

IN THE HIGH COURT OF JHARKHAND AT RANCHI
F.A. No.209 of 2023

Vijay Kumar, aged about 48 years, son of Baban Prasad, resident of Qr. No.D.T.-2546, Dhurwa, P.O. Dhurwa, P.S. Dhurwa, District Ranchi.

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

Smt. Sagarika Devi, wife of Vijay Kumar, daughter of Sri Ganesh Prasad, resident of New Subhash Colony, Sanjay Path, Jai Prakash Nagar, Dimna Road, Road No.6, P.O. Mango, P.S. Mango, Town Jamshedpur.

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

P R E S E N T

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

.....

For the Appellant : Mr. Indrajit Sinha, Advocate
 : Mr. Akhouri Awinash Kumar, Advocate
 : Ms. Ashwini Priya, Advocate

.....

C.A.V. on 09.10.2025

Pronounced on 14/10/2025

Per Sujit Narayan Prasad, J.

Prayer:

1. The instant appeal has been filed challenging the legality and propriety of impugned judgment passed on 09.12.2022 and decree signed on 15.12.2022 by learned Additional Principal Judge, Additional Family Court-I, East Singhbhum at Jamshedpur whereby and whereunder the Original Suit No. 314 of 2016 filed by the petitioner-appellant-husband under Section 13(1)(iii) of the Hindu Marriage Act, 1955 for a decree of divorce has been dismissed.

2. At the outset it needs to refer herein that despite all the measures having been taken for the appearance of the respondent-wife, she has not put her appearance, therefore this Court has proceeded accordingly.

Factual Matrix

3. The brief facts of the case of the appellant-husband as narrated, is that, his marriage with the respondent-wife Sagarika Devi was solemnized as per Hindu rites and customs on 29.04.2007 and after her marriage the respondent-wife came to reside at her matrimonial house and stayed there for a period of 15 days.

4. It has been stated that during the aforesaid period, it was noticed that the respondent's behaviour was abnormal and she was unable to understand anything concerning the home work, behaviour with husband and other family members as well as with the people visiting the house of the petitioner. Neither she used to wash her hands after attending the call of nature nor she took bath. She did not know how to wear saree properly, nor she had any knowledge of conjugal functions.

5. It has further been stated that the mother of the petitioner tried to educate the respondent in all family works like washing, cooking and wearing apparels but of no

consequence. All the aforesaid matters were brought to the knowledge of the father of the respondent wife but he did not care for it. After some times the petitioner brought the respondent to Ranchi and got her treated but with no remedy. The respondent gave birth to a female child and even then, there was no change in her habits and actions.

6. It has been stated by the appellant that the petitioner/appellant got the respondent examined at Bhagalpur and the doctor after examining the respondent expressed and opined that the respondent is of immature brain which is incurable and there is no hope for any remedy. It has been stated that earlier also the petitioner had consulted doctors at Kanke, Ranchi who expressed his opinion that it is not a case of Lunacy rather a case of mental retardation which is not curable.

7. After failure of such aforesaid efforts, father of respondent was informed who came to Ranchi and took away the respondent to his house at Jamshedpur in the month of September, 2009 along with all the gifts given to her during the marriage. When the petitioner/appellant went to see his daughter at Jamshedpur, the respondent and other family members of the respondent misbehaved with him which cannot be expressed rather can be felt within. During the aforesaid visit to Jamshedpur, the

petitioner/appellant was shocked to see that her daughter was neither properly fed or dressed nor cared for at Jamshedpur by the respondent or her other family members.

8. It has stated that the petitioner again went to Jamshedpur on 20.01.2011 and requested his father-in-law that at least female child may be handed over to him but father-in-law of the petitioner flatly refused. The petitioner waited for any change in nature, action, habit of the respondent till 20.01.2011 but it was found in total negation.

9. The appellant/husband had stated that when it was finally established that living of the petitioner and the respondent as husband and wife is not possible at all and divorce is the only remedy left, thereafter, appellant/husband had preferred a suit being M.T. suit No.52/2011 under Section 13(1)(iii) of Hindu Marriage Act 1955 for dissolution of his marriage mainly on the ground that the respondent wife is of the unsound mind. In the aforesaid Matrimonial Suit No. 52 of 2011 notice was issued and served upon respondent wife but, she remained absent and ultimately an order of judicial separation was passed by the Principal Judge, Family Court, Ranchi on 04.04.2013, reserving liberty with the original applicant to prefer

application for divorce in accordance with law, if no co-habitation takes place between the parties for a period of one year.

10. It has further been stated that the respondent wife has preferred an appeal being F.A. No.566 of 2014 before the High Court against the order dated 04.04.2013 passed in M.T. Suit No.52 of 2011 wherein vide order dated 07.05.2015 this Court had refused to interfere with the order dated 04.04.2013 and has observed that “in view of these facts, we see no reason to entertain this First Appeal at this stage. Matrimonial Suit No.16 of 2015 and the interim maintenance application preferred by the appellant shall be decided on its own merits and without being prejudiced by the earlier observations made in the order dated 4th April, 2013 as well as order passed on 27th September, 2014. This appeal is disposed of with the aforesaid observation.”

11. It has also been stated that the appellant on premise that no cohabitation took place between the parties and more than one year has been elapsed since the order dated 04.04.2023 passed in M.T.Suit No. 52 of 2011, had preferred the suit being M.T. Suit No. 16 of 2015 under Section 13(1)(iii) of Hindu Marriage Act 1955 with prayer for dissolution of his marriage before the Principal Family Judge

Ranchi on 09.01.2015.

