

IN THE HIGH COURT OF JUDICATURE AT PATNA

Nilu Kumari

vs

Sanjay Kumar

Miscellaneous Appeal No. 331 of 2018

02 September 2025

**[Hon'ble The Acting Chief Justice and Hon'ble Mr. Justice S. B. Pd.
Singh]**

Issue for Consideration

Whether the marriage between the parties was liable to be annulled under Section 12(1)(d) of the Hindu Marriage Act, 1955, on the ground that the wife was already pregnant by another person at the time of marriage, and whether the child born within four months of marriage could be presumed legitimate in view of Section 112 of the Indian Evidence Act, 1872?

Headnotes

Hindu Marriage Act, 1955 – S.13(1)(ia), (ib) – Cruelty and desertion – Allegations must be specific and proved by cogent evidence – Vague and general statements insufficient – Normal wear and tear of marriage not cruelty.

Cruelty – Meaning and scope – Must be grave and substantial; trivial quarrels or differences do not amount to cruelty – Burden of proof lies on petitioner seeking divorce.

Desertion – Period requirement – Divorce petition filed within four months of alleged desertion – Does not satisfy statutory period of two years – Petition premature and unsustainable.

Family Court – Duty to reconcile – Failure to make efforts for reconciliation before granting divorce – Held, violation of statutory mandate.

Permanent alimony – Non-consideration – Family Court erred in not deciding alimony of wife and dependent daughter – Order unsustainable.
Result – Decree of divorce set aside – Marriage restored – Appeal allowed.

Case Law Cited

(2007) 4 SCC 511, AIR 1975 SC 1534

List of Acts

Hindu Marriage Act, 1955; Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Dowry Prohibition Act, 1961

List of Keywords

Cruelty; Desertion; Premature Divorce Petition; Maintenance; Reconciliation; Alimony; Dowry; Matrimonial Dispute; Family Court; Section 13 Hindu Marriage Act.

Case Arising From

The judgment dated 20.02.2018, passed by Ld. Principal Judge, Family Court, Vaishali at Hajipur in Matrimonial (Divorce) Case No. 247 of 2013.

Appearances for Parties

For the Appellant/s: Mr. Kaushal Kishor, Adv.

For the Respondent/s: Mr. Anirudh Kumar Sinha, Adv.

Headnotes Prepared by Reporter: Mr. Ravi Raj, Adv.

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.331 of 2018

Nilu Kumari W/o Sanjay Kumar, Resident of Mohalla- Pokhara Mohalla, Mahajan Toli, P.S.- Town Hajipur, District- Vaishali. Naihari Address- D/o Sri Ram Babu Singh, Resident of Village- Jamalpur, P.O.- Subhai, Mahua Road, P.S.- Sadar Hajipur, District- Vaishali.

... .. Appellant/s

Versus

Sanjay Kumar S/o Sri Harivansh Narayan Patel, resident of Mohalla- Pokhara Mohalla, Mahajan Toli, P.S.- Town Hajipur, District- Vaishali.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Kaushal Kishor
For the Respondent/s : Mr.Anirudh Kumar Sinha

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 02-09-2025

Heard the parties.

2. The appellant has come up in this appeal against judgment and decree dated 20.02.2018 passed by the learned Principal Judge, Family Court, Vaishali at Hajipur in Divorce Case No. 247 of 2013, whereby the petition filed by the respondent under Section 13 of the Hindu Marriage Act, 1955 (in short 'the 1955 Act') seeking dissolution of marriage by a decree of divorce, has been allowed.

3. The pleaded case of the respondent in his



petition under Section 13 of the Hindu Marriage Act, 1955 is that the marriage of the appellant was solemnized with the respondent on 20.11.2011 according to the Hindu Rights and Customs. The marriage was consummated and a female-child was born out of the wedlock on 03.11.2012. Sometimes after the marriage, the appellant started pressurizing the respondent to live separately from his old parents. The appellant used to abuse filthy languages against her parents-in-law. She also used to behave cruelly with her husband (respondent) and tried to malign the prestige of the family of the respondent. After marriage, the appellant never took the responsibility as a wife and old mother of the respondent used to cook food for the family. The appellant always used to throw the food outside the house and respondent and his other family members had to remain hungry on so many occasions. The appellant is a lady of free mind and she always used to go for movie and market with another male members. Whenever the respondent objected, she became furious. She used to go to her *Maike* frequently without the permission of the respondent.



