

First Appeal (DB) No. 48 of 2025

(Against the judgment dated 27.09.2024 passed by Sri Rajesh Kumar No. 1, learned Principal Judge, Family Court, Jamtara in Original Suit No. 146/2023.)

Rajkumar Paul, S/o Sri Ashok Paul, R/o Vill- Birajpur,
P.O. & P.S.- Masalia, Dist.- Dumka. ... **Appellant**

Versus

Mamta Kumari, W/o Rajkumar Paul, D/o Sri Umesh Paul,
R/o Piprasole, P.O. & P.S.- Karmatar, Dist.- Jamtara.

... **Respondent**

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellant : Mr. Shashank Shekhar, Adv.
For the Respondent : Mr. Sameer Saurabh, Adv.

Dated : 27/01/2026

JUDGMENT

Per Rongon Mukhopadhyay, J. :

- 1.** Heard Mr. Shashank Shekhar, learned counsel for the appellant and Mr. Sameer Saurabh, learned counsel appearing for the respondent.
- 2.** This appeal is directed against the judgment dated 27-09-2024 passed in Original Suit No. 146/2023 by Sri Rajesh Kumar No. 1, learned Principal Judge, Family Court, Jamtara whereby and whereunder, the suit preferred by the appellant under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955, has been dismissed.
- 3.** For the sake of convenience, both the parties are referred to in this judgment as per their status before the learned trial court.
- 4.** The petitioner/husband (appellant herein) had preferred a suit under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 for dissolution of his marriage with the respondent (respondent

herein also) in which it has been stated that the marriage of the petitioner was solemnized with the respondent on 13-12-2016 at village Piprasole, District- Jamtara as per Hindu rites and customs. After the marriage, the petitioner and the respondent started residing together at Village- Birajpur, District-Dumka and Village-Palojori, District- Deoghar and out of the said wedlock, a son was born who was named Abhinav. Prior to the marriage, the respondent was posted at Middle school Tikopahari, District- Deoghar as a Government Teacher and the respondent had assured that she will get her transferred to Palojori where the petitioner was working as Urja Mitra. It has been stated that after December 2016, the respondent started compelling the petitioner to establish a separate establishment at village Piprasole, District- Jamtara and in order to create pressure, the respondent started quarreling with the parents of the petitioner on petty matters. The petitioner was however, not in a position to stay at Piprasole as the father of the petitioner was suffering from various ailments. The respondent on the other hand, started issuing threats that she will commit suicide if such desire is not fulfilled which constrained the petitioner to report the said matter to the parents of the respondent. The parents of the respondent, at this information, came to Birajpur and attempted to force the petitioner to live separate from his father which the petitioner declined. It has been stated that on 15-03-2018, the father of the respondent took her away from village Birajpur with cash of Rs. 1 lakh, ornaments etc and the respondent started residing at her father's house where she is still continuing to reside. The petitioner had gone to his in-laws' house to bring the respondent back, but he was abused and warned that the respondent shall not be sent back till the petitioner separates from his parents. The petitioner had once

again made an effort to bring back the respondent on 06-09-2020, but the said effort proved futile. Being constrained, the petitioner had preferred a suit for restitution of conjugal rights in Original Suit No. 101 of 2021 and since the respondent had agreed to lead her marital life with the petitioner, a settlement was arrived at consequent to which the suit was disposed of. However, the respondent did not resume her conjugal life with the petitioner and several roadblocks were put up by her preventing normalcy in the marital life. There has been no conjugal relationship between the petitioner and the respondent since 15-03-2018.

5. On being noticed, the respondent had appeared and filed her written statement in which the allegations made in the plaint has been denied. It has been stated that at the time of marriage, the father of the respondent was compelled to shell out Rs. 2 lakhs to the petitioner and his family. The respondent had secured a job of a Government Teacher prior to her marriage and is at present posted at Utkramit Madhya Vidyalaya, Tikopahari, Margomunda Block, District Deoghar. After marriage, the respondent tried for his transfer within Hat Palojori Block and had also filed representation before the Deputy Commissioner, Deoghar on 11-11-2017, but no action had been taken on the said representation. It has been stated that the respondent is posted at village Tikopahari which is at a distance of 75 kilometres from village Hat Palojori and since the petitioner was working as an Electric Meter Reader on contract basis at Hat Palojori, he had expressed his inability to take the respondent to village Tikopahari for attending to her duty rather the petitioner advised the respondent to continue her duty from her father's house and as such the respondent started doing her duty from her father's house, but she used to live in her matrimonial house

