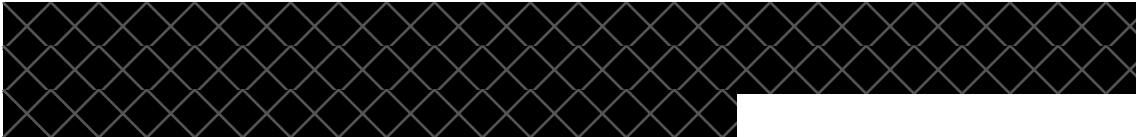
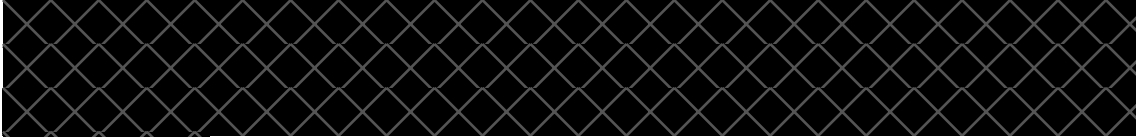


IN THE HIGH COURT OF JHARKHAND AT RANCHI
F.A. No.74 of 2022



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



... .. **Respondent/Respondent**

P R E S E N T

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

.....

For the Appellant : Mr. Ankit Vishal, Advocate
For the Respondent : Mr. Satish Kumar Keshri, APP.

.....

C.A.V. on 30.04.2025 Pronounced on 10/06/2025

Per Sujit Narayan Prasad, J.

Prayer:

1. The instant appeal has been filed challenging the legality and propriety of impugned judgment passed on 30.06.2022 and decree signed on 08.07.2022 by learned Principal Judge, Family Court, Chatra whereby and whereunder the Original Suit No. 29 of 2019 filed by the petitioner-appellant-husband under Section 13(1), (i-a), (i-b) & iii of the Hindu Marriage Act, 1955 for a decree of divorce has been dismissed.

Factual Matrix

2. The brief facts of the case of the appellant-husband as narrated, is that, his marriage with the respondent-wife

██████████ was solemnized as per Hindu rites and customs on 16.02.2017 and after her marriage and upon her *Vidai*, the respondent-wife came to reside at her matrimonial house.

3. After a brief period of stay, the respondent-wife began to complain about pain in her abdomen and told the appellant that she was suffering from abdominal pain since before marriage and after taking injection the pain used to subside.

4. The appellant, who was working in Delhi in a private job, had taken the respondent-wife along with him to Delhi, where he took his wife to a hospital for treatment, where MRI was performed and in the scan a tumor was detected in the womb of the wife. As per the medical advice, when the appellant got his wife admitted in a hospital at Delhi, then the father and the brother of the wife refused to get her operated upon at Delhi and stated that they would get the respondent-wife treated on their own.

5. It has been stated by the appellant that the parents and brother of the respondent-wife had got the respondent married to the appellant through fraud after active concealment of illness.

6. The appellant has also stated that since the operation was not performed, the respondent-wife would

always threaten the petitioner of committing suicide.

7. It has been further stated that respondent-wife used to abuse him and inflicting physical blows and quarrels with the appellant.

8. It has also been stated that in May, 2017, while the respondent-wife was staying with the appellant at Delhi, then without informing the appellant, she slipped out of the appellant's house and remained missing for two days during which frantic searches were made by the appellant and the respondent-wife returned to appellant's house on her own after two days.

9. Thereafter, appellant brought his wife back to his native place in Chatra (Jharkhand) and entrusted the responsibilities of his wife to his parents and other inmates of the house, but the respondent-wife continued to behave rudely and ill-treated her parent-in-laws and other family members and was very harsh and nasty with them. Several times, she tried to set herself on fire, which was prevented by the parents of the appellant. Then, the parents of the respondent-wife were informed who, accompanied by few members of the society, visited appellant's house and took away the respondent-wife from her matrimonial house and since then respondent-wife is continuously staying with her parents at her parental house.

10. It is the case of the petitioner that marital life of the appellant has got utterly spoilt and meaningless since there has been virtually no physical relations and cohabitation between the appellant and the respondent-wife since after six months of marriage and as the wife was living in her parental house, the petitioner did not enjoy companionship or cohabitation with his wife which has made his marriage a mockery and he has been subjected to the social ridicule.

11. The appellant has categorically asserted in his plaint that since more than one and half years as on the date of filing of the plaint, he has not established any physical relations with his wife and their conjugal relations have been perfectly impaired since his wife was always staying and living with her parents.

12. The appellant has also alleged that the respondent-wife and her parents pressurized the appellant for providing them money for the treatment of his wife and in case he would not provide them the demanded money, they would get him and the entire family implicated in a false dowry case and get them imprisoned.

13. It has further been stated that fifteen days prior to the filing of the instant suit, the respondent-wife suddenly developed acute abdominal pain and then father of the respondent-wife demanded money from the appellant for the

treatment of the respondent, then the appellant transferred Rs.15,000/- to the accounts of the in-laws and later the appellant, with the support and cooperation of an insurance claim got the operation of the respondent-wife performed at Hill View Hospital at Ranchi.

14. It has also stated that the respondent-wife always accuses the appellant of having performed second marriage, whereas there is no iota of truth in the said allegations.

15. It has been asserted that the attitude and behaviour of the respondent-wife with the appellant and his family members has always been very cruel and nasty. The appellant has a gut-feelings and perceives that because of the cruel nature of the wife and the routine problems erupting between the couple, their married life would never be on the even track and run smoothly even in the future. Their relations as a married couple would always remain impaired and there appears no probability of any improvement in future. Their marriage was wrecked beyond salvage. The appellant has also spent nearly Rs. 1,30,000/- on the treatment of the respondent-wife, yet there has been virtually no improvement in the nature and attitude of the respondent-wife.

16. In the aforesaid circumstances as alleged by the appellant, an application under Section 13(1)(i-a)(i-b) of the

Hindu Marriage Act, 1955 had been preferred by him before Family Court, Chatra for a decree of divorce and the same has been numbered as the Original Suit No. 29 of 2019

17. The case was admitted for hearing and upon notice the respondent wife appeared in this case and sought time to file her written statement.

18. It is evident that in tune with the provisions of Family Court Act to explore the possibilities of an amicable solution between the parties to this matrimonial discord, the case was referred to the Mediation Centre, Chatra but the mediation stood failed between the parties. The court again took a chance to test the probability of mediation between the parties and an amicable settlement, but prospect of reconciliation between the petitioner and the opposite party again stood failed.

19. Thereafter, the respondent-wife filed her written statement and strongly denouncing the contentions of the appellant, as made in the plaint and refuted the allegations made against her.

20. By virtue of her written statement, the respondent-wife had *inter alia* stated that the present matrimonial suit is not legally maintainable in law as well as on the facts of the case and it is a fit case to be dismissed with cost.

