

IN THE HIGH COURT OF JHARKHAND AT RANCHI

First Appeal No.64 of 2023

..... **Appellant**

Versus

... ... **Respondent**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant : Mr. Gautam Kumar, Advocate
Mr. Ashutosh Kr. Sinha, Advocate
Mr. Savita Kumari, Advocate
For the Respondent : Mr. Pankaj Srivastava, Advocate
Mr. Ashish Gautam, Advocate

C.A.V on 30.06.2026

Pronounced on 20/07/2026

Per Sujit Narayan Prasad, J.

Prayer

The instant appeal is directed against the judgment dated 23.02.2023 passed in Original Suit No.284 of 2018 by the learned Principal Judge, Family Court, Sahibganj, whereby and whereunder, the petition filed under section 27(1)(b) and (d) of the Special Marriage Act by the appellant-husband against the respondent-wife has been dismissed.

Factual Matrix

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

- (i) It is the case of the plaintiff-husband (appellant herein) that the parties solemnized marriage on 25.06.2008 under the provisions of

Special Marriage Act. After marriage, the defendant (respondent herein) went to her matrimonial house and live there for some time.

(ii) After some time of marriage, the respondent-wife instituted a false criminal case on 10.11.2009 against the plaintiff-husband at Rajmahal and went to her parental house and never came to the plaintiff. The plaintiff requested several times to the defendant for leading happy conjugal life with the plaintiff but she refused. The plaintiff thereafter filed a case for restitution of conjugal rights before the Principal Judge, Family Court, Sahibganj vide Matrimonial Suit No. 62/2009 which was dismissed. The defendant also filed a maintenance case before the Principal Judge, Family Court, Sahibganj and the learned Court has been pleased to allow maintenance to the tune of Rs. Rs. 2,000/-per month to defendant-wife and Rs. 1,000/- per month to her child.

(iii) The cause of action arose on 26.10.2018 when the defendant refused to come to the plaintiff at Sahibganj.

(iv) It has further been alleged that there is no cohabitation with the plaintiff-husband and defendant-wife for about ten years which amounts to cruelty on the part of the defendant -wife. The defendant has also deserted the plaintiff and there is no chance of reunion between them and now it is impossible to lead marital life with the defendant and therefore, the original suit being Original Suit No.284 of 2018 has been filed.

3. On the aforesaid ground of cruelty and desertion, the appellant-husband has prayed for a decree of dissolution of the marriage between

him and the respondent-wife, accordingly, the aforesaid suit for dissolution of marriage has been preferred.

4. It needs to mention herein that in Original Suit No.284 of 2018, after issuance of notice, the respondent-wife appeared and contested the suit by filing her written statement denying all the allegations levelled against her by the plaintiff-husband. On appearance, the defendant filed her written statement refuting most of the allegation of the plaintiff made in the plaint and stated that the plaint is not maintainable being false, bogus, imaginary, baseless and the plaintiff having no valid cause of action. She admitted that the parties knew each other and that they had fallen in love with each other. She has further stated that that the plaintiff established physical relation with her on assurance of marriage and she conceived from such cohabitation even before the marriage.

5. When the plaintiff came to know about her pregnancy, he started ignoring her and refused to marry her. The defendant then filed a criminal case against the plaintiff. Meanwhile, she delivered the male child on 19.04.2008 at Barharwa, However, with the intervention of the relatives, the plaintiff-appellant herein agreed to marry and thereafter, the marriage was solemnized and registered on 25.06.2008. She also denied the allegation of alleged cruelty and her misbehaviour.

6. It has been stated that earlier the plaintiff-husband had filed a matrimonial suit no.62 of 2009 for restitution of conjugal rights u/s 9 of the Hindu Marriage Act in the Court of Principal Judge, Family Court, Sahibganj which was dismissed and the plaintiff did not challenge its finding in the appellate Court. In the said judgment, the learned Court held that the defendant had valid ground for not joining the company of the

plaintiff. Therefore, the judgment is still in existence and as such, the instant suit filed u/s 27(i)(b) (d) of the Special Marriage Act for decree of divorce is not maintainable. It is admitted that the plaintiff has been acquitted in G.R.Case No.449/09. She denied that the plaintiff made efforts to take the defendant back. She further expressed her desire to live with the plaintiff along with her minor son if he keeps them with dignity and respect. She has been living with her parents since long. She admitted the maintenance amount to the defendant and her child; therefore, she had prayed to dismiss the suit.

