IN THE HIGH COURT OF JHARKHAND AT RANCHI
F.A. No.78 of 2022
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Gautam Kalwar @ Gautam Bhagat, aged about 43 years, son of Raja Kalwar @ Ajay Kumar Bhagat, resident of Gudaraghat, Rajmahal, P.O. & P.S. – Rajmahal, District – Sahibganj. **... ... Appellant/Petitioner**

Versus

Anita Devi, aged about 38 years, wife of Gautam Kalwar, daughter of Late Nandji Prasad Bhagat, resident of Village and Post Srikund, P.O. & P.S. – Kotalpokhar, District - Sahibganj. **... ... Respondent/Opposite Party**

P R E S E N T

CORAM:HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

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For the Appellant : Mrs. Jasvinder Mazumdar, Advocate
: Mr. Aniket Jaiswal, Advocate
For the Respondent : Mrs. Ritu Kumar, Advocate
: Mr. S.B.Deo, Advocate
: Mr. Raj, Advocate

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C.A.V. on 15.06.2026 Pronounced on 25/06/2026

Per Sujit Narayan Prasad, J.

Prayer:

1. The instant appeal has been filed challenging the legality and propriety of impugned judgment passed on 19.07.2022 and decree signed on 29.07.2022 by learned Additional Principal Judge, Additional Family Court, Rajmahal whereby and whereunder the Original Suit No.13 of 2019 filed by the appellant-husband under Section 13(1)(i-a) (i-b) of the Hindu Marriage Act, 1955 for a decree of divorce has been dismissed.

Factual Matrix`

2. The brief facts of the case of the appellant-husband as narrated in the plaint, is that both parties are Hindu by

religion and their marriage was solemnized on 01.05.2001 according to Hindu rites and rituals at Gumani Srikund, P.S. Kotalpokhar, District-Sahibganj and after marriage petitioner-husband and respondent-wife lived together for short span of time and during the stay dispute between both parties arose so much that respondent deserted the petitioner-husband and started living separately and whenever petitioner tried to restore the relations he was dealt with cruelty by the respondent and ultimately all the efforts of petitioner failed.

It is the case of the petitioner-husband that respondent instituted Rajmahal P.S. Case No.88/2005 under Sections 498A, 323 read with 34 of IPC and under Section 3/4 of Dowry Prohibition Act against the petitioner and his parents and in the trial, petitioner alongwith his family members have been convicted by the learned court of S.D.J.M., Rajmahal which was confirmed in Appeal by the learned court of Sessions Judge-I, Rajmahal against which petitioner preferred a revision before Hon'ble High Court bearing revision no. 1254/2017.

It is the further case of petitioner-husband that respondent filed case under Section 125 Cr.P.C bearing Criminal Misc. Case No. 73/2006 which was disposed of by the learned court of Principal Judge, Sahibganj.

It is further case of the petitioner-husband that without having cogent evidences and materials, respondent

filed a complaint petition being No.443/2007 in the Court of learned S.D.J.M., Rajmahal and in that case the summoning order was passed vide order dated 06.05.2008 for the appearance of the accused persons for the alleged offence under Sections 107, 494 and 120 'B' of the IPC.

It is further case of the petitioner-husband that after the solemnization of marriage in the year 2001 the petitioner-husband was put under physical and mental torture by the respondent and the respondent never tried to reconcile the issue and dissolve the disputes and on 19.06.2017 petitioner-husband went to meet the respondent at her house situated at Kotalpokhar to resolve the disputes but the petitioner was treated very badly and beaten by the respondent and his in-laws very brutally and for this incident one FIR being Kotalpokhar P.S. Case No.34/2017 dated 23.06.2017 was lodged under Sections 341, 323, 504, 506, 324, 307, 379 and 34 of the IPC by the petitioner-husband against the respondent and her family members in which police submitted final form in favour of the accused persons against which petitioner-husband filed a protest complaint petition bearing No.948/2017 and after enquiry the learned court of A.C.J.M., Rajmahal took cognizance of the offence vide order dated 22.10.2018 against the respondent and her family members under Sections 341, 323, 324, 379 of the IPC.

It is further case of the petitioner-husband that

petitioner-husband has passed Class-X only and the respondent has passed Intermediate and she did have always some superiority complex from the beginning of the marriage and she never liked the petitioner and always belittled him publicly.

It is further case of the petitioner-husband that petitioner did not get any handsome job since he is not well qualified and for this reason he lived his life till date with financial crisis as well as under depression and at this stage of life when he needs moral support from the respondent, he is being treated with cruelty and with hatred and this situation has created an atmosphere under which the petitioner-husband wants to relinquish his relations with the respondent.

It is further case of the petitioner-husband that out of the wedlock of the petitioner and the respondent a daughter namely Khushi Kumari was born on 11.05.2002 but the respondent did not allow him to have any attachment with the petitioner and this act of the respondent itself also shows that how much cruel the respondent is.

It is the case of the petitioner-husband that all the accommodation and adjustment from the part of the petitioner could not change the attitude and behavior of the respondent and she kept on neglecting the petitioner.

It is further case of the petitioner-husband that the

acts and omissions on the part of the respondent have caused immense mental agony and the petitioner is left with no option but to initiate the instant proceeding against the respondent.

