
(2010) 05 JH CK 0099
In the Jharkhand High Court

Smt. Kumari Priti @ Priti Gupta @ Neelam Gupta	APPELLANT
Vs	
Sanjay Prasad	RESPONDENT

Date of Decision : 22-05-2010

Acts Referred:

Hindu Marriage Act, 1955 — Section 13, 15
Penal Code, 1860 (IPC) — Section 109, 34, 406, 498A, 504

Citation : AIR 2010 Jhar 139 : (2011) 1 DMC 326

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Judgement

Pradeep Kumar, J.—This first appeal is directed against the judgment and decree dated 30th August, 2005 passed by Shri Anand Kumar Gupta, Additional District & Sessions Judge, II, Gumla in Matrimonial Title Suit No. (Talakbad) No. 13/2001, by which judgment the Additional District & Sessions Judge decreed the suit filed by respondent-husband, Sanjay Prasad granting a decree of divorce by dissolving the marriage between the parties. He also directed the respondent-husband to deposit a sum of Rs. 2,00,000/- (rupees two lakhs) as one time alimony along with her personal belonging Stridhan. He also directed to pay Rs. 500/- per month till the matter of maintenance was not decided finally by the competent court.

2. It is important to note that this Court by its order dated 23.3.2007 had directed the respondent-husband to deposit Rs. 2,00,000/-(rupees two lakhs) in short-term fixed deposit under the scheme where interest is credited every month and to pay Rs. 2,000/- (rupees two thousand) per month to the appellant-wife by way of maintenance by using interest amount as well.

3. Learned Counsel for the respondent-husband has submitted that he has already credited a fixed deposit of Rs. 2 lakhs, which is ready to give as and when demanded by the appellant-wife and he is also paying monthly maintenance Rs. 2,000/- per month.

4. It is submitted by the learned Counsel for the appellant-wife that the learned

trial court committed an error of law and fact in granting divorce on the ground that the appellant-wife, Kumari Priti @ Priti Gupta @ Neelam Gupta was a mental patient and due to her mental illness no relation as husband and wife was established between the parties and they are living separately since last 5 years. It is further submitted by the learned Counsel for the appellant-wife that in absence of evidence of any competent doctor, who could prove that she was suffering from any mental disease and as such grant of divorce u/s 13(i) (ia), of the Hindu Marriage Act, 1955 is bad in law and only fit to be set aside. It is further submitted by the learned Counsel for the appellant-wife that the learned trial court only on the basis of certain papers brought from C.I.P., Kanke, Ranchi, which was not even signed by any doctor, gave a finding that the appellant-wife was suffering from mental disease and granted divorce, which is absolutely bad in law and only fit to be set aside. It is further submitted by the learned Counsel for the appellant-wife that the respondent-husband even after receiving the notice, appeared in the appeal, has solemnized remarriage on 5.7.2006 in violation of Section 15 of the Hindu Marriage Act and he should be punished for the same.

5. On the other hand, learned Counsel for the respondent-husband has submitted that the evidence of P.W.5, Udaibans Prasad Sharma, who proved the documents before the court brought from C.I.P., Kanke, Ranchi that the appellant-wife was treated at C.I.P., Kanke Ranchi every year since 2000-03 and even her sister and father were suffering from mental disease. In that view of the matter, the learned trial court rightly granted decree of divorce and came to a finding that due to mental illness of the appellant-wife no marriage relation was established between the respondent-husband and appellant-wife and they are living separately since last five years and dissolved the marriage.

6. After hearing both the parties and going through the record, I find that the respondent-husband filed an application u/s 13 of the Hindu Marriage Act, 1955 on 3rd August, 2001 for the dissolution of his marriage before the District Judge, Gumla, which was registered as Matrimonial Suit No. 13/2001 stating therein that the petitioner-respondent herein, Sanjay Prasad was married with respondent-appellant, Smt. Kumari Priti @ Priti Gupta @ Neelam Gupta according to Hindu Rites and ceremonies on 11.7.2000 at village Burmu (Arra) P.O. Burmu, District Ranchi. After the marriage of the petitioner-respondent with the respondent-appellant, the respondent-appellant was taken back to the house of the petitioner-respondent at Ghaghra District Gumla, It is further alleged that during the stay of respondent-wife at Ghaghra between 12.7.2000 to 14.7.2000, the respondent-wife was found suffering from acute mental disorder and frequently used to tear her own cloths and sometimes started laughing and weeping loudly. Due to her mental disorder no co-habitation took place between the petitioner-husband and respondent-wife. It is also alleged that she started throwing out the breakfast and the meal provided to her by family members of the petitioner-husband. It is also alleged that she also started beating the petitioner-husband and his family members and abused them in filthy languages.

