

IN THE HIGH COURT OF JHARKHAND AT RANCHI**First Appeal No.138 of 2025**

Narayan Abhishek @ Rajeshranjan Yadav, aged about 55 years, son of Late Kalicharan Yadav, resident of Opposite Block No.1, Bariatu Housing Colony, P.O. Bariatu, P.S. Bariatu, District Ranchi, Jharkhand.

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

Versus

Priti Kumari, aged about 37 years, daughter of Devendra Prasad Yadav, resident of Khoja Bazaar, P.O. Munger, P.S. Kasim Bazaar, District Munger, Bihar.

... **Opp. Party/Respondents**

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

For the Appellant : Mr. Indrajit Sinha, Advocate
Mr. Ashwini Priya, Advocate
Mr. Souma Ranjan Mukherjee, Advocate
Mr. Kaushik Chakraborty, Advocate

For the Respondent: Mr. Ravi, Advocate

C.A.V. on 23rd June, 2026

Pronounced on 23/07/2026

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 24.04.2025 and decree dated 01.05.2025, passed by the learned Additional Principal Judge, Additional Family Court-II, Ranchi in Original (M.T.S) Suit No. 372 of 2020, whereby and whereunder, the suit filed by the appellant- husband for dissolution of marriage by decree of divorce u/s 13(1)(ia) of Hindu Marriage Act, 1955 against respondent-wife, has been dismissed.

Factual Aspect

2. In brief, the appellant's case, as per Original Matrimonial Suit, is that prior to filing of Original (M.T.S) Suit No. 372 of 2020, the appellant had filed application for annulment of marriage by filing Original Suit (M.T.S.) Case No. 841/2019 which has been withdrawn vide order dated 21/08/2020 with a liberty to file fresh one.
3. Accordingly, Original (M.T.S) Suit No. 372 of 2020 has been filed, the subject matter of present appeal, for decree of divorce under Section 13(1) (i-a) of the Hindu Marriage Act, 1955.
4. The marriage of the appellant was solemnized with the opposite party at Baba Dham Temple, Deoghar on 23.05.2019 following Hindu Rites and Rituals. The marriage of the appellant and the opposite party-respondent was an arranged one and families of both participated in the ceremony of the marriage. After completion of the ceremonies, the opposite party-respondent went to the matrimonial home of the appellant at Ranchi on 24.05.2019. After returning to the matrimonial home of the applicant/appellant, the marriage of the appellant and the opposite party-respondent was never consummated.
5. It has been alleged that the behavior of the opposite party-respondent was quite abnormal towards the applicant/appellant and the family members of the applicant

as she was very aggressive and abusive in nature. There were constant quarrels between the opposite party-respondent and the family members of the appellant leading to physical assaults.

6. The appellant tried a couple of times to restore the conjugal life with the opposite party/wife. It is submitted that on 02.06.2019 the appellant and the opposite party-respondent went to Sahebganj to attend one marriage and the opposite party-respondent insisted to attend one marriage of her own cousin, so she went along with the appellant to Sahebganj and from there, she went to Munger with her maternal uncle. The opposite party- appellant had to attend the marriage of her cousin on or about 24.06.019 and was supposed to return after one week post the marriage. After dropping her at Sahebganj, the appellant, returned to his home at Ranchi. When the marriage of the cousin of the opposite party-respondent was over, the applicant/appellant requested the opposite party to return to the matrimonial home at Ranchi, but the opposite party-respondent flatly refused the same. The applicant several times requested the opposite party-respondent to return to Ranchi and continue her marital life with the applicant, but all the efforts of the applicant went in vain and the opposite party never returned.

7. The family members of both the applicant and opposite party-respondent took endeavors to restore the marital life of the applicant and the opposite party-restore but due to the rigidity and mental block of the opposite party with respect to the consummation of marriage, the same couldn't be done. Till date, the opposite party-respondent has not returned from her parental home to the matrimonial home just in order to avoid any such physical contact with the appellant. The conduct of the opposite party-respondent was also cruel towards the present appellant and his family members. The opposite party-respondent gets infuriated soon and gets indulged in physical assaults. The opposite party-respondent has on occasions assaulted and abused the old ailing mother of the appellant and also his sisters. Whenever the appellant intended to restore the conjugal life, the opposite party-respondent turned abusive in nature and has assaulted him. There has been constant threatening on her part with respect to false implication of the present appellant and his family members in criminal cases. The mother of the appellant is totally dependent on him and the opposite party's adamancy and apathetic behavior towards her adds to the cruelty inflicted by her. The appellant to all endeavors to pacify the entire issue and but miserably failed. The verbal abuses, physical assaults on appellant and his family members, the threatening for implication in false

criminal cases and deprivation from conjugal life; collectively constitutes to cruelty as entailed under the Hindu Marriage Act.

