

IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. (DB) No. 238 of 2024

Neel Kamal Bauri, aged about 30 years, S/o Tara Pado Bauri, present R/o 146, Gourango Colony, Phusro, in front of Hari Mandir, P.O. Phusro Bazar, P.S. Bermo, District Bokaro, Jharkhand; permanent R/o Village Kumhardaga, P.O. & P.S. Pindrajora, District Bokaro, Jharkhand

... .. Petitioner/Appellant

Versus

Kumari Priya @ Priya Kumari, W/o Neel Kamal Bauri, D/o Manbhul Bauri, R/o New Murli Nagar, BCCL Colony, P.O. Saraidhela, P.S. Saraidhela (Steel Gate), Block No.27, District Dhanbad, Jharkhand

... .. Respondent/Respondent

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

For the Appellant : Mr. Baibhaw Gahlaut, Advocate
Mr. Subhneet Jha, Advocate
For the Respondent : Mr. Sunil Singh, Advocate

06/Dated: 5th January, 2026

Per Sujit Narayan Prasad, J.

Prayer

1. The instant appeal under Section 19(1) of the Family Courts Act, is directed against the Judgment dated 14.08.2024 (Decree signed on 22.08.2024) passed by the learned Principal Judge, Family Court, Bokaro in Original Suit No.07 of 2022, whereby and whereunder, the petition filed against the respondent-wife under Section 13(1), (i-a) & (i-b) of the Hindu Marriage Act, 1955 for dissolution of marriage, has been dismissed.

Facts

2. The brief facts of the case, which required to be enumerated, needs to be referred as under:

3. It is the case of the petitioner appellant herein that his marriage with the respondent was solemnized on 08.03.2019 as per Hindu rites and

customs. After marriage, they lived together as husband and wife. Out of their wedlock, they have been blessed with a female child namely Shreya Kumari, born on 28.11.2019. The respondent is a quarrelsome lady. She always used to quarrel with his blind father, mother and younger sister without any reasonable cause and she was saying to kill them by administering poison. He made a complaint to his Sasural but they instead of persuading the respondent, used to instigate her to quarrel with them. She retained his ATM Card, used to withdraw money against his permission and used to give to her parents. When he came to know about this fact and protested, she called her father. Her father and brother came to his house and they threatened to kill him and took the respondent with them after lodging a written complaint against him by the respondent in Mahila P.S., Bermo and taking away jewellery worth Rs.3,00,000/- and cash amounting Rs.40,000/-. After that on 14.05.2020, he went to his Sasural and tried to persuade the respondent and her family members and anyhow brought her to his house on 15.05.2020. On being told her to ask her father and brother to bring jewellery worth Rs.3,00,000/- and cash amounting Rs.40,000/-, on 18.05.2020 her father and two brothers came to his house and threatened to forget about such jewellery and money, otherwise he would be sent behind the bars. On 19.05.2020 she went to her parental home. After that, he made several efforts to bring her back but she did not agree, so lastly, he had made a complaint to Mahila Police Station, Dhanbad. Being fed up due to their such behaviour, he had filed Original Suit No. 135 of 2020 u/S. 9 of Hindu Marriage Act, 1955 against the respondent for restitution of conjugal rights, in which during mediation, she clearly stated that she does not want to lead her conjugal life with him.

4. She stated that she does want to lead her conjugal life with a labour, so the mediation was unsettled and lastly, he had withdrawn that suit. She has deserted him since 19.05.2020 without any rhyme and reason and there is no relationship of husband and wife between them. There is no collusion in filing of this suit. Cause of action is said to be arisen on 08.03.2019, when their marriage was solemnized and on 19.05.2020 she left her matrimonial home.

5. The respondent by filing written statement has vehemently opposed the prayer of the petitioner contending, inter-alia, that the instant suit is not maintainable either in law or in facts. There is no cause of action to file this suit. Due to non-fulfillment of demand of dowry, she was subjected to cruelty and torture by various means by the petitioner and even he assassinated her character. He has no regard, respect and dignity for her and he always tried to defame her in filthy language and sent message calling her '*Randi*' (prostitutes). Never ever she quarreled with the petitioner or his family members rather she was assaulted by them for non-fulfillment of demand of additional dowry. Even after birth of the baby, the petitioner did not come to see the newly born baby. He never got their baby treated by doctor during her illness, so she was compelled to return to her parents' home for treatment of their baby. The petitioner even tried to establish her as Call Girl, for which she has filed Dhanbad P.S. Case No. 11 of 2022 against the petitioner under Information Technology Act. She called her father and mother to save her life and made a complaint to Police. The petitioner is trying to mislead the court only to save his skin. She never ever denied to lead her conjugal life with the petitioner. The petitioner/husband used to call his associates in drunken state and pushed his associates in her room and provided her mobile number to his associate to call her and go to bed. The petitioner committed torture upon her beyond permissible limit. He sexually abused her and tortured her mentally and physically, for which she had filed Dhanbad Cyber PS. Case No. 11 of 2022 against the petitioner. There is no cause of action in filing of the case.

