IN THE HIGH COURT OF JHARKHAND AT RANCHI

First Appeal No. 273 of 2026

Kumari Anjali, aged about 32 years, W/0 Vikash Choudhary, D/O Surendra Prasad, R/O Mohalla Jailhata, Ward No.19, Mohan Cinema Road, P.O. & P.S. Daltonganj, District-Palamau, Jharkahand.

.....…Petitioner/Plaintiff/Appellant

Versus

Vikash Choudhary, S/O Ram Mohan Choudahry, R/O 20/ Cart Sarai Road, Upper Bazar, Besides Todi Heights, Ranchi P.O. GPO, P.S. Kotwali, District-Ranchi, Jharkhand

..... **Opposite Party/Defendant/ Respondent**

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

For the Appellant : Mr. Amit Kumar Chaturvedi, Advocate
For the Respondent : Mr. Arbind kumar, Advocate
Mr. Prem Prakash, Advocate
Ms. Sakshi Diksha, Advocate

C.A.V on 06.10.2026 **Pronounced on 05/11/2026**

Per Sujit Narayan Prasad, J.

1. The instant appeal under section 19(1) of the Family Courts Act, 1984 is directed against the judgment dated 30.04.2026 and the decree dated 07.05.2026 passed in Original Suit No.61 of 2022 by the learned Principal Judge, Family Judge, Palamau at Daltonganj (in short, learned Family Judge) whereby and whereunder the petition filed under section 13(1) (i-a) (i-b) of the Hindu Marriage Act, 1955 by the appellant-wife against the respondent-husband, has been dismissed.

Factual Matrix

2. The brief facts of the case as pleaded in the plaint having been recorded by the learned Family Judge, needs to be referred herein as:

(i) The marriage of the appellant/wife was solemnized with respondent on 15.02.2015 according to Hindu rites and

custom at Jailhata Ward No. 19, Mohan Cinema Road, PO & P.S. Daltonganj, District-Palamau and after marriage, petitioner (appellant herein) came to the house of the respondent/husband and both started living together as husband and wife.

(ii) It is alleged that from very beginning of marriage, the respondent started to insult the petitioner and her family members by using abusive and unparliamentary language without any cause and petitioner has been physically and mentally tortured by the respondent.

(iii) It is further alleged that petitioner/appellant/wife requested to the respondent/husband to change his behaviour, but on that very request, respondent always tortured the petitioner and also done cruel behaviour with her and respondent does not want to keep relation with the petitioner and due to account of non-cohabitation and cruel behaviour of the respondent, the petitioner is suffering from pain and agony.

(iv) It is stated that cause of action arose severally times for petitioner and finally on 09.08.2019, when respondent/husband deserted the petitioner at her *maike* without any reason and after several attempt did not agree to live with petitioner and treated her with cruelty.

(v) Based upon the aforesaid fact the petitioner/appellant-wife has filed a suit before the learned Family Court praying therein to pass a decree of divorce on the ground of cruelty and desertion,

3. In pursuance to issuance of notice, the respondent-husband appeared in the said suit and filed written statement on 28.04.2023 stating therein that the suit filed under section 13 1(i-a) (i-b) of the Hindu Marriage Act is not maintainable in law and is fit to be dismissed. The factum of marriage has been admitted. It is stated that the petitioner has not come up before this learned Court with clean hands and the petition under reply has been pressed with suppression of material facts.

4. It has been stated that the petitioner since studying in Ranchi, met with the respondent and both the parties have love and affection for each other. They amicably decided to marry and therefore, they have solemnized their love marriage in the presence of their common friends and well-wishers on dated 15.02.2015 and registered it before the marriage registrar, at Ranchi vide Registration No. 634/2015 dated 25.05.2015.

5. It is stated that after hearing about marriage of the petitioner with the respondent, the parents of respondent came at Ranchi on 04.09.2015 and threatened the respondent with dire consequences. They made fun of the physical appearance and dark skin of the respondent and they abused the respondent that he belongs to the poor family. After hearing abusive language of the parents, petitioner went to the Mahila Thana, Ranchi, along with the respondent and gave a Complaint against her parents. Then after intervention of Mahila Thana Police, Ranchi, a compromise petition was made in which it was amicably settled that a social marriage be solemnized between the petitioner and the respondent. The date of marriage was fixed by the parents of the petitioner on 27.02.2016 and the social marriage of the petitioner and the respondent solemnized at Daltonganj, Palamau.

6. It is further stated that the petitioner left the respondent alone and went to her *maike* at Palamau on 20th March, 2020.

7. The petitioner and the respondent had gone for three consecutive years to Mata Vaishno Devi Mandir at Jammu Kashmir since 2015 to 2017 along with the parents of the petitioner and in the year 2019, the petitioner and respondent visited Mahakal Mandir Ujjain and they also visited Kolkata and Darjeeling in the year, 2020, therefore instance of cruelty by respondent/husband upon petitioner/wife is not correct.

8. It is further stated that since the beginning of the marriage, the petitioner never intended to stay with the respondent and her in-laws. The petitioner pressurized the respondent to stay alone in separate room. It is pertinent to mention here that the petitioner used to give threat of putting the opposite party behind the bars on false charge of Domestic Violence Act and Dowry Act on being objected to her misbehaviour, therefore, petition is incorrect, baseless, concocted and manufactured for the purpose of the present suit.

9. Learned Family Judge, after institution of the said case taking into consideration of the pleadings of the parties, after scrutinizing the evidence adduced on behalf of both the parties, oral as well as documentary, has dismissed the suit for dissolution of marriage.

10. The impugned judgment by which the suit for dissolution of marriage has been dismissed is under challenge by the appellant-wife by filing the instant appeal.

Submission of the learned counsel for the appellant-wife:

11. The learned counsel appearing for the appellant-husband has taken the following grounds:

(i) There is an error in the impugned judgment, since, each and every aspect of the matter has not been taken into consideration based upon the evidences produced by the appellant-wife

(ii) The element of cruelty and desertion has been found to be there if the evidences adduced on behalf of the appellant-wife will be taken into consideration but without appreciating the same properly the learned Family Judge has come to the finding by holding that no element of cruelty and desertion is there and, on that ground, dismissed the suit and, as such, the impugned judgment and decree suffer from an error.

(iii) It has been contended that the appellant-wife has been compelled by the respondent/husband to live in her *maike* and, thus, has deserted the petitioner, but the same has not been taken into consideration by the learned Family Judge.

(iv) It has been contended that the learned Family Judge has failed to appreciate the evidences adduced on behalf of the appellant-wife as in the trial, the evidence has come that it was the respondent-husband who has treated the appellant-wife with cruelty and compelled her to leave the matrimonial home, but this fact has not been considered by the learned Family Judge.

(v) It is further submitted that the appellant is living in her parental home since 09.08.2019 and there is no chance of settlement between the parties.

(vi) Learned counsel for the petitioner has contended that the respondent-husband had filed a separate proceeding being O.S. No. 07 of 2023 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. It has been submitted that the said suit was dismissed by the same Court under the presiding authority of the same learned Judge who had also dismissed the suit filed by the petitioner-wife seeking a decree of divorce.

