

IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 38 of 2022

Amit Kumar Jha, aged about 46 years, son of Subodh Kumar Jha, resident of Ward No.21, Mohalla Karpoori Nagar, P.O. & P.S.-Madhepura, District-Madhepura, State-Bihar.

... .. Appellant/Petitioner

Versus

Rani Devi, wife of Amit Kumar Jha, permanent resident of Ward No.21, Mohalla-Karpoori Nagar, P.O. & P.S.-Madhepura, District-Madhepura, State Bihar, present residing C/o Bishnukant Jha, Village-Murramkalan, Public K.G.T. School, P.O. & P.S. Ramgarh, District Ramgarh, State-Jharkhand.

... .. Respondent/Respondent

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI**

For the Appellant : Mr. Anil Kumar Sinha, Advocate
For the Respondent : Mr. Pratik Sen, Advocate

C.A.V. on 12th February, 2026
Per Sujit Narayan Prasad, J.

Pronounced on: 17th February, 2026

1. The instant appeal under Section 19(1) of the Family Court Act, 1984 is directed against the order/judgment dated 24.02.2022 and decree signed on 08.03.2022 passed by the learned Principal District Judge-cum-Principal Judge, Family Court, Ramgarh in Original Suit No. 174 of 2014, whereby and whereunder, the petition filed under Section 13 of the Hindu Marriage Act, 1955 by the appellant/petitioner seeking a decree of divorce against his wife, has been dismissed.
2. The brief facts of the case leading to filing of the divorce petition by the appellant/petitioner needs to be referred herein as under:

The case of the petitioner is that, the petitioner Amit Kumar Jha and the respondent Rani Devi are legally married couple and their marriage was solemnized on 08.03.2000 according to Hindu rites and customs. After the marriage, the respondent started living with her husband, the petitioner, as his lawful wife. In due course of time, the couple was blessed with three children out of their wedlock.

It is alleged that, from the very beginning, the respondent had developed strained relationship with the petitioner and his other family members. She used to torture the petitioner, his mother as well as his brother. She was not willing to cook food and was not ready to live with the petitioner. Their conjugal life had become a hell, but even then, the petitioner tried his level best to persuade his wife, but all in vain. Ultimately, she left her matrimonial home on 22.02.2009 alongwith her two children and started living at village Morramkalan, Ramgarh.

The petitioner had made several attempts to bring her back, but, instead, he was abused and insulted by his wife and her other family members and as such, they have been living separately since 22.02.2009. In the meantime, the petitioner had filed a petition u/s 9 of Hindu Marriage Act, 1955 for restitution of his conjugal rights, but all his efforts went futile. Hence, the suit for divorce was filed.

3. The learned Family Judge has called upon the respondent-wife. The wife has filed written statement and altogether five issues have been framed which are as follows:
 - (i) Whether the suit as framed is maintainable?
 - (ii) Whether after solemnization of the marriage, the respondent has treated the petitioner with cruelty?
 - (iii) Whether the petitioner has been deserted for a continuous period of not less than two years immediately preceding the presentation of the petitioner?
 - (iv) Whether the petitioner is entitled for decree of divorce?
 - (v) To what relief or reliefs the petitioner is entitled for?
4. The evidences have been laid on behalf of both the parties. Thereafter, the judgment has been passed dismissing the suit by holding that the petitioner (appellant herein) has failed to prove his case for divorce on the grounds of cruelty and desertion against the respondent/wife on the touchstone of preponderance of probabilities, which is the subject matter of the present appeal.

Submission of the learned counsel for the appellant/petitioner:

5. It has been contended on behalf of the appellant/petitioner that the factual aspect which was available before the learned Single Judge supported by the evidences adduced on behalf of the appellant/petitioner has not properly been considered and as such, the judgment impugned is perverse, hence, not sustainable in the eyes of law.
6. It has been submitted that the issue of cruelty, i.e., not taking care of the appellant/petitioner and even of the parents and not cooking food as also the fact of desertion has not been taken into consideration in right perspective even though the fact about living separately since 22.02.2009 has well been established.
7. Learned counsel for the appellant/petitioner, based upon the aforesaid ground, has submitted that the judgment impugned suffers from perversity, as such, not sustainable in the eyes of law.

