

IN THE HIGH COURT OF JHARKHAND AT RANCHI**F.A. No.41 of 2025**

Hukum Lal B.P., aged about 55 years, son of late Lahri B.P., resident of Keshalpur Colliery, PO: Katras Bazar, PS: Katras, District Dhanbad, Jharkhand. Plaintiff/Appellant

Versus

Meghwati Devi @ Jyoti Chouhan, aged about 55 years, wife of Hukum Lal B.P., resident of Kenduadih, E.B. Section, PO: Kusunda, PS: Kenduadih, District Dhanbad, Jharkhand. ...Defendant/Respondent

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

For the Appellant(s) :Mr. Suraj Singh, Advocate
For the Respondent(s) : Mr. Sanjay Prasad, Advocate

CAV ON: 03.02.2026
Per Sujit Narayan Prasad, J.

PRONOUNCED ON:10 .02.2026

Prayer:

1. The instant appeal has been filed on behalf of the appellant under Section 19(1) of the Family Courts Act, 1984 against the order/judgment dated 17.12.2024 and decree dated 04.01.2025 passed by the learned Additional Principal Judge, Additional Family Court No.II, Dhanbad, in Original Suit No. 924 of 2022, whereby and whereunder, the said Suit filed by the appellant-husband under the provisions of Section 13(1)(i-a) and (i-b) of Hindu Marriage Act, 1955 was dismissed on contest holding that the plaintiff is not entitled to decree of divorce and, therefore, suit is dismissed.

Factual Matrix

2. The brief facts of the case, which required to be enumerated, needs to be referred as under:
3. The marriage between the parties was solemnized in the month of April, 1985 at Kathara, Bokaro, as per Hindu rites and customs. After

the marriage both the parties had been living together as wife and husband at Keshalpur, Katras. Out of their wedlock, four children were born, namely, Rakesh Chouhan, aged about 34 years, Rajesh Chouhan, aged about 32 years, Ajay Chouhan, aged about 28 years and Raja Chouhan aged about 24 years. It is further stated that the respondent Meghwati Devi has adopted Christian religion and started living in Church at Padri. It is further stated that the respondent used to torture him and also threatened him of dire-consequences. The petitioner and his sons tried to persuade her to reside together but she flatly refused. The respondent has no any concern with him.

4. Cause of action for the suit arose in April 1985 when the marriage was performed. It also arose on several occasions when the respondent misbehaved and committed cruelty with the petitioner.
5. Notice was issued to the respondent who appeared and filed her written statement admitting the factum of marriage with the petitioner-appellant. Thereafter, altogether five issues have been framed by the learned Family Judge which are as follows:
 - (i) Whether the suit is maintainable in its present form?
 - (ii) Whether the petitioner has got valid cause of action for the suit?
 - (iii) Whether the marriage of the petitioner and respondent is fit to be dissolved on the ground of cruelty u/s 13 (1)(i-a) of the Hindu Marriage Act?
 - (iv) Whether the marriage of the petitioner and respondent is fit to be dissolved on the ground of desertion u/s 13(1)(i-b) of the Hindu Marriage Act?
 - (v) Whether the petitioner is entitled for the reliefs as claimed for?

6. The evidences have been laid on behalf of both the parties. The petitioner husband had examined himself as P.W.1 and further on his behalf his son namely Raj Chouhan has been examined as P.W.2.
7. On behalf of the respondent-wife three witnesses had been examined including herself as D.W.1 and further two independent witnesses, namely, Kranti Devi and Shyam Bhuiya have been examined as D.W.2 and D.W.3 respectively.
8. After appreciation of the evidences, the Additional Principal Judge, Additional Family Court No.II, Dhanbad vide judgment dated 17.12.2024 has dismissed the suit by holding that the plaintiff is not entitled to decree of divorce and, therefore, suit is dismissed.
9. The appellant-husband being aggrieved and dissatisfied with the impugned judgment dated 17.12.2024 and decree dated 04.01.2025 passed by the learned Additional Principal Judge, Additional Family Court No.II, Dhanbad in Original Suit No. 924 of 2022 has filed the present First Appeal under Section 19(1) of the Family Courts Act, 1984.

