

IN THE HIGH COURT OF JHARKHAND AT RANCHI

First Appeal No.165 of 2023

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

Versus

.... **Opp. Party/Respondent**

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA**

For the Appellant : Mr. Ashish Kumar, Advocate
For the Respondent : Mr. Priyanshu Nilesh, Advocate
Mr. Rahul Dev, Advocate
Ms. Shipra Sonam, Advocate

CAV on 03.07.2026

Pronounced on 23/07/2026

Per Sujit Narayan Prasad, J.

Prayer

The instant appeal under Section 19(1) of the Family Court Act, 1984 is directed against the judgment dated 19.04.2023 passed in Original Suit No.201 of 2018 by the learned Principal Judge, Family Court, Civil Court, Giridih, whereby and whereunder, the petition filed under section 13(1) (i-a) & (iii) of the Hindu Marriage Act, 1955 by the appellant-husband against the respondent-wife has been dismissed.

Facts

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

- (i) The marriage between the petitioner, _____ (petitioner herein) and the respondent, _____ (respondent herein) was solemnized on 22.06.2017 at R.R.P _____ as per Hindu Rites and customs prevailing in between the parties in the presence of guardian and relatives of both the parties. After solemnizing the marriage, wife/opposite party, _____ came to his matrimonial home at _____ and both of them started to live together.
- (ii) The petitioner, appellant herein has stated that in the first night, he (petitioner) found that his wife/respondent, _____ is suffering from mental disorder and she failed and neglect to maintain the proper marital relationship with him. Since his wife suffers from a chronic and incurable mental disorder and is not in proper mental state to lead a married life.
- (iii) It was further averred that the parents of his wife were informed about physical and mental condition of the respondent, _____, then the parents of his wife came to his house and disclosed the fact that the respondent is suffering from mental disease since her childhood and they provided medicine.
- (iv) The petitioner has further pleaded that his wife is suffering from a mental illness and though she was under medication, suppressing the material facts, the father of the opposite party negotiated the marriage of the opposite party and immediately after that, it was noticed that there is suppression of the material facts. It has been further stated that the respondent/wife was

acting in very abnormal manner, as she used to abruptly get very aggressive, hostile and suspicious nature.

- (v) It has been further averred that the respondent/wife had been taken away by her parents after next day of the marriage. Thus, the respondent went to her parents' house with her parents. The petitioner has further averred that on account of serious mental illness which is of incurable and that he cannot be expected to live with her. There is every chance of violent acts, which could be dangerous to the petitioner. The father of the opposite party fraudulently concealed the fact of mental illness of the respondent and obtained his consent by fraud. The marriage was not consummated due to mental illness of the respondent.
- (vi) The petitioner/husband has further narrated that the respondent has treated him with cruelty as she has failed to provide love and affection and has failed to discharge her marital obligation. It was further pleaded that he only lived with his wife for a day. Again, the petitioner has pleaded that he tried his best to take back the respondent/wife by various means and he went to his sasural situated at Begusarai and inspite of the best efforts on his part, the wife did not return to his house.
- (vii) The petitioner has pleaded that the cause of action for the suit has arisen on 22.06.2017 when the marriage was performed.
- (viii) Thus, on the ground of mental illness of the respondent/wife, as also on the ground of cruelty, the petition for divorce under Section 13 of the Hindu Marriage Act, 1955 was filed by the petitioner/husband against his respondent/wife, Nikki Kumari.

3. Upon perusal of the record, it appears that when the respondent,

was not appeared then the petition for divorce

was proceeded *ex-parte* against the respondent on 31.08.2021. later on the respondent /wife entered her appearance in the case and filed a petition for setting aside the *ex-parte* order dated 31.08.2021 and finally the court has set aside the *ex-parte* order dated 31.08.2021.
4. Thereafter, she has filed her written statement on 04.09.2021. The allegations made in the divorce petition were controverted and resisted by the respondent/wife.
5. The case of the respondent/wife is that she has admitted the fact that her marriage was solemnized with the petitioner on 22.06.2017 at R.R.P,

