

IN THE HIGH COURT OF JHARKHAND AT RANCHI
F.A. No. 155 of 2022

Diwakar Kumar Sharma, aged about 37 years, son of Ramchandra Sharma, r/o Village-Koriyana, P.O.-Maheshtikri, P.S.-Basantrai, District- Godda, Jharkhand

..... **Appellant/petitioner**

Versus

Safalta Sharma, aged about 32 years w/o Diwakar Sharma, r/o Village- Koriyana, P.O.- Maheshtikri, P.S.-Basantrai, District- Godda, Jharkhand at present C-III,Inder Enclave Face I Kirari Suleman Nagar Sultanpuri C Block North Western Delhi- 110086.

... ... **Opposite party/Respondent**

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

For the Appellant	: Mr. Vinay Kumar Tiwary, Advocate
For the Respondent	: Mr. Rakesh Ranjan Advocate

CAV on 10.02.2026 **Pronounced on 18/02/2026**

Per Sujit Narayan Prasad, J.:

1. The instant appeal under Section 19(1) of the Family Court Act, 1984 is directed against the judgment dated 15.10.2022 and Decree dated 03.11.2022 passed by the learned Principal Judge, Family Court, Godda in Original Suit No.75 of 2021, whereby and whereunder, the petition filed under Section 13(1)(i),(i-a),(i-b) of the Hindu Marriage Act, 1955 by the plaintiff (appellant herein) seeking a decree of divorce against his wife (respondent herein), has been dismissed.

Factual Matrix

2. The brief facts of the case leading to filing of the

divorce petition by the appellant/ plaintiff needs to be referred herein as under:

The appellant/plaintiff and respondent/defendant are legally married husband and wife and their marriage has been solemnized in 08.12.2011 at Bhartikitta as per Hindu rites and customs in a simple ceremony.

The petitioner/husband (appellant herein) and the respondent/OP/wife lived together in relation of husband-wife since the date of marriage till 30.04.2021. The petitioner and the respondent got blessed with two children out of their wedlock namely, Aryan Raj (son) and Anshika Kumari (daughter) aged about 9 and 5 years old respectively.

It has been stated that differences arose between the petitioner and the respondent/OP due to the misconduct and misdeeds of the respondent/OP. The respondent/OP used to flee from the house of the petitioner despite the objection made by the petitioner. It has been alleged that the respondent/OP developed illicit relationship with Sonu Sharma alias Sourav Kumar Sharma who used to visit the petitioner's house regularly. It has further been stated that the respondent has not made physical relation with the petitioner for more than a year.

It is alleged that the respondent/OP along with two children, fled away with Sonu Sharma alias Saurav Sharma on 0.04.2021 after taking all her ornaments and petitioner's

golden chain and ring. The respondent also took Rs. 60,000/- kept by the petitioner for which Basantrai P.S. Case no. 34/2021 state Vrs- Sonu Sharma alias Saurav Sharma has been registered u/s-364, 379, 120(B)/34 of the I.P.C.

Thereafter being aggrieved with the conduct of respondent-wife, the appellant-husband had preferred a suit being Original Suit No. 75 of 2021 before the learned Family Court Godda.

3. Thereafter notice was issued on due address through Nazarat as well as through Registered Post and thereafter publication/advertisement of said notice in the local daily Hindi newspaper was made for appearance of respondent/OP's/defendant/wife, but she did not appear. Therefore, vide order dated 20.06.2022 the suit has been ordered to be proceeded *ex-parte* (in absence of defendant).

4. Based upon the pleading, the learned Family Court altogether has framed six issues which are as follows:

“I. Whether the Suit as framed is maintainable?

II. Whether the plaintiff has valid Cause of Action for the suit?

III. Whether the defendant/Opposite Party-wife, after her solemnization of marriage with plaintiff/petitioner-Husband, had sexual intercourse with any person other than plaintiff and thus guilty of extra marital sexual intercourse or ADULTEROUS ACT Under section 13 (1)(i) of Hindu Marriage Act, 1955?

