

IN THE HIGH COURT OF JHARKHAND AT RANCHI

First Appeal No.141 of 2024

Biswajit Mahapatra aged about 38 years son of Devendra Nath Mahapatra resident of H.No.23, Gurudwara Basti, Bistupur, P.O & P.S-Bistupur, Town-Jamshedpur, District-East Singhbhum.

..... Appellant

Versus

Anita Karmakar wife of Biswajit Mahapatra, Daughter of Chat Karmakar resident of H.NO.9, Golai No.1, Near Uma Jewelers, Kagalnagar, Sonari, P.O & P.S-Sonari, Town-Jamshedpur, District-East Singhbhum.

... .. Respondent

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

For the Appellant : Mr. Samir Kumr Lall, Advocate
For the Respondent : Mr. Dilip Kumar Karmakar, Advocate

C.A.V on 07.10.2025 Pronounced on 14/10/2025

Per Sujit Narayan Prasad, J.

The instant appeal under section 19(1) of the Family Courts Act, 1984 is directed against the judgment dated 23.04.2024 and the decree dated 27.04.2024 passed in Original Suit No.53 of 2019 by the learned Addl. Principal Judge, Addl. Family Court-2, East Singhbhum at Jamshedpur (in short, Family Judge) whereby and whereunder the petition filed under section 27(1)(b) and (d) of the Special Marriage Act by the appellant-husband against the respondent-wife has been dismissed.

Factual Matrix

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

- (i) It is pleaded that the parties are Hindu but their marriage was solemnized on 02.05.2016 before Marriage Officer-cum-District

Sub Registrar, Jamshedpur under the provisions of Special Marriage Act.

(ii) It is pleaded that the appellant and the respondent before marriage came in contact with each other through sports event as they are sports persons. Soon thereafter, they became friend and gradually their friendship turned into love affair and they decided to solemnize marriage and their marriage was solemnized according to Special Marriage Act before the Marriage-Officer-cum-District Sub-Registrar, Jamshedpur.

(iii) It is alleged that prior to solemnization of marriage on 02.05.2016 the respondent disclosed before the petitioner that her family members are adamant for her marriage with someone not of her choice as such to avoid such marriage proposal she is in need of a marriage certificate for which they should get their marriage solemnized and registered, so that she can avoid her marriage proposals by using the said marriage certificate or else the respondent will commit suicide and due to the aforesaid reason even after solemnization of the marriage between the petitioner and respondent on 02.05.2016 the respondent stayed in her parent's house without accompanying the petitioner.

(iv) It is alleged that due to the aforesaid reason even the marriage of the petitioner with the respondent was not consummated as the respondent all throughout till date on some or other pretext refused the petitioner to join in her matrimonial house, the reason best known to the respondent.

(v) It is alleged that the marriage in between the petitioner and respondent was not accepted by the parents and other family members of the respondent as they belong to different caste and number of times the petitioner requested the respondent to join him in her matrimonial home but all such effort of the petitioner went in vain as the respondent was not interested to join the petitioner to lead happy marital life with the petitioner.

(vi) It is pleaded that gradually day by day the behaviour and approach of the respondent towards the petitioner changed and she became aggressive and started to misbehave with the petitioner whenever he tried to contact her.

(vii) It is alleged that the respondent one day disclosed that she has got the marriage certificate with her and unless and until she will be given a sum of Rs. 20 lakhs neither she will reside with the petitioner nor will give divorce to the petitioner rather will implicate the petitioner and his family members in dowry case on false allegations.

(viii) It is alleged that the respondent started to create nuisance by giving threatening to the petitioner over telephone due to which the peaceful life of the petitioner became miserable and was great set back to the petitioner. Due to that reason, the petitioner believed that the respondent under a pre-planned way got the marriage solemnized and registered before the Marriage Officer only with oblique intention to extort money from the petitioner without leading happy conjugal life as husband and wife with the petitioner.

(ix) It is further pleaded that the petitioner as well as his family members number of times tried their level best to make the respondent understand and to join her matrimonial house but all such effort become futile when lastly on 15.01.2019 the respondent flatly denied and expressed her unwillingness to reside with the petitioner rather started to level false, concocted and scandalous allegations against the petitioner and his family members.

