**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**First Appeal No.136 of 2025**

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**.....… Petitioner/Appellant**

**……. Respondent/ Respondent**

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

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For the Appellant : Mr. Atanu Banerjee, Advocate
For the Respondent : Mr. Dilip Kumar Karmakar, Advocate

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**C.A.V on 14.09.2026** **Pronounced on 29/10/2026**

***Per Sujit Narayan Prasad, J.***

The instant appeal under section 19(1) of the Family Courts Act, 1984 is directed against the judgment dated 02.05.2025 and the decree signed on 16.05.2025 passed in Original Suit No.478 of 2020 by the learned Principal Judge, Family Court, Ranchi (in short, Family Judge) whereby and whereunder the petition filed under section 13(1) (i-a), (i-b) of the Hindu Marriage Act, 1955 by the appellant-husband against the respondent-wife has been dismissed.

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 (appellant herein) and the respondent/wife (respondent herein) was solemnized on 25.11.2007

in accordance with Hindu rites and rituals at Arrah, Bihar which is arranged one.

(ii) Earlier the petitioner had filed a suit bearing Original Suit No. 532/2017 u/s 9 of the Hindu Marriage Act, 1955 which was disposed of after settlement before the Mediation Center, Ranchi, on 30.05.2018, the terms and conditions of settlement was not complied by the respondent.

(iii) The petitioner is the only son of his parent. The petitioner has four sisters and out of them one sister and mother of petitioner are not alive. Three children of the deceased sister were residing with petitioner but before marriage neither the respondent nor her family members raised any objection for the same.

(iv) It has been alleged that the marriage between the parties was negotiated on the false pretext that the respondent is disciplined, cultured, adjustable lady by the relatives of the respondent.

(v) It has been stated that after marriage the respondent came to her matrimonial home. The relatives of the petitioner welcomed the respondent heartily. After arrival of the respondent at matrimonial home she refused to accept the children and started raising disputes with them and refused to stay with children.

(vi) The respondent compelled them to leave away from the house and mentally tortured them. Even the petitioner tolerated the adverse consequences of the marriage tried to keep the respondent with respect, dignity and provided every comfort beyond his capacity but the respondent was not satisfied.

(vii) The respondent started torturing the petitioner mentally and physically and pressurized to send the father of petitioner at native

place ignoring his old age and ailment. She started saying that she cannot live in joint family. The petitioner is the only person to look after him.

(viii) Inconsequence the respondent consumed 20 sleeping pills due to which her pregnancy got terminated and this also caused much mental pain to this petitioner.

(ix) It has been stated that after finding no alternative the father of petitioner left his house and started living at Arrah at the native place alone.

(x) On 23.04.2007 the father of respondent got serious cardiac attack. He required proper care and medical treatment but the respondent refused to stay with him at Ranchi and soon after she left her matrimonial home in May 2008 but after much persuasion the respondent returned back in the month of June 2008. During stay together as husband and wife the respondent gave birth to two daughters, namely,

on 12.02.2009 and 15.12.2014 respectively, even then behaviour of the respondent did not change and she refused to Perform any moral duties and matrimonial obligations.

(xi) The respondent started extorting huge money from the petitioner and she used to remain busy in gossiping with unknown persons and on objection by the petitioner the respondent threatened with dire consequences and attempted to commit suicide several times.

(xii) On 27.09.2016 the father of petitioner came to Ranchi and on very next day he got paralytic attack due to which he was admitted in Raj Hospital, Ranchi. After discharge from hospital father of petitioner started residing at Ranchi as a result the respondent started

quarreling with petitioner and his father without any rhyme and reason.

(xiii) The respondent neglected to take care of children also and started to wander by scooty every day. Whenever, petitioner made any objection on this she treated to commit suicide and also several times made attempt to commit suicide.

(xiv) Lastly, in the month of September, 2016 the respondent became more aggressive and separated her bed and since then no conjugal life with the petitioner and respondent has been established.

(xv) On 04.05.2017 the respondent left matrimonial home along with two daughters and with all her belongings without any information to the petitioner.

(xvi) Later on, 05.06.2017 the respondent along with her parents, relatives and some unknown persons came to the house of petitioner at Ranchi, operated the locker and took away everything lying therein including the valuable jewelries of deceased mother of petitioner. The petitioner considering the education and future of the daughters tried to bring back the petitioners but all went in vain.

(xvii) The petitioner finding no alternative filed Original Suit No. 532/2017 u/s 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights with respondent on 02.08.2017 and due to continuous threat of the respondent, apprehension and under compelling circumstances the petitioner instituted an Informatory petition bearing. No.737/2017 before Chief Judicial Magistrate, Ranchi on 19.08.2017.