IV. Whether the defendant/Opposite Party-wife, after her solemnization of marriage with plaintiff/petitioner, treated the plaintiff-husband with CRUELTY under section 13 (1) (i-a) of Hindu Marriage Act, 1955?

(V) Whether defendant/opposite Party-wife has deserted the plaintiff/petitioner-husband for a continuous period of not less than two years immediately preceding the presentation of this petition, and thus committed "DESERTION" of her husband (plaintiff/petitioner) under section 13 (1) (i-b) of Hindu Marriage Act, 1955?

VI. Whether the plaintiff/petitioner-husband Diwakar Kumar Sharma is entitled for relief of "Dissolution of his Marriage with defendant/opposite party-wife Safalta Sharma." by passing the Decree of Divorce under section 13 (1)(i) and/or sec 13 (1) (i-a) and/or sec 13 (1) (i-b) of Hindu Marriage Act, 1955 and any other relief or reliefs?"

5. The suit has been filed on the ground of adultery, cruelty, and desertion but the issues could not be proved and accordingly, the prayer for dissolution of marriage has been dismissed by the learned Family Court which is the subject matter of the present appeal.

Submissions advanced by the learned counsel appearing for the appellant:

6. Learned counsel appearing for the appellant-husband has submitted that the Learned Family Court has failed to appreciate that the appellant has produced credible evidence which are sufficient to establish his case and the appellant is entitled for grant of decree of divorce on ground of adulterous act of respondent wife.

7. Further, it has been submitted that the findings recorded by the learned Trial Court while answering issue no.(iii) adultery, and (iv)(cruelty) are perverse and based on mere presumption, therefore, the same will not stand in the eye of law.

8. Submission has also been made that the learned Court below also failed to appreciate that the appellant has successfully substantiated the allegation that the respondent has extramarital affairs and, therefore, the petitioner / appellant is entitled for grant of decree of divorce. But that aspect of the matter has not been taken into consideration by the learned Family Court.

9. It has been contended on behalf of the appellant that the factual aspect which was available before the learned court supported by the evidences adduced on behalf of the appellant has not properly been considered and as such, the judgment impugned is perverse, hence, not sustainable in the eyes of law.

10. Learned counsel for the appellant has submitted that the specific pleadings of the plaintiff/ appellant to the effect that the respondent wife has eloped with another person on 30.04.2021 even though the aforesaid fact has not been properly appreciated by the learned Family Court.

11. He has further submitted that the learned court committed an error in observing that the appellant could not

prove any act of cruelty on the part of respondent No.1 either in his plaint or in his evidence adduced on his behalf. Such observation/finding is completely perverse as would be evident from a bare perusal of the plaint as well as evidence of PWs who have categorically stating that the respondent /OP/wife had adulterous relationship but such fact has totally been ignored by the learned court.

12. The learned court further failed to take note of the fact that the relationship between the parties had deteriorated to such an extent that it has become impossible for appellant to live with the respondent wife but the same has not been properly taken into consideration by the learned Family Court.

13. Learned counsel for the appellant has submitted that such categorical statements on the part of different PWs clearly proves factum of cruelty as well as the factum of adultery.

14. Learned counsel for the appellant, based upon the aforesaid grounds, has submitted that the judgment impugned suffers from perversity, as such, not sustainable in the eyes of law.

Submissions advanced by the learned counsel appearing for the respondent:

15. Learned counsel for the respondent-wife, defending the impugned order, has submitted that the appellant has sought divorce on the ground that the behaviour of

respondent-wife towards the appellant and his family members is torturous and she has extramarital affairs and, therefore, the appellant cannot reasonably be expected to live with the respondent but the learned Family Court, after taking into consideration the evidence, has held that the appellant-husband has not succeeded to prove and establish the ground of cruelty as also failed to prove that the respondent had any illicit relation and has rightly dismissed the suit.