(x) It is pleaded that due to aforesaid inhuman torture upon the petitioner by the respondent the life of the petitioner became miserable and as the respondent had denied to have any conjugal relation with the petitioner since solemnization and registration of their marriage on 02.05.2016 without any reasonable and cogent reason, hence, all such act of the respondent amounts to cruelty as defined U/s 27(1)(d) of the Special Marriage Act.

(xi) It is alleged that the respondent without any reasonable cause deserted the petitioner for a continued period of not less than 2 years till the date of presentation of this petition, therefore, the petitioner is entitled for decree of divorce against the respondent.

3. On the aforesaid ground of cruelty and desertion, the appellant-husband has prayed for a decree of dissolution of the marriage between him and the respondent-wife, accordingly, the suit being Original Suit No.53 of 2019 for dissolution of marriage has been preferred.

4. It needs to mention herein that in Original Suit No.53 of 2019, after issuance of notice the respondent-wife appeared and contested the suit by filing her written statement denying all the allegations levelled against her by the plaintiff-husband. It has been stated that the suit has

been filed on false, frivolous and concocted grounds and is fit to be dismissed. She has admitted that her marriage was solemnized with the petitioner as per the Special Marriage Act 1954 but denied that it is not a fact that prior to their marriage the respondent had ever stated before the applicant that family members of the respondent were adamant to get her married somewhere else so marriage certificate was required for avoiding their marriage proposal or she would commit suicide.

5. It is admitted that after introduction of both parties the matter was put up before the family members and upon their consent and in presence of both the family members and witnesses the marriage was duly solemnized and registered at Jamshedpur. It has been averred that at the time of marriage they were gifted with gold ornaments, clothes, furniture and other house hold articles including cash and the respondent were brought to her in laws' house with the same presents.

6. It is stated that they put their proposal before their respective family members and on their consent on 02.05.2016 at the marriage registry office, Jamshedpur the marriage was solemnized and registered. Thereafter, they were blessed with gifts and from the parents' house of the respondent she was taken to her matrimonial house along with the gifted articles. The applicant and respondent began to live together as husband and wife and about 6-7 months they enjoyed their matrimonial life.

7. It is stated that thereafter the appellant and his family members started demanding Rs.5 lakhs from the respondent and her parents and, thereafter, her parents any how managed to pay Rs. One lakh to the appellant but again they pressurized for the remaining amount of Rs. 4 lakhs and continued torture and assault due to that she had to be admitted

in hospital. In course of treatment on 05.03.2018 it was found that she was pregnant of two months but due to assault and torture it was miscarriage.

8. It is alleged that after lapse of few months the applicant by misleading took the respondent to her parents' house to stay there for sometimes but did not take her back.

9. It is stated that the appellant is a constable in Jharkhand Police and, as such, to lead a peaceful married life she approached his superior officers of his department for keeping her with him peacefully and not otherwise.

10. It is alleged that for non-fulfillment of the demand of dowry by the respondent's parents, she was subjected to torture and the applicant admittedly being a police man and having contact with VVIP he has no regard of law and adamant to spoil the life of a simple sweet hearted lady by throwing her in measurable condition. But all attempts of the respondent went in vain and she was subjected to torture at the hands of the appellant and his family members.

11. It is stated that thereafter the respondent had no option but to lodge a criminal case against the appellant and his family members being C/1 Case No. 1391/19 U/s 498(A),406,313,384,323,324 I.P.C.

12. It is alleged that ultimately the respondent sent a request letter through her lawyer dated 06.01.2019 not to demand any dowry and to bring her back and keep her peacefully with due dignity, beside this she also intimated the matter to the superior police officer as well as to the S.P, Chaibasa orally and also in writing under whom the applicant is posted as constable no. 1579 within district police Chaibasa. The applicant did not give any response of the said letter and in order to defend himself

from any criminal case for their wrongful act filed this suit with false and concocted allegations.

13. It is stated that the respondent had sent a request letter on 06.01.2019 which was duly received by the applicant so question of flat refusal to live with the applicant on 15.01.2019 does not arise and it is stated only to make a cause of action as such no cause of action accrued on the said date or any other day.

