IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.151 of 2023
In
FIRST APPEAL No.47 of 2018

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Manoj Kumar @ Munna Son of Yadunandan Prasad Yadav, Resident of Mohalla - Station Road, Rajendra Nagar, Ward No. 30, P.S. - Begusarai Town, Distt. - Begusarai.

... ... Appellant

Versus

Nita Bharti Wife of Manoj Kumar, Daughter of Bishundeo Paswan, resident of Village - Baghi, Ward No. 25, P.S. - Begusarai, Muffasil, District- Begusarai.

... ... Respondent

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Appearance :
For the Appellant/s : Mr.Alok Kumar Sinha, Advocate
Mr.Pramod Man Bansh, Advocate
For the Respondent/s : Mr.Kumar Vikram, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA)

Date : 17.03.2026

Heard learned counsel appearing on behalf of the appellant and learned counsel for the respondent.

2. The present appeal taken on our board, which preferred against the impugned judgment dated 28.02.2018 as passed by learned Principal Judge, Family Court, Begusarai in Divorce Case No. 69 of 2013, whereunder the petition as brought by the applicant/respondent, Nita Bharti, who is the wife of O.P./appellant namely, Manoj Kumar @ Munna filed under section 27 of the Special Marriage Act, 1954, was dismissed considering that marriage between the parties was

"*void ab initio",* therefore, the question of divorce does not arise. Being aggrieved with aforesaid judgment, present appeal was preferred by opposite party/appellant, who is the husband of the respondent.

3. The factual aspect of the case of applicant/respondent namely, Nita Bharti suggest that her marriage was solemnized with OP/appellant namely, Manoj Kumar @ Munna as per provisions available under Special Marriage Act before Special Marriage Officer, Teghra, Begusarai, on 04.10.2007. She joined her matrimonial home with OP/appellant and lived there for 4-5 days, whereafter she was assaulted and abused calling her caste name publicly as she was the member of scheduled caste community by the OP/appellant and his family members, who had further raised a demand of Rs. Five Lakhs in cash and one Katha of land at Begusarai, due to non-fulfillment of which, she was drove from her matrimonial home.

4. It also transpires that marriage was a love marriage without any intimation to parents of the parties and subsequently the applicant/respondent qualified the medical entrance examination and joined her MBBS course in Mahatma Gandhi Medical Science College, Vardha in the year 2013.

During aforesaid period, the OP/appellant visited to her on several occasions and also tortured her during said visit. On one of such occasion i.e. on 20.02.2013, the appellant made an attempt to commit murder of applicant/respondent, Nita Bharti by strangulating her, upon refusal of demand of Rs. 25,000/-. The information *qua* aforesaid occurrence had given to police, who did not take any action in view of the relationship of applicant/respondent with OP/appellant. On 25.02.2013, the applicant/respondent came to her parental place Baghi, Begusarai, and narrated the entire facts to her parents, who called a panchayat on 18.03.2013 at their place, wherein the OP/appellant namely, Manoj Kumar @ Munna with his parents were present and again raised their demand qua dowry and humiliated the applicant/respondent on caste line, whereafter a criminal complaint case No. 530C/2013 was lodged. OP/appellant namely, Manoj Kumar @ Munna is from different caste (not a member of scheduled caste community) and he, therefore, alleged to humiliate the applicant/respondent publicly in her caste name being the member of scheduled caste community.

5. Citing all such reasons, the divorce petition was preferred by applicant/respondent, Nita Bharti for dissolution of

her marriage with Manoj Kumar @ Munna (OP/appellant) with a demand of Rs. Five Lakhs as permanent alimony. Considering the pleading of the parties, the learned Family Court, Begusarai framed the following issues for just and proper decision of the case, which are as under:

I. Whether the matrimonial petition as framed is maintainable?

II. Whether the O.P. (appellant) has after the solemnization of the marriage treated the petitioner with cruelty?

III. Whether O.P. (appellant) has deserted the petitioner for a continuous period of more than two years immediately preceding the presentation of the petition?

IV. To what relief if any the parties are entitled?

6. To substantiate the claim, the applicant/respondent Nita Bharti has examined altogether four witnesses namely, PW1 Nita Bharti (applicant/respondent), PW2 Vishundeo Pswan, the father of the applicant/respondent, PW3 Murlidhar Ram and PW4 Ramudgar Singh. Besides these oral evidence, the following documentary evidences were exhibited before the learned Family Court on behalf of appellant/respondent, which

are as under:

Exhibit '1' – Complaint application of Complaint Cas No. 534C/2013;

Exhibit '2' – Ordersheet in complaint case No. 534C/2013;

Exhibit - '3' – Plaint of Matrimonial Case No. 81/2013;

Exhibit – '4' – Evidence of respondent Manoj Kumar @ Munna in Matrimonial Case No. 81/2013;

Exhibit '5' – Certified copy of the Complaint Case No. 645C/2013; and

Exhibit '6' – Order of the Hon'ble High Court, Patna passed in Criminal Miscellaneous No. 1846/2014.

7. Contrary to the aforesaid OP/appellant Manoj Kumar @ Munna has examined four witnesses namely, DW-1 Manoj Kumar (applicant himself); DW-2 Vinod Kumar; DW-3 Dhayant Kumar and DW-4 Sanjeet Kumar.

8. Besides these oral evidence OP/appellant has also relied upon the following Exhibits:

Exhibit 'A' 'B', 'B(1)' & 'B(2)' which are the information under RTI;

Exhibit 'C' to 'C/12 - Railway Tickets; and

Exhibit 'D' Series - The bank account details.

