

First Appeal No. 270 of 2018

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[Against the judgment and decree dated 22.06.2018 passed by Sri Banshidhar Tiwari, learned Principal Judge Family Court, Palamau at Daltonganj in Matrimonial Suit No. 112 of 2014]

.....
Khirmani Devi **Appellant**

Versus

Ramesh Mehta **Respondent**

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P R E S E N T

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

HON'BLE MR. JUSTICE DEEPAK ROSHAN

.....

For the Appellant : Mr. Arun Kumar, Advocate

For the Respondent : Mr. Anil Kumar, Advocate

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Per. Rongon Mukhopadhyay, J.

14/04.10.2023 Heard Mr. Arun Kumar, learned counsel for the appellant and Mr. Anil Kumar, learned counsel appearing for the respondent.

2. This appeal is directed against the judgment and decree dated 22.06.2018 passed by Sri Banshidhar Tiwari, learned Principal Judge Family Court, Palamau at Daltonganj in Matrimonial Suit No. 112 of 2014, whereby and whereunder the suit preferred by the petitioner (respondent herein) u/s 13 (1) (ia) (ib) of the Hindu Marriage Act, 1955 has been allowed and the marriage between the petitioner and the opposite party (appellant herein) has been dissolved from the date of decree.

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

4. The petitioner (respondent herein) had preferred a suit u/s 13 (1) (ia) (ib) of the Hindu Marriage Act, 1955 against the opposite party (appellant herein) in which it has been stated that the marriage of the petitioner was solemnized with the opposite party in the year 1998. After the solemnization of the marriage the opposite party had treated the petitioner with brutality from 2001-2009. The opposite party also used to assault the petitioner and torture her parents. It has been stated that the opposite party came to her parental home in 2004 and instituted a complaint case u/s 498A of the IPC and Section 3/4 of the D.P. Act against the

petitioner and her parents. The matter however was compromised and she started living at her matrimonial house. The opposite party would intermittently flee away to her parents' house. It has been stated that she is staying at her parental home since the year 2009 and when the petitioner wanted to bring her back, he was subjected to abuse and the opposite party had refused to come back to her matrimonial house. The opposite party had deserted the petitioner for more than four years.

5. The opposite party on being noticed had appeared and filed her written statement, in which, she has denied the allegations leveled against her and has further stated that there was a demand of dowry and she was apprehending a threat to her life which resulted in her lodging Complaint Case No. 471/2004 u/s 498A of the IPC and other offences. The petitioner entered into a compromise but had never adhered to the terms and conditions of the compromise and he had once again resorted to his earlier cruel behavior against her. She has stated that there was no cruelty meted out to the petitioner from her side but the reverse was true. The petitioner is still retaining the ornaments gifted in the marriage. She has also stated that she was forcibly ousted from her matrimonial house by the petitioner and no amount of maintenance was extended to her.

6. Based on the pleadings of the parties the following issues were framed:

- (I)** Is the matrimonial suit, as framed and filed maintainable ?
- (II)** Is the petitioner has valid cause of action for the suit ?
- (III)** Is the petitioner entitled for decree of divorce on the ground of cruelty and desertion ?
- (IV)** To what other relief or reliefs, the petitioner is entitled to ?

7. In support of his case the petitioner has examined four witnesses.

8. P.W.1 (Etwari Devi) is the mother of the petitioner who has stated that she got the marriage of her son solemnized with Khirmani Devi about 19 years back. No children were born

out of the said wedlock. Both the parties stayed together for 9-10 years. For the last 7-8 years the opposite party is residing at her parents' house. She has stated that the opposite party never used to respect anyone in her matrimonial house and used to frequently flee away to her parents' house. She used to abuse her in-laws and sometimes resorted to assault. On a few occasions, she had assaulted the petitioner. The petitioner had thrice gone to the place of his in-laws to bring back the opposite party but she refused. She has also stated that her son was not properly treated at her in-law's place.