Arguments advanced on behalf of the plaintiff/appellant-husband:

10. The learned counsel for the plaintiff-appellant has raised the following points:
 - (i) It has been submitted on behalf of the appellant that the marriage was solemnized in the month of April 1985, according to Hindu rites and customs.

(ii) It has been contended that respondent was treating the appellant with cruelty and respondent has deserted the appellant continuously for more than four years for no reason.

(iii) The respondent/wife has adopted Christian religion and started living in Church at Padri.

(iv) It is further contended that the respondent is having illicit relationship with another person namely Basudeo Kumar Jha and she has deserted him for more than five years.

(v) It is further contended that the respondent has left the house on 18.9.2020 leaving his husband/appellant and four children.

(vi) The appellant is paying maintenance of Rs. 10,000/- per month regularly to the respondent as per direction of Family Court, Dhanbad in Maintenance Case No. 415 of 2020.

(vii) It is further contended that efforts for mediation were made in the Mediation Centre, Dhanbad between the appellant and respondent along with four children inspite of that the respondent has not come to live with her husband. Therefore, impugned judgment and decree is liable to be quashed and set aside.

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

11. *Per contra*, Mr. Sanjay Prasad, the learned counsel appearing on behalf of the respondent-wife, while defending the impugned judgment, has submitted that there is no error in the impugned judgment. The learned counsel has raised the following points:

(i) The learned Family Judge has rightly come to the conclusion that the petitioner-husband (appellant herein) has failed to prove the ingredients of cruelty and desertion against the respondent and has dismissed the suit filed by the petitioner-appellant.

(ii) It has been submitted that the appellant-husband used to torture her physically and mentally in various ways after having drink but she kept mum due to her children and she always has discharged her duty as wife. Due to continuous torturing of her husband, she started living separately from 18.9.2020.

(iii) It is further contended that the petitioner is habitual of having drink and he is having illicit relationship with another lady. She is residing separately due to continuous harassment of her husband.

(iv) Learned counsel, based upon the aforesaid grounds, has submitted that no interference is required in the order impugned.

Analysis:

12. This Court has heard the learned counsel for the parties and gone through the findings recorded by the learned Family Judge in the impugned judgment.
13. 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 Sections 13(1)(i-a) (i-b) of the Hindu Marriage Act, 1955 and, accordingly, issues have been framed by the learned Family Court wherein primarily issue nos.III and IV pertain to cruelty and desertion.

14. The evidence has been laid on behalf of both the parties. The petitioner-husband had examined himself as P.W.1 and further on his behalf his son Raj Chouhan has been examined as P.W.2.

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

(i) PW-1 Hukum Lal B.P. is the petitioner-appellant himself has supported his case in his examination-in-chief.

In his cross-examination he deposed that he resides in Kesharpur Colliery. Prior to it he was residing with his son and wife. Prior to 18.9.2020 there was no any problem between both the parties. He had not made any complaint to Mukhiya, panchayat, Thana or Court regarding illicit relationship of his wife. It is not true that after being beaten she was driven out from her matrimonial home. He has made complaint on 19.12.2020 to Ramkanali. In Maintenance Case he had stated that he is ready to keep his wife but she does not want to live with him. He has further deposed that he wants divorce from his wife as she is having illicit relationship with his driver.

(ii) PW-2 Raj Chouhan is the son of the petitioner. In his examination-in-chief he has supported the evidence of PW-1.

In his cross-examination he has stated that his mother adopted Christian religion in year 2008 and his father adopted Christian religion in the year 2011. His father and mother used to quarrel in the night. His mother never abused or assaulted his father. His father and elder brother had gone in search of his mother but she could not be traced out. His mother

has illicit relationship with Basudeo Kumar Jha and due to respect of the family they did not make any complaint against Basudeo Kumar Jha either in Thana or Court.