9. Considering the oral evidences, exhibits and materials available on record, the learned Family Court, Begusarai decided Issue No. 1 i.e. maintainability of the petition preferred by respondent Nita Bharti at the first instance and arrived on conclusion that as compliance of section 12 of the Special Marriage Act was not made, therefore, the marriage between the parties were not solemnized legally and as such the question of divorce does not arises and, therefore, on the ground of maintainability the application preferred by the applicant/respondent was dismissed with certain objectionable observations in para '7' and '8' of the impugned judgment, which completely appears unwarranted. The rest of the issues were not answered by the learned Family Court in view of the finding of Issue No. 1 as discussed aforesaid.

Argument on behalf of the appellant

10. Learned counsel appearing for the appellant submitted that the judgment of learned Family Court is completely perverse on its face for the reason that the Issue No. 1 qua maintainability was decided perversely particularly when same appears admitted by applicant/respondent herself. Admitting the marriage only, the petition was preferred by the

applicant/respondent before learned Family Court regarding dissolution of her marriage with OP/appellant under section 27 of the Special Marriage Act.

11. It is submitted that the marriage was solemnized in terms of Special Marriage Act, 1954, whereafter a certificate on behalf of Marriage Officer was issued under the Act as per its 4th Schedule in terms of section 13 of the Act. It is submitted that only after compliance of section 12, the certificate under section 13 of the Act under 4th Schedule can be issued by Marriage Officer, which is the conclusive evidence of the fact that marriage was solemnized.

12. It is pointed out that the compliance of section 11 was duly made and as for the reason that section 12 is nowhere mention in the schedule, it was presumed by learned Family Court that same was not complied with and therefore, perversely it was held that the marriage between the parties was not solemnized at any point of time, and, therefore, same is "*void ab initio*" and as such there is no occasion to press any application on behalf of applicant/respondent to seek divorce.

13. It is submitted that DW-2 & DW-4 who are the witnesses of marriage certificate, categorically deposed that after solemnization of marriage the applicant/respondent went

along with OP/appellant on motorcycle.

14. Learned counsel for the appellant relied upon the legal report as available through **Tamali Bhattarcharjee Vs. Samik Baidya** reported in **2003 SCC OnLine Cal 558** and **Priyanka Tarapad Bannerji and Another Vs. State of Maharashtra and Others** reported in **2025 SCC OnLine Bom 493.**

Argument on behalf of Respondent

15. Learned counsel appearing on behalf of the applicant/respondent/wife, submitted that respondent came to know about the present pending proceeding somewhere in the 1st week of November, 2025, whereafter she entered into appearance through her Vakalatnama dated 07.11.2025.

16. It is submitted that since through impugned judgment the marriage of respondent with appellant was declared *'void'* as same was not said to be performed in terms of law, she solemnized her marriage with one Saroj Kumar on 18.12.2021 and out of said wedlock, they have now one child of one year. It is submitted referring to the counter affidavit dated 27.01.2026 that appellant has spent some money for respondent out of love and care as a friend and has not filed any case for claiming compensation for the same. It is also pointed out that

the respondent also spent huge amount of money on the appellant from her stipend as she received monthly during her study period. It is submitted that considering the peculiar facts and circumstances, this application is liable to be dismissed.

17. Learned counsel relied upon the legal report of Hon'ble Allahabad High Court as available through **Nirmal Dass Bose Vs. Km. Mamta Gulati** reported in **1996 SCC OnLine All 586**.

Conclusion

18. Having heard learned counsel appearing for the parties and upon perusal of the record, it transpires to us that PW-1 applicant/respondent namely, Nita Bharti, PW-2 her father (Vishundeo Paswan), PW-3 Murlidhar Ram and PW-4 Ramudgar Singh, categorically admitted before the learned Family Court through their examination-in-chief on affidavit that the marriage of applicant/respondent namely, Nita Bharti was solemnized with OP/appellant namely, Manoj Kumar @ Munna as per Special Marriage Act on 04.10.2007 in the office of Special Marriage Officer, Teghra, Begusarai (Bihar).

19. PW-1 Nita Bharti, in her cross examination supported the allegation of cruelty and caste name abuse as she was the member of scheduled caste community, but in cross

examination she categorically stated that she solemnized her marriage with OP/appellant namely, Manoj Kumar @ Munna out of her own sweet-will before the Marriage Registrar, Teghra, Begusarai, which was also supported by appellant and his witnesses during the trial.

20. Therefore, without discussing any further witnesses, it can be arrived safely on the conclusion that the marriage between the parties admittedly solemnized before the Special Marriage Officer, Teghra. The genuineness of marriage certificate (under Schedule 4th), which was not believed by the learned Family Court was also not disputed by the applicant/respondent during the trial.

21. We never came across such a perverse legal interpretation of law as we are witnessing in the present case. Learned Family Court completely ignored the provisions of section 13(2) of the Special Marriage Act, that "*the marriage certificate shall be deemed to be conclusive evidence of the fact that marriage under this Act has been solemnized …….*"

22. To clarify our aforesaid observation, it would be apposite to reproduce **paragraph 11, 12 & 13** of the Special Marriage Act, 1954, which are as under:

> *"**11. Declaration by parties and witnesses.** – Before the marriage is solemnized the parties and three witnesses shall, in the presence of the Marriage Officer, sign a*

declaration in the Form specified in the Third Schedule to this Act, and the declaration shall be countersigned by the Marriage Officer.

12. Place and form of solemnization. *– (1) The marriage may be solemnized at the office of the Marriage Officer, or at such other place within a reasonable distance therefrom as the parties may desire, and upon such conditions and the payment of such additional fees as may be prescribed.*

(2) The marriage may be solemnized in any form which the parties may choose to adopt:

Provided that it shall not be complete and binding on the parties, unless each party says to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties, - "1.(A), take thee (B), to be my lawful wife (or husband)."

