

IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No.142 of 2024

Smt. Champa Kumari @ Sampa, aged about 30 years, wife of Sri Saheb Mahakud, daughter of Sri Hariya Pradhan, aged about 30 years, resident of 41, Morakathi Basti, D-Block, PO Luabasa, PS Birsanagar, Town-Jamshedpur, Dist.-East Singhbhum, Jharkhand, Permanent resident of Village-Bada Sijulata, PO B.Kutung, PS Rajnagar, Dist. Seraikella-Kharsawan, Jharkhand. Respondent/Appellant

Versus

Saheb Mahakud, son of Sri Ushakar Mahakud, aged about 42 years, R/o village Bara Sijulata, PO B.Kutung, PS Rajnagar, Distt. Seraikella-Kharsawan, Jharkhand. Plaintiff/Respondent

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

For the Appellant(s) :Mr. Anurag Kashyap, Advocate
For the Respondent(s) : Mr. P.A.S. Pati, Advocate

CAV ON: 27.01.2026**PRONOUNCED ON:05. 02.2026****Per Sujit Narayan Prasad, J.**

1. The instant appeal has been filed on behalf of the appellant under Section 19(1) of the Family Courts Act, 1984 against the order/judgment dated 30.03.2024 [decree signed on 08.04.2024] passed by the learned Principal Judge, Family Court, Seraikella-Kharsawan, in Original Suit No. 54 of 2021, whereby and whereunder, the said Suit filed by the respondent-husband was allowed on contest but without cost, holding that marriage of the petitioner (respondent herein) Saheb Mahakud with the respondent Smt. Champa Kumari (Appellant herein) solemnized on 28.4.2019 is hereby dissolved.
2. The brief facts of the case, which required to be enumerated, needs to be referred as under:
3. The marriage between the parties was solemnized on 28.04.2019 as per Hindu rites and customs at the parent's house of the

respondent(appellant herein) and the parties started residing together at the house of the petitioner (respondent herein).

4. It is stated that marriage was solemnized without any demand of dowry and after consummation of marriage, soon after it was realized by the petitioner/respondent/husband that respondent/appellant wife is not very much interested in staying in her matrimonial home but to stay at her parent's house to lead a luxurious life and for this reason her behaviour became very rude with the petitioner and his family members and even refused to cohabit.
5. Further she started making fight and quarrel, abusing entire family members with filthy languages and the respondent/wife in order to pressurize regularly insists the applicant to take a house on rent at Baridih in Jamshedpur and even after efforts to convinced the respondent about his inability to arrange a house on rent due to his meager income as driver of an auto, the respondent did not agree and continued her irrational behaviour and sometimes used to hit her head on wall with intend to injure and putting blame upon the applicant and his family members with threatening to implicate in false criminal cases.
6. This fact has also been stated that considering the aforesaid conduct of the respondent the petitioner made a written complaint to Mukhiya and Gram Pradhan of village Bara Sijulata on 04.09.19 where mother and relative of the respondent came and in the panchayati respondent assured not to repeat her previous behaviour but went to her maike with her parents and returned after 3 months on several requests of the petitioner but again her similar conduct and behaviour continued.

7. It has further been stated that on 14.10.2020 again a panchayati was held in presence of members of both the sides and again even after assurance given by respondent/wife, she after coming from her maike did not amend her behaviour. On 16.01.2020 respondent/wife again made quarrel for arranging rented house at Jamshedpur near her parents house but on refusal she called her parents and went to Rajnagar P.S. giving threatening lodged complaint against applicant and his family members and on her complain they were called upon at Rajnagar P.S. on 17.01.2020 where police did not find the statement of respondent true and her complaint was not accepted.
8. It is further case that several attempts were made through Rajnagar police to bring the respondent back in his house, but she refused and finally on 08.02.2020 when the applicant/husbandwas in house of respondent, he was abused by the respondent and her mother and also beaten by her brother with fist and blows and it was told that applicant/husband has to take rented house at Baridih, since the respondent will not live in village at matrimonial house.
9. It has also been stated that mother of the respondent demanded rupees 5 lac and if the applicant/husband wants divorce he will have to pay the said money and mentioning all these facts the applicant made a written application to D.C., S.P. Seraikella on 24.02.2020, upon which report was submitted by O/C Rajnagar finding the complaint made by petitioner as true.
10. After such report again request was made with respondent and her family members to send her back but they again made a frivolous complaint to O/c Rajnagar on 26.11.2020 which was refused to be

registered and on the same day complaint was also made in Mahila Thana Sakchi, which was sent for mediation but it failed.