12. It appears from the impugned judgment that respondent wife preferred another Mat Title Suit No. 38 of 2014 under section 9 of Hindu Marriage Act for restitution of conjugal rights against appellant husband on 20.1.2014 before the Principal Judge, Family Court, Ranchi. The respondent wife also filed a Transfer petition being Transfer Petition (C) No.1 of 2016 before the High Court seeking transfer of both Mat. Suit No. 16 of 2015 and Mat. Title Suit No. 38 of 2014 from the court of Principal Judge, Family Court, Ranchi to the court of Principal Judge, Family Court, Jamshedpur and consequently vide order dated 27.04.2016 passed in said Transfer Petition permission was accorded and accordingly both the matrimonial suits have been received on transfer by the Principal Judge, Family Court, Jamshedpur and Mat. Suit No. 16 of 2015 has been re-registered as Original Suit No. 314 of 2016 while Mat. Title Suit No. 38 of 2014 has been re-registered as Original Suit No. 341 of 2016 respectively. It further appears that both the matrimonial suits ie. Original Suit No. 314 of 2016 (under section 13(1) (iii) of the H.M.A.) and Original Suit No. 341 of 2016 (under section 9 of H.M.A.) were ordered to be clubbed together for convenience of the parties and proceeding of the cases were ordered to continue analogous.

13. The case was admitted for hearing and upon notice the respondent wife appeared and filed her written statement and strongly denouncing the contentions of the appellant, as made in the plaint and refuted the allegations made against her and stated that the petitioner husband filed Matrimonial Suit No. 52 of 2011 on false and concocted facts to get rid of the respondent.

14. The respondent wife has further stated that the marriage of both parties was solemnized on 29.4.2007 at Jamshedpur, at the time of marriage some valuable articles gifted by the parents of the respondent. The husband of the respondent and his family inmates had taunted and had insulted her for not bringing the fridge, the mother-in-law asked for all the ornaments from her and all her ornaments were taken over by the mother and father of the husband and also a demand of Rs. 5 lakhs for getting a house built for the petitioner was made but the demand was not fulfilled by the respondent's father and since then they treated the respondent with cruelty torturing and taunting her at any pretext. Her husband demanded from the parents of the respondent Rs. 36,000/ for motor cycle but her parents showed their inability. The respondent's mother-in-law was diagnosed as heart patient and she went to Mumbai to her second son Sunil Kumar Verma whereas the respondent

stayed in her marital home with sister-in-law *nanad* Kiran Swarnkar and her two children.

15. It has further been stated that the mother-in-law underwent major operation in Mumbai and returned from Mumbai along with other inmates after 45 days. Thereafter, the mother-in-law remained on bed, she had lost her voice virtually and the respondent had to do entire household work alone, taking all the care of mother-in-law who could hardly move as she had lost all her senses. During March, 2008 the respondent did not feel well and requested her husband to take her to any lady doctor but he refused and he never cared to know how she was doing hence the respondent had to inform her father who came to her marital home and took her to a doctor and she got medical treatment and the doctor advised her to take rest, which she was never allowed by the petitioner. Her husband had arrived to her marital home and they took up quarrel with her, they tortured her, Mamta, Vijay Kumar's sister had assaulted her and her husband had abused her in filthy language. They wanted to oust her from her sasural and her husband supported the sister and he also assaulted her by himself at their instigation without any reasons.

16. The respondent had to request her father to help her as she was pregnant and nobody took care for her; she

was not even allowed two square meals properly. She was made to work worse than a maid servant in the household and even her husband did not support her. On 20.4.2008 the father of the respondent came over to her sasural and requested the petitioner and his father to allow the respondent to go with him, to Jamshedpur but they insisted that if he wanted to take his daughter, he would have to sign on a paper stating therein that he was taking his daughter with the ornaments as mentioned. They allowed her to go with three ornaments only out of her total twelve ornaments and even the weight of the same were also wrongly described by them in the paper. Her father had no option but to sign on the same.

17. The respondent came to Jamshedpur with her father on 20.4.2008. The respondent had to come back to her parents while she was pregnant and she delivered a female child on 3.7.2008 at Jamshedpur but none of the sasural family members came to see the child, not even the husband came to see his daughter. The child had some abnormality in her right leg. The mother-in-law of the respondent expired on 24.10.2008 and hearing this news the respondent, went to her sasural and participated in her last rites and she lived there till 15 February 2009 but none behaved properly with her. The father-in-law, sternly warned her not to enter into

the kitchen, she could not take meal by her own hand, she was not allowed to even warm the milk of her child, and her husband never took any care of the child. At the time of marriage of the second sister of the respondent on 17.02.2009, her father went to Ranchi on 10.02.2009 and invited the petitioner and his father, but they left respondent to her father's house on 15.02.2009 and did not attend the ceremony. The petitioner and his family members totally forgot about the respondent and when her father spoke to petitioner and his father, they flatly told him that they would not allow the respondent to come over to Ranchi. Then on 15.05.2009 respondent's father took her alongwith her child to her sasural at Ranchi but they did not allow her to enter into their house. There was heavy rainfall at that time. The local police were informed and it was with their intervention that the respondent and her child could enter the house and she stayed there till 25th September 2009 on which date she was assaulted by the petitioner and his sister Mamta, and father-in-law and Mamta's husband instigated them to beat her so that she should leave the house. Mamta abused her saying that she was an idiot and she has got such certificates made by the doctor of Bhagalpur which was surprising as the respondent had never gone to Bhagalpur and due to all this the respondent had to suffer, she could

not get anything to eat, and on 26 September 2009, the respondent was forcibly carried on a vehicle brought by the petitioner and she along with the child was dropped in her maike at Jamshedpur and since then she along with her child named Shreya are helplessly staying with the father of the respondent.

18. It is further stated that the respondent had attempted to contact the petitioner by her mobile but the petitioner has never shown his interest and he avoided talking to her, she asked for some money from the petitioner for the child but he straightaway refused saying that he is not at all interested in the child.

19. It has further been stated that there was marriage of third sister of the respondent on 23.11.2010 and the father of the respondent went to Ranchi to invite the petitioner and his family members but they were evasive. The respondent's father asked for the ornaments and wearable sarees belonging to the respondent for the said occasion but they refused to give him anything.

20. It is submitted that the mother of the respondent was suffering from brain tumor and the respondent was busy in her treatment and the concerned lawyer who was engaged for Matrimonial Suit No. 52 of 2011 did not look

into the case properly and due to laches of the lawyer her written statement was not filed in M.T.S. No. 52 of 2011 and therefore, M.T.S. No. 52 of 2011 was decided ex-parte on 4.4.2013 and a decree of judicial separation was granted u/s 10 of Hindu Marriage Act.

