2026:CGHC:10934-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 59 of 2023

{Arising out of judgment and decree dated 18-1-2023 in HMA No.105A/2022 of the Judge, Family Court, Balodabazar}

Judgment reserved on: 17-2-2026

Judgment delivered on: 3-3-2026

Judgment (Full) uploaded on: 3-3-2026

Dinesh Sahu, S/o Shri Radheshyam Sahu, aged about 34 years, R/o Village Pawani, Police Station & Tahsil Bilaigarh, Civil District Balodabazar-Bhatapara, Revenue Distt. Sarangarh-Bilaigarh, Chhattisgarh

(Plaintiff)

... Appellant

versus

Smt. Padma Sahu, W/o Shri Dinesh Sahu, aged about 34 years, R/o Village Pawani, Police Station & Tahsil Bilaigarh, District Balodabazar-Bhatapara, Chhattisgarh at Present R/o Village Raykona, Thana Sarsiwan, Tahsil Bilaigarh, Revenue District Sarangarh-Bilaigarh, Chhattisgarh

(Defendant)

... Respondent

For Appellant : Mr. Sunil Sahu, Advocate.
For Respondent : Mr. Aman Kesharwani, Advocate.
Amicus Curiae : Mr. Rahul Tamaskar and Mr. Sharad Mishra, Advocates.

Division Bench: -
Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Arvind Kumar Verma, JJ.

C.A.V. Judgment

Sanjay K. Agrawal, J.

1. Invoking the jurisdiction of this Court under Section 19(1) of the Family Courts Act, 1984, the appellant herein/plaintiff has preferred

this appeal challenging the judgment & decree dated 18-1-2023 passed by the Judge, Family Court, Balodabazar in HMA No.105A/2022, by which his application for dissolution of marriage on the grounds contained in Sections 13(1)(ia) & 13(1)(ib) of the Hindu Marriage Act, 1955 (for short, 'the Act of 1955'), has been rejected finding no merit.

2. The aforesaid challenge has been made on the following factual backdrop: -

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the civil suit before the Family Court.)

2.1) The appellant herein/plaintiff filed application for dissolution of marriage with the respondent herein/defendant stating inter alia that their marriage was solemnized on 15-2-2015 at Village Raikona, Police Station Sarsiwa, under Hindu rites and customs and immediately after marriage, his wife i.e. the respondent herein resided with him for 10-11 days and thereafter proceeded to her maternal home, thus she lived with him only for 10-11 days and thereafter, started pressurizing him to live separately from his ailing and aged parents and in case of refusal, she threatened him to implicate him in false case and from July, 2017, she started residing separately without there being any reason. Thereafter, in the year 2018, the defendant/wife got registered FIR against the plaintiff/ husband and his family members for offence punishable under Sections 498A read with Section 34 of the IPC & 5 of the

Chhattisgarh Tonhi Pratadna Nivaran Adhiniyam, 2005, which was pending consideration before the jurisdictional criminal court and which comes under the purview of mental cruelty. It has further been pleaded that counselling was done by the Family Welfare Committee, Balodabazar on 23-7-2018 in which his wife i.e. the respondent herein has categorically and unequivocally stated that she is not willing to reside in her matrimonial home by leaving her father and mother. It has also been pleaded that the defendant/wife is residing separately from the plaintiff/husband since more than 5-6 years which falls under the definition of cruelty under Section 13(1)(ia) of the Act of 1955 and living separately since more than 5-6 years which leads to the ground of desertion under Section 13(1)(ib) of the Act of 1955. In para 12 of the plaint, it has also been clearly stated that false case has been filed by the respondent/wife against the plaintiff/ husband and his family members for offence punishable under Section 498A read with Section 34 of the IPC at Police Station Sarsiwa, which constitutes the ground of mental cruelty. Thus, the plaintiff/husband prayed for dissolution of marriage by a decree of divorce.

2.2) The defendant/wife filed written statement controverting the allegations made in the plaint stating inter alia that the plaintiff started demanding dowry, four-wheeler, etc. and used to draw amount of her salary by ATM card and also used to brand her '*tonhi*' and did not take her along with him. In paragraph 5, she has admitted the fact that case of dowry under Section 498A read with

Section 34 of the IPC and tonhi pratadna for offence under Sections 4 & 5 of the Chhattisgarh Tonhi Pratadna Nivaran Adhiniyam, 2005 were registered against the appellant herein and his family members and pending in the court of Judicial Magistrate First Class, Bhatgaon, District Balodabazar-Bhatapara. As such, the plaintiff/husband is not entitled for dissolution of marriage by decree of divorce.