11. It has been stated that having failed in sustaining their claim and complaint before police, a false criminal complaint against the applicant/husband and his mother and other relatives bearing C/1 Case No. 544 of 2021 u/s 498A, 321, 323, 307/34 and 3 & 4 of the D.P. Act was filed which is now pending in the Court of J.M. 1stClass at Jamshedpur.
12. In the backdrop of the above allegations of cruelty and desertion from the conjugal life of the applicant/husband since 17.01.2020, the suit for dissolution of decree of marriage was filed by the applicant/husband.
13. Accordingly, notice was issued to the respondent (Appellant herein) who appeared and filed her written statement admitting the factum of marriage with the petitioner-respondent.
14. Thereafter, altogether five issues have been framed by the learned Family Judge which are as follows:
 - (i) Whether the suit is maintainable in its present form?
 - (ii) Whether the petitioner has got valid cause of action for the suit?
 - (iii) Whether the petitioner is entitled for a decree of divorce on the ground of cruelty u/s 13(1)(ia) of the Hindu Marriage Act, 1955?
 - (iv) Whether the petitioner is entitled for a decree of divorce on the ground of desertion u/s 13(1)(ib) of the Hindu Marriage Act, 1955?
 - (v) Whether the petitioner is entitled for any other relief or reliefs?

15. The evidences have been laid on behalf of both the parties. The petitioner husband had examined himself as P.W.2 and further on his behalf other witnesses namely Ushakar Mahakud and Ashwani Kumar Pradhan have been examined as P.W.1 and P.W.-3 respectively.
16. On behalf of the respondent three witnesses had been examined including herself as D.W.1 and further mother and aunty of the respondent namely Bharti Devi and Arti Devi had been examined as D.W.2 and D.W.3 respectively.
17. After appreciation of the evidences, the Principal Judge, Family Court, Seraikella-Kharsawan vide judgment dated 30.03.2024 has allowed the suit in favour of husband by holding that the petitioner/husband has proved his case for divorce on the ground of cruelty against the respondent on the touchstone of preponderance of probabilities.
18. The appellant-wife being aggrieved and dissatisfied with the impugned judgment dated 30.03.2024 [decree signed on 08.04.2024] passed in Original Suit No. 54 of 2021 has filed the instant First Appeal under Section 19(1) of the Family Courts Act, 1984.

Arguments advanced on behalf of the respondent/appellant-wife:

19. The learned counsel for the respondent-appellant has raised the following points:
 - (i) It has been contended on behalf of the appellant that the learned Court below had overlooked the material fact that the respondent herein has not come to the court with clean hands. The respondent and his family members are guilty of committing cruelties upon the appellant as after the marriage, they started harassing the appellant. The respondent wants

to take advantage of his own wrong. The respondent deliberately and intentionally left the appellant at her parental home and never came back to take the appellant to her matrimonial home. The appellant has also filed complaint before CAW Cell, against the respondent and his family member.

(ii) The Ld. Family Court overlooked the fact that the Respondent was on continuous medication, which was concealed by them during the time of the marriage. Appellant was continuously being subjected to the harassment and mental cruelty and agony for the dowry. The Family Court stick to the only fact that no dowry was demanded at the time of the marriage, and failed to observe that the Appellant was continuously subjected to humiliation by the hand of the Respondent and his family. The Learned Family Court erred to consider that as per the allegation the Appellant demanded to take the property on rent in Baridih, Jamshedpur, as now she is living separately from the Respondent, she did not reside there.

(iii) The Ld. Family Court failed to appreciate that the Respondent falsely alleged that the Appellant used to bang her head against the wall, but the Respondent failed to give any medical or other document regarding the same. The complaint filed by the Respondent before the panchayat was false and frivolous and was filed with the mala-fide intention to defame and mentally harass the Appellant in front of the whole village.

(iv) The Ld. Family Court erred in consider that the allegations alleged by the Respondent against the Appellant was not supported by any evidence. The Respondent always made or tried to make the issue out of the petty acts of the daily household chaos. It is not wrong to say that the

Respondent is hyper sensitive person who got offended on everything. The Respondent intentionally take the house matter in the panchayat just to defame the Appellant in front of whole village.