However, on 15.7.2000 she was taken back to her father's house at Burmu by her brother, Arbind Prasad. The petitioners-husband and his family members narrated the incident to her brother, which took place between 12.7.2000 to 14.7.2000. Again when the respondent-wife came to Ghaghra on 16.7.2000 and started living with her husband then during that period from 16.7.2000 to 19.7.2000 also her behaviour was the same and hence the petitioner-husband brought the respondent-wife on 20.7.2000 to Ranchi and got her examined by Dr. P.K. Chaudhary, a Neuro Psychiatric and also by Dr. Arun Kumar Gupta another Nuuro Psychiatric both of whom prescribed medicines. The respondent-wife in presence of the petitioner-husband disclosed to Dr. P.K. Chaudhary that since last one and half year before her marriage, she was under medical treatment and the doctors had advised her father not to marry the respondent-wife. It is further alleged that her father, uncle and maternal uncle came on 21.7.2000 and took her back to their house for medical treatment and since then she was residing at Burmu (Arra) with her parents. It is also alleged that subsequently petitioner-husband came to know that the respondent-wife was being treated at C.I.P., Kanke with a change name as Neelam Gupta. The petitioner-husband also came to know that the respondent-wife was under mental treatment since last several years before marriage and by suppressing the said fact her parents got the marriage done and as such her parents have played fraud upon the petitioner-husband. It is also alleged that she was treated at C.I.P., Kanke Ranchi from 9.9.2000 to 28.9.2000 where the name of the respondent-wife was registered as Neelam Devi wife of petitioner-husband, Sanjay Prasad.

7. It is submitted by the learned Counsel for the appellant-wife that the the appellant-wife was suffering from incurable mental disorder and as such a decree of divorce u/s 13(i) (iii) of the Hindu Marriage Act, as also on the ground of cruelty u/s 13(i) (ia) may be granted.

8. It appears that after service of notice the appellant-wife appeared and filed her written statement in the suit stating therein that the petitioner-husband has filed the suit falsely and maliciously and the petitioner-husband got no valid ground for divorce. It is further alleged that the petitioner-husband was demanding dowry, hence the false case has been filed. The respondent-appellant-wife submitted that she was a student of Women's College, Ranchi, in the year 1993 and she has got a degree of B.A. (Economics) Honours in 1995-1998 Batch. She was also perfect of the hostel and even her Hostel Superintendent, Indu Bala Srivasta found her behaviour and conduct was good. She was a very good student. She passed Matriculation Examination in the First Division from D.A.V. School, B.A.S.L. Patratu and also did her I.A. & B.A. with Economics Honours from Women's College, Ranchi. She also stated that at the time of marriage her father had given 1 lakh rupees cash, Colour T.V., Fridge, Suzuki Motorcycle, cloths and utensils. It is further stated that her father filed a complaint case against the petitioner-husband under Sections 498A/406/504/506/109/34 of the Indian Penal Code. It is further stated that the

