

IN THE HIGH COURT OF JHARKHAND AT RANCHI**First Appeal No.121 of 2019**

Dhananjay Kumar Pandey, aged about 67 years, son of Late Chitranjan Kumar Pandey, resident of:159 Sindhu Road, 10 no. Basti, PO & PS-Sidhgora, Jamshedpur, District: East Singhbhum.

..... **Petitioner/Appellant**

Versus

Vidyawati Devi, Daughter of: Sri Sidheswar Pandey, resident of Village-Danwar, PO & PS-Danwar, District-Rohtas (Bihar).

.... ... **Respondent/ Respondent**

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

For the Appellant : Mr. Dhananjay Kumar Pathak, Advocate

For the Respondent : Mr. Samir Verma, Advocate

C.A.V on 03.07.2026**Pronounced on 23/07/2026****Per Sujit Narayan Prasad, J.**

1. The instant appeal under section 19(1) of the Family Courts Act, 1984 is directed against the judgment dated 04.01.2019 and the decree signed on 15.01.2019 passed in Original Suit No.136 of 2002 by the learned Principal Judge, Family Court, East Singhbhum, Jamshedpur (in short, Family Judge) whereby and whereunder the petition filed under section 13(1) (i) (i-a) of the Hindu Marriage Act, 1955 by the appellant-husband against the respondent-wife has been dismissed.

2. It needs to refer herein that earlier the appellant-husband had filed a suit for divorce on the ground of cruelty against the respondent-wife which was allowed by the learned Family Judge vide its judgment dated 11.07.2011 and decree signed and sealed on 15.07.2011.

3. Being aggrieved, the respondent-wife approached before this Court by preferring a First Appeal being First Appeal No.101/2011.

4. A co-ordinate Bench of this Court vide its judgment dated 22.11.2016 passed in First Appeal No.101/2011 has quashed and set aside the judgment and decree of the learned Family Court, Jamshedpur and remitted the matter to the concerned learned Family Court with a direction to settle the issues, examine the witnesses and decide the matter.

5. While setting aside the judgment and decree for divorce, a co-ordinate Bench of this Court has also discarded the issues settled by this Court as also the entire evidence adduced by the parties and directed the learned Family Judge, Jamshedpur to frame issues, strictly in accordance with the pleadings of the parties and allowing the parties to adduce evidence afresh, strictly according to the pleadings of the parties. It was also directed that pleadings of the parties shall remain the same.

6. Being aggrieved and having not satisfied, the petitioner-husband had filed a review petition being Civil Review No.17/2017 on the ground that there was an amendment petition filed before the learned Family Court, Jamshedpur which was allowed and the ground of adultery was added. But Civil Review No.17/2017 was also dismissed by this Court observing that no valid reason for reviewing the judgment dated 22.11.2016 was found.

7. Thereafter in light of order dated 22.11.2016 passed by this Court, the matter was remitted back to the learned Family Court.

8. The learned Family Judge after taking into consideration the pleadings of the parties has formulated the issues vide order dated 01.10.2018 and after considering the evidence adduced on behalf of the parties and after scrutinizing the materials on record has dismissed the suit for dissolution of marriage vide its judgment dated 04.01.2019 and decree

dated 15.01.2019 passed in Original Suit No.136 of 2002 which are under challenge in the instant appeal.

9. The brief facts of the case as pleaded in the plaint having been recorded by the learned Family Judge, needs to be referred herein as:

- (i) The appellant-husband and respondent-wife got married on 03.07.1987 according to Hindu customs and rites and the respondent joined her husband and in laws in her marital house immediately after said marriage at Jamshedpur.
- (ii) At Jamshedpur respondent's father-in-law had been in service and subsequently her husband got employment in Jamshedpur Notified Area Committee.
- (iii) The behavior of the respondent wife was all along cruel towards the appellant and her father-in-law and mother-in-law, which resulted in separation of the appellant from his parents in 1990, but even after his separation the appellant noticed that there was no change in the behaviour of the respondent, even towards the appellant itself.
- (iv) The respondent-wife used to move freely from Jamshedpur to Daltonganj (place of posting of her father) or her father's native village Danwar in Rohtas District against the will of the appellant-husband.
- (v) Further, when the appellant raised objection, she used to misbehave with him in most ugly manner and made life of the petitioner miserable.
- (vi) The respondent-wife remained non-co-operative in begetting issue through the appellant. She refused to have issue through the

appellant and expressed her desire to the appellant that she will get issue through others or have test tube baby.

- (vii) Further, during the period of her stay in the house of the appellant, the respondent in day-to-day affairs, used to quarrel with the appellant in most nasty manner, sometimes she did not hesitate in causing violence and sometimes she used to take bottle containing kerosene oil and matches with her saying that she would commit suicide as the appellant was raising objection to cruel behavior of the respondent.
- (viii) It has been stated that whenever, the respondent had been in her parent's house, she, her brothers namely Yatindra Narayan Pandey and Upendra Narayan Pandey, her matrimonial brothers Dadan Tiwary and Satya Narayan Tiwary used to threaten the appellant and his parent's that her brothers have close link with terrorists of Palamu District, and with the help of the said terrorists, they would get the appellant and his parents wiped out from this world.
- (ix) Further, the respondent led gang comprising her two brothers, namely, Yatindra Narayan Pandey and Upendra Narayan Pandey and her two maternal brothers namely Dadan Tiwary and Satya Narayan Tiwary, of village Gorayi, Dist. Rohtas with a view to commit dacoity in parental house of the appellant in village Dewarin, District Rohtas, but timely intervention of villagers foiled the mission of the respondent and her gang men.
- (x) The respondent, through different persons, managed to communicate message to the appellant that she has persons of criminal history for doing away life of the appellant and his parents.

(xi) This exceeds the limit of cruelties, being caused to the petitioner, by the respondent.

(xii) Thus, the respondent-defendant treated the plaintiff-petitioner with cruelty which leading to filing of the Original Suit No.136 of 2002.

10. On the aforesaid ground of cruelty and on the basis of allegation of adultery, the appellant-husband has prayed for a decree of dissolution of the marriage between him and the respondent-wife.

11. It needs to mention herein that in Original Suit No. 136 of 2002, the respondent-wife has appeared and filed a written statement denying all the allegations levelled against her by the appellant-husband.

12. In the written statement, the respondent-wife admitted about her marriage with the petitioner/appellant but has denied the other allegations contained in the plaint. It is averred that the suit is not maintainable. She has stated that, at the time of marriage, her father had provided cash Rs.70,000/- and other household articles to the petitioner, on the demand of the petitioner and his parents and sisters. The said articles were taken by the petitioner and his family members to Jamshedpur from Daltonganj and are lying in the house of the petitioner.