Submission of the learned counsel for the respondent:

8. *Per contra*, Mr. Pratik Sen, learned counsel for the respondent-wife, while defending the impugned judgment, has submitted that there is no error in the impugned judgement. The learned Family Judge has considered the issue of cruelty and desertion and having come to the conclusion that no evidence has been adduced to establish either cruelty or desertion, has dismissed the petition.
9. It has been contended that the allegation so far as alleged of commission of cruelty is considered, the ground has been raised before the learned Family Judge that the respondent-wife is not taking care of the appellant/petitioner and the in-laws.
10. It has been submitted that at the time of marriage, sufficient dowry was given by the parents of the respondent-wife but the appellant/petitioner and his parents demanded additional dowry of Rs. 3 lac at the time of her Bidai, which had taken place after 2½ years. In the meantime, the appellant/petitioner had been regularly visiting the parental house of the respondent at Ramgarh and was cohabiting with her. Finally, her Bidai was effected after the father of respondent presented large number of articles to the appellant/petitioner and his parents. Thereafter, they lived peacefully at her matrimonial for about three months. However, the

appellant/petitioner and his other family members again started demanding additional sum of Rs. 3 lac as dowry and she was even subjected to assault on non-fulfillment of their aforesaid demand. In the meantime, the respondent gave birth to a girl child, who is now 14 years old. However, respondent was reprimanded for giving birth to a girl child.

11. It has also been submitted that the respondent-wife again became pregnant in the year 2005, whereupon, the appellant/petitioner and his family members tried to terminate her pregnancy, but the father of the respondent brought her back to her parent's house, where she gave birth to her second girl child. Thereafter, the appellant/petitioner and his family members again demanded additional dowry and refused to keep her minor daughter. Lastly, on 22.02.2009, the father of the respondent came to her matrimonial home situated at Madhepura and took her back to Ramgarh on 15.03.2009. Subsequently, the petitioner, came to her parent's home and threatened that, his kids would be killed if his demand was not fulfilled. Subsequently, the respondent filed a complaint case before C.J.M., Hazaribag, vide Complaint Case No. 424/09, u/s 498A of IPC and its other allied sections, wherein, cognizance has been taken against all the accused persons.
12. The respondent has also filed a case of Maintenance u/s 125 Cr.P.C, vide Maintenance Case No. 74/09, which was allowed in her favour and the appellant/petitioner was directed to pay a sum of Rs. 7,000/- per month to her. Their two children, namely, Mohit Kumar and Muskan are living with the respondent at her parent's home and her one daughter, namely, Masoom Kumari, is living with the appellant/petitioner. The case for restitution of conjugal rights, vide MTS No. 167/09 filed by the appellant/petitioner was dismissed as withdrawn on 25.06.2014, as in that case the appellant/petitioner was directed to pay Rs. 6,000/- per month as ad-interim maintenance to the respondent.
13. Learned counsel, based upon the aforesaid ground, has submitted that if on that pretext, the factum of cruelty and desertion has not been found to be established, based upon which the decree of divorce has been refused to be granted, the impugned judgment cannot be said to suffer from error.

Analysis:

14. This Court has heard the learned counsel for the parties and gone through the finding recorded by the learned Family Judge in the impugned judgment.
15. The case has been heard at length. The admitted fact herein is that the suit for divorce has been filed on the ground of cruelty and desertion, i.e., by filing an application under Section 13 of the Hindu Marriage Act, 1955
16. It is evident from the factual aspect that the appellant/petitioner had a motion by filing a petition under Section 13 of the Hindu Marriage Act, 1955 for decree of divorce on the ground of cruelty and desertion on the background of the fact, as has been pleading in the suit, that the marriage of the petitioner and the respondent was solemnized on 08.03.2000, according to Hindu rites and customs. After the marriage, the respondent started living with her husband as his lawful wife. The couple was blessed with three children out of their wedlock. It is the case of the petitioner that from the very beginning, the respondent used to torture the petitioner, his mother as well as his brother. She was not willing to cook food and was not ready to live with the petitioner. Ultimately, the respondent left her matrimonial home on 22.02.2009 alongwith her two children and started living at village Morramkalan, Ramgarh. It is also the case of the petitioner that the petitioner had made several attempts to bring her back, but, instead, he was abused and insulted by his wife and her other family members and as such, they have been living separately since 22.02.2009. In the meantime, the petitioner had filed a petition u/s 9 of Hindu Marriage Act, 1955 for restitution of his conjugal rights, but all his efforts went futile.
17. Written statement was filed by the respondent/wife wherein all allegation has been refuted and accordingly, issues have been framed wherein primarily issue nos.2 and 3 pertains to cruelty and desertion.
18. The evidence has been led on behalf of both the parties. For ready reference, the evidence led on behalf of the appellant/petitioner is being referred as under:

