

IN THE HIGH COURT OF JHARKHAND AT RANCHI**F.A. No. 10 of 2024**

Arvind Kumar Agarwal, aged about 44 years, son of Satyendra Agarwal, resident of Sarvodaya Nagar, PO & PS: Daltonganj, District-Palamau

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

Rakhi Rani Agarwal, aged about 42 years, daughter of Ashok Agarwal, resident of C/o Loriyal Professional Saloon, Arush Complex, Near ICICI Bank, Pagoda Chowk, PO, PS & District-Hazaribagh

... .. Respondent/Respondent

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

For the Appellant	: Mr. Anand Kumar Pandey, Advocate
For the Respondent	: Mr. Pankaj Kr. Choudhary, Advocate
	Mr. Arya Suman, Advocate

C.A.V. on 7th November, 2025**Pronounced on 14/11/2025****Per Sujit Narayan Prasad, J.****Prayer**

1. The instant appeal under Section 19(1) of the Family Courts Act, 1984 is directed against the order/judgment dated 20th December, 2023 (decree sealed and signed on 12th January, 2024) passed by the learned Principal Judge, Family Court, Hazaribagh in Original Suit No. 119 of 2023, whereby and whereunder, the petition filed under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 by the appellant/petitioner seeking a decree of divorce against his wife, has been dismissed.

Factual Matrix

2. The brief facts of the case leading to filing of the divorce petition by the appellant/petitioner needs to be referred herein as under:

It is the case of the appellant/petitioner that the marriage of the appellant/petitioner with the respondent-wife was solemnized on 27.04.2013 as per Hindu rites and custom at Agrasen Bhawan, Daltonganj, District-Palamau (Jharkhand). After marriage, the respondent-wife led conjugal life in her matrimonial house at Daltonganj, Palamau, till November, 2016. Now, the parties are not living together.

It is the further case of the appellant/petitioner that the respondent-wife had filed Maintenance Case No.217 of 2022 before the same Court, which was dismissed on contest, however, she had filed maintenance case only after acknowledgement of notice of divorce suit.

It is the further case of the appellant/petitioner that on the day of Chauthari, i.e., on 29.04.2013, she started demanding fridge and in default, she destroyed household articles and was asking for divorce. She never cooked meal and not discharged her household duties. She was blaming the appellant/petitioner as impotent. On several occasion, the appellant/petitioner and his father approached the respondent-wife and her family members for resumption of conjugal life but she refused.

He thereafter again approached her for resumption of conjugal life on 01.06.2022 at Hazaribag where she was running a Beauty Parlour under the name and style of "Lorial Professional Saloon" but she refused to resume conjugal life. She was insisting to live separately. Therefore, the appellant/petitioner has prayed for divorce on the ground of cruelty and desertion.

After notice the respondent-wife appeared and had filed a written statement wherein she raised defences and she denied the case of petitioner-husband except filing of the said Maintenance case and submitted further that in the marriage, sufficient dowry etc. were given but in matrimonial house, she was treated with cruelty in demand of further dowry. It has further been submitted that She was visiting her matrimonial house but in December, 2021 she was refused to enter into the house of the petitioner/appellant. She never refused resumption of conjugal life and still willing to resume conjugal life. It has further been stated that the appellant/petitioner runs business of tobacco and earns Rs.70,000 to 80,000/- per month.

3. It is evident from the factual aspect that the appellant/petitioner had a motion by filing a petition under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 for decree of divorce on the ground of cruelty and desertion.
4. After taking into consideration the pleading of the both the parties the learned Family Court has framed altogether five issues which are as follows:-
 - (i) Whether the suit is maintainable in its present form?
 - (ii) Whether the parties are legally married husband and wife?
 - (iii) Whether the petitioner-husband was treated with cruelty after marriage by the respondent-wife?
 - (iv) Whether the respondent-wife voluntarily deserted the petitioner-husband?

(v) Whether the petitioner-husband is entitled for the relief of divorce as prayed for on the grounds of cruelty and desertion as contained u/s 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955 or any other relief/reliefs?