It is further case of the petitioner that the respondent has completely deserted the petitioner continuously since 30.05.2005 and has willfully neglected him in a reprehensive manner in the discharge of her matrimonial obligations towards the petitioner without reasonable cause which entitles the petitioner for a decree of dissolution of marriage with the respondent and the marriage between the parties have irretrievable broken down for all practical purposes and there is no chance of restoration of relationship.

It is the case of the petitioner that the cause of action for the suit arose on 30.05.2005 when the respondent without any valid reason deserted the petitioner and on 19.06.2017 when the petitioner had gone to the respondent's home for panchayati where he was humiliated and badly manhandled for which he had lodged an FIR on 23.06.2017 being Kotalpokhar P.S. Case No.34/2017 which cause of action is till subsisting.

It is further case of the petitioner that no matrimonial case is pending between the parties in any Court or forum whatsoever except one maintenance case being Criminal Misc. No.73/2006 in which the petitioner

has been sent to jail several times.

It is further case of the petitioner that there is no collusion between the parties in filing the instant matrimonial suit for decree of divorce.

On the aforesaid grounds, the appellant-husband had filed a suit for dissolution of his marriage before the learned Family Judge and prayed to pass a decree of divorce.

3. After service of notice, the respondent-wife has appeared and filed her written statement stating therein that all the allegations made by the petitioner-husband in his petition are false and misconceived.

The respondent-wife has stated in her written statement that she got married to petitioner on 01.05.2001 and at the time of her marriage her father gave gold ornaments weighing 10 Bhar, Television, Fridge, Washing Machine, Almirah, Utensils to her and Rs.1,50,000/-cash, watch, gold chain and gold ring, cloths to petitioner and she went to her matrimonial home and after six months the husband and his relatives started demanding Rs.3,00,000/-, bed worth Rs.50,000/- and 25 Bigha of land on which she informed her father and brother and when they expressed their inability to fulfill the demand then her husband and his relatives started committing mental and physical cruelty upon respondent by abusing and assaulting her but anyhow

she kept on facing it and one day her husband and his relatives also tried to burn her and in the meantime, she gave birth to daughter Khushi Kumari.

It is further case of the respondent-wife that on 30.05.2005 her brother along with some respected member of the society came to her matrimonial home and tried to settle down the matter but in front of them the petitioner-husband and his relatives, assaulted the respondent-wife and ousted her from her matrimonial home along with her daughter and threatened that they will not keep respondent and her daughter, in their house till their demand is fulfilled. Thereafter, the respondent instituted Rajmahal P.S. Case no.88/2005 under Sections 498A, 323 and 34 of IPC and Section 3/4 of Dowry Prohibition Act against the husband and his relatives, in which all the accused were convicted by the learned court of S.D.J.M., Rajmahal and their appeal was also dismissed by the learned court of Sessions Judge-1.

It is further case of the respondent-wife that during the pendency of the case several efforts were taken by the Court to get the case compromised and respondent every time expressed her willingness to go to her matrimonial home on assurance of her safety but petitioner never got ready to keep the respondent and her daughter with dignity.

It is further case of the respondent that during the

pendency of the case, petitioner-husband has conducted illegal marriage with another lady Bhagwati Rai for which she filed Complaint Case being P.C.R. Case No.443/2007 under Section 494 of IPC and to escape from it, the petitioner has filed the present case for divorce.

It is further case of the respondent that respondent is still ready to live with the petitioner if he assures her safety and keep his second wife in another house.

It is further case of the respondent that she never deserted petitioner rather she was compelled to leave her matrimonial home by the petitioner-husband and her relatives.

It is further case of the respondent that it is not true that she never tried to settle down the matter and respondent today is also ready to live with petitioner on assurance of her safety and if respondent keep his second wife in another house.

It is further case of respondent that maintenance order passed by the learned Family Court on 22.02.2012 has never been complied by the petitioner.

It is further case of the respondent that all the allegations leveled against her by the petitioner are false and baseless and present suit is barred by limitation and to escape from it, false cause of action is shown on 19.06.2017

and petitioner is not entitled for any relief.

4. On the aforesaid grounds, the respondent has prayed to dismiss the suit.

5. The case proceeded for evidence during which the petitioner/appellant has produced and examined two witnesses including himself.

6. The respondent-wife has produced and examined altogether three witnesses including herself.

7. The learned Principal Judge, after hearing learned counsel for the parties, framed six issues for adjudication of the *lis*, which are as follows :-

(i) Whether the suit is maintainable in present form?

(ii) Whether petitioner has got valid cause of action?

(iii) Whether the respondent after deserting the petitioner living separately since 30.05.2005?

(iv) Whether the petitioner is entitled for the decree of dissolution of marriage with respondent?

(v) Whether any other relief or reliefs to which petitioner is entitled?

8. All the aforesaid issues were decided against the appellant-husband and in favour of respondent-wife and decreed the suit on contest in the following terms :

> "From the evidence brought on the record, it is crystal clear that petitioner failed to prove that respondent Smt. Anita Devi has deserted the

> petitioner since 30.05.2005 without any reasonable cause and petitioner also failed to prove that he was subjected to cruelties by the respondent Smt. Anita Devi. Thus, these issues are decided against the petitioner and I find and hold that petitioner is not entitled for decree of divorce u/s-13(1) (i-a) (i-b) of Hindu Marriage Act on ground of cruelty and desertion by respondent Smt. Anita Devi, accordingly, I also find that suit is not maintainable as framed, and petitioner has not valid cause of action for filing the suit and is not entitled for any relief, accordingly, issue no.(i), (ii) and (v) are also decided against petitioner.
>
> For the aforesaid reasons, the suit of the petitioner stands dismissed. No order as to cost. Office Clerk is directed to prepare decree within stipulated time."