14. It is further averred that after marriage the applicant and respondent had good conjugal relation for few months. The respondent never did any type of inhuman torture upon the petitioner/applicant which amounts to cruelty as such the allegation does not come under the preview of section 27(1)(d) of Special Marriage Act and the respondent never deserted the applicant.

15. Learned Family Judge, after institution of the said case, taking in to consideration of the pleading of the appellant has formulated the issues and has decided the *lis* by refusing to grant divorce to the petitioner/appellant.

16. The aforesaid judgment by which divorce has not been granted is under challenge by filing the instant appeal.

Submission on behalf of the appellant-husband:

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

- (i) There is an error in the impugned judgment, since, each and every aspect of the matter has not been taken into consideration based upon the documentary evidences as well as ocular evidences.

(ii) That the learned Family Judge has failed to consider that though the marriage of the appellant and the respondent was solemnized according to Special Marriage Act but the respondent did not want to live with him as wife and, as such, the impugned judgment and decree suffer from an error.

(iii) It has been contended that the learned Family Judge has failed to consider that the respondent had filed a false criminal case against him and his family members being C/1 Case No. 1391/19 U/s 498(A),406,313,384,323,324 1.P.C which also amounts to cruelty.

(iv) It has been contended that the learned Family Judge has failed to consider that the respondent wife never wanted to lead a conjugal life with the appellant rather married with the appellant only to extort money.

(v) It has been contended that the learned Family Judge has failed to consider that nothing was brought on record to show that respondent stayed at her matrimonial house for even a single day.

(vi) It has been contended that the learned Family Judge has failed to consider that the appellant never deserted the respondent rather the respondent never showed her interest to join appellant and her matrimonial house.

(vii) It has been contended that the learned Family Judge has failed to consider that not even a single chit of paper was brought on record to show that respondent ever undergone treatment in any hospital wherein it was found that she suffered a miscarriage due to torture and assault.

(viii) It has been contended that the learned Family Judge has failed to consider that the respondent in her evidence has admitted that she filed case under section 498(A) against the appellant after receiving notice of the Original Suit.

(ix) It has been contended that the learned Family Judge has failed to consider that the respondent in her cross-examination has stated that she was pregnant and got herself checked by Dr. Priti Mohan, but neither the Doctor was examined during trial nor the respondent herself brought any prescription of Doctor or any paper regarding her treatment by the said Doctor.

(x) It has been contended that the learned Family Judge has failed to consider that the respondent has never produced any chit of paper to show that she or her family members had paid an amount of Rs.one lakh to him or his parents.

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

Submission of behalf of the respondent-wife:

19. The learned counsel appearing for the respondent-wife has taken the following grounds:

- (i) There is no error in the impugned judgement. The learned Family Judge has considered the entire issue and on the basis of evidence as led by the parties has passed the order impugned as such same may not be interfered with.
- (ii) The appellant has sought divorce on the ground that the behaviour of the respondent-wife is cruel, and has deserted

the appellant without any valid ground but the learned Family Court, after taking into consideration the oral and documentary evidence, has held that the entire allegations levelled in are absolutely illegal, uncalled for and has rightly dismissed the suit.

- (iii) It has also been submitted that the learned Family Court after taking into consideration the material available on record has found that the conduct of the appellant-husband has never been towards salvaging the institution of marriage as it is he who has come for the dissolution of the marriage, therefore on the pretext of the aforesaid categorical finding of the Family Court, the impugned order requires no interference.

20. Learned counsel, based upon the aforesaid grounds, has submitted that if on that pretext, the factum of cruelty has not been found to be established, hence, the impugned judgment cannot be said to suffer from an error.

Analysis:

21. We have heard the learned counsel appearing for the parties and gone through the impugned judgment.

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

(i) Is the suit as framed maintainable?

(ii) Whether the applicant has valid cause of action?

(iii) Whether the respondent has committed acts of cruelty on the applicant sufficient for the purpose of divorce?

(iv) *Whether the respondent has deserted the applicant for a period of two years or more immediately preceding the filing of the application?*

(v) *Whether the applicant is entitled to a decree of divorce?*

(vi) *To what other relief or reliefs the applicant is entitled to?*

23. The issue pertaining to ground for divorce is by formulating a specific issue whether the plaintiff/applicant is entitled to a decree of divorce by dissolution of marriage between the parties as issue no(v).

