

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.250 of 2019

Anisha alias Anisha Kumari alias Anisha Sinha D/o Shashi Kumar Sinha, Wife of Satish Kumar Prakhand Shikshak, Khabra Middle School, at and P.O.-Khabra, P.S. Sadar, District-Muzaffarpur and residing with her parents at Village and P.O. Khabra, P.S. Sadar, District-Muzaffarpur

... ... Appellant/s

Versus

Satish Kumar Son of Late Birendra Mohan Mishra Zila Parishad Shikshak, Bhola Singh High School, Purushottampur, Muzaffarpur, permanent r/o Village and P.O.-Bahera Jahidpur, P.S. Nanpur, District-Sitamarhi at present residing as a monthly tenant in the house of Sri Gulzar Chaudhary, Moh-Gannipur, Mishra Tola, P.O.-Muzaffarpur Town P.S.-Kazi Mohammadpur, District-Muzaffarpur

... ... Respondent/s

Appearance :

For the Appellant/s : Mr. Amit Kumar Jha, Advocate.

For the Respondent/s : Mr. Md.Imtiaz Ahmad, Advocate.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date : 30-04-2025

1. Heard learned counsel for both the parties.
2. This Miscellaneous Appeal has been filed against the judgment/order dated 22.11.2018 and decree dated 06.12.2018 passed by the learned Principal Judge, Family Court, Muzaffarpur in Matrimonial Case No. 14 of 2014 whereby the learned Family Court has allowed the divorce case filed by the respondent-husband under Section 13 (1) (ia) of the Hindu Marriage Act, 1955.



3. The case of the respondent-husband in brief is that the marriage between the parties was solemnized on 06.06.2010 according to Hindu rites and customs. The appellant-wife was taken to the ancestral village of the respondent-husband where she was treated with warmth and affection by his family members. It is alleged that the appellant-wife, from the inception of the marriage, displayed indifference towards family customs and participated in traditional functions reluctantly. She used to show disrespect to the respondent's mother, elder brother, married sister and brother-in-law. She repeatedly avoided consummation of the marriage. However, after persistent persuasion, the marriage between both the parties consummated, but the appellant-wife remained passive throughout. She insisted on returning to her parental house where she was taken on 20.06.2010. Due to indifferent and quarrelsome behaviour of the appellant-wife, the respondent-husband brought her to Muzaffarpur and initially accommodated her at his maternal uncle's house. However, she failed to adjust and frequently quarreled with him and his relatives. Both the parties then shifted to various rented accommodations. The appellant-wife allegedly refused to perform household duties, often stayed out late with her brother-



in-law and created frequent disturbances. The appellant-wife used to visit market with her brother-in-law, Prashant Kumar, and often return late in night, and on asking for explanation, she used to outburst in anger and misbehave with the respondent-husband. On 10.09.2010, when the respondent-husband reached his house at 7:30 PM, he found that the lights of his house were off and Prashant Kumar was sitting on his bed with an atmosphere pointing to some unholy incident. On making inquire of the same with the appellant-wife, she started cursing and abusing the respondent-husband and threatened him to get him killed or get him implicated in false case of domestic violence and torture. On 16.09.2010, the respondent-husband was assaulted by the relatives of the appellant-wife. Eventually, the appellant-wife left the house of her husband on 15.12.2010 with her belongings, without any prior intimation to the respondent-husband. A *panchayati* was convened on 05.02.2011, where reconciliation efforts failed. The respondent-husband initially filed a divorce petition vide Matrimonial Case No. 185 of 2011, which was dismissed as premature on 11.03.2013. The Miscellaneous Appeal No. 275 of 2013, against the said order, was disposed of as withdrawn on 19.12.2013 by this Court with observation that if a fresh suit is filed, the



Family Court, Muzaffarpur shall decide such suit on merits after hearing the parties in accordance with law. Meanwhile, the appellant-wife filed dowry torture case under Sections 498A, 494, 323, 379/34 of the Indian Penal Code, 1860 and Sections 3 and 4 of the Dowry Prohibition Act, 1961 vide Kazimohammadpur P.S. Case No. 174 of 2011 against the respondent-husband and his family members causing immense mental trauma to the respondent-husband. Due to torture by the appellant-wife, the mother of the respondent-husband died on 07.06.2013 by heart attack and despite having knowledge of the same, the appellant-wife did not participate in her *shradha-karma*. The elder brother of respondent-husband also suffered paralysis due to the cruelty committed by the appellant-wife. The respondent-husband sought decree of divorce from the learned Family Court vide Matrimonial Case No. 14 of 2014. No child was born out of their wedlock.

