IN THE HIGH COURT OF JHARKHAND AT RANCHI

First Appeal No. 68 of 2021

Pinki Kumari, aged about 33 years, W/o Ravi Kumar, D/o Sri Kishore Kumar Jha @ Kishori Jha @ Netaji, resident of Ghogardiha, P.O. and P.S. Ghogardiha, District Madhubani, Bihar. **... Appellant**

Versus

Ravi Kumar, son of Braj Mohan Jha, resident of Tarun Enclave, Flat No.36, 5th Floor, Post Office Road, P.O. and P.S. Mango, Jamshedpur, District East Singhbhum. **... Respondent**

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANOJ PRASAD

For the Appellant : Ms Amrita Sinha, Amicus Curiae
For the Respondent: Mr Anurag Kashyap, Advocate

Reserved on: 13/10/2026 **Pronounced on: 05/11 /2026**

***Per* Manoj Prasad, J.**

1. Heard Ms. Amrita Sinha, learned *Amicus Curiae* appearing on behalf of the appellant-wife and Mr. Anurag Kashyap, learned counsel appearing on behalf of the respondent-husband.

2. The instant First Appeal has been filed by the appellant-wife under Section 19(1) of the Family Courts Act, 1984 impleading the respondent-husband against the judgment dated 24.11.2021 (Decree signed on 30.11.2021) passed by the learned Principal Judge, Family Court, Jamshedpur in Matrimonial Suit No.105 of 2015, whereby an application filed by the respondent-husband for dissolution of marriage by a decree of divorce on the ground of cruelty and desertion as contemplated under Section 13(1)(i-a) and 13(1)(i-b) of the Hindu

Marriage Act, 1955 (hereinafter referred to as "the Act, 1955") was allowed.

3. Brief facts of the case as per the plaint filed by the respondent-plaintiff are that the marriage between the parties was solemnized on 23.11.2008 at Madhubani, Bihar as per the Hindu rituals. After marriage, both parties started residing together at Jamshedpur since 28.11.2008 and out of the wedlock, a daughter was born out. However, while residing together, the respondent discovered some improper behavior by the appellant. The appellant used to quarrel with every family member for petty cause. Her behavior was unruly. At occasions, she threw the hot pan on the family members while they were dining together. Considering such erratic behavior, the matter was reported to the family of the present appellant, who did not bother to respond to any such complaint. The daughter born out of the wedlock, was within a short period of time detected to be suffering from cancer and for her treatment she was taken to Mumbai. However, the appellant did not bother to accompany the daughter during her treatment to Mumbai. Such behaviour of the Appellant compelled the respondent to obtain medical advice for the appellant. The doctors reported some psychiatric issue, for which treatment was done. Finally, it is alleged that the present appellant left her matrimonial home and is residing with her parents at her parental home and since then there has been no restitution of conjugal rights and no cohabitation has been there. The appellant has even not bothered to see her minor child during these entire period. Apart from that, the respondent also alleges in his petition that the

appellant in a very unusual manner used to physically assault the minor child, put her in cold water tub even during the winter season and even on one occasion she tried to throw her away from the balcony. With these allegations, a case for dissolution of marriage on the ground of cruelty and desertion by a decree of divorce was made and prayer was made to allow the petition for dissolving the marriage between the parties.

4. The appellant-defendant appeared before the learned Trial Court on getting notices and has contested the claim of the respondent disputing the allegations made therein and has made prayer for dismissal of the suit. In the entire written statement, plea has been taken that the marriage was solemnized as per the Hindu rituals. *Kanyadan* was performed and the marriage was in accordance with Section 7 of the Act, 1955. Vague and general denial of the allegations made in the plaint was there and prayer was made to dismiss the suit.

5. Based on the pleadings, the learned Trial Court formulated the following issues, which are hereunder: -

> *"I. Whether the suit as framed is maintainable?*
> *II. Whether this court has jurisdiction to try this suit"*
> *III. Whether the marriage of the plaintiff and defendant is fit to be dissolved on the ground of cruelty?*
> *IV. Whether the defendant has deserted the plaintiff prior to two years from the date of filing of this suit"*
> *V. Whether the plaintiff is entitled for any relief or reliefs claimed in the suit?*
> *VI. What other relief or reliefs and plaintiff is entitled?*

6. On behalf of the respondent-plaintiff, three witnesses, namely, Ravi Kumar, the plaintiff himself as P.W.-1, Brajmohan Jha, who is the father of the plaintiff as P.W.-2 and Manoj Kumar Jha, who is the uncle

of the plaintiff as P.W.-3 were examined. On behalf of the appellant-defendant, the appellant herself was examined as D.W.-1.