13. It is stated that after the marriage, the petitioner and his parents, further demanded one colour T.V., as well as, other articles and cash Rs. 12,000/-, after one month of the marriage. Two letters dated 10.08.97 and 14.08.97 were sent by the father of the petitioner to the father of the respondent, as well as, grand-father of the respondent, stating therein that, until the said articles and cash be provided to the petitioner and his family members, no *Vidaaie* ceremony shall be performed. Father of the respondent provided all the above articles except T.V. and Box Bed and the

Vidaaie ceremony was performed, whereupon, the respondent came to her matrimonial home, at Jamshedpur.

14. Furthe,r since the T.V. Set and Box Bed were not provided to the petitioner and his parents, they began to torture her in various ways. She was not allowed to enter into the kitchen. She was completely kept away from daily affairs of the house and was being treated as maid-servant, at the instance of her mother-in-law. Respondent was confined within the premises and she was not allowed to go out of the house and, therefore, there is no question of her moving freely from Jamshedpur to Daltonganj.

15. It is her further case that due to ill treatment made by the petitioner and his parents, respondent fell seriously ill on 06.09.88, at Jamshedpur, but the petitioner and his family members, did not take care of her treatment and they informed the father of the respondent regarding her illness, who sent his son to bring the respondent, to his native place, where he got her treated by the doctor. After treatment, the respondent was again sent back to her in-law's house, but she was again tortured by the petitioner and his parents.

16. The respondent has denied that she was non-cooperative towards having physical relationship with the petitioner and has stated that she was always willing to have a child, but the petitioner used to avoid cohabiting with her, for reasons best known to him.

17. Further that, when there was no issue, for about more than two years, the petitioner, on the advice of the respondent, went for treatment to Dr. Chawla, at Jamshedpur. Both of them were treated by the doctors and the doctor found the respondent fit for giving birth to a child, but the

petitioner was not found fit for getting any issue, through the respondent, for which the petitioner was medically treated by the doctor.

18. Further that, when no child was born to the respondent, the mother of the petitioner used to abuse the respondent as "*Baanjh*" and the parents of the petitioner were negotiating for second marriage of the petitioner, with another lady and when the respondent opposed, she was mercilessly assaulted by the petitioner, at the instance of his parents. The petitioner and his parents, after assaulting her, used to drive her out of their house, off and on, but at the request of the father and the brothers of the respondent, she was being allowed to stay in the house of the petitioner. However, in the year 2001, respondent became pregnant, but after two months, there was abortion of the child, due to ill treatment made by the petitioner and his parents.

19. It is averred that the father-in-law of the respondent used to kick on her belly, at the time of her pregnancy, as a result of which, abortion took place, but no proper treatment was given to her. After abortion, the petitioner and his family members began to torture the respondent, which became intolerable. Thereafter, the petitioner called her brother and she was sent to her father's house and since then, she is living at her parents' house, at her native place.

20. It is further averred that the petitioner and his family members, never tried to take her back to their house, though, she is all along ready and willing to live with her husband, but despite repeated requests made by the father and brothers of the respondent, the petitioner is not ready and willing to take her back and he is negotiating for second marriage.

21. The respondent has denied that, she or her brothers ever threatened the petitioner and that, her brothers are associated with the terrorist of Palamau. She has further stated that, the petitioner has no document to show that, he informed any authority regarding the alleged wrongful acts of the respondent, as well as, her father and brothers. She has denied that, she has any intention to grab any property of the petitioner, rather all her belongings are lying in the house of the petitioner.

22. It is the further case of the respondent that, due to ill treatment made upon her, she has instituted a case against the petitioner and his family members under section 498A, 307 of the I.P.C., being Karakat P.S. Case No. 137/02, which is pending in the court of S.D.J.M, Bikramganj, at Sasaram.

23. The respondent has denied that, petitioner has any reasonable apprehension from her or her parents. She has reiterated that, she has always been ready and willing to live with her husband, at her matrimonial home. She has further stated that, she has never left Jamshedpur, on her own, rather she was being driven out, by the petitioner and his family members, after assaulting her. Submitting thus, it has been prayed that instant suit may be dismissed.

24. Learned Family Judge, after institution of the said case, taking into consideration of the pleadings of the petitioner/appellant and the respondent has formulated the issues and has decided the *lis* by refusing to grant divorce to the plaintiff/appellant.

25. The aforesaid judgment by which divorce has not been granted is under challenge by filing the instant appeal.

Submission of behalf of the appellant-husband:

26. Mr. Dhananjay Kumar Pathak, the learned counsel appearing for the appellant-husband has taken the following grounds:

(i) There is an error in the impugned judgment, since, each and every aspect of the matter has not been taken into consideration based upon the documentary evidences as well as ocular evidences.

(ii) It has been contended that the element of cruelty has been found to be there as soon after the marriage the respondent-wife treated the petitioner-husband with cruelty and used to quarrel with him in most nasty manner and always threatened to commit suicide by pouring kerosine oil upon herself which caused mental agony to him, but without appreciating the same properly, the learned Family Judge has come to the finding by holding that no element of cruelty is there and, as such, the impugned judgment and decree suffers from an error.

(iii) It has been contended that the appellant has been meted out with cruelty at the hands of the respondent-wife due to her abnormal and cruel behaviour as also she moved freely here and there and even denied to establish physical relationship with him as would be evident from the evidence adduced on behalf of the appellant-husband, but the same has not been taken into consideration by the learned Family Judge.

(iv) It has been contended that though the learned Family Judge has proceeded the matter and dismissed the original suit, but he has failed to appreciate the evidences adduced on behalf of the

appellant as in the trial, the evidence has come that it was the respondent-wife who has committed cruelty upon him by her cruel behaviour and act and leading an adulterous life by leaving her matrimonial house.

27. The learned counsel, based upon the aforesaid grounds, has submitted that the impugned judgment and decree, therefore, needs interference on the ground of perversity.

Submission of behalf of the respondent-wife:

28. On the contrary, the learned counsel appearing for the respondent-wife has taken the following grounds:

- (i) There is no error in the impugned judgement. The learned Family Judge has considered the entire issue and on the basis of evidence as led by the parties and has passed the order impugned as such same may not be interfered with.
- (ii) The appellant has sought divorce on the ground that the behaviour of the respondent-wife is cruel and she is leading an adulterous life but the learned Family Court, after taking into consideration the oral and documentary evidence, has held that the entire allegations levelled in the plaint for divorce suit are absolutely illegal, uncalled for and has rightly dismissed the suit.
- (iii) It has been contended that the learned Family Judge has observed that witness of the petitioner, Umesh Prasad P.W.-2, upon his cross-examination has admitted at para-28, that petitioner has solemnized second marriage and out of the said wedlock one son was begotten. Thus, it appears

that it is the petitioner himself who has solemnized second marriage and leading an adulterous life and the learned Family Judge has rightly dismissed his petition for divorce.

- (iv) It has been contended that the fact about having a relationship with another woman while the first wife is alive is sufficient evident to prove the element of cruelty, which is being on the part of the appellant-husband towards the wife which proves that the appellant-husband is leading an adulterous life and hence, the second marriage of the petitioner-husband proves that he has acted cruelty upon the respondent-wife.
- (v) It has further been contended that the petitioner-husband has not made a party the person with whom the alleged illicit relationship of the respondent-wife exists and, as such, the suit for divorce is not maintainable on the ground of adultery and, thus, the learned Family Judge has rightly dismissed the suit.

