

First Appeal No. 2 of 2023

Against the judgment and decree dated 19.11.2022 (decree signed on 12.12.2022) passed by Shri Lolark Dubey, learned Principal Judge, Family Court, Gumla in Original Suit No. 75 of 2021

Sachin Singh son of Anirudh Singh, resident of Village Devi Nagar, Hesag, PO Hatia, PS Jagannathpur, District Ranchi

... .. Appellant

Versus

Rekha Kumari Singh wife of Sachin Singh, resident of Village Nawadih, PO Koleng, PS Palkot, District Gumla

... .. Respondent

For the Appellant : Mr. Gautam Kumar, Advocate
For the Respondent : Md. Kaiser Alam, Advocate

Present:

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE ARUN KUMAR RAI

C.A.V. on - 13.01.2025

Pronounced on - 03.11.2025

Per, R. Mukhopadhyay, J.

Heard Mr. Gautam Kumar, learned counsel for the appellant and Md. Kaiser Alam, learned counsel for the respondent.

2. This appeal is directed against the judgment and decree dated 19.11.2022 (decree signed on 12.12.2022) passed by Shri Lolark Dubey, learned Principal Judge, Family Court, Gumla in Original Suit No. 75 of 2021 whereby and whereunder the suit preferred by the respondent herein for dissolution of her marriage with the appellant herein has been allowed and the marriage between them has been dissolved with a further direction to the appellant to make payment of an amount of Rs. 6,00,000/- as one time alimony, Rs. 3,000/- within two months and to return the streedhan to the respondent.

3. For the sake of convenience both the parties are referred to in this judgment as per their status in the learned trial court.

4. The petitioner – wife had filed a suit for dissolution of her marriage with the respondent – husband (appellant herein) in which it has been stated that the marriage of the petitioner was solemnized with the respondent on 03.12.2017 as per Hindu rites and customs in Gumla and after marriage, the petitioner came to reside at her matrimonial house at village Devi Nagar, Hesag, PS Jagarnathpur District Ranchi. The respondent after marriage had been making demand of Rs. 7,00,000/-, though the father of the petitioner had spent an amount of Rs. 5,60,000/- along with a gold chain and a ring. The father of the petitioner had also spent a huge amount on other marriage expenses. The respondent had put pressure on the petitioner for a car for which an amount of Rs. 4,43,315/- was taken as a loan from Cholamandalam Insurance and Finance Company and the name of the petitioner figured in the agreement and the petitioner is regularly receiving notice for deposit of the loan amount which has created mental as well as financial pressure upon the petitioner. From 24.10.2018 onwards, there has been no relationship between the petitioner and the respondent. The petitioner despite the torture committed upon her by the respondent had managed to stay at her matrimonial house for 8 months and on 24.10.2018 she was ousted from her matrimonial house. It has been stated that on 15.07.2021, the respondent along with his friends had come to the parents' house of the petitioner and had assaulted and threatened her.

5. On being noticed, the respondent had appeared and filed his written statement in which it has been stated that after staying for a few days, the petitioner without informing anyone had left for her parental house and though the respondent used to go to his in-laws' place to bring back the petitioner, but he was humiliated and his in-laws have refused to send back the petitioner with him. It has been stated that the petitioner has an illicit affair with someone which is the reason for her not staying at her matrimonial house. The petitioner is in the habit of instituting false cases against the respondent and also used to torture him. In the meditation centre at Gumla, attempts were made for settlement, but the petitioner never appeared which indicates that the

petitioner was not inclined for compromise. The respondent has denied the allegations made by the petitioner in her petition. The respondent has expressed his desire to keep the petitioner with him. The petitioner works as a Munshi of a Contractor, but due to torture meted out to him, he has left his job and has gone into a depression.