2.3) The Family Court after appreciating oral and documentary evidence available on record, framed following four issues and answered the issues as under: -

:: वाद प्रश्न ::

1.	क्या प्रतिवादिनी द्वारा विवाह के बाद वादी के वृद्ध माता–पिता से अलग हरने की जिद्द करते हुए झूठे केस में फंसा देने की धमकी देकर क्रूरतापूर्ण व्यवहार किया गया?	नहीं
2.	क्या प्रतिवादिनी द्वारा वादी को बिना युक्तियुक्त कारण के लगभग 5–6 वर्षों से पृथक रहकर वादी का अभित्यजन कर दिया है?	नहीं
3.	क्या वादी, प्रतिवादिनी के साथ संपन्न विवाह दिनांक 15–02–2015 को विघटित कराकर विवाह–विच्छेद की आज्ञप्ति प्राप्त करने के अधिकारी है?	नहीं
4.	सहायता एवं व्यय?	कंडिका 25 के अनुसार निर्णय घोषित

2.4) In sum and substance, the Family Court has clearly recorded a finding that the grounds of cruelty and desertion are not established and as such, proceeded to dismiss the suit/application for dissolution of marriage against which this appeal has been preferred.

3. Mr. Sunil Sahu, learned counsel appearing on behalf of the appellant herein/plaintiff/husband, would submit that the Family Court has dismissed the application for dissolution of marriage on 18-1-2023

and the present appeal was filed on 22-2-2023, thereafter, on 16-6-2025, the appellant herein, his brother Rajesh Kumar Sahu, his father Radheshyam Sahu, his mother Phoolbai and his one more brother Manoj Kumar – all five family members, have been acquitted of the charges under Sections 498A read with Section 34 of the IPC and 5 of the Tonhi Pratadna Nivaran Adhiniyam, 2005 by judgment dated 16-6-2025 passed by the Judicial Magistrate First Class, Bhatgaon, District Sarangarh-Bilaigarh in Criminal Case No.J-374/2018. This would reinforce the cruelty meted out by the respondent herein/wife by making false complaint. Mr. Sunil Sahu would further submit that the appellant has filed application under Order 41 Rule 27 of the CPC along with copy of the judgment of acquittal dated 16-6-2025 which may be taken on record. As such, the ground of cruelty is very much established on account of the subsequent event also which the appellant has filed in shape of Order 41 Rule 27 of the CPC. Mr. Sunil Sahu would rely upon the decisions of the Supreme Court in the matters of **Rani Narasimha Sastry v. Rani Suneela Rani**[1] and **K. Srinivas Rao v. D.A. Deepa**[2] to buttress his submissions. He would also submit that the ground of desertion is also established.

4. Mr. Aman Kesharwani, learned counsel appearing on behalf of the respondent herein/defendant/wife, would submit that though the charges have not been established for offence under Sections 498A read with Section 34 of the IPC & 5 of the Tonhi Pratadna Nivaran

1 (2020) 18 SCC 247
2 AIR 2013 SC 2176

Adhiniyam, 2005, but further appeal is to be filed against the judgment dated 16-6-2025 by which the appellant herein and four other family members have been acquitted of the criminal charges levelled against them and as such, the present first appeal as well as the application under Order 41 Rule 27 of the CPC deserve to be rejected. He would further submit that Order 41 of the CPC has not been made expressly applicable by Section 10 of the Family Courts Act, 1984 and therefore Order 41 of the CPC is not applicable to appeals under Section 19(1) of the Family Courts Act, 1984, as such, the application under Order 41 Rule 27 and the present first appeal both deserve to be dismissed.

5. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the record with utmost circumspection.

6. True it is that the application for divorce on the ground of cruelty under Section 13(1)(ia) and on the ground of desertion under Section 13(1)(ib) of the Act of 1955 was rejected by the jurisdictional Family Court by the impugned judgment & decree dated 18-1-2023 against which this first appeal has been preferred by the plaintiff/husband and during the pendency of the instant first appeal, the appellant herein and his four other family members namely, brother Rajesh Kumar Sahu, father Radheshyam Sahu, mother Phoolbai and another brother Manoj Kumar have been acquitted by the jurisdictional criminal court from the criminal charges for offence

under Sections 498A read with Section 34 of the IPC & 5 of the Tonhi Pratadna Nivaran Adhiniyam, 2005.

7. This Court on 20-1-2026 took cognizance of the application under Order 41 Rule 27 of the CPC and issued notice to the other side and further directed that the application under Order 41 Rule 27 of the CPC shall be considered at the time of final hearing. It is the case of the respondent herein/wife that Order 41 Rule 27 of the CPC has not been made applicable by virtue of Section 10 of the Family Courts Act, 1984. At the outset, the applicability of Order 41 Rule 27 of the CPC i.e. the application for taking additional evidence on record is being considered now.

8. Section 10 of the Family Courts Act, 1984 prescribes the procedure to be applied to suits and proceedings before the Family Court. It states as under: -

> "**10. Procedure generally**.—(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.
>
> (2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

> (3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other."