9. The appellant-husband, being aggrieved with the judgment passed on 19.07.2022, has approached this Court by filing the present appeal.

Submission made on behalf of the appellant-husband

10. Learned counsel appearing for the appellant-husband has taken following grounds in assailing the impugned judgment :-

(i) The Judgment dated 19.07.2022, passed by learned Additional Principal Judge, Additional Family Court, is wrong, illegal, against the weight of evidence and materials on record and are liable to set aside.

(ii) The learned Family Court has passed the impugned judgment totally against the facts and circumstances and the case law and is therefore, unsustainable.

(iii) The impugned judgment passed by learned court is fit to be set aside in view of the fact that it has no merit.

(iv) The judgment and award of the learned Family Court are not sustainable in the eyes of law and are fit to be set aside inasmuch as the learned Family Court has totally failed to appreciate that there is no evidence on record on the basis of which the impugned judgment has been passed, whereby the suit filed by the appellant has been dismissed.

(v) The learned Family Court has failed to appreciate that the evidences were available on record to establish that the appellant has been subjected to cruelty by the respondent in various ways and the marriage between the parties has irretrievably been broken down and there are no chances of resumption of their cohabitation, therefore, their marriage deserves to be dissolved by decree of divorce.

(vi) The learned Family Court has committed serious illegality in not appreciating the fact that the petitioner tried his level best to bring the respondent back but the respondent refused to live with the petitioner/appellant.

(vii) The learned Family Court has committed serious illegality in not appreciating the fact that the respondent has willfully withdrawn herself from the

society of her husband and thus, the same amount to willful desertion.

(viii) The learned Family Court has also failed to take into consideration that admittedly the parties are living separately since long and there is no chance of restoration of their matrimonial life.

(ix) The learned Family Court has also committed serious illegality in not appreciating the fact that aforesaid acts of the respondent are the act of cruelty and the appellant is entitled for decree of divorce.

(x) The learned Family Court has committed serious illegality in not considering the fact that there is no chance of compromise amongst the parties, as such in the interest of justice, learned court below ought to have passed a judgment allowing the suit for declaration of the marriage of the appellant to be dissolved.

(xi) The learned Family Court has committed serious illegality in not adjudicating the issue no. iii (i.e whether the respondent (wife) after deserting the petitioner (husband) was living separately since 30.05.2005) the respondent herself admitted the fact that the parties are residing separately since a long time and which is a valid ground for getting decree of the dissolution of marriage by the appellant from the respondent.

(xii) The learned Family Court has committed serious illegality in not considering the fact that the allegation made by the respondent in her written statement of the appellant has conducted illegal marriage with another lady has not been backed by any sort of evidence by the respondent.

(xiii) The learned Family Court has committed serious illegality in not considering the fact that though out of the three cases which have been filed by the respondent against the appellant, two cases of demand of dowry and another for maintenance in which the outcome is in favor of the respondent the third case of section 494 of Indian Penal Code the appellant has been acquitted which clearly shows the false allegation made by the respondent against the appellant.

(xiv) It has been submitted that the learned Trial Court has failed to appreciate the oral and documentary evidence produced on behalf of petitioner / appellant and, thus, came to wrong conclusion.

(xv) The learned court below has also failed to take into consideration that admittedly the parties are living separately since long and the conduct of the respondent shows that the respondent does not want to join the appellant and hence there is no chance of restoration of their matrimonial life.

11. Learned counsel appearing for the appellant, on the

basis of aforesaid grounds, has submitted that the judgment passed by the learned Additional Principal Judge, Additional Family Court, Rajmahal requires interference.

Submission made on behalf of respondent-wife

12. Learned counsel for the respondent has taken the following grounds in defending the impugned judgment :-

(i) Learned counsel appearing for the respondent has submitted that learned Family Court has rightly held that the appellant is not entitled for the decree of divorce on the ground of cruelty and desertion because the appellant has failed to prove the allegation of cruelty and desertion against her.

(ii) Learned counsel for the respondent-wife, defending the impugned order, has submitted that the appellant has sought divorce on the ground of cruelty and desertion but the learned Additional Family Court, after taking into consideration the oral and documentary evidence, has held that the entire allegations levelled in are not correct and has rightly dismissed the suit.

(iii) It has been argued on behalf of respondent that she never treated the appellant with cruelty rather evidences on record depict that it is the respondent who is sufferer and the learned Family Court has also observed in the impugned judgment that it is the petitioner/appellant who treated the respondent-wife with cruelty, compelling the respondent to take shelter

in her parent's house and respondent had not deserted petitioner without any valid reasons.

(iv) It has been submitted that the appellant-husband never tried to create a bonding with his wife as he never visited his matrimonial home for Bidai of respondent where the respondent was residing and it has been observed by the learned Family Judge that the petitioner has not made sincere or even had not given any notice to respondent of conjugal right and petitioner had not made any attempt to bring respondent back to his house for cohabitation.

(v) The appellant-husband has no love and affection with his wife and daughter as the petitioner/appellant has never visited home of wife to see his daughter and petitioner is not even aware whether his daughter Khushi Kumari is studying or she is simply living in the house.