- 8.** In the backdrop of the aforesaid factual aspect, it has been submitted by the appellant/petitioner before the Family Court that the appellant is entitled to get a decree of divorce from the opposite party on grounds of cruelty. It has further been submitted that the opposite party-respondent till date has not returned to the matrimonial home and is still not willing to continue conjugal life and the cause of action for filling present suit is 5/9/2020 and 8/9/2020.
- 9.** On being noticed by the learned Family Court the opposite party / respondent appeared and has filed her written-statement stating therein that the suit is not maintainable and fit to be dismissed. There was no cause of action for institution of the suit, and the cause of action as mentioned in the plaint is imaginary, baseless and fit to be rejected.
- 10.** The marriage of the applicant Narayan Abhishek and Opp. Party-respondent was an arranged marriage and it was solemnized on 23.05.2019, according to the rites and customs of Hindus at the Sri Baidyanath Temple at Deoghar and after marriage in the night, on subsequent early morning both bride and bride-groom alongwith their family members, proceeded for their houses. The family and relatives of Opp. Party-respondent went to their native

village-Khoja Bazar at Munger District, and the family members and relatives of the appellant along with the Bride and Bride-Groom at Bariyatu Housing Colony Ranchi. One of the brother of Opp. Party-respondent Sunny Kumar also accompanied the bride to her sasural and he remained there till the reception party in the night of 26th May. In the night between 24th and 25th May 2019 both bride and bride-groom enjoyed their *Suhagrat* at the house of applicant at Bariyatu, Ranchi. It is also a fact that on 26th May 2019 a reception party was organized at IMA Marriage Hall, at Morabadi, Ranchi and till 1st June 2019 the appellant enjoyed physical relation with the Opp. Party-respondent to the extent of his full satisfaction.

- 11.** It is further stated that the appellant and his family members started demanding more dowry. It is submitted that the respondent spent a week at her Sasural in a humiliating atmosphere. After a week on 02.06.2019 the applicant was to attend a marriage invitation in a village Mahadevganj, his Maternal grandmother's house, nearby Sahebganj and the Opp. Party was also told to accompany him in the marriage invitation. When the appellant reached Sahebganj along with his wife, he called her maternal uncle by a telephonic call at Sahebganj, and the Opp. Party-respondent was handed over to her maternal uncle Sanjay Kumar, saying that she is newly wedded bride, nobody is

known to herself at village Mahadevgaj, she will feel monotonous, so at present you took her with yourself to Bakiya-Dira, and when on return journey he will come to Bakiya-Dira, he will accompany her with him.

12. Since then, the applicant did not come back either to Bakhiya-Dira or Sahebganj and by that time the Opp. Party is living at her parent's house at village-Khoja Bazar, District-Munger. It is submitted that when nobody of her Sasural went to the parent's house of the Opp. Party-respondent to bring her then ultimately on 24.03.2021 the Opp. Party along with her brother Sunny came to Ranchi and went to her Sasural, but nobody opened the door and allowed the respondent to enter into the house. Then the respondent along with her brother went to Bariyatu Police Station and stated the entire fact then Bariyatu Police called upon the family members of the appellant and tried their best to conciliate the matter but the family members of the applicant were adamant not to accept the Opp. Party in their house and ultimately the respondent and her brother spent their night at Aditya Hotel at Bariyatu, and on subsequent morning both brother sister returned to their house.

13. It is further contended that it is a matter of great surprise that just after few months of the marriage, the appellant filed an application on 19.12.2019 under Section 12(a) of the

Hindu Marriage Act 1955, for declaration of their marriage void, without any reason and that has been dismissed.

- 14.** The learned family court, on the basis of pleadings of the parties and after hearing the respective parties and analyzing the evidence adduced on behalf of both the sides, held that petitioner-appellant has failed to prove his case on the ground of cruelty against the respondent (wife) which are grounds of divorce under Hindu Marriage Act, accordingly the suit was dismissed.

Submission of the learned counsel for the appellant-husband:

- 15.** It has been contended on behalf of the appellant that the factual aspect which was available before the learned family 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.
- 16.** It has been submitted that the issue of cruelty has not been taken into consideration in right perspective.
- 17.** Submission has been made that the learned Family Court, has failed to appreciate that the appellant's sister who was examined as P.W.1 has fully supported the case of the appellant, who has deposed in her evidence that after marriage the relationship of the respondent with the appellant was abusive and the respondent used to often

misbehave with the appellant. On 02.06.2019, the appellant and respondent went to Sahebganj to attend a marriage ceremony but the respondent left to Munger to attend another marriage on 24.06.2019 with her maternal uncle and thereafter never returned back.

18. Further in the cross examination P.W. 1, the appellant's sister has further deposed about the incident occurred on 24.03.2021, wherein she has categorically stated that the respondent had returned to her matrimonial home only to assault appellant's family members and had no intention of residing with them. P.W. 1 further deposed that they had informed the nearest Police Station regarding the incident dated 24.03.2021.

19. Further, P.W.2 the appellant himself, has deposed that after the marriage, the respondent had bad temperament and used to often quarrel with appellant and his family members. After the marriage, the respondent resided with the appellant only for 8 to 9 days and thereafter left for her parental home and never came back to her matrimonial home, but that piece of evidence has not been appreciated by learned family court. P.W.2, the appellant has further deposed that on 24.03.2021, the respondent suddenly came to her matrimonial home along with her brother and physically abused and assaulted appellant's mother and sisters and thereafter left the matrimonial home with all her

belongings. The said incident was informed to the nearest police station, Bariatu Police Station. Thereafter, when no action was taken against the respondent, the appellant on 20.04.2021, filed a Complaint case being Complaint Case No. 2941 of 2021 against the respondent and her family members. Accordingly, the Learned Judicial Magistrate, 1st Class- XXI, Ranchi in Complaint Case No. 2941 of 2021, vide order dated 02.12.2022 took cognizance of the offence under Sections 323, 379, 341, 447, 448 and 34 of the Indian Penal Code against the respondent and her family members. But that aspect of the matter has not been appreciated by learned family court.

20. Further, the learned Family Court, Ranchi, failed to appreciate that O.P.W.1, the respondent herself, at para no. 28 of her evidence has deposed that marriage was not consummated on 24.05.2019. It is an admitted position that the marriage was not consummated and the refusal by the respondent to consummate marriage caused mental cruelty to the appellant.