13. Certificate of marriage. *– (1) When the marriage has been solemnized, the Marriage Officer shall enter a certificate thereof in the Form specified in the Fourth Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses.*

(2) On a certificate being entered in the Marriage Certificate Book by the Marriage Officer, the Certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses have been complied with."

23. It would be apposite to reproduce the **Fourth Schedule** of the Special Marriage Act, 1954, which reads as under:

"THE FOURTH SCHEDULE
(See section 13)
CERTIFICATE OF MARRIAGE

I, E.F., hereby certify that on the ……. day of …… 20…….., A.B. and C.D.* appeared before me and that each of them, in my presence and in the presence of three witnesses who have signed hereunder, made the declarations required

by section 11 and that a marriage under this Act was solemnized between them in my presence.

(Sd.) E.F.,
Marriage Officer for
(Sd.) A.B.,
Bridegroom.
(Sd.) C.D.,
Bride.
(Sd.) G.H.
(Sd.) I.J. Three witnesses
(Sd.) K.L.

Dated the … …...day of ….. ….. 20… …..
*Herein give particulars of the parties."

24. In this context, it would be apposite to reproduce relevant part of the impugned judgment which leads to the conclusion to declare the marriage between the parties as "*void ab initio"* which are as under:

> *"In this connection perusal of section 12 of the Special Marriage Act is very essential because it deals with solemnization of marriage. Section 12 of the Act envisage that marriage may be solemnized at the office of the Marriage Officer or such place within a reasonable distance there from in any form suited to the parties. But marriage shall not be complete and binding unless such party says before the Marriage Officer and the three witnesses- (1)(A) take (B) to be my lawful wife (or her husband).*
> *On bare reading of section 12 of Special Marriage Act shows that marriage can be completed and binding only when the parties of the marriage declares that he takes other party as wife or husband in presence of three witnesses and the Marriage Officer.*
> *However in the plaint it only mentioned that marriage solemnized before Special Marriage Magistrate, Teghra. Presence of any witness has not been mentioned in the plaint which is important ingredient of the completion of the marriage under section 12 of the Act.*
> *In this regard it is pertinent to mention that photostat*

copy of marriage certificate issued under Special Marriage Act by Special Marriage Magistrate ARvind Kumar Khan shws that in presence of witness Vinod Kumar, Sanjeet Kumar and Rajesh Kumar, the respondent Manoj Kumar @ Munna and applicant Neeta Bharti has made declared declaration as per provision of section 11 of the Act and solemnized marriage before him.

Section 11 does not deal with solemnization of the marriage under Special Marriage Act rather section 11 deals with declaration by parties and witnesses which says that before the marriage solemnized, the parties and three witnesses shall in the presence of Marriage Officer signed on the declaration in the form schedule three and declaration shall be counter signed by the officer.

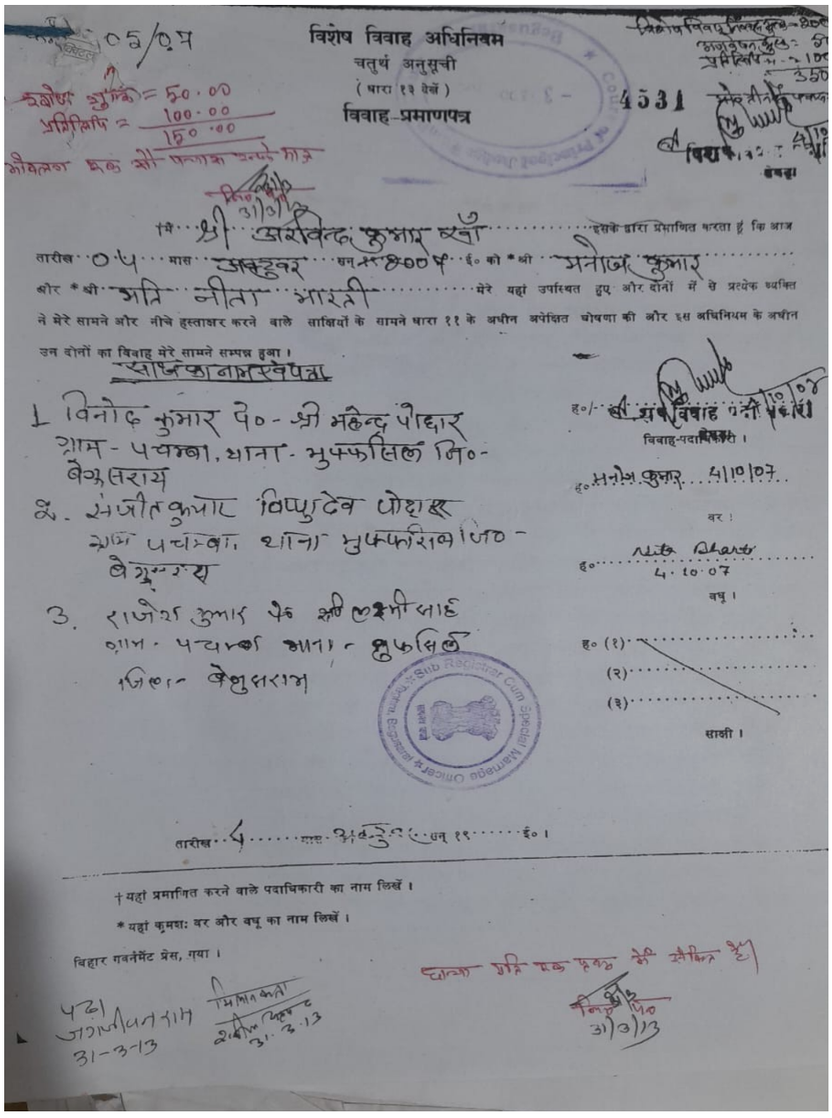
Since declaration is to be made and signed and counter signed by the parties before the Marriage Officer as per section 11 of the Special Marriage Act.