29. Learned counsel, based upon the aforesaid grounds, has submitted that if on that pretext, the factum of cruelty and adultery has not been found to be established, hence, the impugned judgment cannot be said to suffer from an error.

Analysis:

30. We have heard the learned counsel appearing for the parties, gone through the impugned judgment as well as the Trial Court Records, as also the testimonies of the witnesses and the documents exhibited therein.

31. The learned Family Judge has formulated altogether six issues, for ready reference the same are being quoted hereinbelow:

(I) Is the suit as framed maintainable?

(II) Whether the applicant has valid cause of action?

(III) Whether the respondent is guilty of committing acts of cruelty against the applicant?

(IV) Whether the respondent has, after the solemnization of marriage, had voluntary sexual intercourse with any person, other than her husband, the petitioner herein?

(V) Whether the applicant is entitled to a decree of divorce on the grounds of cruelty and adultery?

(VI) To what other relief or reliefs the applicant is entitled to?

32. The learned Family Judge has considered the evidence adduced on behalf of the parties for deciding the issues involved in Original Suit No.136 of 2002 as they are interconnected.

33. This Court in order to appreciate the aforesaid rival submission before entering into the legality and propriety of the impugned judgment needs to discuss herein the relevant part of the evidences adduced on behalf of the parties wherein the element of cruelty and adultery has been shown by the petitioner-husband.

34. During the trial, two witnesses have been examined on behalf of the appellant-husband, upon remand of the suit. They are P.W.1 Dhananjay Kumar Pandey, petitioner himself and P.W.2-Umesh Prasad, is the well-wisher of the petitioner. Signatures of the Respondent on her previous examination-in-chief and cross-examination have been marked as Exts. 1, 1/1 to 1/14.

35. On behalf of the respondent, two witnesses have been examined, upon remand of the suit. They are R.W.1 Vidyawati Devi @ Vidyawati

Pandey, respondent herself and R.W. 2 Yatindra Narayan Pandey, brother of the respondent.

36. In his examination on oath as PW1, the appellant-husband has deposed that his marriage was solemnized with the respondent on 03.07.1987 and after the marriage the respondent came to his house at Jamshedpur and they started living as husband and wife. He has deposed that soon after the marriage the respondent treated him and his parents with cruelty due to which his parents were compelled to live separately from them. He has deposed that the respondent never acted as his wife and never cared him and when he objected, she has started quarreling with him and always threatened to implicate him and his family members in false cases.

37. He has deposed that the respondent told him that she would give birth to a child after establishing physical relation with another person and not from the petitioner. He has deposed that the respondent used to move here and there without his consent from Jamshedpur to Daltonganj for illicit relationship and since June, 2002 she spent night with other persons at different area of Jamshedpur. The petitioner-husband has deposed that the respondent was staying with one Akhilesh Tripathi for about six months and she never wanted to leading a conjugal life with the petitioner which amounts to cruelty. He has deposed that the respondent was treated by several doctors for birth of a child who advised her to take medicine and consummate the marriage with the petitioner but she refused to do so.

38. He has deposed that the respondent's brother and father instigated her to misbehave with him and they also threatened him for

dire consequences if he objects the respondent. He has further deposed that the relatives of the respondent had tried to commit dacoity at his native place but the same could not be succeeded due to villagers. He has further deposed that the respondent has lodged a false criminal case against him, his parents and sister under section 498A IPC due to which he had suffered physical and mental agony. He has deposed that his relatives and well-wishers tried their level best to patch up the differences but all went in vain due to adamant and cruel behaviour of the respondent. The respondent wants to lead an adulterous life with other persons and she has established physical relation with Akhilesh Tripathi.

39. In para-4 of his cross examination, he has stated that he had never made any complaint to anywhere about the cruel behaviour of the respondent. At para-7 the petitioner has admitted that he never caught her wife red handed while establishing physical relationship with other person and he never lodged any case against the respondent or Akhilesh Tripathi in this regard. At para-11 he has admitted that he has not produced the prescription or certificate of any doctor in the Court. At para-13 of his cross-examination, the petitioner has admitted that the respondent had lodged the case under section 498A IPC after he instituted the suit for divorce. At para-14 he has admitted that he does not want to keep the respondent as his wife. At para-15 he has deposed that he did not file any case with respect to restitution of conjugal rights. At para-17 he has admitted that initially he had filed this case because his wife had made complaint in his department and despite his persuasion, she did not obey him. At para-24 he has stated that neither he had produced any medical document nor had filed any case.

40. PW2 Umesh Prasad is a witness who knows both the parties. He has deposed that the marriage between the petitioner and the respondent was solemnized in the year 1987. Soon after the marriage, the respondent treated the petitioner and his parents with cruelty due to which parents of the petitioner started living separately in a quarter since the year 1990. He has narrated the entire facts as stated by the petitioner in his evidence. At para-14 of his examination-in-chief he has stated that he heard from Dhananjay Pandey (the petitioner) that the respondent had refused to establish physical relationship with the petitioner. He has corroborated the factum of illicit relationship of the respondent with other persons.

41. During cross-examination, at para-1 he has denied the suggestion that he got information from the petitioner and admitted that he knows these things personally. At para-2 he has admitted that he has no talking term with the respondent since 1990. At para-3 he has admitted that he had used to go to the petitioner's house on routine manner but he had never seen that the respondent had abused the petitioner. At para-4 he has admitted that as on date he is having no relation with either of the petitioner or the respondent. At para-6 he has admitted that he had never seen that the respondent has spent night at Sonari, Bishtupur etc. At para-7 he has admitted that he got information from the petitioner that the respondent did not want to live with the petitioner. At para-19 he had stated that he had seen the respondent with a teacher of Rajasthan School whose name is Tripathi or Tiwari. At para-20 he has admitted that he had never seen the respondent with any other person except this man. At para-21 he has admitted that he had never seen the respondent having physical relationship with any other person. At para-24 he has admitted that he

was never informed by the petitioner about illicit relationship of the respondent. At para-28 he has admitted that the petitioner has solemnized second marriage and he has one son out of the said wedlock. At para-30 he has admitted that the petitioner had solemnized the marriage before 5-7 years ago.

42. On the other hand, the defendant-wife (Vidyawati Pandey) has deposed herself as RW1. She has deposed that she was married with the defendant on 03.07.1987 and at the time of marriage cash Rs.70,000/- in addition to Furniture, Clothes, Gold and Silver ornaments, Household articles were presented to the petitioner. The respondent has deposed that after one month of marriage, on 10.08.1987 and 14.08.1987 her in-laws' had sent letters addressed to her father and grand-father for demand of dowry which she had produced in the Court.