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

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

Submission on behalf of the appellant-husband:

9. The learned counsel appearing for the appellant-husband has taken the following grounds in assailing the impugned judgment:

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

(ii) The learned Family Judge has failed to consider that though the marriage of the appellant and the respondent was solemnized according to Special Marriage Act but the respondent did not want

to live with him as wife and, as such, the impugned judgment suffers from an error.

(iii) It has been contended that the learned Family Judge has failed to consider that the respondent had filed a false criminal case against him at Rajmahal on 10.11.2009 which also amounts to cruelty.

(iv) It has been contended that the learned Family Judge has failed to consider that the respondent wife never wanted to lead a conjugal life with the appellant. Thereafter, the appellant filed a case for restitution of conjugal rights.

(v) It has been contended that the learned Family Judge has failed to consider that the respondent has deserted the appellant for more than two years without any reasonable ground.

(vi) It has further been contended that the learned Family Judge has failed to consider that since 2009, the appellant and the respondent are living separately and there is irretrievable break down in the marriage of the appellant and the respondent.

(vii) It has been contended that the appellant has never caused any cruelty upon the respondent and the criminal case lodged by the respondent against the appellant resulted into acquittal of the appellant.

(viii) It has been contended that the intention of the appellant from the very beginning was apparent to lead conjugal life with the respondent.

10. The learned counsel, based upon the aforesaid ground, has submitted that the impugned judgment is perverse and therefore, needs interference.

Submission on behalf of the respondent-wife:

11. The learned counsel appearing for the respondent-wife has taken the following grounds in defending the impugned judgment:

- (i) There is no error in the impugned judgement. The learned Family Judge has considered the entire issue and on the basis of evidence as led by the parties has passed the order impugned as such same may not be interfered with.
- (ii) The appellant has sought divorce on the ground that the behaviour of the respondent-wife is cruel, and has deserted the appellant without any valid ground but the learned Family Court, after taking into consideration the oral and documentary evidence, has held that the entire allegations levelled are absolutely illegal, arbitrary and has rightly dismissed the suit.
- (iii) It has also been submitted that the learned Family Court after taking into consideration the material available on record has found that the conduct of the appellant-husband has never been towards salvaging the institution of marriage as it is he who has come for the dissolution of the marriage, therefore, on the pretext of the aforesaid categorical finding of the Family Court, the impugned order requires no interference.

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

Analysis:

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

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

(i) Whether the suit is maintainable?

(ii) Whether the plaintiff has got valid cause of action for the suit?

(iii) Has the defendant deserted the plaintiff for more than two years without any reasonable ground?

(iv) Whether the plaintiff is entitled for a decree of divorce?

(v) Whether the plaintiff is entitled for any other relief?

15. The issue pertaining to ground for divorce, i.e., whether the plaintiff/applicant is entitled to a decree of divorce by dissolution of marriage between the parties.

16. But first of all, the learned Family Judge has taken into consideration the issue nos.(i), (ii) and (iii), i.e., maintainability of suit, valid cause of action for suit and the ground of desertion. The learned Family Judge has considered the evidence adduced on behalf of the parties for deciding the issues involved in the Original Suit.

17. This Court, in order to appreciate the aforesaid rival submission before entering into the legality and propriety of the impugned judgment, needs to discuss herein the relevant part of the evidences adduced on behalf of the parties which has been mentioned in the impugned order

wherein the element of cruelty and desertion has been shown by the petitioner-husband.

18. In support of his case, the plaintiff/appellant has examined three witnesses, i.e., P.W.-1, Manoj Kumar Hansda (plaintiff himself), P.W.-2, Md. Mahboob Alam and P.W.-3, Marang Marandi.

19. On the other hand, the respondent-wife, namely, Varsha Monigini Hembrom has examined herself as D.W.1

20. During the trial, the P.W.1 (the plaintiff himself) has supported his case in his examination-in-chief.

21. In cross-examination, he admitted his marriage with the defendant as per Santhal Customs and also a son from the defendant- wife. He claimed to file a Mat. Case No. 62/09 against his wife for restitution of conjugal rights which has been dismissed but he could not say the grounds for its dismissal. He further admitted to pay maintenance allowance to his wife as well as the son. He admitted Sohagini Hansda to be his cousin (sister) but denied to know Mohit Marshal Hansda. He further denied that Mohit Marshal Hansda is his son. He also denied that due to physical relation with Sohagini Hansda, the defendant does not want to live with him.