(vii) In the OS No. 07 of 2023 the court has given its finding that the wife has reasonable justification for her reasonable excuse in withdrawing from the society of respondent/husband and the said suit for restitution was dismissed.

(viii) The learned Family Court in the OS No. 07 of 2023 has observed that it would not be safe for the appellant/wife to cohabit with the petitioner under hostile state of affairs in existing her matrimonial home.

12. The learned counsel, based upon the aforesaid grounds, has submitted that the impugned judgment and decree, therefore, needs interference said to be perverse.

Submission by the learned counsel for the respondent-husband:

13. Per contra, the learned counsel appearing for the respondent-husband has taken the following grounds:

(i) There is no error in the impugned judgement as the learned Family Judge has considered the entire issue and on the basis of evidence laid by the parties and has passed the order impugned.

(ii) The appellant/wife is cruel, has deserted the respondent without any valid ground but the learned Family Court, after taking into consideration the oral and documentary evidence, has held that the entire allegations levelled against the respondent husband are not true and accordingly dismissed the suit.

(iii) It has also been submitted that the conduct of the appellant-wife has never been towards salvaging the institution of marriage as it is the appellant-wife has come for the dissolution of the marriage, therefore the impugned order requires no interference.

(iv) It has been contended that the petitioner/appellant-wife has neglected to care the respondent and, as such, the petitioner has deserted the respondent and acted cruelty upon him.

14. 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:

15. We have heard the learned counsel appearing for the parties, gone through the impugned judgment, as also the testimony of the witnesses, the materials available on record and the documents exhibited therein.

16. The learned Family Judge has formulated altogether four issues, for ready reference the same are being quoted hereinbelow:

1-Whether the suit, as framed, is maintainable ?

11-Whether the petitioner has valid cause of action for filing this suit ?

III-Whether the petitioner is entitled for a decree of divorce against her husband-O.P on the ground of cruelty and desertion U/s 13(1) (i-a), (i-b) of Hindu Marriage Act, 1955 ?

IV-Whether the petitioner is entitled for any other relief or reliefs ?

17. This Court is now adverting to the impugned order/judgment by which prayer for dissolution of marriage has been dismissed by the learned Family Court.

18. In support of her case, three witnesses have been examined on behalf of the appellant-wife including herself as P.W.1, P.W.2: -Prabhat Kumar, maternal uncle of petitioner, P.W.3: -Sandhya Gupta, mother of petitioner. Petitioner/wife has not exhibited any document.

19. In this case, respondent-husband has also examined three witnesses including himself as witness, R.W.1: -Vikash Chaudhary, the Respondent himself, R.W.2: -Ashish Bhagat, brother-in-law of the respondent and R.W.3: -Rina Bhagat, Sister of the respondent.

20. The learned Family Judge has taken into consideration the issue nos. (III) as first issue i.e., Whether the petitioner is entitled for a decree of divorce against her husband-O. P on the ground of cruelty and desertion U/s 13(1) (i-a), (i-b) of Hindu Marriage Act, 1955?

21. Thereafter, the learned Family Judge has considered the evidence adduced on behalf of the parties for deciding the issues involved in Original Suit.

22. This Court in order to appreciate the aforesaid rival submission before entering into the legality and propriety of the impugned judgment needs to discuss herein the relevant part of the evidences adduced on behalf of the appellant-wife and the respondent-husband.

23. During the trial, the appellant /wife herself has been examined as PW1 before learned Family Court. In her examination the appellant-wife has narrated entire things as pleaded in the plaint about her marriage with the respondent-husband. She had deposed that her marriage was solemnized with the respondent Vikash Chaudhary on 15.02.2015, according to Hindu Rites and ceremonies at Jail Hata, Daltonganj. Thereafter again, her marriage ceremony was held according to Hindu rites and rituals on 27.02.2016 in the presence of her family members with Vikash Choudhary.

24. She had deposed that after marriage she went to her sasural where she lived for about 10 days in her sasural. After that she fell sick, then her husband did not get her medically treated and also did not look after her. Thereafter she came to her *maike* with her husband where *maike* people got her medically treated. During the time of living in her *maike,* her husband and in-laws used to taunt her for dowry and tortured her. Her husband demanded Rs 5,00,000/- cash and one four-wheeler vehicle from her and on small matters used to beat her and abuse her *maike* people. Her husband always used to say about giving divorce to her. Her husband used to abuse the relatives and say about giving divorce. Ornaments worth Rs. 10,00,000/- was given to her by her *maike* people, they have been sold by her husband and her husband has also kept all her clothes.

25. She had further deposed that after she had fallen sick, since then there has been no physical relationship between her and her husband. On 08.09.2019, her husband ousted her from her sasural and since then she is living in her *maike*. Her brother had given money to her husband for doing business, but her husband did not start business. Her husband always used

to harass and torture her; therefore, she wants to take divorce from her husband.

26. During her cross-examination, she has deposed that on 15.02.2015 she and her husband Vikash Chaudhary by their own will had solemnized marriage in a temple in Daltonganj and at that time she has solemnized marriage after hiding the said fact from her family members. She used to love Vikash Chaudhary and she had solemnized marriage secretly because her family members would not have agreed for her marriage. She had met Vikash Chaudhary for the first time in January, 2015 and before that she had never met him. It is not true that after marriage, her *maike* people used to torture them both. It is correct to say that written complaint with her signature was given in Mahila P.S, Ranchi, but she says that her husband had forcefully taken her signature on the Complaint petition. It is correct that Mahila P.S Ranchi had called her *maike* people and there was a written compromise. According to that Compromise on 27.02.2016, their marriage was solemnized with all rites and rituals in which her *maike* and sasural people had all participated. Before 27.02.2016 she had visited Vaishnao Devi temple with her husband. Her *maike* people had taken them, wife and husband, in the year, 2015, 2016 and 2017 during Navratri to Vaishnao Devi temple. She and her husband had gone to Ujjain during Nag Panchami in the year, 2019. She says by herself that expenses for reservation and hotel booking at Ujjain were done by her *maike* people.

27. She has further stated that in the year, 2020, her father had purchased a car and Puja of the Car was performed in Deori Temple, Tamar and her husband Vikash Chaudhary was also present there. It is not true that in the year, 2021, her husband had come to her *maike* on the

occasion of Holi. Her marriage Anniversary was on 27.02.2021 and her husband had participated in the marriage Anniversary without invitation and on the said date, photographs were also taken on the occasion of Marriage Anniversary. At present she is ad-hock teacher in DAV Public School, Daltonganj where her salary is Rs. 15,000/- per month. She had deposed that her *maike* people had given a proposal to her husband that he should take a house and live with her in Daltonganj, but her husband did not agree. She says by herself that her *maike* people had apprehension that her husband would kill her, therefore, they had given the proposal to live in Daltonganj. Even if her husband wants to keep her in Daltonganj by taking a house, even then she will not live with him. She is not aware that her husband has filed O.S Case No. 07/2023 which is pending before this Court for her *Bidai*.