24. But first of all, the learned Family Judge has taken into consideration the issue nos.(iii), and (iv), i.e., the ground of cruelty and desertion. The learned Family Judge has considered the evidence adduced on behalf of the parties for deciding the issues involved in Original Suit No.53 of 2019.

25. This Court in order to appreciate the aforesaid rival submission before entering into the legality and propriety of the impugned judgment needs to discuss herein the relevant part of the evidences adduced on behalf of the parties which has been mentioned in the impugned order wherein the element of cruelty and desertion has been shown by the petitioner-husband.

26. During the trial, the petitioner/appellant has been examined himself as PW1.

27. It appears from the impugned judgment, that on the other hand, the respondent-wife has also examined two witnesses in support of her contention including herself as RW1.

28. In his examination on oath as PW1, the appellant-husband has narrated entire things as pleaded in the plaint about his marriage with the

respondent. He has stated on oath that he has filed this divorce case against his wife. He has stated that he has filed this case for dissolution of his marriage with the respondent solemnized on 02.05.2016.

29. He has deposed that he and the O.P/respondent were sports persons and during their sports activity they came in contact and it turned into a love affair. On 02.05.2016 they got married before Marriage Registrar, Jamshedpur as per Special Marriage Act. He has stated that the respondent cheated him to solemnize the marriage as prior to the marriage she told him that her parents are trying to marry her against her wish so she wanted a marriage certificate to avoid her marriage and she even threatened him of committing suicide. He has deposed that after the marriage on 02.05.2016 the respondent did not come to her house and the marriage was not consummated as she avoided coming to her in laws' place on one pretext or the other.

30. He has further deposed that their marriage was not acceptable by the parents and relatives of the respondent as they were of different caste. He has stated that several times he asked the respondent to come to his house but it went futile as she was not ready to come to his house and was not ready to lead happy conjugal life with him. He has further deposed that after sometime, behaviour of the respondent changed and whenever he tried to contact her, she used to get aggressive and misbehaved with him. He has deposed that he was surprised when one day the respondent told him that she would not stay with him unless he gives him Rs. 20 lakhs and threatened that she will not divorce him and will implicate him and his family in false dowry case.

31. He has further deposed that his life became hell due to threatening given to him on phone and due to which he could not do his work properly. He has full faith that under a plan she married him in order to extort money from him. He has deposed that he along with his family tried to make her understand to come and live with him and lead a happy conjugal life with him but instead of coming she started threatening him of implicating him in false dowry case and in this way, he has been tortured by her and she even refused to have physical relation with him which amounts cruelty upon him.

32. He has further deposed that in spite of registered marriage on 02.05.2016 she is staying separately from him for more than two years, so due to desertion and cruelty he is entitled for decree of divorce from the respondent. He has stated that it has been wrongly stated by the respondent that all the allegations levelled against her is false and it is also false that gold jewelries, furniture and cash were given to him and she came with lot of articles to his house.

33. He has further stated that it is also false that after the marriage respondent stayed with him as his wife for seven months and that he and his family demanded Rs. 5 lakhs from her and Rs. One lakh was ever given and she was tortured for the rest four lakhs. He has also deposed that it is also false allegation that she was assaulted for money and that she was found pregnant during treatment and due to assault, she suffered miscarriage. He further deposed that it is also false that he never wanted to bring the respondent to his house and that any pressure was given to her for dowry. It is also false to say that respondent neither abused him nor misbehaved with him nor gave any threatening. It is also false that he

received any letter sent by the respondent on 06.01.2019a and that respondent never did any inhuman acts against him.

34. In the cross-examination, he has stated that he took bail in the case filed by his wife U/s 498(A) I.P.C and he had signed on the application prior to getting the marriage certificate. He has denied that it is not true that he does not want to keep his wife. He has admitted that he has not filed any case for bringing his wife. He has further denied that he has no proof that his wife behaved cruelly with him and she did not want to stay with him. He has stated that even if the respondent gets ready to stay with him then also, he will not keep her. He has further denied that he has neither informed anybody nor lodged any case regarding demand of Rs. 20 Lakhs by the respondent.