16. It has been contended that allegation against respondent as to her illicit relation is also based on mere suspicion of the appellant because except the generalized statement made about illicit relation of respondent/wife, the appellant has not alleged/claimed that he has ever seen any specific incident of the adulterous/sexual act, therefore the finding of learned Family court is absolutely correct based upon the evidences led by the appellant/husband.

17. Learned counsel for the respondent has further submitted that learned trial court has rightly held that the appellant is not entitled for the decree of divorce on the ground of cruelty, adultery and desertion because the appellant has miserably failed to prove his case even to the extent of preponderance of probabilities.

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

Analysis:

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

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

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

P.W.-1 Diwakar Kumar Sharma (petitioner/appellant himself) has stated in his affidavited examination-in-chief that the O.P. is the wife of the petitioner, she used to run away from the house. The O.P. has an illicit relation with one Sonu Sharma alias Sourav Kumar Sharma who used to frequently visit the house of the petitioner. The O.P. stopped making physical relation with the petitioner and thus deprived petitioner of his marital right. On 30.04.2021, O.P. Safalta Sharma accompanied with her children fled away with her lover Sonu Sharma taking away all her jewelry and also golden chain, ring of the petitioner and also cash Rs. 60,000/- of the petitioner. O.P. treated the petitioner with cruelty by her cruel behaviour and she had made illicit relation with her lover.

In court question he has stated that defendant/OP is his wife. Their, marriage has been solemnized on 08.12.2011 as per Hindu customary rites and ceremonies. They (petitioner and OP) lived as husband and wife properly from year 2011 to 2019 and they got blessed with two children out of their wedlock. Thereafter since 2019 her behaviour changed and he found that she used to talk on phone with someone. He checked record of her call details and also overheard her talking on phone and then he found that his wife(OP) used to talk offensive and obscene things with another boy named Sonu Sharma alias Saurav Kumar Sharma, who is in his relation and who used to frequently visit his house.

He had further deposed that his wife stopped making physical relation with him after year 2019. On 30.04.2021 while he had gone out of his house in connection with his work as journalist and at that time, his Parents were in the house but they were sick being infected with corona virus and thus they were staying in isolation. He had left house on that day at 9:30 AM in morning and when he returned his house at around 12:30 PM, he found that his wife (OP) and children were not present at home, all the gate and doors of house were open, TV and fans were on and house-hold articles were missing. His parents could not say anything as they were confined

in the room due to illness. But when inquired from the neighbours then they told him that his wife fled away with Sonu Sharma along with his children. When he tried to contact his wife and children on their phone but their phone found switched off.

Thereafter his wife never contacted him and since 30.04.2021 his wife (OP) along with his children left him/abandoned him forever. As his wife used to have obscene talks with Sonu Shama and she fled with said Sonu Sharma not to ever return back, hence he has reason to believe that she has illicit relation with Sonu Sharma. That due to conduct of OP as she left him not alone but also took away his children hence, he has suffered much mental pain and agony. The OP has not filed any case against him. He does not know where his wife/OP resides right now.

P.W.-2 Bal Kishore Thakur has stated in his affidavited examination-in-chief dated 19.07.2022 likewise PW-1. He stated that OP Safalta Sharma had illicit relationship with one Sonu Kumar Sharma @ Saurav Kumar Sharma s/o Late Sushil Sharma and said Sonu Sharma used to visit his house regularly, and it was known and discussed everywhere in the village. That OP stopped making any physical relation with petitioner. The witness further stated that due to illicit relation and bad behavior of OP,

the petitioner used to remain under mental stress. That on 30.04.2021, the OP fled away with Sonu Sharma which was witnessed by villagers.