(v) The Ld. Principal Judge Family Court while passing the impugned order dated 30.03.2024, had not considered the material fact that the appellant has been a brilliant student and is a highly educated lady having a graduation degree, therefore it is beyond impossible to believe that a woman who is highly qualified and having a meritorious academic record, was unable to perform her marital obligations as per Ld. Family Court. The said reason itself is sufficient for setting aside the judgment dated 30.03.2024 passed by the Ld. Family court.

(vi) The Ld. Family Court erred in considering that the marriage between the Appellant and Respondent is the arrange marriage, solemnized with the consent of both the parties. Thereafter, it is not wrong to say that the divorce petition is the result of inferiority complex of the Respondent and all the complaints were filed with the intention to defame and harass the Appellant.

(vii) The Ld. Family Court erred in considering that the Respondent alleged that the Appellant forced the Respondent to live separately from his parents where as the father of the Respondent, who was examined as PW-1 during trial stated that "he cannot say anything regarding the medicine of potency taken by his son as his son does not resides with him". The Respondent intentionally and knowingly deposed the wrong and false allegation before the Trial Court. The said reason itself is sufficient for setting aside the judgment dated 30.03.2024 passed by the Ld. Family Court. as there are no instances and evidence on record to

show that the Respondent has ever insisted or forced the Respondent to take a separate accommodation.

(viii) The Ld. Family Court erred in considering that the Respondent had relied his submissions on the statement of the PW-3 i.e Ashwani Kumar Pradhan. The Ld. Trial Court failed to observe that he himself has deposed that "he is fully aware of the case and conduct of the Appellant" and thereafter he himself has deposed that "all these facts have been disclosed by the Respondent to him". The statement of the PW-3 is wholly based on the hear-say. Ld. Family Court also rely on his hear-say evidence while passing the impugned judgment dated 30.03.2024. The said reason itself is sufficient for setting aside the judgment dated 30.03.2024 passed by the Ld. Family court.

(ix) The Ld. Family Court has passed the order dated 30.03.2024 without application of mind. It is admitted fact that the marriage between the parties was solemnized with dowry, but thereafter, the Ld. Family Court failed to observe the harassment and cruelty faced by the Appellant at the hands of the Respondent and his family members. It is settled law that harassment and cruelty occurred in the realm of demand of dowry after marriage is also an offence under Dowry Prohibition Act. The said reason itself is sufficient for setting aside the judgment dated 30.03.2024 passed by the Ld. Family court.

(x) The Ld. Family Court erred in considering that the Respondent alleged that the Appellant left his company and stay at her maternal home for long durations which was appreciated by the Ld. Family Court while passing the impugned judgment dated 30.03.2024 but on the other hand the Ld. Family Court has failed to appreciate the medical evidences placed

by the Appellant on record. The Ld. Family Court erred in considering that the statement of Defendant witness where all of them have deposed that the Respondent several times beaten the Appellant and threw her out of matrimonial house and there was constant demand of dowry by the Respondent and his family members.

(xi) The Ld. Family Court erred in considering the action and behaviour of the Respondent towards the Appellant and their marriage. It is admitted fact that both the parties went for the mediation which got failed as alleged by the Respondent in his petition, but he intentionally conceals the reason behind that. The said mediation was failed because of the Respondent as he never appears before the mediator. The conduct of the Respondent was completely overlooked by the Ld. Family Court. The said reason itself is sufficient for setting aside the judgment dated 30.03.2024 passed by the Ld. Family court.

(xii) The Ld. Family Court erred in considering the fact that alleged attempt by the Respondent to bring Appellant back to her matrimonial home was the time when COVID was at its peak. The country was under quarantine and it was alleged by the Respondent he was making efforts to bring Appellant back. The Respondent intentionally make the false statement before the Ld. Court for which he should be punished separately. The Ld. Court also failed to appreciate the same. The said reason itself is sufficient for setting aside the judgment dated 30.03.2024 passed by the Ld. Family court.

(xiii) For that the Respondent made the statement before the Ld. Family Court that he is paying the maintenance regularly, of which the slips were also shown during the final argument. The Ld. Family Court

failed to consider the outstanding amount and failed to observe that, that was the tactic of the Respondent by showing the limited slips as evidence only. The Appellant was continuously lead her life under the constant threat. The phone calls made by the aunt of the Appellant to the father of the Respondent to sort the thing out between the Appellant and Respondent of which the father of the Respondent never paid any heed.