Findings of the Trial Court

7. The learned Trial Court after considering the oral evidence on behalf of the parties, held that though allegations were there that the appellant was suffering from some psychiatric problem but there was absence of any documents, particularly any medical paper to substantiate any such allegation and hence such allegations remained unsubstantiated. However, there was sufficient evidence on the point of cruelty and the learned Trial Court held that the allegations of physical assault on the infant, verbal and physical abuse to the husband and the other in-laws and even filing of a case under Section 498-A of the Indian Penal Code after institution of the petition for dissolution of marriage without any averment or allegation with regard to demand of dowry or cruelty having been meted out on her, establishes the case of cruelty by the appellant against the respondent.

8. The learned Trial Court has considered the judgment of the Hon'ble Supreme Court in the case of ***Naveen Kohli Vs. Neelu Kohli*** reported in ***(2006) 4 SCC 558***, while examining the ambit and scope of the word 'cruelty' and has also referred another judgment in the case of ***V. Bhagat Vs. D. Bhagat*** reported in ***(1994) 1 SCC 337,*** on the exposition of the term "mental cruelty". Thus, the issue was decided in favour of the respondent and against the appellant.

9. On the issue of desertion, the learned Court held that the appellant in her cross-examination has admitted the fact of having

deserted her husband since the time when their minor daughter was aged about 7 months leaving the minor daughter alone with the present respondent and since then there has been no restitution of conjugal life between the parties.

10. Accordingly, the suit was also decreed on the ground of desertion. Other issues were also decided in favour of the respondent and against the appellant. The learned Trial Court also considered the aspect of permanent alimony and ordered for payment of Rs.10,000/- per month as interim alimony/maintenance, giving liberty to the parties to file a separate application for permanent alimony before a court of competent jurisdiction and the suit was accordingly decreed.

11. Aggrieved by the aforesaid judgment and decree, the present appeal has been filed. However, it appears that after filing of the appeal as steps were not taken on behalf of the appellant, Ms Amrita Sinha was appointed as *Amicus Curiae* to assist the Court on behalf of the appellant-wife. Ms Sinha has been vigilant and has diligently assisted the Court both on facts and law for deciding the case.

12. Ms Sinha, while arguing the case on behalf of the appellant, has submitted that the allegations regarding the appellant's psychiatric problem remain unsubstantiated. If the present respondent's case is considered, it would be apparent that the respondent admits to having brought his wife to her parents' house and thereafter leaving her there, which, in fact, demolishes the case of desertion by the wife, as it is the husband who has deserted the wife. Learned counsel, in all fairness, concedes that it is not in dispute that the minor daughter is suffering

from cancer and that huge expenses have been incurred for her treatment. The respondent also does not dispute that the said minor child is in the care and custody of the father, and that the appellant has not taken any steps to take care of the child, to accompany the child in the course of her treatment at Mumbai, or to do anything for the purpose of the care and protection of the child. However, learned counsel has submitted that the allegations of cruelty and desertion are false and that the appeal is fit to be allowed.

13. Ms Sinha has also submitted that during the hearing of the present appeal, a proposal for permanent alimony was made by the respondent-husband, by way of payment of Rs.25 lakhs, to which the appellant had agreed. Subsequently, the respondent retracted his statement, and a subsequent proposal was to pay Rs.15 lakhs as permanent alimony. Considering these entire facts, a prayer is made to pass an appropriate order.

14. *Per contra,* Mr Anurag Kashyap, learned counsel for the respondent-husband has submitted that the impugned order does not suffer from any illegality and warrants no interference. Case of the respondent-plaintiff was well proved, and it was established that the present appellant was guilty of having meted out cruelty on the respondent and also of having deserted the respondent and, hence, the decree for divorce do not warrant any interference. It is further submitted that it is true that initially the proposal for one time alimony was made and it was assured that Rs.25 lakhs would be paid but since about Rs.40 lakhs expenses have been incurred by the respondent

towards treatment of his daughter, he was unable to pay such amount and subsequently, as per his capacity he has made an offer for payment of Rs.15 lakhs as permanent alimony. On these facts, prayer is made to dismiss the appeal.

FINDINGS

15. Having heard the learned counsel appearing on behalf of the parties and the rival contentions raised, the only question for determination before this Court is ***whether the respondent has proved a case of cruelty and desertion by the appellant, thereby entitling the respondent to a decree for divorce.***

16. Before discussing the facts of the present case, this Court would like to note that the respondent had offered to pay one-time permanent alimony of Rs.25 lakhs, which was accepted by the appellant. However, later on, the offer was retracted, and the respondent-husband offered to pay Rs.15 lakhs as a full and final settlement. On the Court's intervention to settle the final alimony amount at Rs.20 lakhs, it appears the proposal failed, and the parties agreed to argue the case on its merits. Similar efforts were made earlier by a Co-ordinate Bench of this Court, and despite all efforts the alimony amount could not be settled, and hence the case has been heard on its merits.