16. The evidence of witnesses examined on behalf of the respondent-wife is as under:

(i) D.W.-1 is Meghwati Devi @ Jyoti Chouhan is the respondent-wife herein who in her examination-in-chief has negated the claim and assertion of the petitioner. She has stated that she was married with petitioner in April 1985 and out of the wedlock there are four sons. Both husband and wife adopted Christian Religion in year 2008 and she was Padri in Kesharpur Church. But in year 2020 by making conspiracy she was removed from Padri. She was tortured physically and mentally in various ways after having drink by the petitioner. But she kept mum due to her children and she always discharged her duty as wife. Due to continuous torturing of her husband, she started living separately from 18-09-2020. As per order of Learned Family Court, she is getting maintenance Rs. 10,000/- per month. Petitioner is habitual of having drink and he is having illicit relationship with another lady. She is residing separately due to continuous harassment of her husband.

In cross-examination she deposed that she has four sons but now they have no any affection with her. After filing of the case, she had gone to meet her children and they also had come in search of her. Children had persuaded her to reside with their Papa but she refused for the same. She has given oral information in Thana regarding drinking of her husband. When she was residing with her husband a driver was also residing there

but she does not know the name of the driver and also, she does not identify him. It is not true that she is having illicit relationship with the aforesaid driver and so her husband had removed the driver. She was residing with her husband till 18-09-2020 and during that period no cohabitation took place between husband and wife. She does not want divorce from her husband.

(ii) DW-2 and DW-3 are independent witnesses who have supported the evidence of DW-1 in their examination-in-chief. In cross DW-2 has stated that she is having friendship with Meghwati Devi for about two years. She never met with the children of respondent. Meghwati Devi is still residing in her house and she provides her food and water. It is not true that Meghwati Devi was having illicit relationship with another person and so both husband and wife used to quarrel with each other and she does not want to live with her husband.

DW-3 has stated in his cross that he resides in Basjora and respondent resides in Kendua. He has gone to the house of Meghwati Devi at Kesharpur. He has seen that after having liquor the petitioner had beaten his wife. He is acquainted with both the parties for about 3-4 years but he cannot say the name of both parties.

17. No document has been adduced on behalf of either side.
18. The learned Family Judge after taking into consideration the entire evidences adduced on behalf of the parties, has decided the suit vide order dated 17.12.2024 by holding that the petitioner has not been able to prove his case for divorce on the ground of cruelty and desertion against the respondent against which the present appeal has been filed.

19. Herein since appellate jurisdiction has been invoked therefore, before entering into merit of the case, at this juncture it would be purposeful to discuss the appellate jurisdiction of the High Court.
20. It needs to refer herein that under section 7 of the Family Courts Act, the Family Court shall have and exercise all the jurisdiction exercisable by any District Court or any Sub-ordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature which are described in the explanation to section 7(1).
21. Sub-section (1) to section 19 of the Family Courts Act provides that an appeal shall lie from every judgment or order not being an interlocutory order of a Family Court to the High Court “both on facts and on law”. Therefore, section 19 of the Family Courts Act is parallel to section 96 of the Code of Civil Procedure, the scope of which has been dealt with by the Hon'ble Apex Court in series of judgments.
22. The law is well settled that the High Court in a First Appeal can examine every question of law and fact which arises in the facts of the case and has powers to affirm, reverse or modify the judgment under question. In ***“Jagdish Singh v. Madhuri Devi” (2008) 10 SCC 497*** the Hon'ble Supreme Court observed that it is lawful for the High Court acting as the First Appellate Court to enter into not only questions of law but questions of fact as well and the appellate Court therefore can reappraise, reappreciate and review the entire evidence and can come to its own conclusion. For ready reference the relevant paragraph of the said judgment is being quoted as under:

“27. It is no doubt true that the High Court was exercising power as the first appellate court and hence it was open to the Court to enter into not

only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a rehearing of the main matter and the appellate court can reappraise, reappraise and review the entire evidence—oral as well as documentary—and can come to its own conclusion.”