22. PW-2, Md. Mahboob Alam has also supported the case of the plaintiff in his examination-in-chief. In cross-examination, he claimed to depose in favour of the plaintiff in earlier case filed by the plaintiff for restitution of conjugal rights but he could not say its number and also its judgment. He denied to know Mohit Marshal Hansda. He also denied that Mohit Marshal Hansda is the son of Manoj Hansda. He denied that the

defendant could not live with the plaintiff as he has been living with another lady having illicit relationship with her.

23. P.W.-3, Marang Marandi has also supported the case of the plaintiff in examination-in-chief but in cross-examination, he expressed his ignorance regarding the contents of the examination-in-chief.

24. He claimed to attend the marriage ceremony of the parties solemnized at Barharwa. He stated that the defendant has been living with her parents.

25. He further stated that prior to filing of this case, the plaintiff had filed a case against his wife. He denied to depose in that case. He claimed to know Sohagini Hansda and admitted that earlier Manoj had been living with said Sohagni Hansda but in the next paragraph, he took 'U' turn and denied to know Sohagini Hansda. He also denied that presently Manoj has been living with one Nuri Aasa Marandi at South Colony Quarter at Sahibganj.

26. In paragraph-20, he stated that the plaintiff and the defendant have been living separately for 10 to 15 years. He denied any atrocity on behalf of the plaintiff with his wife.

27. On the other hand, the defendant Versha Monigini Hansda has examined herself as DW-1 who supported her case in examination-in-chief.

28. In cross-examination, she denied that Manoj has not solemnized his re-marriage. She admitted that she has been living separately from Manoj since 2009. She claimed to file a case under Section 498A of the I.P.C against the plaintiff in Rajmahal Court but her husband has been acquitted in that case. She denied that her husband went to her house for

taking her back. She further denied that her husband made several efforts to take her back. She admitted that she has not established relation with her husband since living separately. She admitted to get maintenance amount per month.

29. Further, in paragraph-23, she admitted that while deposing as PW-5 in G.R. Case No. 449 under paragraphs-13, 25 and paragraph-29, she had stated that she would not live with Manoj as there was a different situation of the parties. She denied to trap Manoj in her love. She further denied her intention to snatch money from the plaintiff and torture him mentally. She denied that the plaintiff has been suffering from mental and economical harassment as she is not living with him. She is still ready to live with her husband.

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

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

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

33. 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.

34. 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.”

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

36. The “cruelty” has been interpreted by the Hon’ble Apex Court in the case of ***Dr. N.G. Dastane vs. Mrs. S. Dastana, (1975) 2 SCC 326***

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

37. This Court, deems it fit and proper to take into consideration the meaning of ‘cruelty’ as has been held by the Hon’ble Apex Court in ***Shobha Rani v. Madhukar Reddi, (1988)1 SCC 105*** wherein the wife alleged that the appellant-husband and his parents demanded dowry. The Hon’ble Apex Court emphasized that “cruelty” can have no fixed definition.

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

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

40. 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”.

41. 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.

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

43. Further, it needs to refer herein that the Hon’ble Apex Court in *Joydeep Majumdar v. Bharti Jaiswal Majumdar*, (2021) 3 SCC 742, has observed that while judging whether the conduct is cruel or not, what has to be seen is whether that conduct, which is sustained over a period of time, renders the life of the spouse so miserable as to make it unreasonable to make one live with the other. The conduct may take the form of abusive or humiliating treatment, causing mental pain and anguish, torturing the spouse, etc. The conduct complained of must be “grave” and “weighty”

and trivial irritations and normal wear and tear of marriage would not constitute mental cruelty as a ground for divorce.

44. “Cruelty” has an inseparable nexus with human conduct and is always dependent on social strata or milieu to which parties belong, their ways of life, relationship, temperaments and emotions that are conditioned by their social status, reference be made to the judgment rendered by the Hon’ble Apex Court in the case *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, (2012) 7 SCC 288.

45. The Hon’ble Apex Court in the case of *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226 has observed that cruelty is evident where one spouse so treats other and manifests such feelings in other, as to cause reasonable apprehension in mind of other that it would be harmful or injurious to reside with other spouse and cruelty may be physical or mental. It has further been observed that staying together under the same roof is not a precondition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof.

46. In matrimonial relationship, cruelty means absence of mutual respect and understanding between spouses which embitters relationship. Sometimes it may take form of violence, or at times may just be an attitude or approach. Silence in some situations may also amount to cruelty reference be made to the case of *Ravi Kumar v. Julmidevi*, (2010) 4 SCC 476.