In court question he has stated that petitioner is his co-villager hence he is acquainted with the fact of the case. Petitioner's marriage has been solemnized with the O.P. in the year 2011 as per Hindu rites and customs. After marriage she went to her sasural and she lived there for two-three years properly. Thereafter their relation got sour and they started fighting/quarrelling with each other. She used to frequently go to her maike and used to return to her sasural. However, for last one year she has gone to her maike and has not returned to her sasural. There are two children born out of wedlock of petitioner with OP. He doesn't know as to why O.P./Safalta Sharma does not want to live with the petitioner. He does not know as to why they quarrelled. On 30.04.2021 O.P. went to her 'maike'. The witness claims that he had witnessed her going on that day with Sonu, relative of hers. He came to know from the petitioner and his family members that she went to her maike taking the jewelry and money of the petitioner. In para 14 he has stated that he has not heard about any illicit relation of OP with anyone. In para 16 the witness states that his house is just two three houses apart from petitioner's house and whatever happens in

petitioner house he can hear.

P.W.-3 Pradeep Kumar Sharma has stated in his affidavit examination-in-chief dated 29.08.2022 that he knows both the parties. Further, stated likewise as in chief examination of PW-1 and PW-2. In para 1 he has stated that Safalta Sharma has illicit relation with one Sonu Kumar Sharma @ Saurav Kumar Sharma who used to visit his house. That due to her illicit relation with Sonu Sharma, OP used to defy/disobey petitioner and had also stopped making any physical relation with him. The behavior and conduct of OP perpetrated mental and physical cruelty to petitioner. That on 30.04.2021 Sonu Sharma took away OP with him which was witnessed by villagers who gave information.

On court question he has stated that petitioner is his own brother; that Diwakar Sharma's marriage has been solemnized with the O.P./Safalta Sharma on 08.11.2011 as per Hindu customary rites and ceremonies. After marriage she went to her 'sasural' but the quarrel between them erupted from the very beginning. O.P.'s behaviour was very much different as she was brought up in Delhi and she used to talk with different boys on phone. Many strangers used to come to meet her. She used to talk to different boys on phone. On 30.04.2021 O.P. fled away with Sonu Sharma along with her children, at that time

petitioner had been out in connection with his work and his old aged father-mother were lying sick and were confined into their room. When at around 12 noon, petitioner came back, he found that TVs, fans etc were on and gate is left open and OP with children had not been there. Then on asking, the neighbours told them that at 11:30 PM two boys had come by red colored motorcycle and they were accompanied with another two boys on another motorcycle, of them one boy was same who used to come to his house often. That OP has illicit relation with Sonu Sharma and that is why she fled away with him and since then her whereabouts is not known. That a case has been lodged against said Sonu Sharma.

P.W.-4 Ram Chandra Sharma has stated in his affidavited examination-in-chief stated likewise PW-1, PW-2 & PW-3 and added that petitioner is his son and OP is his daughter-in-law. That one Sonu Sharma @ Saurav Kumar Sharma used to come to petitioner's house with whom OP had established illicit relation. That due to her illicit relation OP started ignoring petitioner and also stopped making physical relation with him, causing mental agony to petitioner. That on 30.04.2022 Sonu Kumar Sharma @ Saurabh took away OP which was witnessed by villagers who informed. That OP has perpetrated mental and physical cruelty upon petitioner.

In court question he has stated that he is the father of the petitioner, O.P./Safalta Sharma is his daughter-in-law (Putohu). Their marriage has been solemnized as per Hindu rites and customs. After marriage both lived at his house as husband and wife for two-three years properly and out of their wedlock they got blessed with two children. After 2-3 years, their relation started souring and both used to quarrel and O.P. leaving sasural went to her maike. The petitioner went to her maike and brought her back. Thereafter she used to frequently go to her maike and lastly on 30.04.2021 she went to her maike and since then she never came back to her sasural. On 30.04.2021 when O.P. was in her sasural, O.P. called Sonu Sharma on his phone and without any information she left sasural and went with him along with her children. When Deewakar came back from his work, he found entire house open and no trace of OP and children there, then he inquired from his neighbours who told him that she has left with Sonu Sharma by red coloured motorcycle. OP used to tell that Sonu Sharma is her cousin but he does not know exact relation. Since 30.04.2021 she never came back, they do not know where does she live, that is why they did not go to her maike for bringing her back.