statement made in paragraph No. 5 of the plaint with regard to her behaviour and mental condition, are false and fabricated. Similarly, the allegation made in paragraph Nos. 7 & 8 with regard to her bad behaviour with her respondent-husband and his family members is also false and fabricated. The statement made in paragraph 9 is not accepted. The allegation made in paragraph 10 & 11 that she was taken away to Ranchi with Ramesh Sahu and treated by Dr. P.K.Chaudhary and also by Dr. Arun Kumar Gupta, the brother-in-law of petitioner-husband, Arbind Kumar has got a Medical Store at Radium Road, Ranchi and he had taken respondent-appellant-wife and petitioner-respondent-husband for breakfast to the house of Mr. P. K. Choudhary and respondent-appellant-wife was asked that Mr. P. K. Choudhary is a friend of Ram Kumar Sahu, elder brother of the petitioner-respondent-husband and from the case she could come to know that he was a Psychiatrist. She was also taken to the house of Arun Kumar Gupta, who is the friend of Arbind Kumar, brother-in-law of petitioner-respondent-husband for breakfast only. She denied that she was suffering from mental disease. With regard to allegation made in paragraph 16 the respondent-appellant-wife admitted that she was admitted at C.I.P., Kanke, Ranchi but there is no concealment or cheating, as her nick-name is Nilam Gupta and the allegation that she was suffering from mental illness from before, is false and fabricated. She stated that she was admitted at C.I.P., Kanke, Ranchi for better treatment since due to the torture by her husband, Sanjay Prasad and due to his cruelty of demand of dowry she has become mentally disturbed. She also stated that the petitioner-appellant-husband is keeping all her jewellery and her belongings at his place.

9. Thereafter, the parties examined their witnesses in Court. It appears that on the sole evidence of P.W.5, Udaibans Prasad Sharma, who proved the documents brought from C.I.P., Kanke, Ranchi, gave a finding that the respondent-appellant-wife is suffering from mental disorder and decreed the suit.

10. Let us consider the case of both the parties in order to see as to whether the trial court was right in granting the divorce or not?

11. The petitioner-respondent examined 6 witnesses in the suit. They are P.W.1, Sanjay Prasad, P.W.2, Ramesh Prasad Gupta, P.W.3, Smt. Neelam Devi, P.W.4, Ram Khelawan Sahu, P.W.5, Udaibans Prasad Sharma and P.W.6, Dr. Arvind Kumar.

12. P.W.1, Sanjay Prasad has stated in Court that he was married with the respondent-wife on 11.7.2000 at village Burmu(Arra) and after marriage she came with him and lived with him at Ghaghra. After reaching Ghaghra the petitioner-husband came to know that his wife-respondent is a mental patient and sometimes started laughing and weeping loudly. She also started to tear her own cloths. She also started throwing breakfast and meal provided to her by family members of the petitioner-husband. Seeing this abnormal behaviour of the respondent-wife with her husband-petitioner made a complaint about this to her brother on 15.7.2000 when he came for taking her back to her father's

house. When, she again came on 16.7.2000 then finding no change in her behaviour. In the meantime, she assaulted her husband-petitioner and his family members. Thereafter, her husband-petitioner brought her to Ranchi on 20.7.2000 and got her checked-up by Dr. P. K. Chaudhary, a Neuro Psychiatric and also by Dr. Arun Kumar Gupta another Neuro Psychiatric, who are doctors of mental disorder. During medical examination she stated to Dr. P. K. Chaudhary that she was under treatment since one and half years and doctor had advised her father not to get her marriage. He also stated that on 21.7.2000 her father, uncle and maternal uncle came and took her back to Burmu (Aara) for treatment and from that date she lived with them. He also came to know that the respondent-appellant-wife has been admitted in C.I.P. Kanke Ranchi in the name of Neelam Gupta for treatment. He also came to know that she was being treated at C.I.P., Kanke Ranchi since 11.9.2000 and she was relieved on 28.9.2000. She was also admitted in CLP., Kanke Ranchi between 17.7.2000 to 5.9.2002. He further stated that she was mental disorder from before her marriage and if the petitioner-respondent-husband is allowed to live with her then he has got danger of his life as she may assault and kill him under her mental disorder. He further stated that he has got no option to pray for divorce. He denied that he demanded any dowry before or after his marriage with the opposite party-wife.

In his cross-examination, he admitted that the opposite party-wife, Neelam Devi was a student of D.A.V., School, Patratu passed her Matriculation in First Division and she was also doing B.A. Economics Honours at Women's College, Ranchi. He also stated in his cross-examination that even on the first time when he went to her room at 10 P.M. she started weeping and suddenly gave a slap to him.