. At the time of marriage, her

father gave Rs. 11,00,000/-cash and jeweleries etc. After marriage, she entered inside the matrimonial home with her husband.
6. The respondent has further stated that she was never suffering from any mental illness or any other mental disorder problem. She denied that she suffered from any mental disorder, far less of a chronic and incurable nature. She had taken a stand that she is absolutely a normal lady and after the marriage, she was living with her husband leading a conjugal life, but she was being subjected to tortured and cruelty by the hands of her husband and his family members due to demand of four wheelers vehicle. After marriage, she led a happy marital life a period of 2 months.
7. The respondent/wife has pleaded that she has all along been ready and willing to lead a normal marital life with the petitioner/husband. The wife has also further pleaded that she was never medically checked up by the

Doctor about mental illness, however, she was tortured and harassed by her husband and his family members for bringing less dowry in the marriage.

8. The respondent has averred in her pleading that there is no fraud played upon the petitioner. The version of the petitioner/husband is that the marriage of the parties could not be consummated due to inability of the respondent/wife, is totally false and fabricated and false story was made by her husband. Her husband did not provide proper food to her when she had been living in the matrimonial home. On the first night of her marriage, she came in close contact with her husband and slept together. Her mental condition is quite normal. The marriage was solemnized after obtaining the full and free consent of the petitioner and there was no deception or fraud.

9. The case of the respondent/wife is further that she and the petitioner both of them live together happily for some period and in this period her husband gave good treatment to her.

10. But later on, her husband and his family members started demanding her to bring four wheelers from her parents and her husband used to insist her to go her parental house to bring the same because her husband and his family members were not satisfied with the dowry and they have been making demand.

11. It has been further pleaded that she was driven out of the matrimonial home on 17.09.2017 after keeping all her jewelries and at that time her husband had taken her signature on the blank paper. It was further pleaded by respondent/wife that her father and relatives tried to pacify the matter but in vain. Several efforts were made by her and her father to get the matter settled but they went in vain as her husband/petitioner is/was not interested to keep her. She is willing to return to the matrimonial home but the

husband had refused to rehabilitate her. Thus, she was compelled to leave the matrimonial home. Thus, the respondent/wife has prayed that the petition for divorce which was filed the petitioner/husband is liable to be dismissed.

12. On the basis of the pleadings of the parties, following issues were framed by the learned Family Court for proper adjudication of the divorce petition.

- (i) *Whether the suit as is maintainable in its present form?*
- (ii) *Whether the plaintiff has got a valid cause of action for the suit?*
- (iii) *Whether the defendant is able to co-habitat with plaintiff?*
- (iv) *Whether the marriage solemnized between the plaintiff and defendant is fit to be dissolved on the ground of cruelty?*
- (v) *Whether plaintiff is entitled for the relief claimed ?*

13. In order to prove and substantiate his divorce petition, the petitioner/appellant, _____ has produced and examined the following witnesses. P.W 1 is _____ (petitioner/applicant himself), P.W 2 is _____, P.W-3 is _____ and P.W-4 is _____.

14. Thus, on behalf of the petitioner, four witnesses were produced and examined to prove his case. However, no documentary evidence has been filed by the petitioner side.

15. On the contrary, in order to prove her case, the respondent/wife produced three witnesses as O.P.W-1 is _____, O.P.W-2 is _____ and O.P.W-3 is _____ (respondent herself).

16. It has been submitted before the learned Family Judge that she is suffering from mental illness since long and due to her insanity, it is not possible for the appellant/plaintiff to lead conjugal life with defendant and,

as such, a prayer has been made that the decree of divorce may be granted by dissolving the marriage of the parties.

17. Learned Family Judge, after institution of the said case, taking into consideration of the pleadings of the parties has formulated the issues and has decided the *lis* by refusing to grant divorce to the appellant/plaintiff.

18. 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:

19. 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 ocular evidences.

(ii) The element of mental disorder has been found to be there if the evidences adduced on behalf of the appellant-husband will be taken into consideration but without appreciating the same properly, the learned Family Judge has come to the finding by holding that no element of mental disorder is there and, as such, the impugned judgment and decree suffer from an error.