It is pertinent to note that it is practice and tradition of the society that after marriage the bride is assimilated in the caste of bridegroom. But, from the assertions in the plaint it appears that applicant Neeta Bharti has much affiliation with her parental caste as Paswan who happens to be scheduled caste and since allegedly the applicant had been publicly humiliated by the respondent Manoj Kumar @ Munna who happens to be Yadav by caste, and his family members in panchayat also because of applicant Neeta Bharti being scheduled caste which is one of the ground of filing of the case and dissolution of marriage.

As such neither averment in the plaint nor marriage certificate issued by Marriage Officer, Teghra, the requirement of marriage of being completed and binding by proclamation of parties that he takes the other party as his lawful wife or husband as required under section 12 of the special marriage Act, has been fulfilled.

Since the marriage of the applicant Neeta Bharti and the respondent Manoj Kumar @ Munna was not in accordance with section 12 of the Special Marriage Act hence the marriage certificate itself does not make marriage bind and complete. In absence of marriage no question of divorce. In such circumstances issue no. 1 is answered in negative and decided against the applicant in favour of the respondent Manoj Kumar @ Munna."

25. It is relevant to reproduce the **certificate of marriage** between the parties as issued under **'Schedule 4'** of the Special Marriage Act, which are as under:



विशेष विवाह अधिनियम
चतुर्थ अनुसूची
(धारा १३ देखें)
विवाह-प्रमाणपत्र

4531

मैं श्री अरविन्द कुमार सह ..... इसके द्वारा प्रमाणित करता हूं कि आज
तारीख 04 मास अक्टूबर सन् २००७ ई० को *श्री मनोज कुमार .....
और *श्री अति नीता भारती ..... मेरे यहां उपस्थित हुए और दोनों में से प्रत्येक व्यक्ति
ने मेरे सामने और नीचे हस्ताक्षर करने वाले साक्षियों के सामने धारा ११ के अधीन अपेक्षित घोषणा की और इस अधिनियम के अधीन
उन दोनों का विवाह मेरे सामने सम्पन्न हुआ।

साक्षियों के हस्ताक्षर

1. विनोद कुमार पि० श्री भलेन्द्र पोद्दार
ग्राम - पचम्बा, थाना - मुफस्सिल जि० -
बेगूसराय
2. संजीत कुमार विष्णुदेव पोद्दार
ग्राम पचम्बा, थाना मुफस्सिल जि० -
बेगूसराय
3. राजेश कुमार पि० श्री [illegible]
ग्राम - पचम्बा थाना - मुफस्सिल
जिला - बेगुसराय

ह०/- [illegible] 4/10/07
विवाह-पदाधिकारी।

ह० मनोज कुमार 4/10/07
वर।

ह० Nita Bharti
4.10.07
वधू।

ह० (१) .....
(२) .....
(३) .....
साक्षी।

तारीख 4 मास अक्टूबर सन् १९ ई०।

†यहां प्रमाणित करने वाले पदाधिकारी का नाम लिखें।
*यहां क्रमशः वर और वधू का नाम लिखें।
बिहार गवर्नमेंट प्रेस, गया।

26. From the aforesaid observation the sole reason assigned to arrive to the conclusion to declare the marriage "*void ab initio*" is that: "*As such neither averment in the plaint nor marriage certificate issued by Marriage Officer, Teghra, the*

requirement of marriage of being completed and binding by proclamation of parties that he takes the other party as his lawful wife or husband as required under section 12 of the Special Marriage Act, has been fulfilled." It was also observed that "*the marriage certificate itself does not make marriage binding and complete."*

27. Therefore, from the aforesaid observation, it can safely gathered that due to non-fulfillment of legal requirement of section 12 of the Special Marriage Act, the marriage between the parties was declared "*void ab initio".* Though, it was accepted by learned Family Court that the marriage certificate was issued by the Special Marriage Officer, Teghra, Begusarai in prescribed format.

28. From the plain reading of section 12 of the Special Marriage Act, we find that in terms of section 12(1) of the Act, generally the marriage may be solemnized between the parties at the office of Marriage Officer, or at such other place within a reasonable distance therefrom as the parties may desire with additional fees and cost as prescribed. With plain reading of section 12(2) of the Act, it also appears that the parties may solemnize their marriage in any form unless each party says to the other party in the presence of the Marriage Officer and the

three witnesses and in any language understood by the parties that "*I (A), take thee (B), to be my lawful wife (or husband).*"

29. From the marriage certificate of the parties which was issued by Special Marriage Officer, Teghra, Begusarai in terms of Schedule 4 (as per section 13 of the Act), it appears that the marriage between the parties was solemnized at the Office of Marriage Registrar in presence of three witnesses namely, Vinod Kumar (DW-2), Sanjeet Kumar (DW-4) and Rajesh Kumar, which was solemnized on 4th October, 2007, after making the required declaration under section 11 of the Act, and, thereafter, it was only certified that the marriage was solemnized between the parties "**under the Act"**. Meaning thereby that the proviso of sub-section (2) of section 12 of the Act, as mentioned aforesaid, was also fulfilled, which is the only criteria, in absence of which, it can be said that the marriage between the parties was not completed and binding on the parties.