22. The learned Family Judge has gone into the interpretation of the word “cruelty” and adultery and

assessing the same from the material available on record as also the submission made in the pleading, i.e., plaint and has found that the element of cruelty, adultery and desertion has not been established. The said finding of the learned Family Court has been assailed herein by way of filing the instant appeal.

23. Herein since appellate jurisdiction has been invoked therefore, before entering into merit of the case, at this juncture it would be purposeful to discuss the appellate jurisdiction of the High Court.

It needs to refer herein that under section 7 of the Family Courts Act, the Family Court shall have and exercise all the jurisdiction exercisable by any District Court or any Sub-ordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature which are described in the explanation to section 7(1).

24. Sub-section (1) to section 19 of the Family Courts Act provides that 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”. Therefore, section 19 of the Family Courts Act is parallel to section 96 of the Code of Civil Procedure, the scope of which has been dealt with by the Hon'ble Apex Court in series of judgments.

25. The law is well settled that the High Court in a First Appeal can examine every question of law and fact which

arises in the facts of the case and has powers to affirm, reverse or modify the judgment under question. In **“Jagdish Singh v. Madhuri Devi” (2008) 10 SCC 497** the Hon'ble Supreme Court observed that it is lawful for the High Court acting as the First Appellate Court to enter into not only questions of law but questions of fact as well and the appellate Court therefore can reappraise, reappreciate and review the entire evidence and can come to its own conclusion. For ready reference the relevant paragraph of the said judgment is being quoted as under:

25. It is no doubt true that the High Court was exercising power as the first appellate court and hence it was open to the Court to enter into not only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a rehearing of the main matter and the appellate court can reappraise, reappreciate and review the entire evidence—oral as well as documentary—and can come to its own conclusion.

26. Further, it requires to refer herein that under section 3 of the Indian Evidence Act a fact is said to be proved when the Court either believes it to exist or considers its existence so probable that a prudent man under the circumstances would proceed on the supposition that such fact really exists. Therefore, the normal rule of preponderance of probability is the rule which governs the civil proceedings but herein since grave allegation of extra-marital affair has been alleged

therefore cogent evidence is required to be laid by the plaintiff/appellant.

27. The expression “preponderance of probability” is not capable of exact definition nor can there be any strait-jacket formula or a weighing machine to find out which side the balance is tilted. The preponderance of probability would imply a positive element about possibility of existence of a fact. This means a higher degree of probability of happening of something and existence of a fact.

28. In “*A. Jayachandra v. Aneel Kaur*” (2005) 2 SCC **22** the Hon'ble Apex Court has observed that the concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, the Court has to see what are the probabilities in the case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse caused by the acts or omissions of the other.

29. Since this Court are exercising the power of appeal as referred hereinabove and as per the settled position of law which require the consideration of the appellate Court is that the order/judgment passed by the appropriate Forum, if suffers from perversity, the same is to be taken as a ground for its reversal.

30. It needs to refer herein that the interpretation of the word “perverse” as has been interpreted by the Hon'ble Apex Court which means that there is no evidence or erroneous consideration of the evidence. The Hon'ble Apex Court in ***Arulvelu and Anr. vs. State [Represented by the Public Prosecutor] and Anr., (2009) 10 SCC 206*** while elaborately discussing the word perverse has held that it is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as so 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.”

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

32. In the backdrop of the aforesaid settled position of law this Court is now adverting to examine that whether the prayer of the appellant for dissolution of marriage is fit to be allowed on the ground of adultery, cruelty and desertion alleged to be committed by the respondent wife.

Issue of adultery

33. Since 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”

34. 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).

35. It is settled proposition of law that a proceeding under Hindu Marriage act is not any criminal proceeding where proof beyond reasonable doubt is required rather here "preponderance of probability" is enough. However, the charge of adultery is a serious charge as it casts aspersion on the character of spouse and 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.

36. 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.

37. 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.