21. It has been contented that the present baseless suit

has been filed by the appellant only with an ulterior purpose to harass the respondent. The appellant has no cogent and reliable grounds to file this matrimonial suit against the appellant since she is a woman of good character and has always provided respect and regards to the appellant and his entire family members, but it is the appellant himself, who has always neglected the appellant.

22. It has been stated that in fact respondent desires and wants to spend her entire life with the appellant and is still ready to live with the appellant to lead her conjugal life with him.

23. The learned Family Judge has taken in to consideration the pleading made by the parties in the plaint as well as in the written statement. The case proceeded for evidence during which the appellant has produced and examined three witnesses including himself.

24. The respondent-wife has produced and examined altogether six witnesses including herself.

25. The learned Principal Judge, after hearing learned counsel for the parties, framed six issues for adjudication of the *lis*, which are being referred as under:

1. Whether the suit is maintainable in it's present form?
2. Whether the petitioner/plaintiff has a valid cause of action for the divorce suit?
3. Whether the OP [REDACTED] (nee [REDACTED])


has treated the petitioner and his family members with cruelty ?

4. Whether the OP has refused to develop physical relationship with the petitioner/plaintiff ?

5. Whether the plaintiff is entitled to get divorce dissolving the marriage of the petitioner with OP U/s 13(1) (i-a)(i-b) & iii of the Hindu Marriage Act, 1955 ?

6. Whether the petitioner/plaintiff is entitled to be awarded the relief or reliefs as prayed for?

26. The aforesaid issues were decided against the appellant-husband and in favour of respondent-wife and decreed the suit on contest in the following terms :

“Under the facts and circumstances of the case and after considering the entire material available on records, this Court comes to the **definite conclusion** that the plaintiff/petitioner  has miserably failed to prove the grounds of alleged **cruelty and desertion** pleaded by him in his petition and as well as his wife’s status of being an individual having an **unsound mind** while actually filing the instant suit under section 13(1), (i-a), (i-b) & iii of the Hindu Marriage Act, 1955 before this Court and therefore, he is **not entitled** for a decree of divorce.”

27. The appellant-husband, being aggrieved with the judgment passed on 30.06.2022 and decree signed on 08.07.2022 by learned Principal Judge, Family Court, Chatra approached this Court by filing the instant appeal.

Submission made on behalf of the appellant-husband

28. Learned counsel appearing for the appellant-husband has submitted that the Learned Family Court below has failed to appreciate that the petitioner /appellant has

produced credible evidence which are sufficient to establish that the respondent-wife has subjected him to cruelty and on account of cruelty and desertion, the petitioner / appellant is entitled for grant of decree of divorce.

29. Further, it has been submitted that the findings recorded by the learned Trial Court while answering issue no.3 (cruelty) are perverse and based on mere presumption, therefore, the same will not stand in the eye of law.

30. Submission has also been made that the learned Court below also failed to appreciate that the petitioner / appellant has successfully substantiated the allegation that the respondent has deprived him from cohabitation and, therefore, the petitioner / appellant is entitled for grant of decree of divorce. But that aspect of the matter has not been taken into consideration by the learned Family Court.

31. It has lastly been submitted that the learned Trial Court has failed to appreciate the oral and documentary evidence produced on behalf of petitioner / appellant and, thus, came to wrong conclusion.

32. Learned counsel appearing for the appellant, on the basis of aforesaid grounds, has submitted that the judgment passed by the learned Principal Judge, Family Court, Chatra requires interference.

Submission made on behalf of respondent-wife

33. Learned counsel for the respondent-wife, defending the

impugned order, has submitted that the appellant has sought divorce on the ground that the respondent-wife is of unsound mind or has been suffering continuously or intermittently for mental disorder and the appellant cannot reasonably be expected to live with the respondent but the learned Family Court, after taking into consideration the oral and documentary evidence, has held that the entire allegations levelled in are absolutely illegal, uncalled for and has rightly dismissed the suit.

34. Learned counsel for the appellant has further submitted that learned trial court has rightly held that the appellant is not entitled for the decree of divorce on the ground of cruelty and desertion because the appellant has miserably failed to prove the allegation of cruelty and desertion against her.

35. Learned counsel for the respondent-wife has submitted that the appellant has taken desertion as a ground for divorce but this plea is not available to him since it is the appellant and their family members who demanded dowry from her parents and when her poor parents failed to fulfill the illegal dowry demands of the appellant and his family members, she was subjected to constant torture, harassment and cruelty (both physically and mentally) by the appellant and her in-laws and ultimately they ousted her from her matrimonial house located at village Kurumdadhi

and then she had to take shelter in her Naihar where she is residing ever and learned Family Court, taking into consideration the evidence led by the respondent-wife, has rightly rejected the prayer for divorce made by the appellant.

36. Submission has been made that the learned Principal Judge, Family Court on the backdrop of the evidence led by the parties has come to the conclusion that the appellant-husband has miserably failed to establish the grounds of cruelty, desertion and mental illness of his wife without any valid, cogent and tenable evidence and he is just cooking up flimsy grounds to avoid keeping his wife with him, who otherwise is very keen to rehabilitate her marital life with the appellant and except the vague and omnibus allegations made by husband against his respondent-wife, no cogent convincing, clinching evidence, no concrete documentary evidence has been led to substantiate the charges of cruelty, desertion and mental illness.

37. Learned counsel for the respondent-wife on the aforesaid grounds has submitted that the impugned judgment requires no interference by this Court

Analysis

38. We have heard the learned counsel for the appellant-husband as also learned counsel for the respondent-wife and perused the material available on record and the finding recorded in the impugned order.

39. This Court, before looking into the legality and propriety of the impugned order, requires to refer the testimonies of the witnesses, as available on record.


40. The appellant, in support of his case, has adduced three witnesses including himself. The relevant portion of the testimonies of the witnesses are mentioned as under :-

PW-1, Shashi Kumar Singh, who is the neighbour of the appellant, in his examination-in-chief, has deposed that he knows both the parties to the instant case. The appellant's marriage with the respondent was performed on 16th February, 2017 and after her marriage she came to reside with appellant at her matrimonial house. After few days of stay, she started to complain about the stomach ache and would say that she was experiencing this ache before the marriage but after taking injection she used to feel comfortable. He has averred that appellant works in Delhi and he had taken the respondent-wife along with him to Delhi and there he took her to a hospital This witness has stated that the parents of respondent and the brother got the marriage of the respondent performed with appellant through active concealment of fact of her illness. He has further deposed that the respondent would always curse and abuse the appellant and his family members. He has also deposed that at Delhi the respondent-wife without informing her husband had absconded from her house for two days and

after a frantic search she returned home. Thereafter, the petitioner returned to his native place at Chatra along with his wife and then the wife began to live with her parent-in-laws but she was not courteous and polite to her parent-in-laws and was always engaged in a verbal dual with them and began to repeatedly threaten them of setting herself on fire and committing suicide. Annoyed with this attitude of the respondent, her in-laws informed her parents at the parental house and thereafter they took her back to the Naihar. It has also been deposed by this witness that the respondent and her parents would repeatedly raise demand of money from the appellant for the treatment of respondent-wife and when the said demand was not met with then they would always threaten the petitioner and his entire family to be implicated in a criminal case and suffer incarceration. It has also been deposed that the attitude and behaviour of the respondent-wife was quite rude and hostile towards the appellant and his family members. According to the version of this witness, the future of the relationship between the appellant and the respondent looks bleak, hence this witness feels that the marriage of petitioner could not last long.