17. It is reiterated that the respondent-plaintiff filed a petition for dissolution of marriage by a decree of divorce on the grounds of cruelty and desertion. Aspects of cruelty and desertion were pleaded in the plaint at paragraphs 5 to 9. Aspects of desertion were pleaded at paragraphs 11 to 15 of the plaint. Similar statements appear at

paragraphs 19, 23 and 24 of the plaint. In the written statement filed by the appellant-defendant, paragraph 11 is the reply to the statements made in paragraphs 4 to 19 of the plaint, which read as under:

> *"That para(s) 4-19 of the suit is a concocted reservoir of low standard rhetoric and at last of para 19 the dissolution of marriage wrongly observed, pleaded and proposed in total derogation of laws in force and the customs and usage resorted to in Marriage formerly."*

18. At paragraph No. 13, there is a reply to paragraph Nos.20 to 30 of the plaint, which read as under:

> *"That under paras 20-30 the plaintiff is restlessly riding a plain of wrong and empty explanations of sentiments in utter disregards to his true attempt to set a good trend to the conjugal life."*

19. We are of the considered view that such a reply does not comply with the requirements of Order VIII Rules 3, 4 and 5 of the Code of Civil Procedure. Order VIII Rule 3 of the CPC mandates that every fact must be specifically denied, and Order VIII Rule 4 stipulates that an evasive denial is no denial. In the facts of the present case, such a reply in the written statement amounts to an evasive denial, which, as a matter of law, shall be treated as no denial. Order VIII Rule 5 of the CPC provides that facts not denied shall be deemed to be admitted. Thus, from the bare pleading of the appellant, the allegations of cruelty and desertion appear to have been admitted.

20. Still, this Court would like to examine the evidence on record. Three witnesses examined on behalf of the respondent, particularly the respondent, have reiterated the entire assertions made in the plaint, including the manner of behaviour, the neglect of the child, etc. There is

nothing in cross-examination to discredit the testimony of this witness. The appellant, examined as D.W.-1, in her examination-in-chief, has also made a similar statement to that in the written statement, which practically amounts to not disputing the allegations levelled against her.

21. Apart from the above, the fact that the appellant admits of having left her minor child when the child was aged about 7 months and has not bothered to take care of the child despite knowing full well that the child is suffering from cancer is definitely such acts which would come under the definition of cruelty sufficient to dissolve the marriage in terms of Section 13(1)(i-a) of the Act, 1955.

22. On the point of desertion, this Court would like to refer to the evidence of the appellant examined as D.W.-1; particularly in her cross-examination at last sentence, it has been stated at last line of para-26 that *"जब बेटी सात महीना की थी तभी मैं मायके चली गई और तब से पति से कोई सम्पर्क नहीं है।"*. This is an admission of desertion.

23. We are also in conformity with the view taken by the learned Trial Court Judge, who held that after the institution of the suit for dissolution of marriage, an FIR under Section 498-A of the IPC was registered against the husband. This fact has been admitted by the appellant in her evidence. It is not in dispute that, in the entire written statement, there is no pleading that cruelty was meted out to her, for or in relation to any demand for dowry, or otherwise. The learned Trial Court considered such aspects to be elements of cruelty sufficient to dissolve the marriage in terms of Section 13(1)(i-a) of the Act, 1955.

24. In view of the preceding discussions, we are of the considered view that the point for determination formulated by us is fit to be decided in favour of the respondent-husband and against the appellant-wife. The respondent successfully proved that the appellant subjected the respondent to cruelty and deserted the respondent for a continuous period of more than two years prior to filing of petition for dissolution of marriage by a decree of divorce. Thus, the impugned judgment and decree do not warrant any interference and the appeal does not have any merit.

25. However, the aspect of permanent alimony, for which efforts by this Court as well as by a Co-ordinate Bench of this Court were made, requires consideration. The learned Trial Court has allowed an interim alimony of Rs.10,000/- per month to be paid by the respondent to the appellant, which perhaps is being paid.

26. There is some dispute regarding the arrears of maintenance/alimony. Considering the affidavits filed on behalf of the appellant and the respondent pursuant to the direction of a Co-ordinate Bench of this Court, and in accordance with the law laid down by the Hon'ble Supreme Court in the case of ***Rajnesh Vs. Neha & Another***, reported in ***(2021) 2 SCC 324***, this Court considers that the monthly alimony amount be enhanced from Rs.10,000/- per month to Rs.15,000/- per month. However, the parties are at liberty to apply, by filing an appropriate application before a court of competent jurisdiction, for modification of the said amount under any changed

circumstances, and the said application shall be decided on its own merits following the process of law.

27. Accordingly, the First Appeal is **dismissed** without any order as to costs. Pending Interlocutory Applications, if any, do not survive and stand disposed of.

28. Though we may not have agreed with all the contentions urged by Ms Amrita Sinha, the learned Amicus, that does not detract from the able assistance she rendered in this matter. She was thoroughly prepared and did her best for the appellant. We thank her for her assistance.

(M. S. Sonak, C.J.)

(Manoj Prasad, J.)

November 5 , 2026
A.F.R.
Madhav/-
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