43. The respondent has deposed that all the demands of her in-laws were fulfilled by her parents except one T.V and box-bed due to which she was tortured by her in-laws. She has further deposed that the petitioner and his parents started torturing her due to non-fulfillment of demand of additional dowry and even stopped to provide her food. The respondent has further deposed that she had tolerated the cruel act of her in-laws with a hope that the behaviour of the in laws and his husband would be changed in future but in vain. The respondent has deposed that she always obeyed the petitioner but on the instigation of her in-law's, the petitioner never cared her and even not ready to beget a child from her.

44. She has further deposed that the father and mother of the petitioner wanted to remarry the petitioner with another girl to whom

they had liked earlier and always treated the respondent with cruelty. She has deposed at para-10 that after being harassed and tortured at the hands of the petitioner and his parents, she made a complaint to the office of the petitioner where he worked thereafter the petitioner had filed a suit for divorce. At para-11 she has deposed that the petitioner has solemnized second marriage with one woman, namely, Guddi, and out of the said wedlock he has a son. At para-12 she has stated that due to cruelty meted out by her in-laws her pregnancy was aborted and thereafter her in-laws had assaulted her brutally and driven her out of the house due to non-fulfillment of demand of dowry. At para-13 the respondent has deposed that when the petitioner and his parents neglected her, she had lodged a case against the petitioner and his family members under the Dowry Prohibition Act and at that time she was residing at her *maike*. At para-14 the respondent has stated that she has not solemnized second marriage as she still loves with the petitioner.

45. At para-17 the respondent has deposed that Tripathi Sir is her *Kulguru* and he is like her father. At para-20 she has deposed that the petitioner has amended the plaint of the suit by inserting the clause of adultery after five years which has hurt her honor and dignity and, as such, the suit for divorce is liable to be dismissed.

46. During cross-examination, RW1 has stated at para-10 that her father-in-law wrote a letter addressing to her father for demand of T.V and bed box so that they would keep her properly in her matrimonial home. At para-26 she has admitted that Akhilesh Kumar Tripathi is *Kulguru* of her father but he was a teacher or not she does not know. At para-27 she has stated that she does not know where Akhilesh Kumar

Tiwari was living. At para-33 she has admitted that she had lodged a case against her husband at Bikramganj Court in 2002 which is still pending. At para-39 and 40 the respondent has denied the suggestion that it was wrong to say that she had moved freely here and there at Jamshedpur on her own wish without permission of her in-laws and stayed at night for days or months at the house of another person.

47. R.W.2 Yatinandra Narayan Pandey is the brother of the respondent. He has corroborated the entire facts as narrated by the respondent in her examination-in-chief and cross-examination. This witness has stated that at the time of marriage as per demand made by the petitioner and his parents cash Rs.70,000/- in addition to Furniture, Clothes, Gold and Silver ornaments, Household articles were given to the petitioner. At para-5, RW2 has deposed that on 10.08.1987 and 14.08.1987 the petitioner and his parents wrote letters to his father and grand-father for demand of dowry mentioning therein that if the demand would not be fulfilled then her daughter will be neglected. Thereafter, the demand was fulfilled but a T.V and one bed box were not given due to which her sister was subjected to cruelty and mentally tortured at the hands of her husband and in-laws. At para-9 this witness has stated that her sister (the respondent) was driven out of the matrimonial home after brutal assault by her in-laws.

48. At para-11, he has deposed that when the petitioner and her parents tortured and neglected the respondent, then after being compelled she lodged a criminal case under the provision of Dowry Prohibition Act against them. At para-14 he has stated that the respondent still wants to live with the petitioner but the petitioner.

49. During cross-examination, this witness has denied the suggestion at para-14 that the petitioner and his family members never treated the respondent with cruelty. At para-27 he has stated that after performing *Gauna* ceremony in 1988 her sister (the respondent) went to her matrimonial home where she was treated with cruelty. At para-48 RW2 has stated that Akhilesh Tripathi is his *Kulguru* and he is a blind person with both eyes. At para-53 he has stated that Akhilesh Tripathi is now aged about 70 years. At para-65 she has denied the suggestion that her sister (the respondent) had been seen alone in other areas of this city.

50. In the backdrop of the aforesaid factual matrix and the depositions of the witnesses, this Court now proceeds to re-advert to the factual substratum of the case as well as to the rival contentions advanced by the learned counsel appearing for the respective parties.

51. It stands admitted, on the basis of the evidences adduced by the appellant-husband, that the suit was instituted on the plea of cruelty and adultery. This fact is further borne out from the issues as duly framed by the learned Family Court.

52. The appellant-husband has throughout the proceedings, consistently alleged acts of cruelty and adultery on the part of his wife. In order to substantiate these allegations, he has laid evidences which have already been adverted to hereinabove.

53. This Court while appreciating the argument advanced on behalf of the appellant-husband 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.

54. 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.”*

55. Thus, “perversity” refers to a finding or decision so unreasonable or irrational that no reasonable person acting judicially could have reached it. It signifies a gross and unreasonable assessment of evidence or law by a court.

56. Further Perversity is a high threshold for intervention, distinguishing it from a mere error of fact or law. The "safest approach on perversity is the classic approach on the reasonable man's inference on the facts but inadequacy of evidence or a different reading of evidence is not perversity, reference in this regard be made to the judgment rendered by the Hon’ble Apex Court in the case of “***Damodar Lal v. Sohan Devi***”, (2016) 14 SCC 197.

Issue of Cruelty:

57. Herein, submission has been made on behalf of the appellant-husband that the respondent-wife committed cruelty against him.

58. 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.

59. 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 appellant-husband and his parents demanded dowry. The Hon’ble Apex Court emphasized that “cruelty” can have no fixed definition.

60. 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.”

61. 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.”

62. 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.

63. 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”.

64. 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.

65. The Hon’ble Apex Court in “*Joydeep Majumdar v. Bharti Jaiswal Majumdar*”, (2021) 3 SCC 742, has observed 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.

66. “Cruelty” has an inseparable nexus with human conduct and is always dependent on social strata or milieu to which parties belong, their ways of life, relationship, temperaments and emotions that are conditioned by their social status, reference be made to the judgment rendered by the Hon’ble Apex Court in the case “*Vishwanath Agrawal v. Sarla Vishwanath Agrawal*”, (2012) 7 SCC 288.

67. The Hon’ble Apex Court in the case of “*K. Srinivas Rao v. D.A. Deepa*”, (2013) 5 SCC 226 has observed that cruelty is evident where one spouse so treats other and manifests such feelings in other, as to cause reasonable apprehension in mind of other that it would be harmful or injurious to reside with other spouse and cruelty may be physical or mental. It has further been observed that staying together under the same roof is not a precondition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof.

68. In matrimonial relationship cruelty mean absence of mutual respect and understanding between spouses which embitters relationship. Sometimes it may take form of violence, or at times may just be an attitude or approach. Silence in some situations may also amount to cruelty reference be made to the case of “*Ravi Kumar v. Julmidevi*”, (2010) 4 SCC 476.