4. The appellant-wife appeared and filed written statement on 14.01.2015 wherein she denied all allegations of cruelty by her and claimed that she always fulfilled her marital obligations, while the respondent-husband behaved with cruelty and sought divorce to facilitate his remarriage. It is stated that prior to their marriage, the respondent-husband compelled her



father to execute a sale deed in his favour. As such, the father of the appellant-wife, namely, Shashi Kumar Sinha executed registered sale deed on 12.03.2010 before their marriage in the name of the appellant-wife and respondent-husband. After solemnization of their marriage on 06.06.2010, the respondent-husband and his family members subjected her to cruelty by different ways for more dowry. Ultimately, she lodged the dowry torture case. It is further stated that the respondent-husband was having an illicit relationship with one Rajani Kumari, whom he falsely projected as a relative. Also, she denied allegation with respect to presence of Prashant Kumar in her bedroom in absence of the respondent-husband on 10.09.2010. Moreover, she stated that she never left her matrimonial house on 15.12.2010, rather it was the respondent-husband who ousted her from the matrimonial home on 06.03.2011 and falsely alleged her departure. Despite suffering mental and physical abuse, she asserted her willingness to continue her conjugal relationship and opposed the divorce petition as false, fabricated and motivated by greed.

5. On the basis of pleading and submissions advanced on behalf of the parties, the learned Family Court framed following issues:-



- (i) *Is the suit as framed maintainable?*
- (ii) *Has the petitioner got cause of action to file the case?*
- (iii) *Whether O.P. treated cruelty with petitioner?*
- (iv) *Whether O.P. deserted the petitioner without any just and reasonable cause?*
- (v) *Whether petitioner is entitled to get decree of divorce as prayed for ?*

6. On behalf of respondent-husband four witnesses including himself were examined in support of his case. A.W.-1 Sanjay Kumar who is co-tenant, deposed that appellant-wife used to frequently misbehave with the respondent-husband and often pressurize him to live at her parental home. She left her matrimonial house without consent of her husband and there were no marital relationship between both the parties for over four years. Also, the criminal case filed by the appellant-wife was false and intended to harass. A.W. -2, Manoj Kumar supported the case of the respondent-husband deposing that the appellant-wife refused to return even after *panchayati* dated 05.02.2011. A.W-3, Satish Kumar, who is the respondent himself, deposed that the marriage was solemnized with the appellant-wife on 06.06.2010, and at the time of marriage, she was employed as a Block Teacher. He further stated that the appellant-wife did not behave properly with his mother and other family members after the marriage, while residing at her matrimonial home. Moreover, it was stated that the appellant-



wife was reluctant to engage in physical cohabitation with him, which caused mental cruelty. After she went to her *naihar*, the appellant-wife was not willing to return to her matrimonial home. He further stated that he took his wife to his *Mama's* house, where she had an altercation with his maternal aunt *Mami*. Thereafter, he rented a house in Mohalla Mishra Tola, but she was not willing to live there and pressurized him to reside at her *naihar* in Khabra. When he refused to live at his *sasural*, the appellant-wife became annoyed. Furthermore, he deposed that the appellant-wife had a special relationship with her brother-in-law, Prashant Kumar. He used to visit their residence frequently, and in the absence of the respondent-husband, she would return late at night. Upon questioning, she would abuse him and create ugly scenes, which amounted to cruelty. It was further stated that the appellant-wife never took interest in household affairs and would sometimes cook meals only for herself. She often refrained from having meals with the respondent-husband, despite his continuous efforts to adjust with her, but she did not change her rude behaviour. It is further deposed that on 10.09.2010, he found the appellant-wife with her brother-in-law inside his house under suspicious circumstances, and when he objected, the appellant-wife reacted abusively. Despite



intervention by neighbors, her behavior remained aggressive. On the eve of Vishwakarma Puja in 2010, appellant-wife's father and relatives entered the house, used filthy language, and the appellant-wife supported them instead of restraining their conduct. Thereafter, she stopped communicating with the petitioner, began living independently, and finally left the matrimonial home on 15.12.2010 without his consent. Efforts at reconciliation through a *panchayati* failed, as the appellant-wife refused to return and even threatened to ruin the respondent-husband life. The witness stated that due to her continued cruel behavior, his mental peace was severely disturbed, affecting his family members as well. The respondent-husband further stated that ill behavior and cruelty by appellant-wife, including filing of a false criminal case, which caused him mental agony and led to filing the present divorce suit. In cross-examination, he admitted receiving a sale deed from his father-in-law but denied non-payment of consideration. He also admitted that an earlier divorce case was dismissed and the present one is filed as per court permission. Allegations of second marriage or illicit relationship were categorically denied, and there was no effective cross-examination on the alleged cruelty by the appellant-wife, and A.W.- 4, Satyendra Kumar Rakesh, also



supported the case of the respondent-husband and deposed that there is no chance of resumption of their matrimonial life. All the witnesses affirmed that both the parties are issueless.