6. Based on the pleadings of the parties, the followings issues have been framed for adjudication:

1. Is the divorce suit is maintainable in its present form?
2. Whether the petitioner has valid cause of action to bring a suit for dissolution of marriage with the respondent?
3. Whether there is no relationship between the petitioner and the respondent from 14.10.2018 uptill now?
4. Whether the respondent regularly assaulted the petitioner at his house at Devi Nagar, Hesag, Jagarnathpur, Ranchi and on 15.07.2021 the respondent and his friends came at the house of the petitioner and assaulted the petitioner?
5. Whether due to ill behaviour of the respondent and cruelty on the part of the family of the respondent, the petitioner was bound to leave the house of the respondent?
6. Whether the petitioner is entitled to a decree of divorce?
7. Whether the petitioner is entitled for permanent alimony as well as return of her streedhan from the respondent?
8. Whether the petitioner is entitled to any other relief/reliefs?

7. The petitioner has examined 4 witnesses on her behalf.

8. P.W. 1 – Sugandhi Devi is the mother of the petitioner who has stated that after marriage of her daughter, a demand of Rs. 7,00,000/- was made by the respondent despite cash, ornaments and other articles being given at the time of marriage. Since the demand could not be fulfilled, the petitioner was assaulted and ousted from her matrimonial house. Since the year 2018, there is no relationship between the petitioner and the respondent. She has stated that petitioner resides with her. The respondent used to come to her house and commit assault upon the petitioner and he also used to extend threats.

In cross-examination, she has deposed that a dowry related case was instituted in which a truce was arrived at by both the parties to stay together, but despite the same, the petitioner never went back to her matrimonial house. Thereafter also another dowry related case was instituted which is still pending. The petitioner has also filed a case for

maintenance which is also pending. There was a marriage negotiation between the petitioner and Tuntun Singh, who is a friend of her son-in-law, but no engagement was done. She has denied that the petitioner was having a love affair with Tuntun Singh. She has also denied of the petitioner having a love affair with Satish Sahu.

9. P.W. 2 – Manoj Rai is the cousin brother of the petitioner who has stated that on 24.10.2018, the respondent had assaulted and ousted the petitioner from her matrimonial house and when he and father of the petitioner had gone to the house of the respondent, the respondent had threatened the father of the petitioner and in their presence had assaulted the petitioner.

In cross-examination, he has submitted that he does not have any medical document in support of the treatment given to the petitioner on account of the torture committed upon her by the respondent. He does not have any knowledge that the petitioner does not want to reside with the respondent.

10. P.W. 3 – Dashrath Sahu is the uncle of the petitioner in village relation, who has stated about the demand of Rs. 1,00,000/- made by the respondent and on non-fulfillment, the petitioner was assaulted in front of her parents and threat was also extended of committing her murder. His home is adjacent to the house of the father of the petitioner.

In cross-examination, he has deposed that he has knowledge that the respondent had come to bring back the petitioner, but the petitioner did not go with him.

11. P.W. 4 – Rekha Kumari is the petitioner who has stated that her marriage with the respondent was solemnized on 03.12.2017. After a few days of marriage, a demand was made by the respondent of Rs. 7,00,000/- and she was subjected to torture on account of non-fulfillment of the said demand. Her father had already spent a huge amount to the respondent including gold ring and chain. The respondent has kept with him her ornaments and other articles given by her father at the time of marriage. When she was staying at her matrimonial house, the respondent pressurized her to sign on an agreement of Cholamandalam Finance Company for purchase of a car and for which she is regularly

receiving notices from the finance company for clearing the loan which has put her in a great mental stress. Whenever, the respondent came to her parents' place, she was assaulted in presence of her parents.

In cross-examination, she has stated that after marriage she has stayed at her matrimonial house for 8 months after which she returned back to her parents' house and had never gone back to her matrimonial house. She has knowledge that the respondent has filed a case before the Family Court, Ranchi for restitution of conjugal rights. It is incorrect to say that in Gumla Mahila Police Station, a compromise was effected pursuant to which she was asked to go back to her matrimonial house. It is incorrect that prior to her marriage, negotiations for marriage were undertaken with Tuntun Singh. She has denied that after her marriage with the respondent, she had conversations over phone with Tuntun Singh. Satish Sahu is her friend with whom she consults about her studies and work. She has denied that she has a love affair with Satish Sahu. She has accepted the fact that the respondent used to object to her conversation with Satish Sahu. The car financed by Cholamandalam Finance Company is in the name of the respondent.

