

IN THE HIGH COURT OF JHARKHAND AT RANCHI
F.A. No.227 of 2024

K. Jagannath Rao, aged about 74 years, son of Late K. Rama Rao, resident of B-313 Swarn Vihar, P.O.- Sonari, P.S.-Sonari, District-East Singhbhum, State – Jharkhand.

.... **Appellant(s)**

Versus

K. Malti Rao, w/o K. Jagannath Rao, aged about 65 years, resident of B 313 Swarn Vihar, P.O.- Sonari, P.S.-Sonari, District-East Singhbhum, State – Jharkhand.

.... **Respondent(s)**

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

For the Appellant(s)

: Mr. Jazeb Iqbal, Adv.

For the Respondent(s)

: Mr. Niladri Shekhar Mukherjee, Adv.

05/Dated: 10th July, 2025

1. This appeal has been filed under Section 19(1) of the Family Courts Act and has been directed against the judgment and decree dated 20.07.2024 (decree signed on 03.08.2024) passed by learned Principal Judge, Family Court, Jamshedpur in Original Suit No.184 of 2023 whereby and whereunder the application filed for dissolution of marriage on the ground of cruelty and desertion has been rejected.

Factual Matrix

2. The brief facts of the case as per the pleading made as has been incorporated in the impugned judgment reads as under:-

- (i) The suit had been filed by the appellant-husband against the respondent-wife for dissolution of marriage by a decree of divorce under the Hindu Marriage Act, on the grounds of **cruelty and desertion**.

- (ii) The appellant and the respondent were legally married on **13th August 2006** at **Purulia, West Bengal**, according to Hindu Rites and Customs. No child was born out of this wedlock. The appellant had a previous marriage with one **R.V. Ratnam**, who passed away in 2002, and he has a daughter named **Rakhi Priya Karnam** from that marriage.
- (iii) After their marriage, the respondent frequently left the matrimonial home for extended periods, often without valid reasons, and stayed at her parental home in Purulia for months. She showed little interest in household responsibilities and failed to take care of the appellant even when he was suffering from back pain. The respondent also mistreated the appellant's daughter, especially during her pregnancy, and refused to provide any help or support. There are allegations of theft of money and jewellery from the house and incidents of public humiliation due to her suspected shoplifting.
- (iv) The respondent-wife neglected the appellant-husband, failed to provide food regularly, and cooked poorly, which led to the appellant developing health problems. Her repeated acts of mental cruelty caused severe trauma to the appellant, who is now undergoing psychiatric treatment. She and her brother also allegedly threatened the appellant, and even attempted to lodge false complaints against him with the police.

- (v) Since **February 2021**, the respondent has been living in a separate room without any marital communication or relationship with the petitioner, amounting to **willful desertion**. The petitioner states that it is no longer possible to live with the respondent under the same roof and therefore seeks a decree of divorce. There is no collusion between the parties, and no other proceeding under the Hindu Marriage Act is pending between them.

3. The husband, the appellant herein, had preferred an application for dissolution of marriage on the ground of cruelty and desertion. The case had been instituted and thereafter the notice was issued to the respondent-wife. The written statement was filed on behalf of the wife. Thereafter following issues have been framed: -

- (i) Whether the suit is maintainable in its present form?
- (ii) Whether the petitioner has valid cause of action for the suit?
- (iii) Whether the respondent has treated the petitioner with cruelty after the solemnization of marriage?
- (iv) Whether the respondent has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of this petition?
- (v) Whether the petitioner is entitled for any other relief or relief as claimed in the suit?

4. The parties have been directed to adduce their evidence on their behalf the same is being referred herein:

PW-1, K. Jagannath Rao (husband/appellant herein) in his chief examination reiterated the facts as mentioned by him in the plaint. During cross-examination he explained that his first wife expired on 19.3.2002. He was aged about 55 years at that time and his child was aged about 14 years. At the time of his second marriage he was aged about 56 years and since 13.8.2006 his wife has been living with him. Only these two persons are living with each other and food for both persons prepared jointly but whenever the respondent used to go to her parents' home, he has to cook food. Further he explained that at the time of his second marriage his daughter was working in Bangalore and during holidays she used to come and live with the petitioner and respondent with affection. He also explained in his evidence dated 23.11.2023 that morning breakfast has been cooked by his wife and after having breakfast jointly they came here (in the Court) and he has no evidence in support of allegation made by him against his wife regarding shoplifting. Further he explained that during the illness of his mother-in-law, he used to see her with his wife. His brother-in-law was suffering from cancer and his wife used to go to see him and he never stopped her and she takes care when he becomes ill but, in her absence, he is suffering from pain and he feels her absence. On the suggestion that if his wife accepts his condition and would not go to her parents' house then both of them live together, the petitioner denied.