9. A careful perusal of Section 10 of the Family Courts Act, 1984 would show that subject to the other provisions of the Act of 1984 and the rules, the provisions of the CPC would apply to the suits and proceedings before a Family Court, but Order 41 of the CPC has not been expressly made applicable by virtue of Section 10 of the Family Courts Act, 1984 in an appeal filed under Section 19(1) of the Family Courts Act, 1984. Section 19 of the Family Courts Act, 1984 is also silent on the aspect of application of CPC or power to admit additional evidence. Section 19 of the Family Courts Act, 1984 states as under: -

> "**19. Appeal**.—(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.
>
> (2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):
>
> Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991.
>
> (3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

> (4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and, as to the regularity of such proceeding.
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> (5) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.
>
> (6) An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges."

10. As stated above, Section 19(1) of the Family Courts Act, 1984 mandates that save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 or in the Code of Criminal Procedure, 1973 or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law. Notwithstanding anything contained in the CPC, Order 41 of the CPC has not been expressly made applicable to the appeals preferred under Section 19(1) of the Family Courts Act, 1984. The general principle behind Order 41 Rule 27 of the CPC is that the appellate court should not travel outside the record of the trial court and cannot take any evidence in appeal and an exception has been carved out in shape of Order 41 Rule 27 which enables the appellate court to take additional evidence in exceptional circumstances and one of the circumstances in which the production of additional evidence under Order 41 Rule 27 of the CPC by the appellate court is to be considered is, whether or not the appellate court requires the

additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.

11. The Supreme Court in the matter of **Sanjay Kumar Singh v. State of Jharkhand**[3] has explained the general principles behind Order 41 Rule 27 of the CPC in following terms: -

> "**7.** It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate court is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.
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> **8.** As observed and held by this Court in *A. Andisamy Chettiar* v. *A. Subburaj Chettiar*[4], the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further observed that the true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced."

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3 (2022) 7 SCC 247

4 (2015) 17 SCC 713 : (2017) 5 SCC (Civ) 514

12. But the fact remains that Order 41 including Rule 27 of the CPC has not been expressly made applicable in the appeals preferred before this Court against the judgment & order of the Family Court under Section 19 of the Family Courts Act, 1984 and there is no express provision in the Family Courts Act applying the CPC including Order 41 of the CPC, though Section 21 of the Act of 1955 provides for application of all the proceedings. Despite, all the above, the Family Courts Act, 1984 is silent on the point of applicability of the CPC, specially Order 41 to appeals under Section 19 and thus power of appellate court to admit additional evidence. In such circumstances, the doctrine of *ex debito justitiae* is pressed into motion. According to Black's Law Dictionary, Eighth Edition, *ex debito justitiae* means 'from or as a debt of justice; in accordance with the requirement of justice; of right; as a matter of right'.

13. It is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a rehearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial court are open for reconsideration. Therefore, the first appellate court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display

conscious application of mind and record findings supported by reasons on all issues and contentions. (See **Malluru Mallappa (Dead) Through Legal Representatives v. Kuruvathappa and others**[5].)

14. It is also well established principle of law that the right of appeal is a substantive right and the questions of fact and law are at large and are open to review by the appellate Court. It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective and meaningful.

15. In this regard, the decision of the Supreme Court in the matter of **Income Tax Officer, Cannanore v. M.K. Mohammed Kunhi**[6] may be noticed herein in which it has been held that the appellate court has all the ancillary and incidental power(s) to make the appeal effective, which states as under: -

> **"6.** ... The right of appeal is a substantive right and the questions of fact and law are at large and are open to review by the Appellate Tribunal. Indeed the Tribunal has been given very wide powers under Section 254(1) for it may pass such orders as it thinks fit after giving full hearing to both the parties to the appeal. If the Income Tax Officer and the Appellate Assistant Commissioner have made assessments or imposed penalties raising very large demands and if the Appellate Tribunal is entirely helpless in the matter of stay of recovery the entire purpose of the appeal can be defeated if ultimately the orders of the departmental authorities are set aside. It is difficult to conceive that the legislature should have left the entire matter to the administrative authorities to make such orders as they choose to pass in exercise of unfettered discretion. The assessee, as has been pointed out before, has no right to even move an application when an appeal is pending

5 (2020) 4 SCC 313
6 1968 SCC OnLine SC 71

before the Appellate Tribunal under Section 220(6) and it is only at the earlier stage of appeal before the Appellate Assistant Commissioner that the statute provides for such a matter being dealt with by the Income Tax Officer. It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective (*Sutherland Statutory Construction*, 3rd Edn., Articles 5401 and 5402). The powers which have been conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective. In *Domat's Civil Law Cushing's Edn*., Vol. 1 at p. 88, it has been stated:

> "It is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express dispositions, but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it."