38. In the instant case the allegations specific to the ground of alleged Adultery has been alleged by the appellant and it has been alleged that OP/his wife developed illicit relationship with Sonu Sharma alias Sourav Kumar Sharma

who used to visit the petitioner's house regularly. It has further been alleged that Opposite Party/ wife along with her children fled away with said Sonu Sharma @ Saurabh Sharma on 30.04.2021 taking away all her ornaments as well the gold chain and ring as well as cash Rs. 60,000/- of the appellant. It has been stated by the appellant that he has lodged FIR against Sonu Sharma after incident of alleged elopement of his wife with Sonu Sharma leading to registration of Basantrai PS Case No. 34 of 2021.

39. It is evident from the statement of the appellant that his allegation against OP as to her illicit relation is based on his suspicion as she (respondent wife) had stopped making any physical relation with appellant for last one year.

40. From the impugned order it is evident that even petitioner/appellant's allegation of his having seen and overheard her talking with Sonu objectionable things and having checked her call details has not been stated by him in his chief-examination or anywhere in his petition and only in examination by learned Family court for the first time petitioner as PW1 has claimed that he overheard the objectionable talks between respondent/wife and Sonu. However, petitioner/appellant has neither stated/narrated with specificity as to when he heard and what they were talking, nor produced the said call details even.

41. 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 Sonu Sharma or 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.

42. As we discussed hereinabove in the preceding paragraph that it is established proposition of law, that not only the pleading in respect of charge of adultery should be specific and the circumstances must be such as to lead to inference, as a necessary conclusion and the proof required to prove adultery must carry a high degree of probability.

43. Further, it is evident from record that altogether, 3 witnesses except the appellant, have been examined on behalf of the petitioner/appellant before the learned Family Court and the statement of all the said witnesses have been referred hereinabove in the preceding paragraphs.

44. The petitioner's brother namely Pradeep Kumar Sharma examined as PW3., in his chief-examination, he has just made generalized statement that OP developed illicit relation with Sonu Sharma who used to regularly sit his house and this has become common talk in village. But in his

examination by Family court, he has stated that he believes that she has illicit relation with Sonu. This witness has himself nowhere said that he has either seen them in any adulterous relation or any instance suggestive of their being in such relation. Nor he has himself seen with whom the OP left her 'sasural'. He stated that neighbour Balkishore Thakur and others told them that she has eloped with Sonu Sharma.

45. Likewise, PW4 is father of petitioner who has conceded that there has not been good relation rather relation has soured between them hence she used to leave her sasural many times and finally 30.04.2021. The question arises herein that being father this witness always used to live at house where allegedly Sonu used to come but he has not stated any specific incident suggesting adulterous relationship between respondent and the said Sonu.

46. Thus, even from the statement of the father and brother (P.W.3 and 4) of the appellant the alleged act of adultery of the respondent/wife has not found support. Thus, from testimonies of all these witnesses show that none of the witnesses have any personal knowledge with certainty about illicit relation of respondent wife with Sonu or anyone else. Further the PW2 the neighbour of the appellant and his house is situated so closely near house of petitioner that anything happening there is audible, has clearly stated that he has never heard about any illicit relation of respondent/wife.

47. Thus, on the basis of the discussion made hereinabove, this Court is of the considered view that appellant has miserably failed to prove the ground of adultery against his wife-the respondent under section 13 (1) (i) of Hindu Marriage Act.

48. It is evident from the impugned judgment that since the learned Family Court while negating the claim of the petitioner/ appellant has also taken into consideration the aforesaid fact which would be evident from the various paragraphs of the impugned judgment, for ready reference the said relevant paragraphs are being quoted as under:

“In short, it may be concluded that the petitioner has alleged the circumstances which led him to his suspicion and surmises in his doubtful mind as to adulterous behaviour of OP but he has miserably failed to prove those circumstances. The inference drawn by him is not based on any cogent and acceptable evidence. The charge of adultery should be specific, it should be established in all probabilities and the evidences required to prove adultery must carry a high degree of probability.

