

IN THE HIGH COURT OF JHARKHAND AT RANCHI**F.A. No. 172 of 2024**

Arun Kumar, aged about 48 years, son of Late Ram Dev Ram, resident of Police Line, Sector-12, J.M.P., P.O.-Sector-12, P.S.-B.S. City, District-Bokaro, permanent resident of Village and P.O.-Sidisopur, P.S.-Bihta, District-Patna, Bihar.

... .. Appellant/Petitioner

Versus

Raj Soni Devi, wife of Arun Kumar, daughter of Late Lalan Prasad, resident of C/o Baldev Chaudhary at Sector-4, B.S. City, P.O. & P.S. Sector-4, B.S. City, District-Bokaro, Jharkhand.
Parents Home Village-Dhibra, P.O.-Ushari Sikarpur, P.S. Sahpur, District-Patna, Bihar.

... .. Respondent/Respondent

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

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| For the Appellant | : Mr. Sanjay Kumar, Advocate |
| For the Respondent | : Mr. Rajeeva Sharma, Sr. Advocate |
| | Mr. Om Prakash, Advocate |

Order No. 06/Dated: 24th April, 2025

1. The instant appeal under Section 19(1) of the Family Court Act, 1984 is directed against the order/judgment dated 31.05.2024 passed by the learned Principal Judge, Family Court, Bokaro in Original Suit No. 179 of 2019, whereby and whereunder, the petition filed under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 by the appellant/petitioner seeking a decree of divorce against his wife, has been dismissed.
2. The brief facts of the case leading to filing of the divorce petition by the appellant/petitioner needs to be referred herein as under:

The marriage of the appellant/petitioner with the respondent was solemnized on 26.02.1996 as per Hindu rites and custom. After marriage, they lived together as husband and wife. Out of their wedlock, they have been blessed with three children. The respondent is never interested to live in his joint family. She never paid respect to her in-laws. His parents are ailing but the respondent never taken care of them. She always tried to create nuisance on trivial issues and wanted to live

separately from his family, for which he remained upset. He had to take friendly loan of Rs.3,40,000/- for performing death ceremony of his parents. The respondent pressurized him to purchase ornaments, for which she tortured him by various means and used to create nuisance and quarrel in the family in presence of guest and he had purchased ornaments for her. In spite of that, there was no changes in her behaviour. Rather she had threatened him to get him killed through his son Ranjeet Kumar and one Awadhesh Yadav. He had listen the conversation between Ranjeet Kumar and Awadhesh Yadav about the conspiracy. The respondent wants to take his P.F., Gratuity and other benefit of his service after getting him killed. He had seen his wife/respondent to be an uncommon situation with Ranjit Kumar but due to insult in the society, he did not make hullah or made complaint anywhere. He is a simple Policeman and an ideal husband. Whereas, his wife/respondent always doubts about his character. She has abused him and assassinated his character with his sisters. The respondent has no interest with him. She is eager to get a heavy amount in her name and she always demanded money of Rs.20,00,000/- Their children namely Neha Kumar is aged about 23 years, Prince Raj is aged about 20 years and Riya Kumari is aged about 16 years and all are earning members. The son Prince Raj has given blow on his face and other children have insulted him in filthy languages. The wife/respondent is skilled in tailoring work and earn Rs.8,000-10,000 (approx.) per month. Despite that, he has managed to maintain them by giving Rs. 10,000-15,000/- per month besides other articles such as clothes, laptop and a scooty and household articles. The respondent never supported him to establish relationship of husband and wife between them since 15th November, 2016 and till date she has deserted him and since then there is no relationship of husband and wife between them. The respondent is too cruel and he apprehends his life to live with the respondent. Her cruelty and behaviour has defamed him in the society. She is indulged in voluntarily sexual intercourse with Ranjit Kumar. He tried to persuade her but in vain. On 15.11.2016, she left his company and started living with Ranjit Kumar. She came to Bokaro and lived at Sector-4, B.S.City to disturb him. Said Ranjit Kumar has also threatened to kill him. The respondent had given an application to

his department levelling false and baseless allegations, which caused him torture, This suit is not presented in collusion with each other. The cause of action is said to be arisen on 26.02.1996 when their marriage was solemnized and on 15.11.2016 when they started living separately.

3. It is evident from the factual aspect that the appellant/petitioner had a motion by filing a petition under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 for decree of divorce on the ground of cruelty and desertion.
4. The learned Family Judge has called upon the respondent-wife. The wife has filed written statement and altogether five issues have been framed which are as follows:
 - (i) Is this suit maintainable in its present form?
 - (ii) Whether the petitioner has valid cause of action for the suit?
 - (iii) Whether the respondent (Wife) has subjected the Petitioner (husband) to cruelty after marriage?
 - (iv) Whether the respondent (wife) deserted her husband (petitioner) since last two years prior to filing of the suit and is entitled to get a Decree of dissolution of marriage on the basis of Section 13(1)(ia)(ib)(ic) of Hindu Marriage Act, 1955?
 - (v) Whether the petitioner is entitled to get the relief as prayed for?
5. The evidences have been made on behalf of both the parties. Thereafter, the judgment has been passed dismissing the suit by holding that none of the ground either of cruelty or desertion has been established by the appellant/petitioner which is the subject matter of the present appeal.