(iii) The respondent-wife is suffering from mental disorder and she failed and neglect to maintain the proper marital relationship with him. Since his wife suffers from a chronic and incurable mental disorder and is not in after mental state to lead a married life.

(iv) It has been contended that the appellant has been meted out with cruelty at the hands of the respondent due to her abnormal

behaviour as would be evident from the evidence adduced on behalf of the appellant-husband, but the same has not been taken into consideration.

(v) It has been contended that though the learned Family Judge has proceeded with the matter and dismissed the original suit, but he has failed to appreciate the evidences adduced on behalf of the appellant as in the trial, the evidence has come that it was the respondent-wife who has committed cruelty upon him by her cruel behaviour and act.

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

Submission on behalf of the respondent-wife:

21. 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 respondent-wife is of unsound mind or has been suffering continuously or intermittently for mental disorder and the appellant cannot reasonably be expected to live with the respondent but the learned Family Court, after taking into consideration the evidences, has observed that the entire allegations levelled therein were absolutely illegal,

uncalled for and as such, the suit has rightly been dismissed.

- (iii) It has been submitted that after some time of marriage, her husband and in-laws started to demand four wheelers and taking this issue, she was being subjected to physical and mental cruelty. When the alleged demand was not fulfilled then she was being tortured by the hands of the petitioner and his family members. Apart from this, it has been submitted that the petitioner-appellant wants to marry another woman.
- (iv) 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 dissolution of the marriage, therefore, on the pretext of the aforesaid categorical finding of the Family Court, the impugned order requires no interference.

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

Analysis:

23. We have heard the learned counsel appearing for the parties, gone through the impugned judgment as well as the Trial Court Records, as also the testimonies of the witnesses.

24. 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 appellant/plaintiff, before the learned Family Court, wherein the element of mental disorder has been shown by the appellant-husband.

25. During the trial, the petitioner, . has produced and examined the following witnesses;

P.W. 1, (petitioner/applicant himself),

P.W 2, , P.W-3, ' and

P.W-4, .

P.W 1, , who is petitioner himself, in his examination-in-chief has stated that he instituted this divorce petition against the respondent , who is his legally wedded wife. He was married to according to Hindu rites and rituals on 22.06.2017 in presence of relative of both the parties at R.R.P

1. After marriage, the respondent/wife came to his house. On the first night of the marriage, he found that his wife was acting in very abnormal manner, she used to abruptly get very aggressive, hostile and suspicious in nature. The petitioner further found that the respondent/wife suffers from a chronic and incurable mental disorder and is not in a fit mental state to lead a married life. The fact that the respondent is/was suffering from mental disorder, has been suppressed by the parents of

respondent before the marriage. The petitioner contended that the marriage was never consummated due to abnormal behaviour of the respondent. Thus, there is fraud played upon the parents of respondent with him concealing the fact that the respondent suffered from unsoundness of mind and his consent has been obtained for marriage by suppression. It was further detected that before the marriage, the respondent was under treatment from the childhood. This witness has deposed that the following day of the marriage, the matter of illness of the respondent was informed to the father of the respondent, thereafter his father-in-law, mother-in-law and others came to his house. On being inquired by father-in-law, he said that his daughter had been suffering from mental disorder since her childhood.

This witness has further deposed that the respondent had taken away by parents along all her belongings. This witness has claimed that the marriage could not be consummated because of the physical inability of his wife and it was difficult to live together with the respondent/wife. There is every chance of violent acts, which could be dangerous to his life. The father of the respondent/wife fraudulently concealed the fact of mental illness and obtained his consent by fraud.

In his cross-examination, this witness has stated that the respondent is a graduate. This witness has clarified that he is a government employee posted at Pune and he is an owner of a flat. He is getting monthly of Rs. 50,000/-. He has further deposed that he did not examine his wife from doctor. Before marriage, his family

members reached in the house of his wife to see her and thereafter the marriage was negotiated.

This witness has further deposed that he never opposed his marriage. He has further clarified that the respondent lodged a criminal case having P.S case no-30/19 before Kodwa P.S. Pune and after that he was called out by police at Police station. Except this an application was submitted before secretary of housing Society, Pune against him. This witness has vehemently deposed that he did not desire to keep his wife with him.

