

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.32 of 2024

Jyoti Rani, W/o Nishant Kumar D/o Narayan Prasad Singh, Resident of Village- Mahsoni, P.S.- Piri Bazar, District- Lakhisarai, Presently resident at A/204 Vicenza 51 Atladra, P.S.- Manjalpur, District-Badodara (Gujarat), At present address- Shivanjali Apartment, Flat No. 402, Bilasi (Hariharwadi), Deogarh.

... .. Appellant/s

Versus

Nishant Kumar, S/o Late Balmiki Mahto, Resident of Village- Mahsoni, P.S.- Piri Bazar, District- Lakhisarai, Presently residing at A/204 Vicenza 51 Atladra, P.S.- Manjalpur, District-Badodara (Gujrat), At present address- Shivanjali Apartment, Flat No. 402, Bilasi (Hariharwadi), Deogarh.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ram Naresh Singh, Advocate
For the Respondent/s	:	Mr. Manoj Kumar Ambastha, Advocate
		Ms. Anju Kumari Sinha, Advocate
		Mr. Yash Kiliyarnand, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE RANA VIKRAM SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date: 06-08-2026

1. This appeal under Section 19(1) of the Family Courts Act, 1984, is directed against the judgment and decree dated 20.03.2023 / 01.04.2023 passed by the learned Principal Judge, Family Court, Lakhisarai in Matrimonial Suit No. 68 of 2021, whereby and whereunder, the suit filed by the respondent-husband under Section 13(1)(ia) of the Hindu Marriage Act, 1955 seeking dissolution of marriage on the ground of cruelty has been allowed and a decree of divorce has been granted in his favour.



Brief Facts of the Case

2. The marriage between the parties was solemnized on 12.02.2010 at Muzaffarpur according to Hindu rites and customs in the presence of relatives of both sides. It is stated that no dowry was exchanged. After the marriage, the appellant-wife accompanied the respondent-husband to his ancestral village Mahsoni Kajra, District Lakhisarai, where she stayed for 4-5 days before returning to her parental home. At the relevant time, the respondent was posted as an officer in the State Bank of India at Somath Branch, Daman & Diu (Union Territory) and was residing at Chala Area, Vapi, Gujarat.

3. Out of the wedlock, two daughters were born; Nehal Shreya on 07.12.2010 and Navya on 03.08.2014. Both children were born at the appellant's parental home in Muzaffarpur.

4. The respondent-husband alleges that from the very beginning of married life, the appellant exhibited cruel behaviour towards him and his family members. He claims that despite living under the same roof for several years (particularly between 2010 and 2018), the appellant consistently denied him conjugal relations, frequently abused



him using filthy and vulgar language, quarrelled on trivial issues, and deliberately alienated him and their children from his parents and siblings. Specific instances alleged include:

(i) Refusal to cook food for the respondent's visiting father in January 2012 and abusive behaviour thereafter.

(ii) Public humiliation and use of derogatory language during family functions, including Chhath Puja in 2012 and the Shraddha ceremony of the respondent's father in February 2015.

(iii) Refusal to visit the ailing father-in-law at Kajra and non-participation in the last rites of the respondent's mother in March 2022.

(iv) Persistent verbal abuse in the presence of relatives and even at the respondent's workplace.

(v) Refusal to cohabit with the respondent at his new place of posting in Deoghar, Jharkhand, after his transfer, and continued threats and abusive messages.

5. The respondent asserts that he continued to provide financial support to the appellant and the children (including payment of ₹15,000/- per month, school fees, rent, electricity, and society maintenance) but the marriage had



become irretrievably broken, with no cohabitation since November 2018. He also claims that the appellant's conduct drove him to the brink of suicide, though concern for his daughters restrained him.

6. The appellant-wife, in her written statement, denied the allegations of cruelty and levelled counter-allegations of physical and mental abuse, frequent beating, consumption of alcohol by the respondent, and insults to her and her family. She contended that she had been living with the respondent under court orders during the pendency of the suit and that the petition was filed with the ulterior motive of remarriage.