13. P.W.2, Ramesh Prasad Gupta stated that the marriage of both the parties i.e. petitioner-husband and respondent-wife was performed according to Hindu Rites on 11.7.2000 at Burmu(Arra). Thereafter, the respondent-wife went to Gaghra where it was found that she is suffering from mental disease as she started sometimes laughing sometimes weeping and sometimes torn her own clothes and she wanted to burn herself by picking up a burn weed from oven and when his brother and mother asked her not to do so then she used to rebuke them. He further stated that when she came for the second time on 16.7.2000 from her father's house then she again started weeping in the same way and even wanted to commit suicide by going near the well. Then on 20.7.2000 she was taken to Ranchi where she was examined by Dr. P. K. Choudhary and Dr. Arun Kumar Verma, who are mental disease doctors. The respondent-wife told to Dr. P. K. Choudhary that she was suffering from mental disease since one and half years. Subsequently, they came to know that she was being treated at C.I.P., Kanke, Ranchi and as per Register she was treated from 11.9.2000 to 28.9.2000 in the name of Neelam Gupta wife of Sanjay Prasad. Subsequently they also came to know that she was treated from 17.7.2002 to 28.9.2002. He also alleged that parents of respondent-wife by suppressing the said fact got her marriage and thereby cheated his brother.

In his cross-examination, he admitted that when he went to see for the first time before her marriage on 7.5.2000 she had given satisfactory answer to his question. His wife and sister had also seen her. He denied that she was assaulted at her sasural and also her clothes were burnt by her in-laws.

14. P.W.3, Neelam Devi also stated that after marriage when the respondent-wife came to Gaghra, her behavior was strange as she used to laugh sometimes and weep sometimes. She also used to throw the breakfast and food given to her and as such they came to know that she is of unsound mind and when she came for the second time on 16.7.2000 then she was taken to Ranchi on 20.7.2000 where she was examined by Dr. P. K. Choudhary and Arun Kumar Verma, who are mental disease doctors, She admits to Dr. P. K. Choudhary that she was suffering from mental problem from before and the doctors had asked her father not to get her marriage. Then on 21.7.2000 she went to her matrimonial home to Burmu (Aara) for threatment and since then she is staying there.

She stated, in her cross-examination, that respondent-wife's father had filed criminal case against them and she has taken bail in the case. She also admitted that before her marriage she was studying at Ranchi by living in hostel, but she has left study one and half years before her marriage. She had seen Priti Kumari in the house of her uncle before marriage at Ranchi and Priti had served Nasta and tea to them. She had also talked to Priti Kumari at that time she was normal. She denied, in her cross-examination, that she was assaulted and tortured at her sasural due to which she lost her mental balance.

15. P.W.4, Ram Khelawan Sahu also stated the same thing that after marriage it was disclosed by her in-laws that she is suffering from mental disease and she was shown at Ranchi to mental doctors.

16. P.W.5, Udabansh Prasad Sharma, who was posted at Central Institute of Psychiatry, Kanke Ranchi as Medical Record Technician brought the record of the respondent-Priti Kumari from CLP. and proved the same in Court. He produced the same by the order of the Director of C.I.P., namely, Samsul Haque vide letter No. 8788 dated 4.8.2003. He proved the same as Ext.-I. He stated that the treatment of Neelam Devi is available at file No. 52677/A dated 9.9.2000. In the beginning she was treated by the Junior Resident and Senior Resident at page Nos. 1 to 19 on the record, which has been written by Dr. Somia Basu. Thereafter, she was treated by Dr. T. Ravi and his writings are file Nos. 20-22. Subsequently, she was treated as outdoor patient by Dr. T. Ravi and Consultant Dr. Sarita Paul. She was supervised till 27.9.2000. She was again brought before the doctor on 5.10.2000 thereafter admitted in CLP., Kanke Ranchi on 11.9.2000. She was also treated on 17.7.2000, 11.12.2000 and 1.3.2000. She was finally discharged on 23.7.2003. He stated in her previous history, which are written by Dr. Sonia Basu that on 18.5.99, 10.6.99, 12.7.99, 16.8.99, 10.9.99, 16.11.99, 25.1.2000, 18.3.2000 and 27.5.2000. All signatures were marked as Ext.-2.

In his cross-examination, that when a patient was admitted either his signature

or thumb impression was taken. He also admitted that he is a technician and not a Psychiatry expert. He also stated that the medical report as Ext.-II in which there is no signature of Director or his stamp seal . The Register is also not certified by any officer of CLP., Kanke Ranchi. He also stated that as Ext.-II in page No. 3 nowhere this written that it is a case of history of Neelam Devi.