P.W-2, , who is mother of the petitioner, has stated that the marriage between the parties was solemnized on 22.06.2017 at Giridih. After marriage, respondent came to her house. In the first night of the marriage, her son, found that the respondent, was mentally ill and suffering from mental retardation. Thereafter the matter of illness was informed to father of and provide medicine to the respondent. On being ask, the parents of respondent have narrated that the respondent is suffering from mental illness and she is under medication. Thereafter, the respondent was taken out by her parents at Begusarai. This witness has further stated that her son, who is petitioner, made efforts to call back his wife, but no avail. She has further deposed that before marriage the fact that the respondent is suffering from mental disease, has been suppressed by the respondent's father.

P.W-3, in his examination-in-chief has stated that his house is 100 gauge away from the house of

. This witness has stated that the petitioner is son of his

brother-in-law. After marriage, _____ came to the house of petitioner where in the first night of the marriage it was found that the behavior of the respondent was abnormal and she was mentally weak lady. After that the matter was informed to the parents of _____

_____ and after receiving the alleged information the parents and other persons came to the house of the petitioner and the parents of _____ have admitted that _____ is/was suffering from mental disease and it was suppressed before the marriage by them. This witness has further deposed that the marriage could not be consummated due to inability of respondent and ultimately the respondent was taken out by the parents. Thereafter, the petitioner instituted this divorce petition.

In his cross-examination he has stated that before the marriage the family members of petitioner liked the respondent and this is an arranged marriage, in which the girl was seen by the petitioner side. After that the function of marriage was performed in which he also participated. After solemnizing the marriage, he left marriage place and went to his house. This witness denied the fact that at the time of first night he was present. The matter of mental illness of the respondent was informed to him by the petitioner.

P.W, 4 _____, who is petitioner's brother in his examination-in-chief has stated that his brother instituted this divorce petition against the respondent _____, who is legally wedded wife of the petitioner. The marriage of both was solemnized according to Hindu rites and rituals on 22.06.2017 in presence of relative of both the parties at R.R.P

.. After marriage, the respondent entered appearance in her matrimonial home. On the first night of the marriage, his younger brother found that his wife was acting in very abnormal manner, as she used to abruptly get very aggressive, hostile and suspicious in nature. His brother further found that the respondent suffers from a chronic and incurable mental disorder and is not in a fit mental state to lead a married life. The fact that the respondent is/was suffering from mental disorder, has been suppressed by the parents of respondent before the marriage.

This witness has contended that the marriage was never consummated due to abnormal behaviour of the respondent. Thus, there is fraud played upon the parents of respondent. concealing the fact that the respondent suffered from unsoundness of mind and the consent has been obtained for marriage by suppression. This witness has further deposed that the following day of the marriage, the matter of illness of the respondent was informed to the father of the respondent, thereafter the parents of the respondent and others came to his house. On being inquired by the parents of the respondent, they said that his daughter had been suffering from mental disorder before the marriage.

This witness has also further deposed that the respondent had taken away by parents. This witness has further testified that the marriage could not be consummated because of the physical inability of the respondent.

In his cross-examination he has admitted that the petitioner is his own brother. He along with family members reached at Deoghar to

see the respondent. When his family members liked the respondent then the marriage of the petitioner was negotiated. This witness has clarified that the respondent was Staying in her parents' house from July, 2017.

26. Now, it needs to refer the witnesses examined on behalf of the respondent-wife, i.e., O.P.W 1, _____, O.P.W 2, _____ and O.P.W _____ (respondent herself)