(xviii) The petitioner appeared in Original Suit No. 532/2017 and the matter was referred to Mediation Center, Ranchi, wherein both

parties agreed to lead a peaceful, progressive and harmonious conjugal life with each other under some terms and conditions. As such the Original Suit No. 532/2017 was disposed off on 30.05.2018.

(xix) That the respondent was doing B.Ed. Course from her parental home and as per terms and condition the children started living at the residence of petitioner at Ranchi but respondent flatly refused to reside at her matrimonial home and started demanding separate accommodation at Ranchi.

(xx) Thereafter, the petitioner finding no way took a rented flat at Singh More, Hatia, Ranchi but no improvement came in the cruel behaviour of respondent and she started saying that until and unless the matrimonial home is not transferred in her name she will not live at her matrimonial home.

(xxi) The cruel behaviour of respondent increased day by day and on 29.09.2018 the respondent all of a sudden became aggressive and started assaulting the petitioner with fist and kick. The petitioner somehow was saved due to intervention of the neighbours. In spite of that the petitioner visited to respondent but she started raising disputes in trifling matter as she was not ready to compromise upon anything or to make adjustment.

(xxii) The respondent started blackmailing the petitioner by threatening to commit suicide. She used to slap, dig her nails into the body of petitioner and tear his clothes. The petitioner also called the respondent as Idiot, Dog, *Behuda etc.,* and abused him in filthy languages which caused tremendous physical and mental agony to

the respondent. The petitioner was mentally depressed and frustrated too and failed to do his job since May, 2019.

(xxiii) Due to pressure of the respondent, the daughters started to live with their mother (respondent). The parents of the respondent also started residing with their daughter (respondent) due to which the petitioner stopped to make visit to respondent and finding no way filed the present suit for decree of divorce.

(xxiv) That on provocation of the parents, the respondent filed a criminal case against the petitioner before Nawada Police Station on the basis of false and frivolous grounds and only with a view to humiliate the petitioner.

(xxv) The petitioner tolerated all atrocities of the respondent with a hope that one day all will be settled but there was no change in her approach. The respondent continued to quarrel with petitioner and his father on trifling matters and threatened to commit suicide. The petitioner suffered terribly and caused mental agony.

(xxvi) The matrimonial tie between both the parties has irreparably broken down as there is no chance of their re-union and since 04.05.2017 both the parties are living separately.

3. On the aforesaid ground of cruelty and desertion, the appellant-husband had filed suit being Original Suit No. 478 of 2020 before the learned Family Court and prayed for a decree of dissolution of the marriage between him and the respondent-wife.

4. Upon issuance of the notices in the said suit the respondent-wife has appeared and filed a written statement denying all the allegations levelled against her by the appellant-husband.

5. In the written statement, the respondent-wife admitted about her marriage with the petitioner/appellant and birth of two daughters out of their wedlock but has denied the other allegations contained in the plaint. It is stated that after marriage the respondent went to her matrimonial home and started peaceful conjugal life with petitioner and out of their wedlock there are two daughters,

who were born.

6. It is also stated that at the time of marriage 200 grams of gold jewelries, 400 grams silver jewelries, household articles and cash of Rs.3.50-Lakhs were given to the petitioner as marriage expenses. She has denied that she failed to accept the children of deceased sister of petitioner and started disputes with them, rather the respondent provided every comfort beyond her capacity.

7. It is further stated that the father of petitioner is an active person after his retirement. He used to go to his village Shangi Bhojpur, Bihar to look after his ancestral properties and constructed a Pucca house at his village and invested huge amount over it. It is also stated that due to assault by the petitioner her pregnancy was aborted.

8. It is also wrong to say that on 23.04.2007 the respondent refused to take care of her father-in-law when he suffered from massive cardiac attack because the marriage between the parties has been solemnized in the month of November, 2007. It is stated that after six month of marriage the respondent went to her parental home in the month of May, 2008 with consent and permission of petitioner and father-in-law and returned. back to Ranchi in the month of June, 2008.

9. It is stated that at the time of marriage the petitioner was working in Konark Cement but due to his short temper and aggressive nature his

employer terminated him from the job. Thereafter, the petitioner started assaulting the respondent without any rhyme and reason due to which the respondent sustained injuries.