5. The evidences have been led on behalf of both the parties. Thereafter, vide order dated 20.12.2023 the judgment has been passed dismissing the suit by holding that none of the ground either of cruelty or desertion has been established by the appellant/petitioner, which is the subject matter of the present appeal.

Submission of the learned counsel for the appellant/petitioner:

6. It has been contended on behalf of the appellant/petitioner that the factual aspect which was available before the learned Family Judge supported by the evidences adduced on behalf of the appellant/petitioner has not properly been considered and as such, the judgment impugned is perverse, hence, not sustainable in the eyes of law.
7. It has also been contended that the learned Family Court has failed to take into consideration the pleadings coupled with the ample evidence on record, as it has been established that the respondent left her matrimonial house as far as back on 13.11.2016. Further, the respondent-wife has left her matrimonial home with all her belongings without any intimation to the appellant and his family members.
8. It has been submitted that the respondent-wife is running a Beauty Parlour and she is earning a lot.

9. Therefore, it has been submitted that the issue of cruelty and desertion has not been taken into consideration in right perspective by the learned Family Court.
10. Learned counsel for the appellant/petitioner, based upon the aforesaid ground, has submitted that the judgment impugned suffers from perversity, as such, not sustainable in the eyes of law.

Submission of the learned counsel for the respondent-wife:

11. *Per contra*, learned counsel for the respondent-wife, while defending the impugned judgment, has submitted that there is no error in the impugned judgement. The learned Family Judge has considered the issue of cruelty and desertion and having come to the conclusion that no cogent evidence has been adduced to establish either cruelty or desertion, has dismissed the petition.
12. It has been contended that respondent wife never refused resumption of conjugal life and still willing to resume conjugal life with petitioner/appellant.
13. It has been submitted that the appellant/petitioner has tried to mislead the Court by filing application on the misleading ground of committing cruelty by the wife upon the husband.
14. Learned counsel, based upon the aforesaid grounds, has submitted that if on that pretext, the factum of cruelty and desertion has not been found to be established, based upon which the decree of divorce has been refused to be granted, the impugned judgment cannot be said to suffer from an error.

Analysis:

15. This Court has heard the learned counsel for the parties and gone through the finding recorded by the learned Family Judge in the impugned judgment.
16. The case has been heard at length. The admitted fact herein is that the suit for divorce has been filed on the ground of cruelty and desertion, i.e., by filing an application under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 and accordingly, issues have been framed wherein primarily issue nos.(iii) and (iv) pertain to cruelty and desertion.
17. The evidence has been led on behalf of both the parties, i.e., the appellant/petitioner and the respondent-wife. For ready reference, the evidences led on behalf of the parties are being referred as under:

All four P.Ws., i.e., P.W.1 to P.W.4 filed their respective examination-in-chief in support of the case of the petitioner husband and they all have deposed that due to physical, mental and economical cruelty of the respondent-wife, the petitioner-husband has suffered a lot.

- (i) PW-1 Arvind Kumar Agarwal (appellant/petitioner himself) has stated in his cross-examination that no legal notice for restitution of conjugal life was issued nor social or personal effort was made. On 01.06.2022, he visited the respondent-wife at Hazaribag and since, respondent-wife refused to resume conjugal life, he filed divorce suit. He had further stated that respondent-wife never visited him.

he had further stated that he cannot say about jewelery given in marriage and no Panchayati took place.