7. *Maxwell on Interpretation of Statutes*, 11th Edn., contains a statement at p. 350 that "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. *Cui jurisdictio data est, ea quoqe concessa esse videntur, sine quibus jurisdictio explicari non potuit*". An instance is given based on *Ex parte Martin* [(1879) 4 QBD 212, 491] that "where an inferior court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment, for the power would be useless if it could not be enforced".

16. Similarly, in the matter of **Haryana Suraj Malting Limited v. Phool Chand**[7], their Lordships of the Supreme Court have laid down the doctrine of the implied grant and held that certain powers are recognised as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly

7 (2018) 16 SCC 567

granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised.

17. In the matter of **Rabindra Singh v. Financial Commissioner, Cooperation, Punjab and others**[8], it has been held by the Supreme Court that in absence of express provision for application of CPC, in order to do complete justice, the provisions of CPC can be applied, and their Lordships observed as under: -

> **"21.** What matters for exercise of jurisdiction is the source of power and not the failure to mention the correct provisions of law. Even in the absence of any express provision having regard to the principles of natural justice in such a proceeding, the courts will have ample jurisdiction to set aside an ex parte decree, subject of course to the statutory interdict.

18. In view of the above-stated discussion, it is held that even in absence of express provision for application of the CPC and more particularly, Order 41 of the CPC, in appeal under Section 19(1) of the Family Courts Act, 1984, the appellate Court/this Court will have, by its necessary implication, all the incidental and ancillary power to make the adjudication of appeal effective and meaningful including power to admit additional evidence in accordance with law subject to two caveats that, case sought to be set up is pleaded so as to support the additional evidence that is proposed to be brought on record and secondly, the appellate court requires additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.

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8 (2008) 7 SCC 663

19. In this regard, the decision of the Supreme Court may be noticed herein profitably. The Supreme Court in the matter of **Iqbal Ahmed (Dead) by LRs. and another v. Abdul Shukoor**[9] held that if additional evidence is sought to be brought on record, permissible pleading to that effect in either plaint or written statement, would be necessary, and observed as under: -

> **"8.** In our opinion, before undertaking the exercise of considering whether a party is entitled to lead additional evidence under Order XLI Rule 27(1) of the Code, it would be first necessary to examine the pleadings of such party to gather if the case sought to be set up is pleaded so as to support the additional evidence that is proposed to be brought on record. In absence of necessary pleadings in that regard, permitting a party to lead additional evidence would result in an unnecessary exercise and such evidence, if led, would be of no consequence as it may not be permissible to take such evidence into consideration. Useful reference in this regard can be made to the decisions in *Bachhaj Nahar* v. *Nilima Mandal*, (2008) 17 SCC 491 : AIR 2009 SC 1103 and *Union of India* v. *Ibrahim Uddin*, (2012) 8 SCC 148. Thus, besides the requirements prescribed by Order XLI Rule 27(1) of the Code being fulfilled, it would also be necessary for the Appellate Court to consider the pleadings of the party seeking to lead such additional evidence. It is only thereafter on being satisfied that a case as contemplated by the provisions of Order XLI Rule 27(1) of the Code has been made out that such permission can be granted. In absence of such exercise being undertaken by the High Court in the present case, we are of the view that it committed an error in allowing the application moved by the defendant for leading additional evidence."

20. The scope of admitting additional evidence has already been held by the Supreme Court in **Sanjay Kumar Singh** (supra). As such, though Order 41 of the CPC has not been made expressly inapplicable, but the High Court while hearing appeal under Section 19(1) of the Family Courts Act, 1984 has all the incidental or ancillary

9 2025 SCC OnLine SC 1787

powers inherent in it to make its appellate jurisdiction effective and meaningful including the power to take additional evidence. Since the additional evidence is very much necessary and the Court requires it for just and proper disposal of the appeal, the application for taking additional documents on record is allowed and the judgment of the criminal court is taken on record.

21. At this stage, this Court would have ordinarily stayed the judgment and could have directed the other side to produce the document in rebuttal, but since it is the judgment of the jurisdictional criminal court, no useful purpose will be served by doing so, therefore, this Court is proceeding to consider the appeal on merits.

22. Now, the question that needs consideration is, whether the Family Court is justified in rejecting the application filed by the appellant/plaintiff for grant of decree for dissolution of marriage on the ground of cruelty and desertion?

Cruelty

23. In order to answer the plea raised at the Bar, it would be appropriate to notice the provision contained in Section 13(1)(ia) of the Hindu Marriage Act, 1955, which states 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) xxx xxx xxx
>
> (ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty, or

(ib) xxx xxx xxx"

24. A careful perusal of Section 13(1)(ia) of the Hindu Marriage Act, 1955 would show that husband or wife would be entitled for decree of dissolution of marriage on the ground of cruelty if after solemnization of marriage, one spouse has treated the other spouse with cruelty.