69. For considering dissolution of marriage at instance of a spouse who alleges mental cruelty, result of such mental cruelty must be such that it is not possible to continue with matrimonial relationship reference may be taken from the judgment rendered by the Hon'ble Apex Court in the case of ***“Joydeep Majumdar v. Bharti Jaiswal Majumdar”***, (*supra*).

70. Further, the word ‘cruelty’ is used 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. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of Vinita ***“Saxena v. Pankaj Pandit”***, (2006) 3 SCC 778.

71. Further, in the case of ***“Manish Tyagi v. Deepak Kumar”***, (2010) 4 SCC 339 the Hon'ble Apex Court has categorically observed that to constitute ‘cruelty’, it is enough that conduct of one of parties is so abnormal and below accepted norm that other spouse could not reasonable be expected to put up with it. Conduct is no longer required to be so atrociously abominable which would cause reasonable apprehension that it would be harmful of injurious to continue cohabitation with another spouse. Hence, it is not necessary to establish physical violence. Continued ill-treatment, cessation of marital intercourse, studied neglect, indifference may lead to inference of cruelty.

72. Thus, the word “cruelty” under Section 13(1)(i-a) of the Act has got no static connotation, and therefore, gives a very wide discretion to the Court to apply it liberally and contextually. What is cruelty in one case may not be the same for another and has to be applied from person to person while taking note of the attending circumstances. Harm or injury to health, reputation, the working-career or the like, would be important considerations in determining whether the conduct of the defending spouse amounts to cruelty. It has to be shown that the defending spouse has treated him with cruelty to cause reasonable apprehension in his/her mind that it will be harmful or injurious to live with the contesting spouse.

73. Now adverting to the factual aspect of the instant case, it appears that the petitioner-husband has alleged that the respondent-wife has treated him and his family members with cruelty.

74. It is the case of the petitioner that, since respondent’s entry into the matrimonial home, the respondent’s conduct was persistently cruel towards the petitioner/appellant as well as her parents-in-law. This ultimately led to the petitioner’s separation from his parents in the year 1990. Notwithstanding such separation, the respondent’s behaviour towards the petitioner remained unchanged. The petitioner has further alleged that the respondent was non-cooperative in establishing physical relations, which, according to him, amounts to cruelty. It is his case that the respondent habitually engaged in quarrels with him in a most intemperate manner, even in respect of day-to-day affairs, and at times resorted to acts of violence against him. On certain occasions, she is said to have threatened to commit suicide. The petitioner has also alleged that the respondent, in concert with her brothers and cousins, threatened him with dire

consequences, claiming connections with terrorists of Palamau and other criminal elements. It is further alleged that the respondent's brothers and cousins attempted to commit dacoity at the petitioner's parental house in Rohtas District.

75. On the other hand, the respondent-wife, in her evidence, has deposed that it was the petitioner-husband and his parents who subjected her to cruelty, neglect, and even deprivation of food owing to the non-fulfilment of dowry demands. She has further stated that she lodged a complaint with the office where the petitioner-husband was employed at the relevant time, and that, as a consequence thereof, the petitioner instituted the present suit for divorce. The respondent-wife has also deposed that when the petitioner and his family members refused to keep her in the matrimonial home on account of the non-fulfilment of additional dowry demands, she was compelled to initiate criminal proceedings under Section 498A of the Indian Penal Code against them.

76. From the aforesaid, it is apparent that the petitioner/appellant case rests upon allegations of persistent cruelty, refusal of conjugal relations, quarrelsome behaviour, threats of suicide and alleged criminal associations of the respondent's relatives.

77. Conversely, the respondent-wife has categorically deposed that it was the petitioner-husband and his parents who subjected her to cruelty, neglect, and deprivation of food owing to non-fulfilment of dowry demands. She has further stated that she was compelled to lodge complaints, including criminal proceedings under Section 498A IPC, when the petitioner and his family members refused to keep her in the matrimonial home for want of additional dowry.

78. From the material available on record and taking into consideration the deposition of witnesses in entirety, it is apparent that allegations levelled by the petitioner/appellant are grave in nature, however, they remain unsubstantiated by the cogent evidence, as such mere assertions, without corroboration, cannot form the basis of a decree of divorce.

79. The respondent's testimony regarding cruelty, neglect, and deprivation of food due to dowry demands is consistent and supported by her subsequent legal action under Section 498A IPC. The initiation of such proceedings lends credence to her version and demonstrates that she was compelled to seek protection under law.

80. Further, the petitioner's allegations appear retaliatory in nature, particularly in light of the respondent's complaint to his office and her initiation of criminal proceedings. The balance of probabilities favours the respondent's version that she was subjected to cruelty and dowry harassment.

81. The aforesaid fact has also been taken note by the learned Family Court which would be evident from para-13, 14 and 15 of the impugned judgment wherein the learned Family Court has observed which reads as under:

"13. Now I move on to decide Issue No. III ie. whether respondent is guilty of committing acts of cruelty against the applicant. It is the case of the petitioner that, after coming to her matrimonial home, respondent's behaviour was all along cruel towards the petitioner and her parents-in-laws, which ultimately resulted in separation of the petitioner from his parents in 1990, but despite that, there was no change in the behaviour of the respondent, even towards the petitioner. The petitioner has alleged that, respondent had been non-cooperative in having physical relationship with the petitioner, which according to the

petitioner, tantamount to cruelty. It is his further case that, the respondent used to quarrel with him in most in nasty manner, even, day-to-day affairs. At times times, she did not even hesitate in causing violence upon the petitioner. At times, she used to threaten to commit suicide. It is further case of the petitioner that, the respondent, along with her brothers and cousins, used to threaten him of dire consequences, as they were having links with terrorists of Palamau and other criminal persons. He has also alleged that, the brother and cousins of the respondent, had attempted to commit dacoity in the parental house of the petitioner, in Rohtas District. He has also alleged that, respondent is a lady of easy virtue and leads adulterous life with other persons, including one Akhilesh Tripathy, which is also cruelty upon the petitioner.

To the contrary, the case of the respondent is categoric denial of the allegations of the petitioner. It is the case of the respondent that, the petitioner and his family members, used to harass her for demand of additional dowry and she was mercilessly beaten by them. It is her further case that, she was treated as maid-servant and several times was ousted from her matrimonial home, after being assaulted. It is her further case that, when she had no child born from the petitioner, then her mother-in-law used to tell her "Banjh" and the parents of the petitioner were negotiating for second marriage of the petitioner with another lady and when the respondent opposed, she was mercilessly assaulted. It is her case that, when she was finally ousted from her matrimonial home, she filed a case under section 498A, 307 of the I.P.C., being Karakat P.S.Case No. 137/02, which is still pending in the Court of S.D.J.M, Bikramganj, at Sasaram.