- (i) PW-1 is the appellant/petitioner himself who has stated in examination-in-chief that two days after his marriage with the respondent on 08.03.2000, the respondent had developed bitterness towards the petitioner and his other family members. She used to pressurize him to live separately from his mother and his unemployed brother, and when he did not accede to her such request, she threatened him to leave her company. He stated that, his daughter, Masoom was under his care and custody. He further stated that, he had got compassionate appointment in Madhepura University after the death of his father and the respondent always insisted upon him to spend his entire earnings on the respondent and also to neglect his mother and brother; and on raising objection, the petitioner was ill-treated and abused by the respondent. Her brother and father also used to instigate her and asked to leave the company of her husband and lastly, despite objections from the petitioner, the respondent went away to her parent's home on 22.02.2009 alongwith her two children leaving behind one daughter with him.

It has also been stated by the appellant/petitioner that in the meantime, he took several steps to bring the respondent back, but she did not accede to his request and thereafter, he had filed a case at Hazaribag, vide Case No. 1167/09, and it was in connection with the aforesaid case that, both of them were referred before the mediation center, but even before the Mediator, she refused to join his company. He had made three attempts to bring her back, but he was abused by the brother of the respondent and the respondent herself refused to join his company.

The appellant/petitioner has admitted in his cross-examination that, the court had directed him to pay Rs. 7,000/- per month as maintenance to his wife and two children in connection with case No. 74/09. He claimed to have filed an appeal against the aforesaid order before the Hon'ble High Court, but he did not have any knowledge about fate of the case and he candidly admitted that, he has not paid any maintenance to his wife and children. He stated

to have paid Rs. 6000/- per month to his wife and children for continuous six months in connection with MTS Case No. 167/14, which was dismissed in the year 2014. He stated that his wife had filed a case of dowry demand against him, vide case No. 424/09. He did not know in which class his children Mohit and Muskan were studying. He has denied that, he had withdrawn the MTS Case No. 167/09 as he did not want to pay interim maintenance to his wife.

19. The respondent-wife has also been examined as R.W.-1. For ready reference, her evidence is being referred as under:

- (i) RW-1 (respondent) has stated in her examination-in-chief that after her marriage, her in-laws did not perform her Gauna and were deferring it, but her husband used to visit her house and demanded Rs. 3 lac to get the compassionate appointment after death of his father. He also used to demand motorcycle, TV and furniture. Her Gauna was performed 3 years after her marriage. She stated that, thereafter, her husband and his family members started demanding additional dowry of Rs. 3 lac and on non-fulfillment of the same, she was subjected to cruelty. Her daughter Muskan Kumari was born at her matrimonial home, whereupon, her husband had again demanded Rs. 3 lac. They had also performed sex determination test of fetus during her 2nd pregnancy and on coming to know that, it was a girl child, they pressurized her to terminate her pregnancy. Thereafter, she narrated the above facts to her parents and, on 26.03.2005, her brother and father came to her matrimonial home and took her back to her parent's home, where she gave birth to her 2nd daughter. In the meantime, her husband had also got compassionate appointment and he demanded additional dowry of Rs. 3 lac and that, then only he would keep the petitioner and her three children with him. Subsequently, she had given an application before Women Commission at Patna in the year 2007, and thereafter, they had executed a compromise wherein her husband had undertaken not to subject her to physical and mental cruelty in future. Thereafter, the respondent went to her in-laws' house, but she was again subjected to cruelty. In the meantime, her husband

got promoted for class-III service in the year 2009 and now, they have started demanding Rs. 5 lac from her and she was subjected to cruelty on non-fulfillment of their such demand. Subsequently, she again filed a complaint before Women Commission, whereupon, her husband and her brother-in-law came to her parent's home and pressurized her to dissolve her marriage as the petitioner wanted to solemnize his 2nd marriage.

Thereafter, she filed a case of dowry demand, which was initially filed at Hazaribag and subsequently, it was transferred to Ramgarh as her lawyer had stopped taking steps and since she was not examined in that case, the accused persons got acquitted.