28. She had further deposed that before she falls sick, on one occasion physical relation was established between her and her husband and after that only she started facing problem. All the medical treatment papers are in the house of her husband, therefore, she cannot file the same in Court. Her treatment was done firstly done by their family doctor Anand Kumar in Daltonganj and when he could not diagnose the problem, then her treatment was done by Dr. Jitendra Singh at Ranchi, who diagnosed her disease and treated her. No test was done. Her husband had also reached the clinic of Dr. Jitendra Singh. Doctor had told the name of her disease as Honeymoon cystitis. That her father is present in the Court on the said date.

29. She had further deposed that it is not true that her husband had got her medically treated with Dr. Shobha Chakravorty in Ranchi. She says by herself that her mother had borne all the expenses of her treatment with

Dr. Shobha Chakravorty. She will not live with her husband even if her husband keeps her properly and maintains her. It is not true that her husband has not tortured her for dowry. It is not true that under the influence of her *maike* people and due to their protest, she has filed this divorce case. In Court question, she has stated that in or about October, 2016, her illness of Honeymoon cystitis was cured. After she was cured of her illness from October, 2016 to August, 2019, altogether she lived with her husband for about three months in Ranchi, she by herself some times for two days and some times for 4 days used to go to her *sasural.* The *sasural* people used to oust her by saying something or the other. In her further cross-examination, she has stated that there was no physical relationship with her husband before marriage. It is not true that despite physical relationship, as she was not conceiving, for that she was medically treated. She cannot file in court any documentary proof or medical prescription that her husband is not capable to establish physical relationship. It is not true that she under the influence of her parents has made the allegation that her husband is not capable of establishing physical relationship.

30. P.W.2, Prabhat Kumar, in his examination-in-chief on affidavit, has stated that he knows both the parties to the case and the marriage of petitioner Kumari Anjali was solemnized on 15.02.2015 with the respondent according to Hindu rites and ceremonies for which marriage certificate was issued from the office of Marriage Officer, Ranchi, Jharkhand on 25.05.2015. After marriage, petitioner went to her *sasural* at Ranchi and lived there for few days, but after that respondent always used to behave cruelly with her and used to beat her and without permission of the petitioner, secretly took out the Gold and silver ornaments of the

petitioner kept in the drawer, which was all her stridhan, which were given to the petitioner by her parents and relatives in the marriage as gift, which were worth Rs. 10,00,000/- and after stealing them, the respondent sold the ornaments and spend the money in his debauchery.

31. This witness had further stated that few days after marriage, respondent/husband started demanding dowry of Rs. 5,00,000/- and one car and said that she should get the same from her parents, brother and relatives and give it to him otherwise she will not be allowed to live in the house. That always petitioner was assaulted, abused and threatened for her life by the respondent. It has further been deposed that respondent is a very clever and useless person and does illegal work and has made different types of fake I.Ds and does illegal work and when the petitioner stopped him from doing such illegal work, then he used to beat her.

32. This witness has further deposed that respondent by giving false assurance and taking advantage of the innocence of the petitioner by cheating her had solemnized marriage with the petitioner and by giving threats of dire consequences to the petitioner and her family, forced the petitioner also to make false allegation against the parents and brother of the petitioner. The respondent always used to abuse the petitioner and also her parents and brother and disrespected them and by making excuses used to take money from them. sometime after marriage, respondent tortured the petitioner physically and mentally in various ways and used to say that she should earn and give him and that he will solemnize second marriage as he is done with her and used to give threatening of giving divorce. There is no issue from the marital life of the petitioner and respondent and petitioner is living separately from her husband since 09.08.2019 and the petitioner is living in her *maike* house of her parents. Several times,

panchayati was convened regarding the cruelty, abuse, assault and illegal demand of dowry by the respondent and also for doing bad behaviour with the parents of the petitioner but the respondent did not listen to anyone and even threatens the petitioner of dire consequences and to face bad consequences if she does not withdraw her case. Petitioner has threat to her life by living with the respondent and any time respondent can cause harm to the life of the petitioner, her parents and her brother.

33. In his cross-examination, he has stated that petitioner Kumari Anjali is his niece (Bhanji) and petitioner has done her education at Daltonganj and she has passed matric probably in the year, 2003 and also passed 12th from Daltonganj. He does not remember in which year, petitioner had gone to Ranchi for her studies. He had deposed that Parents of the petitioner were not aware about the registered marriage of the petitioner and respondent. He is not aware that after the knowledge about the Court marriage of the petitioner, her parents went to Ranchi and also beat her for which petitioner gave a petition in Mahila P.S., Kotwali against her parents.

34. He further stated the parties were married according to Hindu rites and ceremonies in Daltonganj and he is aware about the same and had participated in the marriage. He came to know in the year, 2019 that respondent was not keeping the petitioner properly. He is not aware whether petitioner has filed any Complaint either in Police Station or any where regarding assault upon her by her husband. He does not know the day, date and month when demand of dowry was made from the petitioner. He does not have personal knowledge that respondent is a clever, useless person and does illegal works by making fake I.Ds. He has stated that respondent had told the petitioner before marriage that he has a steel

rolling factory and does work of contract, but later-on she came to know that he does not have any of these. Respondent had threatened on his phone that he will destroy the petitioner and her brother and has also kill them, but he cannot say the day, date and month of the said phone call. He is not aware on which day, date and month and how much money respondent has taken from the brother of the petitioner. Respondent had come to his house once and at that time he had abused the petitioner, then he had tried to make the respondent understand, but he cannot say the day, date and year of the said occurrence. He was not present in any panchayati. After 09.08.2019, he came to know that relation of petitioner and respondent is not good, therefore, petitioner is living in her *maike*. He has stated that it is not true that he is not aware of any facts of this case.

35. P.W.3, Sandhya Gupta, in her examination in chief on affidavit has stated that she knows both parties to the case. She has further stated that the marriage of petitioner Kumari Anjali was solemnized on 15.02.2015 with the respondent according to Hindu rites and ceremonies for which marriage certificate was issued from the office of the Marriage Officer, Ranchi, Jharkhand on 25.05.2015. After marriage, petitioner went to her sasural at Ranchi and lived there for few days, but after that her husband always used to behave cruelly and used to beat her and without permission of the petitioner, secretly took out the Gold and silver ornaments of the petitioner from the drawer, which was all her stridhan, which were given by her parents and relatives in the marriage as gift, which were worth Rs. 10,00,000/- and after stealing them, the respondent sold the ornaments and spend the money for his debauchery.

36. She has further deposed that few days after marriage, respondent started demanding dowry of Rs. 5,00,000/- and one car and said that

petitioner should get the same from her parents, brother and relatives and give it to him otherwise she will not be allowed to live in the house. Petitioner was assaulted, abused and threatened for her life by the respondent. That respondent is a very clever and useless person and does illegal work and has made different types of fake I.Ds and does illegal work and when the petitioner stopped him from doing such illegal work, then he used to beat her and kept her confined in a room. She had stated that respondent by giving false assurance and taking advantage of the innocence of the petitioner by cheating her had solemnized marriage with the petitioner and by giving threats of dire consequences to the petitioner and her family, forced the petitioner also to make false allegation against the parents and brother of the petitioner. The respondent always used to abuse the petitioner and also her parents and brother and disrespected them and by making excuses used to take money from them.