6. On the basis of the pleadings of the parties, the following issues have been framed by the learned Family Judge for adjudication of the suit, which are as follows: -

(i) Is this suit maintainable in its present form?

(ii) Whether the petitioner has valid cause of action for the suit?

(iii) Whether the respondent (Wife) has subjected the petitioner (husband) to mental and physical cruelty after marriage?

(iv) Whether the respondent (wife) deserted her husband (petitioner) since last two years prior to filing of the suit and is entitled to get a Decree of dissolution of marriage on the basis of Section-13 (1) (ia) (ib) of Hindu Marriage Act, 1955?

(v) Whether the petitioner is entitled to get the relief as prayed for?

7. The evidences have been made on behalf of both the parties. Thereafter, the judgment has been passed dismissing the suit filed under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 for a decree of divorce by the petitioner, appellant herein, which is the subject matter of the present appeal.

Submission of the learned counsel for the appellant-husband:

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

9. It has been submitted that the respondent-wife is a quarrelsome lady and without any rhyme and reason used to quarrel with him and his family members.

10. It has further been submitted that respondent-wife did not discharge her martial obligations rather she on being instigated by her family members used to quarrel with him and his family members.

11. It has been contended that in the mediation proceedings, respondent-wife has flatly refused to live with him. She does not want to lead her conjugal life with him and she has deserted him since 19.05.2020.

12. It has further been submitted that the issue of cruelty and desertion has not been taken into consideration in right perspective by the learned Family Court, hence, the judgment impugned has been passed.

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

Submission of the learned counsel for the respondent-wife

14. *Per contra*, learned counsel for the respondent-wife, while defending the impugned judgment, has submitted that there is no error in the impugned judgement. The learned Family Judge has considered the issue of cruelty and desertion and having come to the conclusion that no evidence has been adduced to establish the issue either of cruelty or desertion, has dismissed the petition.

15. It has been contended that all the allegations as levelled are false, baseless, concocted and imaginary.

16. It has also been submitted that the respondent-wife was subjected to cruelty and torture for non-fulfillment of demand of dowry.

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

Analysis:

18. 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.

19. The case has been heard at length. The admitted fact herein is that the suit for divorce has been filed on the grounds of cruelty and desertion, i.e., by filing an application under Section 13(1) (i-a) (i-b) of the Hindu Marriage Act, 1955 and accordingly, issues have been framed wherein primarily issue nos. III and IV pertain to cruelty and desertion.

20. The evidence has been led on behalf of both the parties. For ready reference, the evidences led on behalf of the parties are being referred as under:

List of petitioner(s) witness(s)

P.W.1, Gour Chandra Bauri (cousin of the petitioner)

P.W.2, Kharu Bauri (Uncle of the petitioner)

P.W.3, Neel Kamal Bauri (petitioner himself)

P.W.3, Neel Kamal Bauri, the petitioner himself in his examination-in-chief on affidavit, has made allegations against the respondent-wife that she is quarrelsome lady and she on one pretext or other used to quarrel with his blind father, sick mother and younger sister and she used to tell him to kill all the three by administering poison. She also used to misbehave with them. He has further deposed that the parents of the respondent used to instigate her not to do household work. The respondent-wife also kept his ATM Card and used to withdraw money and sent to her father and brother.

He has further deposed that earlier he had filed Original Suit No.135 of 2020 under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights against the respondent. Mediation was held and during mediation, she refused to continue her conjugal life with him and also stated that she would not go with him to serve his blind father and sick mother. She also told that as he was a labour, so she would not continue her conjugal life with him and the dispute was not settled.

In his cross-examination, he has deposed that he cannot file documents relating to mediation. He has also denied that on 14.05.2020, he has assaulted his wife and compelled her to call her parents. At para-34, he has denied that during his living with the respondent, he created a fake ID of the respondent and done wrong work. At para-35, he has voluntarily deposed that the respondent has an illicit relationship with her younger brother and she has also a boyfriend.