30. It would be apposite to reproduce para 10 of the **Tamali Bhattarcharjee's case (supra)**, which reads as under:

> ***"10.*** *The learned Advocate for the petitioner has much relied on the evidence of the petitioner as P.W. 1 which goes unchallenged to establish that the marriage between the parties was not solemnized. The petitioner in her evidence at page 22 of the Paper Book has only stated that there was no solemnization in connection with the marriage. There is no specific allegation on her part that the minimum declaration which is required under*

> *the proviso to section 12(2) of the Act has not been made. On the other hand it is an admitted position that after the marriage a certificate of marriage had been issued by the appropriate authority and in that background it is well settled that the issuance of certificate is a strong indication that all the formalities prior to issuance of such certificate have been complied with. Section 13 of the Act deals with the Certificate of Marriage and it lays down very clearly that when the marriage has been solemnized, the Marriage Officer shall enter a certificate thereof specified in the schedule in a book to be kept by him i.e. to say Marriage Certificate Book and clause (2) of the said section further lays down that on a certificate being entered into the Marriage Certificate Book by the Marriage Officer the certificate shall be deemed to be conclusive evidence of the fact that a marriage under the Act has been solemnized. Section 18 of the Act further lays down regarding effect of registration of marriage and clearly indicates that where a certificate of marriage has been finally entered into the Marriage Certificate Book the marriage shall be deemed to be a marriage solemnized under the Act from the date of entry in such Book. From all these provisions it is evident that it is not open to the petitioner to challenge the marriage simply on the allegation that marriage was not solemnized as per the provisions of the Act."*

31. It would further be apposite to reproduce para 5 & 6 of **Priyanka Tarapad Bannerji's case (supra)**, which reads as under:

> ***5.*** *Once a Marriage Certificate was issued to the parties under the Special Marriage Act, it is conclusive evidence of the legality and solemnity of the marriage until it is set aside for any valid reason by an appropriate authority or by the Court of law. The law would not permit any person or authority to discard or not to give effect to such marriage certificate.*
> ***6.*** *We may also observe that Section 13 of the Special Marriage Act, 1954 provides for "Certificate of marriage" which ordains that when the marriage has been solemnized, the Marriage Officer shall enter a certificate thereof in the form specified in the Fourth Schedule in a book, to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses. Sub-section (2) provides that on a certificate being entered in the Marriage Certificate Book by the Marriage Officer, the Certificate shall be "**deemed to be conclusive evidence**" of the fact that a marriage under the Special Marriage Act has been solemnized and that all*

> *formalities respecting the signatures of witnesses have been complied. When such is the provision and the sanctity, the law would accord to a marriage certificate issued by the Registrar, which continuous to be legal and valid, the petitioner cannot have any grievance. The marriage certificate dated 23 November 2023 issued to the petitioner and her spouse Mr. Rahul Verma is legal and valid and fully recognized by the Indian law. There cannot be any other opinion.*

32. Moreover, the suit by the applicant/respondent Nita Bharti was not brought for declaration of marriage as *void* rather same was brought for dissolution of marriage. Interestingly, two witnesses of marriage, who are Vinod Kumar (DW-1) and Sanjeet Kumar (DW-2) who are witnesses of marriage certificate in their clear terms of deposition stated that marriage of OP/appellant was solemnized with respondent before the learned trial court but their testimony *qua* solemnization of marriage were completely ignored by the learned Family Court.

33. Therefore, interpretation of section 12 of the Special Marriage Act as made by the learned Family Court appears completely perverse on its face, where after due compliance of all the legal requirements, the marriage certificate was issued after due entry in marriage register in support of solemnization of marriage by the learned Marriage Registrar, Teghra, Begusarai (Bihar).

34. Non-taking consideration of testimony of DW-2 & DW-4 also made the impugned judgment bad in the eyes of law

and, moreover, the relief which was not sought for was granted by ignoring the factual aspects raised on oath that admittedly the marriage of applicant/respondent namely, Nita Bharti was solemnized with OP/appellant, where prayer was sought for dissolution of their marriage under section 27 of the Special Marriage Act.

35. It is pertinent to note that the proviso appended to section 12 (2) of the Special Marriage Act, 1954 as well as schedule 4 thereto, were not subsequent insertions or amendments, but formed an integral part of the enactment itself. Both provisions were legislatively conceived and drafted contemporaneously with the parent statute, having been incorporated at the very inception of the act as enacted on 9th October, 1954. The same came into force along with the act w.e.f. 1st January, 1955, thereby reflecting the clear legislative intent that the proviso to section 12(2) and schedule 4 must be read harmoniously as component of the original statutory scheme and, as such, we find that “marriage certificate” is also the conclusive evidence of the fact that after due compliance of proviso of section 12(2) of the Special Marriage Act, marriage between the parties was solemnized. Proviso of section 12(2) of the Special Marriage Act cannot be looked into isolation and,

therefore, the view taken by Division Bench of Kolkata High Court in **Tamali Bhattacharjee case (supra)** and by Bombay High Court in **Priyanka Tarapad Bannerji case (supra)** are appearing more legally convincing to us. We find that in view of aforesaid single Judge view of **Nirmal Dass Bose case (supra)** of Allahabad High Court, as referred by respondent, is not a correct interpretation of section 12(2) of the Special Marriage Act and same is not convincing to us.

36. In view of aforesaid factual and legal discussion, we have all reason either to "allow" this appeal or remand it back to the learned trial court.

37. But, we took a "pause", considering the post consequences either of allowing present appeal or to remand it back for fresh consideration in view of prayer *qua* dissolution of marriage under section 27 of the 'Act' as issue Nos. 2, 3 & 4 left unanswered by learned Family Court. In either conditions, the effects which we probablized are:-

(i) To keep both parties in limbo for next so many years.

(ii) To disturb the marriage of respondent with one Saroj Kumar, with whom she solemnized marriage, after passing of statutory period in view of Section 30

of the Special Marriage Act, where one male child was also born.

(iii) Child who is 'one year' old will be grown and groomed seeing legal fight of mother, which certainly in conflict with his best interest.