However, in his cross-examination, this witness has deposed that the instant case has been filed by Dileep Singh and he has further averred that whatever has been tutored

to him by the petitioner-appellant, he has filed his sworn affidavit and he has accordingly deposed before the Court.

P.W. 2 Dileep Kumar is the father of the petitioner . In his examination-in-chief, he has repeated the entire contents of the deposition of PW-1 Shashi Kumar Singh.

In his cross-examination, he has deposed that in case the petitioner and the opposite party lived and stayed together then he has no objections at all. He has a house both at Kurumdadi and Chatra. It has further been deposed that when his daughter-in-law was not provided the medical treatment for her illness then she used to threaten of committing suicide. Further, he has deposed that when his daughter-in-law was allegedly absconding for two days then neither he himself nor his son, the petitioner had lodged any missing report before any police station in Delhi. He further categorically re-asserts that there has been no physical union and sexual relations established between his son and his daughter-in-law. At para-6 of his deposition, although he has acknowledged the evidence provided by PW-1 Shashi Kumar Singh, but he has categorically denied Shashi Kumar Singh to be related to him any way and he has further denied that the averment of Shashi Singh that the instant case has been filed by the petitioner's side is an after thought and a

later exercise made upon the previous conduct of the OP of having instituted the case is totally false.

At para-26, he has deposed that he was unaware of the name of the hospital where his daughter-in-law had undergone MRI scan and only his son [REDACTED] could answer the same. At para-27, he has deposed that his daughter-in-law was living in her Maika/parental house since about two and half years, but he could not tell the date from which she has been staying there. At para-28, he has deposed that they had earlier tried to bring back their daughter-in-law back to her Sasural but later he stated that he had gone alone to fetch his daughter-in-law, but he could not make any statement regarding the date, month, day and the year of the same. At para-29, he has candidly averred that the monetary demands made by the family of his daughter-in-law for her treatment and the consequent pressure exerted upon them for the same.

P.W. 3 [REDACTED], is the appellant himself, who in his examination-in-chief has practically echoed the same contents of examination-in-chief of PW-1 & PW-2 and at para 11 & 12 of his affidavit, he has also laid much emphasis on the aspect of the non-cohabitation of respondent and the consequential non-establishment of physical sexual relations with the OP-wife because of her lack of co-operation in leading the marital life and

expansion of family and her insistence on living in her Naihar alone. He has also expressed a grave apprehension of his marital life ever improving in future and he has thus prayed this Court for dissolution of his marriage with the OP-wife on account of his contentions made in his matrimonial application/plaint.

In his cross-examination, this witness has admitted his wife-OP of having stayed with him for about six months after the marriage. At para-4 of his cross-examination, he has deposed that even if his wife desires to live and stay with him with good behaviour and attitude then also he would not keep his wife with him because he has no faith and confidence upon her. Further, at para-6 of his cross-examination, he has deposed that the basic cause for seeking divorce from his wife-OP is the bad behaviour of his wife, constant threats of committing suicide or killing people in the family and for getting the family members implicated in the false cases. He has deposed that his wife has misbehaved with him and treated him with cruelty but he has not filed any documentary evidence to this effect before this Court. He has, however, claimed that his wife continues to serve him threats of putting herself on fire and committing suicide and he has earlier filed documentary evidence to this effect before this Court. At para-7, he has deposed that at Delhi, when his wife had gone missing for two days from their

house, then he had not lodged any informatory petition (Sanha) before any police station in Delhi, but, he had stated this fact back home at Chatra. He has deposed that he had no documentary evidence to demonstrate the ill-treatment, ill-behaviour and cruelty inflicted by his OP-wife, hence, he could not file it before the Court. Lastly, he has denied the suggestion that just for the sake of saving his skin and protecting himself from the savage of section 498(A) IPC and section 3/4 of Dowry Prohibition Act, he had filed the instant case for dissolution of his marriage with OP-wife. He has deposed that he had filed the instant case for dissolution of his marriage with the OP-wife prior to institution of the case under section 498(A) of IPC and section 3/4 of Dowry Prohibition Act.

41. The respondent-wife has also adduced six witnesses in support of her case which are being dealt hereunder as :-

OPW-1 Vijay Singh, is the cousin brother of OP-wife. In his examination-in-chief, he has deposed that OP-wife's marriage with the petitioner-appellant was solemnized on 16.02.2017 as per Hindu rites and customs, where-after upon her Vidai, she went to her Sasural along with the petitioner and began to lead a conjugal life with him. After few months of her stay in Sasural, the petitioner began to indulge in abusing his wife and to make the dowry demands from her. When the OP-wife stated that her parents were old

and poor peasants and they could not further give anything in dowry, then the petitioner-appellant and his family members got annoyed with her and began to inflict both mental and physical torture upon the OP and exclaimed that they were not at all keen to keep her along with the petitioner-appellant.

It has further been deposed that that petitioner had turned out the OP-wife several times from his house yet the OP was very much keen and desirous to always live and stay with her husband in her Sasural. This witness has denied that OP-wife had ever ventured out of her house to stroll anywhere without the permission of her husband and neither she had crossed her limits and treated the petitioner with any cruelty or any ill- treatment. He has assertively denied the allegations of the petitioner-appellant that OP-wife had a tumor and was medically treated upon. He has averred that OP is fully fit and fine and in a healthy state and thus was fully competent to live and stay with her husband all through her life. He has also averred that the case brought by the petitioner-husband for dissolution of his marriage with the OP was purely false, fabricated and untenable and the reply filed by the OP in this case was purely true and reasonable.