25. The word 'cruelty' has not been defined in the Hindu Marriage Act, 1955. However, the Black's Law Dictionary, Eighth Edition, defines 'cruelty' as the intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human and defined 'legal cruelty', 'mental cruelty' and 'physical cruelty' as under:-

> "***legal cruelty***. Cruelty that will justify granting a divorce to the injured party, specif., conduct by one spouse that endangers the life, person, or health of the other spouse, or creates a reasonable apprehension of bodily or mental harm. [Cases: Divorce →27. C.J.S. Divorce § 22.]
>
> ***mental cruelty***. As a ground for divorce, one spouse's course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse. See EMOTIONAL, DISTRESS. [Cases: Divorce →27. C.J.S. Divorce § 22.]
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> ***physical cruelty***. As a ground for divorce, actual personal violence committed by one spouse against the other. [Cases: Divorce →27(3, 6). C.J.S. Divorce §§ 24, 27, 29-31.]"

26. The word 'cruelty' has not been specifically defined in the Hindu Marriage Act, 1955. However, the Supreme Court in the matter of **Samar Ghosh v. Jaya Ghosh**[10] has laid down some situations or instances of human behaviour that would constitute mental cruelty. Paragraph 101 of the report states as under :-

10 (2007) 4 SCC 511

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

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

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

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

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

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

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

(*vii*) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

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

> (*ix*) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.
>
> (*x*) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.
>
> (*xi*) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.
>
> (*xii*) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty
>
> (*xiii*) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.
>
> (*xiv*) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

27. It is doubtless that burden must lie on the petitioner to establish his or her case for, ordinarily, the burden lies on the party which affirms a fact, not on the party which denies it. This principle accords with common sense as it is so much easier to prove a positive than a negative. The petitioner must therefore, prove that the respondent has treated him with cruelty within the meaning of Section 10(1)(b)

of the Hindu Marriage Act, 1955. [See : **Dr. N.G. Dastane v. Mrs. S. Dastane**[11] para 23.]

28. In the instant case, it is the case of the plaintiff/husband that the defendant/wife has got registered a false complaint case giving rise to cause of action, against him, his two brothers namely, Rajesh Kumar Sahu & Manoj Kumar, his father namely, Radheshyam Sahu and his mother namely, Phoolbai. First Information Report was lodged by the defendant/wife on 13-5-2018, charge-sheet was filed on 4-10-2018 and ultimately, after seven years they have been acquitted on 16-6-2025 by recording following findings in Criminal Case No.J-374/2018 by the Judicial Magistrate First Class, Bhatgaon, District Sarangarh-Bilaigarh: -

> 16. इसी प्रकार प्रकरण के अन्य साक्षी रामकृष्ण साहू अ.सा. 07 एवं किशोर साहू अ.सा. 08 ने घटना की जानकारी सामाजिक बैठक के दौरान होना बताया है। प्रकरण में विवेचनाकर्ता पुनीराम टंडन अ.सा. 09 ने विवेचना कार्यवाही का समर्थन किया है। अ.सा. 09 के द्वारा जप्ती कार्यवाही की गई है तथा जप्ती कार्यवाही का ही उनके द्वारा समर्थन किया गया है। अभियोजन के उक्त तथ्यों के खंडन में बचाव पक्ष के द्वारा आरोपी दिनेश साहू ने स्वयं का परीक्षण कराया है तथा दस्तावेज पेश कर यह स्थापित करने का प्रयास किया है कि घटना के समय आरोपी राजेश कुमार साहू, मनोज कुमार साहू और उनके पिता राधेश्याम साहू तथा वह स्वयं अपने–अपने कार्य पर उपस्थित थे इसलिए घटना दिनांक 29/03/2018 को उनके द्वारा कोई घटना कारित नहीं किया गया है। यह भी स्थापित करने का प्रयास किया है कि सभी आरोपीगण अलग–अलग जगह निवास करते हैं। प्रकरण में यह दर्शित है कि आरोपीगण राजेश साहू एवं मनोज साहू अलग–अलग जगह निवासरत हैं तथा राधेश्याम साहू और फुलबाई ग्राम पवनी में तथा आरोपिया गुंजा साहू अपने ससुराल में निवास करते हैं। जबकि प्रार्थिया का निवास स्थल उसका मायका ग्राम रायकोना है। इस प्रकार प्रकरण में प्रार्थिया के द्वारा दहेज में चार पहिया वाहन की मांग किये जाने की बात सत्य प्रतीत नहीं होता है। प्रार्थिया ने उसके खाते में आरोपी दिनेश साहू और राजेश साहू के द्वारा 57000/– रूपये ट्रांसफर करने का भी कथन किया