10. It is further stated that after birth of second daughter the petitioner started assaulting the respondent on the pretext she failed to give birth to a male child and petitioner pressurized the respondent for getting pregnant again for birth of a male child. The respondent lived with petitioner under great stress and trauma with a view to save her matrimonial life. It is stated that the respondent became pregnant four times but unfortunately her two pregnancy got miscarriage twice on 05.08.2008 and on 12.05.2014, respectively.

11. It is stated that on 27.09.2016 the father of petitioner came to Ranchi but unfortunately, he fell down in drawing room and in absence of petitioner, the respondent rushed him to Raj Hospital and after his treatment and getting well father-in-law started residing at Ranchi. The respondent has denied that she ever separated her bed and there is any non-consummation of marriage since 2016. It is further stated that on 10.04.2017 the petitioner filed a petition before Ranchi Women Commission for illegal demand of Rs.3-Lakhs against the petitioner but due to threatening of the petitioner, the respondent requested the Women Commission to drop the proceedings against the petitioner.

12. On 04.05.2017 the petitioner brutally assaulted the respondent for non-fulfillment of his demand of Rs.3-Lakhs and ousted her along with her two daughters from the matrimonial home. The petitioner informed her brother who sent his Car and the petitioner along with her two daughters went to the house of her brother situated at Muri and later on

went to her parental home situated at Arrah, Bihar, along with her children.

13. It is stated that on 05.06.2017 the respondent took her jewelries from the joint Locker at Dena Bank, Doranda. On 31.05.2017 the petitioner went to the parental home of the respondent at Arrah and assaulted the respondent and also thrashed the parents of the respondent. The petitioner also demanded Rs.3-Lakhs whereas earlier the father of respondent had already been given cash of Rs.2-Lakhs and Rs.1-Lakh through cheque in the year 2009 for purchasing Car to the respondent.

14. It is stated that the respondent gave a written application to Officer-in-charge, Nawadih Police Station, Arrah, Bihar, through Registered Post vide Receipt No.2954890811V on 08.06.2017. On 02.08.2017 the petitioner also filed a petition for restitution of conjugal rights u/s 9 of the Hindu Marriage Act, 1955 before this Court vide M.T.S. Case No.532/2017. The respondent appeared in that case and matter was referred to Mediation Center, Ranchi, and after settlement between the parties the said case was disposed of on 30.03.2018 in light of Mediation Report.

15. It is stated that after settlement before Mediation Center, Ranchi the petitioner took the respondent to a rented flat situated at Singhmore, Ranchi, in spite of that the petitioner has four flats at Ranchi. The respondent informed that the properties are in the name of his father, so, only his father and sister will live with him at his residence at Veer Kunwar Singh Colony. Ranchi. But it was decided during mediation that petitioner will look after her father-in-law. In spite of that the respondent took 3 BHK Flat No.004 at

, Ranchi at monthly rent of Rs.6000/- and maintenance charge of Rs.1000/- against the consent of petitioner.

16. It is stated that after settlement before Mediation Center, Ranchi the petitioner took the respondent to a rented flat situated at Singh More, Ranchi, in spite of that the petitioner has four flats at Ranchi. The respondent informed that the properties are in the name of his father, so, only his father and sister will live with him at his residence at Veer Kunwar Singh Colony. Ranchi. But it was decided during mediation that petitioner will look after her father-in-law. In spite of that the respondent took 3 BHK Flat No.004

Ranchi at monthly rent of Rs.6000/- and maintenance charge of Rs.1000/- against the consent of petitioner.

17. After settlement the petitioner along with her daughters started living in rented house since 16.04.2018. The respondent was pursuing her B.Ed Course, so, she has to go to Arrah leaving behind her daughters at the matrimonial home. It is also stated that during B.Ed. Course of respondent, the petitioner did not allow the daughters to go to meet the respondent during her visit to Ranchi. But after several requests the petitioner used to bring the daughters to Singh More's rented house on Saturday or Sunday and took the daughters by Sunday evening.

18. Whenever the petitioner used to come visit respondent he used to assaulted the respondent on petty matters. The respondent has denied that she ever treated the petitioner with cruelties. The petitioner is using two vehicles one Wagon-R Car bearing Reg. No.JH01Y 5466 and another is Bullet Motorcycle bearing Reg. No. JH01CY 5222 which shows that the petitioner is leading a luxurious life. It is also stated that respondent after completing her B.Ed. requested the petitioner to allow her daughters

to live with her but the petitioner failed to yield the request of respondent and he only dropped elder daughter along with all her belongings and fee book at Singh More, Ranchi, and sent messages that respondent has completed her B.Ed., so, she should earn and lead an independent life with elder daughter and since March, 2019 the respondent along with her elder daughter was leading her life at the mercy of god as petitioner refused to pay a single penny towards maintenance of respondent and her elder daughter. The younger daughter was living with petitioner but on several requests the petitioner sent the younger daughter of the petitioner, so, she can see her second daughter as the respondent has not seen her since last three months.