Having given scrupulous consideration to all the above facts and findings, this court is led to conclude that plaintiff (Diwakar Kumar Sharma) has miserable failed to prove the ground of adultery against his wife-the opposite Party (Safalta Sharma) under section 13 (1) (i) of Hindu Marriage Act.”

49. Thus, from the aforesaid, it is evident that the learned Family Court in his conclusive finding has observed 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.

50. Thus, on the basis of the discussion made hereinabove, it is considered view of this Court that the finding of the learned Family Court on the issue of alleged adulterous act of the respondent/wife cannot be said to be suffer from any perversity.

Issue of cruelty

51. Now this court is adverting to the issue of cruelty. It needs to refer herein that 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.

52. This Court deems it fit and proper to take into consideration the meaning of ‘cruelty’ as has been held by the Hon’ble Apex Court in ***Shobha Rani v. Madhukar Reddi, (1988)1 SCC 105*** wherein the wife alleged that the husband and his parents demanded dowry. The Hon’ble Apex Court emphasized that “cruelty” can have no fixed definition.

53. 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."

54. The Hon'ble Apex Court has further observed therein that while dealing with such complaints of cruelty it is important for the court to not search for a standard in life, since cruelty in one case may not be cruelty in another case. What must be considered include the kind of life the parties are used to, "their economic and social conditions", and the "culture and human values to which they attach importance."

55. 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.

56. 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”.

57. 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.

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

59. Further in the case of ***Vishwanath Agrawal v.***

Sarla Vishwanath Agrawal, (2012) 7 SCC 288, the Hon'ble

Apex Court has held as follows:—

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

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

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

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

“5. ... Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.

6. These preliminary observations are intended to emphasise that the court in matrimonial cases is not concerned with ideals in family life. The court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord

Reid observed in Gollins v. Gollins : (All ER p. 972 G-H)

‘... In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman.’”

60. In the case of **Samar Ghosh v. Jaya Ghosh, (2007)**

4 SCC 511 it has been held by the Hon’ble Apex Court as follows:—

99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

61. Thus, from the aforesaid settled position of law it is evident that “Cruelty” under matrimonial law consists of conduct so grave and weighty as to lead one to the conclusion that one of the spouses cannot reasonably be expected to live

with the other spouse. It must be more serious than the ordinary wear and tear of married life.

62. Cruelty must be of such a type which will satisfy the conscience of the Court that the relationship between the parties has deteriorated to such an extent that it has become impossible for them to live together without mental agony. The cruelty practiced may be in many forms and it must be productive of an apprehension in the mind of the other spouse that it is dangerous to live with the erring party. Simple trivialities which can truly be described as a reasonable wear and tear of married life cannot amount to cruelty. In many marriages each party can, if it so wills, discover many a cause for complaint but such grievances arise mostly from temperamental disharmony. Such disharmony or incompatibility is not cruelty and will not furnish a cause for the dissolution of marriage.

63. Herein allegations of cruelty have been specifically made by plaintiff/appellant wherein it has been stated that the differences arose between him and respondent (wife) due to misconduct and misdeed of the respondent as respondent used to flee from appellant's house despite his objection. Second allegation is that respondent had stopped making any physical relation with him depriving him of his right.

64. Now coming to allegation that respondent/wife used to commit misdeed and tortured the appellant by her

misconduct. But from testimony of the appellant/petitioner or his witnesses it is evident that they have failed to state or prove precisely what sort of misconduct or misdeed the respondent was indulged into. None of the witness nor the appellant either in his petition or in his testimony has specified it.

65. However, all the witnesses have stated that after few years since marriage the relation of appellant and wife started getting bitter and they used to be quarrel between them but from the testimony it is not clear that quarrel or bitterness of relation was due to any misdeed or misconduct on part of respondent/wife. So far allegation that respondent stopped physical relation and deprived petitioner of his conjugal right is concerned, there is no any substantiating/cogent evidence direct or circumstantial on this point.