(vi) The appellant-husband has no valid cause of action and he is not entitled to get any relief as claimed by him.

(vii) Learned counsel has submitted that the respondent-wife and her minor daughter had filed a case u/s 125 of Cr.P.C bearing Criminal Misc. Case no. 73/2006 claiming maintenance for herself and her minor daughter Khushi Kumari from petitioner -husband and vide judgement dated 22.02.12 passed by the learned

Family Court, maintenance of Rs. 7000/- per month was allowed in favour of the respondent-wife and the daughter and Hon'ble High Court was also pleased to dismiss the revision against the judgment dated 22.02.12 but despite that petitioner-husband deliberately did not obey the order of Hon'ble High Court and did not pay a single penny to the respondent and her daughter to meet their daily need and for which he was sentenced to jail which shows that petitioner-husband is having negligent, hostile and irresponsible attitude towards his wife and daughter.

(viii) Learned counsel for the respondent has further submitted that learned Family court has rightly held that the appellant is not entitled for the decree of divorce on the ground of cruelty and desertion because the appellant has failed to prove the allegation of cruelty and desertion against her.

13. Learned counsel for the respondent-wife on the aforesaid grounds has submitted that the impugned judgment requires no interference by this Court.

Analysis

14. We have heard the learned counsel for the appellant-husband as also learned counsel for the respondent-wife and perused the material available on record and the finding recorded in the impugned order.

15. This Court, before looking into the legality and propriety of the impugned order, requires to consider the testimonies of the witnesses, as available on record.

16. The appellant, in support of his case, has adduced two witnesses including himself. The relevant portion of the testimonies of the witnesses are mentioned as under :-

PW-1 Gautam Kalwar, the appellant himself, has stated that he has filed present case to take divorce from his wife Anita Devi. He has further stated that he got married to respondent in year 2001 and after marriage respondent started quarreling and pressurizing him to live separately but he refused to do so because he is only son of old parents on which respondent started ill-treating with him and his parents and he tried to pacify the matter but he failed and there was no change in the cruel behavior of respondent and in the meantime, respondent gave birth to daughter in year 2013.

He has further stated that respondent used to always threaten him to implicate him in false case and in year 2015 when he did not agree to live separately from his parents then respondent out of his own will left his house and files false case against him and his parents and she also filed false case bearing case no.443 of 2007 against his sister and brother-in-law who resides somewhere else.

He has further stated that he has filed appeal in Jharkhand High Court against his conviction and his parents.

P.W.1 has further stated that in maintenance case filed by respondent, the learned Court fixed the maintenance amount of Rs.7,000/- but he is not able to pay money in absence of income and the total amount reached more than Rs. 10,00,000/- for which he was sentenced for period of 11 years 09 months and because of it he was in jail from 12.06.2019 for three months.

He has further stated that because of attitude of living separately from his parents, respondent used to always quarrel with him and his parents and threaten to implicate in his case and one day without telling him respondent went away taking all her belongings.

In his examination-in-chief, he has stated that several times he tried to take respondent back to his house but she did not agree to it, several times attempt was also made by the Court for mediation but it also failed and respondent got him sent to jail and lastly on 19.06.2017 last attempt was made for compromise but respondent tried to kill him by knife and Acid and anyhow in injured condition he rescued himself.

It has been stated that respondent never tried to live together and improve the relation rather she always gave

petition in the Court to send him jail and committed mental cruelty upon him by her cruel behavior.

P.W.1 has further stated that even after passing of fifteen years of marriage respondent never tried to live together and he is facing difficulty in taking care of his parents.

It has bend deposed that respondent has committed mental and physical cruelty upon him and his parents by implicating in false case and despite of his efforts not ready to live with him and depriving him for pleasure of conjugal life and such situation is reached between the party that it is not might possible to live conjugal life together.

He has admitted that against the order of maintenance against him by the Family Court, he went to High Court in year 2011 but the order of Family Court was confirmed by Hon'ble High Court in year 2016 and he received the copy of judgement in his house.

He has further admitted that he resides separately from his parents since very beginning and he and his parents does not reside in one house. He has also admitted that in G.R. Case no. 211/2005, corresponding to Rajmahal P.S. Case no.88/2005 u/s-498A,323 of IPC he was convicted.

He has further admitted that he got Bail from Hon’ble High Court in a case of 498A of IPC.

He has stated that respondent went out from his house from 30.05.2005 and after 30.05.2005 he never went to his

matrimonial home to take Bidai of respondent and he has heard that his daughter studies at Farakka.

In his cross-examination P.W.1 admitted that he does not know that whether his daughter studies or lives ideal in house because he has never visited them.

Lastly, he has stated that he does not want to keep respondent and his daughter even if they want to live with him.

P.W. 2 Lal Bahadur Sarkar has stated that that he knows both the parties and they got married to each other 20 years back according to Hindu rites and ritual and he was present in the marriage.

The witness has further stated that out of wedlock one girl was born. After marriage, the respondent stared quarreling with the appellant to live separately from his parents and when the appellant refused for it then respondent started threatening to send him and his parents to jail by implicating them in false case and in year 2005 respondent left the petitioner house out of her own free will and till date she has not return to petitioner's house and in between petitioner tried several times to take respondent back to his house but respondent flatly refused to reside with petitioner and in this way the conjugal life of petitioner was destroyed.