In his cross-examination, at para-3, he has averred that the OP-wife had instituted a case under the Dowry Act upon

her husband, which was instituted after the filing of the instant matrimonial petition. At para-4, he has deposed that after her marriage, the OP-wife lived well in her Sasural for about 6-7 months. While she was in her Sasural, [REDACTED] had taken her along to Delhi where she was badly treated and cruelty was inflicted upon her. Thereafter, from Delhi [REDACTED] was dropped back to her Sasural, where the atrocities commenced upon the OP-wife. At para-5 & 6, he has averred that [REDACTED] lived in Delhi for about six months and thereafter, for one month she lived in her Sasural and at Delhi the husband ill-treated and misbehaved with her and while she was staying in her Sasural, she was ill-treated and her parent-in-laws misbehaved with her. At para-7, he has averred that the atrocities upon the OP had begun in the year 2017 itself, but no case had ever been filed against the petitioner-husband or his family members. At para-9 of his deposition, he has averred that prior to her marriage, wife had never complained about any stomach ache, but after her marriage, he got to know about the abdominal ache of the OP-wife during her stay at Delhi. He has averred that she was treated at Delhi and thereafter the husband dropped her to his parents in her Sasural and husband went back to Delhi. At Ranchi, the OP-wife was treated at the medical clinic of Dr. Shobha Chakravorty, the expenses of which were borne by

the husband. At para-12, he has candidly admitted that during her stay in Sasural, her cousin sister had threatened the inmates of the house of torching herself to flame in order to commit suicide and then everybody had joined hands to save her. However, this information about the same had been provided to him by the father of the petitioner [REDACTED]. At para-13, he had significantly deposed that both [REDACTED] and [REDACTED] have been living separately from each other since last about two and half years and in the meanwhile no conjugal physical relations have ever taken place between them and both are living apart. At para 14, he has deposed that [REDACTED] Singh had discussed with him how much was received or not received by them as dowry and regarding rest of the dowry demand, the same had been informed to him by [REDACTED]. However, no dowry demand had ever been raised in his presence. At para-16, he has denied the suggestion that no dowry demand were ever raised from his cousin sister [REDACTED] and her family members. Lastly, at para-17 of his deposition, he has denied the suggestion that [REDACTED] had lodged a false and fabricated case of dowry demand upon her husband [REDACTED].

OPW-2 Janardan Singh is another cousin brother of opposite party, who in his examination-in-chief has stated

the same contents as that of OPW-1, hence it needs no repetition here. However, in his cross-examination, at para 4 he has deposed that the OP-wife has been turned out of her Sasural no less than 3-4 times, but he could not specify the day and date of the same. Although, she had not been ousted from her matrimonial house in his presence, but he had received this information through his sister, who had communicated it to him from her Sasural. He has further deposed that once when OP-wife had been ousted from her Sasural at 4.00 PM evening, then after he was informed on cell phone, he had accompanied the father, brother and other members of the family and had reached her Sasural the same day at about 5.00 P.M after she had been ousted. Thereafter, the meeting and conference, the husband and in-laws agreed to keep her back and thereafter she stayed in her Sasural for about three months. At para-9, he had significantly deposed that later the demand of money as dowry was made in his presence by the in-laws. He has candidly averred that they could not fulfill the demand but no case was instituted by them. Neither they informed about the demand to either any police station or any Court. At para-10, he has deposed that his sister has been living separately from her husband since about two years, however, after her marriage, upon her Vidai, she had gone to her Sasural and from there she later on went to Delhi and her

marital life was moving smoothly and her conjugal life was very peaceful and happy. At para-12, he has deposed that when she returned from Delhi then her in-laws began to torture and torment her At para-13, he has averred that at Chatra, OP-wife was not kept well for the full one year that she stayed in her Sasural and in between, her in-laws began to torture her and treat her with cruelty and began to make demand for money, then they filed a case before the Court. He has deposed that the in- laws of the OP-wife used to make a demand of Rs. 2,00,000/-. At para-17, he has deposed that in case his sister would get proper treatment and honour in her Sasural, then she was very keen and desirous of staying with her husband. At para- 18, he has categorically denied the suggestion that his sister is mentally sick and she has been treated at Ranchi. At para-19, he has denied the suggestion that his sister had ever tried to torch herself to flame and commit suicide in her Sasural and that she was ever trying and exerting to get the entire family be implicated in a case. At para-20, he has deposed that his sister was still very keen and desirous to stay in her Sasural along with her husband and in-laws and lead a peaceful conjugal life.

OPW-3 Raj Kumar Singh is another cousin brother of the OP-wife, who in his examination-in-chief, has in a routine and mechanical manner repeated the same contents as that

of OPW-1 & OPW-2 and has virtually stated the contents in toto.

In his cross-examination, at para-4, he has candidly averred that his sister [REDACTED] does not suffer from any kind of illness. According to him, neither she had any complaints of illness prior to the marriage or thereafter. At para-5, he has deposed that his sister [REDACTED] is not staying with her husband since last about three to three and half years. At para-6, he has denied the suggestion that the mental health of [REDACTED] is not well and proper. At para-7, he has asserted that [REDACTED] has never ever made an attempt to commit suicide. At para-8, he has denied about having knowledge of the information regarding unsuccessful attempt of [REDACTED] to commit suicide had been communicated to her Maika. At para-9, he has deposed that [REDACTED] had gone to her Maika on her own. Dowry demand was being raised from her and when the demand could not be fulfilled she was ill-treated and thereafter turned out of her matrimonial house. He has further averred that dowry demand had been raised by the husband and this information had been passed on to him by his sister. He has averred that a case under section 498(A) IPC for dowry demand and ousting the OP-wife from the matrimonial house had been instituted,

OPW-4 Sandeep Kumar Singh is another cousin brother of OP-wife. In his examination-in-chief, this witness significantly has also deposed the same contents as that of OPW 1 to 3 and has not added anything more to their averments.

In his cross-examination, at para-4, he has deposed that dowry demand from the OP had been raised in his presence. At para-7, he has deposed that the marriage of [REDACTED] had been performed on 16th February, 2017 and after staying in her Sasural for about six months, she returned to her Maika and at para-8, he has deposed that ever since the year 2017, in the last four years the litigating couple have not met each other. At para-9, he has deposed that the marital discord and the quarrel between the petitioner-husband and OP-wife had been communicated to him by the father and brother of his cousin sister. At para-10, he has denied the suggestion that during this while [REDACTED] had tried to commit suicide. At para-11, he has denied the suggestion that his sister had not gone back to her Maika along with her parental family. However, at para-12, he has deposed that he had heard that his brother-in-law had dropped the OP-wife to her Maika. At para-13, he has vehemently denied the suggestion that prior to her marriage itself, she used to suffer from abdominal ache and stated that this contention is absolutely baseless.

OPW-5 Indradeo Singh is the father of the OP-wife. In his examination-in-chief, he has stated that he knows both the litigating parties as they are his daughter and son-in-law respectively and their marriage was solemnized on 16th February, 2017 and at the time of marriage, all dowry and gifts in the form of jewelry, cash Rs. 10,00,000/-, household articles and clothes had been given where-after upon her Vidai, the OP went along with petitioner-husband to her Sasural and began to lead her conjugal life with him. She could barely live peacefully for six months where-after her husband, the petitioner and other members of her in-laws family began to abuse her, ridicule her for insufficient dowry and began to make dowry demands further and when this dowry demand could not be met, then the husband-petitioner has brought the instant suit for dissolution of his marriage with the OP-wife. This witness has also deposed about the OP-wife being ousted from her matrimonial house and not being taken within the family folds again, although his daughter is very keen and desirous to live and stay with her husband in her Sasural. Like other witnesses, he has categorically denied all the allegations pertaining to the conduct, nature, activities and history of previous illness of his daughter, as alleged and has very assertively averred that the entire case has been filed on false and fabricated grounds just to get rid of the society of his daughter. This witness has

asserted that his daughter-OP is fully fit and healthy and is in a good state both mentally and physically to lead her conjugal life till her last breath and the reply furnished by the OP-wife in this case is absolutely true and genuine and the case brought against her by the petitioner-husband is fit to be dismissed being totally false and fabricated.