21. Further submission has been made that after 02.06.2019, the respondent never showed any inclination to return to the matrimonial home and she never had any intention to start cohabiting with the appellant.

22. It has been contended that the evidence adduced by the respondent does not disclose any effort made by her to

resume the matrimonial relationship and also, she has not filed any petition for restitution of conjugal rights.

23. From the evidence adduced by the respondent itself, an inference can be drawn that there was *animus deserendi* on the part of the respondent and she has not pleaded or established any reasonable cause for remaining away from her matrimonial home.

24. Further, the learned Family Court, also failed to appreciate that even when the appellant husband makes an offer to resume the marital relationship and the respondent wife without any reasonable cause, failing to resume cohabitation, it would amount to constructive desertion.

25. It has submitted that both the parties are living separately since 02.06.2019 i.e. more than six years which itself amounts to cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955.

26. It has been submitted that on the date of the alleged incident on 24.03.2021 the appellant was not present in the house when the respondent and her family members attacked the appellant's mother and sisters.

27. Referring to the judgment rendered by Hon'ble Apex Court in the case of **Samar Ghosh v. Jaya Ghosh**, submission has been made that in that case, it has been observed that mental cruelty includes "*where there has been a long period of continuous separation, it may fairly be concluded that the*

matrimonial bond is beyond repair and the marriage becomes a fiction though supported by a legal tie, it may lead to mental cruelty". Similarly in this case also the marriage solemnized between the parties on 23.05.2019 and they are living separately since 02.06.2019, their marriage never consummated and all the reasons stated above amount to cruelty. In the case at hand, the marriage had lasted hardly for few days and was never consummated on the account of the fact that the respondent has incapable of performing her matrimonial obligations.

28. Submission has been made that the learned family judge has discarded the evidence of the appellant even though there is no question on behalf of the respondent in course of the cross-examination that why the earlier suit was filed by taking aid of Section 12 (a) of Act 1955 and later on the suit for dissolution of marriage was filed on the ground of cruelty. Submission has been made that rule of putting one's version in cross-examination is one of essential justice and nor merely technical one. In this regard reference has been made to the judgment rendered by Hon'ble Apex Court in the case of ***Arvind Singh Vs. State of Maharashtra [(2021) 11 SCC 1]***.

29. Desertion has fully been proved if the entire evidence will be taken into consideration since it is the respondent who has

left the matrimonial house parting away from the life of the appellant.

30. Attention has been drawn towards the statement of the respondent having been recorded in course of cross-examination that she can part away from the life of the appellant subject to make payment of one crore, house etc. Therefore, submission has been made that the said evidence itself clarifies that the respondent only in order to get the sufficient amount has solemnized the marriage.
31. Submission has been made that the parties are living separately for a long period of time and there is no chance of restoration of conjugal right, but this aspect of the matter has also not been taken into consideration while passing the impugned judgment, therefore, the same requires interference by this Court.
32. Submission has been made that the relationship of husband and wife is on the thread of trust which itself has been broken and there is no chance of re-union.
33. Learned counsel for the appellant, based upon the aforesaid grounds, has submitted that the judgment impugned suffers from perversity, as such, is not sustainable in the eyes of law.

Submission on behalf of respondent-wife

34. While on the other hand, learned counsel for the respondent has submitted that it is a case where there is no error in the

impugned judgment reason being that the evidence in entirety of all the witnesses has been taken into consideration.

35. The marriage was solemnized on 23.05.2019 and immediately after six months the suit has been filed to get the declaration of nullity of marriage by filing application under Section 12 of the Hindu Marriage Act, 1955 but due to the rider as referred under Section 14 of the Hindu Marriage Act, 1955 the same was withdrawn with the liberty to file fresh suit.

36. It has been contended that immediately after six months the fresh suit has been filed, in which, the impugned judgment has been passed now making departure from the ground which was there in the earlier suit and this time a suit for dissolution of marriage has been filed on the ground of cruelty by filing application under Section 13 1(i-a).

37. The argument has been advanced that it has come in the evidence of the appellant that he somehow wants to get rid of his wife and therefore, immediately after six months from the date of solemnization of marriage, the first suit was filed and assessing the situation that ground which has been taken for getting the declaration of nullity of marriage is quite impossible to be proved then the same was withdrawn and second suit being the present one has been filed on the ground of cruelty.

- 38.** It has come in the evidence that after solemnization of marriage she has rushed to attend the marriage in the house of the relatives of the appellants but he was not allowed to participate rather she has been handed over to her maternal uncle in order to keep in his house.
- 39.** Even after solemnization of the marriage when the appellant has reached he has asked the maternal uncle to go in the paternal house with the maternal uncle. Therefore, it has been contended that it is not being proved that the respondent has parted away the appellant rather it is the appellant who has forced her to go out of the matrimonial house.
- 40.** The allegation of assault has been leveled when the respondent has come to the matrimonial house but she was not allowed to enter in the house and a false allegation has been made by instituting an FIR that the respondent along with her brother who has come along with the respondent so that he may reach to the matrimonial house safely but they have not been allowed to enter.
- 41.** It has been stated in the affidavit that the respondent being the resident outside Ranchi that is far away place from Munger, as such it cannot be expected from the outsider to assault the family members along with the appellants by entering into their residence.

42. The learned counsel based upon the aforesaid has submitted that impugned judgment requires no interference and the appeal is fit to be dismissed.