It has further been stated that the appellant/petitioner had entered into compromise before the mediation center with the respondent and he had agreed to take her alongwith her two children to Madhepura, but he did not abide by the aforesaid undertaking and that maintenance case was decided in her favour on 26.03.2015. The appellant/petitioner had preferred criminal revision vide Cr. Revision No. 450/15 against the aforesaid order, but the said revision was dismissed on 10.05.2019 by the Hon'ble High Court. It has further been stated that the appellant/petitioner has not paid any maintenance to the respondent till date. He had also not paid the interim maintenance amount, which was allowed to her in the case of restitution of conjugal rights. She (RW1) asserted that petitioner had solemnized 2nd marriage and he also have children from his 2nd wife.

She (RW1) admitted in her cross-examination that, her husband was unemployed at the time of her marriage and claimed that her Gauna was performed 2½ years after her marriage. She stated that, her husband has taken her to Dr. P. Tuti for determination of her pregnancy and denied that, there was no doctor named as P. Tuti at Madhepura. She denied that, she does not want the accompany her husband to Madhepura.

20. The learned Family Judge has gone into the interpretation of the word “cruelty” and “desertion” and assessing the same from the evidences led on behalf of the parties as also the submission made in the pleading, i.e., plaint and written statement, has found that the element of cruelty and desertion could not have been established and accordingly dismissed the said suit against which the present appeal has been filed.
21. The learned counsel for the appellant/petitioner has argued that the evidence of cruelty and desertion has not properly been considered and as such, the judgment suffers from perversity, hence, not sustainable in the eyes of law.
22. While on the other hand, argument has been advanced on behalf of the respondent has submitted that the judgment is well considered one and merely by committing fraud, the suit for divorce has been filed.
23. This Court while appreciating the argument advanced on behalf of the parties 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. 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.””

24. Thus, a perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. Further “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. Further the ground for divorce has been taken of cruelty and desertion. The “cruelty” has been interpreted by the Hon’ble Apex Court in the case of *Dr. N.G. Dastane vs. Mrs. S. Dastana, (1975) 2 SCC 326* wherein it has been laid down that the Court has to enquire, as to whether, the conduct 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.

26. This Court deems it fit and proper to take into consideration the meaning of ‘cruelty’ as has been held by the Hon’ble Apex Court in *Shobha Rani v. 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.
27. According to the Hon’ble Apex Court, “cruelty” is the “conduct in relation to or in respect of matrimonial conduct in respect of matrimonial 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.”
28. The Hon’ble Apex Court has further observed therein that while dealing with such complaints of cruelty 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.”
29. 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.
30. 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 a cross-examination. The Hon’ble Apex Court held these allegations against the husband to constitute “cruelty”.
31. In *Vijaykumar 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.

32. Further, in the case of *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, (2012) 7 SCC 288, the Hon’ble Apex Court has held as follows:

“22. The expression “cruelty” has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.

25. After so stating, this Court observed in Shobha Rani case about the marked change in life in modern times and the sea change in matrimonial duties and responsibilities. It has been observed that : (SCC p. 108, para 5)

“5. ... when a spouse makes a complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance.”

26. Their Lordships in Shobha Rani case referred to the observations made in Sheldon v. Sheldon wherein Lord Denning stated, “the categories of cruelty are not closed”. Thereafter, the Bench proceeded to state thus: (Shobha Rani case, SCC p. 109, paras 5-6)

“5. ... Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty. 1. These preliminary observations are intended to emphasise that the court in matrimonial cases is not concerned with ideals in family life. The court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Reid Gollins v. Gollins : (All ER p. 972 G-H) observed in ,, ... In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman.””

33. In the case of *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511 it has been held by the Hon’ble Apex Court as follows: —

“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. 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.”

34. 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.
35. It is, thus, evident 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.
36. Thus, from the aforesaid settled position of law it is evident that “Cruelty” under matrimonial law consists of conduct so grave and weighty as to lead one to the conclusion that one of the spouses cannot reasonably be expected to live with the other spouse. It must be more serious than the ordinary wear and tear of married life.
37. Cruelty must be of such a type which will satisfy the conscience of the Court that the relationship between the parties has deteriorated to such an extent that it has become impossible for them to live together without mental agony. The cruelty practiced may be in many forms and it must be productive of an apprehension in the mind of the other spouse that it is dangerous to live with the erring party. Simple trivialities which can truly be described as a reasonable wear and tear of married life cannot amount to cruelty. In many marriages each party can, if it so wills, discover many a cause for complaint but such grievances arise mostly from

temperamental disharmony. Such disharmony or incompatibility is not cruelty and will not furnish a cause for the dissolution of marriage.

38. Since the issue of desertion has also been raised therefore, the definition of “desertion” is required to be referred herein as defined under explanation part of Section 13 which 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.
39. *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.”