In his cross-examination, he has deposed that the instant case was instituted in the year 2019 and after filing of the case, she has been living in her parental house with him. At para-4 of his deposition, he has averred that he has instituted a dowry harassment case against his son-in-law and his parents as they were demanding dowry from him. In the said case, he has reliably learnt that the Hon'ble Jharkhand High Court, Ranchi had granted an interim relief of Rs. 1,00,000/- in cash to his daughter but that money had not been withdrawn till date, as there were some technical difficulties related to the banking transaction. After opening of the Pass Book, the money remitted by his son-in-law to their account, has not been withdrawn at all till date. Whether his daughter would desire to withdraw that money or not that entirely depends on the consent, decision and discretion of his daughter. At para-5, he has very categorically averred that his daughter was not suffering from any kind of ailment or sickness and rather was fully hale and hearty and that she is still fully fit and of a

sound health. At para-6, he has denied the suggestion that at Delhi, his son-in-law had got his daughter admitted in a hospital but he instead himself had pestered his son-in-law to get his daughter treated at their own house itself. At para-7, he has candidly admitted that at Ranchi in Hill View Hospital, his daughter had undergone a surgery but for what ailment was she operated upon, he was however ignorant of the same. At para-8, he has deposed that just after few days of marriage, his son-in-law and his parents used to abuse and ridicule his daughter while she was staying at Chatra and this trend of abusing and being nasty to the OP-wife had begun just after 6-7 months of marriage. He has further deposed that this rude behaviour and ill-treatment was meted out to his daughter on account of the dowry demand raised by his son-in-law and his parents and when this demand could not be met with, then they not only abused his daughter but also ousted her from the matrimonial house. He has asserted that the allegation of being abused and treated badly was not based on hearsay basis, but rather his daughter had herself communicated about the same to her father on telephone. At para-9, he has averred that his daughter had never ever tried to commit suicide by torching herself to flame or cutting her veins or in any other manner and to get her husband and family be

implicated in a false case. At para-10, he has deposed that the solo reason for his daughter being ousted from her matrimonial house is the dowry demand. At para- 11 & 12, he has deposed that his daughter is of a very quiet and submissive nature but she had narrated it to her father that dowry demand of Rs. 2,00,000/- in cash were being raised from her by his son-in-law and his family members and all the family members of the in-laws family used to pounce upon and raise the dowry demands of Rs. 2,00,000/- from the OP- wife in unison.

OPW-6 is the OP of this case herself and in her examination-in-chief this witness has deposed that she is the opposite party of this case and the petitioner and herself enjoys the relationship of being husband and wife. Their marriage was solemnized as per Hindu rites and customs with the petitioner on 16th February, 2017 and after her marriage, she went to her Sasural along with the petitioner and there the conjugal relations between the couple were established and they began to lead a married life and the OP is still very keen and desirous to stay and spend her entire life with the petitioner-husband and establish conjugal and physical sexual relationship with him. At para-3, she has averred that in the year 2018 the petitioner raising the dowry demand from her began to inflict both mental and physical cruelty upon her yet she continued to bear this cruel attitude

and behaviour of her husband and stay in her Sasural. At para-4, she has candidly averred that neither she ever complained of any abdominal ache in the past nor she suffers any pain and trauma presently. At para-5, she has again asserted that she was neither ever provided with any medical treatment at Delhi nor was she ever admitted in any hospital at Delhi for undergoing a surgery. At para-6, she has boldly asserted that the OP is perfectly fit and healthy and is in the best physical state to bear children and attain motherhood. At para-7, she has deposed that OP had never ever threatened the petitioner of committing suicide by igniting herself to flames nor would she ever give the same in future. At para-8, she has positively averred that the OP is ever too keen and desirous to lead a familial blissful marital life with the petitioner-husband and she would always give all love, respect, regard, care and her services as a dutiful wife all through her life and she would never ever breach these future commitments to her husband and the in-laws. At para-9, she has strictly denied that at Delhi she used to venture out of her house alone and independently without the knowledge and consent of her husband and rather she would only go out of her house together with her husband. At para-10, the OP has denounced that she had ever behaved badly, rudely and ill-treated her husband and her in-laws in the past as

alleged and has further committed herself that in future also she would never ever ill-treat and badly behave with her husband-petitioner, her parent-in-laws or anybody in her matrimonial family and she is totally committed and dedicated to render full services and a pleasant association to her husband and parent-in-laws in future also. At para-11, she has reiterated her desire to live and stay with her husband all through her life. At para-12, this witness has deposed that the petitioner after filing of the instant case before this Court and on account of the non-fulfillment of dowry demands raised by him and his family have ousted the OP-wife from her matrimonial house and prior to the filing of the instant case, OP was living and staying with her husband only. At para-17, the OP has vehemently denied the expenses of Rs.1,30,000/- made upon her medical treatment by the petitioner. At para-18, OP has claimed herself to be fully fit and was fully fit to conceive and produce children and was also prepared to even file a medical certificate issued by the doctor regarding her fertility fitness and at para-19, she has strictly and vehemently denied the claim of the petitioner of seeking the relief of divorce from her terming it as untrue, frivolous and baseless.

In her cross-examination, at para-2, she has reiterated her marriage to have been solemnized on 16th February, 2017 whereafter she went to her Sasural and four months later she

went to Delhi and stayed there for nine months. Subsequently, she returned to her Sasural at Chatra along with her husband. She has however, claimed that during her stay at Delhi she had never ever experienced any kind of illness. Neither she had experienced any stomach ache nor she had any fever etc. also. She has averred that after her marriage, she stayed for about eight months with her husband at Delhi and thereafter about 3-4 months in her Sasural at Chatra and subsequently after filing of the instant case she has been continuously living in her Maika. At para-10, she has averred that ever since 2019 when her husband has instituted the present matrimonial case against her since then no physical sexual relations has been established between them and at para-12, she has further denied the suggestion that vide Pathalgadda PS case No. 26/2019, she and her family had lodged a case upon her husband and his brother and sister-in-law (Bhabhi). She has further added that her in-laws used to demand cash in dowry and when it could not be fulfilled, then her parent-in-laws and her husband began to beat her with cruelty and inflict atrocities upon her. At para-14, she has averred that in her matrimonial house, her mother-in-law, father-in-law and her husband all used to join together in making her dowry demand from her but how much amount was being demanded, she could not recall at the time of her deposition.