35. The respondent as RW1 has stated in her examination in chief given by way of affidavit dated 08.07.2022 that she is the legally wedded wife of the applicant as their marriage was solemnized on 02.05.2016 before Special Marriage Officer, Jamshedpur. She has stated that they came in contact with each other in JRD Stadium, Jamshedpur and very soon their friendship turned into love and lastly, they got married to each other. She has further deposed that prior to the marriage she had stated to the petitioner that when she brought their matter before her parents, they got ready for the marriage. She has deposed that both the family members were ready for the marriage and thus, the marriage was registered.

36. She has further deposed that at the time of marriage, she was gifted with gold ornaments, furniture and other household articles and even cash and she went to her matrimonial home along with the same. She has further deposed that her marriage was duly consummated and she lived

happily at her matrimonial home for seven months, thereafter applicant and his family started demanding Rs. 5 Lakhs and she was subjected to cruelty and ultimately in compelling situation her parents paid Rs. 1 lakh on 20.08.2017, but she was continuously pressurized for bringing the remaining Rs. 4 lakhs, so cruelty upon her continued and due to which she was admitted in hospital. She has further deposed that during the course of treatment on 05.03.2018 it was found that she was having two months pregnancy, but as she was tortured and assaulted, so it resulted in miscarriage. She has further deposed that after lapse of few months with misleading statements she was brought to her parental home by the applicant and then she was never taken back. So, finding no alternative she filed a criminal case being Case No. C/1 1391/19 against the applicant and his family and on the basis of which Sonari P.S Case No. 110/19 was registered and chargesheet has also been submitted.

37. She has deposed that she herself and her family attempted a lot to settle the dispute but the applicant and his family were adamant in not allowing her to come at her matrimonial home unless and until she paid the rest dowry amount. So, she sent a request letter through her lawyer on 06.01.2019 requesting not to demand dowry and to bring her and keep her with dignity. She has deposed that the matter was also brought in the notice of S.P, Chaibassa where the applicant was posted but there was no response from the side of the applicant. She has stated that her letter was duly received by the applicant and subsequently he filed this false and fabricated case for divorce.

In her cross-examination she has stated that it is true that after receiving notice in this case she filed a case U/s 498(A) I.P.C against her

husband. She has admitted that at the time of registered marriage witnesses from both the sides were present. She has admitted that when she was pregnant, she got herself checked from Dr. Priti Mohan of Sonari. She has stated that it is true that she made complaint against her husband before D.G.P., Jharkhand. She has denied the suggestion that after deceiving the applicant he married him and it is also wrong to say that after the registered marriage they did not stay together. She has denied the suggestion that she was demanding Rs. 20 Lakhs from the applicant for giving divorce.

38. R.W.2-Ashtami Karmakar is the sister of the respondent who has stated in her examination in chief given by way of affidavit dated 06.02.2022 that his sister Anita Karmakar is the legally wedded wife of the applicant as their marriage was solemnized on 02.05.2016 before Special Marriage Officer, Jamshedpur. She has stated that they came in contact with each other in JRD Stadium, Jamshedpur and very soon their friendship tuned into love and lastly, they got married to each other.

39. She has stated that prior to the marriage her sister had stated to the petitioner that when she brought the matter before her parents and family, they got ready for the marriage. Both the family members were ready and thus the marriage was registered. She has deposed that at the time of marriage her sister was gifted with gold ornaments, furniture and other household articles and even cash. She has deposed that her sister went to her matrimonial home along with the said articles where her marriage was duly consummated and she lived happily at her matrimonial home for seven months. Thereafter, the applicant and his family started demanding Rs. 5 lakhs as dowry from her and she was subjected to cruelty and ultimately in compelling situation her parents paid Rs. 1 lakh on

20.08.2017, but her sister was continuously pressurized for bringing the remaining Rs. 4 lakhs so cruelty upon her continued and due to which she was admitted in hospital. She has stated that during the course of treatment on 05.03.2018 it was found that her sister is two months pregnant but due to torture and assault resulted in miscarriage. She has deposed that after lapse of few months with misleading statements her sister was brought to her parental home by the applicant and they never took her back. So, finding no alternative a criminal case being Case No.C/1 1391/19 was filed by her sister against the applicant and his family and on the basis of which Sonari P.S Case No. 110/19 was registered.