17. P.W.6, Dr. Arvind Kumar stated that he is a Physician and he identified the signature of Dr. Arun Kumar Gupta on the prescription dated 20.7.2000, which was marked as Ext.-3. He also proved the prescription and signature of Dr. P.K. Choudhary on his prescription dated 20.7.2000, which was marked as Ext.-3/l.

In his cross-examination, he admitted that he never practiced or got education with Dr. P.K. Choudhary and Dr.Arun Kumar Gupta.

18. Thus, from the evidences of the petitioner-respondent witnesses, it appears that no doubt the petitioner-husband and his family members have stated that the appellant-wife after marriage on 11.7.2000 came to Ghaghra her behaviour was not good and she used to sometimes laugh and sometimes weep and sometimes tear her clothes and attempted burn herself and that when she came for the second time from her father's house on 16.7.2000 then her condition was the same. She was taken to Ranchi for treatment on 20.7.2000 by Dr. P. K. Choudhary and Dr. Arun Kumar Gupta, but no doctor was examined by them even Dr. P. K. Choudhary or Dr. A.K. Gupta, who are said to be known to the petitioner and are said to be expert of mental disease were not examined. Apart from evidence as given by the family members of the petitioner-respondent the only evidence is the Register, which was brought by P,W.5 in Court.

19. On the other hand, the appellant-respondent also examined 6 witnesses in the case.

20. D.W.1, Raja Ram Prasad stated that he knows Priti Kumari right from her childhood and her father was working at Patratu and she passed her matriculation examination in First Division and also she was doing B.A. Honours in Economics from Women's College, Ranchi by living in the Hostel. He also stated that after seeing the girl her "Cheka" was done at Rani Satimandir, Ranchi and she was married on 11.7.2000. In "Tilak" 1 lakh cash with Sujiki Motorcycle, colour T.V. etc. were given. Subsequently he came to know that in-law's of Priti Kumari assaulted her for dowry and suicide her by making false allegation that her behaviour is unbalanced.

In his cross-examination, he stated that he does not give the year when she passed her matriculation examination. He denied that Priti Kumari was mad from before her marriage. He also stated that in-laws of Priti Kumari never came to Kanke for taking her back to her sasural.

21. D.W. 2, Bhuneshwar Prasad also stated that he knows Priti Kumari and she was a student of Women's College, Ranchi before her marriage. She was also doing her B.A. (Economics) Hons by living in the Hostel. Family members of the

petitioner-respondent had seen the girl and thereafter "Cheka" was done at Ranisati Mandir and then she was married on 11.7.2000. He also stated that in "Tilak" at Ghagra her father had given 1 lakh cash, colour T.V., Sujiki Motorcyle, utensils and clothes etc..

In his cross-examination, he stated that due to her marriage her education was stopped. He also stated that her nick name is Priti Kumari.

22. D.W.3, Suresh Prasad Sahu also stated that Priti Kumari is his daughter and when he was posted at B.A.S.L. Patratu as a Supervisor Priti Kumari was a student of B.A.S.L. D.A.V., Patratu and she passed her matriculation examination in First Division. Thereafter, she did I.A. from Women's College, Ranchi and got admission in B.A Economics Hons. by living in the Hostel. She was a brilliant girl right from the beginning. He also stated that his cousin brother, Pradeep Sahu is related to the petitioner-respondent and due to his mediation the marriage was settled. He also stated that Ramesh Sahu elder brother of petitioner-respondent-husband he demanded 3 lakhs rupees as cash and a Maruti Car, but he was not in a position to give the same, hence it was settled at only 1 lakh rupee and sujiki motorcycle, which he had given in the dowry. After marriage on 11.7.2000 his daughter left for her "sasural" at Ghaghra and she came back with her brother on 14.7.2000 at Burmu (Aara), but 16.7.2000 she was again sent to Gaghra. He further stated that at Ghaghra Priti Kumari was not treated well and she was tortured by her in-laws. They also brought her to Ranchi where she was taken to the house of Dr. P. K. Choudhary hearing that the behaviour of her in-laws are very bad with his daughter. On 27.7.2000 he along with his Sadu and brother-in-law went at Gaghra and brought her back to his house. Subsequently due to their bad behaviour he filed a complaint case at Ranchi. Thereafter this false case was lodged by the petitioner-respondent-husband.