- (ii) PW-2 Satyendra Kumar Agarwal (father of the petitioner-husband) has also deposed that there are sufficient household articles in his house except fridge. He has three sons. All are married. On 13.11.2016, the respondent-wife went away to her parental house. On 01.06.2022, petitioner-husband met with respondent-wife. She refused resumption of conjugal life. Thereafter, present case was lodged. On that day, no physical relationship was established between the parties. Petitioner-husband narrated this matter to mother. Panchayati took place at Daltonganj. He is not against of resumption of conjugal life of parties. No dowry or cruelty case has been lodged by the respondent-wife. 3 to 4 times, he has visited the respondent-wife at Hazaribagh but every time he was insulted. He cannot say the date when the petitioner-husband visited the respondent-wife.
- (iii) PW-3 Jai Prakash Agarwal (Jija of the appellant/petitioner-husband) in his cross-examination has deposed that he never visited the respondent-wife at Hazaribag. On 01.06.2022, the petitioner and his father came to Hazaribagh. He has seen the photo of Beauty Parlour of respondent-wife in facebook but not seen physically.
- (iv) PW-4 Birendra Ram (Neighbour of petitioner-husband) has deposed in his cross-examination that the respondent wife was insisting the petitioner husband to live separately for which the petitioner husband has filed the suit. He cannot remember the date

and how many times respondent wife visited her parental house, from marriage till 2023. He has also deposed that the petitioner husband and his father visited the saloon of respondent wife at Hazaribag in the year, 2022 but he was not accompanying them. He cannot say the date of panchayati. The petitioner husband runs tobacco shop with his father.

18. The respondent-wife has also been examined as R.W.-1. For ready reference, her evidence along with other R.Ws. are being referred as under:

- (i) RW-1 Rakhi Rani Agarwal (respondent-wife) has stated in her examination-in-chief filed on affidavit that she still wants to resume her conjugal life.

In her cross-examination she has deposed that she has been using vermilion over her forehead. She came back to parental house from matrimonial house in December, 2021. She did not state no depose in her maintenance case that she has no relation with husband since 13.11.2016.

- (ii) R.W.2 Ashok Kumar Agarwal (father of the respondent-wife) has deposed in his cross-examination that no dowry-cruelty case was lodged. Respondent-wife lived in matrimonial house till 2016. Respondent-wife was living in her matrimonial house, the petitioner-husband was visiting house of this witness but can't say its number. Further, deposition has been made that on 01.06.2022,

the petitioner-husband did visit his house. After one night stay, he went back promising to come for Bidai.

- (iii) R.W.3 Sunil Kumar Agarwal (brother of respondent-wife) has deposed in his cross-examination that he works in BCCL, Dhanbad and living there with his family. Since in government job, he cannot undertake any business. He was also a witness in maintenance case of respondent. He had deposed that respondent/wife lived in matrimonial house till December, 2021 and no cruelty upon respondent-wife took place in his presence. He had further stated that respondent-wife runs beauty parlor at Hazaribagh.

19. The learned Family Judge has gone into the interpretation of the word “cruelty” and “desertion” and assessing the same from the evidences led on behalf of the parties as also the submission made in the pleading, i.e., plaint and written statement, has found that the element of cruelty and desertion could not have been established.
20. The learned counsel for the appellant/petitioner has argued that the evidence of cruelty and desertion has not properly been considered and as such, the judgment suffers from perversity, hence, not sustainable in the eyes of law.
21. While on the other hand, argument has been advanced on behalf of the respondent has submitted that the judgment is well considered one and merely by committing fraud, the suit for divorce has been filed.
22. This Court while appreciating the argument advanced on behalf of the parties on the issue of perversity needs to refer herein the interpretation of

the word “perverse” as has been interpreted by the Hon'ble Apex Court which means that there is no evidence or erroneous consideration of the evidence. The Hon'ble Apex Court in *Arulvelu and Anr. vs. State [Represented by the Public Prosecutor] and Anr., (2009) 10 SCC 206* while elaborately discussing the word perverse has held that it is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law. Relevant paragraphs, i.e., paras-24, 25, 26 and 27 of the said judgment reads as under:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. The ground for divorce has been taken of cruelty and desertion. The “cruelty” has been interpreted by the Hon’ble Apex Court in the case of ***Dr. N.G. Dastane vs. Mrs. S. Dastana, (1975) 2 SCC 326*** wherein it has been laid down that the Court has to enquire, as to whether, the conduct charge as cruelty, is of such a character, as to cause in the mind of the petitioner, a reasonable apprehension that, it will be harmful or injurious for him to live with the respondent.
24. This Court, deems it fit and proper to take into consideration the meaning of ‘cruelty’ as has been held by the Hon’ble Apex Court in ***Shobha Rani v. Madhukar Reddi, (1988)1 SCC 105*** wherein the wife alleged that the husband and his parents demanded dowry. The Hon’ble Apex Court emphasized that “cruelty” can have no fixed definition.
25. 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.”