23. It also requires to refer herein that under section 3 of the Indian Evidence Act a fact is said to be proved when the Court either believes it to exist or considers its existence so probable that a prudent man under the circumstances would proceed on the supposition that such fact really exists. Therefore, the normal rule of preponderance of probability is the rule which governs the civil proceedings but herein since grave allegation of cruelty has been alleged therefore cogent evidence is required to be laid by the parties in order to substantiate their claim.
24. The expression “preponderance of probability” is not capable of exact definition nor can there be any strait-jacket formula or a weighing machine to find out which side the balance is tilted. The preponderance of probability would imply a positive element about possibility of existence of a fact. This means a higher degree of probability of happening of something and existence of a fact.
25. In “***A. Jayachandra v. Aneel Kaur***” (2005) 2 SCC22 the Hon'ble Apex Court has observed that the concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, the Court has to see what are the probabilities in the case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse caused by the acts or omissions of the other.

26. Since this Court are exercising the power of appeal as referred hereinabove and as per the settled position of law which require the consideration of the appellate Court is that the order/judgment passed by the appropriate Forum, if suffers from perversity, the same is to be taken as a ground for its reversal.
27. In the backdrop of the aforesaid settled position of law and factual aspect of the instant case this Court is now adverting to the issue of cruelty as well as allegation of desertion as involved in the present case.
28. The learned counsel for the appellant/plaintiff has argued that the evidence of cruelty/desertion has not properly been considered and as such, the judgment suffers from perversity, hence, not sustainable in the eyes of law.
29. While on the other hand, argument has been advanced on behalf of the respondent-husband that the judgment is well considered and same is not suffering from any element of perversity.
30. This Court while appreciating the argument advanced on behalf of the parties on the issue of perversity needs to refer herein the interpretation of the word “perverse” as has been interpreted by the Hon'ble Apex Court which means that there is no evidence or erroneous consideration of the evidence. The Hon'ble Apex Court in *Arulvelu and Anr. vs. State [Represented by the Public Prosecutor] and Anr., (2009) 10 SCC 206* while elaborately discussing the word perverse has held that it is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as so to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm

in law. Relevant paragraphs, i.e., paras-24, 25, 26 and 27 of the said judgment reads as under:

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

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

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

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

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

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

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

4. The New Lexicon Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.) Perverse.—Purposely deviating from accepted or

expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

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

31. Thus, from the aforesaid it is evident that if any order made in conscious violation of pleading and law then it will come under the purview of perverse order. Further “perverse verdict” may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.
32. Admittedly, in the instant case, one of the grounds for divorce has been taken on the issue of cruelty.
33. 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.
34. This Court deems it fit and proper to take into consideration the meaning of ‘cruelty’ as has been held by the Hon’ble Apex Court in ***Shobha Rani v. Madhukar Reddi, (1988)1 SCC 105*** wherein the wife alleged that the appellant-husband and his parents demanded dowry. The Hon’ble Apex Court emphasized that “cruelty” can have no fixed definition.
35. 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.”

36. 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.”
37. 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.
38. 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”.
39. 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.

40. It needs to refer herein that it is settled position that a proceeding under Hindu Marriage act is not criminal proceeding where proof beyond reasonable doubt is required rather “preponderance of probability” is enough. However, the character of spouse affects his/her reputation in the society. Therefore, it is established proposition of law, that not only the pleading in respect of charge of adultery should be specific, it should also be established in all probabilities. The accepted rule, therefore, is that circumstantial evidence is all that can normally be expected in proof of charge; However, the circumstances must be such as to lead to fair inference, as a necessary conclusion. In other words, proof required to prove adultery need not necessarily be what is at times said to be proof beyond a shadow of doubt, "It need not reach certainty but must carry a high degree of probability”.
41. 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.

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

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

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

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

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

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

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

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

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

44. Thus, from the aforesaid settled position of law it is evident that “Cruelty” under matrimonial law consists of conduct so grave and weighty as to lead one to the conclusion that one of the spouses cannot reasonably be expected to live with the other spouse. It must be more serious than the ordinary wear and tear of married life.
45. Cruelty must be of such a type which will satisfy the conscience of the Court that the relationship between the parties has deteriorated to such an extent that it has become impossible for them to live together without mental agony. The cruelty practiced may be in many forms and it must be productive of an apprehension in the mind of the other spouse that it is dangerous to live with the erring party. Simple trivialities which can truly be described as a reasonable wear and tear of married life cannot amount to cruelty. In many marriages each party can, if it so wills, discover many a

cause for complaint but such grievances arise mostly from temperamental disharmony. Such disharmony or incompatibility is not cruelty and will not furnish a cause for the dissolution of marriage.