He has further stated that respondent filed false case of demand of dowry against petitioner in which petitioner had to go to jail.

He has further stated that during long trial of the case several efforts were made by different courts to solve the matter by mediation but it also failed. The respondent also filed false case about petitioner's second marriage.

He has further stated that for compromise between the parties through mediation, in June 2017, he went to her house but respondent, said that she will withdraw all her cases and waive the maintenance amount if petitioner sells all his property of Rajmahal and is ready to reside in her father's house at Shrikund but when petitioner refused to agree with it then respondent and her brothers, locked the petitioner in a room and badly assaulted him with iron rod, knife as a result petitioner got injured and also showed pistol to him and they also tried petitioner to burn by Acid and when he went to rescue petitioner then they also assaulted him and anyhow they saved their life and petitioner was got treated by Sahibganj, Hospital for which petitioner instituted case against respondent and his brother which is pending.

This witness has further stated that both parties are residing separately for last 16 years and petitioner is tremendously going through family trouble and he is deprived of conjugal relationship for long time and all the possibilities of compromise between parties is exhausted and

both parties does not want to live jointly and petitioner has old parents in his house and they need one daughter-in-law to look after them.

In his cross-examination P.W.2 has admitted that he does not know how many cases respondent has filed against petitioner.

P.W.2 has further admitted that petitioner is only son of his parents but since last 10-15 years he is not living with his parents.

This witness has deposed that he does not know where petitioner is presently residing and in what conditions he is residing and how he is managing his food.

P.W.2 has further admitted that he has no talks either with respondent or with her brothers or father for getting the case compromised.

P.W.2 further admitted that in a case instituted by respondent petitioner and his family members went to jail and he was Bailor in that case.

17. The respondent-wife has also adduced three witnesses, including herself, in support of her case which are being dealt hereunder as :-

D.W. 1 Anita Devi is the respondent herself**.** She has stated in his examination-in-chief that she got married to petitioner in May 2001 according to Hindu rites and ritual and out of wedlock one daughter Khushi Kumari was born who is now aged about 18 years.

It has further been stated by D.W.1 that after marriage the petitioner and his relatives started pressurizing her for demand of Rs.3,00,000/- cash, one bed and 25 Bigha of land for which they committed cruelty upon her and when their demand was not fulfilled, the petitioner and his relatives ousted her alongwith her daughter from their house in year 2005 thereafter she instituted Rajmahal P.S. Case no.88/2005 u/s-498A,323,34 of IPC and u/s-3/4 of Dowry Prohibition Act against the petitioner and his relatives in which all accused persons were convicted and their appeal was also dismissed.

She has further stated that in maintenance case bearing no.73/2006 vide judgement dt.22.02.12 the learned court of Family Judge allowed maintenance amount of Rs.7,000/- per month against which petitioner filed Revision bearing no.202/12 in Hon'ble High Court but Hon'ble High Court dismissed the revision and directed the petitioner to clear the maintenance amount within three months but till 29.09.2015 petitioner has not paid any maintenance amount to her.

She has further stated that against her wish petitioner got illegally married with Bhagwati Rai on 20.04.2007 for which she instituted Complaint case bearing no.443/2007 u/s-494 of IPC but in absence of witnesses petitioner was acquitted but the real fact is that petitioner is still living with his second wife at her house situated at Gudaraghat and he

has two children one daughter and one son from his second wife.

She has stated that her father died in the year 2013 and she has five brothers and four sisters and all of them are married and she is living with her old mother aged about 85 years at Pakur alongwith her daughter Khushi Kumari who is presently aged about 18 years and she has not performed second marriage and in absence of money she is facing difficulty in meeting the expenses on education of her daughter.

D.W.1 has further stated that petitioner went five to six times to jail for default of paying maintenance amount but he is not ready to pay maintenance amount to her and her daughter despite the fact he is man of Crores of assets.

She has further stated that she is still ready to live with petitioner if petitioner writes bond assuring that he will not assault her and keep petitioner and daughter properly.

D.W.1 has admitted that her husband has been acquitted in a case of bigamy. She has also admitted that she lived in her matrimonial home from year 2001-2005 and in 2005 the petitioner and his relatives ousted her from her matrimonial home thereafter the petitioner never came to see her and her daughter.

She has stated that it is not true that Nandhoshi Sukumar Gupta went two times to her house for her Bidai but she did not return to her matrimonial home. She has

further submitted that the petitioner, since year 2005-2010, never came to take her Bidai and since 2005 she has never cohabited with petitioner.

DW-2 Khushi Kumari is the daughter of both parties has filed her examination-in-chief on affidavit stating therein that she is the single child of both parties and since very beginning she is residing with her mother. Her father, who is petitioner of this case, has never talked to her or her mother.

She has further stated that her mother told that when she was 2½ years old then petitioner attempted to kill her by throwing her from the second floor. She has further stated that though she tried to talk to her father in court but her father neither talked to her nor has given any money to her.

She has further stated that she has passed her Matric Exam from DAV School Pakur and she has studied Intermediate at Patna Bihar but she has returned to Pakur in absence of money and presently she is studying in B.A Part-I at Pakur College and due to lack of money she is not able to prepare for Medical Examination.