R.W. 1, K. Malti Rao (wife/respondent herein) during her chief examination reiterated the facts as mentioned in her written statement.

During cross-examination this witness explained that she got married with the petitioner on 13.8.2006 with the consent of family members and his (petitioner's) first wife expired on 19.3.2002 and from first wedlock petitioner has one daughter. Her parents house is at Purulia, West Bengal and she is single sister among five brothers. Family members of her parents used to come at her matrimonial house and similarly she also used to go to her parents house. Further she explained that to see her ill brother and mother she used to go with her husband and her husband also had gone several times at her parents house. She also explained that on 25.2.2020 she went to her parents house and returned before the Holi at Jamshedpur on 2.3.2020 as well as the daughter of the petitioner became pregnant in the year 2021 while she was living at Sonari and she also used to go to meet her, however during pregnancy she did not stay with her but she used to come and return. Further she explained that in January, 2022 due to illness of her brother she went to Purulia and stayed there for five days. Earlier she also went to Sakchi Mahila P.S to lodge case against her husband but the complaint was not lodged but her husband was called and then she withdrew it. She also explained that at her marriage her daughter was studying at Bangalore but in festival and holidays she used to come at Jamshedpur and she has also gone several times at Bangalore with her husband. She admitted that during her stay at her parents house, her husband had to live alone at Jamshedpur. She also explained her daughter, this witness and husband are joint holder of bank account and she has its ATM. The said account is at SBI Sonari

Branch. During Covid her brother has expired at Purulia and during that period she stayed there for 11 days and her husband has returned after leaving her there. She also explained that during the period of cancer of her brother the petitioner helped for Rs.10,000/-. Her husband is suffering from blood pressure and lower back pain prior to marriage and on 1.6.2022 the petitioner assaulted her after consuming liquor and she informed this matter to Sakchi Mahila Police Station but complaint was not lodged. At present there are two rooms in the house and it is not correct that both of them are living separately and it is also not correct that she tortured him mentally and sometimes used Facebook and Whatsapp.

5. The learned Family Judge, on consideration of the evidence of the parties, has not found any element of cruelty and desertion, hence, rejected the application filed by the husband (appellant herein) by declining to dissolve the marriage, against which the present appeal is filed.

Submission of the learned counsel appearing on behalf of the appellant/husband:

6. Learned counsel appearing for the appellant-husband has submitted that the Learned Family Court has failed to appreciate that the petitioner /appellant has produced credible evidence which are sufficient to establish that the respondent-wife has subjected him to cruelty and on account of cruelty and desertion, the petitioner / appellant is entitled for grant of decree of divorce.

7. Further, it has been submitted that the findings recorded by the learned Trial Court while answering issue no. III (cruelty) and IV (desertion) are

perverse and based on mere presumption, therefore, the same will not stand in the eye of law.

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

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

Submission of the learned counsel appearing on behalf of the respondent/wife:

10. Per contra, Mr. Niladri Shekhar Mukherjee, learned counsel appearing for the respondent-wife has submitted that there is no error in the impugned judgment, rather, the learned Family Court after taking into consideration the evidence in entirety has not found any element either cruelty or desertion. Hence, the impugned judgment cannot be said to suffer from an error.

11. It has further been submitted that both the appellant and the wife are living together in the same house and even the wife cooks food for the appellant-husband.

12. It has been submitted by the learned counsel that even on the date when both parties were required to appear before the Court, the respondent-wife cooked food for the petitioner-husband, and the husband, after having his meal, came to the Court. This conduct clearly indicates that there is neither an element of cruelty nor desertion in the relationship.

13. Learned Family Judge after taking into consideration the aforesaid aspect of the matter, has found no element of either cruelty or desertion, hence the impugned judgment needs no interference.

Analysis

14. We have heard learned counsel for the parties and gone through the pleading made in the memo of appeal and the evidences of the witnesses.

15. The application for dissolution of marriage had been filed on the ground of cruelty and desertion. The evidence had been adduced to prove the element of cruelty and desertion which had not found to be substantiated; hence, the impugned judgment has been passed.