Other witnesses, i.e., P.W.1 and P.W.2 have deposed on the same line as has been deposed by P.W.3.

List of Respondent(s) witness(s)

R.W.-1, Annapurna Devi (mother of respondent)

R.W.2, Manbhul Bauri (father of respondent)

R.W.3, Vivek Kumar Bauri (brother of respondent)

R.W.1, Annapurna Devi (mother of the respondent) has deposed in her examination-in-chief that after seven months of marriage, the petitioner started assaulting the respondent and at that time, the respondent was pregnant of seven months. The petitioner-husband used to enjoy party in his house and compelled the respondent-wife to cook non-vegetarian food and he used to assault her. After giving birth of female child on 28.11.2019, he intensified his torture upon the respondent-wife. The petitioner and his family members brutally assaulted the respondent.

She has further deposed that on 04.06.2020, one Raj Kumar, friend of the petitioner started sending indecent messages on the WhatsApp of the respondent. She has further deposed that to defame the respondent, the petitioner on the basis of Aadhar Card of the respondent, created fake ID and started torturing her, for which, a complaint was lodged by the respondent in Cyber Police Station, Dhanbad. In course of investigation, her complaint was found by the Police to be true. She has denied that the respondent subjected the petitioner or his parents to cruelty rather the petitioner himself made bad imputation upon the respondent.

This witness has not been cross-examined on behalf of the petitioner, as such, evidence of this witness has remained uncontroverted.

R.W.2, Manbhul Bauri (father of the respondent) has also supported the evidence of R.W.1 and has stated in his examination-in-chief regarding cruelty done by the petitioner upon the respondent for non-fulfillment of demand of dowry, assaulted her, created fake ID and defamed her. This witness has also not been cross-examined on behalf of the petitioner.

R.W.3-Vivek Kumar Bauri (brother of the respondent) has also supported the evidence of both R.W.s 1 and 2 and has deposed in his examination-in-chief regarding the demand of dowry made by the petitioner and his family members. He has further deposed that in an injured condition, the respondent called her family members and it was the period of lock down and after getting permission from the Administration, her parents and maternal uncle went to the house of the petitioner and tried to persuade the petitioner but the petitioner became violent and bent upon to assault them and started filthy languages against them.

He has further deposed that the petitioner and his family members compelled the respondent-wife to leave her matrimonial home. He has further deposed that the petitioner after using Aadhar Card of the respondent and after using her ID, uploaded a nude photo of the respondent and circulated the mobile number of the respondent amongst his friends, for which, Dhanbad Cyber P.S. Case No.11 of 2022 was registered and after investigation, it was found that the petitioner created fake ID after using Aadhar Card and ID of the respondent. He has further deposed that at the instance of the petitioner, some anti-social elements entered the room of the respondent and committed wrong with her, for which, Dhanbad P.S. Case No.7074 of 2022 was registered in which, the learned Judicial Magistrate has taken cognizance under Sections 376, 511, 307, 406, 147, 148 and 354 of the IPC.

Evidences of RWs are further corroborated by the documentary evidence adduced on behalf of the respondents, in which, Exhibit-A is certified copy of order dated 25.08.2022 passed in C.P. Case No.1441 of 2021 in which prima-facie case was made out under Sections 498A and 406 read with Section 34 of the IPC against the petitioner, his mother and sister.

Exhibit-B is the certified copy of order passed in Original Maintenance Case No.258 of 2020, in which, the petitioner of this case was directed to pay Rs.4000/- per month to the respondent of this case and Rs.3000/- per month to his daughter.

Exhibit-C is the order-sheet of Dhanbad Cyber P.S. Case No.11 of 2022 along with FIR.

Exhibit-D is the order passed in C.P. Case No.7064 of 2022 filed by the respondent against the petitioner and others.

21. The learned counsel for the appellant/petitioner has argued that the evidence of cruelty and desertion has not properly been considered and as such, the judgment suffers from perversity, hence, not sustainable in the eyes of law.

22. While on the other hand, argument has been advanced on behalf of the respondent has submitted that the judgment has well been considered and merely by committing fraud, the suit for divorce has been filed.

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

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

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

perverse that no reasonable person would have arrived at those findings.