19. The petitioner also sent the younger daughter to Varanasi along with his sister during summer vacation in the year 2019 for giving mental torture to the respondent. since March, 2019 the petitioner stopped paying rent and other expenses of household. Having no option the respondent took loan from her family members for running her daily usage. The respondent sent frequent message to petitioner for bringing her younger daughter, thereafter, younger daughter was brought with all her belongings at Singh More's house, Ranchi. The petitioner abused and assaulted the respondent and refused to pay a single farthing towards the maintenance of respondent and her children. The respondent paid Rs.44,050/- towards the admission and other educational expenses of her younger daughter at Ranchi. The respondent has also to give Rs.1800/- monthly towards the tuition fee. The respondent has taken loan of Rs.03-Lakhs from her father, brother and sister and other relatives. At present the school fee with bus fee of elder daughter is

Rs.3775/- and school fee and transportation of younger daughter is Rs.3800/- per month, respectively.

20. It is stated that the entire articles like clothes, utensils, A.C. Godrej etc. which were given at the time of marriage has been kept by the petitioner. The respondent has denied that she ever treated the petitioner with cruelty. The respondent along with her two daughters is living alone at Singh More, Ranchi. Hence, the present suit of the petitioner is liable to be dismissed.

21. After appearance of both the parties, the learned Family Judge has referred the matter for reconciliation before the learned Mediator but the same was failed.

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

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

**Submission of behalf of the appellant-husband:**

24. Mr. Atanu Banerjee, the learned counsel appearing for the appellant-husband has taken the following grounds:

(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) It has been contended that the element of cruelty has been found to be there as the respondent-wife has lodged false criminal cases against the petitioner. Therefore, the ground has been taken

that once the criminal case has failed, then the element of cruelty will be said to be by the respondent-wife and not by the appellant-husband, but without appreciating the same properly, the learned Family Judge has come to the finding by holding that no element of cruelty is there and, as such, the impugned judgment and decree suffers from an error.

(iii) It has been contended that the appellant has been meted out with cruelty at the hands of the respondent-wife due to her abnormal and cruel behaviour as would be evident from the evidence adduced on behalf of the appellant-husband in which it has come that the respondent-wife used to treat the petitioner with cruelty and assaulted him several times with fists and kicks. It has also come in the evidence that the respondent-wife has humiliated the petitioner by saying Idiot, Dog, *Behuda etc.,* and abused him in filthy languages, but the same has not been taken into consideration by the learned Family Judge.

(iv) It has been contended that though the learned Family Judge has proceeded 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, deserted the petitioner and even not cared the petitioner's old aged parents.

25. The learned counsel, based upon the aforesaid ground, has submitted that the impugned judgment and decree, therefore, needs interference on the ground of perversity.

**Submission of behalf of the respondent-wife:**

26. On the contrary, the learned counsel appearing for the respondent-wife has taken the following grounds:

(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 and 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 she 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 in the plaint for divorce suit are absolutely illegal, uncalled for 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.

(iv) It has been contended that it is admitted by the petitioner that prior to institution of the case of divorce he filed a suit for restitution of conjugal rights and the said suit was withdrawn after meditation but with an ulterior motive and later on filed the suit for divorce which proves that the

petitioner wants to live separately from the respondent by taking divorce.

(v) The respondent-husband has sought for divorce on the ground that the behaviour of the appellant-wife is cruel and she has deserted him without any valid ground and the learned Family Court, after taking into consideration the evidence adduced on behalf of the respondent-wife, has rightly held that there was no sufficient ground found with regard to cruelty and desertion by the respondent-wife and, as such, has dismissed the divorce petition.

(vi) It has been contended that the issue of desertion has rightly been appreciated, since, the issue of desertion requires to be considered on the basis of the factum that if any of the spouse has left the matrimonial house on his/her own will, but in the instant case the petitioner-husband himself has admitted that he himself stopped staying in touch with his wife and started living separately in another flat and on that basis the learned Family Judge has rightly dismissed the suit for divorce.

**Analysis:**

27. 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 and the documents exhibited therein.