16. This Court is now examining the legality and propriety of the finding recorded by the learned Family Judge, who concluded that there was no element of either cruelty or desertion. The question before this Court is whether such a finding can be said to be erroneous or not.

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

18. Before considering this issue, it is necessary to refer to the judgment of the Hon’ble Apex Court where the concept of cruelty has been interpreted under Section 13(1) (i-a) of the Hindu Marriage Act, 1955.

19. It needs to refer herein that so far the allegation of cruelty is concerned, the ‘*cruelty*’ as has been defined by Hon’ble Apex Court in the judgment rendered in *Dr. N.G. Dastane Vs. Mrs. S. Dastane [(1975) 2 SCC 326]*, wherein

it has been held that the Court is to enquire as to whether the charge as cruelty, is of such a character, as to cause in the mind of the petitioner, a reasonable apprehension that, it will be harmful or injurious for him to live with the respondent.

20. The cruelty has also been defined in the case of *Shobha Rani Vs. Madhukar Reddi [(1988) 1 SCC 105]*, wherein the wife alleged that the husband and his parents demanded dowry. The Hon'ble Apex Court emphasized that "cruelty" can have no fixed definition.

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

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

23. In *V. Bhagat vs. D. Bhagat (Mrs.), (1994) 1 SCC 337*, the wife alleged in her written statement that her husband was suffering from "mental problems

and paranoid disorder”. The wife’s lawyer also levelled allegations of “lunacy” and “insanity” against the husband and his family while he was conducting cross-examination. The Hon’ble Apex Court held these allegations against the husband to constitute “cruelty”.

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

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

26. The Hon’ble Apex Court in the case of Vidhya *Viswanathan v. Kartik Balakrishnan*, (2014) 15 SCC 21 has specifically held that cruelty is to be determined on whole facts of the case and the matrimonial relations between the spouses and the word ‘cruelty’ has not been defined and it has been used in

relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other.

27. Further it needs to refer herein that the desertion has been defined under Section 13(i)(b) of the Hindu Marriage Act, 1955 wherein it has been stipulated that either the husband or the wife as the case may be, has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition.

28. It needs to refer herein that the word ‘desertion’ has been defined in Explanation to Section 13 (1) wherein it has been stated that “the expression desertion means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.”

29. It is pertinent to note that the word ‘desertion’, as has been defined in Explanation part of Section 13 of the Act, 1955, means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the 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.

30. *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.”

31. 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.”

32. 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.

33. The offence of desertion is a course of conduct which exists independently of its duration, but as a ground for divorce it must exist for a period of at least two years immediately preceding the presentation of the petition or, where the offence appears as a cross-charge, of the answer.

34. 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.

35. It is, thus, evident from the aforesaid reference of meaning of desertion that the quality of permanence is one of the essential elements which differentiate desertion from wilful separation. If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end.

36. Similarly, two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to from the necessary intention aforesaid.

37. 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.

38. The law consistently has been laid down by the Court that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be *animus deserendi* on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of

the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home.

39. This Court in the light of the aforesaid settled position of law the cruelty and desertion in the proceeding to examine the testimony of the witnesses.

40. The reference of the testimony of the evidences of the witnesses, at the risk of repetition, is once again being reiterated in order to assess as to whether the element of cruelty and desertion has been substantiated or not?

41. PW-1, K. Jagannath Rao (husband/appellant herein) during cross-examination he explained that his first wife expired on 19.3.2002. He was aged about 55 years at that time and his child was aged about 14 years. At the time of his second marriage he was aged about 56 years and since 13.8.2006 his wife has been living with him. Only these two persons are living with each other and food for both persons prepared jointly but whenever the respondent used to go to her parents' home, he has to cook food.

42. He also explained in his evidence dated 23.11.2023 that morning breakfast has been cooked by his wife and after having breakfast jointly they came here (in the Court). His brother-in-law was suffering from cancer and his wife used to go to see him and he never stopped her and she takes care when he becomes ill but, in her absence, he is suffering from pain and he feels her absence.

43. R.W. 1, K. Malti Rao (wife/respondent herein) during cross-examination has stated that she got married with the petitioner on 13.8.2006 with the consent of family members and his (petitioner's) first wife expired on 19.3.2002 and from first wedlock petitioner(appellant) has one daughter. Her parents house is at

Purulia, West Bengal and she is single sister among five brothers. Family members of her parents used to come at her matrimonial house and similarly she also used to go to her parents house. Further she explained that to see her ill brother and mother she used to go with her husband and her husband also had gone several times at her parents house. She also explained that on 25.2.2020 she went to her parents house and returned before the Holi at Jamshedpur on 2.3.2020 as well as the daughter of the petitioner became pregnant in the year 2021 while she was living at Sonari and she also used to go to meet her, however during pregnancy she did not stay with her but she used to come and return.