46. Since the appellant husband has also contended the issue of desertion therefore, it would be apt to discuss herein the element of “desertion”.
47. It needs to refer herein that the word ‘desertion’ has been given in Explanation to Section 13 (1) of the Hindu Marriage Act, 1955 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 willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.”
48. 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 willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.
49. ***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.”

50. 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.”

51. 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.
52. 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.
53. 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.

54. 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 willful 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.
55. 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.
56. 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.
57. 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.

58. Thus, from the aforesaid settled position of law, it is evident from the interpretation of the word “cruelty” that daily tear and wear is not construed to be the cruelty while on the other hand desertion means parting away one spouse from the other, but while deciding the issue of desertion the factum of parting away is to be seen as to whether the parting away is due to compulsion or with her volition.
59. This Court is proceeding to examine the finding so recorded by the learned Family Judge in the impugned judgment, the touch stone of the interpretation of the word cruelty and definition of the word desertion.
60. The factual aspect as per the pleadings made in the memo of appeal as has been incorporated in the impugned judgment and as also available in the trial court records is that the ground of cruelty has been taken on behalf of the appellant that the respondent-wife used to torture him and also threatened him of dire-consequences. The petitioner/appellant tried to persuade her to reside together but she flatly refused. He has further deposed that he wants divorce from his wife as she is having illicit relationship with his driver.
61. Per contra the respondent/wife has negated the claim and assertion of the petitioner/appellant/husband. She has stated that she was married with petitioner in April 1985 and out of the wedlock they have four sons. Both husband and wife adopted Christian Religion in year 2008 and she was Padri in Kesharpur Church. But in year 2020 by making conspiracy, she was removed from Padri. She was tortured physically and mentally in

various ways after having drink by the petitioner. But she kept mum due to her children and she always discharged her duty as wife. Due to continuous torturing of her husband, she started living separately from 18-09-2020.

62. The admitted fact is that the marriage in between the parties was solemnized in the year 1985 and they lived together up to the year 2020 i.e. about 35 years and out of the said wedlock four children were born. The respondent-wife has left the matrimonial house in the year 2020.
63. From perusal of the statement of P.W. 1 husband/appellant it is evident that prior to 18.9.2020 there was no problem between both the parties. He had not made any complaint to Mukhiya, Thana or Court regarding illicit relationship of his wife. Further in Maintenance Case he had stated that he is ready to keep his wife but she does not want to live with him.
64. It is evident from testimony of PW-2 Raj Chouhan who is the son of the petitioner that his mother adopted Christian religion in year 2008 and his father adopted Christian religion in the year 2011. This witness had supported the version of his father in context to allegation of illicit relationship of his mother with another person but this witness has also stated that they did not make any complaint against the said person either in Thana or Court.
65. Further the allegation of illicit relationship made by the petitioner/appellant was denied by the respondent/wife and she had categorically stated that she had been tortured in her sasural by the petitioner/appellant who is addictive of alcohol.

66. Thus, from the aforesaid it is evident that allegation of illicit relationship against the respondent has not been substantiated by any cogent evidence and further the person against whom it was alleged that the said person had sexual relationship with the respondent/wife has not been impleaded as party respondent by the petitioner/appellant before the learned Family Court.
67. So far as the conversion in Christianity religion is concerned, it is admitted fact that both the parties had adopted the said religion before year 2020 and therefore the contention of the appellant/ husband that respondent behaviour has been changed drastically afterwards, has no leg to stand and further the appellant has never made any complaint before any one about the ill behaviour of the respondent wife.
68. Thus, from the aforesaid available material it is evident that the petitioner/appellant has failed to substantiate his contention that the respondent/wife had committed cruelty upon him and though on account of the conduct of the respondent, he received a threat from respondent and therefore, it was impossible for him to stay with the respondent, but the allegation levelled by the petitioner /appellant appears to be groundless.
69. The aforesaid fact has also been taken note by the learned Family Judge in the impugned judgment that no cogent evidence has been brought on record to substantiate the element of mental cruelty.
70. Although there is no dispute that in matter like this the normal rule of preponderance of probability is the rule which governs the proceedings but herein since grave allegation of cruelty has been alleged therefore at least primary evidence is required to be laid by the appellant/husband in

order to substantiate his claim but from the discussion aforesaid it is evident that he had failed to do so.