She has admitted in her cross-examination that her mother told that when she was 2½ years old, her father tried to kill her by throwing her from second floor. She has further admitted that after regaining consciousness she never went to her father's house and she never came to meet her father or her parents' grandparents.

D.W. 3 Abdul Khalik, has stated in his examination-in-chief that the house of father of respondent is situated at Shrikund Bazar and in year 2001 both parties got married, in which lots of gifts and dowry were given but after 4-5 years of marriage petitioner and his relatives assaulted the respondent and ousted her out from her matrimonial home, on which she returned to her father house and he came to know about it from respondent and her father.

D.W.3 has further stated that after the death of her father, the respondent is residing at Pakur alongwith her daughter who is presently aged about 18 years and old mother aged about 80 years and respondent told him that her husband is not giving the maintenance amount to her and her daughter.

He has stated that the respondent told him that in dowry case petitioner and his relatives were convicted.

He has further stated that petitioner is residing with another girl namely Bhagwati Rai and therefore he wants to divorce respondent.

D.W.-3 has admitted in his cross-examination that presently respondent and her daughter is living along with mother of respondent and respondent is living in the house jointly constructed by all brothers and sister of respondent.

18. From the testimony, as referred hereinabove, it is evident that the appellant-husband has been examined as P.W.1 before the Family Court, who in his deposition has

mainly taken the ground of bad behaviour of his wife toward him and his family members. He has deposed that the respondent-wife used to quarreling and pressurizing him to live separately.

19. From the aforesaid testimony of the appellant-husband it is evident that though cruelty has been pleaded by him in his petition, but no cogent evidence has been produced by him to prove the allegations.

20. The respondent-wife has been examined as DW-1 who has stated that after marriage the petitioner and his relatives started pressurizing her for demand of Rs.3,00,000/- cash, one bed and 25 Bigha of land for which they committed cruelty upon her and when their demand was not fulfilled, the petitioner and his relatives ousted her alongwith her daughter from their house in year 2005 for which she had instituted Rajmahal P.S. Case no.88/2005 u/s-498A,323,34 of IPC and u/s-3/4 of Dowry Prohibition Act against the petitioner and his relatives in which all accused persons were convicted.

She has stated that the case has been filed by her husband against her is not true and her husband made false and concocted allegations against her.

She has stated that the allegation levelled against her in the petition is false, concocted and are baseless.

21. The learned Additional Principal Judge, from the statements of the witnesses so produced on behalf of the

parties, has come to the conclusion that appellant has failed to prove the grounds of alleged cruelty and desertion pleaded by him in his petition.

22. From the testimony so recorded of the appellant-husband, the learned Additional Principal Judge, Family Court has come to the conclusion that in the instant case, the petitioner/appellant has completely failed in proving the alleged cruelty and desertion.

23. In the context of the aforesaid factual aspect only seminal issue has to be decide herein that *"Whether the plaintiff is entitled to get divorce dissolving the marriage of the petitioner/appellant with OP/wife on ground of cruelty and desertion U/s 13(1) (i-a) (1-b) of the Hindu Marriage Act, 1955*?".

24. Since the learned counsel for the appellant has raised the issue of perversity by contending that the findings recorded by the learned Family Court while answering issue no. (iii) (desertion) are perverse, therefore, before addressing the aforesaid seminal issue it would be apt to discuss herein the appropriate meaning of word "perverse".

25. This Court while appreciating the argument advanced on behalf of the appellant on the issue of perversity needs to refer herein the interpretation of the word "perverse" as has been interpreted by the Hon'ble Apex Court which means that there is no evidence or erroneous consideration of the evidence.

26. The Hon'ble Apex Court in ***Arulvelu and Anr. vs. State [Represented by the Public Prosecutor] and Anr., (2009) 10 SCC 206*** while elaborately discussing the word perverse has held that it is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law. Relevant paragraphs, i.e., paras-24, 25, 26 and 27 of the said judgment reads as under:

> "24. The expression "perverse" has been dealt with in a number of cases. In Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501] this Court observed that the expression "perverse" means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.
>
> 25. In Parry's (Calcutta) Employees' Union v. Parry & Co. Ltd. [AIR 1966 Cal 31] the Court observed that "perverse finding" means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665 : AIR 1994 SC 1341] the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.
>
> 26. In M.S. Narayanagouda v. Girijamma [AIR 1977 Kant 58] the Court observed that any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough [(1878) 1 LR 1r 331] the Court observed that a "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is

> altogether against the evidence. In Godfrey v. Godfrey [106 NW 814] the Court defined "perverse" as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.
>
> 27. The expression "perverse" has been defined by various dictionaries in the following manner:
>
> 1. Oxford Advanced Learner's Dictionary of Current English, 6th Edn. "Perverse.--Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable."
>
> 2. Longman Dictionary of Contemporary English, International Edn. Perverse.--Deliberately departing from what is normal and reasonable.
>
> 3. The New Oxford Dictionary of English, 1998 Edn. Perverse.--Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.
>
> 4. The New Lexicon Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.) Perverse.--Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.
>
> 5. Stroud's Judicial Dictionary of Words & Phrases, 4th Edn.
>
> "Perverse.--A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence."