Response:

43. Mr. Indrajit Sinha, learned counsel in response has submitted on the argument advanced on behalf of the appellant that the departure which has been made in two suit i.e., one in the declaration of suit for nullity and second for grant of decree of divorce on the ground of cruelty cannot be said fatal rather it can always be available for the plaintiff to shift the ground.

Analysis:

44. This Court has heard the learned counsel for the parties and gone through the finding recorded by the learned Family Judge in the impugned judgment as also the trial court record.

45. This Court, in order to appreciate the testimony available on record, has gone through the testimonies of the witnesses, as available in the impugned order.

46. On behalf of appellant-petitioner following witnesses have been examined.

47. P.W.-1 Poonam Kumari, deposed that petitioner filed the case for dissolution of their marriage against the respondent. The marriage of the petitioner with respondent was solemnized on 23.05.2019 according to Hindu rites and

rituals at Deoghar. After marriage, the respondent came to matrimonial house at Ranchi and thereafter started living conjugal life with the petitioner. She deposed that the relationship of the petitioner with respondent was not good as the respondent always misbehave with the petitioner. She deposed that on 02.06.2019 petitioner and respondent went to Sahebganj for participating in a marriage but the respondent left the petitioner and went to her *maika* on 24.06.2019 and since then the respondent resided at her *maika* and not return to the matrimonial house. She deposed that petitioner was taken several efforts to restore conjugal life with respondent but all the efforts went in vain.

48. In cross-examination, para- 13 deposed that the petitioner Narayan Abhishek solemnized marriage at the age of 50 and within one year he filed divorce against the respondent, but the said fact is not within her knowledge. In para-16 she deposed that the respondent came to matrimonial house on 24.03.2021 but not ready to reside in the matrimonial house and only assaulted and beaten the petitioner. In para 21, she deny that the respondent is ready to reside in the matrimonial house.

49. P.W-2- Narayan Abhishek @ Rajesh Ranjan Yadav, petitioner himself, who has deposed that he filed divorce case against respondent Priti Kumari. He deposed that his marriage was solemnized with respondent Priti Kumari on

23.05.2019 according to Hindu rites and rituals at Deoghar and on 24.05.2019 the respondent came to matrimonial house at Ranchi. He deposed that after marriage the behaviour of the respondent was not good with his sister and mother, and the respondent always entered into quarrel with them. There was no marriage consummated due to ignoring attitude of respondent. He deposed that on 02.06.2019 he went to Sahebganj along with respondent to attend marriage ceremony of his relative and when they reached Sahebganj with the respondent, respondent called her Mama and went to Munger without participating in the marriage ceremony and the respondent undertake that she will return to Ranchi within a week. He further deposed that the respondent never return to her matrimonial house. He has taken several efforts to bring her back in the matrimonial house but all the efforts went in vain. He deposed that respondent after marriage only stay at matrimonial house for 8 to 9 days and during this period the respondent entered into quarrel with her sister and with her mother. He deposed that on 24.03.2021 the respondent suddenly came along with his brother and used filthy language against him and also assaulted and beaten of his mother and sister and respondent finally left the matrimonial house along with all belongings, the said information given to police station Bariatu.

50. He deposed that he filed criminal complaint against the respondent and other in-laws, in which warrant has been issued against them. He identified the order-sheet of the said case dated 31.07.2023 which marked as Ext.1. He has deposed that all the allegations made in the written statement are absurd and bundle of lies, the respondent and his relatives assaulted and beaten him on 24.03.2021 at his residence and for that a police case lodged. He further deposed that he had appeared before the police on 25.03.2021 but the respondent was not appeared.

51. In cross-examination, para 23 deposed that his marriage was solemnized on 25.05.2019 and he filed divorce case on 19.12.2019 bearing Case O.S. No. 871/2019. In para 28, he deposed that respondent had resided in the matrimonial house only for 8 days. In para 32, deposed that on 19.12.2019 he decided to file divorce case against the respondent. In para - 41, deposed that there was no evidence to prove that he had taken several efforts to bring back the respondent.

52. On behalf of Opp. Party-respondent, following witnesses have been examined.

53. O.P.W. No. 1 Priti Kumari, deposed that her marriage was solemnized on 23.05.2019 with Narayan Abhishek according to Hindu rites and rituals at Deoghar. After marriage, she came to matrimonial house at Ranchi and on 24.05.2019

the marriage with respondent was consummated. She deposed that till 01.06.2019 she was resided at Bariatu housing colony along with her husband/petitioner. She deposed that she leads a peaceful conjugal life with petitioner. She further deposed that on 02.06.2019, the petitioner went to Sahebganj for participating in the marriage ceremony and the petitioner also took her to Sahebganj. She deposed that when she reached at Sahebganj the petitioner called her Mama Sanjay Yadav and he send her with Sanjay Yadav at her *maika*. She deposed that she went to her *maika* with her Mama upon instruction of petitioner and the petitioner assured her that he will return after attending marriage ceremony and took her to Ranchi. The petitioner never came to her *maika* and he filed divorce case bearing O.S. Case No. 841/2019 dated 19.12.2019 U/s- 14 of Hindu Marriage Act. The petitioner filed the case premature as the one year of mandatory period was not completed, hence the divorce case was dismissed. She identified the order-sheet of O.S. Case No. 841/2019. She deposed that she try her best to stay at her *maika*. She deposed that on 24.03.2021 she came to her matrimonial house along with her younger brother but the petitioner and their sister not permitted her to enter into matrimonial house. She deposed that she stay in a hotel with her brother and on next day return to Munger.