7. After recording evidence of the respondent and his two supporting witnesses, and upon closure of the appellant's evidence for want of prosecution, the learned Family Court accepted the respondent's case, held that cruelty was established, and granted a decree of divorce while observing that the respondent shall remain liable to maintain the appellant and the children.

8. Aggrieved by the said judgment and decree, the appellant-wife has preferred the present appeal.

Proceedings before the Trial Court



9. The respondent-husband filed Matrimonial Suit No. 68 of 2021 on 23.10.2021 before the learned Principal Judge, Family Court, Lakhisarai, seeking dissolution of marriage under Section 13(1)(ia) of the Hindu Marriage Act, 1955 on the ground of cruelty, along with custody of the two minor daughters.

10. Upon service of notice, the appellant-wife appeared and filed her written statement on 05.09.2022, denying the allegations of cruelty levelled against her and raising counter-allegations of physical assault, verbal abuse, humiliation, and desertion by the respondent. She asserted that she had been residing with the respondent pursuant to a court-directed compromise during counselling and that the suit was motivated by the respondent's desire to remarry.

11. On the basis of the pleadings, the learned Family Court framed the following issues for determination:

(i) Whether the suit for divorce filed by the applicant is maintainable?

(ii) Whether the applicant has a sufficient cause of action to sue the opposite party?

(iii) Whether the allegations of ill-treatment, harassment, and torture levelled by the applicant against the



opposite party are true?

(iv) Has the applicant failed to properly maintain the opposite party?

(v) Are the applicant and the opposite party fit to live under the same roof?

(vi) Whether the opposite party is mentally harassed by the applicant and is not treated well?

(vii) Whether the opposite party, being mentally unsound, treats the applicant ill?

(viii) To what relief, if any, is the applicant entitled?

12. The respondent-husband examined three witnesses in support of his case:

(i) **PW-1**: Nishant Kumar (himself) - the petitioner.

(ii) **PW-2**: Sambhavna Verma (his sister).

(iii) **PW-3**: Ravikash Kumar (a long-time friend from the village).

13. The respondent also relied upon certain documentary evidence, including WhatsApp messages and call records marked as Exhibit-1.

14. The appellant-wife was granted sufficient opportunities to lead evidence. However, despite several dates being fixed over a period of nearly three months, she did not



produce any witness or documentary evidence. Ultimately, her evidence was closed on the ground that her counsel had no instructions from her. Arguments were heard only from the respondent's side.

15. During the pendency of the suit, the parties were referred to counselling. On 03.06.2022, they arrived at a temporary understanding and cohabited from 04.06.2022 onwards. However, the said compromise failed, and the matter was placed before the Court again on 31.08.2022, after which the trial proceeded.

16. Upon appreciation of the evidence on record, the learned Family Court held that the respondent-husband had been able to prove cruelty on the part of the appellant-wife. Issues relating to cruelty, maintainability, and cause of action were decided in favour of the respondent. The learned Court accordingly passed a decree of divorce while observing that the respondent shall continue to bear the responsibility of maintaining the appellant and the two children and providing for their education.

Submissions of the Parties

17. **Learned counsel for the Appellant-wife** strenuously argued that the impugned judgment is liable to be



set aside on several grounds. He submitted that the learned Family Court committed a grave error in decreeing the suit solely on the basis of the oral testimony of the respondent and his two interested witnesses (his sister and a friend), without any independent corroboration. It was contended that in matrimonial disputes, especially those involving allegations of mental cruelty, the evidence must be scrutinized with great care and caution.

18. Counsel further submitted that most of the incidents alleged were vague, lacking specific dates and particulars, and that no contemporaneous complaint was ever lodged by the respondent either with the police or any other authority. He emphasised that the appellant was residing with the respondent pursuant to the court's counselling order dated 03.06.2022, yet she was allegedly prevented from properly contesting the case and leading her evidence. This, according to him, amounted to a serious procedural infirmity.

