

IN THE HIGH COURT OF JHARKHAND AT RANCHI**First Appeal No. 329 of 2023**

Amit Kumar Singh @ Sawan Singh, aged about 40 years, son of Randhir Kumar Singh, Resident of Village Pirpaiti Road, P.O. Godda, P.S. Godda (T), District – Godda.

...Appellant/Respondent/Opp. Party

Versus

Ahuti Priya, Aged about 38 years, daughter of Salendra Kumar Singh, W/O Amit Kumar Singh @ Sawan Singh, Resident of Lohyanagar, P.O. Godda, P.S. Godda (T), District-Godda.

...Respondent/Petitioner/Plaintiff

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

For the Appellant : Mr. Rajendra Krishna, Advocate
Mr. Pratyush Shourikya, Advocate
Mr. Jay Shankar Tiwari, Advocate

For the Respondent : Mr. Alok Anand, Advocate
Mr. Shivam Pratap Singh, Advocate

CAV/Reserved on 01.09.2025
Per Sujit Narayan Prasad, J.

Pronounced on 16 09/2025

Prayer:

1. The instant appeal under Section 19(1) of the Family Court Act, 1984 is directed against order/judgment dated 28.08.2023 and decree dated 16.09.2023 passed by the learned Principal Judge, Family Court, Godda in Original Suit No. 137 of 2021, whereby and whereunder the learned court has allowed the suit and the marriage between the parties has been dissolved and further the appellant-husband has been directed to pay a consolidated amount of Rs. 25,00,000/- [twenty five lakh] to the respondent-wife as permanent alimony and also directed to return all the

‘stridhan’ and belongings, gifts of the respondent-wife to her and both the parties were directed to return all the respective gifts to each other. It has further been directed that if the amount of permanent alimony is not paid within the stipulated period, the appellant-husband was directed to pay simple interest @ 9% per annum on the unpaid amount till its realization.

Brief facts of the case:

2. The brief facts of the case, as per the pleading made in the original suit, needs to be referred herein, which reads as under:
3. The marriage between the parties was solemnized on 24.06.2012 as per Hindu customary rites and ceremonies.
4. It is the case of the respondent-wife that her father gave Rs 12 lakhs and 10 bhars of Gold ornaments in the marriage. After marriage the respondent-wife went to her sasural and started living there consummating the matrimonial life. After sometime, the respondent-wife came to her parents’ house [maika] and then on 'Durgaman' [*bedia*], she again went to her sasural, where it is alleged that the husband and his other relatives started making demand of Rs. 5 lacs as dowry and they put it as condition precedent for her stay at sasural otherwise she was said to be ousted from the house. Upon much pressure, the father of the respondent-wife somehow

managed an amount of Rs. 3 lacs and paid to the husband and his parents for safe future of the petitioner, the respondent herein.

5. It is further case of the respondent-wife before the family court that in spite of several other demands as well as continued torture inflicted upon her, she remained in her sasural with a hope that after a child is born out of the wedlock, the things will be normal but during stay at matrimonial house she came to know that her husband, the appellant herein, has illicit relation with another lady of the same locality, which she objected but the in-laws of the respondent-wife assaulted her and ousted her from the house.
6. In such circumstances, the respondent-wife lodged a case being Godda (T) Police Station vide Godda (T) P.S. Case no. 218/2016 for offences u/s- 498A, 494, 323, 506 of IPC and 3/4 of the D.P. Act against the appellant-husband and other matrimonial inmates.
7. It is the case of the respondent, as made out in the plaint which has been taken note in the impugned order, that during her stay at her matrimonial house, the appellant-husband flatly refused to have sex with her saying that there was another option available for him which gave brutal mental anxiety and cruelty to her, which continued for four

years. Because of that even after a long period of married life, she was not blessed with any child.