4. The appellant has completely failed to discharge her matrimonial obligation towards her husband and other in-laws members. The actions/misdeeds of the appellant have caused great torture and harassment in the mind of the respondent. This causes enormous pain and grief in the mind of the respondent and he found that in spite of giving best possible love and affection, there was no change in her behaviour towards him, his parents, relations and friends. The appellant has left the society and company of the respondent and went to her *Maike* on 19.08.2013. The matrimonial relation between the appellant and respondent had already irretrievably broken down and there was no hope of restoration of their conjugal life. Hence, the respondent has filed the present Divorce Petition for dissolution of marriage with the appellant.

5. After filing of the Matrimonial Case, summons were issued to the opposite party/appellant. She appeared and filed her written statement in which she has stated that all the allegations made by the respondent against the conduct and behaviour of the appellant was denied. It has been averred that she used to cook food at her matrimonial



house and after taking the bath and performing prayer to the God, she used to take lunch or food. It has been averred that Rs. 2 lakh was demanded as dowry by her husband and for non-fulfillment of the same, she was ousted from her matrimonial house along with her daughter. It has also been alleged that respondent has illicit relationship with his sister-in-law (*Bhabhi*). The appellant has also filed Complaint Case No. 2526 of 2014 against the respondent and other in-laws family members under Sections 498(A) of the Indian Penal Code and Section 3/ 4 of the Dowry Prohibition Act. This Divorce case is said to have been filed on false and concocted grounds only to oust the appellant from the matrimonial life of the respondent. The appellant, therefore, prayed that divorce petition filed by the respondent is fit to be dismissed.

6. After framing of the issue and material evidences available on record, learned Principal Judge, Family Court, Vaishali at Hajipur held that the appellant-wife has treated her husband with mental cruelty. Accordingly the suit has been decreed on contest under Sections 13 (1) of the Act and accordingly the marriage



solemnized on 20.11.2011 between the parties was dissolved on the ground of cruelty and desertion. The appellant-wife, aggrieved by the said judgment of the learned Family Court filed the instant appeal before this Court.

7. Learned counsel for the appellant-wife submits that the learned Family Court has erred in law and facts both in allowing the divorce petition filed by the respondent-husband. Learned counsel has further submitted that the divorce petition has wrongly been allowed on the ground of cruelty, rather the appellant-wife had been treated with cruelty at her matrimonial home and she had only availed her legal remedies by filing cases as regards the cruelty meted out to her and also as regards the demand of dowry by the respondent-husband and his family members, however the same have been wrongly taken against the appellant. It is further submitted that the Family Court has wrongly concluded that the appellant had deserted the respondent-husband, whereas it was the respondent, who had compelled the appellant-wife to leave her matrimonial home.



8. It is further submitted on behalf of the appellant that appellant-wife has filed Maintenance Case No. 31 of 2016 u/s 125 of the Code of Criminal Procedure before learned Principal Judge, Family Court, Vaishali at Hajipur wherein she is getting Rs. 3000/- per month as interim maintenance.

9. It is also submitted that no efforts were made by the Family Court to reconcile the matter between the parties and no permanent alimony was decided. It is therefore contended that the findings returned by the Family Court are not sustainable in the eyes of law.

10. We have heard learned counsel for the appellant and perused the concerned record of Family Court as well as the impugned judgment.

11. From perusal of the case records, it appears that marriage between the appellant and the respondent was dissolved by the learned Family Court on the ground of cruelty and desertion.

12. So far as, the ground of cruelty for taking divorce is concerned, the word 'cruelty' has not been defined in specific words and language in the Hindu



Marriage Act, 1955, but it is well settled position that cruelty is such of character and conduct as cause in mind of other spouse a reasonable apprehension that it will be harmful and injurious for him to live with O.P.- respondent.

13. It is observed by the Hon'ble Apex Court in leading case of Samar Ghose vs. Jaya Ghose reported in 2007 (4) SCC 511 that a 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. More trivial irritations, quarrel, normal wear and tear of the married live which happens in day-to-day live would not be adequate for grant of divorce on the ground of mental cruelty.

14. In this context, we are tempted to quote the golden observation made by the Hon'ble Apex Court during decision in case of Narain Ganesh Dastane vs. Sucheta Naraih Dastane reported in, AIR 1975, 1534, which are as follows:-

"One other matter which needs to be clarified is that though under Section 10(1)



(b), the apprehension of the petitioner that it will be harmful or injurious to live with the other party has to be reasonable, it is wrong, except in the context of such apprehension, to import the concept of a reasonable man as known to the law of negligence of judging of matrimonial relations. Spouses are undoubtedly supposed and expected to conduct their joint venture as best as they might but it is no function of a court inquiring into a charge of cruelty to philosophise on the modalities of married life. Some one may want to keep late hours of finish the day's work and some one may want to get up early for a morning round of golf. The court cannot apply to the habits or hobbies of these the test whether a reasonable man situated similarly will behave in a similar fashion. "The question whether the misconduct complained of constitutes cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another;



and what may not be cruel to an Individual under one set of circumstances may be extreme cruelty under another set of circumstances". The Court has to deal, not with an ideal husband and ideal wife (assuming any such exist) but with the particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to draw their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures."