In cross-examination, she has deposed that her daughter-in-law had stayed with her for 10-11 years. She had never made any complaints anywhere regarding the cruel behavior of her daughter-in-law. When in spite of every effort the opposite party did not come back, she had solemnized the second marriage of her son in the year 2006 and out of the said wedlock children have also been born.

9. P.W.2 (Suresh Mahto) is the uncle in relation to the petitioner who has stated that the marriage between the parties was solemnized in the year 1996. For the last 10 years the opposite party is staying at her parental home. The opposite party used to quarrel and frequently used to go to her parents' house. She also used to slap her husband. He had on several occasions seen the opposite party assaulting her husband. She also used to assault her parents-in-law.

In cross-examination, he has deposed that he does not know as to how many cases are going on between the petitioner and the opposite party. He does not remember the dates on which Panchayati was convened three times. He has stated that the petitioner has not solemnized a second marriage.

10. P.W.3 (Jhubli Kuar) is the neighbor of the petitioner who has stated about the marriage between the parties and the misbehavior of the opposite party. She had at least twice seen the assault committed by the opposite party upon her husband and parents-in-law. She has stated that opposite party is staying at her parents' house for the last ten years.

In cross-examination, she has deposed that the petitioner has not solemnized a second marriage. The opposite party was seen to have committed the assault but she does not remember the date(s) of such incident. There is a litigation going on between the parties from before.

11. P.W.4 (Ramesh Mehta) is the petitioner who has stated that his marriage was solemnized with the opposite party in the year 1998. She had stayed at her matrimonial house for 8-9 years. She used to misbehave and used abusive language against her in-laws. A dowry related case was instituted by the opposite party which had ended in a compromise. The opposite party is residing at her parents' house for the last 8-9 years and he had gone to take her bedai 3-4 times but she had refused to return to her matrimonial house.

In cross-examination, he has deposed that after a compromise was effected in the dowry related case the opposite party was brought back to her matrimonial house where she stayed for only eight days. In order to bring her back Panchayatis were also convened but she refused to return back to her matrimonial house. He has stated that he has not solemnized a second marriage.

12. The opposite party has also examined four witnesses in support of her case.

13. O.P.W.1 (Jagdish Choudhary) is the neighbor of the opposite party who has admitted her marriage with the petitioner. After marriage the opposite party had gone to her matrimonial house. He has stated that there was no complaint from the in-laws of the opposite party that her behavior was not proper. The opposite party had returned to her parents' place from her matrimonial house and primary reason is that according to her she was being assaulted and ousted from her matrimonial house. The opposite party has also instituted a case in relation to the assault suffered by her. The petitioner was convicted in the said case. The matter was finally compromised and the petitioner had taken back the opposite party to her matrimonial house. However, the opposite party could not stay for long in her matrimonial house as the

petitioner had once again assaulted her and ousted her from her matrimonial house. The petitioner thereafter never come to take back the opposite party; the reason being the second marriage solemnized by the petitioner. He has stated that the petitioner had himself disclosed about his second marriage and the birth of children out of the said wedlock.

In cross-examination, he has deposed that he does not have any knowledge as to how the opposite party behaved with her in-laws at her matrimonial house. The petitioner had disclosed to him that the petitioner wanted to get rid of the opposite party from his life. He has stated that the petitioner was sentenced for 20 years.

14. O.P.W.2 (Gorakhnath Mehta) has stated that the main reason for filing this case is the desire of the petitioner to get rid of the opposite party as he had solemnized a second marriage. He has stated that the opposite party was assaulted and ousted from her matrimonial house. The petitioner had never come to the parents' house of the opposite party to take her back. He has stated that there was a case between the opposite party and the petitioner in which the petitioner had taken back the opposite party but later on he had ousted her.

In cross-examination, he has deposed that he is the younger brother of the opposite party. The opposite party had stayed at her matrimonial house for 15-16 years. The petitioner did not want to keep his wife due to which the opposite party would frequently come back to her parents' house.