- 8.** Further case has been made out that the respondent-wife was finally ousted from the house and beaten mercilessly when she questioned about the drunk nature and illicit relation of the appellant-husband with another lady. It has been submitted that for the future of the respondent-wife the entire family members of the respondent-wife tried their best to convince the appellant-husband so that a healthy conjugal life may be restored but the appellant-husband never thought it better to make any solution of dispute rather became more aggressive and finally ousted the respondent-wife from her matrimonial house since then she is living a deserted life for the last three years since filing of the matrimonial suit.
- 9.** It has been submitted that in spite of several attempts being made by the respondent-wife, when the appellant-husband refused to accept the respondent as wife, she left with no alternative on 03.03.2021 the appellant-husband finally refused to accept the respondent as wife and when it became evident that marital ties has irrevertably broken, the respondent-wife filed the suit being Original Suit No. 137 of 2021 praying therein for a Decree of Divorce.

- 10.** After filing of suit by the respondent-wife, on being noticed, the appellant-husband appeared through his counsel and filed vakalatnama.
- 11.** The parties were sent for mediation but the parties could not arrive at any mutually agreeable settlement and the case proceeded.
- 12.** It is evident that in spite of sufficient opportunity granted to the appellant-husband, the Opp. Party in the suit, the appellant-husband did not file 'Written Statement'. Finally, vide order dated 02.07.2022 the Court debarred him from filing 'Written Statement' and the case proceeded with petitioner's [respondent herein] evidence. It further appears that the appellant-husband, never had made any effort to file Written Statement by filing any application.
- 13.** Thereafter, the respondent-wife produced witnesses, who were examined and cross-examined but the appellant-husband did not adduce any evidence.
- 14.** The learned family court, taking into consideration the submissions advanced by the parties, decreed the suit in favour of respondent-wife and the marriage between the parties has been dissolved and further the appellant-husband has been directed to pay a consolidated amount of Rs. 25,00,000/- [twenty five lakh] to the respondent-wife as permanent alimony as also directed to return all the

‘stridhan and belongings, gifts of the respondent-wife to her and both the parties were further directed to return all the respective gifts to each other. It has further been directed that if the amount of permanent alimony is not paid within the stipulated period, the appellant-husband was directed to pay simple interest @ 9% per annum on the unpaid amount till its realization.

15. Against the order/judgment dated 28.08.2023 and decree dated 16.09.2023 passed in Original Suit No. 137 of 2021 the appellant-husband has filed the present suit.

Submission on behalf of appellant-husband:

16. Learned counsel for the appellant-husband has submitted that the learned family court did not consider the fact that the permanent alimony granted in favour of wife is disproportionate to the income and liability of the appellant-husband.

17. Further, the learned family court failed to take into consideration the fact that the respondent-wife is an earning lady and has been teaching in school since 2013 and has good source of income.

18. Further submission has been made that it is the appellant-husband who actually promoted her wife to complete her studies and to join as a teacher but this aspect

of the matter has also not been appreciated by the learned family court.

19. It has been submitted that it is the respondent-wife who wanted to leave her husband but the wife always finds reason to fight with the appellant-husband and leave him.

20. Further submission has been made that the ground of extra-marital relation has been taken against the appellant-husband for which even a criminal case was filed but in the said criminal case, the appellant-husband was acquitted and thereby it is proved that the appellant-husband had no extra-marital relation but due to the wrong allegation leveled by the respondent-wife, the appellant-husband has got mental agony but this fact has not been taken into consideration by learned family court.

21. Further submission has been made that the appellant-husband has tried his best to convince his wife for treatment of her infertility but she was adamant not to live with him and his family members and get rid of him.

22. Further submission has been made that in the marriage money has been spent by both the families and during cross-examination the witnesses examined on behalf of respondent-wife i.e., the wife [P.W. 1], her father [PW 2] and mother [PW 3] failed to say that how the money of dowry, as alleged has been received by them. But the

learned family court without taking into consideration these facts and the law laid down in the case ***of Rajnesh Vs. Neha [(2021) 2 SCC 324]*** wherein it has been laid down that while deciding the quantum of permanent alimony the income of the wife as also husband is to be considered, has passed the impugned order awarding the permanent alimony, which requires interference.

23. Further submission has been made that the learned family court has erred in finding that appellant is having monthly income of Rs. 5 lacs based on the oral testimony of P.W.1, P.W. 2 and P.W. 3, but there is no documentary proof in this regard.