11 AIR 1975 SC 1534

है जिस संबंध में पासबुक पेश किया गया है जिसमें एक साथ उक्त राशि का ट्रांसफर नहीं हुआ है, अलग–अलग दिनांक को राशि आहरण हुई है जो स्वयं अथवा एटीएम के माध्यम से आहरण हुआ है। इससे भी यह तथ्य प्रमाणित नहीं हो रहा है कि आरोपी दिनेश साहू प्रार्थिया के वेतन का आहरण कर लेता था।

17. टोनही प्रताड़ना के संबंध में यह तथ्य आया है कि आरोपीगण प्रार्थिया को टोनही कहते थे इसलिए आरोपिया गुंजा साहू के बच्चे होने पर उसे गोद लेने नहीं दिये तथा आरोपी राजेश साहू के शादी में लेकर नहीं गये। इस संबंध में कोई स्पष्ट तथ्य नहीं आया है क्योंकि प्रार्थिया और आरोपी के मध्य एक साथ रहने को लेकर वाद–विवाद बढ़ते जा रहा था जिसके कारण ही उनके मध्य अलग रहने की स्थिति उत्पन्न हुई तथा प्रार्थिया आरोपीगण के विरूद्ध टोनही प्रताड़ना के संबंध में बढ़ा–चढ़ाकर कथन की है। इसलिए आरोपीगण के विरूद्ध प्रार्थिया का किया गया कथन उनके उपर दबाव डालने के आशय से किया गया है। इस प्रकार आरोपीगण के विरूद्ध आरोपित अपराध प्रार्थिया के कथन से ही प्रमाणित नहीं होता है।

18. उपरोक्त विश्लेषण के आधार पर अभियोजन अपना मामला आरोपीगण के विरूद्ध युक्तियुक्त संदेह से परे प्रमाणित करने में असफल रहा है कि उन्होंने घटना दिनांक 29.03.2018 से अब तक स्थान ग्राम प्रार्थीया के मायके रायकोना अन्तर्गत थाना सरसीवा जिला बलौदाबाजार वर्तमान जिला सारंगढ़ बिलाईगढ़ में प्रार्थीया पदमा साहू के साथ क्रुरता करने का सामान्य आशय आरोपीगण दिनेश साहू, राजेश साहू, राधेश्याम साहू फुलबाई, मनोज साहू, गुंजा साहू के साथ निर्मित कर सामान्य आशय के अग्रशरण में प्रार्थीया के पति एवं पति के नातेदार होते हुए दहेज के रूप में चार पहिया वाहन की मांग कर प्रार्थीया को शारीरिक एवं मानसिक रूप से प्रताड़ित किया। प्रार्थीया को उक्त दिनांक, समय व स्थान पर टोनही के रूप में पहचान कर उसे शारीरिक एवं मानसिक रूप से प्रताड़ित किया। **इस प्रकार विचारणीय बिंदु क्रमांक 1 से 3 का निष्कर्ष <u>प्रमाणित नहीं</u> में दिया जाता है। अतः प्रकरण के आरोपीगण को धारा 498(A)/34 भारतीय दण्ड संहिता एवं धारा 5 टोनही प्रताड़ना अधिनियम 2005 के अपराध में <u>दोषमुक्त</u> कर स्वतंत्र किया जाता है।**

29. As such, the jurisdictional criminal court has clearly recorded a finding that the prosecution has failed to prove that the plaintiff/husband, his two brothers – Rajesh Kumar Sahu & Manoj Kumar, his father – Radheshyam Sahu and his mother – Phoolbai have treated the defendant/wife with cruelty and demanded dowry and they were acquitted of the charges under Sections 498A read

with Section 34 of the IPC and 5 of the Chhattisgarh Tonhi Pratadna Nivaran Adhiniyam, 2005.

30. In this regard, the decision of the Supreme Court in **Rani Narasimha Sastry** (supra) deserves to be noticed herein profitably in which their Lordships have clearly held that when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498A of the IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has been meted out on the husband, and observed in paragraphs 13 and 14 as under: -

> **"13.** In the present case, the prosecution is launched by the respondent against the appellant under Section 498-A IPC making serious allegations in which the appellant had to undergo trial which ultimately resulted in his acquittal. In the prosecution under Section 498-A IPC not only acquittal has been recorded but observations have been made that allegations of serious nature are levelled against each other. The case set up by the appellant seeking decree of divorce on the ground of cruelty has been established. With regard to proceeding initiated by the respondent under Section 498-A IPC, the High Court[12] made the following observation in para 15: (*Rani Narsimha Sastry case*[4], SCC OnLine Hyd)
>
> > "*15.* ... Merely because the respondent has sought for maintenance or has filed a complaint against the petitioner for the offence punishable under Section 498-A IPC, they cannot be said to be valid grounds for holding that such a recourse adopted by the respondent amounts to cruelty."
>
> The above observation of the High Court cannot be approved. It is true that it is open for anyone to file complaint or lodge prosecution for redressal of his or her grievances and lodge a first information report for an offence also and mere lodging of complaint or FIR cannot ipso facto be treated as cruelty. But, when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498-A IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty

12 *Narsimha Sastry v. Suneela Rani,* 2017 SCC OnLine Hyd 714

> has been meted out on the husband. As per the pleadings before us, after parties having been married on 14-8-2005, they lived together only 18 months and, thereafter, they are separately living for more than a decade now.
>
> **14.** In view of the forgoing discussion, we conclude that the appellant has made a ground for grant of decree of dissolution of marriage on the ground as mentioned in Section 13(1)(*i-a*) of the Hindu Marriage Act, 1955."

31. Furthermore, the Supreme Court in **K. Srinivas Rao** (supra) has held that the conduct of the respondent-wife in filing a complaint making unfounded, indecent and defamatory allegation against her mother-in-law, in filing revision seeking enhancement of the sentence awarded to the appellant-husband, in filing appeal questioning the acquittal of the appellant-husband and acquittal of his parents indicates that she made all attempts to ensure that he and his parents are put in jail and he is removed from his job. Their Lordships further held that this conduct has caused mental cruelty to the appellant-husband.

32. Coming to the facts of the case, it is quite evident that the defendant/ wife has reported the matter to the police for registration of offence punishable under Sections 498A of the IPC and 5 of the Tonhi Pratadna Nivaran Adhiniyam, 2005 on 13-5-2018 stating that she was subjected to cruelty and harassment pertaining to demand of dowry pursuant to which charge-sheet was filed on 4-10-2018 in which the plaintiff/husband, his two brothers, his father and mother, all five were acquitted on 16-6-2025. However, such allegations are extremely serious affecting the character and the reputation of the plaintiff/husband and he has also faced apprehension of arrest for

the aforesaid offence and as such, he suffered great mental trauma of getting arrested and he not only stood trial for seven years, but also suffered prosecution for fairly long time which caused permanent scar on his mind and has definitely adversely affected his status in the society.

33. On the basis of aforesaid discussion, it is held that the plaintiff/ husband and his family including two brothers and parents were subjected to the rigors of a criminal trial under Sections 498A of the IPC and 5 of the Tonhi Pratadna Nivaran Adhiniyam, 2005, an ordeal that spanned seven years only to culminate in an acquittal. It is evident that the allegations of cruelty and demand of dowry, etc., levelled by the defendant/wife could not withstand judicial scrutiny; they remained unsubstantiated, devoid of cogent evidence, and ultimately collapsed under their own weight. Furthermore, an acquittal in a criminal court does not merely signal the end of a trial; it often highlights the beginning of a social scar. In our social fabric, such public accusations tarnish reputation and erode the dignity of the husband and the family members long before a verdict is even reached and recorded. We find that the sustained distress of defending one's honour against unfounded claims constitutes a potent form of mental cruelty under Section 13(1)(ia) of the Act of 1955. To compel a spouse/husband to endure the shadow of a criminal prosecution that is eventually found to be baseless is to inflict a wound that no reconciliation can easily heal. Parties have remained entrenched in their respective solitudes, living separately

for a period of seven years. As such, this Court is of the considered opinion that the plaintiff/husband has successfully established the ground for grant of decree of dissolution of marriage under Section 13(1)(ia) of the Act of 1955 that is mental cruelty.

Desertion

34. The ground of desertion has been enumerated in Section 13(1)(ib) of the Act of 1955, which states 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) xxx xxx xxx
>
> (ia) xxx xxx xxx
>
> (ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or
>
> (ii) to (vii) xxx xxx xxx
>
> *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."

35. The word "desertion" in the context of Sections 13(1)(ib) and 10 of the Hindu Marriage Act, 1955, has been considered by the Supreme Court in the matter of **Adhyatma Bhattar Alwar v. Adhyatma Bhattar Sri Devi**[13] and to establish "desertion", their Lordships have laid down two essential ingredients in order that it may furnish

13 AIR 2002 SC 88

a ground for relief, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Their Lordships observed in paragraph 6 of the report as under: -

> **"6.** 'Desertion' in the context of matrimonial law represents a legal conception. It is difficult to give a comprehensive definition of the term. The essential ingredients of this offence in order that it may furnish a ground for relief are:
>
> 1. The factum of separation
>
> 2. The intention to bring cohabitation permanently to an end — *animus deserendi*;
>
> 3. The element of permanence which is a prime condition requires that both these essential ingredients should continue during the entire statutory period;
>
> The clause lays down the rule that desertion to amount to a matrimonial offence must be for a continuous period of not less than two years immediately preceding the presentation of the petition. This clause has to be read with the Explanation. The Explanation has widened the definition of desertion to include 'wilful neglect' of the petitioning spouse by the respondent. It states that to amount to a matrimonial offence desertion must be without reasonable cause and without the consent or against the wish of the petitioner. From the Explanation it is abundantly clear that the legislature intended to give to the expression a wide import which includes wilful neglect of the petitioner by the other party to the marriage. Therefore, 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 (*animus deserendi*). 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. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively and their continuance throughout the statutory period."