O.P.W 1, _____, who is father of the respondent, in his examination-in-chief has stated that the respondent, _____ is his daughter. She was married to the petitioner on 22.06.2017 as per Hindu ceremonies. His son-in-law filed this petition for divorce on the basis of false allegations against her daughter. He has stated that at the time of marriage, he gave Rs. 11,00,000/- cash as well as gold and silver ornaments amounting to Rs. 8,00,000/- to the petitioner. After marriage, her daughter entered appearance in her matrimonial home where she started to live with her husband including her in-laws. After some time of the marriage, his son-in-law including in-laws started to demand four wheelers as additional dowry and the petitioner used to insist her daughter to bring money from her parents for him. Taking this issue her daughter was being tortured. When the alleged demand was not fulfilled by him, then her daughter was subjected to physical and mental cruelty and she was kept continued without food several occasions. This witness has further stated that when the torture of the petitioner and in-laws was not bearable then her daughter informed to him about torture. After receiving the information of torture, he reached the

matrimonial home of the respondent and requested to the petitioner and his family members not to torture her daughter but in-vain. This witness has further stated that seeing the atmosphere of torture he proposed to take his daughter with him on 17.07.2017. Thereafter, after taking all the jeweleries of the respondent, the petitioner and his family members kicked out him as well as his daughter from their house. Thereafter he along with daughter left that place and reached his house. He has further deposed that for fear of his life and life of the respondent he did not complain the same before police station. This witness denied the fact that her daughter is suffering from any mental disease, she is mentally fit lady. This witness has further stated that his son-in-law desire to conduct second marriage due to which, he levelled false allegations on his daughter.

In his cross-examination, he has stated that her daughter was living with her husband till 17.07.2017 for a period of 25 days. One day his son-in-law reached his house and stated that he did not desire to keep the respondent along with him.

O.P.W, 2 has stated that after marriage, respondent reached in her matrimonial home where she was tortured for demand of additional dowry like four wheelers. On the request of respondent's father, he along with respondent's father reached the matrimonial home of where it was found that the respondent used to be tortured by the hands of petitioner and his family members taking the four wheelers vehicle.

This witness has further stated that the petitioner and his family members threatened the respondent's father saying that if the demand

would not be fulfilled then you should ready to serve consequence. This witness has further stated that the respondent is absolutely a normal lady and allegation of the petitioner that she is suffering from mental disorder is totally concocted and the respondent was being subjected to torture for the additional demand.

O.P.W 3, , **who is respondent herself**, has filed her examination-in-chief through an affidavit in which she has stated that this divorce petition has been filed by her husband. She was married to the petitioner, as per Hindu rites and customs on 22.06.2017 at . At the time of marriage, her parents gave sufficient gifts.

After solemnizing the marriage, she went to her matrimonial home and joined the society of her husband and started to perform her matrimonial obligation with her husband. She lived in her matrimonial home till 17.09.2017.

This witness has deposed that her husband and her in-laws started demanding her to bring four wheelers from her parents, taking this issue she was being subjected to physical and mental cruelty. The matter was informed by her to her father. But the alleged demand was not fulfilled by her father. This witness has further stated that taking this issue, she was kept confined without food till several day. Thereafter, her husband and in-laws started to blame to her saying that she is suffering from mental disorder. She is absolutely a normal lady and after the marriage, she was living with her husband leading a conjugal life, but after some time of the marriage she was being subjected to torture and cruelty by the hands of her husband and his

family members with respect of additional dowry of four wheelers. She was kicked out by her husband on 17.09.2017 after snatching all her ornaments, then she reached her parents' house with her father.

In her cross-examination, she has stated that she is a normal lady and she was/is never suffering from any mental illness or any other mental disorder. The petitioner and her in-laws demanded four wheelers and taking this issue she was being tortured and ultimately after receiving the information of torture, her father came to her matrimonial home. This witness has further clarified that she was kicked out by the hands of her husband, then she reached her parents' house with her father.

27. 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 cruelty and mental disorder and, as such, has dismissed the suit.

28. The fact about filing of suit on the ground of mental disorder is admitted one as per the evidences adduced on behalf of the appellant. The appellant-husband has tried to establish the element of cruelty upon him at the hands of the respondent-wife.

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

30. From the testimony so recorded of the appellant-husband, the learned Principal Judge, Family Court has come to the conclusion that in the instant case, except the vague and omnibus allegations made by

husband against his respondent-wife, no cogent convincing, clinching evidence, no concrete documentary evidence has been led to substantiate the charges of mental illness. The onus to prove the grounds taken for divorce squarely rests on the husband which are required to be discharged by leading a cogent, tangible and reliable evidence.