27. Thus, from the aforesaid it is evident that if any order made in conscious violation of pleading and law then it will come under the purview of perverse order. Further “perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

Issue of Cruelty

28. Now this Court is adverting to the issue of cruelty. It

requires to refer herein the definition of '*cruelty'* as has been defined by Hon'ble Apex Court in the judgment rendered in ***Dr. N.G. Dastane Vs. Mrs. S. Dastane [(1975) 2 SCC 326],*** wherein it has been held that the Court is to enquire as to whether the charge as cruelty, is of such a character, as to cause in the mind of the petitioner, a reasonable apprehension that, it will be harmful or injurious for him to live with the respondent.

29. The cruelty has also been defined in the case of ***Shobha Rani Vs. Madhukar Reddi [(1988) 1 SCC 105],*** wherein the wife alleged that the husband and his parents demanded dowry. The Hon'ble Apex Court emphasized that "cruelty" can have no fixed definition.

30. According to the Hon'ble Apex Court, "cruelty" is the "conduct in relation to or in respect of matrimonial conduct in respect of matrimonial duties and obligations". It is the conduct which adversely affects the spouse. Such cruelty can be either "mental" or "physical", intentional or unintentional. For example, unintentionally waking your spouse up in the middle of the night may be mental cruelty; intention is not an essential element of cruelty but it may be present. Physical cruelty is less ambiguous and more "a question of fact and degree."

31. The Hon'ble Apex Court has further observed therein that while dealing with such complaints of cruelty that it is important for the Court to not search for a standard in life,

since cruelty in one case may not be cruelty in another case. What must be considered include the kind of life the parties are used to, "their economic and social conditions", and the "culture and human values to which they attach importance."

32. The nature of allegations need not only be illegal conduct such as asking for dowry. Making allegations against the spouse in the written statement filed before the court in judicial proceedings may also be held to constitute cruelty.

33. In ***V. Bhagat vs. D. Bhagat (Mrs.), (1994)1 SCC 337***, the wife alleged in her written statement that her husband was suffering from "mental problems and paranoid disorder". The wife's lawyer also levelled allegations of "lunacy" and "insanity" against the husband and his family while he was conducting cross-examination. The Hon'ble Apex Court held these allegations against the husband to constitute "cruelty".

34. In ***Vijay Kumar Ramchandra Bhate v. Neela Vijay Kumar Bhate, (2003)6 SCC 334*** the Hon'ble Apex Court has observed by taking into consideration the allegations levelled by the husband in his written statement that his wife was "unchaste" and had indecent familiarity with a person outside wedlock and that his wife was having an extramarital affair. These allegations, given the context of an educated Indian woman, were held to constitute "cruelty"

itself.

35. The Hon'ble Apex Court in ***Joydeep Majumdar v. Bharti Jaiswal Majumdar, (2021) 3 SCC 742***, has been pleased to observe that while judging whether the conduct is cruel or not, what has to be seen is whether that conduct, which is sustained over a period of time, renders the life of the spouse so miserable as to make it unreasonable to make one live with the other. The conduct may take the form of abusive or humiliating treatment, causing mental pain and anguish, torturing the spouse, etc. The conduct complained of must be "grave" and "weighty" and trivial irritations and normal wear and tear of marriage would not constitute mental cruelty as a ground for divorce.

36. The Hon'ble Apex Court in the case of ***Vidhya Viswanathan v. Kartik Balakrishnan*, (2014) 15 SCC 21** has specifically held that cruelty is to be determined on whole facts of the case and the matrimonial relations between the spouses and the word 'cruelty' has not been defined and it 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. It is a course of conduct and one which is adversely affecting the other.

37. Now reverting to the fact of the case it has been stated by the appellant/husband that the respondent/wife used to quarrel and the respondent never tried to live together and improve the relation rather she always gave petition in the

Court to send him jail and committed mental cruelty upon him by her cruel behavior. It has been further alleged that the respondent has committed mental and physical cruelty upon him and his parents by implicating in false case and despite of his efforts not ready to live with him and depriving him for pleasure of conjugal life.

38. *Per contra* the respondent/wife had stated in her testimony before the learned Family Court that after marriage the petitioner and his relatives started pressurizing her for demand of Rs.3,00,000/- cash, one bed and 25 Bigha of land for which they committed cruelty upon her and when their demand was not fulfilled, the petitioner and his relatives ousted her alongwith her daughter from their house in year 2005 for which she had instituted Rajmahal P.S. Case no.88/2005 u/s-498A,323,34 of IPC and u/s-3/4 of Dowry Prohibition Act against the petitioner and his relatives in which all accused persons were convicted.

39. Admittedly, the plea of cruelty has been raised by the appellant husband thus onus is upon him to prove the fact of cruelty caused upon him by the respondent/wife but after going through the material on record, it is evident that he has not brought on record any material to show that the respondent's behaviour was cruel towards him and, thus, whatever allegation has been made by the appellant/petitioner regarding the alleged cruelty on behalf of respondent/wife could not be proved.

40. Thus, from the aforesaid it is evident that the appellant husband has not produced any cogent evidence in regard to the cruelty which has been subjected to him by the respondent/wife as also he had not lodged any complainant regarding the alleged occurrence.

41. Further, the learned Family Court has finally observed that the allegations made by the petitioner regarding cruelty upon him by the respondent are too vague and general in nature and neither in pleading nor in his evidence petitioner has disclosed the date, time or the manner by which he was subjected to cruelties or harassment by the respondent.