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

Arguments advanced on behalf of the petitioner/respondent-husband:

20. *Per contra*, Mr. P.A.S. Pati, the learned counsel appearing on behalf of the respondent-husband, while defending the impugned judgment, has submitted that there is no error in the impugned judgment. The learned counsel has raised the following points:

(i) The learned Family Judge has considered the issue of cruelty and having come to the conclusion that the petitioner-husband (respondent herein) has succeeded to make out a case for decree of divorce against the respondent/wife (appellant herein) on the ground of cruelty, has allowed the petition.

(ii) It has been submitted that the appellant-wife used to pressurize the respondent to live separate from his parents to which he was not agreed then she started to quarrel with him and also started to misbehave with parents of the respondent.

(iii) It has further been contended that the she has filed frivolous complaint before Rajnagar P.S. and even after direction and coming to the matrimonial home, her behaviour did not change and she remained adamant for her demand of separate residence and after going to maike, she did not return.

(iv) The mother of the respondent demanded Rs. 5,00,000/- from the petitioner and asked divorce. Without any reason a false criminal complaint was also filed before CJM but the application of the respondent was not found true by the police and that case is now pending before the J.M. at Jamshedpur.

(v) Finally, she has left the matrimonial home in the year 2021 and has not returned to the company of the petitioner despite his effort to bring her back.

(vi) Learned counsel, based upon the aforesaid grounds, has submitted that since the factum of cruelty has been sufficiently established, based upon which the decree of divorce has been granted, as such, no interference is required in the order impugned.

Analysis:

21. We have heard the learned counsel for the parties as also the finding recorded by the learned Family Judge in the impugned judgment as also the record of the learned Family Judge.
22. The case has been heard at length. The admitted fact herein is that the suit for divorce has been filed by the respondent/husband on the ground of cruelty and desertion, i.e., by filing an application under Sections 13(1)(i-

a) (i-b) of the Hindu Marriage Act, 1955 and, accordingly, issues have been framed by the learned Family Court wherein primarily issue nos.III and IV pertain to cruelty and desertion.

23. The evidence has been laid on behalf of both the parties. The petitioner-husband had examined himself as P.W.2 and further on his behalf other witnesses namely Ushakar Mahakud and Ashwani Kumar Pradhan have been examined as P.W.1 and P.W.-3.

24. The evidence of witnesses examined on behalf of the petitioner-husband is referred herein under:

(i) PW-2 Saheb Mahakud (respondent-husband himself) has supported his case.

In cross-examination he admitted that he had mentioned in his deposition that he was illiterate and only knew how to write his name. He has repeated the fact that on many occasions he visited the house of the respondent to bring her, but she always abused by saying that she would not live in the village and intended to live in a town, has further stated that she always gave threatening to implicate in a false case. He has also stated that he has filed the application given to S.P. and D.C. regarding the torture made by the respondent. He has also said that despite the fact the respondent does not want to live with him he went to bring her back but now he does not want to keep her as had his wife any intention to live with him she would not have sent him to jail.

(ii) PW-1, Ushakar Mahakud is father of the petitioner. In his examination-in-chief he has repeated the facts of the plaint.

In cross-examination he had deposed that since his son does not reside with him as such, he cannot say about taking medicine for potency by the petitioner. He has denied the allegation regarding torture meted out to the respondent and has said that only for the purpose of making paper she admitted herself in hospital. He has further stated that complaint was made to Mukhiya and Sarpanch, but no paper was made.

(iii) PW-3, Ashwani Kumar Pradhan is Gram Pradhan of village Bara Sijulta. In his examination-in-chief he has stated that the petitioner is his own Bhagini whereas O.P. is also his distant relative. He has fully supported the case by elaborating conduct of the respondent.

In Cross-examination, he stated that O.P. is the daughter of his Mousi. About behavior of the respondent, he has stated that these facts have been disclosed by the petitioner. He has stated entire period of residing in the matrimonial house by the respondent after marriage was only for 2-3 months is within his knowledge. He has also supported the fact of convening a meeting in his presence as disclosed in para 10 of his deposition but has said that no paper was prepared in the meeting.