47. For considering dissolution of marriage at instance of a spouse who alleges mental cruelty, result of such mental cruelty must be such that it is not possible to continue with matrimonial relationship reference may

be taken from the judgment rendered by the Hon'ble Apex Court in the case of *Joydeep Majumdar v. Bharti Jaiswal Majumdar*, (2021) 3 SCC 742.

48. Further the word 'cruelty' is used 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. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of *Vinita Saxena v. Pankaj Pandit*, (2006) 3 SCC 778.

49. Further, in the case of *Manish Tyagi v. Deepak Kumar*, (2010) 4 SCC 339 the Hon'ble Apex Court has categorically observed that to constitute 'cruelty', it is enough that conduct of one of parties is so abnormal and below accepted norm that another spouse could not reasonable be expected to put up with it. Conduct is no longer required to be so atrociously abominable which would cause reasonable apprehension that it would be harmful of injurious to continue cohabitation with another spouse. Hence, it is not necessary to establish physical violence. Continued ill-treatment, cessation of marital intercourse, studied neglect, indifference may lead to inference of cruelty.

50. The word "cruelty" under the Act has got no static connotation, and therefore, gives a very wide discretion to the Court to apply it liberally

and contextually. What is cruelty in one case may not be the same for another and has to be applied from person to person while taking note of the attending circumstances. Harm or injury to health, reputation, the working-career or the like, would be important considerations in determining whether the conduct of the defending spouse amounts to cruelty. It has to be shown that the defending spouse has treated him with cruelty to cause reasonable apprehension in his/her mind that it will be harmful or injurious to live with the contesting spouse.

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

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

53. It is evident from material available on record that the relationship of the plaintiff/appellant with the defendant was not cordial due to filing of criminal case regarding torture by the plaintiff/appellant owing to demand of dowry. Further it is evident from Ext-"A" that the plaintiff/ Appellant has levelled allegations of un-chastity against wife – respondent by denying himself to be the father of her son.

54. It is settled position of law that levelling disgusting accusations of indecent familiarity with a person outside wedlock and allegations of extra-marital relationship constituted grave assault on the character, honour, reputation, status of the spouse and therefore, such aspersions amounted to worst form of insult and cruelty, which itself was sufficient to substantiate cruelty in law, reference in this regard be made to the

judgment rendered by the Hon'ble Apex Court in the case of *Vijay Kumar Ramchandra Bhate v. Neela Vijay Kumar Bhate (supra)*.

55. It is very well settled that in a case where divorce is sought on the ground of cruelty, every allegation of cruelty must be pleaded and proved. As could be seen from the record that the plaintiff/appellant has not whispered any instance of cruelty or misbehaviour of the wife-defendant/respondent with the plaintiff /appellant.

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

57. Since, the plaintiff/ husband/appellant has also taken ground of desertion, as such at this juncture, it would be apt to refer the definition of 'desertion' as stipulated under explanation part of Section 27 of the Special Marriage Act wherein it has been prescribed that the expression desertion means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

58. *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.”

59. 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.”

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

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

adultery and cruelty in that the offence founding the cause of action of desertion is not complete, but is inchoate, until the suit is constituted. desertion is a continuing offence.

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

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

64. Further, the Hon'ble Apex Court in *Debananda Tamuli vs. Kakumoni Katakya*, (2022) 5 SCC 459 has considered the definition of 'desertion' on the basis of the judgment rendered by the Hon'ble Apex Court in *Lachman Utamchand Kirpalani v. Meena*, AIR 1964 SC 40 which has been consistently followed in several decisions of this Court. The law consistently laid down by this Court is that 'desertion' means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of

deserting spouse to bring the cohabitation to a permanent end. In other words, there should be *animus deserendi* on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home. For ready reference explanation part of Section 27 of the special Marriage Act is being quoted herein:

“27. Divorce.—(1) ...

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

65. From the aforesaid, it is evident that desertion means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

66. This Court, on the premise of the interpretation of the word “desertion” has considered the evidences of the witnesses, as has been incorporated by the learned Court in the impugned judgment.

67. It is evident from testimony of the defendant/wife that she denied that her husband (appellant herein) went to her house for taking her back. She further denied that her husband made several efforts to take her back. From record, it appears that there is even not a single evidence available on the record that the plaintiff even sent any notice to the defendant

showing his eagerness to take her back. Likewise, no any date has been pleaded or whispered in the evidence as to when the appellant went to take the defendant/respondent back.

68. The desertion has been defined that if either of the parties on its own has left the house without any compulsion or coercion, then only such type of separation will come under the fold of desertion. But what we have seen from the evidence of the appellant and the witnesses adduced on his behalf during the trial that no cogent evidence available on record which shows that appellant/husband has made efforts to take respondent back to matrimonial house. Further, it has come in the impugned judgment that appellant having relation with another lady and as such, the said ground is enough for respondent wife to leave her matrimonial home.