54. In cross-examination, at para 30 she deposed that she stayed at matrimonial house till 01.06.2019 and thereafter on 02.06.2019 she went to her maternal grand-parent's house and then went to her *maika* and till date she has been residing there. In para 32, she deposed that the petitioner called her Mama and forced to go to her Nani's place and she went there along with her Mama and thereafter went to her *maika* but the petitioner never visited her *maika* to bring her back in the matrimonial house. She deposed that she have taken several efforts to visit and go her matrimonial house but petitioner and his family not allowed her to enter into the matrimonial house.

55. O.P.W. No.2 Sanjay Kumar, deposed that the respondent is her niece and her marriage solemnized on 23.05.2019 with Narayan Abhishek according to Hindu rites and rituals at Deoghar. After marriage, the respondent came to her matrimonial house at Ranchi. There was reception on 26.05.2019 at IMA marriage Hall, Ranchi and he was also present in the said reception party. The respondent discharged her matrimonial obligation with all dignities and respect. He deposed that on 02.06.2019 the petitioner called him over phone and stated that he was on his way to Mahadevganj for attending marriage with respondent and he requested to come at Sahebganj for some urgent talk. He deposed that after receiving the call, he went to Sahebganj

and meet with the petitioner and the petitioner requested him to took her respondent to her Nanihal because she was new to the marriage place and undertake that after attending marriage he came there and took her to matrimonial house. He deposed that according to request of the petitioner; he took respondent to his residence. He deposed that the petitioner never came to bring the respondent at her matrimonial house since 2019 and thereafter the respondent went to her maika. The petitioner have two old sisters, they never wanted to return the respondent at matrimonial house.

56. In cross-examination, para 20 deposed that with the consent of the party the marriage of the petitioner with respondent was solemnized. In para 23, he deposed that respondent Priti Kumari while staying at her matrimonial house discharged all the matrimonial obligations. In para 29, he deposed that the respondent Priti Kumari has been staying separately with the petitioner at her maika and in para-30 deposed that the petitioner always keep his mobile switched off and also block his number.

57. On the basis of the pleading of the parties, the learned Principal Family Judge after appreciating the ocular evidence, dismissed the suit filed by the appellant-husband for dissolution of marriage by decree of divorce u/s 13(1)(i-a)

of Hindu Marriage Act, 1955 against respondent/husband, against which the present appeal has been preferred.

- 58.** It needs to refer herein that since appellate jurisdiction has been invoked herein, therefore, before entering into merit of the case, at this juncture it would be purposeful to discuss the appellate jurisdiction of the High Court.
- 59.** 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).
- 60.** 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.
- 61.** 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:

“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.”

62. Herein, the learned counsel for the appellant has argued that the evidence of cruelty as also the demand of dowry has not properly been considered and as such, the judgment suffers from perversity, hence, not sustainable in the eyes of law.

63. From the pleadings available on record and the arguments advanced by the learned counsel, the issue which requires consideration is as to:

“Whether the judgment and decree passed by the learned family court denying the decree of divorce on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act requires interference?”

64. This Court, while appreciating the argument advanced on behalf of learned counsel on the issue of perversity, needs to refer herein the interpretation of the word “perverse” as has been interpreted by the Hon'ble Apex Court which means that there is no evidence or erroneous consideration of the evidence. The Hon'ble Apex Court in ***Arulvelu and Anr. vs. State [Represented by the Public Prosecutor] and Anr., (2009) 10 SCC 206*** while elaborately discussing the word perverse has held that it is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law. Relevant paragraphs, i.e., paras-24, 25, 26 and 27 of the said judgment reads as under:

“24. The expression “perverse” has been dealt with in a number of cases. In *Gaya Din v. Hanuman Prasad* [(2001) 1 SCC 501] this Court observed that the expression “perverse” means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.

25. In *Parry's (Calcutta) Employees' Union v. Parry & Co. Ltd.* [AIR 1966 Cal 31] the Court observed that “perverse finding” means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In *Triveni Rubber & Plastics v. CCE* [1994 Supp (3) SCC 665 : AIR 1994 SC 1341] the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.

26. In *M.S. Narayanagouda v. Girijamma* [AIR 1977 Kant 58] the Court observed that any order made in conscious violation of pleading and law is a perverse order. In *Moffett v. Gough* [(1878) 1 LR 1r 331] the Court observed that a “perverse verdict” may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In *Godfrey v. Godfrey* [106 NW 814] the Court defined “perverse” as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.

27. The expression “perverse” has been defined by various dictionaries in the following manner:

1. *Oxford Advanced Learner's Dictionary of Current English*, 6th Edn.

“Perverse.—Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.”

2. *Longman Dictionary of Contemporary English*, International Edn.

Perverse.—Deliberately departing from what is normal and reasonable.

3. *The New Oxford Dictionary of English*, 1998 Edn.

Perverse.—Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

4. *The New Lexicon Webster's Dictionary of the English Language* (Deluxe Encyclopedic Edn.)

Perverse.—Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

5. *Stroud's Judicial Dictionary of Words & Phrases*, 4th Edn.

“Perverse.—A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.”

65. Herein, submission has been made on behalf of the appellant-husband that the respondent-wife committed cruelty against the appellant-husband and his family members and further it is the wife who deserted and refused to live with the appellant.