21. It is submitted that the aforesaid suit was filed mainly on the ground of mental illness of the respondent and the petitioner had filed certificates of doctor were completely false as she never appeared for any test before any doctor and the petitioner had falsely taken the alleged medical report/certificate for the purpose of obtaining divorce. It is completely denied that the respondent is suffering from mental disorder, mental retardation and mental backwardness as alleged in M.T.S. No. 52 of 2011 and M.T.S. No. 16 of 2015 (instant Original Suit No. 314 of 2016).

22. It is submitted that the respondent has passed B.Com. Examination and was doing job on the post of Security Assistant w.e.f. 31.3.1997 in Intelligence Bureau a Nagaland appointed by Government of India, Ministry of Home Affairs however, she resigned from the said post due to personal reason as she was posted in Kohima, Nagaland. It is submitted that divorce cannot be sought on ground of none cohabitation between the parties for the period of one

year because the respondent. had already filed M.T.S. No. 38 of 2014 u/s 9 of Hindu Marriage Act, which is pending for final disposal.

23. It is submitted that the respondent is not mentally retarded as she passed the Matric examination as the regular student of Balika High School Jamshedpur and she passed the Bihar School Examination Board in 1993 with second division and mathematics was one her subject. She also passed second year per-university Commerce Examination 1995 from Nagaland University where her father was posted as I.B. Officer. She also passed Bachelor of Commerce examination three years degree course in April 2001 from Ranchi University in second division. She was also appointed in Intelligence Bureau Department, Central Government Service on the post of Security Assistant and she resigned from the said job due to personal reasons. She was medically fit in all respect and Served in Central Government Service. Hence it is wrong to say that she is mentally retarded and mentally backward lady.

24. It has further been submitted that the respondent herself presented for medical and psychological Examination before the Jharkhand Government District Mental Health Center, Jamshedpur and after her examination the Dr. S. Kumar Psychologist has issued certificate on 2.7.2015 that

on the basis of mental status examination and psychological test finding depressive features found and no thought disturbed elicited at present so the medical in psychological examination and the certificate given by the doctor on 2.7.2015 after full examination belies, the allegation of mental illness and mental retardation of the respondent made in M.T.S. No. 52 of 2011 and M.T. S. No. 16 of 2015.

25. The statement regarding the mental illness and retardation of the respondent peacefully denied and is fully false, oppressive, vexatious, condemnable and fully baseless. The respondent is passing her days along with her daughter with great hardship and difficulties since the petitioner did not take care of the respondent and her child nor provided any maintenance allowance to her and her child and the educational expenses and other expenses for the child. The petitioner has completely deserted the respondent without any reason. The respondent has also filed M.T.S. No. 38 of 2014 u/s 9 of Hindu Marriage Act (now Original Suit No. 341/2016) for restitution of conjugal rights. The respondent and her daughter are willing to live with the petitioner.

26. It is submitted that the petitioner is under full control of his father and other family members who are adamant for divorce on false grounds because the respondent's father refused to fulfill their demand for

construction of house as he is a retired person. It is therefore, prayed that the suit filed by the petitioner for divorce may be dismissed with cost and petitioner be directed to keep his respondent wife by allowing her suit for restitution of conjugal rights filed u/s 9 of Hindu Marriage Act.

27. The learned Family Court, after institution of the said case, taking into consideration of the pleadings of the parties has formulated the issues and has decided the lis by refusing to grant divorce to the petitioner/appellant.

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

Submission made on behalf of the appellant-husband

29. Learned counsel appearing for the appellant-husband has submitted that the Learned Family Court below has failed to appreciate that the petitioner /appellant has produced credible evidence which are sufficient to establish that the respondent-wife has been suffering from mental retardation and therefore the petitioner / appellant is entitled for grant of decree of divorce.

30. Further, it has been submitted that 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.

31. Submission has also been made that the learned Court below also failed to appreciate that the petitioner / appellant has successfully substantiated that the decree of Judicial separation between the petitioner and the respondent has been passed on 04.04.2013 in Mat. Suit No. 52 of 2011, wherein it was ordered that if cohabitation takes place between the petitioner and the respondent for a period of one year, the petitioner shall be at liberty to file a case for divorce, and since the date of the aforesaid order more than one year has already been elapsed, but no cohabitation has taken place between the petitioner and respondent and, therefore, the petitioner /appellant is entitled for grant of decree of divorce.

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

33. The learned counsel, based upon the aforesaid ground, has submitted that the impugned judgment and decree is suffering from perversity, therefore, needs interference.

Analysis

34. We have heard the learned counsel for the appellant-husband and perused the material available on record and the finding recorded in the impugned order.

35. On the basis of the factual aspects, the learned Family Judge has formulated altogether six issues, for ready reference the same are being quoted hereinbelow:

- i) Whether the suit is maintainable in present form?
- ii) Whether the petitioner has got valid cause of action for the suit?
- iii) Whether the respondent has been suffering from incurable mental disease?
- iv) Whether the petitioner is entitled for a decree of divorce on the ground of respondent's incurable mental disease?
- v) Whether any cohabitation took place in between the petitioner and the Respondent within one year from the date of Order dated 4.4.2013 passed in Matrimonial Title Suit No. 52/2011 passed by the Principal Judge, Family Court at Ranchi?
- vi) To what other relief or reliefs the applicant is entitled for?

36. The learned Family Judge has considered the evidence adduced on behalf of the parties for deciding the issues involved in Original Suit.

37. 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 before the learned Family Court, wherein the element of mental disorder/retardation has been shown by the petitioner-husband.

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

39. During the trial, three witnesses have been examined on behalf of the appellant-husband who himself has been examined PW1 and other witness i.e. PW2-Bishwanath Prasad and P.W.3 Bhola Swarankar. Further certain documents have been exhibited i.e. judgment passed in Mat. Suit No. 52 of 2011 has been marked as Ext.1 and photocopy of document regarding return of ornament has been marked as Ext.2.