19. It was also argued that the two minor daughters, who were in the care of the parties during the relevant period, were the best witnesses to speak about the domestic atmosphere, but neither party examined them nor did the Court summon them. On the question of jurisdiction, learned



counsel submitted that the parties had lived together for the major part of their married life in Gujarat and, therefore, the Family Court at Lakhisarai lacked territorial jurisdiction.

20. Finally, it was urged that the respondent himself was guilty of cruelty and had filed the petition with the ulterior motive of remarriage. Dissolution of marriage, it was submitted, would have serious adverse consequences on the future of the two growing daughters, which aspect was not adequately considered by the trial court.

21. **Learned counsel for the Respondent-husband**, on the other hand, supported the impugned judgment. He submitted that the respondent had clearly established a continuous course of cruel conduct on the part of the appellant, which made it impossible for him to continue with the marital relationship. He drew the Court's attention to the consistent evidence of PW-1, PW-2 and PW-3 regarding specific instances such as the 2012 Chhath Puja incident, public abuse during the father's Shraddha ceremony, alienation of children from the paternal grandmother, refusal to attend the mother's last rites, and denial of conjugal rights since 2018.

22. Counsel contended that the evidence on record



clearly demonstrates a pattern of mental cruelty, public humiliation, and deliberate neglect of the respondent's family obligations. He pointed out that despite ample opportunities, the appellant chose not to lead any evidence in rebuttal, and an adverse inference must be drawn against her. The temporary cohabitation pursuant to the counselling order also failed, further strengthening the case of irretrievable breakdown.

23. Regarding jurisdiction, it was submitted that the ancestral home of the respondent is at Mahsoni Kajra, Lakhisarai, the marriage was solemnized within the jurisdiction, and the respondent continues to have strong links with the place. On the question of children, counsel submitted that the respondent is ready and willing to bear all expenses for their maintenance and education and is prepared for reasonable visitation rights to the appellant.

24. Discussion and Findings

A. Standard of Appellate Interference:- An appeal under Section 19 of the Family Courts Act, 1984 is a first appeal on facts as well as on law. While the findings of the trial court are entitled to due respect, this Court is duty-bound to re-appreciate the entire evidence and arrive at its



own independent conclusion if the material on record so requires. The limited scope of interference applicable to second appeals under Section 100 of the Code of Civil Procedure does not apply here. The Appellate Court must satisfy itself that the decree is justified on a preponderance of probabilities.

B. Appreciation of Evidence:- (i) The respondent-husband examined three witnesses; himself as PW-1, his sister as PW-2, and a long-time friend as PW-3. The evidence consists almost entirely of oral assertions of intermittent episodes of verbal abuse, refusal of physical intimacy, friction with family members, and occasional public altercations spanning a period of more than eleven years.

(ii) A careful scrutiny of the depositions reveals that the alleged incidents are scattered across different years, lack precise dates, particulars of time, place and surrounding circumstances, and do not form a continuous or sustained course of conduct. The witnesses have spoken in general terms of “abuse”, “filthy language” and “cruel behaviour” without furnishing the necessary specifics that would enable the Court to evaluate the gravity and impact of each incident.

(iii) A closer examination of the material relied



upon by the respondent further reinforces this conclusion. The principal incidents pleaded and spoken to by the witnesses are: the alleged verbal outburst at Bhubaneswar in May 2010 after a short outing with a friend; the refusal to cook food for the visiting father-in-law in January 2012; the use of abusive language in May 2013 upon the husband's return from a friend's house; the alleged non-cooperation during the father's illness and the public altercation during the Shraddha ceremony in February 2015; the alleged use of filthy language in 2016 when the husband proposed a visit to the ancestral home; the incident of May/June 2018 involving the elder sister of the husband; and the general assertion of denial of physical relations after November 2018. These episodes are spread over a period of nearly twelve years. In respect of most of them, neither the husband nor the supporting witnesses could furnish exact dates, the precise words used, the presence of independent persons, or any contemporaneous complaint or record. The 2012 Chhath Puja plate-throwing episode and the 2015 Shraddha incident, though narrated with somewhat greater detail by PW-2 and PW-3, remain isolated in time and are not shown to have been repeated with similar intensity in the intervening or subsequent years. The long intervening



periods of cohabitation, the birth of two children, and the admitted occasional physical relations prior to 2018 further dilute any claim of continuous cruelty. The overall picture that emerges is one of intermittent domestic friction rather than a sustained course of conduct rendering cohabitation intolerable.