37. She has stated that sometime after marriage, respondent tortured the petitioner physically and mentally in various ways and used to say that petitioner should earn and give him and that he will solemnize second marriage as he is done with her. She had stated that petitioner is living separately from her husband since 09.08.2019 and the petitioner is living in her *maike* house of her parents and Several times, *panchayati* was convened regarding the cruelty, abuse, assault and illegal demand of dowry by the respondent and also for doing bad behaviour with the parents of the petitioner but the respondent did not listen to anyone and even threatens the petitioner of dire consequences and to face bad consequences if she does not withdraw her case. she had further deposed that the instant suit for divorce filed by the petitioner against the respondent is true because petitioner has threat to her life by living with the respondent and

any time respondent can cause harm to the life of the petitioner, her parents and her brother.

38. In her cross-examination, she has deposed that affidavit has been prepared as per her instruction and the contents of her affidavit are correct. she knows the respondent since 05.09.2015 and she has seen the marriage certificate, therefore, she has written the date of marriage as 15.02.2015 in para-2 of her affidavit and date of marriage as 25.05.2015 before Marriage Officer, Ranchi. On 05.09.2015, brother-in-law of the respondent had shown her the marriage certificate, then she came to know about the marriage and at that time her daughter was living in Upper Bazar, Ranchi in a rented house where she had taken for her studies. She had deposed that the primary education of her daughter has been made in Daltonganj. She does not remember in which year her daughter passed Matric. Probably at the time of marriage, her daughter was studying in M.A., since the time, her daughter has gone to study at Ranchi. She had deposed that it is not true that she had assaulted and abused her daughter for which her daughter along with the respondent had registered a Complaint in Mahila PS, Ranchi where both the parties entered into a compromise that they would get the boy and girl married, according to social norms. She says herself that she had not gone, but her husband had gone. She does not know who had signed on the compromise. It is true that as per terms of compromise on dated 18.11.2025, the boy and girl were engaged in Hotel Krishna INN in Ranchi in which family members of both the parties were present. Once she came to know that her daughter has solemnized marriage with the respondent, then they got the boy and girl engaged as per the norms of the society. She married her daughter with the respondent according to Social norms. The marriage of her daughter was solemnized

from their residence according to Social norms. She herself says that once in the year, 2017-2018, during the time of Dashara, for 10 days, her daughter was assaulted. No Complaint was registered in the Police Station regarding the assault. Her daughter was treated by the doctor, but she does not have the proof. It is true that after marriage, they had gone to Vaishnao Devi along with the respondent. She does not know that after marriage, her daughter had gone to Ujjain. It is true that in the year, 2020 at the time of Dushera, they had gone to Deori Temple, Tamar, Ranchi for doing worship but they had not called the respondent for the said puja, nor had they gone to the house of the respondent to take him. She says by herself that respondent himself came for worship. It is not true that on 27.02.2021, respondent had come to their house at Daltonganj to celebrate his marriage Anniversary. She says by herself that she was not informed about the death of the father of the respondent and at that time it was Corona period.. It is not true that they want their daughter to take divorce from their husband by putting pressure upon her and they want to solemnize second marriage of their daughter.

39. Per contra, evidence of three witnesses has been adduced by the respondent-husband.

40. The respondent while examining herself as RW 1 has stated that petitioner and respondent became friends in the year, 2014 and after some time, they both were in love with each other and on 15.02.2015, they solemnized their marriage, according to Hindu rites and customs and also registered their marriage voluntarily under the Hindu Marriage Act, having Registration No. 634/2015 dated 25.05.2015.

41. He has stated that when the petitioner told about relationship and registration of her marriage with the respondent in her house, then parents

and brother of the petitioner became angry and came to the rented house of the petitioner at Mahavir Chowk, Ranchi and scolded her, as a result of which, petitioner had left her parents at the house and came to the house of respondent at Upper Bazar, Ranchi and told everything to the respondent. On 04.09.2015, petitioner along with respondent had gone to Mahila P.S Ranchi and gave a Complaint against her parents in the Police Station in which her parents was pressurizing her to come out from the marriage and on 05.09.2015, a meeting of both the parties was called in the Mahila P.S, Ranchi and with consent, there was a compromise between the parties in Mahila P.S. Ranchi that parents of the petitioner will solemnize the marriage of petitioner with the respondent, according to social norms and decided that Ring ceremony will be performed in Ranchi and Tilak and other rituals of marriage will be performed at the permanent residence of the petitioner at Daltonganj. Thereafter, on 18.11.2015, Ring ceremony (Chheka) rituals was performed at Hotel Krishna INN, Ratu Road, Ranchi between the petitioner and the respondent in which family members of both the parties and friends had participated. As per the wishes of the parents and brother of the petitioner, date of marriage was fixed on 27.02.2016 and on the said date, respondent along with his family members, came with Barat to Daltonganj, Palamau and on 27.02.2016 in the night, firstly Tilak ritual was performed and thereafter marriage ritual were performed in the presence of family members of both the parties according to Hindu rites and customs and in the marriage, both the parties as per their capacity and rituals and customs, voluntarily exchanged the gifts.

42. This witness has further deposed that on the second day after marriage; petitioner came to the house of the respondent at her sasural at

Ranchi and both started living as wife and husband at Ranchi. The petitioner along with her parents and brother as well as with the respondent, before their marriage which was schedule on 27.02.2016, had gone to Jammu and Kashmir to visit Mata Vaishnao Devi during Navratri of 2015 and also during Navratri of 2016 and 2017. In the year, 2019, petitioner and respondent, both together went to Ujjain and Darjeeling via Kolkata for tourism. In the year, 2020 during Navratras, father of the respondent had purchased a Car, then respondent had also gone along with her parents and brother of the petitioner for worship in Deori Temple, Tamar, Jharkhand.

43. He has deposed that since 20th March, 2020, petitioner is living in her *maike* continuously and doing Private job for which respondent has no objection. Respondent on 27.02.2021 came to his sasural, Palamau to celebrate his Marriage Anniversary at Palamau and celebrated his marriage Anniversary with the parents and family members of the petitioner and returned to Ranchi and had also gone to sasural in the year, 2021 for celebrating Holi at his sasural. He has deposed that his father died on 31.12.2021 and he informed the petitioner on phone about the same and requested her to come to Ranchi at once but petitioner refused to come to Ranchi. Respondent talked to the parents and brother of the petitioner on phone and requested them to sent the petitioner to Ranchi, but they also refused. Neither the petitioner nor her parents or brother came and participated in the *Shrad Karma* of his father. After the death of his father, he did not go to celebrate Holi in the year, 2022 to the house of the petitioner at Palamau according to Hindu customs due to which, petitioner and her parents became annoyed and said that now their daughter will not go to Ranchi. That respondent tried to make them understand, but they did

not listen to the respondent, then respondent went to the house of the petitioner at Palamau and told her to come to Ranchi with him, but petitioner clearly refused to come to Ranchi and after that her parents also started saying that if he wants, he can come and live in Palamau, and now their daughter will live here and not return to Ranchi. The petitioner spends the money which she earns from Private job on her parents and does not share the house hold expenses with the respondent. The petitioner never lived with her in-laws in her sasural and also never celebrated any festivals in her sasural and she always wants to live only in her *maike* and her parents and brother also wants the same.