In his cross-examination, he admitted that after her marriage, on 19.2.2000 Priti Kumari was admitted at C.I.P., Kanke, Ranchi for the first time where she stayed for nine weeks and thereafter she was never again admitted in the C.I.P., Kanke Ranchi. He also stated that at time of marriage Priti Kumari was perfectly alright and there is no question of hiding anything from them. He denied that she was having any problem from before and by suppressing the said fact got the marriage done.

23. D.W.4, Priti Devi @ Nilam stated that presently she is staying with her parents. She further stated that she passed her matriculation examination in 1993 in First Division when she was a student of D.A.V., B.A.S.L., Patratu. Thereafter she got admitted in LA. at Women's College, Ranchi where she was staying at Hostel No. 2 of Women's College. After completing I. A. she got admitted in B. A. Economic Hons. in the Women's College, Ranchi and continued her education by living at Hostel No. 2 at Women's College. Even her hostel's friend will say that she had a very normal life and she was perfectly balanced girl. She stated that after seeing her when the petitioner-respondent's family members agreed for marriage because the cousin sister of petitioner, Santi Devi

was married to her uncle, Basant Sahu and they knew her from before "Cheka" was done on 14.5.2000 and thereafter she was married on 11.7.2000. In "Tilak" on 7.7.2000 everything was given as demanded by the petitioner-respondent's family. After marriage she went to Gaghra where she was not treated properly at Gaghra and she was tortured by her in-laws and on 14.7.2000 she was sent with her brother to father's house at Burmu and on 16th July she again went to her "Sasural" since nobody came to take her. Then, her husband and other family members brought her to Ranchi on 20th July, 2000 and she stayed with husband, husband's brother-in-law, who has got a medical shop. The said -Arbind Kumar took her to the house of Dr. P. K. Choudhary for breakfast and she was informed that he is a friend and also to the house of Dr. Arun Kuma Gupta where she was taken food, but she subsequently came to know that they brought her for declaring mental case. She was not even checked up by two doctors. She stated due to torture committed by her inlaws she came back to her father's house with her father on 26th July, 2000. Due to the aforesaid torture she started living under tension and lastly she was treated at C.I.P., Kanke Ranchi, She denied that she had any mental from before.

In her cross-examination, she stated that Bandna daughter of Advocate of Simdega also used to study with her in the women's college hostel. She also stated that one of her friends Priya's father, L.K.N. Sahdeo, who is a conducting lawyer in the case. She further stated that B.A.Part-II Examination has cleared, but she could not appear in B.A.Part-III paper-5. She further denied that she was ever treated at C.I.P., Kanke, Ranchi on 18.5.99. She also stated that the rasam of Muhdekhai was done at the house Pradeep Sahu at Amrud Bagan Ratu Road, Ranchi. She stated that she used to torture by her in-laws after her marriage when she was at Ghaghra due to which she developed tension and depression and subsequently she was admitted at CLP., Kanke Ranchi on 9.9.2000. She was discharged on 28.9.2000 from C.I.P., Kanke Ranchi.

24. D.W.5, Arbind Kumar is a brother of the appellant-wife. He also stated that she was a student of B. A Hons.(Economics) at Women's College, Ranchi He also stated that after marriage on 11.7.2000 she went to Gaghra and brought her back on 14.7.2000. He further stated that his sister Priti Kumari having perfect mental, but after marriage due to torture she developed some depression and tension.

In his cross-examination, he stated that his sister nick name as Neelam. He denied that his sister was ever treated before marriage on 18.5.99. He also stated that he cannot say as to the house at Amrud Bagan, Ranchi is old or new. He further stated that he does not remember that when family member of petitioner had come to see her in the house of his uncle then the neighbours were present or not. He admitted that when she was brought from her in-laws house on 26th July, then she was treated at C.I.P., Kanke Ranchi.