40. The relevant portion of the testimonies of the witnesses from petitioner's side are mentioned as under: -

PW.1 appellant husband had stated in his examination-in-chief that he had filed a Matrimonial (Title) suit No. 52/2011 before the court of the Ld. Principal Judge, Family Court, Ranchi, for dissolution of marriage by a decree of divorce, but the Ld. Principal Judge, vide order dt. 4.4.2013 was pleased to grant a decree of judicial separation between him and the respondent and was pleased to pass further order that if no cohabitation takes place between him and the respondent for a period of one year, he shall be at liberty to file a case for dissolution of marriage by a decree of divorce, and one year has already been elapsed since the date of the aforesaid order dt. 4.4.2013, but no cohabitation took place between him and the respondent and so he has filed the instant suit against the respondent.

It is further stated that his marriage was solemnized with respondent on 29.4.2007 according to Hindu rites and rituals. Thereafter, respondent came to her matrimonial home and lived there for only 15 days and during her stay he noticed that respondent is mentally retarded. Respondent neither used to wash her hand after coming from toilet nor she knew how to wear saree. She even did not take bath. His mother tried to give proper training of home making and hygiene but all went in vain. The father of respondent was also informed about abnormal behaviour of respondent, but

he did not seriously take it and only said that her behaviour will improve.

He has further deposed that after sometime he brought respondent to her matrimonial home at Ranchi and got her examined and treated by psychiatrists and they have opined that respondent is suffering from mental retardation and the ailment is incurable.

He has further deposed that in the meantime respondent gave birth to a female child but no change came in her behaviour. Again, he got respondent treated at Bhagalpur by Dr. S.P. Singh and he also agreed with the diagnosis of Doctor of Kanke, Ranchi and opined that that ailment is incurable. Thereafter, the father of respondent came to Ranchi and took away respondent along with his child and all the gifts which were presented at the time of marriage.

He has further deposed that after sometime he went to respondent's paternal home to see his daughter, but his in laws misbehaved with him which was intolerable. Again on 20.1.2011 he went to is matrimonial home where he saw his daughter in a very pitiable condition and when he requested his in-laws to handover his daughter, they started abusing him. Thereafter, his wife filed a case u/s 498A/406 IPC and 3/4 Dowry Prohibition Act, bearing C/1 Case No. 1874/2011

against him but his wife could not prove the allegations against him and he has been acquitted in the said case vide Judgment dt. 28.7.2017 and due to the aforesaid reasons, the marriage between him and the respondent is retrieving for a period of more than nine years. He has further denied the averments made in the written statement of the respondent.

In his cross-examination P.W-1 has stated that his marriage was solemnized at Jamshedpur on 29.4.2007 and on the next day of marriage his wife came along with him to his house. He has a daughter born out of this wedlock in July 2008 but he does not remember the date of her birth he does not know where his daughter is and in what class she is study. He did not make any effort to know the condition of his daughter. He stated that his daughter was born in Gurunanak Hospital. He had filed Mat. Suit No. 52 of 2011 in Ranchi, in which ex-parte decree was not passed. Four witnesses had given evidence in said case but they were not cross-examined. He has filed the copy of the order of Mat. Suit No. of 2011 but he does not remember whether it is certified copy or photo copy. He is not filed any medical certificates in this case. He had got examined the doctor in Mat. Suit No. 52 of 2011. He did not make any application in the court to keep his wife after the passing of order and

decree. He does not know whether his wife has filed any petition in the court for living with him or not. He does not remember the date of his wife going away to her mayka from his house after the marriage. He stated that his mother was treated in Mumbai she had gone there in August 2008 and after the operation there she returned to Ranchi. His mother died on 24.9.2003. His wife came to her sasural at Ranchi to attend the cremation of his mother. He does not remember whether his daughter came at that time or not. His wife stayed there for 3-4 months and they were fulfilling their marital obligations in that period. He did not know during that period that his wife is mentally retarded.

He admitted that his father-in-law had given the demand draft of Rs. 1,60,000/- and cash of Rs. 1,00,000/- in the marriage. He denied receiving any home theater in the marriage. He stated that bed, dressing table, Almirah, Washing Machine was given in the marriage, but he had not seen the utensils. Tilak ceremony took place seven days prior to the marriage. All these articles are still with him till date. The respondent had filed a Misc. Case for setting aside of decree passed in Mat. Suit No. 52/2011 but he does not remember whether he appeared in that Misc. case or not. He also does not remember whether the respondent had filed a case for maintenance or not. He does not know that

respondent stayed with him for a period of one year and two months after the marriage. He stated that he had shown his wife to a dentist in Ranchi for the first time. When his wife was pregnant, he showed her to a doctor but he does not remember the date and name of the doctor. He admitted he has not filed any medical prescriptions in that case. He admitted that his father-in-law, his wife and his daughter had come to Ranchi on 15.5.2009 but he did not lead them entered his house and he allowed them to enter his house only when they took the aid of the police. He does not remember whether his wife stayed in his house between 15.5.2009 to 25.9.2009 or not. He admitted that he brought his wife to Jamshedpur to her *myka* on 26.9.2009 and left her there. He does not remember whether he had shown his wife to any doctor or not.

He cannot bring the doctor for evidence in this case, who had given evidence in Mat. Suit No. 52 of 2011 at Ranchi. He denied the suggestion that the respondent did not get any opportunity to cross-examine the doctor at Ranchi. He does not know that the respondent had given an application that the medical board may be constituted. He stated that he has not passed B.Sc. He was cashier in Mahindra and Mahindra Company before marriage but he does not remember the date of his appointment. He does not know that his wife is B.Com.