14. From the evidence on the record, it appears that, the petitioner, upon his cross-examination as P.W.I, has admitted at para 4 that, he had not complained anywhere regarding cruel behaviour of his wife. At para 6 he has admitted that, though his wife used to neglect him with regards establishing physical relationship, but he has not lodged any case in this regard. At para 7 of his cross-examination, he has admitted that, he has not caught his wife establishing physical relationship red-handed, and that, though he has seen the respondent residing in the house of Akhilesh Tirpathy till 06 March, but he has not lodged any case in this regard, against his wife or Akhilesh Tripathy. At para 12

of his cross-examination, he has admitted that, he has not lodged any case in any court or in police station, regarding the threats given to him, by the respondent and her brothers and cousins. At para 17 he has admitted that, initially he had filed this case because, his wife had complained against him in his department, despite his persuasion. P.W.2 has admitted upon his cross-examination at para 3 that, he has never seen the respondent abusing the petitioner. At para 6 of his cross-examination, P.W.2 has admitted that, he has not seen respondent spending nights at Bistupur, Sonari and other places.

15. From the above discussions, it is clear that, though the petitioner has alleged regarding threatening given by the respondent and brothers and cousins, but he has not filed any case in this regard, nor he has filed any case for the alleged attempted dacoity by the brothers and cousins of the respondent, in the native village of the petitioner.

While discussing Issue No. IV i.e. whether respondent has, after solemnization of marriage, had voluntary sexual intercourse with any person other than her husband, this court has found the allegation of the petitioner in this regard, not proved beyond all reasonable doubts. As per the settled law, making unsubstantiated allegation of extra marital relationship against the other spouse is cruelty, on the said spouse, alleged to having extra marital relationship and the said cruelty is sufficient for the purpose of dissolution of the marriage between the parties. In a judgment reported in (2013) 5 SCC 226 K. Srinivas Rao Vs. D.A. Deepa, the Hon'ble Supreme Court has observed at para 14 that, Thus, to instances illustrative of mental cruelty, noted in Samar Ghosh Vs. Jaya Ghosh, reported in (2007) 4 SCC 511, we could add a few more. Making unfounded, indecent, defamatory allegations against the spouse or his/her relatives, in the pleadings, filing of complaints or issuing notices or news items, which may have adverse impact on the business prospect or the job of the spouse would, in the facts of a case, amount to mental cruelty to the other spouse".

The Hon'ble Jharkhand High Court in a judgment reported in 2018 Supreme (Jhk) 1996: Raju Vishwakarma Vs. Seema Devi, has also reiterated this settled Principal of law that, unfounded allegations of illicit relationship, amounts to causing mental

cruelty to the other spouse, sufficient for the purpose of dissolution of the marriage between the parties,

As such, in my view, the petitioner himself is guilty of infliction of cruelty upon the respondent. I further find that, even the witness of the petitioner, Umesh Prasad, P.W.2, upon his cross-examination has admitted at para 28 that, it is true that, the petitioner has performed second marriage and he has a son out of the said marriage. At para 30, P.W.2 has admitted that, the applicant has performed second marriage 5-7 years ago. I further find that, both the witnesses examined on behalf of the respondent have categorically stated in their examination-in-chiefs that, the applicant has performed marriage with a lady named Guddi, d/o Hiramani Pandey, r/o Village Kaithia, Mohania and that, he has son also with the said second marriage, but despite such categoric averments in the examination-in-chiefs of the respondent's witnesses, no question was asked in the cross-examination on behalf of the petitioner in this regard. As such, this is deemed to be admission on behalf of the petitioner. It is settled law that, no one can take benefit of his own fault. The entire conduct of the petitioner shows that, he himself, has inflicted cruelty upon the respondent, by making false and unsubstantiated allegations against her, as well as, Performing second marriage and suppressing the said fact before this court. As such, this issue is also decided against the petitioner and in favour of the respondent.”

82. Thus, from the aforesaid relevant paragraphs of the impugned judgment, it is evident that that the learned Family Court has observed that the petitioner, during his cross-examination as P.W.1, admitted at paragraph 4 that he had never lodged any complaint regarding the alleged cruel behaviour of his wife. At paragraph 6, he conceded that although he claimed neglect in respect of physical relations, he had not instituted any case on that ground. At paragraph 12, he admitted that he had not filed any case in any court or police station regarding the alleged threats by the respondent and her brothers and cousins. At paragraph 17, he further

admitted that the present case was initially filed because the respondent had lodged a complaint against him in his department, despite his persuasion.

83. Thus, upon a comprehensive appraisal of the evidences and the testimony of witnesses, it is manifest that the learned Family Court rightly negatived the claim of the petitioner-appellant that he had been subjected to cruelty by the respondent-wife. The admissions elicited in cross-examination of P.W.1 and P.W.2 further weaken the petitioner's case, as no contemporaneous complaint or proceeding was ever instituted to substantiate the allegations of cruelty, adultery, or threats. In contrast, the respondent-wife has consistently deposed to acts of cruelty and neglect perpetrated by the petitioner and his family members on account of dowry demands, which she was compelled to resist through lawful proceedings under Section 498A IPC.

84. In view of the foregoing, this Court is of the considered opinion that there is no occasion to take a view different from that of the learned Family Court on the issue of cruelty.

Issue of Adultery:

85. It needs to refer herein that it is settled position that a proceeding under Hindu Marriage act is not criminal proceeding where proof beyond reasonable doubt is required rather "preponderance of probability" is enough. However, the character of spouse affects his/her reputation in the society. Therefore, it is established proposition of law, that not only the pleading in respect of charge of adultery should be specific, it should also be established in all probabilities. The accepted rule, therefore, is that circumstantial evidence is all that can normally be expected in proof of charge; However, the circumstances must be such as to lead to fair

inference, as a necessary conclusion. In other words, proof required to prove adultery need not necessarily be what is at times said to be proof beyond a shadow of doubt, "It need not reach certainty but must carry a high degree of probability".

86. Since herein the allegation of extramarital affair has also been levelled by the plaintiff/appellant therefore in the aforesaid context, it needs to refer herein that Section 13(1)(i) of the Hindu Marriage Act, 1955, allows for divorce if the other spouse has, after the marriage, had voluntary sexual intercourse with anyone other than their spouse and providing a ground for divorce for either husband or wife. This is one of several grounds under Section 13(1) for dissolving a Hindu marriage, alongside cruelty 13(1) (ia), desertion 13(1) (ib), conversion, mental disorder, and venereal disease. For ready reference, the said section is being quoted herein which reads as under:

“13. Divorce.—(1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party— [(i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or”

87. It needs to refer herein that the petition for dissolution of marriage can lie at the instance of husband or wife, even if respondent has committed even a single act of adultery [if he or she has voluntary sexual intercourse with any person other than his or her spouse).