25. On behalf of the respondent (Appellant-wife herein) three witnesses had been examined including herself as D.W.1 and further mother and aunty of the respondent namely Bharti Devi and Arti Devi had been examined as D.W.2 and D.W.3.
26. The evidence of witnesses examined on behalf of the respondent-wife is as under:
 - (i) D.W.-1 is Champa Kumari @ Sampa is the appellant-wife herein has in her examination-in-chief has supported the case negating the claim and

assertion of the petitioner. She has made disclosure of cruelty attributed to her in the matrimonial house just after 2 months of her marriage by the petitioner and in-laws and has mentioned a specific date 16.01.20 when her husband in the night badly assaulted her for which she went to local P.S. where her husband admitted his guilt by giving an undertaking for not doing the thing again and her medical examination was also made on 17.01.20 and thereafter, she was admitted in Tata Main Hospital on 18.01.20 and after discharge on 20.01.20, she is residing in her parental house. She has also stated about the case lodged by her u/s 498A, 321, 323, 307 of the IPC and Sections 3 & 4 of the D.P. Act in which the cognizance has been taken. She has also mentioned in her deposition that for maintenance she filed O.M. case No. 92 of 21 at Jamshedpur in which judgment was passed on 24.05.23 but despite the judgment, the petitioner is avoiding payment of maintenance.

In cross-examination, she has denied the allegations made by the petitioner and has repeated the facts of cases filed by her. She has denied the allegations that she used to put pressure on her husband to arrange a separate house in town and always used to go to her maike. She has also denied the allegation that she caused injury to herself.

(ii) D.W.-2 Bharati Devi is mother of the respondent. In depositions she has fully supported the facts as stated in the show cause and has denied the allegations of the petitioner. During her further examination in chief, she identified three photographs showing injury of her daughter which has been marked as Exhibit A. She has also identified the documents relating to admitting and discharge from TMH which has been marked as Exhibit B.

In her cross-examination she had stated that she is illiterate, the affidavit is prepared in English and what mentioned therein, she does not know, but the facts relating to divorce have been mentioned. She has again stated the demands made after the marriage but has admitted that the marriage was performed without taking dowry. She has stated that her son-in-law is not literate, but her daughter is a graduate. She has admitted that after marriage, her son-in-law called a meeting after marriage which she attended with several persons. She has stated that the second time she went there when her daughter was assaulted and after consoling, she returned. She has denied the fact that since her son-in-law is an illiterate person and is a driver having less income as such, she does not want to send her daughter with him. She also denied the fact that she wants to keep her son-in-law in her own house as gharjamai.

(iii) D.W.-3 Arati Devi, aunt of the respondent has also repeated the same facts as a replica of the other witnesses. She has stated that the parties are her close relatives, and she has denied the fact that marriage was performed at her initiative but has admitted that marriage was solemnized without dowry. She has stated that she knows that both sides have filed cases against each other. She has stated that she does not know how many days have passed since marriage, or how many days the respondent stayed in her matrimonial house but for 3 to 4 years she has been residing in her parental house. She has denied being the witness of any assault but has stated that when the respondent came to her house, she saw signs of being slapped on her face and has also stated that everything has been explained and disclosed by her sister on the phone. She has also admitted that the petitioner is an illiterate person whereas her niece is a graduate and

knowing all these facts marriage was performed but this is not a fact that for this reason, her niece does not want to live with the petitioner. She has stated that in her affidavit several dates have been mentioned but she cannot say about any date as of now.

27. The following documents have been adduced on behalf of the petitioner-husband:

- (i) Certified copy of written application in Rajnagar P.S. dated 09.02.2020 which is exhibited as Ext.1
- (ii) Certified copy of application dated 24.2.2020 to Mukhiya is marked as Ext. 2.
- (iii) Certified copy of application dated 24.2.2020 to D.C. Seraikella is marked as Ext.3.
- (iv) Certified copy of application dated 24.2.2020 to S.P., Seraikella is marked as Ext.4.
- (v) Certified copy of judgment in O.M. No. 92 of 2021 dated 24.05.2023 marked as Ext.5.

21. The following documents have been adduced on behalf of the respondent-wife:

- (i) Three photos of respondent showing injury marked as Ext.A
- (ii) Photocopy of discharge summery of TMH the date of admission 18.1.2020 and date of discharge 20.01.2020 marked as Ext.B.

22. The learned Family Judge after taking into consideration the entire evidence as well as the documentary evidence adduced on behalf of the parties,

has decided the suit vide order dated 30.03.2024 by holding that the petitioner/respondent herein has been able to prove his case for divorce on the ground of cruelty against the respondent/appellant herein on the touchstone of preponderance of probabilities.

23. The instant appeal has been preferred against the aforesaid order/judgment dated 30.03.2024.

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

25. 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).

26. 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.