Graduate. He admitted that he did not give any notice to call his wife after one year of passing of the order in Mat. Suit No. 52 of 2011 on 4.4.2013. He does not remember the date of filing of Mat. Suit No. 16 of 2015 at Ranchi. Amongst the witnesses who gave evidence in Mat. Suit No. 52 of 2011 one was Vijay Kumar other was Baban Prasad third was doctor whose name does not remember and the fourth was Shivajee. He does not know that there are two mental hospitals in Ranchi one of which is run by Central Government while the other is run by Jharkhand Government. He does not know whether there is mental hospital in Bhagalpur or not Besides the two mental hospitals in Ranchi there is third mental hospital whose name he does not know. He had gone to the third mental hospital which is also in Kanke but he does not remember the name of the doctor he had gone to see or the date and month of his visit. He had met the doctor for getting information and he told him his problem. The said doctor did not make any consultation nor gave any prescription. He again met the said doctor but he does not remember the date, month or year of his visit nor he knows the boundaries of the Hospital of said doctor.

He does not know whether the first appeal No. 566 of 2014 was filed by the respondent in Jharkhand High Court or he had appeared in that case or any order was passed in

the said case, He has no knowledge that his mother-in-law had brain tumor. He does not know when she died. There are three sisters to his wife. He has no knowledge when the sister of his wife got married. He had not attended the marriage since he was not invited. He does not know when the third sister of his wife got married since he did not attend the said marriage as he was not invited. No one from his family attended the said marriage since they were not invited.

He does not remember in which year he went to Bhagalpur. He denied the suggestion that his father-in-law gave twelve gold articles in his marriage. His father can talk about it however; he cannot attend since he is sick and is around 75 years old. There is no mental hospital in RIMs Ranchi. He has no knowledge whether there is any mental hospital in Bhagalpur Medical College or not. He does not know where his wife presently lives and got job she is doing. He had performed Puja for the mental illness of his wife but he does not remember the date. His father-in-law has retired from I.B. but he does not know the date of his retirement. He had gone to his sasural after 2009 but he does not remember the date he had gone in 2011 and thereafter he never went to his sasural.

He categorically stated his wife is mentally sick. He denied his suggestion that he never took his wife for

treatment of her mental illness. He has taken his wife to two doctors for treatment. One of the doctors gave advise while the other did not give any opinion. He denied the suggestion that he never took his wife to Bhagalpur. He does not remember on what date he took her to Bhagalpur. He has denied the suggestion that he has deposited fake medical certificate in Mat. Suit No. 52/2011.

He admitted that he has not deposited any medical certificate in this suit. He has denied the suggestion that he wants to divorce the respondent for remarriage for the sake of dowry. He categorically stated that he cannot keep his wife even she is mentally fit. Lastly, he has denied the suggestion that he has given false evidence and filed false case.

P.W.-2 Bishwanath Prasad and P.W. 3 Bhola Prasad Swankar have filed their examination-in-chief on affidavit which is similar in contents to the affidavit evidence of the petitioner simply corroborating the facts averred in the main petition and the evidence of the petitioner.

PW 2 in his cross examination has stated that he never intervened in the dispute between petitioner and respondent. He stated that he is making the statement that the family members used to call respondent insane as he had heard and seen but he has no knowledge about medical

science. He has seen the medical certificate of the doctor but he does not remember its date.

He stated that all the articles of the marriage have been returned to the respondent but he was int witness to that. He was witness in panchayati but he does not remember the date. There were four neighbours and two persons on behalf of petitioner he and Santosh Singh and on behalf of respondent her father and one other person whose name he does not remember. The document of panchayat was prepared which is deposited in court but he has not seen that document. Respondent lives in Jamshedpur and has a child. He does not know when petitioner went to bring respondent. He Isas denied the suggestion that he is giving false evidence being neighbour of petitioner.

PW-3 has stated in his cross-examination that he stayed in Ranchi for 20-25 days after the marriage of Vijay. He stated that Sagrika stayed in her sasural for around one and half years after the marriage. Sagrika(respondent) gave birth a child in July 2008 at Tata Nagar (Jamshedpur). He never visited the sasural of his Saala (brother-in-law) at Jamshedpur after the marriage. He has no knowledge when and how many times Vijay visited the mayka of Sagarika but he knows that when Sagarika's father took her to Jamshedpur after Bidai, Vijay had gone along with them. He

visited his sasural at Ranchi many times during the presence of Sagarika and he tried to talk to her but he could not do so due to her behaviour. After the marriage Vijay's mother had gone to Mumbai for medical treatment but he does not clearly remember after how many days after the marriage she had gone there. She died in 2008 at Ranchi. Vijay had gone to his sasural at Jamshedpur after September, 2009. He has no knowledge whether Vijay attended the marriage of Sagarika's sister. He had gone to Bhagalpur in the last months of 2007.

He does not remember the date of his visit to Kanke Hospital. They had met Dr. U.N. Choudhary, but he cannot describe the boundaries of the clinic of Dr. Choudhary in Kanke Hospital. He never talked to Sagarika's father about her illness. He had gone to Dr. U. N. Choudhary at Kanke Hospital along with Sagarika. He has denied the suggestion that he is giving false evidence in favour of petitioner being his relative.

41. The respondent has examined herself and her father Ganesh Prasad as R.W. No.1. and R.W. No. 2 respectively and original certificate of Matriculation of respondent has been marked as Ext. A, Original Marksheet of Nagaland University has been marked as Ext. A/1, Original Marksheet of B. Com of Ranchi University has been marked as Ext. A/2, Joining letter dt. 22.4.1997 of Nagaland Government (Two sheets)

has been marked as Ext. B and B/1, Resignation letter dt. 10.8.1999 has been marked as Ext. B/2, Medical certificate issued by Dr. Deepak Giri has been marked as Ext. C, Photocopies of four bank draft has been marked as Ext. D, D/1, D/2, and D/3, Entries dated 12.4.2007 and 19.4.2007 in the bank pass book has been marked as Ext. E and E/1 respectively.

42. The respondent wife examined herself as RW.1 and stated by way of affidavit that her marriage was solemnized on 29.4.2007 with the petitioner according to Hindu rites and rituals. After marriage she went to matrimonial home. At the time of marriage her father gave Rs. 1.60.000/- through D.D. and Rs. 1,40,000/- in cash to the father of her husband as tilak and also gave "Home theater" of Rs. 1,00,000/- and 12 gold ornaments, furniture, washing machine, Almirah and utensils, clothes. Her mother-in-law was heart patient and she went to Mumbai for her heart operation and returned to Ranchi after 45 days but she became bed ridden and lost her speech. She served her mother-in-law. She was tortured by her husband, Nanad regularly mentally and physically.