44. This witness has deposed that as per wish of the petitioner, he gave a new look to his house at Ranchi and as per her liking, constructed the Kitchen and Bath room, but despite that petitioner is living in her *maike* since 20.03.2020 and despite several attempts by the respondent, the petitioner under the influence of her parents and brother does not want to come to Ranchi and on asking she also does not clearly say reason for not going to Ranchi. This witness had further deposed that Petitioner has brought all her gold and silver ornaments, clothes and articles of her personal use with herself and voluntarily after leaving her husband and relatives, is living in her *maike*. Despite all the social and family attempts made by the respondent, when the petitioner did not return to Ranchi, then respondent filed a case for Bidal of the petitioner U/s 9 of the Hindu Marriage Act being case no. 562/2022 in family Court, Ranchi and on the request of the petitioner, the said case has been transferred by the Hon'ble High Court to this Court having no. 07/2023. He had deposed that he even today wants to keep the petitioner in his house with respect and will keep her with all respect and is capable to provide her all the marital facilities

and he is physically, mentally and financially capable to maintain her. He had deposed that respondent or his family members had never misbehaved with the petitioner and have also not demanded cash or articles as dowry and under the influence of her parents, petitioner has filed this divorce case only on false facts and evidence and when respondent did not agree for divorce at the mediation Centre at Ranchi, then for getting pressure, parents of the petitioner got filed a criminal case by the petitioner against the respondent being Complaint Case no. 2037/2022, U/s 323, 379, 498A, 504 and 506 of the I.PC in which respondent is on bail. This witness has exhibited the Original Invitation Card of his marriage with Kumari Anjali which has been exhibited as Ext. A. He has also filed copy of three photographs of himself, his wife and other family members and these photographs are marked as Y to Y/2 for identification. The medical treatment papers of the petitioner and respondent of Dr. Shobha Chakravorty of Ranchi which are in photo copies and are in 10 pages have been collectively marked as Mark Y/3 for identification. The Colour photo copy of marriage certificate has been marked as Y/4 for identification.

45. In his cross-examination, he has stated that he has not filed any papers about which he has stated in Para-3 of his affidavit that on 05.09.2015, compromise took place between both the parties, papers were also prepared, but he does not have papers, therefore, he has not filed the same in the Court. He himself says that the papers are with his wife. He has not filed the papers relating to the program that took place in the Hotel and its booking etc. He himself says that he has filed the photos of the program. It is correct to say that the photographs which has been filed by him, no dates are mentioned. He has not filed the tickets by which they had gone to Vaishnao Devi and also not filed any documentary proof of

stay at that place. He says by himself that he has given the photo. He has not filed any documents relating to job of his wife in Court. During Holi his wife had gone to Ranchi with her brother on a car for marketing, then he had also come to Daltonganj with them in the said car, therefore he does not have any documentary proof of going to Daltonganj. He had returned by Bus but he has not kept the Bus ticket. He has filed the photo of Holi festival. He has stated that it is true that since 20.03.2020, his wife is continuously living in her *maike*. He himself says that till the month of March/April of the year, 2021, during the time of Holi and marriage Anniversary, he had come to his sasural. It is correct to say that Section 9 case filed by him in Ranchi Court and was filed after filing of this case for divorce. He had stated that he has given cash as well as gifts to his wife after marriage, but he cannot give proof. He has no Complaint against his wife and if he had said anything against his wife any where, then he takes them back. It is not true that he used to beat his wife and had sold all her ornaments and when his wife questioned, he behaved badly with his wife, assaulted her and tortured her and said that he does not want to live with her and she should take divorce. It is not true that he has never tried to improve his relationship with his wife and threatens to his wife.

46. R.W.2, Ashish Bhagat, has deposed in his examination-in-chief that the mother, father and brother of the petitioner were not happy with the marriage of the petitioner and respondent. They had gone to the rented house of the petitioner at Mahavir Chowk, Ranchi and scolded the petitioner and on 04.09.2015, petitioner along with respondent had gone to Mahila P.S Ranchi and gave a Complaint against her parents in the Police Station in which her parents was pressurizing her to come out from the marriage. Then a meeting was called of both the parties in Mahila P.S,

Ranchi and with consent, there was a compromise between the parties in Mahila P.S. Ranchi that parents of the petitioner will solemnize the marriage of petitioner with the respondent, according to social norms and decided that Ring ceremony will be performed in Ranchi and Tilak and other rituals of marriage will be performed at the permanent residence of the petitioner at Daltonganj.

47. He had stated that on 18.11.2015, Ring ceremony (*Chheka*) rituals was performed at Hotel Krishna INN, Ratu. Road, Ranchi between the petitioner and the respondent in which family members of both the parties and friends had participated. As per the wishes of the parents and brother of the petitioner, date of marriage was fixed on 27.02.2016 and on the said date, respondent, came with Barat to Daltonganj, Palamau and on 27.02.2016 in the night, firstly Tilak ritual was performed and thereafter marriage rituals were performed in the presence of family members of both the parties according to Hindu rites and customs.

48. This witness had further stated that on the next day of marriage, petitioner came to the house of the respondent at her sasural at Ranchi and both started living as wife and husband at Ranchi. The petitioner along with her parents and brother as well as with the respondent, several times went to Jammu and Kashmir to visit Mata Vaishnao Devi and in the year, 2019, petitioner and respondent, both together went to Ujjain and Darjeeling via Calcutta for tourism. In the year, 2020, father of the petitioner had purchased a Car, then respondent had also gone along with her parents and brother for worship in Deori Temple, Tamar, Jharkhand. That the petitioner after marriage, always used to come and go to her *maike* for which petitioner or his family members neither objected and she used to go to her *maike* voluntarily or when her parents called her. Since 20th

March, 2020, petitioner is living in her *maike* continuously. Petitioner is posted as Teacher in DAV School, Palamau. Every year, respondent used to came to his sasural to celebrate his Marriage Anniversary and otherwise also, he also used to come to his sasural to meet them. He had stated that the father of the respondent died on 31.12.2021 at Ranchi. Respondent informed the petitioner on phone about the same and requested him to come to Ranchi at once but petitioner refused to come to Ranchi. The petitioner never lived with her in-laws in her sasural and also never celebrated any festivals in her sasural and she always wants to live only in her *maike* and despite several attempts by the respondent, the petitioner under the influence of her parents and brother does not want to come to Ranchi and on asking she also does not clearly say any reason for not going to Ranchi. Despite all the social and family attempts made by the respondent, when the petitioner did not return to Ranchi, then respondent filed a case for *Bidai* of the petitioner U/s 9 of the Hindu Marriage Act being case no. 562/2022 in family Court, Ranchi and on the request of the petitioner, the said case has been transferred by the Hon'ble High Court to this Court having no. 07/2023. He had further stated that neither the respondent nor his family members had ever misbehaved with the petitioner and have also not demanded cash or articles as dowry. Neither the respondent nor his family members have ever tortured the petitioner physically and mentally. He had further deposed that under the influence of her parents, petitioner has filed this divorce case only on false facts and evidence and when respondent did not agree for divorce at the mediation Centre at Ranchi, then for getting pressure, parents of the petitioner got filed a criminal case and maintenance case by the petitioner and all the cases are currently pending in Palamu Court.