7. Moreover, respondent-husband has submitted six documents for consideration, viz., photocopy of the order of the Hon'ble Court dated 19.12.2013 passed in Misc. Appeal 275 of 2013 filed by applicant Satish Kumar against the order dated 11.03.2013 passed by the Family Court, Muzaffarpur in Matrimonial Case no.185 of 2011, photocopy of the sale deed dated 12.03.2010 executed by Shashi Kumar Sinha in favour of Satish Kumar and Anisha Sinha, R.T.I. Report given by Principal, Rajkiya Madhya Vidhalaya, Khabra, Muzaffarpur on 09.04.2012 regarding working of Anisha Sinha in census work from 17.05.2010 to 28.06.2010, photocopy of the order of the Hon'ble Court dated 28.06.2017 passed in Cri.Misc.No.54168 of 2013 preferred by Anamika Kumari @ Nisha Kumari, Sanjeev Kumar Mishra, Rupam Kumari @ Rajani Kumari against Anisha Sinha regarding the Complaint Case No.2957 of 2012 filed by Nisha Sinha in which quashing order is passed by the Hon'ble Court, photocopy of the order sheet of dated 15.06.2011 to 11.03.2013 of the Family Court, Muzaffarpur passed in Matrimonial Case No. 185 of 2011, and photocopy of the



registration of Vehicle No. BR-06T-9405 Alto LXI in the name of Satish Kumar.

8. On the other hand, appellant-wife examined altogether five witnesses including herself viz., O.P.W.-1 is Kapileshwar Prasad Singh, O.P.W. -2 is Ram Shankar Thakur, O.P.W.-3 is Anisha Sinha @ Anisha @ Anisha Kumari Sinha, the appellant-wife herself, O.P.W.- 4 is Anand Kishore Pandey, and O.P.W.-5 is Shashi Kumar Sinha, the father of the appellant-wife. Furthermore, three documentary evidence, viz., C.C. of order-sheet dated 04.08.2012 in the Court of CJM, Muzaffarpur passed in Kazimohammadpur P.S. Case No. 174/2011 is marked as Ext.A, F.I.R. and Charge Sheet of Kazimohammadpur P.S. Case No.174 of 2011 is marked as Ext.A/1 and C.C. of sale deed dated 12.03.2010 executed by Shashi Kumar Singh in favour of Satish Kumar and Anisha Sinha is marked as Ext.B, were exhibited on behalf of the appellant-wife. She has also submitted C.C. of order dated 11.03.2013 of the Family Court, Muzaffarpur passed in Matrimonial case 185/2011 filed by Satish Kumar against Anisha Sinha for consideration.

9. Opposite party no.3-Anisha Sinha, the appellant-wife in her deposition deposed that she was subjected to torture by various means in her matrimonial house and she had seen the



respondent-husband in objectionable position with one Rajni Kumari. When her husband and his family members did not change their attitude, she filed F.I.R. against them for dowry torture. She further stated that there was no physical relationship with her husband who was non-cooperative. She denied the allegations of torture by her and also denied close relationship with her brother-in-law. She denied that any Panchayati was held on 05.02.2011. In her cross-examination she admitted that she never filed any case for restitution of conjugal rights. O.P. No.5, Shashi Kumar Sinha, who is father of the appellant-wife supported the case of appellant and deposed that the respondent-husband used to misbehave with the appellant-wife and the respondent-husband is a characterless person. O.P.W.-1 Kapileshwar Prasad Singh, O.P.W.2 Ram Shankar Thakur and O.P.W.-4 Anand Kishore Pandey also supported the version of appellant-wife that the respondent-husband had demanded Scorpio from the father of the appellant-wife at the time of marriage and had also taken a land from the father of the appellant-wife vide registered sale deed dated 12.03.2010.

10. In view of facts and circumstances and materials available on record learned Family Court, Muzaffarpur held that both the parties, who are teachers, are



living separately since 15.12.2010 and there has been no cohabitation between them. Also, the appellant-wife had repeatedly accused the respondent-husband of being characterless without any substantive proof. Accordingly, the act of the wife amounts to cruelty. There is continuous separation for a long period which shows that their matrimonial bond is beyond repair. Their marriage has become fiction though supported by a legal tie. The respondent-husband proved his case of divorce on the ground of cruelty. The marriage between the parties is accordingly dissolved and the suit has been decreed vide impugned judgment/order dated 22.11.2018 and decree dated 06.12.2018.