69. The learned Family Court has taken into consideration the aforesaid fact and has observed that *in fact of the present case, it is not possible to hold that there was either the factum of separation or the animus-deserendi on the part of the wife. If the husband had ill-treated the wife and having extra marital relationships with another lady and, therefore, the wife takes shelter at her parental house, it is not possible to hold that there was separation with intention to bring co-habitation permanently to an end.*

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

“...Admittedly, the plaintiff had filed a Matrimonial suit no.62/2009 for restitution of conjugal rights u/s 9 of the Hindu

Marriage Act (Exhibit. A) claiming to be governed by Hindu Law though in that case he admitted that his marriage was solemnized on 15.04.2008 according to Santhal Customary Law but he has filed this suit for divorce against the wife under section u/s 27(1)(b)(d) of the Special Marriage Act claiming to be governed under the provisions of the Special Marriage Act. But no reason has been assigned or submitted by the plaintiff as to why he has filed this suit under the provisions of the Special Marriage Act or not filed under the provisions of Hindu Law or why had filed the earlier suit u/s 9 of the Hindu Marriage Act. However, the learned lawyers for both the parties are agreed that both the parties are Santhals and their marriage was solemnized under the provisions of the Special Marriage Act, the instant suit will be adjudicated under the provisions of the Special Marriage Act.

In the facts and circumstances of the case the wife's evidence both oral and documentary appears to be more probable and consistent with the normal course of events. In my opinion, in the facts of the present case it is not possible to hold that there was either the factum of separation or the animus-deserendi on the part of the wife. If the husband had ill treated the wife and having extra marital relationships with Sohagini Hansda also a son namely Mohit Marshal Hansada from wedlock of said Sohagini and also having extra marital relationships with one Nuri Aasha Marandi and, therefore, the wife takes shelter at her parental house, it is not possible to hold that there was a separation with the intention to bring co-habitation permanently to an end. The husband's case of desertion by the wife must, therefore, be rejected. My answer to the first point, therefore, is that the husband has failed to prove that the wife had deserted him.

12. On the second point of cruelty, the plaintiff has mainly relied on the ground of cruelty caused by the defendant due to desertion. A bare perusal of record reveals that the relationship of the plaintiff with the defendant was not cordial due to filing of criminal case regarding torture by the plaintiff owing to demand of dowry. Ext-"A" reveals that the plaintiff has leveled allegations of un-chastity against wife - defendant by denying himself to be the father of her son. Besides this, the plaintiff has extra marital relation with one Sohagini Hansda. In the judgment (Ext. A) the then Family Court has held that "there appears that the petitioner has extra marital relationship with one lady Sohagni Hansda.

These grounds are enough to the restitution of conjugal rights to live separately from the petitioner". The then Court has also found that "the respondent has valid grounds for not joining the company of the petitioner hence, the relief sought by the petitioner for restitution of conjugal rights cannot be granted to him and as such, the suit filed by the plaintiff for restitution of conjugal rights was dismissed on 10.02.2015" and there is no chit of paper that the plaintiff has challenged this judgment in any Appellate Court".

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

72. This Court, after discussing the aforesaid factual aspect along with the legal position and adverting to the consideration made by the learned Family Judge in the impugned judgment has found therefrom that the issue of desertion and cruelty has well been considered by the learned Family Judge.

73. On consideration of the evidence, the learned Family Judge has found that the appellant-husband has miserably failed to establish the ground of cruelty and desertion against the respondent-wife, and further there is no any evidence on record that the conduct of wife respondent has been of such a nature so as to cause danger to life, limb or health and so as to give rise to a reasonable apprehension of such a danger, rather, it appears that the cruelty came from his side not from the defendant by not taking care of the wife-defendant and her child and also by leveling wild allegations of un-chastity against wife- defendant by denying himself to be the father of her son.

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

75. 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 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.

76. This Court, therefore, is of the view that the judgment dated 23.02.2023 passed in Original Suit No.284 of 2018 by the learned Principal Judge, Family Court, Sahibganj needs no interference.

77. Accordingly, the instant appeal stands dismissed.

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

(Sujit Narayan Prasad, J.)

I Agree.

(Sanjay Prasad, J.)

(Sanjay Prasad, J.)

Dated:20/07/2026
Jharkhand High Court, Ranchi
Rohit-A.F.R.
Uploaded on 21.07.2026