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

> (*I*) *Whether the present suit is maintainable in its present form??*
>
> *(II) Whether the petitioner has valid cause of action to file the present suit?*
>
> *(III) Whether the respondent is the legally wedded wife of the petitioner?*
>
> *(IV) Whether the petitioner- husband has been treated with cruelty by the respondent- wife and deserted him since 04.05.2017?*
>
> *(V). Whether the petitioner- husband is taking advantage of his own wrong?*
>
> *(VI) Whether the petitioner is entitled to get decree of divorce?*
>
> *(VI) Whether the petitioner is entitled to get any other relief or reliefs as prayed for?*

29. The learned Family Judge has considered the evidence adduced on behalf of the parties for deciding the issues involved in Original Suit No.478 of 2020 as they are interconnected.

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

31. During the trial, four witnesses have been examined on behalf of the appellant-husband who himself has been examined as PW4 and exhibited some documents.

32. The petitioner has filed the following documents:

(i) Xerox copy of letter dated 27.07.2017 of Dena Bank has been marked as 'X' for identification.

(ii) Xerox Copy of Mediation Report dated 27.03.2018 has been marked as 'X/2' for identification

(iii) Xerox Copy of medical prescriptions of RINPAS, Ranchi, in the name of petitioner have been marked as "X/3 to X/7", respectively, for identification.

(iv) The marriage and reception photographs of petitioner and respondent have been marked from 'X/B to X/12" for identification.

33. The respondent-wife has also examined three witnesses including herself as RW1 and in support of her contention, she has also exhibited following documents:

(i) Xerox Copy of Prescription of Dr. Samit Lal dated 09.04.2011 has been marked as 'Y' for identification.

(ii) Xero*x* Copy of paper relating to *opening* of Locker dated 15.05.2013 has been marked as "Y/1" for identification.

(iii) Xerox Copy of List of jewelries has been marked as "Y/2" for identification.

(iv) Xerox Copy of application given to Women Commission dated 10.04.2017 has been marked as "Y/3' for identification.

(v) Xerox Copy of application given to Nawada Pollice Station dated 08.07.2017 has been marked as "Y/4" for identification.

(vi) Xerox copy of Registry Receipt dated 08.07.2020 has been marked as 'Y/5' for identification.

(vii) Xerox copy of applicant given by the petitioner to RTI has been marked as 'Y/6' for identification.

(viii) Xerox copy of postal receipt information of applicant has been marked as 'Y/7' for identification.

(ix) Xerox copy of account statement of Punjab National Bank has been marked as 'Y/8' for identification.

(x) Xerox copy of school fee structure of has been marked as 'Y/9' for identification.

(xi) Xerox copy of School fee receipt and online payment of tuition fee of i has been marked as 'Y/10 & Y/11', respectively, for identification.

(xii) Xerox Copy of online fee payment of for the session 2024-25 has been marked as 'Y/12' for identification.

34. In his examination on oath as PW.-4, the petitioner has stated that he was married with on 25.11.2007 in accordance with Hindu rites and customs at Arrah, Bihar. The respondent after marriage unwillingly performed matrimonial rituals and came to start her conjugal life with him on 26.11.2007. She was given warm welcome in the matrimonial home but she maintained indifferent attitude on the occasion of all rituals of the marriage. It appears that the marriage of the respondent with him had taken place on pressure, she did not like his economic condition and family atmosphere and started quarreling with him on petty matters, she committed various type of physical and mental cruelties on him. She categorically stated that she cannot live with is father and maternal niece and nephews. She pressurized him to arrange a separate accommodation for her. He was not agreed to concede the demand of respondent but considering her cruel attitude his maternal niece and nephews left his house, but still behaviour of the respondent did not change she even pressurized his father to go from the house and leave at native village. He has further stated that his mother is not alive, so, he was not willing to send his father to ancestral village. He also stated that to make pressure the respondent consumed 20 sleeping pills at a time, as a result, her pregnancy got aborted and compelled him to send his father to his village and this act of respondent caused immense mental agony to him. He also stated that he tried his best to keep the respondent properly and