24. Submission has been made that as a matter of fact, the appellant-husband is working in his mother's shop wherein he gets monthly salary of Rs. 40,000/- [forty thousand], accordingly he has filed ITR, copy of which has been annexed with the supplementary affidavit as Annexure SA/1 series, wherefrom it is evident that the annual income of the appellant-husband is Rs.4,25,500/-; Rs.4,59,150/- and Rs. 4,77,760/- respectively for the FY 2022-23, 2023-24 and 2024-25.

25. Learned counsel for the appellant-husband on the aforesaid ground has submitted that the impugned order requires interference.

Submission on behalf of respondent-wife:

26. Learned counsel for the respondent-wife has submitted that the marriage between the parties was solemnized on 24th June 2012 and after few months, the family members of the appellant-husband and the husband started making pressure on her for fulfilling their demand of Rs. 5 lacs by way of dowry, the father of the respondent-wife somehow managed to pay them Rs. 3 lacs in the hope that it might secure their daughter's future but the torture perpetrated by them did not stop there and she continued to suffer all atrocities in the hope that once she would give birth of a child, the husband's behavior towards her may change.

27. But the appellant-husband used to stay very indifferent, disinterested and cold towards her always then she came to know that her husband is having an extramarital illicit relation with a woman of the said locality. This caused great mental pain and trauma to her.

28. Further, during her stay at sasural the husband had deprived her of any physical relation/sex and denial of physical relation continued for years and resultantly she has been deprived of the bliss of motherhood. Besides, the appellant-husband used to drink on regular basis and he used to assault and abuse her.

29. Submission has been made that the learned family court considering the marriage to be dead for all purposes has decreed the suit by dissolving the marriage on grounds of desertion and cruelty, which requires no interference by this Court.

30. So far as the issue of permanent alimony is concerned, submission has been made that life of the respondent-wife has thoroughly been spoiled by the appellant-husband who continued to torture her mentally and physically.

31. Further submission has been made that it is true that the respondent-wife is a very highly educated lady but she had to sacrifice her opportunity to secure job only for giving her 100 percent to her marriage with appellant-husband and at present she has not sufficient earning to sustain her life. Therefore, the amount as has been awarded by the learned family court requires no interference for sustenance of the respondent-wife.

32. It has further been submitted that in the marriage itself, the respondent's family has spent a lot of money which the learned family court took into consideration and as such directed to return the same, which also requires no interference.

33. Learned counsel for the respondent-wife, on the basis of aforesaid ground, has submitted that the order passed by the learned family court requires no interference.

Analysis:

34. We have heard learned counsel for the parties and gone through the pleading available on record as also the finding recorded by learned Principal Judge, Family Court, Godda.

35. The factual aspect involved in the case at hand is that marriage between the parties was solemnized on 24.06.2012. After some times, the in-laws of the respondent-wife and her husband stated to have started torturing the respondent-wife for demand of dowry.

36. The respondent-wife, on the ground of cruelty and desertion, invoking the jurisdiction of the learned family court under Section 13(1)(i)(i-a)(i-b) of the Hindu Marriage Act, 1955 filed suit being Original Suit No. 137 of 2021 for dissolution of marriage.

37. Before the learned family court efforts were made for settlement between the parties for which the parties were sent for mediation but it failed.

38. In the suit, on being noticed though the appellant-husband appeared but in spite of having been granted sufficient opportunity he did not file the written statement.

39. On behalf of respondent-wife [the petitioner in the suit] three witnesses have been examined, P.W.1-Ahuti Priya, the respondent-wife; P.W.2-Rekha Kumari, the mother of the respondent-wife and P.W. 3-Shailendra Kumar Singh, the father of the respondent-wife. But no witness has been examined on behalf of appellant-husband. However, witnesses produced by the appellant-wife has been cross-examined.

40. This Court in order to appreciate the finding recorded by learned family court requires to go through the testimonies of witnesses, as available on record.