Submission of the learned counsel for the appellant/petitioner:

6. It has been contended on behalf of the appellant/petitioner that the factual aspect which was available before the learned Single Judge supported by the evidences adduced on behalf of the appellant/petitioner has not

properly been considered and as such, the judgment impugned is perverse, hence, not sustainable in the eyes of law.

7. It has been submitted that the issue of cruelty and desertion has not been taken into consideration in right perspective even though the fact about living separately has well been established.
8. Learned counsel for the appellant/petitioner, based upon the aforesaid ground, has submitted that the judgment impugned suffers from perversity, as such, not sustainable in the eyes of law.

Submission of the learned counsel for the respondent:

9. *Per contra*, Mr. Rajeeva Sharma, learned senior counsel assisted by Mr. Om Prakash, learned counsel for the respondent-wife, while defending the impugned judgment, has submitted that there is no error in the impugned judgement. The learned Family Judge has considered the issue of cruelty and desertion and having come to the conclusion that no evidence has been adduced to establish either cruelty or desertion, has dismissed the petition.
10. It has been contended that the allegation so far as alleged of commission of cruelty is considered, the ground has been raised before the learned Family Judge that the respondent-wife is not taking care of the in-laws. It has been submitted that the father-in-law has died after 6-7 months of the marriage of the parties and mother-in-law has also died sometime in the year 2016 while the marriage was solemnized sometime in the year 1996 and the petitioner for grant of decree of divorce has been filed in the year 2019, as such, the ground of not taking care of the in-laws is absolutely incorrect.
11. It has also been submitted that the appellant-husband and the respondent-wife are having three children, the elder one is a daughter aged about 26 years; second one is a son aged about 22 years and third one is also a daughter aged about 20 years.

12. It has been submitted that the appellant/petitioner has tried to mislead the Court by filing misleading application on the misleading ground of committing cruelty by the wife upon the husband.
13. Learned senior counsel, based upon the aforesaid ground, has submitted that if on that pretext, the factum of cruelty and desertion has not been found to be established, based upon which the decree of divorce has been refused to be granted, the impugned judgment cannot be said to suffer from error.

Analysis:

14. This Court has heard the learned counsel for the parties and gone through the finding recorded by the learned Family Judge in the impugned judgment.
15. The case has been heard at length. The admitted fact herein is that the suit for divorce has been filed on the ground of cruelty and desertion, i.e., by filing an application under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 and accordingly, issues have been framed wherein primarily issue nos.3 and 4 pertains to cruelty and desertion.
16. The evidence has been led on behalf of both the parties. For ready reference, the evidences led on behalf of the parties are being referred as under:
 - (i) PW-1 Subodh Kumar has stated that due to estrangement and lack of faith upon each other both used to level wrong allegations against each other, due to which there was unrest in the family and the appellant/petitioner was compelled by the respondent to live separately from his parents. But in the cross-examination, he has failed to say as to when the marriage between the parties was solemnized and how many children they have. P.W.-1 has also not seen the respondent.
 - (ii) PW-2 Sunil Kumar Bauri has also deposed like PW-1 in his examination-in-chief filed on affidavit but he has also not seen the respondent nor he is knowing her.

- (iii) PW-3 Manish Singh is classmate of the daughter of the appellant/petitioner and in his examination-in-chief filed on affidavit has deposed that the appellant/petitioner and the respondent are residing separately since 2016 and whenever the petitioner was intending to meet with his parents, the respondent was not allowing him to do so and used to quarrel and abuse him. In para-17 of his cross-examination he has specifically deposed that no incident has taken place in his presence.
- (iv) PW-4 (Petitioner) has stated in his examination-in-chief filed on affidavit that his wife was not desiring to reside in joint family, used to quarrel with his brother, sister and parents and compelled him to live separately from his parents and she always prevented him to go to his parents. He has further deposed that his parents died before time in absence of proper care by him. He has also deposed that the respondent tried to get him killed so that she could continue her illicit relationship with one Awadhesh Yadav, a Constable of C.R.P.F.