49. In his cross-examination, he has deposed that Vikash Chaudhary is his own brother-in-law (Sala). He does not remember what was written in para-3 of his affidavit, but the affidavit has been prepared as per his instruction. He has seen the marriage certificate of the petitioner and the respondent. He does not remember its number. He has no proof of the fact written by him in para-4 of the affidavit. He has not brought any proof regarding the Ring ceremony held on 18.11.2015 stated by him in Para-5 of his affidavit. It is not true that on 18-11-2015, no Ring ceremony was performed. He himself says that he very frequently goes to Ranchi and for 1-2 hours he also goes to his sasural. Petitioner and respondent had gone to Vaishnao Devi, Ujjain, Calcutta and Darjeeling but he had not gone along with them and he knows this fact because Vikash Chaudhary had consulted and discussed with him about his tour and after returning from their tour he had told him that they had gone for tour. After 20.03.2020, the girl has never gone to her sasural. His in-laws told him that petitioner did not live properly with them and also did not celebrate any festival with them because he always go to his sasural.

50. R.W.3, Rina Bhagat, has deposed in her examination-in-chief that she knows both the parties to the case and the mother, father and brother were not happy with the marriage of the petitioner and respondent. They had gone to the rented house of the petitioner at Mahavir Chowk, Ranchi and scolded the petitioner. On 04.09.2015, petitioner along with respondent had gone to Mahila P.S Ranchi and gave a Complaint against her parents in the Police Station in which her parents was pressurizing her to come out from the marriage. Then a meeting was called of both the parties in Mahila P.S. Ranchi and with consent, there was a compromise between the parties in Mahila P.S. Ranchi that parents of the petitioner will

solemnize the marriage of petitioner with the respondent, according to social norms and decided that Ring ceremony will be performed in Ranchi and Tilak and other rituals of marriage will be performed at the permanent residence of the petitioner at Daltonganj. On 18.11.2015, Ring ceremony (*Chheka*) rituals was performed at Hotel between the petitioner and the respondent in which family members of both the parties and friends had participated. As per the wishes of the parents and brother of the petitioner, date of marriage was fixed on 27.02.2016 and on the said date, respondent along with his family members and relative came with Barat to Daltonganj, Palamau and on 27.02.2016 in the night, firstly Tilak ritual was performed and thereafter marriage rituals were performed in the presence of family members of both the parties according to Hindu rites and customs. That on the next day of marriage, petitioner came to the house of the respondent at her sasural at Ranchi and both started living as wife and husband at Ranchi. She has further deposed that the petitioner along with her parents and brother as well as with the respondent, several times went to Jammu and Kashmir to visit Mata Vaishnao Devi and in the year, 2019, petitioner and respondent, both together went to Ujjain and Darjeeling via Calcutta for tourism. In the year, 2020, father of the petitioner had purchased a Car, then respondent had also gone along with her parents and brother for worship in Deori Temple, Tamar, Jharkhand. The petitioner after marriage, always used to come and go to her *maike* for which petitioner or his family members neither objected and she used to go to her *maike* voluntarily or when her parents called her.

51. She had further stated that since 20th March, 2020, petitioner is living in her *maike* continuously. Petitioner is posted as Teacher in DAV School, Palamau. Every year, respondent used to came to his sasural to

celebrate his Marriage Anniversary and otherwise also, he also used to come to his sasural to meet them. The father of the respondent died on 31.12.2021 at Ranchi. Respondent informed the petitioner on phone about the same and requested her to come to Ranchi at once but petitioner refused to come to Ranchi. Respondent talked to the parents and brother of the petitioner on phone and requested them to send the petitioner to Ranchi, but they also refused. Neither the petitioner nor her parents or brother came and participated in the Shradh Karma of the father of the respondent. After the death of the father of the respondent, respondent did not go to celebrate Holi in the year, 2022 to the house of the petitioner at Palamau according to Hindu customs due to which, petitioner and her parents became annoyed and said that now their daughter will not go to Ranchi. That respondent tried to make them understand, but they did not listen to the respondent, then respondent went to the house of the petitioner at Palamau and told her to come to Ranchi with him, but petitioner clearly refused to come to Ranchi and after that her parents also started saying that if he wants, he can come and live in Palamau, and now their daughter will live here and not return to Ranchi. The petitioner never lived with her in-laws in her sasural and also never celebrated any festivals in her sasural and she always wants to live only in her *maike*.

52. It is stated that despite all the social and family attempts made by the respondent, when the petitioner did not return to Ranchi, then respondent filed a case for *Bidai* of the petitioner U/s 9 of the Hindu Marriage Act being case no. 562/2022 in Family Court, Ranchi and on the request of the petitioner, the said case has been transferred by the Hon'ble High Court to this Court having no. 07/2023. She had deposed that neither the respondent nor his family members had ever misbehaved with the

petitioner and have also not demanded cash or articles as dowry. Neither the respondent nor his family members have ever tortured the petitioner physically and mentally. That the parents and brother of the petitioner could not digest the marriage of the petitioner with the respondent and only for keeping their respect in their society, they solemnized the marriage of petitioner with the respondent again but they are always trying that somehow they should be divorced. Under the influence of her parents, petitioner has filed this divorce case only on false facts and evidence and when respondent did not agree for divorce at the mediation Centre at Ranchi, then for getting pressure, parents of the petitioner got filed a criminal case and maintenance case by the petitioner and all the cases are currently pending in Palamu Court. She says by herself that since the period of Corona they are living separately. That the petitioner is living in her *maike* and respondent is living in his house at Ranchi.

53. She had deposed that it is not true that she has no personal knowledge of the case and has deposed in favour of her brother as told by her brother. It is not true that her brother always used to assault his wife and tortured her and therefore, petitioner has filed this case for divorce. It is not true that she has deposed falsely in favour of her brother.

54. Upon consideration of the rival submissions and the materials available on record and further taking into consideration the factual aspects as referred hereinabove, this Court is of the view that the following points arise for determination in the instant appeal:

(i) *Whether the learned Family Court has properly appreciated the oral and documentary evidence adduced by the parties?*

(ii) *Whether the conduct of the respondent-husband, as established from the evidence on record, amounts to matrimonial cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act, 1955?*

(iii) *Whether the appellant has established the ground of desertion under Section 13(1)(ib) of the Act?*

(iv) Whether the impugned judgment and decree warrant interference by this Court in exercise of its appellate jurisdiction?