41. P.W.-1 Ahuti Priya (respondent-wife) has stated in her examination-in-chief dated 25.08.2022 that her marriage was solemnized with the appellant-husband on 24.06.2012 as per Hindu customary rites and ceremonies. After marriage she went to her 'sasural'. At the time of marriage, petitioner's father gave Rs. 12 lacs cash and 10 bhar Gold jewelry. When the petitioner came to her 'sasural' after 'Duragaman', the O.P. [husband] and his family members started making complain of having got less dowry and they made demand for Rs. 5 lacs. When demand was not fulfilled by the petitioner's family, then O.P. started perpetrating varied mental and physical cruelty and torture on her. The O.P. refused to cohabit and have physical relation with the petitioner [wife] so that she may not give

birth of any child and with intent to deprive her of bliss of motherhood. During her stay at 'sasural', the petitioner came to know that O.P. has an illicit relation with another woman who is divorced. The O.P. always used to come late in night and sometimes he did not come back whole night and whenever it was objected to by the petitioner the O.P. always used to torture her physically and mentally and he told that he do not want child and he would not keep her. Having found the torture unbearable, the petitioner filed a case u/s- 498A of IPC against the O.P. The O.P's atrocities increased so much that he stopped fulfilling even his basic marital obligations and he used to refuse to have physical relation with the petitioner. The OP continued to deprive the petitioner her right of physical relation with him for long since he has an illicit relation with another lady.

42. It has further been stated that the OP has good earnings of around Rs. 5 lacs per month from his business of cement and rod wholesale dealer, hence he does not respect or care of any body. He always used to tell that he would not keep her and he hardly showed any interest in maintaining the relationship. The petitioner has gone depressed because of her long continuous sufferings at hands of OP and her entire life has become full of despair and gloomy. The OP has ousted her from his house. The family members and relatives made every endeavor to make

him understand and realize the things and to resume his marital life to normalcy but he did not agree. It has been submitted that on 03.03.2021 the O.P. refused to keep the petitioner. The marital relation between the petitioner and OP has completely ended since last three years before and it has reached the point of no return. The petitioner's life with OP is not safe and it is impossible for her to lead life together in conjugal relationship. The petitioner wants divorce from OP on grounds of cruelty and desertion.

43. In her cross examination she has stated that her parents gifted Rs. 12 lacs cash to the O.P., but she has no any proof thereof. She has filed a case u/s-498A of IPC against her husband, in that case her husband has been acquitted. The O.P. has an illicit relation with another girl, and she has proof of that relationship. After marriage she lived at her sasural for one year thereafter she came back to her maike. In the year 2019 she had gone her sasural where she lived for three months thereafter O.P. assaulted her and ousted her from the house. About this matter no any panchayati was held but her father tried to convince him. She cannot spend her life with Amit Kumar Singh.

44. P.W.-2 Rekha Kumari has stated in her affidavit examination-in-chief dated 12.10.2022 that petitioner is her daughter. She supported the version of her daughter and reiterated what has been stated by PW 1.

45. In her **cross examination** she has stated that this case has been filed by her daughter against her husband for divorce. She has gifted 5 bhar gold to her damad and 5 bhar to her daughter. After marriage her daughter lived at her sasural for about 6-7 months in three intervals. Her daughter has done M.Sc. and B.Ed. Presently she is teaching in Naktolia School, Panjwara. The woman with whom the OP has an illicit relationship is a divorcee. Her daughter has filed a case u/s-498A IPC against her husband/OP in which case her husband/OP has been acquitted. Her damad has an illicit relation with a lady, about this matter she has not filed any case. She denied the suggestion that at the time of marriage she has not gifted Rs. 12 lacs and 10 bhar gold. It is true that her daughter is not happy with her marital life and she does not want to live with her husband.

46. P.W.- 3 Shailendra Kumar Singh, has stated in his examination-in-chief dated 17.11.2022 that petitioner is his daughter. He has deposed as has been deposed by PW-1 and PW-2.