88. It needs to refer herein that the Hon'ble Apex Court, while striking down the offence of adultery in “*Joseph Shine v. Union of India*”, (2019) 3 SCC 39 also acknowledged how the notion of marriage had changed since the enactment the Penal Code in 1860:

“102. The background in which this provision was enacted now needs to be stated. In 1860, when the Penal Code was enacted, the vast majority of the population in this country, namely, Hindus, had no law of divorce as marriage was considered to be a sacrament. Equally, a Hindu man could marry any number of women until 1955. ... Two of the fundamental props or bases of this archaic law have since gone. Post 1955-1956, with the advent of the “Hindu Code”, so to speak, a Hindu man can marry only one wife; and adultery has been made a ground for divorce in Hindu Law.

89. It is considered view of this Court that since adultery is a very grave allegation in the context of matrimonial life, therefore, a very high degree or standard of proof is required and the offence of adultery should be proved beyond reasonable doubt. Further a husband or wife can ask for divorce only if at the time of filing the suit, the other party ‘is in adulterous relationship and merely a bald allegation without any cogent evidence of extra marital intercourse is not sufficient to dissolve the marriage.

90. Now advertng to the factual aspect, it is evident from the impugned order that the allegations specific to the ground of alleged cruelty has been made by petitioner-husband. Although the petitioner by way of amendment has inserted ground of adultery against the respondent-wife in his plaint for divorce and he has deposed on this point but he has failed to establish the same by way of his deposition.

91. The petitioner at para-7 of his cross-examination has admitted that he never caught her wife red handed while establishing physical relationship with other person and he never lodged any case against the respondent or Akhilesh Tripathi in this regard. Further, he has admitted at para-16 of his cross-examination that he has not mentioned the name of any person other than Akhilesh Tripathy, with whom his wife used to make illicit relationship. Further, he has admitted that he has not mentioned any

date on which his wife spent her nights with some other person. He has further admitted that he has not mentioned the name of any person who used to give him information regarding his wife establishing illicit relationship with other person. He has further admitted that he has not mentioned on which date which person informed him regarding immoral conduct of his wife.

92. The petitioner has also adduced evidence of PW2 who has admitted at para-6 of his cross-examination that he had never seen that the respondent has spent night at Sonari, Bishtupur etc. At para-19 he had stated that he had seen the respondent with a teacher of Rajasthan School whose name is Tripathi or Tiwari but he has stated that the age of Akhilesh Tripathi is about 30-35 years. At para-20 PW2 has admitted that he had never seen the respondent with any other person except this man. At para-21 he has admitted that he had never seen the respondent having physical relationship with any other person. At para-24 he has admitted that he had never informed the petitioner about illicit relationship of the respondent.

93. Thus, the testimony of PW2 regarding the identification of Akhilesh Tiwari, with whom the respondent is alleged to have maintained an illicit relationship, does not appear to be definite or conclusive.

94. The aforesaid testimony has been taken care of by the learned Family Judge and has observed that the petitioner has not alleged that he has ever seen any specific incident confirming his suspicion that his wife is being in adulterous relationship. The learned Family Judge while taking into consideration the established proposition of law, that not only the pleading in respect of charge of adultery should be specific, it should also

be established in all probabilities, has negated the claim of the appellant-husband.

95. In its finding at para-10, 11 and 12 of the impugned judgment, the learned Family Judge after going through the evidence on record has explained in detail about non-proving of allegations of adultery by the respondent-wife and held that the divorce suit is not maintainable, which reads as under:

"10. Now I move on to decide the suit issue-wise. I begin with Issue no. IV, i.e. whether the respondent has, after the solemnization of marriage, had voluntary sexual intercourse with any person, other than her husband, the petitioner herein. It is the case of the petitioner that, respondent herein was never interested in having physical relationship with him and begetting issue through him. According to the petitioner, she had expressed her desire to the petitioner that, she will get issue through others or she will have tube baby. It is further case of the petitioner, upon amendment of his pleading that, respondent is living in adultery, having sexual intercourse with persons other than the petitioner and she moves freely from Jamshedpur to Daltonganj, without consent of the applicant. Further that, since June, 2002, respondent had become street girl, spending nights with other persons at Bistupur, Sonari, Mango, Nirmal Nagar and other places at Jamshedpur and since the last six months prior to filing of this suit, she had been with a person named, Akhilesh Tripathy and was living in adultery with him also. The case of the respondent is categoric denial of the allegations made by the petitioner in this regard.

11. Learned counsel for the petitioner has referred to the statement of the respondent at para 13 of her written statement, wherein she has stated that, "When there was no issue for about more than two years, the petitioner, on the advise of the respondent, went for treatment to Dr. Chawla, at Jamshedpur, and both of them were treated by the doctors and the doctor found the respondent fit for giving birth to a child, but the petitioner was not found fit for getting any issue through the respondent and so the petitioner was medically treated by the doctor." The Ld.

counsel for the petitioner further referred to para 14 of the written statement of the respondent herein, wherein she has stated that, "However, in the year 2001, respondent became pregnant, but after about two months, there was abortion of the child". The Ld. counsel for the petitioner has submitted that, this admission on the part of the respondent, in her written statement, is sufficient to prove that, the respondent, after solemnization of the marriage, has had voluntary sexual intercourse with any person other than the petitioner herein.

Learned counsel for the respondent has submitted that, as per settled law, there must be clear proof of adultery and standard of proof to establish a matrimonial offence like adultery, is the satisfaction of the court beyond any reasonable doubt. She has further stated that, it is also settled law that, adultery has also to be inferred from the circumstances which exclude presumption of innocence in favour of a person against whom it is alleged. Proof of adultery must be of such character, as would lead a reasonable man to conclude, no other inference than the misconduct and further that, mere probability regarding adultery is not enough. She has further submitted that, as per settled law, no implicit reliance can be placed on the bald statement of the husband for recording a finding of adultery against the wife.

As per section 112 of the Evidence Act, Birth during marriage is conclusive proof of legitimacy. Section 112 of the Evidence Act, provides that "The fact that any person was born during continuance of a valid marriage between his mother and any man, or within 280 days after its dissolution, the mother remaining unmarried, shall be conclusive prove that, he is the legitimate son of that man, unless it can be shown that, parties to the marriage had no access to each other, at any time, when he could have been begotten".

In the instant case, as per the case of the petitioner himself, the parties lived together till 04.05.02. The Respondent has stated that, she became pregnant in the year 2001. P.W.2 has admitted upon his cross-examination at para 28 that, it is true that, the applicant has solemnized second marriage, from which marriage he has a son. No questions have been asked with respect to the categoric statements of the Respondent's witnesses that, the applicant has performed second marriage and he has a son out

of the said marriage. This shows that, there is no doubt regarding the capability of the petitioner to become a father. The petitioner has nowhere stated in his plaint regarding pregnancy of the respondent, which fact has been brought by the respondent in her written statement at para 14. So, from these two paragraphs, it can not be inferred that, respondent had become pregnant with some person, other than the petitioner herein.