At para-15, she has deposed that after 10-15 days of her marriage itself, dowry demand was raised from her. At para-16, she has deposed that no medical treatment had been administered to her at Delhi and rather she was operated upon at Ranchi in the year 2019.. At para- 18 of her cross-examination, she has been queried as to for what ailment was she operated upon at Ranchi and where. In reply thereto, she has deposed that at Ranchi she was not operated upon and rather she was provided the medical treatment by Dr. Shobha Chakravorty. She however was ignorant about the nature of illness for which she was treated upon. It is further deposed that at the time of her treatment nobody had visited her from her Sasural.

42. Besides oral evidence, documentary evidences were also adduced, which were marked as exhibits.

43. From the testimony, as referred hereinabove, it is evident that the appellant-husband has been examined as P.W.3 before the Family Court, who in his deposition has mainly taken the ground of bad behaviour of his wife, constant threats of committing suicide or killing people in the family and for getting the family members implicated in the false cases. He has deposed that his wife has misbehaved with him and treated him with cruelty.

44. In cross-examination, he has deposed that even if his wife desires to live and stay with him with good behaviour

and attitude then also he would not keep his wife with him because he has no faith and confidence upon her.

45. From the aforesaid testimony of the appellant-husband it is evident that though cruelty, desertion as well as his wife's status of being an individual having an unsound mind has been pleaded by him in his petition, but no cogent evidence has been produced by him to prove these allegations.

46. The father of the respondent-wife who has been examined as OPW- 5 Indradeo Singh, has fully supported the fact of marriage being solemnized on 16th February, 2017 and at the time of marriage, all dowry and gifts in the form of jewelry, cash Rs. 10,00,000/-, household articles and clothes had been given. Further, the father of the respondent-wife has deposed that after upon her Vidai, the OP went along with petitioner to her Sasural and began to lead her conjugal life with him. She could barely live peacefully for six months whereafter her husband, the appellant and other members of her in-laws family began to abuse her, ridicule her for insufficient dowry and began to make dowry demands further and when this dowry demand could not be met, then the husband-petitioner has brought the instant suit for dissolution of his marriage with the OP-wife. He has also stated that he has instituted a dowry harassment case

against his son-in-law and his parents as they were demanding dowry from him.

47. The respondent-wife has been examined as OPW-6 who has stated that her marriage was solemnized as per Hindu rites and customs with the petitioner on 16th February, 2017 and after her marriage, she went to her Sasural along with the petitioner and there the conjugal relations between the couple were established and they began to lead a married life and the OP is still very keen and desirous to stay and spend her entire life with the petitioner-husband and establish conjugal and physical sexual relationship with him. She has further stated that she is too keen and desirous to lead a familial blissful marital life with the petitioner-husband and she would always give all love, respect, regard, care and her services as a dutiful wife all through her life and she would never ever breach these future commitments to her husband and the in-laws.

48. The learned Principal Judge, from the statements of the witnesses so produced on behalf of the parties, has come to the conclusion that plaintiff/petitioner XXXXXXXXXX has miserably failed to prove the grounds of alleged cruelty and desertion pleaded by him in his petition and as well as his wife's status of being an individual having an unsound mind.

49. From the testimony so recorded of the appellant-

husband, the learned Principal Judge, Family Court has come to the conclusion that in the instant case, except the vague and omnibus allegations made by husband against his respondent-wife, no cogent convincing, clinching evidence, no concrete documentary evidence has been led to substantiate the charges of cruelty, desertion and mental illness. The onus to prove the grounds taken for divorce squarely rests on the husband which are required to be discharged by leading a cogent, tangible and reliable evidence.

50. In the context of the aforesaid factual aspect only seminal issue has to be decided herein that “Whether the plaintiff is entitled to get divorce dissolving the marriage of the petitioner/appellant with OP/wife U/s 13(1) (i-a)(i-b) & iii of the Hindu Marriage Act, 1955?

51. It needs to refer herein that so far the allegation of cruelty is concerned, the ‘*cruelty*’ as has been defined by Hon’ble Apex Court in the judgment rendered in ***Dr. N.G. Dastane Vs. Mrs. S. Dastane [(1975) 2 SCC 326]***, wherein it has been held that the Court is to enquire as to whether the charge as cruelty, is of such a character, as to cause in the mind of the petitioner, a reasonable apprehension that, it will be harmful or injurious for him to live with the respondent.

52. The cruelty has also been defined in the case of

Shobha Rani Vs. Madhukar Reddi [(1988) 1 SCC 105],

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

53. According to the Hon'ble Apex Court, "cruelty" is the "conduct in relation to or in respect of matrimonial conduct in respect of matrimonial duties and obligations". It is the conduct which adversely affects the spouse. Such cruelty can be either "mental" or "physical", intentional or unintentional. For example, unintentionally waking your spouse up in the middle of the night may be mental cruelty; intention is not an essential element of cruelty but it may be present. Physical cruelty is less ambiguous and more "a question of fact and degree."

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

55. 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.

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

57. In ***Vijay Kumar Ramchandra Bhate v. Neela Vijay Kumar Bhate*, (2003)6 SCC 334** the Hon’ble Apex Court has observed by taking into consideration the allegations levelled by the husband in his written statement that his wife was “unchaste” and had indecent familiarity with a person outside wedlock and that his wife was having an extramarital affair. These allegations, given the context of an educated Indian woman, were held to constitute “cruelty” itself.

58. 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.

59. 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.

60. It needs to refer herein that the appellant husband at para-6 of his cross-examination, has deposed that the basic cause for seeking divorce from his wife-OP is the bad behaviour of his wife, constant threats of committing suicide or killing people in the family and for getting the family members be implicated in the false cases. He has further deposed that his wife has misbehaved with him and treated him with cruelty but he has not filed any documentary evidence to this effect before this Court. He has, however, claimed that his wife continues to serve him threats of

putting herself on fire and committing suicide and he has earlier filed documentary evidence to this effect before this Court. At para-7, he has deposed that at Delhi, when his wife had gone missing for two days from their house, then he had not lodged any informatory petition (Sanha) before any police station in Delhi, but, suo motu he exclaims that he had stated this fact back home at Chatra. At para-8 of his cross- examination, he has admitted that with respect to the contents of para 10 of his matrimonial petition/plaint, he has not filed any documentary evidence in support of the same.

61. This Court, based upon the aforesaid discussions on the issue of cruelty, is of considered view that the issue of cruelty as has been alleged by the appellant-husband against his wife could not be proved because no concrete evidence to that effect has been produced by the appellant.

62. Thus, as per the discussions made hereinabove and law laid down by Hon'ble Apex Court which has also been referred herein above this Court has no reason to take different view that has been taken by the learned Family Court proving the ground of cruelty.