12. The respondent has examined 2 witnesses including himself.

13. R.W. 1 - Sachin Singh is the respondent who has stated about solemnization of his marriage with the petitioner on 03.12.2017 and after marriage, the petitioner had stayed for a few days at her matrimonial house. The petitioner has a love affair with Satish Sahu and both used to go around together and regularly converse over mobile. The petitioner has recently gone to Patna with Tuntun Singh and she was going around with Tuntun. The petitioner wanted to solemnize marriage with Tuntun Singh, but on account of the pressure on behalf of her family members, she solemnized marriage with him. He has filed a suit for restitution of conjugal rights before the Family Court, Ranchi. The petitioner has illicit relationship with several persons and she regularly converses with them over mobile.

In cross-examination, he has stated that the petitioner has stayed at her matrimonial house for 7 months. Despite the illicit relationship of the petitioner with Tuntun Singh and Satish Sahu, he still wants to keep her.

14. R.W. 2 – Anirudh Singh is the father of the respondent who has stated that after marriage, the petitioner stayed for a few days at her matrimonial house and thereafter she has left for her parents' house. The respondent wanted to keep the petitioner with him.

In cross-examination, he has deposed that he bears the entire expenses of the family. He has denied that he, his wife and the respondent had ever tortured the petitioner.

15. It has been submitted by Mr. Gautam Kumar, learned counsel for the appellant (respondent in the suit) that the learned trial court has considered the grounds which are not germane for deciding the issue of cruelty. The so-called cruelty depicted by the respondent herein are simply the wear and tear of a marital life and is not to such an extent which would make it impossible for the respondent to stay with the appellant. Mr. Gautam Kumar has further submitted that the appellant is ready and willing to keep the respondent with him with full dignity and honour.

16. Mr. Md. Kaisar Alam, learned counsel for the respondent herein has submitted that reckless allegations have been made by the appellant touching upon the character of the respondent and the same amounts to cruelty which has been appropriately considered by the learned trial court.

17. We have heard the learned counsel for the respective parties and have also perused the trial court records.

18. 'Cruelty' has not been defined in the Hindu Marriage Act, 1955. Though the various judgments of the Hon'ble Supreme Court has given a broad parameter and if the allegations are perused and if the same are within the said precincts, cruelty would be proved.

19. In this context, we may refer to the case of "*Shobha Rani v. Madhukar Reddi*" reported in (1988) 1 SCC 105, wherein it has been held:

"4. Section 13(1)(i-a) uses the words "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one

which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted."

20. In the case of "**A. Jayachandra v. Aneel Kaur**" reported in (2005) 2 SCC 22, it has been observed as under:

"10. The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct

evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

11. The expression “cruelty” has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. (See *Shobha Rani v. Madhukar Reddi*⁵.)

12. To constitute cruelty, the conduct complained of should be “grave and weighty” so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than “ordinary wear and tear of married life”. The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and

insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party."

21. The suit for dissolution of marriage has been brought by the wife (respondent herein) and in her evidence as P.W. 4, she has given various instances of cruelty which have been committed by the appellant/husband. Demand of dowry, torture and ouster from matrimonial house are some of the instances strongly projected by the petitioner (wife). The appellant though has refuted such allegations, but has vilified the character of the respondent in his written statement as well as in his evidence as R.W. 1. The respondent is said to have an illicit relationship with Satish Sahu and Tuntun Singh as well as with several other persons, but nothing of substance has been brought on record to substantiate such allegations. Such reckless, wild and unverified allegations aimed at character assassination of the respondent would amount to an act of cruelty on the part of the appellant, and the learned trial court has considered such issues in its proper perspective. The appellant has failed to make any dent in the impugned judgment and the primary submission of the learned counsel for the appellant expressing his desire to keep the respondent with him with full honour and dignity would not suffice in strengthening the case of the appellant. This submission and the sustained feature of the evidence of R.W. 1 with respect to his inclination to keep the petitioner as his wife would run contrary to the unsubstantial allegations of the respondent of having illicit relationship with several persons. The learned trial court has properly dealt with all the issues including the issues of permanent alimony and having found no merit, this appeal is hereby dismissed.

22. Pending I.A., if any also stands closed.

(Rongon Mukhopadhyay, J.)

(Arun Kumar Rai, J.)