11. Learned Counsel for the appellant-wife submitted that dowry was demanded by the respondent-husband and his family members, consequently, imparting mental and physical torture which forced her to file dowry torture case against them. Learned Family Court has erred while appreciating the evidence to prove the allegation of cruelty against the appellant-wife. It is further submitted that the learned Family Court failed to consider the fact that the respondent-husband made false allegation of illicit relationship with her brother-in-law, which was not proved by the



respondent-husband through witnesses examined. The appellant-wife is ready to live with the respondent-husband as she feels that marriage is a pious relationship between husband and wife, and inspite of her efforts the respondent-husband has filed divorce suit with ulterior motive. Moreover, it is submitted that the respondent-husband has solemnized second marriage during the pendency of the instant appeal. Therefore, the impugned judgment is liable to be set-aside.

12. Per contra, learned counsel on behalf of the respondent-husband submitted that learned Family Court has rightly decreed divorce on ground of cruelty and hence no interference is required by this Hon'ble Court. It is submitted that both the parties are living separately since last 15 years and she has been hardly interested to lead their conjugal relationship. Since inception of their marriage, the appellant-wife displayed a persistent unwillingness to consummate the marriage or to fulfill the essential obligations arising therefrom. It is further submitted that the appellant-wife wants to vex the respondent-husband as she has persistently alleged him of being characterless causing immense mental cruelty. Moreover, it is submitted that he has solemnized his second marriage after the statutory period of limitation for filing the instant appeal.



13. In view of the rival contentions, the point for determination in this appeal is “*whether the learned Family Court has rightly decreed divorce to the respondent-husband on ground of cruelty by the appellant-wife?*”

14. It appears from perusal of the record that the relationship between the parties has been severely strained, marked by persistent discord. The appellant-wife cohabited with the respondent-husband only for few months i.e. from 06.06.2010 to 15.12.2010, during which the relationship remained devoid of cordiality and harmony, lacking any meaningful marital companionship, which continued to deteriorate. Notably, the parties shared a very brief period of cohabitation during the subsistence of their marriage. No child was born out of their wedlock and as of now they are living separately since last 15 years. Both sides have made serious allegations against each other and have been entangled in ongoing litigation since their separation. There is no indication of any willingness from either party to resume cohabitation or restore the matrimonial bond, as they have remained apart since 15.12.2010. The prolonged separation, the serious nature of allegations, continued legal battles, and mutual lack of interest in reconciliation clearly establish that the marriage has



irretrievably broken down.

15. The settled position of mental cruelty to constitute a ground for dissolution of marriage must be of such a nature that it becomes impossible for the aggrieved spouse to continue in the matrimonial relationship. In context thereto, in the case of **Joydeep Majumdar v. Bharti Jaiswal Majumdar** reported in **(2021) 3 SCC 742** the Hon'ble Supreme Court has observed that:

*“10. For considering dissolution of marriage at the instance of a spouse who allege mental cruelty, the result of such mental cruelty must be such that it is not possible to continue with the matrimonial relationship. In other words, the wronged party cannot be expected to condone such conduct and continue to live with his/her spouse. The degree of tolerance will vary from one couple to another and the Court will have to bear in mind the background, the level of education and also the status of the parties, in order to determine whether the cruelty alleged is sufficient to justify dissolution of marriage, at the instance of the wronged party. In *Samar Ghosh v. Jaya Ghosh*, this Court gave illustrative cases where inference of mental cruelty could be drawn even while emphasizing that no uniform standard can be laid down and each case will have to be decided on its own facts.”*

16. It is pertinent to note that where the parties have remained in continuous separation over a long period, it



can reasonably be inferred that the matrimonial relationship has broken down irretrievably. Though a legal tie may technically subsist, the essence of marriage i.e., companionship, mutual respect, and emotional connection becomes illusory. In such circumstances, persisting with the legal bond may not uphold the sanctity of marriage but rather disregard the lived realities and emotional well-being of the individuals involved. Therefore, prolonging such relationship may, in fact, amount to cruelty.

17. The Apex Court in the case of *Rajib Kumar Roy v. Sushmita Saha* reported in (2023) 17 SCC 441
observed that:

“8. Continued bitterness, dead emotions and long separation, in the given facts and circumstances of a case can be construed as a case of irretrievable breakdown of marriage which is also a facet of cruelty.....”