fulfill all her demand but still she continued to quarrel with him on trifle matters. She often went away from the house without giving any information to him and whenever he inquired about this to her, she abused him and often used to give nail bite on his face. She also used to send money to her father from the Bank Account. It has also been stated that the respondent conceived again but without his permission she got the pregnancy terminated and this also caused mental agony to him. It has further been stated by the petitioner that the respondent refused to do any household chores and started making adverse remarks about his family, she always wanted to show that she comes from a very good family background. He further stated that whenever any of his family members or friends used to come to his house she refused to meet with them and on request, she used to come but never met with them in a proper manner and also never replied any query properly. He further stated that on one occasion his friend came and requested the respondent for cup of tea upon which she loudly told that she is not servant of his father and asked him to make tea himself and on that occasion, she asked him to take divorce from her. In May, 2008 she left his house and went to her Maika with all her belongings, he made several efforts to bring her back but she did not came. In June, 2008 she herself came to his house but there was no change in her cruel behaviour, as a result, he got mentally sick and had to take treatment from Psychiatrist. He somehow tried to run conjugal life with her in spite of all odds and from his conjugal life the respondent gave birth to a daughter on 12.02.2009 who is named as and another daughter was born on 15.12.2014 who is named as . The behaviour of respondent after birth of daughter became more aggressive and she continued to fight with him on petty matters and never took proper care,

as a result, he was forced to do all household chores and whenever asked to do anything she threatened to commit suicide. He also stated that on 27.09.2016 his father suffered Paralytic attack and he was admitted in Raj Hospital and in that condition also the respondent continued to quarrel with him. This petitioner further stated that in May, 2017, respondent called a vehicle and went to her Maika and she went away with all her belongings and when after one month she came she operated joint locker which was in his name along with the name of respondent. She took away all her belongings and also the jewelries of his mother. He further stated that he had filed a suit for restitution of conjugal right bearing Original Suit No. 532/2017 in which mediation had taken place and it was agreed in Mediation Center, Ranchi, that both will live together and they will give respect to each other and will not do any such act which causes any distress to other party. It was agreed that both parties will fulfill their matrimonial obligations and they will lead the conjugal life together. This petitioner further stated that as per terms of mediation he tried to call the respondent to Ranchi but she refused to leave his father and pressurized him to take a rental house as a result he took a rented house at Singh More, Ranchi, where she came and started living with him. He got his daughters admitted in a good school but still cruel behaviour of respondent continued and on 29.09.2018 she abused and assaulted him too much and he was rescued by neighbourers. He also stated that whenever he used to go to the said rental house to meet with respondent she abused, assaulted and blackmailed him to commit suicide. She often put scratches on his face and other parts of the body with her nails and tore his clothes. She also used to throw household articles on him for the purpose of causing injuries to him. She scolded him and used words as "*Bewakoof*, *Kutta*, *Behuda*", etc. and all

these acts of respondent caused physical and mental cruelties on him as a result he got mentally sick and lost his job in the month of May, 2019. The respondent started living with her parents, so, he discontinued to meet with her and the respondent made false complaint against him to State Women Commission and also to Nawada Police but her complaints were found false and the same were dismissed. He stated that it is not possible for him to lead conjugal life with the respondent, so, he filed the present suit for divorce.

35. During cross-examination P.W.-4 (the petitioner) has deposed that he and respondent lived together in the same house for about 9 years and during this period respondent got pregnant and on two occasions miscarriage of her pregnancy took place. He stated that his one daughter is studying in Ranchi and another daughter is studying in but he is not allowed to meet with his daughters from last four years. He also stated that he never filed any application in the Court for felicitating his meeting with daughters. He also stated that he cannot file any documentary evidence to show that respondent had consumed sleeping pills as a result miscarriage of her pregnancy took place. He also stated that

his neighbours and they used to come his house. He further stated in cross-examination that he cannot give documentary evidence for the purpose of showing that his wife/ respondent used to send money in her father's account. He also stated that during entire proceeding of the case he never filed any application that he is unable to attend the Court as he is mentally sick. He stated that he never made any complaint before police station regarding wrong behaviour of the respondent. He

stated that he took the house on rent in April, 2018 and paid last rent in April, 2019 and he discontinued to pay the rent as the parents of respondent started to live with her. He stated that the respondent had filed police case but he has not paper to show that he was called in police station and enquired only. He also stated in the cross-examination that when his wife/ respondent took admission in B.Ed. he filed an application under RTI Act that how she has taken admission in the college and how she has appeared at the examination. He further stated in cross-examination that he had given application in Bank that he should like to operate joint locker on which bank replied that joint locker can be operated in presence of both parties, thereafter, he got the locker seized. He further stated that his wife took jewelries of his mother from Locker as he saw from a CCTV Footage of the Bank that respondent took out a "*Potli*" from the Locker. He stated that he cannot say that when he filed an application in the Bank regarding taking off CCTV footage of the locker. He denied the suggestion that his wife took her jewelries from the locker. He also stated that his father was getting treatment from Dr. M.P. Singh of Raj Hospital who is the father of Bhabhi of respondent and till that time their matrimonial relation was smooth. He denied the suggestion that he has got four flats in Ranchi and voluntarily stated that his father has a house in Ranchi in which he resides. He is the only son of his father. He stated that he has opened LIC account in the name of his both daughters. He denied the suggestion that he pressurized the respondent to give birth to a male child.

