

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.91 of 2021**

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Prity Raj Wife of Shishir Kumar, D/o Malanand Mehta Resident of Bardhman  
Hata Ward No.14, Near Arjun Bhawan Jail Chowk, P.S.-K. Hat, District-  
Purnea.

... .. Appellant/s

Versus

Shishir Kumar Son of Surendra Prasad Singh Resident of Gokul Babu Hata  
Khiru Chowk, Ward No.22, P.S.-K.hat, District-Purnea.

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr.Karandeep Kumar, Advocate  
For the Respondent/s : Mr.Praveen Kumar Agrawal, Advocate

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**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**  
**And**  
**HONOURABLE MR. JUSTICE S. B. PD. SINGH**  
**CAV JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)**

**Date : 13-08-2025**

Heard the parties.

2. The present appeal has been filed under  
Section 19(1)(1-a) of the Hindu Marriage Act, 1984  
impugning the judgment and decree dated 21.08.2020  
passed by learned Principal Judge, Family Court, Purnea in  
Matrimonial (Divorce) Case No. 203 of 2018, whereby the  
petition, filed by the appellant-wife to nullify the marriage  
with the respondent-husband solemnized on 06.02.2016,



has been dismissed.

3. The case of the appellant-wife as per the petition filed before the Family Court is that the marriage of the appellant with the respondent was solemnized on 06.02.2016 as per Hindu rites and rituals and at the time of marriage, her parents had given a gift to the respondent worth Rs. 20 lakhs. After marriage, the appellant started leading matrimonial life with the respondent, however, after some times, her in-laws family members started torturing and assaulting the appellant to meet their illegal demand of Rs. 20 lakhs from her father for establishing a medical clinic at Purnea City. Ultimately, father of the appellant took loan of Rs. 5 lakhs and gave it to the respondent but again they started pressuring for another Rs. 15 lakhs. It is alleged that on 10.09.2017, the respondent made an attempt to kill the appellant by burning and opened gas cylinder in the kitchen but somehow she saved her life and since then, she is residing at her parents' house. The appellant has lodged Purnea (Mahila) P.S. Case No. 49 of 2017 on 23.09.2017 against the respondent and other in-laws family members under Sections 498(A), 120(B), 307,



511, 34 of the Indian Penal Code and Section 3/ 4 of the Dowry Prohibition Act. The respondent, in order to save his skin has filed Matrimonial Suit No. 190 of 2017 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. The respondent has also filed Maintenance Case No. 17 of 2018 on 30.01.2018 against the respondent in which the respondent was directed to make payment of Rs. 15,000/- per month as maintenance to the appellant. The appellant has made all her efforts to reconcile the issue and lead a conjugal live with the respondent but all her efforts went in vein since respondent was not interested to continue matrimonial relationship with the appellant. Hence, the appellant has filed the divorce petition for dissolution of marriage.

4. After filing of the present suit, summons/notices were issued by the Court to the respondent-husband. He appeared and filed his written statement. The respondent has stated in his written statement that all the allegations levelled against the appellant is false and concocted. The respondent has never demanded Rs. 20 lakhs for establishment of his clinic as



before marriage with the appellant, he had established his clinic. The respondent has made every efforts to bring back the appellant into her matrimonial fold but it was the appellant who was not interested to live with the respondent. Ultimately, the respondent has filed Matrimonial Suit No. 190 of 2017 for restitution of conjugal rights. The appellant has been living at her parents house since 10.09.2017 without any reason. The allegation of the appellant that an attempt was made to set her on fire by opening gas cylinder has not been proved.

5. In order to prove her case, the appellant has produced six witnesses namely P.W. 1 Priti Raj (appellant), P.W. 2 Malanand Mahto (father of appellant), P.W. 3 Anil Kumar Singh, P.W. 4 Raj Kumar Shrivastava, P.W. 5 Anokhe Lal and P.W. 6 Bindeshwari Mahto.

6. The respondent has also produced three witnesses in order to falsify the case of the appellant which are D.W. 1 Shishir Kumar (respondent), D.W. 2 Surendra Prasad Singh (father-in-law of the appellant) and D.W. 3 Shanti Devi (mother-in-law of the appellant).

7. In view of the pleadings and the arguments



advanced on behalf of the appellant and respondent as well as the evidences brought on record, the main points for determination in this appeal are as follows:-

*(i) Whether the appellant is entitled to the relief sought for in her appeal.*

*(ii) Whether the impugned judgment of Principal Judge, Family Court, Patna is just, proper and sustainable in the eyes of law.*

8. Both the above points are taken together for discussion on the basis of facts and evidences adduced on behalf of both the parties and the provision of law applicable in this case.