17. The respondent-wife has also been examined as R.W.-1. For ready reference, her evidence is being referred as under:

- (i) RW-1 (respondent) has stated in her examination-in-chief filed on affidavit that out of their wedlock, they have been blessed with three children and they are living with her. At present, she is living in her matrimonial home at Patna. The appellant/petitioner kept her properly for few days and after that he started subjecting her to cruelty and he is living with another lady namely Pooja Devi from whom he has three children. Due to his such illicit relationship, the petitioner stopped providing them maintenance and since 15.03.2016, he without any reasonable cause has no conversation and taking care of them. She is still ready to live with the appellant/petitioner. She and the children are fully dependents upon the petitioner and she is unable to maintain herself. Several times, she requested the appellant/petitioner for providing maintenance but he paid no heed. After that she had filed Original Maintenance Case

No. 151 of 2019 before the court for maintenance, in which order of maintenance has been passed vide dated 17.06.2019. Due to filing of the maintenance case, he has filed this divorce case against her to pressurize her to withdraw that maintenance case. He with a view to defame her, has assassinated about her character. She does not know any other person except the appellant/petitioner and at present she is still living in the paternal house of the appellant/petitioner with his family members. On the contrary, the petitioner is living with one Pooja Devi at Bokaro and out of that relationship, she has given birth to three children. The petitioner is subjecting her and her children with cruelty and torture. Due to such illicit relationship, she has made a complaint to the Department of the petitioner, for which an inquiry was initiated against him. Several panchayatis were held but the petitioner did not mend in his behaviour and he is living with said Pooja Devi. The petitioner has abandoned her without any rhyme and reason. She has the responsibility to get married two daughters and due to paucity of money, she is unable to get them married. The petitioner is A.S.I. in Jharkhand Police.

In her cross-examination it has come that at the time of her marriage her in-laws were alive, appointment of the petitioner was on compassionate ground, after 6 or 7 months of her marriage as her father-in-law expired and after ten years of death of her father-in-law, her mother-in-law expired, since 15.03.2016 she is residing separately from her husband/petitioner, the petitioner is providing Rs.10,000/- per month as maintenance since 2021.

18. The learned Family Judge has gone into the interpretation of the word “cruelty” and “desertion” and assessing the same from the evidences led on behalf of the parties as also the submission made in the pleading, i.e., plaint and written statement, has found that the element of cruelty and desertion could not have been established.
19. The learned counsel for the appellant/petitioner has argued that the evidence of cruelty and desertion has not properly been considered and as

such, the judgment suffers from perversity, hence, not sustainable in the eyes of law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22. The ground for divorce has been taken of cruelty and desertion. 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.
23. This Court deems it fit and proper to take into consideration the meaning of ‘cruelty’ as has been held by the Hon’ble Apex Court in ***Shobha Rani v. Madhukar Reddi*, (1988)1 SCC 105** wherein the wife alleged that the husband and his parents demanded dowry. The Hon’ble Apex Court emphasized that “cruelty” can have no fixed definition.
24. 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.”

25. 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.”
26. 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.
27. 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”.
28. 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.
29. 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.

30. It is, thus, evident that the Hon'ble Apex Court in the recent judgment passed in *Joydeep Majumdar v. Bharti Jaiswal Majumdar* (supra) has been pleased to lay down 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.
31. The definition of “desertion” is required to be referred herein as defined under explanation part of Section 13 which means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage.
32. *Rayden on Divorce* which is a standard work on the subject at p. 128 (6th Edn.) has summarised the case-law on the subject in these terms:

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

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

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

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

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

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

Court in *Lachman Utamchand Kirpalani v. Meena*, AIR 1964 SC 40 which has been consistently followed in several decisions of this Court. The law consistently laid down by this Court is that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be *animus deserendi* on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home. The view taken by the Hon'ble Apex Court has been incorporated in the Explanation added to sub-section (1) of Section 13 by Act 68 of 1976. The said Explanation reads thus:

“13. Divorce.—(1) ...

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

37. This Court, on the premise of the interpretation of the word “cruelty” and “desertion” has considered the evidences of the witnesses as has been incorporated by the learned Court in the impugned judgment.
38. It is evident therefrom that the main ground of cruelty has been taken of not taking care of the in-laws. The ground was taken before the learned Family Judge that the father-in-law had died after 6-7 months of solemnization of the marriage of appellant and respondent sometime in the year 1996. The mother-in-law had also died sometime in the year 2016.
39. The fact about the death of father-in-law and mother-in-law is not in dispute.
40. The suit has been filed in the year 2019. The sole ground, therefore, cannot be said to be sufficient to prove the ground of cruelty of not taking

care of the in-laws since the in-laws had already died way back before filing of the suit, as such, the said ground has been disbelieved by the learned Family Judge.

41. The desertion has also been taken as a ground but the desertion has been defined and interpreted by the Hon'ble Apex Court that the desertion will be said to be desertion if either of the party, on his/her own wish, has left the matrimonial house. But, no such evidence has been produced by the appellant/petitioner to prove the element of desertion showing that the respondent-wife has left her matrimonial house.
42. The learned Family Judge, on consideration of both the issues, has not found the ground for dissolution of marriage and therefore, dismissed the suit.
43. This Court, based upon the aforesaid discussion, is of the view that the appellant/petitioner has failed to establish the element of perversity in the impugned judgment as per the discussion made hereinabove, as such, the instant appeal deserves to be dismissed.
44. Accordingly, the instant appeal fails and is dismissed.
45. Pending interlocutory application(s), if any, also stands disposed of.

(Sujit Narayan Prasad, J.)

(Rajesh Kumar, J.)

Saurabh/A.F.R.