47. In his cross examination he has stated that he has given Rs. 12 lacs to his samdhi in three installments, but he has no proof. His daughter is living at her maike for last two years. The O.P. locked the house then his daughter came to her maike. His daughter does not want to spend her marital life with Amit Kumar Singh. His *Damad [son-in-law]* has an

illicit relation with another lady. His daughter has filed a case u/s-498A of IPC against O.P. His daughter is a teacher since 2013. No any panchayati was held between both the parties. He denied the suggestion that his daughter does not want to live with Amit Kumar since beginning.

48. This Court on the basis of argument advanced on behalf of parties as also testimonies of the witnesses has gone into the issue of dissolution of marriage and found that the respondent-wife had filed the suit for dissolution of marriage on the ground of cruelty and desertion.

49. Herein cruelty has been taken by the appellant as the main ground for dissolution of marriage. It needs to refer herein that he “cruelty” has been interpreted by the Hon’ble Apex Court in the case of ***Dr. N.G. Dastane vs. Mrs. S. Dastana, (1975) 2 SCC 326*** wherein it has been laid down that the Court has to enquire, as to whether, the conduct charge as cruelty, is of such a character, as to cause in the mind of the petitioner, a reasonable apprehension that, it will be harmful or injurious for him to live with the respondent.

50. This Court deems it fit and proper to take into consideration the meaning of ‘cruelty’ as has been held by the Hon’ble Apex Court in ***Shobha Rani v. Madhukar Reddi, (1988)1 SCC 105*** wherein the wife alleged that the husband and his parents demanded dowry. The

Hon'ble Apex Court emphasized that "cruelty" can have no fixed definition.

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

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

53. In *V. Bhagat vs. D. Bhagat (Mrs.)*, (1994)1 SCC **337**, the wife alleged in her written statement that her husband was suffering from "mental problems and paranoid disorder". The wife's lawyer also levelled allegations of "lunacy" and "insanity" against the husband

and his family while he was conducting a cross-examination. The Hon'ble Apex Court held these allegations against the husband to constitute "cruelty".

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

55. 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.

56. From the pleading available on record, it is evident that there is allegation of demand of dowry and on non-fulfillment of the same, the wife was subjected to torture. Further, there is allegation of illicit relationship of husband. All the witnesses have all along supported the version of respondent-wife regarding the allegation so made by the respondent-wife, in their testimonies. However, in support of appellant-husband no witness has been examined though sufficient opportunity has been granted to him. So this Court is of the view that the factum of cruelty has been proved.

57. So far the issue of 'desertion is concerned, this Court, in order to appreciate the aforesaid argument needs to refer herein the word 'desertion'. The word 'desertion' has been given in Explanation to Section 13 (1) of the Act, 1955 wherein it has been stated that "*the expression desertion means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.*"

58. 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.

59. *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.”

60. 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.

61. 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.

62. 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.

63. 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.

64. 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.

65. The law consistently has been laid down 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.

66. The Hon'ble Apex Court in the case of ***Ravi Kumar vs Julmidevi*** reported in **(2010) 4 SCC 476** has observed that the party alleging desertion must not only prove that the other spouse was living separately but also must prove that there is an *animus deserendi* on the part of the wife and the husband must prove that he has not conducted himself in a way which furnishes reasonable cause for the wife to stay away from the matrimonial home. For ready reference, the relevant part of the judgment is quoted as under:

*“13. It may be noted only after the amendment of the said Act by the amending Act 68 of 1976, desertion per se became a ground for divorce. On the question of desertion, the High Court held that **in order to prove a case of desertion, the party alleging desertion must not only prove that the other spouse was living separately but also must prove that there is an animus deserendi on the part of the wife and the husband must prove that he has not conducted himself in a way which furnishes reasonable cause for the wife to stay away from the matrimonial home.**”*

67. From the aforesaid law laid down by Hon’ble Apex Court, it is evident that each and every separation cannot be said to be ‘desertion’ rather if the wife or husband are living separately on their own wish then only the ground of ‘desertion’ for getting the decree of divorce would be available to the party concerned.

