

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.445 of 2024**

Sanjay Kumar Jha, S/O Shardanand Jha, Resident of Village- Harilochanpur,  
P.S.- Sarairanjan, District- Samastipur.

... .. Appellant/s

Versus

1. Annu Devi, W/O Sanjay Kumar Jha, D/O Bindu Nath Jha, Resident of Village - Harilochanpur, P.S.- Sarairanjan, District- Samastipur. At present Resident of Village- Champa, P.S.- Arer, District- Madhubani.
2. Jitendra Nath Jha, S/O Raghunandan Jha, Resident of Village- Pachaur, P.S.- Babubarhi, District- Madhubani.

... .. Respondent/s

**Appearance :**

|                      |   |                                                                                                       |
|----------------------|---|-------------------------------------------------------------------------------------------------------|
| For the Appellant/s  | : | Ms. Shyamli Kumari, Adv.<br>Mr. Sunil Kumar Singh, Adv.<br>Ms. Ayushi Gupta, Adv.<br>Ms. Pragya, Adv. |
| For the Respondent/s | : | Mr. Ratanakar Jha, Adv.<br>Mr. Rajeev Yadav, Adv.                                                     |

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**and**  
**HONOURABLE MR. JUSTICE RANA VIKRAM SINGH**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)**

**Date : 03-09-2026**

This is an appeal assailing the judgment and decree of dismissal of M.M. Case No. 86 of 2013 renumbered as M.M. Case No. 49 of 2017 passed by the learned Principal Judge, Family Court, Madhubani on 04.04.2024. The husband of the respondent no. 1 is the appellant in the instant case.

2. The learned Advocates on behalf of the appellant and the respondent no. 1 are present. In-spite of service of notice, respondent no. 2 is not represented.



3. We have heard the learned counsels for the appellant and the respondent. It appears from the record that marriage of the appellant was solemnized with the respondent on 02.07.2006. After marriage they lived together as husband and wife and in the wedlock a male child was born in the year 2010.

4. It is contended on behalf of the appellant that after the birth of the male child, the respondent meted out with cruelty against her husband. It is alleged that the respondent had illicit relationship with the husband of her elder sister and once the appellant saw both of them in a compromising situation and raised objection. Subsequently on 30.03.2013, the father of the respondent with some other persons came to the house of the appellant and forcibly took her away with all her personal belongings in a Bolero car. Since then, the respondent has deserted the appellant. Thus, on the ground envisaged in Section 13(1)(i) and 13(1)(ia) the appellant prayed for decree for dissolution of marriage by divorce.

5. The respondent/opposite party contested the said suit by filing a written statement, wherein she had denied all allegations made against her by her husband. It is stated by the respondent that the allegations of having illicit relationship with



her own brother-in-law is concocted, manufactured and itself amounts to cruelty. It is also stated by the respondent that in order to solve the dispute between the parties, a local Panchayati was held and a settlement was made, but the husband did not pay due honour to such settlement. The written statement also contains the counter allegation against the appellant that he tried to commit murder of the respondent by poisoning and pleaded that the case for divorce is out and out a false case. On the basis of the pleadings the trial Court framed the following points for determination :-

***“POINTS FOR DETERMINATION***

*7. After hearing ld. Counsels and going through the record following points are formulated for determination:*

- 1. Whether the O.P. No.-1/wife after solemnization of marriage, treated the petitioner/husband with cruelty?*
- 2. Whether the petitioner is entitled for the decree of divorce? ”*

6. We have considered the evidence on record laid by the parties in the trial Court. Section 13(1) postulates a ground of divorce if after the solemnization of marriage either of the spouses is having sexual intercourse with a person other than his/her spouse. The allegation against the respondent is that the appellant saw the respondent with her brother-in-law in a



compromised position. There is gulf of difference between the term “*compromising position*” and “*having sexual intercourse*”. Surprisingly enough, the appellant did not make any complaint against his wife after the alleged occurrence. Even no *sanha* was made in the local police station. No complaint was made to his matrimonial relations. The parents and other relations of the appellant did not come forward to assert in support of the allegation.

7. The Madhya Pradesh High Court in ***Hargovind Soni vs. Ramdulari*** reported in ***1985 SC Online MP 109*** culled out certain guidelines to prove adultery. In paragraph no. 6 of the judgment it is observed :-

“6. Adultery is generally proved by presumptive proof based upon (a) circumstantial evidence; (b) evidence of non-access and birth of children; (c) contracting venereal disease, and (d) confessions and admission. In fact, adultery is seldom susceptible of proof except by circumstances which would lead to that conclusion. The birth of a child to the wife, when there was no access to her by husband during possible period of conception shows, no doubt, the adultery by the wife. But, it must be satisfactorily established that birth of the child was clearly as a result of adulterous intercourse. There must be a clear proof of adultery. Standard of proof to establish a matrimonial offence like adultery is the



*satisfaction of Court beyond reasonable doubt. Adultery has also to be inferred from the circumstances which exclude any presumption of innocence in favour of a person against whom it is alleged. Proof of adultery must be of such character as would lead a reasonable man to conclude no other inference than the misconduct. Mere probability is not enough. No implicit reliance can be placed on the bald statement of the husband for recording a finding of adultery against wife.”*

8. Perusal of the above observation clearly suggests a shift regarding evidentiary probity of a civil suit and the allegation of adultery made in the suit for divorce. While a civil suit including other grounds of divorce can be proved on the basis of preponderance of probability, adultery is held to be proved beyond reasonable doubt.

9. In the instant case, the husband failed to prove the allegation of having sexual relationship by his wife with the husband of her elder sister. Secondly, the entire allegation of cruelty revolves around the case of alleged illicit relationship and allegation and counter allegation.

10. On perusal of the pleadings of the parties, we find that the allegations of cruelty is absolutely vague, omnibus and cannot be considered by this Court for the reasons stated above.



We do not find any illegality in the judgment and decree passed by the learned Principal Judge, Family Court at Madhubani.

11. The appeal is accordingly dismissed, affirming the judgment and decree passed by the learned Principal Judge, Family Court at Madhubani.

(Bibek Chaudhuri, J)

(Rana Vikram Singh, J)

Supratim/Ravi-

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