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

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

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

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

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

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

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

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

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

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

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

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

24. Herein cruelty has been taken as ground for divorce by the appellant/petitioner, therefore it would be apt to refer herein the meaning of the cruelty.
25. The “cruelty” has been interpreted by the Hon’ble Apex Court in the case of *Dr. N.G. Dastane vs. Mrs. S. Dastana, (1975) 2 SCC 326* wherein it has been laid down that the Court has to enquire, as to whether, the conduct charge as cruelty, is of such a character, as to cause in the mind of the petitioner, a reasonable apprehension that, it will be harmful or injurious for him to live with the respondent.
26. This Court, deems it fit and proper to take into consideration the meaning of ‘cruelty’ as has been held by the Hon’ble Apex Court in *Shobha Rani v. Madhukar Reddi, (1988)1 SCC 105* wherein the wife alleged that the

husband and his parents demanded dowry. The Hon'ble Apex Court emphasized that "cruelty" can have no fixed definition.

27. According to the Hon'ble Apex Court, "cruelty" is the "conduct in relation to or in respect of matrimonial conduct in respect of matrimonial obligations". It is the conduct which adversely affects the spouse. Such cruelty can be either "mental" or "physical", intentional or unintentional. For example, unintentionally waking your spouse up in the middle of the night may be mental cruelty; intention is not an essential element of cruelty but it may be present. Physical cruelty is less ambiguous and more "a question of fact and degree."
28. The Hon'ble Apex Court has further observed therein that while dealing with such complaints of cruelty it is important for the court to not search for a standard in life, since cruelty in one case may not be cruelty in another case. What must be considered include the kind of life the parties are used to, "their economic and social conditions", and the "culture and human values to which they attach importance."
29. The nature of allegations need not only be illegal conduct such as asking for dowry. Making allegations against the spouse in the written statement filed before the court in judicial proceedings may also be held to constitute cruelty.
30. In *V. Bhagat vs. D. Bhagat (Mrs.)*, (1994)1 SCC 337, the wife alleged in her written statement that her husband was suffering from "mental problems and paranoid disorder". The wife's lawyer also levelled allegations of "lunacy" and "insanity" against the husband and his family while he was conducting a cross-examination. The Hon'ble Apex Court held these allegations against the husband to constitute "cruelty".
31. In *Vijaykumar Ramchandra Bhate v. Neela Vijay Kumar Bhate*, (2003)6 SCC 334 the Hon'ble Apex Court has observed by taking into consideration the allegations levelled by the husband in his written statement that his wife was "unchaste" and had indecent familiarity with a person outside wedlock and that his wife was having an extramarital

affair. These allegations, given the context of an educated Indian woman, were held to constitute “cruelty” itself.

32. 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.
33. Since desertion has also been taken as ground therefore, the definition of “desertion” is required to be referred herein as defined under explanation part of Section 13 which means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage.
34. *Rayden on Divorce* which is a standard work on the subject at p. 128 (6th Edn.) has summarised the case-law on the subject in these terms:

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

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

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

Desertion is not the withdrawal from a place but from a state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state; the state of things may

usually be termed, for short, 'the home'. There can be desertion without previous cohabitation by the parties, or without the marriage having been consummated. The person who actually withdraws from cohabitation is not necessarily the deserting party. The fact that a husband makes an allowance to a wife whom he has abandoned is no answer to a charge of desertion.

- 35.** The offence of desertion is a course of conduct which exists independently of its duration, but as a ground for divorce it must exist for a period of at least two years immediately preceding the presentation of the petition or, where the offence appears as a cross-charge, of the answer. Desertion as a ground of divorce differs from the statutory grounds of adultery and cruelty in that the offence founding the cause of action of desertion is not complete, but is inchoate, until the suit is constituted. Desertion is a continuing offence.
- 36.** It is, thus, evident from the aforesaid reference of meaning of desertion that the quality of permanence is one of the essential elements which differentiates desertion from wilful separation. If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end.
- 37.** Similarly, two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. In such a situation, the party who is filing for divorce will have the burden of proving those elements.
- 38.** Recently also, the Hon'ble Apex Court in *Debananda Tamuli vs. Kakumoni Katakya*, (2022) 5 SCC 459 has considered the definition of 'desertion' on the basis of the judgment rendered by the Hon'ble Apex Court in *Lachman Utamchand Kirpalani v. Meena*, AIR 1964 SC 40 which has been consistently followed in several decisions of this Court.

The law consistently laid down by this Court is that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be *animus deserendi* on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home. The view taken by the Hon'ble Apex Court has been incorporated in the Explanation added to sub-section (1) of Section 13 by Act 68 of 1976. The said Explanation reads thus:

“13. Divorce.—(1) ...

Explanation.—In this sub-section, the expression “desertion” means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.”