27. 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:

“27. 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.”

28. It also requires to refer herein that under section 3 of the Indian Evidence Act a fact is said to be proved when the Court either believes it to exist or considers its existence so probable that a prudent man under the circumstances would proceed on the supposition that such fact really exists. Therefore, the normal rule of preponderance of probability is the rule which governs the civil proceedings but herein since grave allegation of cruelty has been alleged therefore cogent evidence is required to be laid by the parties in order to substantiate their claim.

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

30. In “*A. Jayachandra v. Aneel Kaur*” (2005) 2 SCC 22 the Hon’ble Apex Court has observed that the concept, a proof beyond the shadow of doubt,

is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, the Court has to see what are the probabilities in the case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse caused by the acts or omissions of the other.

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

32. In the backdrop of the aforesaid settled position of law and factual aspect of the instant case this Court is now adverting to the merit of the case.

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

34. While on the other hand, argument has been advanced on behalf of the respondent-husband that the judgment is well considered.

35. 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 so to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law. Relevant paragraphs, i.e., paras-24, 25, 26 and 27 of the said judgment reads as under:

“24. The expression “perverse” has been dealt with in a number of cases.

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

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

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

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

1. Oxford Advanced Learner's Dictionary of Current English, 6th Edn. “Perverse.—Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.”

2. Longman Dictionary of Contemporary English, International Edn. Perverse.—Deliberately departing from what is normal and reasonable.

3. *The New Oxford Dictionary of English, 1998 Edn. Perverse.*—*Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.*

4. *The New Lexicon Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.) Perverse.*—*Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.*

5. *Stroud's Judicial Dictionary of Words & Phrases, 4th Edn.* “*Perverse.—A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.”*”

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

37. In the instant case, since the issue of desertion has been decided against the respondent/ husband and the instant appeal has been filed by the appellant/wife by contending that the issue of cruelty has not been properly appreciated by the learned Family Court, therefore this Court is now adverting to the issue of cruelty as involved in the present case.

38. 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.

39. This Court deems it fit and proper to take into consideration the meaning of ‘cruelty’ as has been held by the Hon’ble Apex Court in ***Shobha Rani v. Madhukar Reddi, (1988)1 SCC 105*** wherein the wife alleged that the

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

40. 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.”

41. 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.”

42. 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.

43. 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".

44. 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.

45. It needs to refer herein that it is settled position that a proceeding under Hindu Marriage act is not criminal proceeding where proof beyond reasonable doubt is required rather preponderance of probability" is enough. However, the character of spouse affects his/her reputation in the society. Therefore, it is established proposition of law, that not only the pleading in respect of charge of adultery should be specific, it should also be established in all probabilities. The accepted rule, therefore, is that circumstantial evidence is all that can normally be expected in proof of charge; However, the circumstances must be such as to lead to fair inference, as a necessary conclusion. In other words, proof required to prove adultery need not necessarily be what is at times said to be proof beyond a shadow of doubt, "It need not reach certainty but must carry a high degree of probability".

46. 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.

47. Further, in the case of *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, (2012) 7 SCC 288, the Hon’ble Apex Court has held as follows:

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

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

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

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

“5. ... *Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.* 1. *These preliminary observations are intended to emphasise that the court in matrimonial cases is not concerned with ideals in family life. The court has only to understand the spouses concerned as nature made them, and consider their particular grievance.* As *Lord Reid Gollins v. Gollins* : (All ER p. 972 G-H) observed in „... In

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

48. In the case of **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511** it has been held by the Hon'ble Apex Court as follows: —

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

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

49. Thus, from the aforesaid settled position of law it is evident that “Cruelty” under matrimonial law consists of conduct so grave and weighty as to lead one to the conclusion that one of the spouses cannot reasonably be expected to live with the other spouse. It must be more serious than the ordinary wear and tear of married life.

50. Cruelty must be of such a type which will satisfy the conscience of the Court that the relationship between the parties has deteriorated to such an extent that it has become impossible for them to live together without mental agony. The cruelty practiced may be in many forms and it must be productive of an apprehension in the mind of the other spouse that it is dangerous to live with the erring party. Simple trivialities which can truly be described as a reasonable wear and tear of married life cannot amount to cruelty. In many

marriages each party can, if it so wills, discover many a cause for complaint but such grievances arise mostly from temperamental disharmony. Such disharmony or incompatibility is not cruelty and will not furnish a cause for the dissolution of marriage.