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.”

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. The fact that a husband makes an allowance to a wife whom he has abandoned is no answer to a charge of desertion.

40. 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. 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.

41. It is, thus, evident from the aforesaid reference of meaning of desertion that the quality of permanence is one of the essential elements which differentiates 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.
42. 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 form the necessary intention aforesaid. In such a situation, the party who is filing for divorce will have the burden of proving those elements.
43. Recently also, the Hon'ble Apex Court in *Debananda Tamuli vs. Kakumoni Katakya, (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. The law consistently laid down by this Court is 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. The view taken by the Hon'ble Apex Court has been incorporated in the

Explanation added to sub-section (1) of Section 13 by Act 68 of 1976. The said Explanation reads thus:

“13. Divorce.—(1) ...

Explanation.—In this sub-section, 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 wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.”

44. This Court, on the premise of the interpretation of the word “cruelty” and “desertion” has considered the evidences of the witnesses as has been incorporated by the learned Court in the impugned judgment.
45. Admittedly the petitioner/appellant has not made any allegation of any act of physical cruelty on the part of respondent. So far as the mental cruelty is concerned, it has been alleged that two days after his marriage with the respondent on 08.03.2000, the respondent had developed bitterness towards the petitioner and his other family members and respondent used to pressurize him to live separately from his mother and unemployed brother. It has further been alleged that, petitioner always insisted upon him to spend the entire earnings on the respondent and neglect his mother and brother and lastly, despite objections from the petitioner/appellant, the respondent went away to her parent's home on 22.02.2009 alongwith her two children leaving behind one daughter with him.
46. In the aforesaid context it needs to refer herein that the respondent has stated in her cross-examination that, her gauna (second marriage) was performed two and a half years after her marriage, i.e., she had visited her matrimonial home only after her gauna, which is a customary practice. Therefore, the claim of the petitioner gets falsified that only two days after her marriage she had developed bitterness against him or that she insisted upon him to live separately from his mother and brother.
47. Further from the impugned order as also from material available on record it is evident that the petitioner/appellant has not brought on record any cogent evidence to substantiate his claim that, respondent/wife insisted upon him to spent his entire earnings upon her and to neglect his mother

and brother. Further the petitioner/appellant has not examined his mother or brother as witness to substantiate any of his claims.

48. The learned Family Court has also taken into consideration in the impugned order that the fact that after two days of the marriage, the respondent developed bitterness against him cannot be said to be correct in view of the admitted fact that the respondent visited her matrimonial home for the first time after 2½ years after the marriage after her gauna was performed.
49. The learned Family Court has also taken into consideration that the appellant/petitioner was not paying any maintenance towards his wife which has been admitted by the appellant/petitioner which shows his conduct towards his wife and children. Further, the fact of dowry has also been taken into consideration by the learned Family Judge as the photocopy of the settlement dated 28.03.2007, arrived at on the basis of the complaint made by the respondent before the Women Commission at Patna in the year 2007, which had been exhibited, discloses that the appellant/petitioner had undertaken before the Commission that he would keep his wife with full honour and dignity and would not subject her to cruelty which somehow shows that the respondent was subjected to cruelty.
50. The desertion has also been taken as a ground but the desertion has been defined and interpreted by the Hon'ble Apex Court that the desertion will be said to be desertion if either of the party, on his/her own wish, has left the matrimonial house. But, no such evidence has been produced by the appellant/petitioner to prove the element of desertion showing that the respondent-wife has left her matrimonial house on her own wish rather it has been taken note in the impugned judgment as has been contended by the respondent that the respondent had been ousted from her matrimonial home on non-fulfillment of the demand of dowry.
51. Further in the instant case, though the factum of separation is there, but appellant has failed to prove that the respondent had the intention to bring the cohabitation permanently to an end, therefore, the animus deserendi is

lacking in this case on part of the respondent who was still willing to live with the petitioner.

52. The learned Family Judge, on consideration of both the issues, has not found the ground for dissolution of marriage and therefore, dismissed the suit.
53. This Court, based upon the aforesaid discussion, is of the view that the appellant/petitioner has failed to establish the element of perversity in the impugned judgment as per the discussion made hereinabove, as such, the instant appeal deserves to be dismissed.
54. Accordingly, the instant appeal fails and is dismissed.
55. Pending interlocutory application(s), if any, also stands disposed of.

I agree,

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)

(Arun Kumar Rai, J.)

17th February, 2026

Saurabh/

A.F.R.

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