42. This Court, based upon the aforesaid discussions on the issue of cruelty, is of considered view that the issue of cruelty as has been alleged by the appellant-husband against his wife could not be proved because no cogent evidence to that effect has been produced by the appellant and further since, the learned Additional Principal Judge after appreciating the entire evidence had recorded its finding, therefore, it is considered view of this Court that the appellant/petitioner has failed to establish the element of perversity in the aforesaid finding of the learned Additional Family Court.

43. This Court, based upon the aforesaid discussions on the issue of cruelty, is of considered view that the issue of cruelty as has been alleged by the appellant-husband against his wife could not be proved because no concrete

evidence to that effect has been produced by the appellant.

44. Thus, as per the discussions made hereinabove and law laid down by Hon'ble Apex Court which has also been referred herein above this Court has no reason to take different view that has been taken by the learned Additional Family Court proving the ground of cruelty.

Issue of desertion

45. Now coming to the issue of desertion, which is also taken as a ground for decree of divorce. It is evident from the plaint of the petitioner before Additional Family Court which has also taken note in the impugned judgment, that the husband and wife are living separately.

46. Learned Additional Principal Judge, taking into consideration the fact that since even otherwise there is no desertion on the part of respondent-wife as she in her evidence also has deposed that she is very keen and desirous to live and stay with her husband all through her life and perform her wifely duties. Thus, although the husband appellant had filed petition under sub-section (i-b) of Section 13(1) of the Hindu Marriage Act, 1955 but no cogent evidence was led in this respect, as such the same was discarded by the learned family court.

47. It needs to refer herein that the word 'desertion' has been given in Explanation to Section 13 (1) wherein it has been stated that "the expression desertion means the

desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly."

48. It is pertinent to note that the word 'desertion', as has been defined in Explanation part of Section 13 of the Act, 1955, means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wishes of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

49. *Rayden on Divorce*, which is a standard work on the subject at p. 128 (6th Edn.), has summarised the case-law on the subject in these terms:

> *"Desertion is the separation of one spouse from the other, with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse; but the physical act of departure by one spouse does not necessarily make that spouse the deserting party."*

50. The legal position has been admirably summarised in paras-453 and 454 at pp. 241 to 243 of *Halsbury's Laws of England* (3rd Edn.), Vol. 12, in the following words:

> *"In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other*

without that other's consent, and without reasonable cause. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases."

51. Desertion is not the withdrawal from a place but from a state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state; the state of things may usually be termed, for short, 'the home'. There can be desertion without previous cohabitation by the parties, or without the marriage having been consummated. The person who actually withdraws from cohabitation is not necessarily the deserting party.

52. The offence of desertion is a course of conduct which exists independently of its duration, but as a ground for divorce it must exist for a period of at least two years immediately preceding the presentation of the petition or, where the offence appears as a cross-charge, of the answer.

53. Desertion as a ground of divorce differs from the statutory grounds of adultery and cruelty in that the offence founding the cause of action of desertion is not complete, but is inchoate, until the suit is constituted, desertion is a continuing offence.

54. It is, thus, evident from the aforesaid reference of meaning of desertion that the quality of permanence is one of the essential elements which differentiate desertion from wilful separation. If a spouse abandons the other spouse in

a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, *(1)* the factum of separation, and (*2*) the intention to bring cohabitation permanently to an end.

55. Similarly, two elements are essential so far as the deserted spouse is concerned: (*1*) the absence of consent, and (*2*) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to from the necessary intention aforesaid.

56. The Hon'ble Apex Court in ***Debananda Tamuli vs. Kakumoni Kataky, (2022) 5 SCC 459*** has considered the definition of 'desertion' on the basis of the judgment rendered by the Hon'ble Apex Court in ***Lachman Utamchand Kirpalani* v. *Meena*, AIR 1964 SC 40** which has been consistently followed in several decisions of this Court.

57. The law consistently has been laid down by the Court that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there

should be *animus deserendi* on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home.

58. Herein, from the statement of the respondent, it is evident that the appellant and his family members were pressurizing the respondent for demand of Rs.3,00,000/- cash, one bed and 25 Bigha of land and when their demand was not fulfilled, she alongwith her daughter was ousted from the matrimonial house in year 2005.

59. Further from impugned order it is evident that desertion has not been proved before the Family Court through concrete and tangible evidence and further it has come on the record that even otherwise there is no desertion on the part of respondent-wife as she in her evidence also has deposed that she is very keen and desirous to live and stay with her husband.

60. This Court, on the basis of discussions made hereinabove, is of the view that the appellant husband has not been able to prove the ground of desertion as one of the grounds for divorce before the learned Family Court. As such, we have no reason to take a different view that has been taken by the learned Family Court.

Conclusion

61. This Court, on the basis of discussions made hereinabove, is of the view that the judgment dated 19.07.2022 and decree signed on 29.07.2022 by learned Additional Principal Judge, Additional Family Court, Rajmahal whereby and whereunder the Original Suit No.13 of 2019 filed by the appellant-husband under Section 13(1)(i-a) (i-b) of the Hindu Marriage Act, 1955 for a decree of divorce has been dismissed, requires no interference by this Court.

62. Accordingly, the instant appeal fails and is dismissed.

(Sujit Narayan Prasad, J.)

I agree.

(Pradeep Kumar Srivastava, J.) **(Pradeep Kumar Srivastava, J.)**

Date : 25/06/2026

Birendra /**A.F.R.**

Uploaded on 29/06/2026