15. During the course of trial, altogether five witnesses have been examined on behalf of the respondent which are P.W. 1 Sunil Patel (neighbour), P.W. 2 Manoj Kumar, P.W. 3 Kumar Shankar Patel, P.W. 4 Shailendra Kumar Patel and P.W. 5 Sanjay Kumar (respondent himself).

16. The respondent has also brought on record the following documents.

Ext-1 C.C of order from 05.08.2014 to 09.05.2014 passed in Complaint Case No. C1 2526/2014, Tr. No. 28/2015



Ext.2 C.C of Complaint Case No. 2526/2014
Ext. 3 to 3/a Certified copy of deposition of
the witnesses made under Section 202 Cr.P.C in
the Complaint case filed by the O.P.

17. The appellant has also examined five witnesses in support of her case which are O.P.W 1 Nilo Kumari, O.P.W 2 Mina Devi, O.P.W 3 Maheshwar Sah, O.P.W 4 Mukesh Sah and O.P.W 5 Ram Babu Singh.

18. The P.W. 5/respondent has not stated about any incident of cruelty. He has adduced vague evidence on the point of cruelty. Although he has deposed about the date of separation but that is less than 2 years as prescribed in law. In the plaint also, the above facts are lacking.

19. After going through the impugned judgment, it is crystal clear that respondent-husband has failed to prove the cruel behaviour of the appellant towards him and his family members by the strength of cogent, relevant and reliable evidence, while burden of proof of cruelty rests upon the respondent-husband of this case, because, he has sought relief of divorce on the basis of cruel behaviour of the appellant towards him. Not even single incident with



reference to specific date of alleged cruelty has been urged in the plaint before the Family Court. Furthermore, alleged certain flimsy act or omission or using some threatening and harsh words may occasionally happen in the day-to-day conjugal life of a husband and wife to retaliate the other spouse but that cannot be a justified/sustainable ground for taking divorce. Some trifling utterance or remarks or mere threatening of one spouse to other cannot be construed as such decree of cruelty, which is legally required to a decree of divorce. The austerity of temper and behaviour, petulance of manner and harshness of language may vary from man to man born and brought up in different family background, living in different standard of life, having their quality of educational qualification and their status in society in which they live.

20. Thus, considering the above entire aspects of this case and evidence adduced on behalf of both the parties, we find that respondent-husband has failed to prove the allegation of cruelty, much less, the decree of cruel behaviour of appellant which is legally required for grant of decree of divorce under section 13(1) of the Hindu



Marriage Act.

21. So far as ground of desertion is concerned, it is the case of the respondent-husband that appellant-wife has deserted the respondent-husband on 19.08.2013 and since then she has been living at her *Maike*. The respondent-husband made all his efforts to bring back the appellant-wife to her matrimonial house but she was not agree to come with the respondent, hence, ultimately, the respondent has filed the present Divorce Petition on 23.12.2013 just after four months of the appellant-wife allegedly denying to come to her matrimonial fold. Here is is mention to refer Section 13 of the Hindu Marriage Act:-

(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party--

[(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty;



or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

(ii) has ceased to be a Hindu by conversion to another religion; or

[(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

22. From perusal of the record, it clearly transpires that just after four months of the alleged desertion by the appellant-wife, the respondent-husband has filed the present Divorce Petition which is pre-mature and clearly indicates that respondent-husband did not make reasonable efforts to settle with her wife (appellant) and hurriedly filed the divorce petition. The learned Family Court also did not take a pain to reconcile the matter/dispute between the parties and without considering the period of alleged desertion, has allowed the divorce petition and dissolved the marriage



between the parties which appears to be not justified in the eye of law. While allowing the divorce petition, no permanent alimony was decided by the Family Court which is the legal rights of a deserted wife and her dependent-daughter.

23. Hence, after going through the entire facts and evidence of both the parties, the judgment and decree dated 20.02.2018 passed by the learned Principal Judge, Family Court, Vaishali at Hajipur in Divorce Case No. 247 of 2013 is set hereby aside.

24. Accordingly M.A. No. 331 of 2018 stands allowed.

25. Pending I.A(s), if any, stand disposed of.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, ACJ)

Shageer/-

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