15. O.P.W.3 (Shashi Bhushan Mehta) is the brother of the opposite party who has stated that the opposite party is staying at her parental home for the last four years. The petitioner had never come to take back his wife. The petitioner did not behave properly with the opposite party and he did not keep the opposite party at Daltonganj as he was himself staying with his second wife at Daltonganj. It was the petitioner who had disclosed to him about the solemnization of his second marriage. The opposite party had filed a case against the petitioner and her in-laws in which the matter was compromised pursuant to which the

bedai was done. However, the petitioner did not keep the opposite party with him but kept her in a nearby village.

In cross-examination, he has deposed that the petitioner had solemnized a second marriage and three children have been born out of the said wedlock.

16. O.P.W.4 (Khirmani Devi) is the opposite party who has stated about her marriage solemnized with the petitioner 20 years back. She was subjected to torture at her matrimonial house and in spite of Panchayati having been held several times the petitioner did not obey the dictates of the Panchayat. She was assaulted and ousted from her matrimonial house on account of which she had filed a case at Daltonganj. The petitioner was convicted. The petitioner prayed forgiveness and assured that she will be kept well. On such assurances she was taken to her matrimonial house. She has stated that no compromise was arrived at and she had gone to her matrimonial house as she was helpless. After she was taken back, by the petitioner, she stayed at her matrimonial house for two years in spite of the torture meted out to her. She has stated that she is staying at her parents' house for three years but the petitioner neither pays maintenance nor visits her. The petitioner stays at Daltonganj with his second wife Sushila Devi and out of the said marriage he has three children.

In cross-examination, she has denied that she was not tortured and ousted by the petitioner from her matrimonial house. She had earlier filed a case for maintenance as well as a dowry related case but the petitioner forced her to enter into a compromise and due to the same her case was dismissed. She had seen the second marriage of the petitioner. In her twenty years of marital life, she had stayed with the petitioner for ten years. She has stated that she likes her husband and her husband never had any complaints against her.

17. It has been submitted by Mr. Arun Kumar, learned counsel for the appellant that there is no finding arrived at by the learned court below that the petitioner (respondent herein) was subjected to cruelty and the opposite party had deserted her. Only on the basis of the evidence of the opposite party in Complaint

Case No. 471/2004 the marriage has been dissolved without taking into consideration the reason for such evidence. It has been submitted that no documents were exhibited by either of the sides but in spite of the same reliance has been placed by the learned court below in the judgment passed in Complaint Case No. 471/2004. According to Mr. Arun Kumar it was the petitioner who had committed cruelty upon the opposite party and had deserted her on account of his solemnizing marriage with another women but these aspects were never appreciated by the learned court below.

18. Mr. Anil Kumar, learned counsel appearing for the petitioner (respondent herein) has defended the impugned judgment and has submitted that making an allegation of torture and demand of dowry by the petitioner and subsequently retracting from the same during her evidence in the complaint petition would make such allegation false and as a natural corollary it would tantamount to mental cruelty which according to him has been aptly dealt with by the learned court below.

19. We have heard the learned counsel for the respective parties and have also perused the lower court records.

20. Issue no. III is the predominant issue and the part issue of cruelty has been decided in favour of the petitioner though there is no finding with respect to desertion. Both the petitioner and the opposite party had adduced oral evidence but no documentary evidence has been exhibited by them.

21. The marriage of the parties are admitted and so is the complaint case instituted by the opposite party against the petitioner. It is the case of the petitioner that the opposite party after her marriage used to misbehave with her in-laws and sometimes would also resort to assault. She also used to frequently leave her matrimonial house and stay at her parents' house. This according to the petitioner was without any constraints from the side of the petitioner.

22. The opposite party and her witnesses have primarily focused on the torture meted out to her as well as the demand of dowry for which a complaint case was instituted by the

opposite party. It is also the case of the opposite party that the petitioner had solemnized a second marriage.