(iv) It is well settled that isolated or sporadic acts of rude, crass or even abusive behaviour, even if true, do not by themselves constitute “cruelty” under Section 13(1)(ia) of the Hindu Marriage Act, 1955. The Hon’ble Supreme Court in ***Suman Singh v. Sanjay Singh*, (2017) 4 SCC 85**, held that a petition seeking divorce on the basis of isolated incidents alleged to have occurred several years prior to the filing of the petition cannot furnish a subsisting cause of action. The incidents must be of a recurring or continuing nature and should be in near proximity to the institution of the proceedings. The relevant paragraphs of the said judgment are reproduced below:

“16. A petition seeking divorce on some isolated incidents alleged to have occurred 8-10 years prior to filing of the date of petition cannot furnish a subsisting cause of action to seek divorce after 10 years or so of occurrence of such



incidents. The incidents alleged should be of recurring nature or continuing one and they should be in near proximity with the filing of the petition.

17. Few isolated incidents of long past and that too found to have been condoned due to compromising behaviour of the parties cannot constitute an act of cruelty within the meaning of Section 13(1)(i-a) of the Act.

18. In our considered opinion, both the courts below failed to take note of this material aspect of the case and thus committed jurisdictional error in passing a decree for dissolution of marriage. We cannot, therefore, countenance the approach of the High Court because it did not, in the first instance, examine the grounds taken in the petition to find out as to whether such grounds constitute mental cruelty or not? The finding, therefore, though concurrent does not bind this Court.

19. We are not impressed by the submission of the learned counsel for the respondent that an incident which occurred somewhere in 2010 when the appellant visited the office of the respondent and alleged to have misbehaved with the respondent in front of



other officers would constitute an act of cruelty on the part of the appellant so as to enable the respondent to claim divorce. In the first place, no decree for divorce on one isolated incident can be passed. Secondly, there could be myriad reasons for causing such isolated incident. Merely because both exchanged some verbal conversation in presence of others would not be enough to constitute an act of cruelty unless it is further supported by some incidents of alike nature. It was not so.”

(v) In the present case, the parties continued to cohabit for substantial periods (particularly between 2010 and 2018), two children were born, and the respondent himself admitted occasional physical relations prior to 2018. Subsequent conduct of the parties, including the temporary cohabitation pursuant to the counselling order of June 2022, further indicates that the relationship was not marked by an unbroken chain of cruelty.

(vi) The documentary evidence relied upon by the respondent i.e., certain WhatsApp messages marked as Exhibit-1, suffers from a fundamental legal infirmity. No certificate under Section 65B(4) of the Indian Evidence Act, 1872 has been produced. The Hon'ble Supreme Court in



Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal,
(2020) 7 SCC 1 has categorically held that a certificate under Section 65B(4) is a mandatory condition for the admissibility of electronic records. The relevant paragraph of the said judgment is reproduced below:

“61. *We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , and incorrectly “clarified” in Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] . Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor [Taylor v. Taylor, (1875) LR 1 Ch D 426] , which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of*



the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.”

(vii) Oral evidence cannot supply the deficiency. In the absence of the statutory certificate, the WhatsApp messages are wholly inadmissible and cannot be looked into for any purpose.