25. D.W.6, Ashok Kumar also stated that Priti Kumari she is a niece and she was a student of B.A. Economics Hons at. Women's College, Ranchi. She was residing

in the Hostel. She was mentally sound and perfect health. He also stated that he used to take Priti Kumari for examination to St. Xavier's College, Ranchi and again used to bring her back to her hostel at Circular Road, Ranchi during her examination from 9.5.99 to 7.6.99.

In his cross-examination, he admitted that after her marriage due to torture by her in-laws she was admitted at CLP, Kanke Ranchi.

26. Thus, from the evidences, adduced by the defendants also, it appears that opposite party-appellant had no mental problem from before her marriage. They have all admitted that after her marriage when she came back from her in-laws' house on 26.7.2000 her mental condition was not good and as such she was admitted in the C.I.P., Kanke Ranchi was the first time on 19.9.2000 where she was treated for about 9 weeks and she was discharged when she became alright.

27. In that view of the matter, after going through the evidences as adduced by both the parties, it is apparent that no doctor was examined by the petitioner including any doctor from CLP, Kanke Ranchi to prove that the appellant-wife Priti Kumari is suffering from any incurable mental disease. The only evidence on this point is the evidence of P.W.5, Udabansh Prasad Sharma, who is a technician in the medical record room of CLP, Kanke Ranchi and he came with Register of the Hospital are only shows that Neelam Devi was admitted in CLP, Kanke Ranchi on 9.9.2000, He admitted that there is some reference in page -3 of the Register giving old history of a patient i.e. on 18.5.99, 10.6.99, 12.7.99, 16.8.99, 10.9.99, 16.11.99, 25.1.2000, 18.3.2000 and 27.5.2000. but , in his cross-examination at para 17 that he admitted that it is not written that this is a history with regard to Neelam Devi. He also admitted that even the reports appeared in the Register has not been signed and seal by the director nor it bears signature of any authority of CLP. to prove that the registers are true copy of the treatment made to patient named Neelam Devi and as such the register can only prove the fact that some treatment was done on Neelam Devi @ Preeti Devi the appellant, which has also been admitted by the appellants father that she was treated for about nine months since when she came from her sasural due to torture her mental condition was not good.

28. In that view of the matter, in my opinion, there is no conclusive prove that the appellant is suffering from any incurable mental disease nor there is any such finding and the finding of the trial court in this regard on the basis of only the record of CLP, proved by P.W.5 that the appellant-wife was suffering from mental disease is bad and only fit to be set aside. However, it is clear from the evidences adduced by both the parties that the appellant-wife left with her father after her marriage from the house of her in-laws at Gaghra on 26.7.2000 and thereafter she had not returned. Moreover, as it appears from the record of this appeal that the appeal was filed by the appellant on 21.10.2005 and the respondent-husband appeared in the appeal in the High Court through his lawyer. It further appears from the record that when I.A. application was filed by the appellant-wife for payment of maintenance learned Counsel for the respondent took time for filing

reply on 16.3.2007. Thereafter hearing both the parties and orders were passed on 23.3.2007. Subsequently, it is submitted that the respondent-husband entered into the marriage on 5.7.2006 and has also got a child from his second wife.

29. Thus, it is apparent that in violation of Section 15 of the Hindu Marriage Act without getting for final orders in appeal the respondent has contacted the marriage and now in such situation although the appellant-wife is living separately at Ranchi since last 5 years as observed by the trial court the decree of divorce granted by the learned trial court is confirmed and the marriage is dissolved on the ground of desertion and neglected by the husband-respondent and also on the ground of contacting second marriage without awaiting for the final hearing and judgment of this Miscellaneous Appeal. However, since respondent-husband has committed breach by marrying during the pendency of the appeal. The one time alimony Rs. 2 lakhs granted by the trial court is enhanced to Rs. 7 lakhs and the respondent-husband is directed to deposit Rs. 7 lakhs in trial court within one month from the date of this judgment including two lakhs fixed deposit already made by him in favour of the appellant-wife and also to pay Rs. 2000/ per month as fixed by the trial court. If the respondent failed to deposit the same the same may be enforced, in accordance with law. The appellant-wife will be at liberty also to take recourse of law for the second marriage committed by the respondent during the pendency of the appeal in an appropriate criminal forum.

30. With the aforesaid finding and judgment the appeal is allowed in part.