36. P.W.-1 who is friend of the petitioner, P.W.2 who is maternal niece of the petitioner and P.W.-3 who is brother-in-law (Jija of petitioner) have fully supported the case of the petitioner in their respective affidavit examination-in-chief. They have stated that petitioner was married with

respondent on 25.11.2007 in accordance with Hindu rites and after marriage she came to her matrimonial home and started leading conjugal life with the petitioner but from the very beginning the respondent-wife had adopted indifferent attitude and she was not happy with the marriage. They stated that it appeared from the behaviour of respondent that she has married with petitioner against her wishes and on the pressure of her parents. All these witnesses have consistently stated that she started fighting with the petitioner on every petty matter and committed physical and mental cruelties on him. She categorically stated that she does not want to live with the father of the petitioner and maternal niece and nephew. She pressurized the petitioner to send his old ailing father to leave the house and to go to ancestral village. The mother of petitioner had already died and there was none to take care of the father of petitioner. They also stated that on one occasion respondent consumed 20 sleeping pills as a result her pregnancy got aborted and due to the pressure of the respondent, the petitioner sent his old ailing father to ancestral village. They all have stated that due to cruel and quarrelsome attitude of the respondent the petitioner got mentally sick and he had to undergo treatment with a psychiatrist. They stated that in May, 2018 the respondent left the matrimonial home and went along with all her belongings to her Maika. The petitioner made several efforts to bring her back but he could not succeed. The respondent in the month of June, 2018 all of a sudden came to the house of petitioner but still her cruel behaviour continued with petitioner. Somehow, the petitioner tolerated all her activities in order to lead a peaceful conjugal life with her and petitioner has got two daughters from the respondent. They also stated that the respondent often threatened the petitioner to commit suicide. It has been stated by all witnesses that on 27.09.2016 the

father of the petitioner due to his ailment came to Ranchi and on the next day i.e. on 28.09.2016 he suffered from paralytic attack and was admitted to Raj Hospital. The father of petitioner after being discharged started living with the petitioner as there was none to take care of him but still the respondent continued to quarrel with the petitioner and separated from the conjugal life. She called vehicle from her *Maika* in May, 2017 and again she went there with all her belongings and she also took away both children. She came after a month and opened joint Locker and took away all her jewelries including the jewelries of mother of the petitioner. It has been stated that petitioner filed suit for restitution of conjugal right in the Family Court, Ranchi, where mediation took place and as per terms of settlement the case was disposed of. It was agreed in the mediation that both parties will respect the sentiment of each other and will not indulge in any such activities which hurt the sentiments of other and causes any adverse effect on the future of both children. The respondent had agreed that she will fulfill her matrimonial obligations after completion of her B.Ed. Course from Arrah, Bihar, and the petitioner was also supposed to support the respondent in completing B.Ed. Course of respondent at Arrah. It was agreed that during continuance of B.Ed. course the respondent will visit Ranchi during holidays and both children will take admission in any school of Ranchi. The petitioner as per terms of settlement got his both daughters admitted in a good school at Ranchi but the respondent refused to accompany him and on the pressure of respondent the petitioner had to take a rented house at Singh More, Ranchi. They stated that instead of complying all terms of settlement the cruel behaviour of respondent continued and she started make false allegations against him and even made false complaint in Women Commission and before Nawada Police,

but the complaints of the respondent were dismissed as baseless. They have all stated that respondent is not willing to lead conjugal life, so, the petitioner has filed the present suit for divorce.

37. P.W.-1 in the cross-examination has stated that respondent has filed FIR against the petitioner. He has also stated that he cannot say that on which date, month and year respondent left her matrimonial home, but subsequently says that in the year 2016-17. He also stated in cross-examination that father of the petitioner has got three other houses in addition to the house of where he lives. He further stated that

used to treat the father of the petitioner when he was admitted in Raj Hospital and said is the relative of respondent. He also stated that he cannot say that respondent took ornaments of the mother of petitioner.