- 66.** Herein, since the appellant has sought for a relief of dissolution of her marriage on the ground of cruelty. Therefore, this Court before proceeding further needs to go the term cruelty.
- 67.** Herein, cruelty has been taken by the appellant as the main ground for dissolution of marriage.
- 68.** So far the allegation of cruelty is concerned, it requires to refer herein the definition of ‘*cruelty*’ as has been defined by Hon’ble Apex in the judgment rendered in ***Dr. N.G. Dastane Vs. Mrs. S. Dastane [(1975) 2 SCC 326]***, wherein it has been held that the Court is to enquire as to whether the charge as cruelty, is of such a character, as to cause in the mind of the petitioner, a reasonable apprehension that, it will be harmful or injurious for him to live with the respondent.
- 69.** The cruelty has also been defined in the case of ***Shobha Rani Vs. Madhukar Reddi [(1988) 1 SCC 105]***, wherein the wife alleged that the husband and his parents demanded dowry. The Hon’ble Apex Court emphasized that “cruelty” can have no fixed definition.
- 70.** According to the Hon’ble Apex Court, “cruelty” is the “conduct in relation to or in respect of matrimonial conduct in respect of matrimonial duties and obligations”. It is the conduct which adversely affects the spouse. Such cruelty can be either “mental” or “physical”, intentional or

unintentional. For example, unintentionally waking your spouse up in the middle of the night may be mental cruelty; intention is not an essential element of cruelty but it may be present. Physical cruelty is less ambiguous and more “a question of fact and degree.”

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

72. 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.

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

- 74.** In *Vijay kumar Ramchandra Bhate v. Neela Vijay Kumar Bhate*, (2003)6 SCC 334 the Hon'ble Apex Court has observed by taking into consideration the allegations levelled by the husband in his written statement that his wife was "unchaste" and had indecent familiarity with a person outside wedlock and that his wife was having an extramarital affair. These allegations, given the context of an educated Indian woman, were held to constitute "cruelty" itself.
- 75.** 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.
- 76.** Cruelty" has an inseparable nexus with human conduct and is always dependent on social strata or milieu to which parties belong, their ways of life, relationship, temperaments and emotions that are conditioned by their social status,

reference be made to the judgment rendered by the Hon'ble Apex Court in the case ***Vishwanath Agrawal v. Sarla Vishwanath Agrawal, (2012) 7 SCC 288.***

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

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

79. For considering dissolution of marriage at instance of a spouse who alleges mental cruelty, result of such mental cruelty must be such that it is not possible to continue with matrimonial relationship reference may be taken from the

judgment rendered by the Hon'ble Apex Court in the case of ***Joydeep Majumdar v. Bharti Jaiswal Majumdar, (2021) 3 SCC 742.***

80. Further the word 'cruelty' is used relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Vinita Saxena v. Pankaj Pandit, (2006) 3 SCC 778.***

81. Further, in the case of ***Manish Tyagi v. Deepak Kumar, (2010) 4 SCC 339*** the Hon'ble Apex Court has categorically observed that to constitute 'cruelty', it is enough that conduct of one of parties is so abnormal and below accepted norm that another spouse could not reasonable be expected to put up with it. Conduct is no longer required to be so atrociously abominable which would cause reasonable apprehension that it would be harmful of injurious to continue cohabitation with another spouse.

Hence, it is not necessary to establish physical violence. Continued ill-treatment, cessation of marital intercourse, studied neglect, indifference may lead to inference of cruelty.

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

83. This Court, based upon the aforesaid discussions on the issue of cruelty, has gone through the testimony of witnesses and found from the testimony of P.W.-1 Poonam Kumari, that after marriage, the respondent came to matrimonial house at Ranchi and thereafter started living conjugal life with the petitioner. She deposed that the relationship of the petitioner with respondent was not good as the respondent always misbehave with the petitioner. She deposed that on

02.06.2019 petitioner and respondent went to Sahebganj for participating in a marriage but the respondent left the petitioner and went to her maika on 24.06.2019 and since then the respondent resided at her *maika* and not return to the matrimonial house.

84. P.W-2- Narayan Abhishek @ Rajesh Ranjan Yadav, petitioner himself, who has deposed that after marriage the behaviour of the respondent was not good with his sister and mother, and the respondent always entered into quarrel with them. There was no marriage consummated due to ignoring attitude of respondent. He deposed that on 02.06.2019 he went to Sahebganj along with respondent to attend marriage ceremony of his relative and when they reached Sahebganj with the respondent, respondent called her Mama and went to Munger without participating in the marriage ceremony and the respondent undertake that she will return to Ranchi within a week but never return to her matrimonial house.

85. He deposed that on 24.03.2021 the respondent suddenly came along with his brother and used filthy language against him and also assaulted and beaten of his mother and sister and respondent finally left the matrimonial house along with all belongings, the said information given to police station Bariatu. He deposed that he filed criminal complaint against the respondent and other in-laws, in which warrant has been issued against them.

86. In cross-examination, para 23 deposed that he filed divorce case on 19.12.2019 bearing Case O.S. No. 871/2019. In para 28, he deposed that respondent had resided in the matrimonial house only for 8 days. In para 32, deposed that on 19.12.2019 he decided to file divorce case against the respondent. In para - 41, deposed that there was no evidence to prove that he had taken several efforts to bring back the respondent.