31. 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.

32. 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.”*

33. In the context of the aforesaid factual aspect only seminal issue has to be decided herein that;

“Whether the appellant/plaintiff is entitled to get divorce from the defendant/respondent herein U/s 13(1)(i-a) and (iii) of the Hindu Marriage Act, 1955?”

Issue of Cruelty

34. Since the plea of cruelty has been advanced by the appellant/husband, it becomes imperative to delineate the contours of "cruelty" as judicially interpreted. The Hon’ble Supreme Court, in a catena of judgments, has consistently held that cruelty under matrimonial law is not confined to physical violence alone but extends to mental cruelty, which may manifest in conduct, words, or circumstances causing such pain, anguish, or suffering that it renders cohabitation insupportable.

35. It needs to refer herein the definition of ‘cruelty’ as has been defined by Hon’ble Apex 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.

36. 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.

37. 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.”

38. 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.”

39. The nature of allegations need not only be illegal conduct such as asking for dowry. Making allegations against the spouse in the written statement filed before the court in judicial proceedings may also be held to constitute cruelty.

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 cross-examination. The Hon’ble Apex Court held these allegations against the husband to constitute “cruelty”.

41. 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.

42. 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.

43. “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*.

44. 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.

45. In matrimonial relationship cruelty mean 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.

46. 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.

47. 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.

48. 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 other 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 or 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.

49. The word "cruelty" under Section 13(1)(i-a) of 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.

50. From the deposition of the petitioner/appellant, it is manifest that this witness did not allege in his testimony that subsequent to the marriage the respondent/wife committed acts of cruelty against him. No assertion was made that the respondent abused or assaulted either the appellant or

his family members. The only narration advanced was that, owing to alleged mental disorder, the marriage was not consummated. However, the petitioner failed to adduce any cogent evidence before the learned Family Court to substantiate the plea of non-consummation.

51. According to the appellant, the respondent resided in his house for merely one day. In contradistinction, the respondent, Nikki Kumari, examined as O.P.W. No. 3, deposed that she was married to the petitioner on 22.06.2017 and thereafter entered her matrimonial home, where she was subjected to torture for demand of four-wheelers, and ultimately, after her ornaments were snatched, she was expelled on 17.09.2017. Thus, as per her version, she remained in the matrimonial home for about three months.

52. Further, the testimony of P.W.-2, Sunaina Devi, mother of the petitioner, reveals that she too did not allege in her evidence that the respondent abused or assaulted either her husband or other family members of the appellant.

53. In view of the foregoing, it is evident that there is no cogent or reliable evidence on record to establish that the respondent/wife committed cruelty upon the appellant/husband. The allegations remain unsubstantiated and fail to meet the threshold laid down by the Hon'ble Apex Court for proving cruelty in matrimonial disputes.

54. Further, it is evident from impugned order that the learned Family Court has also taken into consideration the testimony of appellant/husband and his mother and has observed that there is no iota of evidence on the record to show that the respondent/wife committed cruelty against the petitioner/husband.

55. Based on the aforesaid discussion and appreciation of evidence, this Court is of the considered view that the learned Family Court has rightly evaluated the entire gamut of facts and circumstances and has dismissed the suit. The findings recorded therein are supported by the material on record and are consistent with the settled principles laid down by the Hon'ble Supreme Court in matrimonial jurisprudence. Accordingly, this Court finds no infirmity warranting interference and sees no reason to take a distinct view from that of the learned Family Court on the issue of cruelty.

Issue of Mental Illness

56. It is evident from order impugned that on the issue of mental illness, the learned Family Court has categorically held that no cogent evidence has been adduced by the plaintiff/husband in order to prove the mental illness of OP- wife and therefore the Family Court has also decided this issue against the appellant/husband.

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

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

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

Explanation- In this clause—

(a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic

disorder or any other disorder or disability of mind and include schizophrenia;

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

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

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

60. From the wording of the provision, it can be said that the second part of the provision has wide scope. For this part, it is not necessary that mental disorder is incurable. However, the mental disorder must be of such kind and extent that the Court needs to be satisfied that it is not advisable to ask the petitioner to live with the respondent. The scope shows that there is no limit to the kind of mental disorder as no specific kind is mentioned. However, the term “has been suffering” shows that the period of illness must not be too short or the petition should not be based on one or two instances showing such mental disorder.