whenever she got leave from the school or on vacations. The respondent always used to transfer her salary to the account of the petitioner regularly for maintaining the household expenses of her matrimonial house. It has been stated that since the respondent was finding difficulty in attending to her duty during her advanced stage of pregnancy, she had taken maternity leave from 04-07-2017 and started living at her matrimonial house but this resulted in quarrel with the mother of the petitioner and she could not remit any amount in the account of the petitioner because of her not getting monthly salary during the relevant period. On 10-09-2017, the respondent gave birth to a male child and the entire expenses were borne by the father of the respondent. The petitioner had got the respondent discharged from the hospital within 5 hours of delivery and taken her to his house at Hat Palojori which was at a distance of 50 kilometers and this resulted in the respondent developing various complications but the respondent was not given any medicine and medical aid rather, she was forced to do physical work beyond her capacity by her mother-in-law at which the respondent became ill. On getting such information, the father of the respondent went to see the respondent and her child in October, 2017 and found the respondent in a perilous condition after which he had taken the respondent and the child to his house and got them treated by a doctor. The acts of the petitioner compelled the respondent to send a legal notice to the petitioner who, after getting the notice, immediately filed a case under Section 9 of the Hindu Marriage Act which was registered as Original Suit No. 112/2020. The respondent on receiving notice in the suit appeared and the matter was finally settled in the Lok Adalat. The respondent thereafter went to reside in the house of the petitioner, but neither the petitioner nor his family members

co-operated with the respondent in continuing her job, rather she was forced to do domestic work in their house. It has been stated that since the health of the respondent started deteriorating, she had to shift to her father's house to continue her duty.

6. Based on the pleadings of the parties, the following issues were framed for adjudication:

- (i) Whether the suit maintainable in its present form?
- (ii) Whether there any valid cause of action for the present suit?
- (iii) Whether the respondent is legally married wife of the petitioner?
- (iv) Whether the respondent has treated the petitioner with cruelty?
- (v) Whether the respondent has deserted the petitioner for a continuous period of more than two years immediately preceding the presentation of the petition, without any reasonable excuse?
- (vi) Whether the petitioner is entitled to the relief claimed or any other relief?

7. The petitioner in support of his case has examined **four** witnesses:

P.W.1 Rajkumar Paul is the petitioner who has stated about solemnization of his marriage with the respondent on 13-12-2016 at Piprasole as per Hindu rites and customs. Out of the wedlock, a son was born to the couple. He has stated that before marriage, the respondent was working as a Government Teacher at Middle school, Tikopahari and during marriage, the respondent had assured him that she will get her transfer to Palojori, where he was working as an Urja Mitra. After marriage, the respondent started creating pressure upon him to get separated from his parents and start living at Piprasole and during this period, the respondent on trivial issues used to

quarrel with his parents. The respondent used to give threats of committing suicide if her intentions were not fulfilled and this conduct of the respondent was informed by him to her parents. On receiving such information, the family members of the respondent came to his house and started putting pressure upon him to stay at Piprasole, but he expressed his inability to accede to such demands. When the respondent became pregnant, she had taken a leave from 04-07-2017 to 22-12-2017 and stayed with him at Palojori and the entire expenses towards delivery of the child were borne by him. After the period of leave expired, the respondent joined her duty and once again started pressurizing her to stay separate. He has stated that on 15-03-2018, the respondent had come to his house at Birajpur and had forcibly taken away cash of Rs. 1 lakh and jewelry and thereafter started residing at her parents' house in Piprasole. In May 2018, he had gone to the house of the respondent to bring her back, but her parents refused and he was abused and humiliated. On 06-09-2020, he along with his friends and relatives had gone to the house of the respondent to take her bidai, but once again her parents had refused and the respondent had to return empty handed. He has stated that from 15-03-2018 onwards, there is no relationship between him and the respondent. He had filed a suit for restitution of conjugal rights but the same ended on the assurance of the respondent of restoring conjugal rights. The respondent, however, was not inclined to restore her marital life and continued staying at Piprasole at her father's house.

In cross-examination, he has deposed that he runs a shop selling plastic products and earns an amount of Rs. 4,000-5,000/- per month.