87. O.P.W. No. 1 Priti Kumari, deposed that after marriage, she came to matrimonial house at Ranchi and on 24.05.2019 the marriage with respondent was consummated. She deposed that till 01.06.2019 she was resided at Bariatu housing colony along with her husband/petitioner. She deposed that she leads a peaceful conjugal life with petitioner. She further deposed that on 02.06.2019, the petitioner went to Sahebganj for participating in the marriage ceremony and the petitioner also took her to Sahebganj. She deposed that when she reached at Sahebganj the petitioner called her Mama Sanjay Yadav and he send her with Sanjay Yadav at her maika. She deposed that she went to her maika with her Mama upon instruction of petitioner and the petitioner assured her that he will return after attending marriage ceremony and took her to Ranchi. The petitioner never came to her maika and he filed divorce case bearing O.S. Case No. 841/2019 dated

19.12.2019 U/s- 14 of Hindu Marriage Act. The petitioner filed this case premature as the one year of mandatory period was not completed, hence the divorce case was dismissed.

88. O.P.W. No.2 Sanjay Kumar, deposed that on 02.06.2019 the petitioner called him over phone and stated that he was on his way to Mahadevganj for attending marriage with respondent and he requested to come at Sahebganj for some urgent talk. He deposed that after receiving the call, he went to Sahebganj and meet with the petitioner and the petitioner requested him to take her respondent to her Nanihal because she was new to the marriage place and undertake that after attending marriage he came there and took her to matrimonial house. He deposed that according to request of the petitioner, he took respondent to his residence. He deposed that the petitioner never came to bring the respondent at her matrimonial house since 2019 and thereafter the respondent went to her maika.

89. In the backdrop of aforesaid testimonies of the witnesses produced on behalf of parties, this Court needs to consider the argument advanced on behalf of the respondent on the issue of the conflicting grounds which has been taken in two suits i.e., in Original Suit (MTS) No. 841 of 2019 which was filed for declaration of marriage nullity under Section 12 (a) of the Hindu Marriage Act, 1955 on the ground that has not

been consummated. The copy of the plaint filed in Original Suit (MTS) No. 841 of 2019 as well as order passed in the said suit is available on record. The documents since is available and as such it is the bounden duty of this Court to appreciate the said document therefore, this Court has gone through the said document i.e., plaint along with the order passed in Original Suit (MTS) No. 841 of 2019.

90. It is evident from the plaint that the suit was filed under Section 12(a) of the Hindu Marriage Act, 1955 but the same was withdrawn with liberty to file fresh suit.

91. The said suit was withdrawn realizing the said rider with the liberty to file fresh suit as would be evident from order dated 21.08.2020 passed in Original Suit (MTS) No. 841 of 2019.

For ready reference, the same is being referred as under:

ORDER

21.08.2020:-An affidavited withdrawal has been filed on behalf of petitioner.

Heard the Ld. Advocate of the petitioner as well as the petitioner through video Conferencing. The petitioner has submitted that both the parties are amicably settled their disputes, out side the Court, and want to file a divorce petition with mutual consent. As such, the petitioner wants to withdraw the present suit as per his own will with liberty to file a fresh suit.

Heard the petitioner and his Ld. Advocate through Video Conferencing. Since the petitioner has himself want to withdrawn the present suit and does not want to proceeding further with this case, hence, the petitioner is granted permission to withdraw the present.

Hence, the present suit is hereby dismissed as withdrawn with liberty to file a fresh suit.

Office is directed to consigned the record in the Record Room within stipulated period.”

92. The second proceeding, being *Original Suit No. 372 of 2020*, from which the present appeal has emanated, was instituted seeking dissolution of marriage on the ground of cruelty, as contemplated under Section 13(1)(i-a) of the Hindu Marriage Act, 1955.

93. Thus, from the foregoing circumstances, it becomes manifest that the appellant, in the two suits aforesaid, has invoked distinct and separate grounds. In doing so, he has effected a departure from the ground originally pleaded in *Original Suit No. 841 of 2019*, to the ground subsequently urged in *Original Suit No. 372 of 2020*.

94. It has been contended by the learned counsel for the appellant that the learned family judge has discarded the evidence of the appellant even though there is no question on behalf of the respondent in course of the cross-examination on the issue of departure that why the earlier suit was filed by taking aid of Section 12 (a) of Act 1955 and later on the suit for dissolution of marriage was filed on the ground of cruelty. Submission has been made that rule of putting one's version in cross-examination is one of essential justice and nor merely technical one. The learned counsel for the petitioner/appellant has relied upon the judgment

rendered by Hon'ble Apex Court in the case of **Arvind Singh Vs. State of Maharashtra (supra)**.

95. We have gone through the judgment rendered by the Hon'ble Apex Court in the case of **Arvind Singh Vs. State of Maharashtra(supra)** wherein the Hon'ble Apex Court while relying upon the judgment rendered in the case of **Muddasani Venkata Narsaiah v. Muddasani Sarojana, (2016) 12 SCC 288** has observed that the rule of putting one's version in cross-examination is one of essential justice and not merely technical one. The effect of non-cross-examination is that the statement of witness has not been disputed. It has further been observed that party is required to put his version to the witness and if no such questions are put the Court would presume that the witness account has been accepted.

96. There is no dispute about the aforesaid settled position of law as has been settled by the Hon'ble Apex Court.

97. The failure to cross-examine a witness on a particular point implies acceptance of the witness's testimony on that point. This principle is fundamental to the adversarial system, preventing a party from later contradicting or challenging evidence that was not disputed during cross-examination. The object is to give the witness

an opportunity to stand by their statement or offer an explanation.

98. However, the application of this rule is not absolute and rigid. Courts have recognised circumstances where the failure to put one's version may not necessarily lead to an adverse inference or be fatal to the challenging party's case. The necessity of putting one's version to a witness depends on the facts and circumstances of each case, the nature of the evidence, and whether the point in question is explicitly denied or is inherently improbable.