61. The term “intermittently” cannot be misread in this provision to

infer that the mental illness returns after the treatment within few days. The term “extent” is also important and on that also the Court needs to be satisfied to come to the conclusion that the petitioner cannot reasonably be expected to live with the opposite party.

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

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

64. The Hon’ble Apex Court in the case of *Kollam Chandra Sekhar v. Kollam Padma Latha, (2014) 1 SCC 225* has categorically

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

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

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

21. The answer to the apparently simple—and perhaps misleading—question as to ‘who is normal?’ runs inevitably into philosophical thickets of the concept of mental normalcy and as involved therein, of the ‘mind’ itself. These concepts of ‘mind’, ‘mental phenomena’, etc. are more known than understood and the theories of ‘mind’ and ‘mentation’ do not indicate any internal consistency, let alone validity, of their basic ideas. Theories of ‘mind’ with cognate ideas of ‘perception’ and ‘consciousness’ encompass a wide range of thoughts, more ontological than epistemological. Theories of mental phenomena are diverse and include the dualist concept—shared by Descartes and Sigmund Freud—of the separateness of the existence of the

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

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

'... we have inherited cultural resistance to treating the conscious mind as a biological phenomenon like any other. This goes back to Descartes in the seventeenth century. Descartes divided the world into two kinds of substances: mental substances and physical substances. Physical substances were the proper domain of science and mental substances were the property of religion. Something of an acceptance of this division exists even to the present day. So, for example, consciousness and subjectivity are often regarded as unsuitable topics for science. And this reluctance to deal with consciousness and subjectivity is part of a persistent objectifying tendency. People think science must be about objectively observable phenomena. On occasions when I have lectured to audiences of biologists and neurophysiologists, I have found many of them very reluctant to treat the mind in general and consciousness in particular as a proper domain of scientific investigation.

... the use of the noun 'mind' is dangerously inhabited by the ghosts of old philosophical theories. It is very difficult to resist the idea that the mind is a kind of a thing, or at least an arena, or

at least some kind of black box in which all of these mental processes occur.’ [John R. Searle, Minds, Brains and Science-Reith Lectures (Harvard University Press, 1984), pp. 10 and 11.]

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

‘... Whatever is unknown about the mind-body relationship (and the area of ignorance seems to expand with that of knowledge), it is now accepted by medical science that recognisable and severe physical damage to the human body and system may be caused by the impact, through the senses, of external events on the mind. There may thus be produced what is as identifiable an illness as any that may be caused by direct physical impact. It is safe to say that this, in general terms, is understood by the ordinary man or woman who is hypothesised by the courts....’

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

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

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

(emphasis in original)

The principle laid down by this Court in the aforesaid case with all fours is applicable to the fact situation on hand wherein this Court has rightly referred to Section 13(1)(iii) of the Act and Explanation to the said clause and made certain pertinent observations regarding “unsound mind” or “mental disorder” and the application of the same as grounds for dissolution of marriage. This Court cautioned that Section 13(1)(iii) of the Act

does not make a mere existence of a mental disorder of any degree sufficient in law to justify the dissolution of marriage.

35. In the English case of Whysall v. Whysall [1960 P 52 : (1959) 3 WLR 592 : (1959) 3 All ER 389] , it was held that a spouse is “incurably of unsound mind” if he or she is of such mental incapacity as to make normal married life impossible and there is no prospect of any improvement in mental health, which would make this possible in future. The High Court of Judicature of Calcutta, in Pramatha Kumar Maity v. Ashima Maity [AIR 1991 Cal 123] has held that mental disorder of the wife, even if proved, cannot, by itself, warrant a decree of divorce and it must be further proved that it is of such a nature as the husband could not be expected to live with the wife.

