make the married life of the other spouses absolutely insufferable.

One of the grounds, which would surely comprise mental cruelty is a long period of continuance separation from which it could only fairly be inferred that the matrimonial bond is beyond repairs. In such case, the



marriage becomes affliction, though supported by a legal tie. Refusal to sever that tie does not serve the sanctity of marriage, on the contrary, it shows scant regard for the feelings and emotions of the parties.

This situation is of mental cruelty.

However, it has to be decided as to who has perpetrated mental cruelty on whom and who seeks to take advantage of this mental cruelty for getting separated divorce. In the present case, it can safely be construed that it was the appellant who has perpetrated mental cruelty on the respondent by his conduct as recorded aforesaid and as far as desertion is alleged, the same appears to be a ploy of the appellant as he never made any serious efforts to bring back the respondent to the matrimonial fold when the respondent very categorically in her evidence and even before this Court had stated that she intends to continue with the matrimonial relationship and had also refused any alimony. This also gets corroborated from



the fact that the respondent had withdrawn her consent for seeking divorce by mutual consent.

As such we are in agreement with the Judgment of the learned Principal Judge, Family Court, Patna.

In the result, we have no option but to dismiss this appeal, **accordingly, this appeal stands dismissed** and the impugned judgement and decree passed by the learned Principal Judge, Family Court Patna is hereby confirmed.

There shall be no order as to costs.

(Satyavrat Verma, J)

(Ashutosh Kumar, J)

Rishabh/-

AFR/NAFR	AFR
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