(viii) The appellant-wife filed a written statement containing counter-allegations of physical assault, verbal abuse and humiliation by the respondent. She, however, chose not to lead any oral evidence. The case, therefore, essentially rests on the word of one party against the other. When the evidence adduced by the petitioner himself is found to be vague, unspecific and unsupported by admissible documentary material, the burden of proving cruelty cannot be said to have been discharged on a preponderance of probabilities.

C. Legal Position on Cruelty:- (i) The concept of mental cruelty under Section 13(1)(ia) of the Hindu Marriage Act has been elaborately explained by the Hon'ble Supreme Court in *Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511*. The Court observed that there cannot be any comprehensive



definition of mental cruelty; human behaviour is complex and each case must be decided on its own facts. The conduct must be of such a nature and gravity that it causes acute mental pain, agony and suffering making it impossible for the parties to live together. Mere trivial irritations, quarrels or the normal wear and tear of married life do not amount to cruelty. The relevant paragraph of the said judgment is reproduced below:

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live



with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental



cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or



without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

No uniform standard can be laid down; each case must be decided on its own facts.”

(ii) Subsequent decisions have consistently emphasised that the conduct complained of must be severe,



enduring and of a continuous character. Sporadic acts of temper or occasional verbal excesses, even if unpleasant, fall short of the threshold required for dissolution of marriage. The cumulative effect of the evidence in the present case does not meet this standard.

(iii) The temporary cohabitation pursuant to counselling in June 2022 and the subsequent failure of that arrangement, by itself, does not establish cruelty on the part of the appellant. Failed attempts at reconciliation, while relevant, cannot convert isolated past incidents into a continuous course of cruelty.

D. Procedural Aspects and Jurisdiction

We find no material irregularity in the conduct of the trial that would independently vitiate the proceedings. The appellant was afforded reasonable opportunity to lead evidence. The Family Court at Lakhisarai had the necessary territorial jurisdiction. These aspects, however, do not salvage the case on merits when the evidence itself is found wanting.

E. Welfare of the Children

The two minor daughters remain the primary concern of this Court. Their welfare shall be safeguarded irrespective of the outcome of the present appeal. The parties



shall continue to discharge their parental obligations. Any dispute relating to custody, visitation or quantum of maintenance may be agitated before the competent court on an appropriate application.

Conclusion

(i) Upon a complete and independent reappraisal of the pleadings, the oral evidence of the three witnesses, examined by the respondent-husband, and the documentary material placed on record, we are of the considered opinion that the respondent has failed to establish cruelty of the degree, gravity and continuity required under Section 13(1) (ia) of the Hindu Marriage Act, 1955.

(ii) The incidents relied upon are scattered, lack necessary particulars, and do not form a sustained course of conduct. The electronic messages marked as Exhibit-1 are inadmissible for want of a certificate under Section 65B of the Indian Evidence Act, 1872. The case essentially rests on the uncorroborated word of one party against the other.

(iii) The findings recorded by the learned Family Court are, therefore, unsustainable in law and on facts.

(iv) The appeal deserves to succeed.

Operative Order



(i) In the result, this appeal is allowed.

(ii) The judgment and decree, dated 20.03.2023 / 01.04.2023, passed by the learned Principal Judge, Family Court, Lakhisarai, in Matrimonial Suit No. 68 of 2021, is hereby set aside.

(iii) The matrimonial suit filed by the respondent-husband under Section 13(1)(ia) of the Hindu Marriage Act, 1955 is dismissed.

(iv) The parties shall continue to discharge their parental obligations towards the two minor daughters, Nehal Shreya and Navya. The question of custody, visitation rights, and quantum of maintenance, if any dispute arises between the parties, shall be decided by the competent court on an appropriate application being moved in accordance with law. Regular updates shall be shared through the designated nodal officer handling records yearly.

A copy of this judgment be transmitted to the learned Family Court, Lakhisarai for information and necessary compliance.



(Bibek Chaudhuri, J)

Rana Vikram Singh, J.: I agree.

skm/-

(Rana Vikram Singh, J)

AFR/NAFR	NAFR
CAV DATE	09.07.2026
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