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

65. The Hon’ble Apex Court in the aforesaid judgment has categorically held that marriage is highly revered in India and we are a nation that prides itself on the strong foundation of our marriages, come

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

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

67. In the backdrop of the aforesaid settled position of law we have gone through the impugned order wherefrom it is evident from the deposition of P.W.-1, (husband), particularly paragraph 11 of his cross-examination, that prior to the marriage the family members of the petitioner met the respondent/wife, and upon seeing her, the marriage was negotiated. This version stands corroborated by P.W.-3, a relative of the petitioner, who in paragraph 13 & 14 of his cross-examination narrated that both parties met each other and, after mutual liking, the marriage was arranged. Thus, it is an admitted position that before marriage the family members of the petitioner saw and approved the respondent/wife.

68. It is further admitted that the marriage was arranged, and the petitioner's side had ample opportunity to interact with the respondent prior to solemnization. Therefore, it is evident that the family members of the petitioner, after satisfying themselves, negotiated the marriage

with the respondent.

69. Significantly, the petitioner/husband has not examined any medical practitioner or jurist to prove the alleged mental illness of the respondent/wife. There is no medical evidence on record to substantiate the allegation. No document has been produced by the appellant/petitioner to support his case that the respondent/wife was either physically incapable of consummating the marriage or was suffering from mental illness. None of the medical jurists were examined by the petitioner's side to prove the alleged ailments.

70. Turning to the evidence of the respondent/wife, it is evident from the impugned judgment that she submitted her examination-in-chief by way of affidavit and was cross-examined on 30.11.2022 by the petitioner's side. The learned Family Court observed that her conduct remained consistent throughout the lengthy cross-examination, and she gave proper and cogent answers to the questions put to her.

71. The learned Family Court, upon perusal of the cross-examination of the respondent/wife, has observed that nothing emerged to suggest that she was mentally ill. On the contrary, it was noted that the respondent/wife answered all questions put forth by the petitioner's side in a coherent and well-mannered fashion.

72. From the aforesaid facts, it is apparent that if indeed the respondent/wife had any health problems, it was incumbent upon the petitioner/husband to have taken her to a competent medical practitioner for examination and treatment. Merely alleging that a wife suffers from health problems cannot, in law, constitute a ground for divorce.

73. Further, from the impugned judgment, it is evident that the respondent/wife has expressed her readiness and willingness to resume cohabitation and join the company of the appellant/petitioner/husband. However, the petitioner/husband has consistently refused to accept her as his wife.

74. The learned Family Court while appreciating the issue of mental illness has referred the ratio of the judgment rendered by the Hon'ble Apex Court in the case of *Ram Narain Gupta v. Rameshwari Gupta*, [(1988) 4 SCC 247] has observed that the petitioner/husband had failed to prove that the respondent/wife had been incurably of unsound mind or had been suffering from mental disorder of such a kind and to such an extent that the petitioner/husband cannot reasonably be expected to live with the respondent/wife. It has further been observed that the petitioner/husband failed to establish that the respondent/wife was suffering from mental disorder before the marriage or at the time of marriage or onward.

75. Thus, on basis of discussion made hereinabove, it appears that the aforesaid ground of mental illness has been raised by the appellant/husband on the flimsy ground and taking into consideration the aforesaid factual aspect the learned Family Court has rightly decided the said issue against the plaintiff /appellant husband as such the judgment impugned requires no interference by this Court on the aforesaid ground of mental illness of respondent/wife.

76. 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 cruelty and mental disorder has well been considered by

the learned Family Judge.

77. On consideration of the evidence, the learned Family Judge has come to conclusion that the appellant-husband has miserably failed to establish the ground of cruelty and mental disorder against the respondent-wife. The aforesaid reason has led the learned Family Judge to dismiss the suit.

78. 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, as would be evident from the impugned judgment.

79. This Court, therefore, is of the view that the judgment dated 19.04.2023 passed in Original Suit No.201 of 2018 by the learned Family Judge needs no interference and, accordingly, the instant appeal stands dismissed.

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

(Sujit Narayan Prasad, J.)

I Agree.

(Pradeep Kumar Srivastava, J.)

(Pradeep Kumar Srivastava, J.)

23rd July, 2026

Rohit/-A.F.R.

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