55. Since all the aforesaid issues are intrinsically interconnected and have a bearing upon one another, the same are taken up together for consideration and adjudication.

56. Before answering the aforesaid issue, it would be apt to refer herein the settled proposition of law regarding appellate jurisdiction.

57. It needs to refer herein that since appellate jurisdiction has been invoked herein, therefore, before entering into merit of the case, at this juncture it would be purposeful to discuss the appellate jurisdiction of the High Court.

58. 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).

59. 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.

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

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

61. 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. 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.

62. Further, it needs 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 like this.

63. 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.

64. 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.

65. At this juncture, it 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.

66. 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."*

67. Thus, from the aforesaid, it is evident that any order said to be perverse 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.

68. Thus, "perversity" refers to a finding or decision so unreasonable or irrational that no reasonable person acting judicially could have reached it. It signifies a gross and unreasonable assessment of evidence or law by a court.

69. Further Perversity is a high threshold for intervention, distinguishing it from a mere error of fact or law. The "safest approach on perversity is the classic approach on the reasonable man's inference on the facts but inadequacy of evidence or a different reading of evidence is not perversity, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Damodar Lal v. Sohan Devi, (2016) 14 SCC 197.***

70. In the instant case, the ground for divorce has been taken on the pretext of cruelty and desertion.

71. 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.

72. 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.

73. According to the Hon'ble Apex Court, "cruelty" is the "conduct in relation to or in respect of matrimonial conduct and 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."

74. 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 to include is 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.

75. 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.

76. 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".

77. 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.

78. Further, it requires to refer herein that the Hon'ble Apex Court in ***Joydeep Majumdar v. Bharti Jaiswal Majumdar, (2021) 3 SCC 742***, has observed 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.

79. The Hon'ble Apex Court in the case of ***Vidhya Viswanathan v. Kartik Balakrishnan, (2014) 15 SCC 21*** has specifically held that cruelty is to be determined on whole facts of the case and the matrimonial relations between the spouses and the word 'cruelty' has not been defined and it has

been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other.

80. Cruelty" has an inseparable nexus with human conduct and is always dependent on social strata or milieu to which parties belong, their ways of life, relationship, temperaments and emotions that are conditioned by their social status, reference be made to the judgment rendered by the Hon'ble Apex Court in the case Vishwanath Agrawal v. Sarla Vishwanath Agrawal, (2012) 7 SCC 288.

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

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

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

be taken from the judgment rendered by the Hon'ble Apex Court in the case of ***Joydeep Majumdar v. Bharti Jaiswal Majumdar (supra).***

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

85. Further, in the case of ***Manish Tyagi*** **v.** ***Deepak Kumar*****, (2010) 4 SCC 339 the** Hon'ble Apex Court has categorically observed that to constitute 'cruelty', it is enough that conduct of one of parties is so abnormal and below accepted norm that other spouse could not reasonable be expected to put up with it. Conduct is no longer required to be so atrociously abominable which would cause reasonable apprehension that it would be harmful of injurious to continue cohabitation with another spouse. Hence, it is not necessary to establish physical violence. Continued ill-treatment, cessation of marital intercourse, studied neglect, indifference may lead to inference of cruelty.

86. The word "cruelty" under Section 13(1)(i-a) of the Act has got no static connotation, and therefore, gives a very wide discretion to the Court to apply it liberally and contextually. What is cruelty in one case may not be the same for another and has to be applied from person to

person while taking note of the attending circumstances. Harm or injury to health, reputation, the working-career or the like, would be important considerations in determining whether the conduct of the defending spouse amounts to cruelty. It has to be shown that the defending spouse has treated him with cruelty to cause reasonable apprehension in his/her mind that it will be harmful or injurious to live with the contesting spouse.

87. It is evident from the interpretation of the word cruelty that the same is to be considered on different parameters depending upon the material, if available on record.

88. Since issue of desertion has also been raised before the learned Family Court it would be apt to discuss herein the element of constituting desertion.

89. It needs to refer herein that the word 'desertion' has been given in Explanation to Section 13 (1) wherein it has been stated that "the expression desertion means the desertion of the one spouse 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 one spouse by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

90. It is pertinent to note that the word 'desertion', as has been defined in Explanation part of Section 13 of the Act, 1955, means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the 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.

91. *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."*

92. 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."*

93. 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.

94. 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.

95. 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.

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

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

98. The Hon'ble Apex Court in ***Debananda Tamuli vs. Kakumoni Kataky, (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.

99. The law consistently has been laid down by the Hon’ble Apex Court that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be *animus deserendi* on the part of the deserting spouse. There must be an absence of

consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home.

100. In the backdrop of the aforesaid settled position of law and before entering in to the issue of cruelty and desertion , 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.

101. Now re-adverting to the factual aspect of the instant case.

102. The appellant herself examined P.W.1 and supported the material allegations made in her matrimonial petition. She specifically deposed that after marriage she was not properly treated by the respondent; that she was subjected to demands for cash and a vehicle; that her ornaments were taken away; and that she was subjected to physical and mental harassment. She further stated that the respondent repeatedly threatened to divorce her and that ultimately, she was compelled to reside at her parental home.

103. During cross-examination certain aspects of the matrimonial relationship have emerged, including the fact that the appellant and respondent had initially married by their own choice, that their families subsequently participated in a social marriage ceremony and that they had undertaken certain religious and recreational journeys together. However, in our considered view, the aforesaid circumstances, by themselves, cannot be treated as conclusive proof that no cruelty was ever committed by the respondent.

104. A matrimonial relationship may remain outwardly cordial on certain occasions and yet one spouse may be subjected to humiliation,

harassment and mental agony during the course of ordinary matrimonial life. Occasional visits to religious places, participation in family functions or photographs taken during celebrations cannot automatically neutralise the effect of other acts of cruelty.

105. The evidence of P.W.2 Prabhat Kumar and P.W.3 Sandhya Gupta, the maternal uncle and mother of the appellant respectively, also supports the appellant's case regarding the matrimonial difficulties faced by her. It is settled that in matrimonial proceedings, the standard of proof is the preponderance of probabilities and not proof beyond reasonable doubt. The Court must examine whether, considering the totality of the circumstances, the allegations are more probable than not.

106. The respondent, on the other hand, examined himself as R.W.1 and produced R.W.2 and R.W.3 in support of his defence. The respondent has relied heavily upon the fact that the parties had visited Vaishno Devi, Ujjain and other places together. However, during cross-examination, R.W.1 admitted that he had not produced the travel tickets or any documentary material establishing the details of such visits.

107. Significantly, the respondent admitted in his cross-examination that the appellant had been residing continuously at her parental home since 20.03.2020. He further admitted that his proceeding under Section 9 of the Hindu Marriage Act was instituted after the appellant had already filed the matrimonial suit seeking divorce.