99. It is the probability of the evidence, which has to be considered not the absence of cross-examination. Even absence of cross-examination, the evidence is to be weighed with its value without attaching much importance on the absence of cross-examination. The truth of the evidence is to be tested on the basis of the probabilities and reliability and the credence of the respective witnesses, particularly, when two versions have been brought on record by the husband and the wife.

100. The absence of cross-examination would undoubtedly affect the value and weight to be attached to the statement of the witness, but it would not render the statement inadmissible or result in its effacement.

101. The Hon'ble Apex Court in the case of ***Bhagwan Singh v. State of Punjab, (1995) 6 SCC 379*** has

categorically held that merely because a witness was not cross-examined on a particular point, it does not necessarily mean that the prosecution's case is demolished. The effect of non-cross-examination depends on the facts and circumstances of each case.

102. In the ***State of U.P. v. Nahar Singh (Dead) and Ors., (2010) 9 SCC 785*** the Hon'ble Apex Court has observed that the omission to cross-examine a witness on a particular point would lead to an inference that the statement of the witness on that point is accepted but this is not an absolute rule and must be applied with caution, considering the entire evidence on record.

103. It is pertinent to mention herein that in the case of ***Lakshmi Singh v. State of Bihar, (2000) 4 SCC 75*** the Hon'ble Apex Court has observed that if a fact is so obvious or so clearly established by other evidence that it does not require specific cross-examination, or if the witness has already given an explanation, then the absence of specific cross-examination on that point may not be fatal.

104. In regard to the submission advanced on behalf of the appellant, that the alleged departure ought to have been confronted to him in the course of cross-examination, this Court is constrained to observe that cross-examination is necessitated only where the fact in issue is disputed. In the present case, the departure is self-evident from the

documentary record, which was brought on file by the appellant himself. Consequently, even if no specific question was put to him in cross-examination on that aspect, the appellant cannot be permitted to dispute his own pleadings as contained in both the complaints, namely *Original Suit (MTS) No. 841 of 2019* and *Original Suit No. 372 of 2020*.

105. Here, the question which is being considered that if the appellant had any wish to get the marriage dissolved then there is no dispute that a suit is to be filed by taking a ground as available under Section 13 of the Hindu Marriage Act, however, the contention raised on behalf of the respondent is that the appellant initially instituted *Original Suit No. 841 of 2019* for a decree of nullity of marriage on the ground of non-consummation. Upon withdrawal of that suit, he subsequently filed *Original Suit No. 372 of 2020*, which is the subject matter of the present appeal, not on the ground of nullity for non-consummation, but instead on the distinct ground of cruelty.

106. According to the considered view of this Court, the departure made by the appellant in pursuing two successive suits on distinct grounds unmistakably reflects his conduct. It demonstrates that he has endeavored, by varying pleas, to sever the marital tie with the respondent—first, by seeking a declaration of nullity of marriage on the ground of alleged

abnormality and non-consummation, and thereafter, in the second round, by invoking the ground of cruelty.

107. It must be observed that, had the element of cruelty in fact existed and been experienced by the appellant, such ground ought to have been agitated from the inception, i.e., at the time of filing the first suit. Admittedly, however, in that initial proceeding no such plea was advanced. Instead, the appellant invoked Section 12(a) of the Hindu Marriage Act, 1955, seeking a declaration of nullity of marriage on the ground of non-consummation.

108. This Court is, therefore, of the considered view that the appellant's conduct in first invoking the ground of non-consummation of marriage and thereafter shifting to the ground of cruelty, itself casts a serious doubt upon the bona fides of the grounds so agitated. Such departure, by its very nature, reflects an attempt to secure dissolution of marriage by varying pleas rather than by consistent assertion of a genuine cause.

109. Now coming to the point of cruelty, from the pleadings available on record. Further, the respondent-wife had been sent to her maika, which has been stated by the respondent-wife in her deposition and remained un-shaken in the cross-examination. Forceful desertion of wife by the husband itself amounts to cruelty.

110. From the pleadings it is further evident that even that on 24.03.2021 she came to her matrimonial house along with her younger brother but the appellant and his sister not permitted her to enter into matrimonial house. It is further deposed by the respondent-wife that she took several efforts to visit and go her matrimonial house but appellant and his family not allowed her to enter into the matrimonial house.

111. This Court taking into consideration the law laid down by Hon'ble Apex Court on the issue of 'cruelty' vis-à-vis the evidence adduced by the appellant-husband and respondent-wife has found that no element of cruelty has been meted out to the appellant-husband rather it is the respondent-wife who has been subjected to cruelty.

112. This Court, after discussing the aforesaid factual aspect along with the settled legal position as discussed and referred hereinabove in the preceding paragraphs and advertent to the consideration made by the learned Family Judge in the impugned judgment has found therefrom that the issue of element of cruelty has been properly considered by the learned Family Judge.

113. Accordingly, issue as framed by this Court is decided against the appellant-husband.

114. This Court, on consideration of the aforesaid discussion, is of the view that the impugned judgment and decree passed by the learned Family Judge is not coming under the

fold of perversity, since, the conscious consideration has been made to the evidences available on record, as would be evident from the impugned judgment.

115. Accordingly, the instant appeal stands dismissed.

116. Pending interlocutory application(s), if any, also stands disposed of.

I Agree

(Sujit Narayan Prasad, J.)

(Pradeep Kumar Srivastava, J.)

(Pradeep Kumar Srivastava, J.)

23rd July, 2026

A.F.R

Alankar/-

Uploaded on 23rd July, 2026