40. She has deposed that her sister, she herself and her family attempted a lot but the applicant and his family were adamant in not allowing her sister to come to her matrimonial home unless and until she paid the rest dowry amount. So, her sister sent a request letter through her lawyer on 06.01.2019 requesting not to demand dowry and to bring her and keep her with dignity. She has deposed that the matter was also brought in the notice of S.P, Chaibasa where the applicant was posted, but there was no response from the side of the applicant. She has stated that her letter was duly received by the applicant and, subsequently, he filed this false and fabricated case.

In the cross-examination she has stated that prior to 02.05.2016 she has gone to the Registry Office once at the time of giving application. She has stated that in the registration application she and her *bhabhi* put their signature as a witness. She has stated that after the registered marriage with the O.P there was a social marriage also which had taken place in a shiv

temple. She has admitted that beside filing criminal Case No. 1391/19 her sister had also given application before S.P. Chaibasa.

41. The learned Family Judge has appreciated the entire facts and evidence and has come to the conclusion that the appellant-husband has failed to make the ground either cruelty or desertion and, as such, has dismissed the suit which is under challenge in the instant appeal.

42. It needs to refer herein that the fact about filing of suit on the ground of cruelty and desertion is admitted one as per the evidences adduced on behalf of the appellant. The appellant-husband has tried to establish the element of cruelty and desertion upon him at the hands of the respondent-wife.

43. The appellant-husband all along has alleged the issue of cruelty which he was subjecting to by his wife and in order to establish the same the evidences has been laid as has been referred hereinabove.

44. This Court while appreciating the argument advanced on behalf of the appellant 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.

45. 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.”*

46. Now coming to the fact of the instant case wherein, the ground for divorce has been taken on the pretext of cruelty and desertion, therefore it would be apt to discuss herein the element of cruelty and further in the light of aforesaid this Court will appreciate that whether the respondent by act of her caused cruelty upon the petitioner/appellant.

47. 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.

48. 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.

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

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

51. 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.

52. 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".

53. 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.

54. It needs to refer herein that it is settled position that a proceeding under Hindu Marriage act is not criminal proceeding where proof beyond reasonable doubt is required rather preponderance of probability" is enough. The accepted rule, therefore, is that circumstantial evidence is all that can normally be expected in proof of charge; However, the circumstances must be such as to lead to fair inference, as a necessary conclusion.

55. Further, it requires to refer herein that the Hon'ble Apex Court in *Joydeep Majumdar v. Bharti Jaiswal Majumdar*, (2021) 3 SCC 742, has observed that while judging whether the conduct is cruel or not, what has to be seen is whether that conduct, which is sustained over a period of time, renders the life of the spouse so miserable as to make it unreasonable to make one live with the other. The conduct may take the form of abusive or humiliating treatment, causing mental pain and anguish, torturing the spouse, etc. The conduct complained of must be "grave" and "weighty" and trivial irritations and normal wear and tear of marriage would not constitute mental cruelty as a ground for divorce.

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

57. Now re-adverting to the factual aspect, it is evident from the impugned order that the allegations specific to the ground of alleged cruelty has been made by the petitioner/plaintiff-husband in his examination-in-chief.

58. However, it is evident from the testimony of the husband/appellant that nothing substantial has come in his testimony in order to substantiate the cruelty meted to him by hand of the respondent/wife. Further no cogent evidence has been produced on behalf of the plaintiff's side that there were any grave and weighty circumstances was arising which compelled the husband/appellant to pullout himself from matrimonial obligation, rather it is evident from the testimony of witnesses that the substances which have been stated is only related to normal wear and tear of life.

59. At this juncture it would be apt to refer the definition of desertion as defined under explanation part of Section 27 of the Special Marriage Act 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.

60. ***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.”

61. 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.”

62. 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.

63. 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.

64. 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.

65. 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.

66. Further, 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. For ready reference explanation part of Section 27 of the special Marriage Act is being quoted herein:

“27. Divorce.—(1) ...

In this sub-section, the expression “desertion” means 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;]

67. From the aforesaid, it is evident that desertion means 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.

68. 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.