P.W.2 Ashok Kumar Pandit is the father of the petitioner. He has reiterated what has been stated by P.W.1.

In cross-examination, he has deposed that if the respondent leaves her job and stays at her matrimonial house with the child, she will be properly maintained. He cannot send the petitioner to stay at Tikopahari as there is no one else to look after him and his wife.

P.W.3 Jagabandhu Paul has stated similar to P.W.1 and P.W.2.

In cross-examination, he has deposed that he is the neighbour of the petitioner. He had not witnessed any quarrel between the petitioner and the respondent.

P.W.4 Purnima Devi is the mother of the petitioner who has also stated similar to the evidence of the other witnesses. In cross-examination, she has deposed that she never had any quarrel with the respondent. Whenever the respondent stayed at her matrimonial house, the respondent used to treat her as her mother.

8. The respondent has also examined ***four*** witnesses on her behalf:

R.W.1 Mamta Kumari is the respondent who has stated that an amount of Rs. 1,50,000/- was transferred in the account of the petitioner prior to the marriage and apart from cash, various other articles were also given in marriage. She was already in employment prior to her marriage as a Government Teacher in Middle School, Tikopahari. After her marriage, she started residing at her matrimonial house at Hat Palojori along with her in-laws. Her in-laws were agreeable to let her continue to work after which the marriage was solemnized. Since the distance from her matrimonial house to her school was 75 km, she started residing at her father's house though in the holidays, she used to go to her matrimonial house. She has stated that she regularly transfers amounts of Rs. 20,000-25,000/- to the

account of the petitioner and she has submitted the account details in support thereof. When she had become pregnant, she had taken maternity leave from 04-07-2017 to 22-12-2017 during which period she resided at her matrimonial house but her in-laws had refused to incur her medical expenses and it was her father who used to get her medical check-up done by Dr. Madhubala Sinha. Despite being advised complete bed rest by the doctor after the birth of a child on 10-09-2017, the petitioner and her mother-in-law forcibly got her discharged from the nursing home and which resulted in her health condition deteriorating. She has stated that her father had ultimately taken her to his house along with the child and her treatment continued for several months at Jamtara. During her maternity leave, she did not get any salary and since she could not transfer any amount to the account of the petitioner, the petitioner and his mother became furious at her. Since the petitioner or his family members did not keep any relation with her, she had sent a legal notice on 27-10-2020 and on receiving the notice, the petitioner had filed a suit for restitution of conjugal rights by making false allegations. The said suit ultimately resulted in a compromise and after settlement, she had gone to Basukinath and thereafter to Puri along with the petitioner and her parents-in-law but after returning to her parents' house, they had left for their house without giving any information. As she was not being taken back to her matrimonial house, a panchayati was held at the behest of her father and the dispute was settled once again in September 2022 but she was not taken back to her matrimonial house on the assigned date. She has expressed her desire to stay peacefully with the petitioner and her in-laws.

In cross-examination, she has deposed that she had tried for a transfer and had also represented the D.S.E., Deoghar and

D.C. Deoghar. She wants that the petitioner to stay with her.

R.W.2 Umesh Prasad Pandit is the father of the respondent who has reiterated what has been stated by R.W.1.

In cross-examination, he has deposed that he does not know as to the exact dispute between the petitioner and the respondent.

R.W.3 Devendra Paul was the mediator in the marriage ceremony between the petitioner and the respondent. He has stated similar to what has been stated by R.W.1 and R.W.2.

In cross-examination, he has deposed that there is no conjugal relationship between the petitioner and the respondent since the year 2020.

R.W.4 Ramswarup Pandit has also stated similar to the other witnesses. He has also stated that in the panchayat, it was decided that the respondent will pay Rs 10,000/- per month to the petitioner and in return, the respondent will be facilitated to her attending to her duties. However, the petitioner resiled from such agreement later on.

In cross-examination, he has deposed that he is the cousin brother of the respondent. The respondent is attending to her duty for the last five months from her father's place.

9. It has been submitted by Mr. Shashank Shekhar, learned counsel for the petitioner/appellant that the petitioner has depicted various instances which would indicate that he has been meted out cruelty by the respondent. Despite the best efforts made by the petitioner, the respondent had refused to stay at her matrimonial house. The respondent has willfully abandoned the petitioner without the permission of the petitioner and the entire circumstances prove cruelty as well as desertion and, therefore, the learned trial court having not properly appreciated the issues framed, the present appeal is liable to be allowed.