36. Similarly, in the matter of **Roi (Bari) Stree v. Rassinga Naik and another**[14], relying upon the observations of GORELL BARNES, J. in the matter of **Sickert v. Sickert**[15], it has been held by the Madras High Court that in order to constitute desertion there must be a cessation of cohabitation and an intention on the part of the accused party to desert the other, and it has been observed as under:-

> "In order to constitute desertion there must be a cessation of cohabitation and an intention on the part of the accused party to desert the other. In most cases of desertion the guilty party actually leaves the other, but it is not always or necessarily the guilty party who leaves the matrimonial home. In my opinion, the party who intends bringing the cohabitation to an end, and whose conduct in reality causes its termination, commits the act of desertion. There is no substantial difference between the case of a husband who intends to put an end to a state of cohabitation, and does so by leaving his wife, and that of a husband who with the like intent obliges his wife to separate from him."

37. However, in this regard, the decision of the Supreme Court in the matter of **Malathi Ravi, M.D. v. B.V. Ravi, M.D.**[16] may be noticed herein in which the essential elements of desertion have been laid down by their Lordships of the Supreme Court as under: -

> "**20.** In the said *Savitri Pandey case*[17], reference was also made to *Lachman Utamchand Kirpalani case*[18] wherein it has been held that desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there (*1*) the factum of separation, and (*2*) the intention to bring cohabitation permanently to an end (*animus deserendi*). Similarly two elements are essential so far as the deserted

14 AIR 1935 Mad 541
15 (1899) P. 278, 282
16 (2014) 7 SCC 640
17 (2002) 2 SCC 73
18 *Lachman Utamchand Kirpalani v. Meena*, AIR 1964 SC 40

> 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. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation."

38. Coming to the facts of the case, it is quite vivid that the appellant and the respondent both are living separately for a period of seven years, as the respondent has lodged FIR on 13-5-2018 and thereafter, they started living separately and the respondent has refused to live with the appellant in the counselling also. As such, the appellant/ husband has successfully established that there has been no cohabitation between the parties for a continuous period of at least two years immediately preceding the presentation of the petition. The respondent/wife predicated her separation on allegations of cruelty, specifically initiating proceedings under Section 498A of the IPC against the husband and his family members and on the allegations of cruelty and the Tonhi Pratadna, the jurisdictional criminal court did not found any material against the petitioner and other family members and they have been acquitted as mentioned in the aforementioned paragraphs.

39. In that view of the matter, the wife's justification for leaving the matrimonial home stands eroded and it is established that she was living separately without reasonable cause. As such, the allegation of cruelty by husband and his family members remained unsubstantiated, rendering the wife's withdrawal from the

matrimonial home without any reasonable cause. The prolonged period of 7 years, coupled with the lack of any effort towards reconciliation, clearly demonstrates an intentional and permanent abandonment of the matrimonial obligations. It is evident that the abandonment was both intentional and without the consent of the husband and thereby the respondent/wife has effectively repudiated the matrimonial bond with the clear intention of bringing cohabitation to a permanent end.

40. Consequently, this Court concludes that the appellant has successfully discharged the burden of proving desertion. Therefore, the ground for dissolution of marriage specified under Section 13(1)(ib) of the Act of 1955 stands established and the appellant is entitled for decree of dissolution of marriage under the ground of desertion also.

41. Accordingly, the appeal is allowed and the impugned judgment & decree dated 18-1-2023 passed by the Judge, Family Court, Balodabazar in HMA No.105A/2022 are set aside. It is held that the plaintiff/husband is entitled for decree of divorce, as such, it is hereby granted in favour of the plaintiff/husband and against the defendant/wife. Consequently, the marriage solemnized between the plaintiff/husband and the defendant/wife on 15-2-2015 is hereby dissolved by a decree of divorce.

42. The defendant/wife has not claimed any permanent alimony by making application or in the written statement, therefore, liberty is

reserved in her favour for claiming permanent alimony by making a separate application under Section 25 of the Act of 1955.

43. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
JUDGE

Sd/-
(Arvind Kumar Verma)
JUDGE

Soma