39. This Court, on the premise of the interpretation of the word “cruelty” and “desertion” has considered the evidences of the witnesses as has been incorporated by the learned Court in the impugned judgment.
40. Herein, the main ground of cruelty has been taken by the appellant/plaintiff that, the respondent-wife always used to quarrel with his blind father, mother and younger sister without any reasonable cause and she has said to kill them by administering poison, but in order to substantiate the aforesaid fact, no any material evidence has been put-forth before the learned Family Court, as such, the said ground, therefore, cannot be said to be sufficient to prove the ground of cruelty.
41. It needs to refer herein that from perusal of impugned order it is also evident that learned Family Court has found that the testimony of the R.w.s has fully been substantiated by the documentary evidences adduce on behalf of the respondent.
42. Further, the learned Family Court has taken note of the order-sheet (Ext-C) Dhanbad Cyber-PS Case no. 11 of 2022 instituted on the basis of the

complaint of the wife of the petitioner (appellant herein) and has found that case was investigated by the Police and allegation of uploading the semi-nude photo of respondent-wife without her permission on the face-book by the petitioner, is true.

43. Further from the record, it is evident that the Exhibit-D is the order dated 03.12.2022 passed in C.P. Case No. 7064 of 2022 filed by the respondent/wife against the petitioner/appellant wherein Magistrate by his order dated 03.12.2022 has made out a prima facie case under Sections 147, 148 307 811,376 511, 354, 341 & 406 of the IPC against the petitioner/appellant along with some other accused and the Ext-D has also been taken into consideration by the learned Family Court.
44. Thus, on the factual aspect aforesaid, it is evident that appellant/husband has failed to produce any material evidence in order to substantiate his claim of cruelty against the respondent wife rather it appears on the basis of discussion made hereinabove that the appellant himself subjected the respondent to cruelty.
45. The desertion has also been taken as a ground but the desertion has been defined and interpreted by the Hon'ble Apex Court that the desertion will be said to be desertion if either of the party, on his/her own wish, has left the matrimonial house. But no such evidence has been produced by the appellant/petitioner to prove the element of desertion showing that the respondent-wife has left her matrimonial house without any reasonable cause.
46. Reference of Section 23(1)(a) of the Hindu Marriage Act needs to be referred herein wherein it has been provided that one cannot be allowed to take advantage of its own wrong. For ready reference, Section 23(1) reads as under:

“23. Decree in proceedings.—(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that

(a) any of the grounds for granting relief exists and the petitioner 2 [except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5] is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

(b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and

[(bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and]

(c) 4 [the petition (not being a petition presented under section 11)] is not presented or prosecuted in collusion with the respondent, and

(d) there has not been any unnecessary or improper delay in instituting the proceeding, and

(e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about reconciliation between the parties: 5

[Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.]

[(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.

(4) In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties.]”

47. The applicability of the said provision is very much available herein since one of the grounds of divorce is desertion and for proving desertion, it is onus upon the party who is taking the ground for seeking dissolution of marriage is to substantiate that the party has left the house on her own. Contrary to that, if the party has been compelled to leave the house on the basis of cruelty which has been meted out to her then the same will not come under the fold of desertion and in that view of the matter, Section 23(1)(a) of Hindu Marriage Act is to be made applicable that if the husband is at wrong, he cannot be allowed to take advantage of its own wrong.

48. This Court, on consideration of the impugned judgment as also the material available on record, has found that no such cogent evidence has been produced by the husband to prove the ground of desertion, as the ground of desertion has been taken that since 19.05.2020, the respondent-wife has deserted him without any rhyme and reason and for more than 19 months there is no relationship of husband and wife.
49. The learned Family Court after due appreciation of all the evidences available on record has come with the finding that it is the petitioner/appellant who has subjected the respondent/wife to cruelty and he, ousted her from the matrimonial home and left her in the lurch.
50. The learned Family Judge, on consideration of the issues, has not found the ground for dissolution of marriage and therefore, dismissed the suit.
51. This Court, based upon the aforesaid discussions, is of the view that the appellant/petitioner has failed to establish the element of perversity in the impugned judgment as per the discussions made hereinabove, as such, the instant appeal deserves to be dismissed.
52. Accordingly, the instant appeal fails and is, dismissed.
53. Pending interlocutory application(s), if any, also stands disposed of.

(Sujit Narayan Prasad, J.)

(Rajesh Kumar, J.)

Dated: 05.01.2026

Rohit/A.F.R.

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