10. Mr. Sameer Saurabh, learned counsel for the respondent has submitted that the respondent has been able to highlight the practical difficulties she found while commuting from her workplace to her matrimonial house. It has been submitted that the respondent used to send money to the petitioner on a regular basis and in those circumstances, it cannot be deduced that the petitioner was treated with cruelty or that the respondent had deserted the petitioner.

11. We have heard the learned counsel for the respective parties and have perused the trial court records.

12. The petitioner had filed the suit for dissolution of marriage with the respondent on the grounds of cruelty and desertion. “Cruelty” is not defined in the Hindu Marriage Act, 1955, but its meaning and purport in the context of the Act has been considered by the Hon’ble Supreme Court in numerous judgments. In the case of **Samar Ghosh vs Jaya Ghosh** reported in **(2007) 4 SCC 511**, it has been held as follows:

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

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

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

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

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

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total

departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

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

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

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

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion

without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

102. *When we take into consideration aforementioned factors along with an important circumstance that the parties are admittedly living separately for more than sixteen-and-a-half years (since 27-8-1990) the irresistible conclusion would be that matrimonial bond has been ruptured beyond repair because of the mental cruelty caused by the respondent.”*

13. In the case of **A. Jayachandra v. Aneel Kaur** reported in **(2005) 2 SCC 22**, it has been held as under:

“10. The expression “cruelty” has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such

delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

11. *The expression “cruelty” has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel*

treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. (See Shobha Rani v. Madhukar Reddi.)

12. *To constitute cruelty, the conduct complained of should be “grave and weighty” so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than “ordinary wear and tear of married life”. The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors*

such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.”

14. The respondent's act of cruelty as depicted by the petitioner seems to be the reluctance on the part of the respondent to stay at her matrimonial house. What has been construed by the petitioner as “reluctance” would in the facts and circumstances of the case can be termed to be a “compulsion” on the part of the respondent. The reason for staying at the parent's house of the respondent was of being near to her school where she is working

as a Government Teacher. The distance between the matrimonial house of the respondent and the school is 75 km and understandably for a female it is not possible to commute and cover such distance on a daily basis more so, when the means of commuting are limited. The respondent, who has been examined as R.W.1, has stated about the efforts made by her to stay at her matrimonial house at the time of festivals or whenever she got an extended holiday. The respondent, it seems, has been regularly sending money on the account of the petitioner which enhances her willingness to lead a peaceful marital life. Her sending of the amounts seems to have shored up the financial resources of the petitioner and his family members since as per their own admission, they run a shop selling plastic wares and the income depicted by them appears to be meagre. The petitioner has failed to prove a single instance which would add muscle to his allegation of being treated with cruelty and the learned trial court has rightly answered issue no. (iv) in favor of the respondent and against the petitioner.

15. The issue of “desertion” appears to intermingle with “cruelty” since it is the case of the petitioner that the respondent had willfully abandoned her without his consent. None of the ingredients constituting “desertion” has been proved by the petitioner. The respondent started residing at her parental home for the sole reason of attending to her duties in school as commuting to school from her matrimonial house on a daily basis would have been an arduous task. Such stay cannot be said to be a “willful abandonment” rather an act of compulsion as we have stated earlier. Moreover, the petitioner prior to the marriage was knowing about the respondent being employed as a Government Teacher and he had willingly accepted the said fact. R.W.1 has stated about representation submitted by her for her transfer to

a school nearby to her matrimonial house, but such efforts did not bear any fruition and for which the respondent cannot be blamed. The respondent has also stated about her willingness to stay with the petitioner and in-laws. These circumstances wipe out the assertion made by the petitioner of being deserted by the respondent and consequently issue no. (v) is also decided against the petitioner.

16. In view of the above discussions, we do not find any merit to entertain this appeal which accordingly stands **dismissed**.

17. Pending I.A.s, if any, stands closed.

(RONGON MUKHOPADHYAY, J.)

(PRADEEP KUMAR SRIVASTAVA, J.)

Jharkhand High Court, Ranchi
Dated the 27th Day of January, 2026
Preet/N.A.F.R.
Uploaded on: 27 / 01 / 2026.