9. It is submitted by learned counsel for the appellant-wife that learned Court below has passed the order in a mechanical manner without appreciating the evidences placed on record before it. Learned Court below has failed to appreciate that an attempt was made by the respondent's side to kill the appellant by setting her on fire. The appellant has been residing at her parents' house since 10.09.2017 but the respondent has not made any effort to take her to her matrimonial home. Learned Family Court



has also failed to appreciate that in the criminal case filed against the respondent and other in-laws family members, the respondent was charge-sheeted for the offences punishable under Section 307 I.P.C which proves her claim of cruelty at the hands of the respondent. The learned court below has failed to consider that the respondent-husband is mentally disturbed person and it reflects from his behaviour and that might be a reason why marriage could not be consummated due to the inability of the respondent.

10. Before coming to the conclusion, we need to analyze whether the divorce petition filed by the appellant on the ground of cruelty meets the requirements as envisaged by Hon'ble Apex Court in its decision?"

11. The concept of cruelty within the meaning of Section 13 (1)(i-a) of the Hindu Marriage Act has been explained by the Hon'ble Supreme Court in case of **"Joydeep Majumdar v. Bharti Jaiswal Majumdar"**, **(2021) 2 RCR (Civil) 289**, by observing as under: -

*"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..."*

12. In "**Samar Ghosh v. Jaya Ghosh**", (2007) 4 **SCC 511**, Hon'ble Supreme 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.

*"85. 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.*

*(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.*

*(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.*

*(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.*





*(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.*

*(vi) 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.*

*(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.*

*(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.*

*(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.*



*(x) The married life should be reviewed as a whole and a few Isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.*

*(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to 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..."*

13. On the envil of the aforesaid principle of Hon'ble Apex Court when we examine the present case in the light of the evidences adduced on behalf of the parties, it becomes clear that there is long separation between the parties and the matrimonial bond is virtually beyond repair and in this circumstance, if divorce is not granted, it will not serve the sanctity of marriage.

14. From perusal of the Trial Court records, it transpires that so many cases were going on between the parties. It also appears that Purnea (Mahila) P.S. Case No. 49 of 2017 was filed by the appellant-wife under Sections



498(A), 120, 307, 511, 34 of the Indian Penal Code in which charge-sheet has been submitted under Section 498(A) I.P.C. It also appears that Matrimonial Suit No. 190 of 2017 was filed by the husband for restitution of conjugal rights in which decree has been passed but in spite of that the appellant-wife did not join her husband. This is sufficient ground in itself for passing a decree for divorce under Sections 13 (1-A)(ii) of the Hindu Marriage Act.

15. It would be pertinent to reproduce the relevant portions of sections 9, 13, 13A and 14 of the Hindu Marriage Act, 1955, which are as follows:-

*"9. Restitution of Conjugal Rights - When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.*

*Explanation- where a question arises*



*whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.*

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

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*i) has, after the solemnisation of the marriage, had voluntarily sexual intercourse with any person other than his or her spouse: or (ia) has, after solemnisation of the marriage, treated the petitioner with cruelty; or (ib) has deserted the petitioner for a continuous period of not less than 2 years immediately preceding the presentation of the petition; or*

*(ii).....*

*Explanation- In this subsection, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the*



*consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and it's grammatical variations and cognate expressions shall be construed accordingly.*

*(1A) Either party to a marriage, whether solemnised before or after the commencement of this Act, may also present a petition for dissolution of the marriage by a decree of divorce on the ground-*

*(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or*

***(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.***

.....

*13A. Alternate relief in divorce proceedings - in any proceeding under*



*this Act, on a petition for dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the grounds mentioned in clauses (ii), (vi) and (vii) of subsection (1) of section 13, the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation.*

*14. No petition for divorce to be presented within one year of marriage -*

*(1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of marriage by a decree of divorce, unless at the date of presentation of the petition one year has elapsed since the date of the marriage.*

16. Further, it is clear that appellant-wife is not willing to join her husband as gets reflected from her evidence also in Matrimonial Suit No. 190 of 2017 filed for restitution of conjugal rights in which she has appeared as



O.P.W.1 and adduced her evidence in para 18 and in the present case also, she has been examined as P.W. 1 and adduced her evidence at para 49. So, in the backdrop of the aforesaid evidence of the appellant-wife as well as the criminal cases filed by the appellant-wife against her husband (respondent), it is clear that the matrimonial bond between both the parties has virtually been broken and it is beyond repair which comes under the purview of mental cruelty by the appellant towards her husband (respondent).