68. It is further evident that living away on one’s wish is to be substantiated by the parties that if either of them, husband or wife, is forced to live the house then the said separation would come under the purview of desertion. The party alleging desertion must not only prove that the other spouse was living separately but also must prove that there is an *animus deserendi*.

69. This Court, on the basis of aforesaid judgment, has again gone through the impugned judgment passed by the learned family court in order to see as to *whether any evidence has been led in order to substantiate the ground of desertion by taking the ground that the wife, the*

respondent herein, has on her own has left the matrimonial house or it is the appellant who forced her to leave the matrimonial house.

70. In order to answer this, this Court has again gone to the relevant part of testimony of the witnesses. From the testimonies of P.W-1 respondent-wife and P.W-2 and P.W-3, who are the mother and father respectively of the respondent, and found that all have repeatedly deposed about torture given to the respondent at her matrimonial home and illicit relationship of the appellant husband. These witnesses have also deposed about non-cohabitation of husband as a result of which respondent could not be blessed with any child. Hence, it was appellant-husband, who forced his wife to leave the matrimonial house. Appellant has not led any evidence that any conduct of the respondent made him to desert her.

71. The learned family court taking into consideration these facts has passed the order for dissolution of marriage and decreed the suit for divorce, which cannot be faulted with.

72. Therefore, the matter was heard on merit on the issue of permanent alimony.

73. It requires to mention herein that permanent alimony has been dealt under Section 25 of the Hindu Marriage Act, 1955, which reads as under:

“25. Permanent alimony and maintenance.—(1) *Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent*

(2) If the court is satisfied that there is, a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just

(3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.”

74. The issue of permanent alimony has elaborately been dealt with by Hon’ble Apex Court in the case of **Rajnish v. Neha & Anr. (2021) 2 SCC 324** which is the leading case law in the field, wherein the Hon’ble Apex Court taking into consideration all aspects of the matter in

granting permanent alimony/maintenance, has given certain directives and also the yardstick have been given for assessing the permanent alimony. For ready reference, the relevant paragraphs of the judgment wherein law has been laid down for permanent alimony is quoted as under:

“Permanent Alimony:

73. *Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the court concerned, for fixing the permanent alimony payable to the spouse.*

74. *In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid.*

75. *Provision for grant of reasonable expenses for the marriage of children must be made at the time of determining permanent alimony, where the custody is with the wife. The expenses would be determined by taking into account the financial position of the husband and the customs of the family*

76. *If there are any trust funds/investments created by any spouse/grandparents in favour of the children, this would also be taken into consideration while deciding the final child support.*

75. Further the Hon’ble Apex Court from paragraphs 77 to 85 has laid down the criteria for determining the quantum of maintenance taking into consideration the objection of granting interim/permanent alimony to ensure that dependent spouse is not reduced to destitution or vagrancy on account of failure of marriage and not as a punishment to the other spouse by taking into various factors viz. Status of

the parties; reasonable wants of the claimant; the independent income and property of the claimant; the number of persons, the non-applicant has to maintain etc. For ready reference, the relevant paragraphs of the judgment is quotes as under:

“Criteria for determining quantum of maintenance

77. *The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded*

78. *The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. [Refer to JasbirKaurSehgal v. District Judge, Dehradun, (1997) 7 SCC 7; Refer to VinnyParmvirParmar v. ParmvirParmar, (2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290]*

79. *In Manish Jain v. Akanksha Jain [Manish Jain v. Akanksha Jain, (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712] this Court held that the financial position of the parents of the applicant wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a*

claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.

80. *On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications. [ReemaSalkan v. Sumer Singh Salkan, (2019) 12 SCC 303 : (2018) 5 SCC (Civ) 596 : (2019) 4 SCC (Cri) 339]*

81. *A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. [Chaturbhuj v. SitaBai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.*

82. *Section 23 of the HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-section (2) of Section 23 of the HAMA provides the following factors which may be taken into consideration : (i) position and status of the parties, (ii)*

reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (iv) value of the claimant's property and any income derived from such property, (v) income from claimant's own earning or from any other source.

83. Section 20(2) of the DV Act provides that the monetary relief granted to the aggrieved woman and/or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.