23. The solemnization of the second marriage of the petitioner appears also to be an admitted fact as P.W.1 the mother of the petitioner has also accepted such marriage in the year 2006 and the birth of children through that marriage. The witnesses of the opposite party including the opposite party herself have categorically supported the factum of second marriage of the petitioner and which finds support from none other than the mother of the petitioner herself. So far as the cruelty and desertion are concerned, both the parties seem to have a diametrically opposite stand and it was incumbent therefore upon the learned court below to appreciate the evidence and come to a definite finding instead of adopting a shortcut method which is not validated by effective reasonings. Why we say so is gathered from the finding reached by the learned court below which is quoted hereinunder for the sake of convenience.

“14. Upon going through the material available on record and the evidence adduced on behalf of petitioner, it appears that petitioner Ramesh Mehta and Khirmani Devi is legally wedded husband and wife and O.P. is living separately from the petitioner for a long period and has deserted him without any reason and O.P. does not want to live with petitioner. It further reveals from perusal of the judgment passed in complaint case no. 471/2004 that O.P. Khirmani Devi has filed a complaint case no. 471/2004 u/s 498A IPC and $\frac{3}{4}$ D.P.Act against the petitioner and his family but during the trial she has not supported her case in her evidence and has taken U turn by saying that neither the accused has demanded any dowry from her nor assaulted her and demolished her case. It seems that she has filed a false case against her husband and in laws and later on compromised the same. The false implication of her husband and in-laws also amounts to cruelty against them. Thus, I think it proper to dissolve the marriage solemnized between the parties as the O.P. has deserted the petitioner for more than two years, he is entitled to get divorce from the O.P. having valid cause of action and the suit is maintainable in the eyes of law, Accordingly, Issue No. I, II, III and IV are decided in favour of petitioner.”

24. As we have noted above, none of the parties have exhibited any documents. The learned court below, though seems to have considered the judgment passed in Complaint Case no. 471/2004 and especially the evidence of the opposite party wherein she has not supported the allegations leveled by her in the complaint petition. Even if we assume that such document was on record even then the evidence of the opposite party would be inadequate to prove cruelty as the rationale behind such evidence has been explained by the opposite party in her statement as O.P.W.4. Her not supporting the allegation of torture and demand of dowry stems from the conduct and repentance of the petitioner as stated by her as O.P.W.4. It is no doubt true that falsity of allegations made by the complainant decided on merit would definitely attract cruelty and could warrant in dissolution of marriage but the circumstances put forward by O.P.W.4 clearly demonstrates subjugation on the part of the O.P.W.4 to save her marital life. The learned court below has not delineated any other circumstances constituting mental cruelty.

25. So far as the issue of desertion is concerned, the said issue was not gone into by the learned court below. As would be apparent from the evidence of the witnesses the petitioner had solemnized a second marriage which fact has been supported even by the mother of the petitioner and this was a sufficient cause apart from other reasons not to return back to her matrimonial house. As per the petitioner (P.W.4) after the complaint case was compromised, she was taken back to her matrimonial house where she stayed for a few days though as per the opposite party she stayed for two years. The evidence of the opposite party further reveals that she was kept by the petitioner at a different place other than the place where the petitioner was staying. This also enhances the contention about the petitioner having solemnized a second marriage. It would thus appear that the opposite party did not leave her matrimonial house on her own volition and her evidence indicates her willingness to resume her conjugal life with the petitioner.

26. In view of the findings noted above, issue no. III is decided against the petitioner (respondent herein) and in favour of the opposite party (appellant herein). The other issues are decided consequently also against the petitioner. The learned court below has committed an illegality in allowing the suit and dissolving the marriage between the parties. We therefore, based on the reasonings recorded above set aside the judgment and decree dated 22.06.2018 passed by Sri Banshidhar Tiwari, learned Principal Judge Family Court, Palamau at Daltonganj in Matrimonial Suit No. 112 of 2014.

27. This appeal is allowed.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)

High Court of Jharkhand at Ranchi

Dated, the 4th day of October, 2023.

Alok/NAFR