66. Thus, on the basis of the pleading and evidence on the record, this Court is of the view that the ground of cruelty has not been substantiated by the appellant and further it has also not been proved that the extent of cruelty is so much that it appears absolutely not possible and safe for the petitioner-husband to live together with respondent-wife and continue with their married life.

67. Thus on the basis of the discussion made hereinabove this Court is of the view that the appellant has failed to substantiate the commission of alleged cruelty of

respondent upon him and since the learned Family Court while negating the claim of cruelty has duly appreciated the evidences brought on record, therefore the finding of the learned Court on the alleged act of cruelty, is not perverse.

Issue of desertion

68. So far desertion is concerned it needs to refer herein that the word ‘desertion’ has been given in Explanation to Section 13 (1) wherein it has been stated that “the expression desertion means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.”

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

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

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

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

“In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases.”

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

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

where the offence appears as a cross-charge, of the answer.

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

75. It is, thus, evident from the aforesaid reference of meaning of desertion that the quality of permanence is one of the essential elements which differentiate desertion from wilful separation. If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end.

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

77. The Hon'ble Apex Court in **Debananda Tamuli vs. Kakumoni Katakya, (2022) 5 SCC 459** has considered the definition of 'desertion' on the basis of the judgment rendered by the Hon'ble Apex Court in **Lachman Utamchand Kirpalani**

v. Meena, AIR 1964 SC 40 which has been consistently followed in several decisions of this Court.

78. The law consistently has been laid down by the Court that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be animus deserendi on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home.

79. Here in this case, it has been stated by the appellant that on 30th April 2021 the respondent left his house without his consent and since then she has no relationship with him. The plaintiff/petitioner in his testimony as PW1 as well as all his witnesses stated that on 30.04.2021 respondent left her sasural and since then she never came back, meaning thereby until 30.04.2021 respondent has lived with petitioner at her sasural.

80. It has come on record that the appellant has preferred the suit for dissolution of marriage before the learned Family Court on 07.06.2021 which is within two years from the

alleged date of cause of action i.e.30.04.2021, thus the "factum of separation" for at least two years preceding presentation of the case has not been satisfied as on date of presentation of the said suit before the learned Family Court i.e. on 07.06.2021 the parties had not lived separate for continuous 2 years rather for only two months which is contrary to the statutory stipulated time period.

81. From the impugned order it is evident that the learned Family Court while not accepting the claim of desertion as one of the ground of dissolution of marriage, has taken into consideration the aforesaid statutory period, therefore, it is considered view of this Court that finding of the learned Family Court on the issue of desertion requires no interference.

82. This Court, based upon the aforesaid discussions is of considered view that the issue of cruelty and adultery a as has been alleged by the appellant-husband against his wife could not be proved because no cogent evidence to that effect has been produced by the appellant and, as such, this Court has no reason to take different view that has been taken by the learned Family Court observing that the petitioner has not been able to prove the adulterous act of respondent wife and neither prove that respondent subjected him with cruelty to the extent required by law.

83. On the perusal of the impugned judgment, it is considered view of this court that learned Family Court after

due deliberation of factual aspect as well as evidence led by both the parties has recorded its finding, therefore, the contention of learned counsel for the appellant that impugned judgment is suffering from perversity, is not fit to be accepted, hence rejected.

84. This Court, on the basis of discussions made hereinabove, is of the view that the judgment dated 15.10.2022 and Decree dated 03.11.2022 passed by the learned Principal Judge, Family Court, Godda whereby and whereunder Original Suit No.75 of 2021 filed by the appellant-husband under Section 13(1)(i)(i-a)(i-b) of the Hindu Marriage Act, 1955 for a decree of divorce has been dismissed, requires no interference by this Court.

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

86. Pending interlocutory application, if any, also stands disposed of.

(Sujit Narayan Prasad, J.)

I agree,

(Arun Kumar Rai, J.)

(Arun Kumar Rai, J.)

Date : 18/02/2026

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

Uploaded on 18.02.2026