38. Therefore "dissolution of marriage" is the only solution, for complete justice.

39. But, at same time, we are also mindful of the legal positon that we cannot exercise power under Article 142 of the Constitution of India for complete justice.

40. At this juncture, our judicial consciousness poses a question to us: being a constitutional court "are we helpless?". This is particularly so, when we are convinced that respondent/applicant cannot perform her marital obligation with appellant due to the aforesaid compelling circumstances.

41. Hence, this is an occasion to view the present episode in a more progressive manner by importing the "***Doctrine of frustration***".

42. As a Constitutional Court it is of paramount importance to touch upon all the possible scenarios, which can result in delivery of justice. Solemnization of marriage is a pious concept which does not only involve a husband and wife

but society at large. And keeping in view the best interest of the parties, best possible way to deliver justice should be adopted. The court highlights that "***Justice should not only be done, but must also be seen to be done".*** Going with the essence of above mentioned phrase, the court will fail in its duty, if it will not discuss the prospective probabilities which can ensure the just, reasonable and conscious delivery of justice.

43. The Indian Jurisprudence suggests that ***" Procedural law is the handmaid of Justice and not its mistress"***, which enables the court to adopt flexible approach rather than taking a rigid view of the prescribed law.

44. At the outset, it is not in dispute that the marriage between the parties was solemnized in accordance with law under the Special Marriage Act, 1954 and continued for a certain period, thereby creating a legally valid and subsisting matrimonial bond. The statutory presumption attached to such marriage stands fortified by the mandate of Section 13(2) of the Act, which accords conclusiveness to the certificate of marriage.

45. It must be acknowledged that though marriage is not a commercial contract, it undeniably embodies a bundle of reciprocal obligations—cohabitation, fidelity, companionship, emotional support, and exclusivity. Where these foundational

obligations stand extinguished not by mere estrangement but by subsequent conduct that legally and morally negates the marital bond, the continuance of marriage becomes impossible in substance. In such circumstances, the Court cannot remain bound by the mere form of the relationship when its essence has ceased to exist.

46. A marriage solemnized under the Special Marriage Act, 1954 stands on a fundamentally different footing from marriages governed by personal laws. It is a secular and civil institution, brought into existence not by religious rites or sacramental ceremonies, but by free consent of parties expressed before a statutory authority. The Supreme Court in ***Supriyo v. Union of India 2023 SCC Online SC 1348*** has recognized that the Act provides a framework for a non-religious, civil form of marriage, thereby underscoring its contractual character. The essence of such marriage lies in legal formalization through procedure and mutual consent, which aligns it closely with the concept of a civil contract. A marriage solemnized under the Special Marriage Act, 1954 stands on a fundamentally distinct footing from marriages governed by personal laws. The Supreme Court in ***Supriyo v. Union of India***, particularly in *Para 25*, has unequivocally held that the

Act is a ***'secular and a religious law'***, enacted as an alternative to marriages rooted in religion. Further, in *Para 475,* the Court explicitly recognized that the legislative intent of the enactment was to provide a framework for civil marriage. Unlike sacramental marriages, the formation of a marriage under the Act is not dependent upon rites or customs, but upon statutory conditions, declaration, and registration before a Marriage Officer, thereby emphasizing consent and legal formalization. Such a structure bears the essential attributes of a civil contract —offer, acceptance, capacity, and formalization under law. Thus, while not a contract in the strict commercial sense, a marriage under the Special Marriage Act possesses a contractual foundation, being a union created by free consent of parties and regulated by statute, rather than by religious sanction. Although marriage is not strictly a commercial contract, in cases governed by secular statutes such as the Special Marriage Act, the contractual underpinnings of marriage permit limited doctrinal borrowing from contract law, particularly where continuation of marital obligations becomes impossible. The doctrine of frustration, embodied in Section 56 of the Indian Contract Act, is founded on the principle that law does not compel performance of that which has become impossible. When

applied in the matrimonial context, particularly to civil marriages under the Special Marriage Act, this principle manifests in situations where the foundation of marriage—cohabitation, consortium, mutual obligations—stands irretrievably destroyed.

47. The doctrine of frustration, as evolved in contract law, operates where an unforeseen event renders the performance of obligations impossible or destroys the very foundation upon which the relationship rests. Transposed into matrimonial jurisprudence, the doctrine applies where the substratum of marriage—mutual trust, exclusivity, and consortium—is irreversibly destroyed, leaving no scope for restoration. The law, in such a situation, must recognize reality over fiction.

48. The present case transcends the conventional doctrine of irretrievable breakdown of marriage. Irretrievable breakdown of marriage contemplates a situation where the marriage has failed due to prolonged separation, incompatibility, or absence of cohabitation. It is not merely a case where the marriage has failed due to incompatibility or prolonged separation; rather, it is one where subsequent events—most notably the lawful remarriage of the respondent-wife and the

birth of a child—have rendered the performance of marital obligations wholly impossible. The doctrine of frustration, as invoked herein, goes a step further—it applies where the very performance of marital obligations has become impossible due to supervening circumstances. The impossibility herein operates at multiple levels—moral, practical, and legal—thereby justifying the application of a doctrine analogous to frustration in order to recognize reality over legal fiction.