Her father-in-law demanded Rs. 5,00,000/- for purchasing a flat at Ranchi in her husband's name. All ornaments were kept by her father-in-law. She conceived but no one took her care, then she Phoned her father who came

and brought her to Jamshedpur from Ranchi on 20.4.2008, she was treated by a lady doctor and she delivered a female child on 3.7.2008 at Gurunanak Hospital, Jamshedpur named as Shreya now aged about 13 years, no one came from her sasural to see her and entire expenses were borne by her father. Her husband left her and her daughter at Jamshedpur forcefully on 26.9.2009, from that day she is residing with her daughter at her father's residence. No one came from her sasural on marriage of her two younger sisters despite several requests. Her mother-in-law died on 24.10.2008 and she participated in her last ceremony and stayed there. During her stay at Ranchi no one treated her well. She neither goes to Bhagalpur nor any mental Hospital at Ranchi either for treatment or check-up.

Her husband filed Mat Suit bearing No. 52 of 2011 at Ranchi, which was disposed off ex-parte because her mother was suffering from brain tumor during that period. If any medical certificate has been filed in said suit by her husband it is false. She passed matriculation in 1993, per-university from Nagaland University in 1995 and passed B. Com from Ranchi University in 2001. She also worked as Security Assistant in Nagaland government from 24.04.1997 to 10.8.1999. She is physically and mentally fit to lead her conjugal life.

She had further stated that She never met Doctor M. Jalil and Dr. Choudhary at Bhagalpur and Ranchi. Her father is retired and old aged person of 75 years and she is dependent on him along with her daughter. She was checked by Doctor S. Hembram at Dist. Mental Health Centre Jamshedpur who issuer medical certificate dated 2.7.2015 to her. She has a daughter name Shreya aged around 13 years old now. She wants to live with her husband at her sasural. All the allegations leveled against her by her husband are false and fabricated.

She has proved the Original Matric certificate issued from Bihar School Examination Committee, Patna which has been marked as Ext. A. She has also proved her Original Marksheet of Pre-university issued by Nagaland University and Original Marksheet of B. Com. issued by Ranchi University Govt as Ext. A/1 and A/2 respectively. She has also proved Original Joining letter dated 22.4.1997 issued by Assistant Director regarding her appointment as Security Assistant by Home Ministry Govt. of Nagaland which has been marked as Ext. B and B/1. She had resigned from the said post on 10.8.1999 and has proved her resignation letter which has been marked as Ext. B/2. She had got herself medical checkup at mental Health Centre Jamshedpur and has produced the certificate of Dr. Deepak Giri of District

Mental Health Centre in this regard which has been marked as Ext C.

In her cross-examination she had stated that this case was filed in Family Court Ranchi by her husband which was transferred to Family Court Jamshedpur by the Hon'ble High Court, Ranchi on her petition. She was ousted on 26.9.2009 from her sasural after the marriage. Her marriage was solemnized on 29.4.2007. she stayed in her sasural for around two years. She has a daughter from her husband who has born on 3.7.2008 at Guru Nanak Hospital Jamshedpur and lives with her. After been ousted from her matrimonial home she filed a case u/s 498A IPC against her husband in 2011 which has been disposed off. Her husband used to misbehave with her in sasural and all the occurrences took place in Ranchi. She got pregnant in her stay at matrimonial home at Ranchi and did fell ill and was not shown to any doctor at Ranchi.

She admitted that since 2009 till this date she has had no physical relation with her husband. She has stated that she has filed written statement wherein she has mentioned that her husband filed Mat. Suit 52 of 2011 against her for a decree of divorce in which *ex-parte* decree was passed. She does not have knowledge that after cancellation of divorce both the parties were asked to live separate. When

she was in her matrimonial home her mother-in-law died. She admitted that when she was pregnant in 2008, she fell ill and asked her husband to take her to lady doctor but he refused. Her father-in-law was not sick at that time. Thereafter, she called her father on 20.4.2008 and went away to her *myka* (parental home) along with him. When her mother-in-law died in 2008, she went to her matrimonial home but she does not remember the period of her stay she does not remember for how many days she stayed in her matrimonial home after the cremation of her mother-in-law.

She has further stated that she has not seen the medical documents filed by her husband. On 26.9.2009 her husband forcibly dropped her to her *myka* in a vehicle and thereafter, he never took her back. She is ready to live with her husband but he is not taking her. She categorically stated that the certificates of Dr. M. Jallil and Dr. U.N. Choudhary are incorrect. She had never visited those doctors.

She has denied the knowledge about the rulings and legal provisions mentioned in her written statement. She does not know whether she has filed any case or not for Irving with her husband. She has passed matric from Girls High School, Sakchi in 1993 and B.Com. from Womens

College, Jamshedpur but she does not remember the year. After B. Com she has not studied further. She has passed Intermediate from Kohima, Nagaland. She has done job from March, 1997 to 1999. She was in the job of Security Assistant at Kohima under Government of India. She does not remember her salary.

Her father was working in Intelligence Bureau at Nagaland under Government of India. But she does not remember when her father got transferred from Nagaland to Jamshedpur. With regard to her statement in para 32 of her written statement she has stated that she had herself appeared before District Mental Health Centre, Jamshedpur where the doctor found her fit. She had appeared in 2015 but she does not know while she had appeared before the doctor or who took her to the doctor. This doctor was from Mango Jamshedpur. She does not remember the date of visiting the doctor. She has filed the certificate in this case. She has not joined anywhere after leaving her job. The petitioner is only giving Rs. 5500-since 2017. She has received Rs. 1,70,000/- and Rs. 1,65,000/- as arrear due to Covid. Her husband works in Mahindra and Mahindra Company and gets salary of Rs. 25,000/- per months but she does not have any proof about it. Her father owns a house in Mango, Jamshedpur.