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

70. The appellant-husband although has taken the ground of cruelty meted to him by his wife but, in course of trial he has failed to establish

the element of cruelty meted out to him at the hands of the respondent-wife as discussed hereinabove.

71. The desertion while, on the other hand, has been defined that if either of the parties on its own has left the house without any compulsion or coercion, then only such type of separation will come under the fold of desertion. But what we have seen from the evidence of the appellant and the witnesses adduced on his behalf during the trial that the appellant has compelled or create the atmosphere against the respondent, therefore respondent being compelled has deserted the place.

72. Further, it is evident from the impugned order that the learned Family Court has examined each and every aspect of the instant case and found that husband/appellant has miserably failed to establish the element of cruelty and desertion. For ready reference, the relevant paragraph is being quoted as under:

“And, from careful scrutiny, appreciation and marshaling of the evidence of the petitioner and the evidence of the respondent and her sister, it is very much clear that it is an admitted position that the respondent is the legally married wife of the petitioner. And prior to the marriage the petitioner and the respondent came in contact with each other at JRD Stadium, Jamshedpur and thereafter they became close and they decided to get married. And accordingly their registered marriage was done on 02.05.2016 before Marriage Officer, Jamshedpur. So on the one hand marriage has been admitted by the petitioner but he has come out with a plea that the respondent told him that her parents are getting her married somewhere else against her choice, so if she will get a marriage certificate with him she can stop her parents and for getting the marriage certificate she started giving threatening that she will commit suicide, so his said plea does not appear to be believable as he is working in police department and there were witnesses from both the sides at the time of registration of the marriage. Further he has corroborated the allegation made in the plaint that after the marriage she kept on staying at her parental place and did not come to her matrimonial home so the marriage could not

be consummated and till date she has on one pretext or the other is not staying in her matrimonial home. And several times he tried to bring back his wife to his house but neither she came to his house nor kept any relation as husband and wife and her behaviour changed and she became aggressive and misbehaved with them and she also demanded Rs. 20 Lakhs from her for staying with her or for giving him divorce with a threatening that if it is not fulfilled she will implicate him in false case of dowry. And due to the behaviour of the respondent and threatening he is unable to live peacefully and his life has become hell and he is not able to do his work properly, so he has full faith that under a plan respondent married him with an intention to extort money from him. So the respondent has tortured him badly and also refused to have physical relation with him and since 02.05.2016 she has deserted him. But the respondent in her written statement and also in her evidence has flatly denied the said allegations levelled by the petitioner against her. And even her sister P.W.2 has also categorically denied the said allegations levelled by the petitioner against her sister respondent. And further as per the evidence of the respondent and her sister the parents of the respondent gifted her with gold ornament, fumitures etc. and after the marriage she went to her matrimonial home along with the gifted article and her marriage was duly consummated and the petitioner and respondent lived happily for around seven months. But thereafter the petitioner and his family started demanding Rs. 5 lakhs as dowry and for which respondent was subjected to cruelty and her parents was compelled to pay a sum of Rs. 1 lakh but thereafter also she was continuously pressurized to give remaining 4 lakhs and cruelty upon her continued. And she even had to be admitted in hospital and due to torture and assault she even suffered miscarriage. And she was taken to her parental home with misleading statements and thereafter the petitioner never brought her back to his house. And due to the torture she was compelled to file C/1 Case no. 1391/19 and on the basis of which Sonari P.S Case No. 110/19 was registered against the petitioner and others. And why a married woman will file a criminal case against her husband without any rhyme or reason. And she even sent request letter to her husband requesting not to demand dowry and to take her and keep her properly with dignity but inspite of that the respondent was not taken by the petitioner to his house. And she even had to complain to D.G.P Jharkhand against her husband. Further the petitioner in his evidence has not stated a single incident or date when the respondent became aggressive and misbehaved with him and his family and how she became cruel to him. And making general