12. I further find that, the petitioner, as P.W.1, has admitted upon his cross-examination at para 7 that, he has not caught his wife raid-handed while making physical relationship. He has further admitted that, he had seen his wife residing in the house of Akhilesh Tripathy till 06 March, but he has not filed any case, in any court or in the police station against his wife or Akhilesh Tripathy, in this regard. At para 16, the petitioner has admitted as P.W.1 that, in his examination-in-chief, he has not mentioned the name of any person other than Akhilesh Tripathy, with whom his wife used to make illicit relationship. He has further admitted at para 16 of his cross-examination that, in his examination-in-chief, he has not mentioned any date on which, his wife spent her nights with some other person. He has further admitted at para 16 that, he has not mentioned the name of any person in his examination-in-chief, who used to give him information, regarding his wife establishing illicit relationship with other person. He has further admitted that, he has also not mentioned in his examination-in-chief that, on which date, which person, informed him regarding immoral conduct of his wife. At para 17 of his cross-examination, he has admitted that, initially he had filed this case because his wife had complained in his department and despite his persuasion she did not obey him. He has further stated that, he does not remember, as to in which year and in which court, he had given application for amendment of ground of divorce. At para 22 of his examination-in-chief, he has stated that, statement of his wife that, she was pregnant in the year 2001, when he was not capable to make her pregnant, shows that, she was pregnant from some other persons, but upon his cross-examination at para 24, he had admitted that, with regards his statement made in para 22 of his examination-in-chief, he has not filed any medical prescription, nor he had lodged any case in this regard. I further find that, the petitioner herein has got examined one Umesh Prasad as P.W.2, who, upon his cross-examination

has admitted at para that it is true that statement made in para 4 of his examination-in-chief is false. At para 6 of his cross-examination, P.W.2 has admitted that, he has not seen the respondent spending nights at Bistupur, Sonari, and other places. At para 7 he has admitted that, the petitioner had told him that, the respondent does not want to spent night with him. P.W. 2 has admitted that, he was driver in J.N.A.C, where the petitioner also use to work. At para 18 he has admitted that, the petitioner had told him that, respondent does not establish physical relationship with him. At par 19 he has stated that, he had seen the respondent, moving around along with a teacher of Rajasthan School, whose name was some Tripathy or Tiwary. At para 20, he has admitted that, apart from this, he had not seen respondent with any other person. At para 23 of his cross-examination, P.W.2 has admitted that, at present Akhilesh Tripathy might be of 30-35 years old. He has denied the suggestion that, he has never seen Akhilesh Tripathy. It is the case of the petitioner that, respondent was having illicit relationship with Akhilesh Tripathy. The Petitioner, as P.W.I, has admitted upon his cross-examination at para 19 that, father of the respondent and Akhilesh Tripathy, were almost of the same age. The petitioner has stated his age to be 57 years, in his examination-in-chief, as P.W.I. The respondent has stated her age A be 52 years, in her examination-in-chief, as R.W.I. P.W.2 claims to have seen Akhilesh Tripathy, with whom, the petitioner alleges that, his wife was having illicit relationship and he has stated that, the said Akhilesh Tripathy is 30-35 years old. This shows that, P.W.2 is not at all reliable.

On the basis of above discussions, I am of the view that, petitioner has failed to establish that, the respondent has, after solemnization of her marriage, had voluntary sexual intercourse with any person other than the petitioner herein. As such, this issue is decided against the petitioner and in favour of the respondent.”

96. From the statement of the appellant, it is apparent that the generalized statement has been made about illicit relation of respondent wife and further the petitioner/appellant has not alleged that he has ever seen any specific incident of respondent adulterous/sexual act confirming

or supporting his suspicion that respondent being in adulterous relationship with anyone else. Thus, it appears that the allegation made in petition gives impression that whatever he has alleged is based on his suspicion and surmises.

97. Further, there was no cogent material to prove that the respondent/wife having illicit relation with some other person, on account of which she has left the appellant/husband and a such the very allegation is merely a ballpark assessment of the respondent/husband.

98. Further since the finding of adultery would adversely affect the interest of alleged adulterer, opportunity should be given to him to defend himself and to disprove the claim of adultery, the said adulterer should be arrayed in the proceedings which would help the court to effectively and completely adjudicate the controversy. Further, if an allegation is made by husband that is required to be proved by the husband by way of leading the evidence and that cannot be adjudicated effectively without making the adulterer as one of the parties. But in the instant case the person against whom allegation of alleged adultery has been levelled has not been made party.

99. The rationale underlying this mandate is that allegations of illicit relationship, if established, entail grave civil consequences and cast a lasting stigma upon the alleged paramour. To record such findings without affording the said individual an opportunity of hearing would be repugnant to the fundamental principle of *audi alteram partem*.

100. It is evident that at para-7 of his cross-examination the petitioner/appellant has admitted that he never caught her wife red handed while establishing physical relationship with other person and he never

lodged any case against the respondent or Akhilesh Tripathi in this regard. At para-16 he has admitted that he had not mentioned in his affidavit on oath the name of any other person with whom her wife (the respondent) was having illicit relationship. Further P.W.2 at para-21 of his cross-examination has admitted that he had never seen the respondent having physical relationship with any other person.

101. Thus, from the aforesaid it is evident that the learned Family Judge has considered the aforesaid facts and has observed that appellant-husband has miserably failed to establish the allegation of illicit relationship of the respondent-wife with other person which also amounts to “cruelty” upon the respondent-wife at the hands of the appellant.

102. From the aforesaid, it is also evident that the petitioner/appellant has alleged the circumstances which led him to his suspicion and surmises in his doubtful mind as to adulterous behaviour of respondent-wife but he has failed to prove those circumstances and the inference drawn by him is not based on any cogent and acceptable evidence.

103. This Court, after discussing the aforesaid factual aspects in conjunction with the settled legal position and upon advertng to the consideration made by the learned Family Judge in the impugned judgment, finds that the issue of alleged adultery was duly examined and consciously dealt with by the learned Family Judge.

104. Accordingly, on the basis of the discussion hereinabove, it is the considered view of this Court that the finding of the learned Family Court on the issue of the respondent-wife’s alleged adulterous conduct cannot be said to suffer from any error warranting interference.

105. This Court, upon consideration of the findings arrived at by the learned Family Judge and in light of the foregoing discussion, is further of the view that the judgment and decree passed by the learned Family Court do not fall within the ambit of perversity. The impugned judgment reflects a conscious and reasoned appreciation of both ocular and documentary evidence, as is evident from its detailed analysis.

106. This Court, therefore, is of the view that the judgment dated 04.01.2019 and the decree signed and sealed on 15.01.2019 passed in Original Suit No. 136 of 2002 by the learned Family Judge needs no interference.

107. Consequently, the instant appeal stands dismissed.

108. Pending I.A(s), if any, stands disposed of.

(Sujit Narayan Prasad, J.)

I Agree.

(Pradeep Kumar Srivastava, J.)

(Pradeep Kumar Srivastava, J.)

Sudhir
Dated: 23/07/2026
Jharkhand High Court, Ranchi
AFR

Uploaded on 23/07/2026.