63. Now coming to the issue of desertion, which is also taken as a ground for decree of divorce. It is evident from the from the plaint of the petitioner before Family Court which has also taken note in the impugned order, that the

husband and wife are living separately which has not been denied by the husband. The respondent-wife in her testimony has also reiterated the same version stating that the appellant-husband sent her in maik and since then there is no relationship as wife and husband in between them.

64. Learned Principal Judge, taking into consideration the fact that since even otherwise there is no desertion on the part of respondent-wife as she in her evidence also has deposed that she is very keen and desirous to live and stay with her husband all through her life and perform her wifely duties. Thus, although the husband appellant had filed petition under sub-section (ib) of Section 13(1) of the Hindu Marriage Act, 1955 but no evidence was led in this respect, as such the same was discarded by the learned family court.

65. 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 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.”

66. 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 wishes 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.

67. *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.”

68. 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.”

69. 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.

70. 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.

71. 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.

72. 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.

73. 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.

74. 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.

75. The law consistently has been laid down by the 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.

76. From impugned order it is evident that desertion has not been proved before the Family Court through concrete and tangible evidence and further it has come on the record that even otherwise there is no desertion on the part of respondent-wife as she in her evidence also has deposed that she is very keen and desirous to live and stay with her husband all through her life and perform her wifely duties

77. This Court, on the basis of discussions made hereinabove, is of the view that the appellant husband has not been able to prove the ground of desertion for one of the grounds for divorce before the learned Family Court. As such, we have no reason to take a different view that has been taken by the learned Family Court.

78. So far as the issue of mental illness is concerned it is evident from the impugned order that the learned Family Court has categorically held that no documentary evidence has been adduced by the plaintiff/husband in order to prove the mental illness of OP- wife and therefore the Family Court has also decided this issue against the appellant/husband.

79. In the aforesaid context, it needs to refer herein Section 13(1) (iii) of the Act 1955 which reads as under:

13. Divorce. — (1) Any marriage solemnized, whether before or after the commencement of the Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

(iii) has been incurably of unsound mind, or has suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation- In this clause—

(a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and include schizophrenia;

(b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party and whether or not it requires or is susceptible to medical treatment; or.....”

80. The aforesaid provision shows that there are two separate grounds in the provision viz. (a) incurable unsound mind; and, (b) respondent spouse has been suffering continuously or intermittently from mental disorder and the disorder is of such kind and of such extent that the petitioner cannot reasonably be expected to live with the respondent.

81. From the wording of the aforesaid provision it can be said that the mental condition like incurable unsound mind mentioned in the first part or the mental disorder mentioned

in the second part needs to be proved by expert evidence and that evidence needs to satisfy the Court that such mental condition exists. From the wording of the provision, it can be said that the second part of the provision has wide scope. For this part, it is not necessary that mental disorder is incurable. However, the mental disorder must be of such kind and extent that the Court needs to be satisfied that it is not advisable to ask the petitioner to live with the respondent. The scope shows that there is no limit to the kind of mental disorder as no specific kind is mentioned. However, the term “has been suffering” shows that the period of illness must not be too short or the petition should not be based on one or two instances showing such mental disorder. The term “intermittently” cannot be misread in this provision to infer that the mental illness returns after the treatment within few days. The term “extent” is also important and on that also the Court needs to be satisfied to come to the conclusion that the petitioner cannot reasonably be expected to live with the husband.

82. Thus, it is evident that the relief is discretionary and while using discretion, the Court is expected to keep in mind the aforesaid things as mentioned above. Further, the burden to prove mental disorder mentioned as second part of the aforesaid provision or the burden to prove incurable unsound mind lies on the party who seeks to use the

ground. In the instant from perusal of record as well as impugned order it is evident that no concrete evidence like psychiatrist opinion or prescription of continuous treatment has been led by the appellant husband in this regard.

83. It needs to refer herein that Psychiatrist is an expert but in view of provision of section 45 of the Evidence Act, it is up to the Court to either rely on the opinion or to refuse to do so. Further, he being a witness, his credibility can be impeached like the credibility of any other witnesses and his veracity can be tested as provided in section 146 and other provisions of Evidence Act. As psychiatrist is expected to give evidence on the basis of the examination of the patient done by him, the symptoms noted by him, the treatment and the follow up treatment given by him and the record created by him needs to be considered both for corroboration and contradiction purpose. In such a case the evidence of other witnesses or the circumstances which relates to the behaviour of the respondent can be considered by the Court as that can help strengthening the opinion or create probability that the opinion has no justification and it is weak.

84. The Hon'ble Apex Court in the case of ***Kollam Chandra Sekhar v. Kollam Padma Latha, (2014) 1 SCC 225*** has categorically observed that the ideas of unsoundness of 'mind' and 'mental disorder' occur in the

section as grounds for dissolution of a marriage, require the assessment of the degree of the 'mental disorder'. Its degree must be such that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for grant of decree. If the mere existence of any degree of mental abnormality could justify dissolution of a marriage few marriages would, indeed, survive in law. For ready reference the relevant paragraph of the aforesaid judgment is being quoted as under:

22. The relevant portions with regard to "unsoundness of mind" and "mental disorder" from the case referred to supra are extracted hereunder: (*Ram Narain Gupta case* [(1988) 4 SCC 247] , SCC pp. 254-56, paras 20-24)

"20. The context in which the ideas of unsoundness of 'mind' and 'mental disorder' occur in the section as grounds for dissolution of a marriage, require the assessment of the degree of the 'mental disorder'. Its degree must be such that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for grant of decree. If the mere existence of any degree of mental abnormality could justify dissolution of a marriage few marriages would, indeed, survive in law.

21. The answer to the apparently simple—and perhaps misleading—question as to 'who is normal?' runs inevitably into philosophical thickets of the concept of mental normalcy and as involved therein, of the 'mind' itself. These concepts of 'mind', 'mental phenomena', etc. are more known than understood and the theories of 'mind' and 'mentation' do not indicate any internal consistency, let alone validity, of their basic ideas. Theories of 'mind' with cognate ideas of 'perception'

and ‘consciousness’ encompass a wide range of thoughts, more ontological than epistemological. Theories of mental phenomena are diverse and include the dualist concept—shared by Descartes and Sigmund Freud—of the separateness of the existence of the physical or the material world as distinguished from the non-material mental world with its existence only spatially and not temporally. There is, again, the theory which stresses the neurological basis of the ‘mental phenomenon’ by asserting the functional correlation of the neuronal arrangements of the brain with mental phenomena. The ‘behaviourist’ tradition, on the other hand, interprets all reference to mind as ‘constructs’ out of behaviour. ‘Functionalism’, however, seems to assert that mind is the logical or functional state of physical systems. But all theories seem to recognise, in varying degrees, that the psychometric control over the mind operates at a level not yet fully taught to science. When a person is oppressed by intense and seemingly insoluble moral dilemmas, or when grief of loss of dear ones etch away all the bright colours of life, or where a broken marriage brings with it the loss of emotional security, what standards of normalcy of behaviour could be formulated and applied? The arcane infallibility of science has not fully pervaded the study of the non-material dimensions of ‘being’.