49. The Law Commission of India has described irretrievable breakdown as a situation where "no reasonable probability remains for spouses living together again" . However, frustration is a more compelling condition—it arises not merely from lack of possibility of reconciliation, but from the destruction of the legal and moral framework of marriage itself. Thus, while irretrievable breakdown addresses the *failure* of marriage, frustration addresses the *impossibility of its continuation*. In the present facts, the second marriage and resultant altered circumstances have rendered the first marriage incapable of subsistence in any meaningful sense. Comparative matrimonial law strongly supports the approach that where the essence of marriage is lost, the law must facilitate dissolution rather than perpetuate a hollow relationship. Similarly,

jurisdictions such as Australia and Canada have adopted no-fault divorce regimes, where the central inquiry is whether the marriage has ceased to function as a social and emotional unit. The emphasis is not on assigning blame, but on recognizing the practical reality that continuation of such marriage serves no purpose. Comparative legal scholarship indicates that countries such as the United States, Germany, and Australia treat breakdown of marriage as a primary ground for dissolution, prioritizing individual welfare and societal stability over rigid formalism. The underlying rationale across these jurisdictions is consistent: the law must not compel parties to remain bound in a relationship that has lost its substance. Where the marital bond is reduced to a mere legal shell, its continuation is contrary to justice.

50. The Family Court, instead of adjudicating the petition for divorce on its own merits within the statutory framework of Section 27, proceeded to declare the marriage void ab initio. Such a finding, in the considered opinion of this Court, travels beyond the pleadings and the evidence available on record, inasmuch as no sufficient ground was established to attract the provisions governing void marriages. The course adopted by the Family Court, therefore, suffers from a

jurisdictional and legal infirmity, and the proper approach ought to have been an adjudication confined to the grounds pleaded under Section 27 of the Act.

51. Be that as it may, subsequent events assume decisive significance in the present case. It has been brought on record that pursuant to the decree dated 28.02.2018 passed by the Family Court, the respondent-wife contracted a second marriage on 18.12.2021. The said remarriage was solemnized after a substantial lapse of time, well beyond the statutory period contemplated under Section 30 of the Special Marriage Act, which permits remarriage upon expiry of the limitation period for filing an appeal, in the absence of any subsisting legal impediment. There is nothing on record to suggest that the respondent-wife had notice of any pending appellate proceedings at the time of entering into the second marriage. The remarriage, therefore, appears to have been entered into in good faith and in due compliance with law. Out of the said wedlock, a child has also been born, whose welfare and legal security cannot be ignored.

52. It would be apposite to produce Sec. 30 of the Special Marriage Act 1954 which is as follows :

> ***30. Remarriage of divorced persons.—****Where a marriage has been dissolved by a decree of divorce, and either there is no right of appeal against the decree or if*

> *there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed either party to the marriage may marry again.*

53. In this backdrop, the developments that have taken place are not merely subsequent in time but are transformative in nature, striking at the very root of the original matrimonial relationship. The marital bond between the appellant and the respondent has, in effect, lost its substratum and survives only in a formal legal sense. The parties have lived apart for a considerable duration, and the possibility of restoration of matrimonial life is wholly illusory.

54. While it is true that the doctrine of frustration, in its strict contractual sense, is not directly applicable to matrimonial law, the underlying principle—that a relationship rendered incapable of performance by supervening circumstances ought not to be artificially preserved—can be judiciously invoked. Constitutional courts are empowered to adopt Purposive Interpretation to advance justice and to put an end to litigation. The Rule of interpretation suggests that Constitutional Courts must be at work to fulfill the legislative intent. Marriage, though not a commercial contract, embodies reciprocal and enforceable obligations such as cohabitation, fidelity, companionship, and exclusivity. Where these essential obligations stand

extinguished, not merely by estrangement but by subsequent conduct that negates the very foundation of the marriage, the continuance of such a bond becomes impossible in substance.

55. Further, the conduct of the parties, including initiation of criminal proceedings, complete erosion of trust, and cessation of cohabitation, clearly brings the case within the ambit of Section 27 of the Special Marriage Act, warranting dissolution of marriage. Any attempt at this stage to unsettle the subsequent marriage would not only result in manifest injustice but would also adversely affect the rights, legitimacy, and welfare of the child born from the second wedlock, as well as the settled expectations of the parties involved therein.

56. This Court has also considered the question of remand; however, remand is not to be resorted to as a matter of course. In the present case, the material facts stand admitted or are otherwise clearly established on record. No useful purpose would be served by remanding the matter, as it would merely prolong litigation and perpetuate uncertainty, without advancing the cause of justice.

57. In view of the above, this Court is of the considered opinion that the present case represents a rare but compelling situation where the doctrine of frustration must be

invoked in matrimonial law.

58. The marriage, though validly solemnized, has lost its essential character due to subsequent events that render its continuation impossible. The legal bond survives only as a shell, devoid of substance, purpose, or enforceability. To compel parties to remain in such a relationship would amount to enforcing a legal fiction at the cost of justice. The law cannot insist upon the preservation of a bond that has ceased to exist in every meaningful sense.

59. Therefore, in order to do complete justice, to uphold the dignity of the parties, to secure the welfare of the child, and to serve the broader interests of society, this Court finds it appropriate to dissolve the marriage by applying the doctrine of frustration, treating the matrimonial bond as having become incapable of performance.

60. Accordingly, marriage of OP/appellant namely, Manoj Kumar @ Munna stands dissolved with respondent/applicant namely, Nita Bharti.

61. Department/Office is directed to prepare decree, accordingly.

62. Before parting with the judgment, this Court expunged the following observation as observed by the learned

Family Court as in our considered opinion, the observation is completely unwarranted and not related with the issues involved and same therefore expunged, being based upon personal experience and opinion of the presiding officer.

> *"It is pertinent to note that it is practice and tradition of the society that after marriage the bride is assimilated in the caste of bridegroom…. .."*
>
> **(Page '6' of the impugned judgment)**
>
> *"Since after marriage the applicant Neeta Bharti had been converted into Yadav Caste from Paswan i.e. scheduled caste to backward but she has obtained MBBS degree fraudulently as member of scheduled caste community in collusion with the respondent Manoj Kumar @ Munna Yadav. Hence, the MBBS degree of the applicant Nita Bharti is liable to be cancelled and applicant Nita Bharti and the respondent Manoj Kumar @ Munna are liable to return money received as stipend during MBBS course by the applicant Neeta Bharti…. …."*
>
> **(Page '8' of the impugned judgment)**

63. Parties to bear their own cost.

64. Trial court record along with copy of the judgment be sent to the learned trial court.

(Chandra Shekhar Jha, J.)

Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

65. I have gone through the judgment written by my esteemed Brother the Hon'ble Justice C.S. Jha. While fully concurring with the observation and finding as well as the ultimate conclusion arrived by my esteemed brother, I would like to record the following few lines to supplement the judgment.

66. The Hon'ble Justice C.S. Jha has recorded the reasons for dissolution of marriage on the following grounds:-

> *"**57**. In view of the above, this Court is of the considered opinion that the present case represents a rare but compelling situation where the doctrine of frustration must be invoked in matrimonial law.*
>
> ***58**. The marriage, though validly solemnized, has lost its essential character due to subsequent events that render its continuation impossible. The legal bond survives only as a shell, devoid of substance, purpose, or enforceability. To compel parties to remain in such a relationship would amount to enforcing a legal fiction at the*

cost of justice. The law cannot insist upon the preservation of a bond that has ceased to exist in every meaningful sense.

***59**. Therefore, in order to do complete justice, to uphold the dignity of the parties, to secure the welfare of the child, and to serve the broader interests of society, this Court finds it appropriate to dissolve the marriage by applying the doctrine of frustration, treating the matrimonial bond as having become incapable of performance.**"*

67. My esteemed brother, Hon'ble Justice C.S. Jha, decided to dissolve the marriage between the parties by applying 'Doctrine of frustration'. It is true that Section 27(1)(d) of the Special Marriage Act contemplates a ground of treating the petitioner with cruelty since the solemnization of marriage. It is needless to say that the term cruelty has not been defined either in the Special Marriage Act or in the Hindu Marriage Act. In Paragraph nos. 90, 99 & 100 of the judgment titled ***Samar Ghosh v. Jaya Ghosh*** reported in ***(2007) 4 SCC 511***, the Hon'ble Supreme Court was pleased to observe as hereunder:-

***"90.** We have examined and referred to the cases from the various countries. We find strong basic similarity in adjudication of cases relating to mental cruelty in matrimonial matters. Now, we deem it appropriate to deal with the 71st Report of the*

Law Commission of India on "Irretrievable Breakdown of Marriage.

99. *Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.*

100. *Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration."*

68. In sub-paragraph (vi) & (vii) of paragraph no. 101, the Hon'ble Supreme Court refers to "Sustained unjustifiable conduct and behavior 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, studied neglected, indifference or total departure from normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure....." are instances of cruelty.

69. It is also hold by the Hon'ble Supreme Court that prolonged separations of ones spouse from the association of other, denial of maintaining conjugal and marital relationship are also instances of cruelty though not under the facts and circumstances of the case amounts to desertion or complete abandonment of marriage.

70. In ***Rakesh Raman v. Kavita***, reported in ***(2023) 17 SCC 433,*** the Hon'ble Supreme Court considered the actual matrix of the matter and found that the husband and wife were living separately for last 25 years, no child was born from the wedlock. The couple initially cohabited as husband and wife barely for 4 years. Repeated attempts of the Court for resolution/settlement yielded no result. Both the parties made bitter allegations against each other. Aforesaid act and conduct were considered as cruelty perpetuated by the respondent to the Appellant. Similar decision was reiterated by the Hon'ble Supreme Court in a very recent case of ***Naomi Chakraborty v. Aparna Chakraborty*** reported in ***2025***

SCC OnLine SC 2798. The Hon'ble Supreme Court found that there was long period of separation without any hope for resolution. It is hold by the Hon'ble Supreme Court in the instant case that marriage was solemnized in the year 2023 and matrimonial litigation between the parties commenced within two years of marriage and had been continuing for the last 22 years.

71. In the instant case, marriage was solemnized under the Special Marriage Act on 4th October, 2007 subsequently the Plantiff filed the suit for dissolution of marriage in 2013, till date the spouses are living separately. There has been no conjugal relationship during these long period of time. The respective spouses do not have any empathy, feeling of love, affection and respect for each other. The marital relation is now a dreary incident. These facts are indeed instances of reciprocal cruelty by and between the parties.

72. On similar score, we can also rely on the judgment in the case of ***Ruchi Wadhawan v. Amit Wali*** reported in **2024 SCC OnLine Del 5497**. The Delhi High Court followed the judgment in ***Samar Ghosh*** (Supra) and also referred to the decision of the Division Bench of the High Court in ***Simran Batra @ Lata Batra v. Davinder Kumar Kapor*** reported in ***2024 SCC OnLine Del 5432*****,** wherein the parties were granted divorce taking into the account the long period of separation while observing that

"Long continuous separation is a facet of mental cruelty. Severing ties, in the long run, may do more good than bad to the parties' psychological health."

73. The High Court of Chhattisgarh in ***Arpit Kumar Agrawal v. Sarika Agrawal*** reported in ***2025 SCC OnLine CHH 10817*** dissolved the marriage between the parties on the ground of cruelty on factual score that they are living separately for more than 10 years.

74. Thus, "Doctrine of frustration" which has been introduced by my esteemed brother as a ground of divorce is supplemented by me holding *inter alia* that continuous uninterrupted, prolonged separation by and between the parties had caused deep frustration in the core of their heart, such frustration caused by the other spouse is a form of cruelty within the meaning of Section 27 (1) (d) of Special Marriage Act.

75. For the reasons stated above, the instant Appeal deserves to be disposed of in terms of paragraph nos. 59 to 62 of this judgment.

76. Order accordingly.

(Bibek Chaudhuri, J)

Rajeev/-
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