She had admitted that there was order for judicial separation in the divorce case and against it she had filed her written statement but she had not filed any case. She has denied the suggestion that she was mentally ill after the marriage and was shown to several doctors.

RW2 father of the respondent corroborated the testimony of his daughter respondent. He has proved the Photo copy of four bank drafts of State Bank of India for Rs. 40,000/-each dated 9.4.2007, in the name of Baban Prasad and two in the name of Vijay Kumar which he had given in the form of dowry which has been marked as Ext. D to D/3 respectively. He has also proved the Original Passbook of SBI of Jamshedpur to show the entries of four Bank Drafts and Cash Rs. 1,40,000/- given to Baban Prasad on 12.4.2007 and Rs. 70,000/-on 19.4.2007 against dowry which has been marked as Ext. E and F/1.

In his cross-examination R.W-2 admitted that the suit has been filed by her son-in-law for divorce and after this case his daughter Sagarika Prasad filed a case of Mental Harassment and assault against her husband who has been acquitted the said case however, he does not remember the date of judgment of the said case. His daughter has not filed any appeal against acquittal.]

His daughter has also filed a maintenance case against her husband which has been decided in 2017 and since then his son-in-law is paying maintenance of Rs. 4,000/- per months to his daughter and Rs. 1500/- per months to his grand-daughter. His daughter is receiving total Rs. 5500/- per months at present.

He had further deposed that his daughter and grand-daughter are living in his house since 26.9.2009 and since then her daughter has no gone to her matrimonial home and has no contact with his son-in-law. He categorically stated that his daughter has no illness. However, he had voluntarily shown his daughter to Dr. B. Giri at Mental Department MGM Hospital. There was no order for medical examination of his daughter by the court. the doctor had given certificate to his daughter which he had deposited in this case and he admitted that his son-in-law had filed Mat. Suit No. 52/2011 for divorce at Ranchi Court in which *ex-parte* decree had been passed in favour of his son-in-law. At the time his wife was suffering from brain tumor and was undergoing treatment at Vellore and lastly she died in 2014 and due to this reason respondent could not appear in said case and *ex-parte* decree was passed in favour of her husband. He had studied the judgment of said case and took steps for restoration and the case was restored.

Thereafter it was transferred to Family Court Jamshedpur by the High Court of Ranchi on their petition in 2016. He does not remember whether Dr. U.N. Choudhary and Dr. Jalil gave evidence in Mat. Suit No. 52 of 2011 or not.

He categorically stated that the above doctors or any other doctor had never examined his daughter. He admitted the photo copy of the document showing return of necklace, Kangan and Tika to him on 20.4.2008 which has been marked as Ext. 2. However, he stated that he was forced to sign the document otherwise he would not be allowed to take his daughter with him. His daughter is graduate. She was doing job in Intelligence Bureau from 1997 to 1999 but had to leave the job since he had been transferred from there and his daughter could not live there alone. He admitted that the name of Baban Prasad and Vijay Kumar is not written in Ext. E and E/1. He has denied the suggestion that his daughter is incurably mentally sick and cannot recover in future.

43. From the testimonies, as referred hereinabove, it is evident that the petitioner and his witnesses have not mentioned any specific instances in order to draw an inference that respondent wife is suffering from mental illness or mental disorder. Further in cross-examination he had specifically stated that his wife came to her sasural at

Ranchi to attend the cremation of his mother and his wife stayed there for 3-4 months and they were fulfilling their marital obligations in that period.

44. The learned Principal Judge, from the statements of the witnesses so produced on behalf of the parties, has come to the conclusion that the petitioner husband has miserably failed to prove the grounds with cogent evidence that his wife is suffering from mental illness or disorder.

45. From the testimony so recorded of the appellant-husband, the learned Additional Principal Judge, Family Court has come to the conclusion that in the instant case, no cogent convincing, clinching evidence, no concrete documentary evidence has been led to substantiate the fact that respondent has been suffering from mental disorder. The onus to prove the grounds taken for divorce squarely rests on the husband which are required to be discharged by leading a cogent, tangible and reliable evidence.

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

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

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

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

Explanation- In this clause—

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

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

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

49. From the wording of the aforesaid provision, it can be said that the mental condition like incurable unsound mind mentioned in the first part or the mental disorder mentioned in the second part needs to be proved by expert evidence and that evidence needs to satisfy the Court that such

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

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

impugned order it is evident that no concrete evidence like psychiatrist opinion or prescription of continuous treatment has been led by the appellant husband in this regard.

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

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

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

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

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

21. The answer to the apparently simple—and perhaps misleading—question as to ‘who is normal?’ runs inevitably into philosophical thickets of the concept of mental normalcy and as involved therein, of the ‘mind’ itself. These concepts of ‘mind’, ‘mental phenomena’, etc. are more known than understood and the theories of ‘mind’ and ‘mentation’ do not indicate any internal

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

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

'... we have inherited cultural resistance to treating the conscious mind as a biological phenomenon like any other. This goes back to Descartes in the seventeenth century. Descartes divided the world into two kinds of substances: mental substances and physical substances. Physical substances were the proper

domain of science and mental substances were the property of religion. Something of an acceptance of this division exists even to the present day. So, for example, consciousness and subjectivity are often regarded as unsuitable topics for science. And this reluctance to deal with consciousness and subjectivity is part of a persistent objectifying tendency. People think science must be about objectively observable phenomena. On occasions when I have lectured to audiences of biologists and neurophysiologists, I have found many of them very reluctant to treat the mind in general and consciousness in particular as a proper domain of scientific investigation.

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

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

'... Whatever is unknown about the mind-body relationship (and the area of ignorance seems to expand with that of knowledge), it is now accepted by medical science that recognisable and severe physical damage to the human body and system may be caused by the impact, through the senses, of external events on the mind. There may thus be produced what is as identifiable an illness as any that may be caused by

direct physical impact. It is safe to say that this, in general terms, is understood by the ordinary man or woman who is hypothesised by the courts....’