71. This Court after discussing the aforesaid factual aspect along with the legal position and adverting to the consideration made by the learned Family Judge in the impugned judgment has found therefrom that the issue of element of cruelty has been appreciated at length by the learned Family Judge, therefore the finding of the learned Family Court on the point of alleged cruelty, is not coming under the fold of the perversity.
72. So far as ground of desertion as provided under section 13 (i-b) of the Hindu Marriage Act, 1955 is concerned the desertion is to be taken into consideration if one of the spouses has been forcefully kept away from the company of another spouse. Here it is evident from the pleadings that the respondent wife is living away from the year 2020 which led the appellant-husband to file the suit for divorce.
73. In the present case the ground of desertion has been raised but no concrete ground has been taken to prove that respondent-wife, at her own wish, has left the company of her husband rather from the statement of respondent wife it is evident that she was being compelled to leave her matrimonial house.
74. This Court since has concurred with the view taken by the learned Family Judge so far as not proving the element of cruelty and, as such, is of the view that the moment the accusation of adultery was leveled by the appellant-husband upon the respondent-wife the same itself amounts to cruelty meted out to the wife by the husband and in that view of the

situation how can it be said that the respondent-wife at her own wish has left the company of her husband.

75. The learned Family Judge has taken into consideration meaning of the word “desertion” and by coming to conclusion that the appellant husband has failed to substantiate that the respondent wife at her own will had left the matrimonial house.
76. As we discussed hereinabove that while judging whether the conduct is cruel or not, what has to be seen is whether that conduct, which is sustained over a period of time, renders the life of the spouse so miserable as to make it unreasonable to make one live with the other. The conduct may take the form of abusive or humiliating treatment, causing mental pain and anguish, torturing the spouse, etc. The conduct complained of must be “grave” and “weighty” and trivial irritations and normal wear and tear of marriage would not constitute mental cruelty as a ground for divorce. The Hon’ble Supreme Court consistently held that the petitioner must show a consistent pattern of behavior by the respondent to prove cruelty, and occasional outbursts of anger or quarrels do not necessarily amount to cruelty.
77. Further, it needs to refer herein that the foundation of a sound marriage is acceptance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be inflated to abolish what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social

status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court.

78. Further this Court is conscious that as an appellate court if any finding found to be erroneous or perverse then certainly the appellate court may reverse the same.
79. This court in order to consider the issue of perversity needs to refer herein the definition of perversity first which has been interpreted by the Hon'ble Apex Court as referred hereinabove which means that there is no evidence or erroneous consideration of the evidence and further, if any order made in conscious violation of pleading and law then it will come under the purview of perverse order. Further "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.
80. This Court, on consideration of the finding arrived at by the learned Family Judge and based upon the aforesaid discussions, is of the view that the judgment and decree passed by the learned Family Judge is not coming under the fold of the perversity as defined by the Hon'ble Apex Court as discussed and referred in the preceding paragraph, since, the conscious consideration and appreciation of all issues has been made as would be evident from the impugned judgment.
81. This Court, therefore, is of the view that the order/judgment dated 17.12.2024 and decree dated 04.01.2025 passed by the learned Additional

Principal Judge, Additional Family Court No.II, Dhanbad, in Original Suit
No. 924 of 2022 needs no interference.

82. Accordingly, the instant appeal fails and is hereby dismissed.

83. Pending I.A.(s), if any, stands disposed of.

(Sujit Narayan Prasad, J.)

I Agree

(Arun Kumar Rai, J.)

(Arun Kumar Rai, J.)

Jharkhand High Court
Date:10 /02/2026
KNR/AFR
Uploaded On:11/ 02/2026