51. In the backdrop of the aforesaid settled legal position this Court is now adverting to the factual aspect of the case as well as finding of the learned Family Court.

52. Admittedly it is evident from record that the allegation of cruelty has been leveled by both the parties against each other.

53. The respondent husband (petitioner/applicant before the Family Court) has stated that after consummation of marriage, respondent/appellant wife is not very much interested in staying in her matrimonial home and started making fight and quarrel, abusing entire family members with muddy languages and the respondent/wife in order to pressurize regularly insists the applicant to take a house on rent at Baridih in Jamshedpur and even after efforts to convinced the respondent about his inability to arrange a house on rent the respondent(appellant wife herein) did not agree and continued her irrational behaviour and sometimes used to hit her head on wall with intend to injure and putting blame upon the applicant and his family members with threatening to implicate in false criminal cases.

54. Per contra in written statement the appellant wife (respondent before the Family Court) has stated that the respondent/husband and his family members are guilty of committing cruelties upon the her and after the marriage, they started harassing the respondent/appellant. She has made disclosure of cruelty attributed to her in the matrimonial house just after 2 months of her

marriage by the petitioner and in-laws and has mentioned a specific date 16.01.20 when her husband in the night badly assaulted her for which she went to local P.S. where her husband admitted his guilt by giving an undertaking for not doing the thing again and her medical examination was also made on 17.01.20 and thereafter, she was admitted in Tata Main Hospital on 18.01.20 and after discharge on 20.01.20. She has also stated about the case lodged by her u/s 498A, 321, 323, 307 of the IPC and Sections 3 & 4 of the D.P. Act in which the cognizance has been taken.

55. This Court has gone through the impugned order/judgment wherefrom it is evident that the learned Family Court has mentioned the aforesaid allegations made by the parties against each other at paragraph 10 of the impugned order but surprisingly without appreciating the veracity of allegation and counter allegation of the parties, had abruptly come to the finding that the silver line of marital relationship has vanished between the parties and accordingly passed the order of dissolution of marriage between the parties. For ready reference the said paragraphs of the impugned judgment are being quoted as under:

10. In the present case allegation of cruelty has been imputed by both the sides against each other. From the evidence on record, I find the following facts as relevant of discussion.

(a) It transpires that complaint of behavioural attitude has started after few days of the marriage and the respondent always putting pressure to the petitioner to have a separate house in town.

(b) Evidence also has surfaced that the petitioner always tried to make understand the respondent that he cannot leave his parents but she did not agree.

(c) It has also come in evidence that petitioner is not literate and he is a simple auto driver and perhaps the respondent who is a graduate does not want to live with him. In this regard on account of dispute between them, Intervention of the police on making application before, has also surfaced as an admitted fact.

(d) After reaching to the police, the respondent has again re-entered into her matrimonial house but due to the alleged behaviour of the respondent some social meetings regarding dispute between the parties has also come on record as an admitted fact, though there was no any written agreement and decision of the social punches, but thus fact has established that the relationship between the parties never remained cordial and showing these facts petitioner has filed many complaints before the competent authorities.

(e) O.P. has also made several complaints against the petitioner and has finally filed a complaint case on the ground of subjecting her torture for demand of dowry, le evidence it has come on record as an admitted fact that marriage was solemnized without taking any dowry. On what grounds the complaint of dowry demand and torture has been filed by the respondent has not come on record on behalf of the respondent by filing the copy of complaint petition. Moreover, that case pending before a competent court and as such no finding or observation can be given regarding that it is also an admitted fact that in this case petitioner remained in jail from 28.07.22 to 15.12.22 as well.

(f) One more aspect is required to be mentioned here that in the evidence respondent has referred about the judgment passed in case of maintenance with assertion that despite the order, the petitioner is not paying the maintenance amount. On the other hand has been submitted on behalf of the petitioner that he is regularly ping the maintenance amount in Court at Jamshedpur and for which at the stage of argument, some copies of deposit slips have been filed and out been disputed then by the respondent by saying that earlier it was not within her knowledge that amount are being deposited. As cannot be said that the petitioner is not obeying the order of the Court.

(g) Making pressure upon the husband by wife to live away from his parents and on that ground not residing in the matrimonial home comes within preview of the term cruelty in the marital relationship giving a ground of divorce to the husband under the Hindu Marriage Act.

(h) Wife has nowhere stated in the pleading or the evidence that, despite her complain and allegations she still ready to forgive her husband and ready to live with him and admittedly since 17.01.20 she has not returned in her matrimonial home.