18. On point of cruelty, the Hon’ble Supreme Court in *Rakesh Raman v. Kavita* reported in (2023) 17 SCC 433
observed in paragraph no.26 that :

*“26. This Court in *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511 though did ultimately give certain illustrations of mental cruelty. Some of these are 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.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(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."

(emphasis supplied)

19. In the present case, the parties shared only a brief period of cohabitation during the subsistence of their marriage. No child was born out of the wedlock, and they have been living separately for the past 15 years. The prolonged



separation indicates that the very foundation of the marriage has eroded, rendering the matrimonial bond irretrievably broken. Additionally, the mutual allegations and counter-allegations concerning each other's character further establish that the relationship has been marred by mental cruelty, leaving no scope for reconciliation.

20. On proper consideration of cumulative facts and circumstances of this case, in our view, the learned Family Court has rightly decreed divorce in favour of the respondent-husband as the impugned judgment is based on carefully watching the demeanour of the parties and their respective witnesses and the ratio and spirit of the precedents set-forth. Consequently, the impugned judgment/order dated 22.11.2018 and decree dated 06.12.2018 passed by the learned Principal Judge, Family Court, Muzaffarpur in Matrimonial Case No. 14 of 2014 need no interference by this Court.

21. Section 25 of the Hindu Marriage Act, 1955 provides for the grant of permanent alimony at the time of passing a decree or any time thereafter. Its primary objective is to ensure the dependent spouse is not left without support after dissolution of marriage and to protect their interests. It is however, intended not to penalize the other spouse. Considering



the guidelines laid down by the Hon'ble Supreme Court in the case of **Rajnesh v. Neha** reported in **(2021) 2 SCC 324, Kiran Jyot Maini v. Anish Pramod Patel** reported in **2024 SCC Online SC 1724** and **Pravin Kumar Jain v. Anju Kain** reported in **2024 SCC OnLine SC 3678** to clarify the position of law with regard to determination of permanent alimony.

22. In this case, it is admitted facts that the marriage between the parties was solemnized on 06.06.2010 as per Hindu rites and ceremonies. Admittedly, both the parties are living separately for the past 15 years and prolonged separation indicates that the very foundation of the marriage has irretrievably broken down, and they are issueless. Both the parties are employed as teacher.

23. As per the affidavit of assets and liabilities filed in the light of the decision of the Hon'ble Supreme Court in case of **Rajnesh v Neha (supra)** it appears that the respondent-husband, aged 44 years, holds a post-graduate degree in commerce along with a B.Ed., and is employed as a *zila parishad* teacher earning a monthly salary of Rs. 46,256/- He also receives Rs. 14,500/- per month from other sources and Rs. 1,854/- as interest from a recurring deposit. He resides in his own house with his second wife and two sons, incurring



monthly household expenses of Rs. 25,000/- . His assets include a 1144 sq. ft. self-acquired property, a share in 4 *kattha* of ancestral land, and 4 decimals of jointly owned vacant land in Hajipur. He has liabilities including a housing loan of Rs. 27,60,000/- with an EMI of Rs. 24,296/-, an accommodation loan of Rs. 1,75,000/-, and monthly expenses of Rs. 10,565/- on premiums, deposits, and education. The appellant-wife, also aged 44, holds a Bachelor of Arts degree and is employed as a Block Teacher with a monthly income of Rs. 47,872/- . She is currently residing at her parental home and bears monthly expenses of Rs. 25,000/- . She owns 4 decimals of self-acquired land. However, as per the respondent-husband affidavit, she also holds a share in her ancestral house situated on 5 *kattha* of land and 22 *kattha* of ancestral agricultural land.

24. It appears from the order dated 19.11.2024 of this case that the respondent-husband proposed and expressed his willingness to give his share of one of the properties which stands in the joint name of the appellant-wife and the respondent-husband, which has a value of a sum of Rs.16-17 lakhs, as permanent alimony in the form of one-time settlement.

25. Admittedly, both the parties are employed as teacher having monthly salary of more than Rs.46,000/- and



both are financially not dependent on each other. They have no issue from their marriage tie. They lived together only for few months and are residing separately since 15.12.2010. In view whereof, the voluntary proposal of respondent-husband for relinquishment of his right in the joint purchased property in their name is just and fair.

26. In view thereof, considering the facts and circumstances of the case, this Court directs the respondent-husband to relinquish his right in the aforesaid joint property within four months from the date of this judgment

27. This Miscellaneous Appeal stands dismissed with aforesaid directions.

28. Pending I.A's., if any, stands disposed of.

(Sunil Dutta Mishra, J)

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CAV DATE	11.02.2025
Uploading Date	30.04.2025
Transmission Date	NA