22. Speaking of the indisposition of science towards this study, a learned author says:

‘... we have inherited cultural resistance to treating the conscious mind as a biological phenomenon like any other. This goes back to Descartes in the seventeenth century. Descartes divided the world into two kinds of substances: mental substances and physical substances. Physical substances were the proper domain of science and mental substances were the property of religion. Something of an acceptance of this division exists even to the present day. So, for example,

consciousness and subjectivity are often regarded as unsuitable topics for science. And this reluctance to deal with consciousness and subjectivity is part of a persistent objectifying tendency. People think science must be about objectively observable phenomena. On occasions when I have lectured to audiences of biologists and neurophysiologists, I have found many of them very reluctant to treat the mind in general and consciousness in particular as a proper domain of scientific investigation.

... the use of the noun 'mind' is dangerously inhabited by the ghosts of old philosophical theories. It is very difficult to resist the idea that the mind is a kind of a thing, or at least an arena, or at least some kind of black box in which all of these mental processes occur.' [John R. Searle, *Minds, Brains and Science-Reith Lectures* (Harvard University Press, 1984), pp. 10 and 11.]

23. Lord Wilberforce, referring to the psychological basis of physical illness said that the area of ignorance of the body-mind relation seems to expand with that of knowledge. In *McLoughlin v. O'Brian* [(1983) 1 AC 410 : (1982) 2 WLR 982 : (1982) 2 All ER 298 (HL)] , the learned Lord said, though in a different context: (AC p. 418 B : All ER p. 301)

'... Whatever is unknown about the mind-body relationship (and the area of ignorance seems to expand with that of knowledge), it is now accepted by medical science that recognisable and severe physical damage to the human body and system may be caused by the impact, through the senses, of external events on the mind. There may thus be produced what is as identifiable an illness as any that may be caused by direct physical impact. It is safe to say that this, in general terms, is understood by the ordinary man or woman who is hypothesised by the courts....'

24. But the illnesses that are called ‘mental’ are kept distinguished from those that ail the ‘body’ in a fundamental way. In *Philosophy and Medicine*, Vol. 5 at p. X the learned editor refers to what distinguishes the two qualitatively:

‘Undoubtedly, mental illness is so disvalued because it strikes at the very roots of our personhood. It visits us with uncontrollable fears, obsessions, compulsions and anxieties....

... This is captured in part by the language we use in describing the mentally ill. One *is* an hysteric, *is* a neurotic, *is* an obsessive, *is* a schizophrenic, *is* a manic-depressive. On the other hand, one *has* heart disease, *has* cancer, *has* the flu, *has* malaria, *has* smallpox....”

(emphasis in original)

The principle laid down by this Court in the aforesaid case with all fours is applicable to the fact situation on hand wherein this Court has rightly referred to Section 13(1)(iii) of the Act and Explanation to the said clause and made certain pertinent observations regarding “unsound mind” or “mental disorder” and the application of the same as grounds for dissolution of marriage. This Court cautioned that Section 13(1)(iii) of the Act does not make a mere existence of a mental disorder of any degree sufficient in law to justify the dissolution of marriage.

35. In the English case of *Whysall v. Whysall* [1960 P 52 : (1959) 3 WLR 592 : (1959) 3 All ER 389] , it was held that a spouse is “incurably of unsound mind” if he or she is of such mental incapacity as to make normal married life impossible and there is no prospect of any improvement in mental health, which would make this possible in future. The High Court of Judicature of Calcutta, in *Pramatha Kumar Maity v. Ashima Maity* [AIR 1991 Cal 123] has held that mental disorder of the wife, even if proved, cannot, by itself, warrant a decree of

divorce and it must be further proved that it is of such a nature as the husband could not be expected to live with the wife.

38. We are of the view that the High Court in exercise of its appellate jurisdiction has rightly come to a different conclusion that the respondent is not suffering from the ailment of schizophrenia or incurable unsoundness of mind. Further, the High Court has rightly rejected the finding of the trial court which is based on Ext. B-10 and other documentary and oral evidence by applying the ratio laid down by this Court in *Ram Narain Gupta v. Rameshwari Gupta* [(1988) 4 SCC 247] referred to supra. A pertinent point to be taken into consideration is that the respondent had not only completed MBBS but also did a postgraduate diploma in Medicine and was continuously working as a Government Medical Officer and had she been suffering from any serious kind of mental disorder, particularly, acute type of schizophrenia, it would have been impossible for her to work in the said post. The appellant husband cannot simply abandon his wife because she is suffering from sickness. Therefore, the High Court allowed both the CMAs and dismissed OP No. 203 of 2000 filed by the appellant for divorce and allowed OP No. 1 of 1999 filed by the respondent for restitution of conjugal rights wherein the High Court granted decree of restitution of conjugal rights in favour of the respondent.

42. Marriage is highly revered in India and we are a nation that prides itself on the strong foundation of our marriages, come hell or high water, rain or sunshine. Life is made up of good times and bad, and the bad times can bring with it terrible illnesses and extreme hardships. The partners in a marriage must weather these storms and embrace the sunshine with equanimity. Any person may have bad health, this is not their fault and most times, it is not within their control, as in the present case, the respondent was unwell and was taking treatment for the same. The

illness had its fair share of problems. Can this be a reason for the appellant to abandon her and seek dissolution of marriage----."

85. Thus, the Hon'ble Apex Court cautioned that Section 13(1)(iii) of the Act does not make a mere existence of a mental disorder of any degree sufficient in law to justify the dissolution of marriage.

86. Thus, on basis of discussion made hereinabove, it appears that the aforesaid ground of mental illness has been raised by the appellant husband on the flimsy ground and taking in to consideration the aforesaid factual aspect the learned Family Court has rightly decided the said issue against the plaintiff husband as such requires no interference by this Court.

87. Accordingly, issue as framed by this Court is decided against the appellant-husband and it is held that the learned Family Court had rightly not granted the decree of divorce in favour of the appellant husband on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act or on the ground of desertion under Section 13(1)(ib) or even on the ground of mental illness under Section 13(1)(iii) of the Act 1955, as such same is requires no interference by this Court.

88. This Court, on the basis of discussions made hereinabove, is of the view that the judgment passed on

30.06.2022 and decree signed on 08.07.2022 by the learned Principal Judge, Family Court, Chatra, whereby and whereunder the Original Suit No. 29 of 2019 filed by the petitioner-appellant-husband under Section 13(1), (i-a), (i-b) & iii of the Hindu Marriage Act, 1955 for a decree of divorce has been dismissed, requires no interference by this Court.

89. Accordingly, the instant appeal fails and is dismissed.

(Sujit Narayan Prasad, J.)

I agree.

(Rajesh Kumar, J.)

(Rajesh Kumar, J.)

Birendra / **A.F.R.**