11. From the discussions made above it is established that bitterness between the parties has reached the level that there is no scope and chance for the parties Ind especially for the petitioner to live with the O.P. and in such a situation, the silver line of marital relationship has vanished.

12.Having regard to the discussed facts in the backdrop of the evidence on record, I find that the petitioner has been able to prove cruelty as pleaded in the form of mental cruelty attributed to him in such a manner, that conduct of the respondent might have inflicted such mental pain and suffering, as would make it not possible for the petitioner to live with the OP and as such this issue No. 3 is decided in favour the petitioner and against the respondent.

56. Thus, from the perusal of the aforesaid paragraphs it is evident that learned Family Court has not appreciated the veracity of the statement made by

the parties against each other and has allowed the suit for dissolution of marriage in favour of the respondent husband.

57. Although there is no dispute that in matter like this the normal rule of preponderance of probability is the rule which governs the proceedings but herein since grave allegation of cruelty has been alleged therefore at least primary evidence is required to be laid by the parties in order to substantiate their claim. From perusal of record, it is evident that the learned family Court in spite of availability of the evidences, the same has not been properly been appreciated by the learned Family Court.

58. It is settled position of law that even for the preponderance of probability there must be some material on record would be necessary to prove the charge, as has been held by Hon'ble Apex Court in the case of ***High Court of Judicature at Bombay through its Registrar v. Uday Singh s/o Ganpatrao Naik Nimbalkar and Others [1997] 5 SCC 129***. However, the aforesaid proposition of law has been laid down by the Hon'ble Apex Court in the service matter but the said principle is also applicable herein.

59. From paragraph 12 of the impugned judgment it is evident that the learned Family Judge has outrightly come to its conclusion that petitioner/husband has been able to prove cruelty as pleaded in the form of mental cruelty attributed to him in such a manner, that conduct of the respondent might have inflicted such mental pain and suffering, as would make it not possible for the petitioner to live with the OP. But from perusal of the operating portion of the said impugned judgment it is evident that the learned Family Court has not recorded its satisfaction that how the court has arrived to the said conclusion.

60. Further it is evident from the record particularly paragraph 26 of the written statement which has been appended as annexure -2 of the memo of appeal that the appellant/wife wants to lead her conjugal life with the respondent husband and minor daughter but the said statement has also not been appreciated by the learned Family Court.

61. As we discussed hereinabove 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. The Hon’ble Supreme Court consistently held that the petitioner must show a consistent pattern of behavior by the respondent to prove cruelty, and occasional outbursts of anger or quarrels do not necessarily amount to cruelty.

62. Further, it needs to refer herein that the foundation of a sound marriage is acceptance, adjustment and respecting each other. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be inflated to abolish what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal

with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court.

63. This Court is of the view that in deciding the issue no. III of cruelty the learned Family Judge has committed error in scrutinizing the evidence adduced on behalf of the parties as the appellant-wife as D.W.1 has categorically stated about the factum of cruelty and torture meted out to her at the hands of her respondent-husband and remained consistent during her cross-examination but the same has not been properly appreciated and the learned Family Court has arrived to its finding abruptly that the cruelty has been proved by the respondent /husband as such, the said finding of the learned Family Court will come under the fold of perversity as per the judgment rendered by the Hon'ble Apex Court which has been quoted and referred hereinabove.

64. This Court after discussing the aforesaid factual aspect along with the legal position and advertiring to the consideration made by the learned Family Judge in the impugned judgment and decree has found therefrom that the issue of element of cruelty by the appellant-wife has not been properly considered by the learned Family Judge.

65. 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 coming under the fold of the perversity, since, the conscious consideration has not been made of the evidences, as would be evident from the impugned judgment.

66. This Court, taking into consideration the definition of “perversity” and

based upon the discussion aforesaid, is of the view that the impugned judgment needs to be interfered with.

67. Accordingly, the impugned judgment dated order/judgment dated 30.03.2024 [decree signed on 08.04.2024] passed by the learned Principal Judge, Family Court, Seraikella-Kharsawan, in Original Suit No. 54 of 2021, is hereby quashed and set aside.

68. In the result, instant First Appeal is hereby allowed.

69. Pending interlocutory applications, if any, also stands disposed of.

I Agree

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)

(Arun Kumar Rai, J.)

Jharkhand High Court

Date: 05/02/2026

KNR/AFR

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