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

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

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

(emphasis in original)

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

35. In the English case of *Whysall v. Whysall* [1960 P 52 : (1959) 3 WLR 592 : (1959) 3 All ER 389] , it was held that a spouse is “incurably of unsound mind” if he or she is of such mental incapacity as to make normal married life impossible and there is no prospect of any

improvement in mental health, which would make this possible in future. The High Court of Judicature of Calcutta, in *Pramatha Kumar Maity v. Ashima Maity* [AIR 1991 Cal 123] has held that mental disorder of the wife, even if proved, cannot, by itself, warrant a decree of divorce and it must be further proved that it is of such a nature as the husband could not be expected to live with the wife.

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

42. Marriage is highly revered in India and we are a nation that prides itself on the strong foundation of our marriages, come hell or high water, rain or sunshine. Life is made up of good times and bad, and the bad times can bring with it terrible illnesses and

extreme hardships. The partners in a marriage must weather these storms and embrace the sunshine with equanimity. Any person may have bad health, this is not their fault and most times, it is not within their control, as in the present case, the respondent was unwell and was taking treatment for the same. The illness had its fair share of problems. Can this be a reason for the appellant to abandon her and seek dissolution of marriage----."

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

54. Now coming to the fact of the instant case it is evident that the learned Family Court after appreciation of all the evidences which has been led by the parties has given conclusive finding that no documentary evidence/cogent or concrete evidence has been adduced by the petitioner/husband in order to prove the mental illness/mental disorder of OP- wife.

55. The learned Family Court has taken note of the fact that in cross-examination appellant husband has admitted that he has not filed any medical certificate in the instant case and further he had stated that he had got examined the doctor in Mat. Suit No. 52 of 2011 but he cannot bring the said doctor for evidence in this case who had given evidence in the said Mat. Suit No. 52 of 2011. The learned Family

Court had also taken note of the fact that petitioner/husband had not filed any medical prescription in the context of mental disorder of the respondent.

56. Further the learned family Court has taken into consideration that respondent in her statement has completely denied that she is suffering from any mental illness or disorder and has also denied visiting any doctor as alleged by the petitioner and has also produced the medical certificate from government hospital to the effect that she is not suffering from any mental illness and only has some depressive feature, the onus of proving that respondent is of incurably unsound mind that she is suffering from mental disorder laid entirely on the petitioner which must be proved by the cogent and clear evidence.

57. Thus, from the aforesaid it is evident that the petitioner/appellant has neither produced in this case the Doctors as witnesses who allegedly examined the respondent nor he has produced any clinical or psychological analytical reports of the respondent to show the kind of mental illness or disorder she is allegedly suffering with, and the degree of the alleged mental illness and whether it is incurable.

58. Thus, on basis of discussion made hereinabove, it appears that the aforesaid ground of mental illness/mental disorder has been raised by the appellant husband on the

flimsy ground and taking in to consideration the aforesaid factual aspect the learned Family Court has rightly decided the said issue against the plaintiff husband.

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

60. The learned counsel for the appellant husband, raised the ground that the impugned judgment and decree is suffering from perversity, therefore, needs interference.

61. 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.

62. 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."

63. This Court after discussing the aforesaid factual aspect along with the legal position as discussed and referred hereinabove and adverting to the consideration made by the learned Family Judge in the impugned judgment has found therefrom that the issue of element of mental disorder has well been considered by the learned Family Judge.

64. From para 33 of the impugned Judgement, it is evident that the learned counsel for the petitioner has placed much reliance upon the certified copy of the judgment of Principal

Judge, Family Court, Ranchi passed in Matrimonial Title Sul. No. 52 of 2011 on 04.04.2013 (Ext. 1 and while referring to para 8 and 9 of the aforesaid judgment wherein the learned court of Principal Judge, Family Court, Ranchi has referred to the oral evidence of Dr. Jalil and the medical prescriptions of Dr. U.N. Choudhary and psychological testing reports conducted by Dr. Jalil that Psychological testing reports would reveal that respondent was a mentally backward lady having lower level of border line intellectual capacity with IQ level of 72.

65. The learned Family Court in the aforesaid context has observed that in the said case, the court has also observed that it appeared from the testimony of Dr Jalil and medical reports that respondent had shown some sort of improvement after medication and considering this fact the court found it desirable that instead of passing a decree of divorce, alternate relief of a decree of judicial separation be granted. Further the respondent has emphatically denied about the meeting of the said doctors and she had also denied that she is undergoing any psychological test as alleged by the petitioner/husband.

66. The learned Family Court has further taken into consideration that the ex-parte order dated 04.04.2013 was passed by the court in the said case i.e. Matrimonial Title

Sul. No. 52 of 2011 as the respondent wife has not appeared and filed written statement in the said case because at the relevant time her mother was suffering from tumor and as such respondent did not get an opportunity to cross-examine the said doctor and medical reports.

67. The Family has further considered the fact that against the order dated 04.04.2013 respondent wife approached the High Court by way of filing appeal being F.A. No. 566 of 2014 and the said appeal was disposed of with the observation that the Mat. Suit No. 16 of 2015 (the instant suit) shall be decided on its own merit and without being prejudiced by the earlier observations made in the order dt. 4 April 2013 passed in Matrimonial Title Suit No. 52 of 2011.

68. 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 mental disorder against the respondent wife. The aforesaid reason has led the learned Family Judge to dismiss the suit.

69. 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.

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

71. This Court, on the basis of discussions made hereinabove, is of the view that the judgment passed on 09.12.2022 and decree signed on 15.12.2022 by the learned Additional Principal Judge, Additional Family Court-I, East Singhbhum Jamshedpur whereby and whereunder the Original Suit No. 29 of 2019 filed by the petitioner-appellant-husband under Section 13(1) (iii) of the Hindu Marriage Act, 1955 for a decree of divorce has been dismissed, requires no interference by this Court.

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

73. Pending I.As. if any stand disposed of.

(Sujit Narayan Prasad, J.)

I agree.

(Rajesh Kumar, J.)

(Rajesh Kumar, J.)

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

Uploaded on 15.10.2025