assertions and allegations that the respondent Anita Karmkar misbehaved with the petitioner and extended cruelty to him will not attract cruelty in any way. Rather the respondent had to file a criminal case against the petitioner and she also had to complain before the police chief of the state speaks a different story. So from the above made discussion of the evidence, it clearly appears that the petitioner has failed to bring any evidence to show any overt act on the part of the respondent which caused mental and physical cruelty to him. The petitioner has failed to bring any specific instance when the respondent was cruel towards him mentally or physically and simply by making assertion and allegation of causing cruelty without stating any date or particular instance would not attract cruelty. So the petitioner has failed to show any overt act on the part of the respondent towards him which would attract cruelty as envisaged U/s 13(1)(ia) and as defined and interpreted by the Hon'ble Court in the above referred cases. So in view of the above discussed evidence, facts & circumstances, it can be safely concluded that the petitioner has not been able to establish that he suffered cruelty at the hands of the respondent and the acts complained against the respondent would not constitute cruelty rather the respondent was compelled to file criminal case for torturing her by the petitioner. And why a wife would file a criminal case against her husband without there being any substance. Further from the above made discussions of the evidence on the record it appears that the petitioner in his evidence has stated that respondent has deserted him for last more than two years but he has not stated any specific date that since when respondent deserted him. And although it is an admitted fact that the petitioner and respondent are staying separately but the respondent has denied his allegation that she has deserted him. And further the respondent and her sister has given evidence that respondent sent a letter on 06.01.2019 to her husband/petitioner requesting him to keep her with proper respect and dignity but he did not respond to the said letter, which clearly shows that it is the petitioner who is not willing to keep marital ties with the respondent. And if it had been the intention of the respondent to desert the petitioner she would not have sent a letter to the petitioner showing her willingness to stay with him. And the testimony of the respondent and her sister remained trustworthy, intact and inspires confidence as their cross-examination by the petitioner side could not yield anything in the favour of the petitioner. And further the petitioner has not brought anything to show that he is willing to resume marital ties with him and if he had the intention to continue marital ties with the respondent he

would have come up with a case U/s 9 of the H.M.Act instead of this divorce case. So the petitioner has also not succeeded in establishing that his respondent wife deserted him for more than two years. And the above discussed evidence shows that it is the petitioner who is staying separately from the respondent and it is the intention of the respondent to bring cohabitation permanently to an end (animus deserendi) as he neither took any efforts for settlement and taking his wife to her matrimonial home and to his society rather he filed this divorce case to get rid of his wife. And it appears that it is constructive desertion on his part. So the petitioner has also not succeeded in satisfying the ingredients of desertion.

So, from the above discussed evidence, facts and circumstances, I find that the petitioner has not succeeded in establishing that the respondent treated him with cruelty & also deserted him as envisaged U/s 27(1)(b)(d) of H.M.Act. So the petitioner is not entitled to the relief of getting divorce from his respondent wife on the ground of cruelty & desertion or any of the said grounds.”

73. Thus, it is evident that the appellant-husband although has taken the ground of cruelty and desertion meted to him by his wife but, in course of trial he has failed to establish the element of cruelty and desertion meted out to him at the hands of the respondent-wife as discussed hereinabove.

74. 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 and desertion has well been considered by the learned Family Judge.

75. On consideration of the evidence, the learned Family Judge has come to conclusion that the appellant-husband has miserably failed to establish the ground of cruelty and desertion against the respondent-wife, rather it is the appellant-husband, who himself has committed cruelty upon the respondent by demanding dowry in the shape of cash of Rs.5 lakhs and he himself deserted the respondent which would be evident from his

evidence itself also while in examination-in-chief he himself has deposed that he is not ready to keep the respondent with him.

76. The aforesaid reason has led the learned Family Judge to dismiss the suit.

77. This Court, on consideration of the finding arrived at by the learned Family Judge and based upon the aforesaid discussion, is of the view that the judgment and decree passed by the learned Family Judge is not coming under the fold of the perversity, since, the conscious consideration has been made of the evidences, both ocular and documentary, as would be evident from the impugned judgment.

78. This Court, therefore, is of the view that the judgment dated 23.04.2024 and the decree dated 27.04.2024 passed in Original Suit No.53 of 2019 by the learned Family Judge need no interference and, accordingly, the instant appeal stands dismissed.

79. Pending I.As, if any, stands disposed of.

(Sujit Narayan Prasad, J.)

I Agree.

(Rajesh Kumar, J.)

(Rajesh Kumar, J.)

Sudhir
Dated: 14/10/2025
Jharkhand High Court, Ranchi
AFR

Uploaded on 15/10/2025.