108. It is also relevant that the respondent has not produced the alleged compromise documents relating to the intervention of Mahila Police Station, Ranchi, despite asserting that such documents had been

prepared. He has further admitted that he could not produce several documents relating to the alleged ceremonies and other events relied upon by him.

109. Applying the aforesaid principles in relation to cruelty along with the facts of the present case, this Court finds that the appellant's evidence regarding repeated humiliation, harassment, threats of divorce and the circumstances compelling her to leave the matrimonial home has to be considered collectively.

110. The learned Family Court appears to have attached considerable importance to the fact that the appellant and respondent had travelled together and had participated in social and religious functions. However, the said circumstances were not sufficient to negate the other evidence brought on record. The learned Family Court was required to examine whether the appellant's matrimonial life, viewed in its entirety, was marked by conduct which caused her sustained mental agony and made it unreasonable to expect her to continue the matrimonial relationship.

111. It is considered opinion of this Court that the cumulative effect of the evidence, particularly the testimony of P.W.1 read with the supporting circumstances emerging from the depositions of P.W.2 and P.W.3, establishes that the appellant was subjected to conduct which caused serious matrimonial discord and mental suffering. The respondent's subsequent expression of willingness to maintain the appellant cannot obliterate the effect of the conduct which had already taken place. Matrimonial cruelty is required to be assessed with

reference to the entire course of the relationship and not merely on the basis of the respondent's subsequent offer to resume cohabitation.

112. It is equally important to observe that a wife cannot be compelled to resume cohabitation merely because the husband expresses his willingness to take her back. The Court must first examine whether her withdrawal from the matrimonial home was supported by reasonable circumstances.

113. Therefore, the finding of the learned Family Court that the appellant had failed to establish cruelty, without a proper cumulative assessment of the material evidence, cannot be sustained.

114. Another relevant circumstance brought to the notice of this Court is the proceeding instituted by the respondent under Section 9 of the Hindu Marriage Act, being Original Suit No. 07 of 2023, which is stated to have been dismissed by the learned Family Court.

115. Learned counsel for the appellant has submitted that while dismissing the said proceeding, the learned Family Court observed that the appellant had reasonable justification for withdrawing from the society of the respondent and that, in the prevailing hostile circumstances, it would not be safe to compel her to resume matrimonial cohabitation.

116. If the aforesaid findings form part of the judgment in Original Suit No. 07 of 2023 and the certified copy thereof is available on the appellate record, the same constitute a relevant circumstance which deserves consideration. The dismissal of a proceeding under Section 9 does not, by itself, establish the ground of divorce under Section 13. Nevertheless, the findings recorded therein, insofar as they relate to the

circumstances surrounding the appellant's withdrawal from the matrimonial home, cannot be ignored while assessing the rival claims of the parties.

117. So far as the ground of desertion under Section 13(1)(ib) of the Hindu Marriage Act is concerned, the statutory requirement is that the respondent must have deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the divorce petition.

118. The explanation appended to Section 13 provides that desertion means desertion without reasonable cause and without the consent or against the wish of the other spouse and includes wilful neglect.

119. In the present matter, the appellant has alleged that she was compelled to leave the matrimonial home on account of the respondent's conduct. The respondent, however, contends that she voluntarily left and refused to return.

120. The essential ingredients of desertion, including the factum of separation and the intention to bring cohabitation permanently to an end, have to be established with reference to the evidence and the statutory period.

121. It is necessary to notice that the matrimonial relationship between the parties is not in dispute. Their marriage was solemnized and registered in year 2015 and later on in February, 2016 the marriage ceremony was performed as per social level by the family members of the parties. The dispute essentially relates to the circumstances under

which the parties started living separately and whether the appellant had established the statutory grounds for dissolution of marriage.

122. From the materials available on record, it appears that the appellant left the matrimonial home in the year 2020 and has not returned thereafter. It is the case of the respondent that the appellant has been residing at her parental home without any reasonable cause or justification and has persistently refused to resume cohabitation. According to the respondent, despite opportunities to return to the matrimonial home, the appellant has remained adamant in her decision not to rejoin the matrimonial household.

123. However, the aforesaid allegations were seriously disputed by the appellant in the present appeal. Her specific case is that she was subjected to cruelty and harassment on account of demand of dowry and was ultimately compelled to leave the matrimonial home. She has also asserted that the respondent/husband had filed suit under Section 9 of Hindu Marriage Act 1955 for restitution of conjugal right which has already been dismissed by the learned Family Court by giving conclusive finding that the wife has reasonable justification for her reasonable excuse in withdrawing from the society of respondent/husband.

124. Thus, on the basis of discussion made hereinabove this Court is of the considered view that in the case at hand, the appellant-wife was being compelled to left the matrimonial house having reasonable cause.

125. Upon a careful consideration of the evidence, this Court finds that the learned Family Court has not adequately appreciated the

cumulative effect of the appellant's and testimony of other witness and the surrounding circumstances.

126. The approach adopted by the learned Family Court in giving substantial weight to the photographs, visits to religious places and occasional participation in family functions, without properly examining the allegations of sustained matrimonial harassment, has resulted in an incomplete appreciation of the evidence.

127. It is well settled that the existence of some cordial moments in a matrimonial relationship does not necessarily exclude the possibility of cruelty. A marriage is required to be assessed in its entirety, and the Court cannot disregard the suffering of one spouse merely because the parties were seen together on certain occasions.

128. This Court is also of the view that the respondent's subsequent willingness to maintain the appellant cannot be treated as sufficient to defeat her claim when the overall circumstances establish that the matrimonial relationship had become seriously disturbed on account of his conduct.

129. The appellant has been residing separately for a considerable period. The matrimonial relationship has not been restored despite the passage of time and the institution of proceedings before the Family Court.

130. Having regard to the nature of the allegations, the evidence adduced by the parties, the subsequent course of litigation and the cumulative circumstances, this Court hold that the appellant-wife has successfully established that the conduct of the respondent-husband, considered cumulatively, amounted to matrimonial cruelty within the

meaning of Section 13(1)(ia) of the Hindu Marriage Act, 1955 and due to alleged cruelty she was compelled to leave the society of the respondent/husband and she is residing at her *maike* since year 2020.

131. The impugned judgment and decree, insofar as they reject the appellant's claim for dissolution of marriage on the ground of cruelty and desertion, therefore, suffer from an error in appreciation of evidence and warrant interference by this Court.

132. Accordingly, the judgment dated 30.04.2026 and the decree dated 07.05.2026 passed by the learned Principal Judge, Family Court, Palamau, in Original Suit No. 61 of 2022 are hereby set aside.

133. Consequent thereto the instant appeal stands allowed.

134. Office shall proceed accordingly.

135. Pending Interlocutory Application, if any, stands disposed of.

(Sujit Narayan Prasad, J.)

I Agree.

(Akhil Kumar, J.)

(Akhil Kumar, J.)

Sudhir
Dated:05/11/2026
Jharkhand High Court, Ranchi
AFR

Uploaded on 05/11/2026.