44. Further she had stated that in January, 2022 due to illness of her brother she went to Purulia and stayed there for five days. Earlier she also went to Sakchi Mahila P.S to lodge case against her husband but the complaint was not lodged but her husband was called and then she withdrew it. She also explained that at her marriage her daughter was studying at Bangalore but in festival and holidays she used to come at Jamshedpur and she has also gone several times at Bangalore with her husband. She admitted that during her stay at her parents house, her husband had to live alone at Jamshedpur. She also explained her daughter, this witness and husband are joint holder of bank account and she has its ATM. She had stated that during Covid her brother has expired at Purulia and during that period she stayed there for 11 days and her husband has returned after leaving her there. She also explained that during the period of cancer of her brother the petitioner helped for Rs.10,000/-.

45. Her husband is suffering from blood pressure and lower back pain prior to marriage and on 1.6.2022 the petitioner assaulted her after consuming liquor

and she informed this matter to Sakchi Mahila Police Station but complaint was not lodged. At present there are two rooms in the house and it is not correct that both of them are living separately and it is also not correct that she tortured him mentally and sometimes used Facebook and Whatsapp.

46. This Court after considering the evidences as recorded on behalf of the husband and wife as has been dealt with in entirety in the impugned judgment, has found that no element of cruelty has been found to be there by the learned Family Judge.

47. It is evident from the impugned judgment that the learned Family Judge while framing particular issue with respect to the element of cruelty as under issue Nos. III and issue of desertion as issue no. IV has considered the evidence of P.W.-1, the appellant himself who has stated in his defence by supporting the statement pleaded in the plaint. The consideration of the evidence of the wife who has been examined as R.W.-1 has also been taken note while considering the issue nos.3 and 4.

48. The learned Family Court has based upon the aforesaid statement recorded on behalf of the appellant and the wife has considered that there is no element of cruelty based upon the interpretation of the word cruelty by the Hon'ble Apex Court in the judgment reported hereinabove.

49. Learned Family Judge while considering the element of cruelty has also taken aid by relying upon the judgment rendered by Hon'ble Apex Court in the case of *V. Bhagat Vrs. D. Bhagat* reported in *1994 1 SCC 33*, *Parveen Mehta Vrs. Inderjit Mehta* reported in *2002 5 SCC 706*, *Jaichandra Vrs. Anil Kaur*

reported in *2005 2 SCC 2022, Naveen Kohli Vrs. Neelu Kohli* reported in *2006 4 SCC 558, Ramchander Vrs. Ananta* reported in *2015 11 SCC 539*.

50. The learned trial court, based upon the aforesaid principle as carved out by the Hon'ble Apex Court regarding the definition of cruelty has found after going through the statement recorded on behalf of the parties in their evidence has found that there is no element of cruelty.

51. So far as the issue of desertion is concerned, learned Family Judge has considered the issue of desertion and by taking aid of the judgment rendered in the case of *Lachman Utamchand Kiriplani versus Meena @ Alias Mota* reported in *AIR 1964 SC 40, Rohini Kumari versus Narendra Singh* reported in *AIR 1972 SC 459, Geeta Jagdish Mangtani versus Jagdish Mangtani* reported in *AIR 2005 SC 3508*, has found that there is no element of desertion also.

52. We on considering the evidences of the appellant husband and the respondent wife as recorded wherein the admitted case of both the parties is that they are living together in the same house under the same roof and not only that the husband particularly has stated that the food is being cooked by the wife and he has come to the Court after taking breakfast.

53. The learned trial court on the basis of the aforesaid evidence has found that there is no element of desertion. The learned Family Judge based upon the aforesaid finding, since, has not found the element of either cruelty or desertion and therefore application has been rejected.

54. This Court, on the basis of the discussion made hereinabove and the legal position as refereed hereinabove, is of the view that no perversity can be said to

be committed in giving finding by the learned Family Judge, therefore, the impugned judgment suffers from no error. Hence, this appeal stands dismissed.

55. Pending I.As. if any stands disposed of.

(Sujit Narayan Prasad, J.)

(Rajesh Kumar, J.)

Amar-Shahid/-
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