84. The Delhi High Court in *Bharat Hegde v. SarojHegde* [*Bharat Hegde v. SarojHegde*, 2007 SCC OnLine Del 622 : (2007) 140 DLT 16] laid down the following factors to be considered for determining maintenance : (SCC OnLine Del para 8)

- “1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non-applicant has to maintain.
5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.
6. Non-applicant's liabilities, if any.
7. Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant.
8. Payment capacity of the non-applicant.
9. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.
10. The non-applicant to defray the cost of litigation.
11. The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act.”

85. Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.”

76. Learned counsel for the appellant-husband has submitted that the wife has earnings. Therefore, this Court is quoting relevant paragraph from case of **Rajnesh (supra)**, wherein the factor where the wife is earning some income has also been dealt with by Hon'ble Apex Court. For ready reference, the said paragraph of the judgment is quoted as under:

“Where wife is earning some income:

90. *The courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The courts have provided guidance on this issue in the following judgments:*

90.1. *In Shailja v. Khobbanna [Shailja v. Khobbanna, (2018) 12 SCC 199 : (2018) 5 SCC (Civ) 308; See also the decision of the Karnataka High Court in P. Suresh v. S. Deepa, 2016 SCC OnLine Kar 8848 : 2016 Cri LJ 4794 (Kar)] , this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. [Chaturbhuj v. Sita Bai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] Sustenance does not mean, and cannot be allowed to mean mere survival. [Vipul Lakhanpal v. Pooja Sharma, 2015 SCC OnLine HP 1252 : 2015 Cri LJ 3451]*

90.2. *In Sunita Kachwaha v. Anil Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589] the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.*

90.3. *The Bombay High Court in Sanjay Damodar Kale v. Kalyani Sanjay Kale [Sanjay Damodar Kale v. Kalyani Sanjay Kale, 2020 SCC OnLine Bom 694] while relying upon the*

judgment in Sunita Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589] , held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

90.4. *An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in Chander Parkash v. Shila Rani [Chander Parkash v. Shila Rani, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] . The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the court.*

90.5. *This Court in Shamima Farooqui v. Shahid Khan [Shamima Farooqui v. Shahid Khan, (2015) 5 SCC 705 : (2015) 3 SCC (Civ) 274 : (2015) 2 SCC (Cri) 785] cited the judgment in Chander Parkash [Chander Parkash v. Shila Rani, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.*

77. This Court, in the touchstone of aforesaid judgment, is now coming to factual aspect involved in the present case so as to come to the conclusion that the quantum of permanent alimony as awarded to the respondent-wife requires interference or not.

78. The respondent-wife has stated that her husband is doing wholesale business of cement and rod (building materials) and he has other sources of income also whereby he earns rupees 5 lakhs per month though the appellant-husband has denied the said fact but did not produce any chit of paper.

79. However, before this Court appellant-husband has produced the copy of ITR of the FY 2022-23, 2023-24 and 2024-25, showing his annual income as Rs.4,25,500/-; Rs.4,59,150/- and Rs. 4,77,760/- respectively. He has stated that he is working in his mother's shop wherein he gets monthly salary of Rs. 40,000/- [forty thousand].

80. It is worthwhile to mention herein that the ITRs copy of which has been produced is not of the year when the suit was filed or before it i.e., before 2021-22 and untenable ground has been taken he is working in the shop of his mother.

81. Further, though the ground has been taken that the respondent-wife is educated lady but it is admitted fact that after marriage solemnized in the 2012 she is facing the rigor of divorce and litigation for more than a decade and now she is about the age of 40, therefore, the learned family court directed the appellant-husband to pay a consolidated amount of Rs. 25,00,000/-(Rs. Twenty Five Lacs) as Permanent Alimony to the respondent-wife as also to return the stridhan and also directed the parties to exchange the gifts to each other, according to considered view requires no interference, for the reasons and discussions made hereinabove.

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

83. Pending Interlocutory Application, if any, stands disposed of.

I agree

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)

(Arun Kumar Rai, J.)

Alankar/A.F.R.

16th, September, 2025