17. So, after perusing the case record and considering the submissions advanced on behalf of the learned counsel for the appellant and the respondent and after analyzing the evidence on record in entirety as adduced by the appellant-wife, this Court finds that learned Court below has not appreciated the evidences in its right perspective and dismissed the petition of the appellant-wife. The learned Court below ought to have considered this fact that divorce petition was filed by the appellant on the ground of cruelty which has been proved by the strength of oral as well as documentary evidence. The matrimonial relation between the appellant and respondent





has already been broken down and there is no hope of restoration of their conjugal life.

18. In view of forgoing discussion, we conclude that respondent-wife has made out a ground for grant of decree of dissolution of marriage on the ground as mentioned in Section 13(1-A)(ii) of the Hindu Marriage Act, 1955."

19. In that view of the matter, the impugned judgment dated 21.08.2020 passed by learned Principal Judge, Family Court, Purnea in Matrimonial Divorce Case No. 203 of 2018 is hereby set aside. The prayer of the appellant-wife for dissolution of marriage by a decree of divorce with the respondent under Section 13(1)(1-a) of the Hindu Marriage Act is allowed and the marriage of the appellant-wife with the respondent-husband is dissolved by a decree of divorce.

20. Registry is directed to prepare decree of divorce accordingly.

21. Before we part with this order, we need to have a say on the quantum of permanent alimony to the appellant.



22. Here it is useful to refer to Section 25 of the 1955 Act, which reads thus:

*"Section 25. Permanent alimony and maintenance: (1) Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the appellant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant (the conduct of the parties and other circumstances of the case), it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent."*

23. In the light of the language used in Section 25 of the 1955 Act, it is clear that claim under Section 25 of



the Act has to be made on an application furnishing all details regarding his or her own income or other property. Further an opportunity has to be given to the other side to put forth his/her defence.

24. The quantum of maintenance is subjective to each case and is dependent on various circumstances and factors. The Court needs to look into factors such as income of both the parties; conduct during the subsistence of marriage; their individual social and financial status; personal expenses of each of the parties; their individual capacities and duties to maintain their dependents; the quality of life enjoyed by the wife during the subsistence of the marriage; period of marriage and such other similar factors. The grant of permanent alimony should be directed after assessing the social, financial status of both the parties and also after appreciating the burden of liabilities incurred either on husband or wife in light of Hon'ble Supreme Court decision in the case of ***Rajnesh vs. Neha*** reported in ***(2021) 2 SCC 324*** read with ***Aditi @ Mithi vs. Jitesh Sharma*** reported in ***(2023) SCC OnLine SC 1451*** read with ***Pravin Kumar Jain vs. Anju Jain*** reported in



**2024 SCC OnLine SC 3678.**

25. Be that as it may, Section 25 of the 1955 Act itself envisages that the wife can initiate proceedings for grant of permanent alimony even after the decree of divorce. Therefore, the court does not become *functus officio* with the passing of the decree and continues to have jurisdiction to award alimony even thereafter.

26. Accordingly, we deem it fit and proper to remand the matter back to the learned Principal Judge, Family Court, Purnea only with regard to decide the quantum of permanent alimony. The Court below is expected to direct the appellant-wife and respondent-husband to file details regarding their assets and liabilities in light of Hon'ble Supreme Court decision in the case of ***Rajnesh vs. Neha*** reported in **(2021) 2 SCC 324** read with ***Aditi @ Mithi vs. Jitesh Sharma*** reported in **(2023) SCC OnLine SC 1451** read with ***Pravin Kumar Jain vs. Anju Jain*** reported in **2024 SCC OnLine SC 3678** and after analyzing their assets and liabilities, pass appropriate order with regard to the permanent alimony within a period of three months from the date of passing of the judgment.



Both parties are directed to co-operate in expeditious disposal of the above matter. In case of non-appearance of either party, proper order shall be passed in accordance with law.

27. It is made clear that the interim maintenance of Rs. 15,000/- per month which was awarded by the learned Family Court in Maintenance Case No. 17(M) of 2018 to the appellant-wife will be paid by the respondent-husband till permanent alimony is decided.

28. In view of the above discussions, M.A. No. 91 of 2021 is hereby disposed of.

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

( S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

AFR/NAFR	AFR
CAV DATE	16/04/2025
Uploading Date	13/08/2025
Transmission Date	N/A