26. 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.”
27. 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.
28. 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”.
29. 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.

30. 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.
31. Since, the appellant husband has also raised the issue of desertion therefore the definition of “desertion” is required to be referred herein as defined under explanation part of Section 13 of Hindu Marriage Act 1955 which means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage.
32. *Rayden on Divorce* which is a standard work on the subject at p. 128 (6th Edn.) has summarised the case-law on the subject in these terms:

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

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

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

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

33. The offence of desertion is a course of conduct which exists independently of its duration, but as a ground for divorce it must exist for a period of at least two years immediately preceding the presentation of the petition or, where the offence appears as a cross-charge, of the answer. Desertion as a ground of divorce differs from the statutory grounds of adultery and cruelty in that the offence founding the cause of action of desertion is not complete, but is inchoate, until the suit is constituted. Desertion is a continuing offence.

34. It is, thus, evident from the aforesaid reference of meaning of desertion that the quality of permanence is one of the essential elements which differentiates desertion from wilful separation. If a spouse abandons the

other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end.

35. Similarly, two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. In such a situation, the party who is filing for divorce will have the burden of proving those elements.

36. Recently also, the Hon'ble Apex Court in ***Debananda Tamuli vs. Kakumoni Katakya*, (2022) 5 SCC 459** has considered the definition of 'desertion' on the basis of the judgment rendered by the Hon'ble Apex Court in ***Lachman Utamchand Kirpalani v. Meena*, AIR 1964 SC 40** which has been consistently followed in several decisions of this Court. The law consistently laid down by this Court is that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be *animus deserendi* on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home.

The view taken by the Hon'ble Apex Court has been incorporated in the Explanation added to sub-section (1) of Section 13 by Act 68 of 1976. The said Explanation reads thus:

“13. Divorce.—(1) ...

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

37. This Court, on the premise of the interpretation of the word “cruelty” and “desertion” has considered the evidences of the witnesses as has been incorporated by the learned Court in the impugned judgment.
38. It is evident therefrom that the ground of cruelty has been taken of demanding fridge and in default, she destroyed household articles and was asking for divorce. Further ground herein is that she never cooked meal and did not discharge her household duties. Further, the respondent wife was blaming the petitioner husband as impotent.
39. The suit has been filed in the year 2022. The said ground cannot be said to be sufficient ground to prove the ground of cruelty, i.e., on the day of Chauthari, on 29.04.2013, she started demanding fridge and in default, she destroyed household articles and was asking for divorce, as such, said ground has been disbelieved by the learned Family Judge.
40. Further, the petitioner-husband has not disclosed exactly when for the first time and for the last time he was blamed as impotent.
41. The desertion has also been taken as a ground but the desertion has been defined and interpreted by the Hon’ble Apex Court that the desertion will

be said to be desertion if either of the party, on his/her own wish, has left the matrimonial house. But no concrete evidence has been produced by the appellant/petitioner to prove the element of desertion showing that the respondent-wife has left her matrimonial house on her own wish and without any valid reason.

42. From the perusal of impugned judgment, it is evident that the learned Family Judge, on consideration of both the issues at depth, has not found the ground for dissolution of marriage as alleged and accordingly, dismissed the suit.

43. This Court, based upon the aforesaid discussions, is of the view that the appellant/petitioner has failed to establish the element of perversity in the impugned judgment as per the discussion made hereinabove, as such, the instant appeal deserves to be dismissed.

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

45. Pending interlocutory application(s), if any, also stands disposed of.

(Sujit Narayan Prasad, J.)

I Agree

(Arun Kumar Rai, J.)

(Arun Kumar Rai, J.)

14/11/2025

Rohit/A.F.R.

Uploaded on 14.11.2025