38. P.W.-2 in his cross-examination has stated that the respondent has filed a maintenance case against the petitioner which is numbered as Original Maintenance Case No. 478/2020. P.W.-2 in cross-examination stated that she has no knowledge that respondent got operated thrice and she has also no knowledge that her maternal / petitioner wanted to have a male child. She has stated that she has no knowledge that locker was in the name of her Mami/ respondent but she knows that after lodging of the case her Mama/ petitioner brought the respondent to his house. She further stated that before bringing the respondent from her Maika. Her Mama/ petitioner had taken a rental house. She denied the suggestion that due to assault of the petitioner the respondent got injuries on her head and mark of injury is still visible on her forehead.

39. PW-3 during cross-examination has stated that petitioner is only son of his parents. He has four sisters. He stated that he cannot say from

25.11.2007 to May, 2008 respondent went to her parental home and on how many occasions. He categorically stated that after marriage respondent went to her parental home first time in the month of May, 2008. He also stated that he has not much knowledge about the matrimonial relation between the petitioner and the respondent. He further stated that he has knowledge that relative of respondent treated the father of the petitioner when he was admitted in Raj Hospital. He also stated that he cannot say that when on last occasion he met with respondent.

40. He denied the suggestion that petitioner assaulted the respondent and thereafter pushed the respondent along with both children out of the house and thereafter called her brother and went to *Maika*.

41. He further stated that he cannot say that who operated the Bank Locker and he cannot say that the said locker was opened by the respondent. He also stated that he has no knowledge about any case filed before Nawada Police. He stated that he has no knowledge that respondent has filed any criminal case against the petitioner. He also stated that he has no knowledge that the petitioner has owns a Wagon-R Car and a motorcycle. He cannot say that daughters of respondent are studying in Ranchi and where they are residing.

42. R.W.-1 is the respondent herself, R.W-2 is Aunt of the respondent and R.W.-3 is brother of the respondent. The respondent and other witnesses examined on her behalf have admitted that marriage of the petitioner with respondent was solemnized on 25.11.2007 in accordance with Hindu rites and rituals at Arrah, Bihar, and after marriage the petitioner started leading his conjugal life with respondent and during continuance of matrimonial life the respondent was blessed with two daughters who are named as born on 12.02.2009 and

born on 15.12.2015. The respondent and her witnesses have also consistently stated that at the time of marriage the parents of the petitioner had given sufficient gold and silver jewelries amounting to Rs.3.50-Lakhs, cash of Rs.03-Lakhs for purchasing of a car and incurred expenses at the time of marriage. They have consistently stated that petitioner was pressurizing on the respondent for additional dowry and committed various types of cruelties for not begetting birth of a son. It has also been stated that behaviour and attitude of the petitioner from the initial days of marriage was very cruel towards the respondent. He often used to abuse and assault the respondent as a result on two occasions the respondent had to suffer miscarriage also due to assault of the petitioner. It has been stated that on 09.04.2011 the petitioner assaulted the respondent as a result she got injuries in eardrum and she had to undergo treatment for her ear injuries from Dr. Samit Lal. The witnesses have also stated that when the respondent got pregnant for the 4$^{th}$ time, the petitioner pressurized her to undergo sex determination test of her fetus and when she denied for the same the petitioner again misbehaved with her. The petitioner always used to say that he is the only son of his parents and he needs a male child for continuance of his generation and he also used to say that where the property will go when she does not give birth to a male child. The respondent due to cruelties and torture of petitioner filed a complaint on 10.04.2017 to State Women Commission, Jharkhand, and when petitioner came to know about this, he abused and assaulted her and pushed out from the matrimonial home as a result she had to go to her *Maika*. The respondent and her witnesses further stated that on 31.05.2017 the petitioner went to her *Maika* and created nuisance and demanded Rs. 03-Lakhs from her parents and ultimately the respondent had to give a

written complaint on 08.06.2017 to Officer-in-Charge Nawada Police Station and the said complaint was sent through Postal Receipt No.295048908. The respondent during stay at Arrah took admission in B.Ed. and when this fact came to the knowledge of the petitioner, he gave an application under RTI on 22.09.2017 in which he made query as to how she was admitted in the college and he sought information for cancellation of her admission in B.Ed. The respondent and her witnesses further stated that petitioner had filed an Original Suit No. 532/2017 u/s 9 of Hindu Marriage Act, 1955 for restitution of conjugal rights and in the said case mediation took place and as per terms of settlement the petitioner was supposed to cooperate for completing her B.Ed. Course and the petitioner had to also take her to his house and start leading conjugal life but the petitioner violated the terms of mediation and he kept her in rental house at Singh More, Hatia, in which there was monthly rent of Rs.6000/- and maintenance charge of Rs.1000/-. The petitioner gave monthly rent for few month and thereafter he discontinued to pay the monthly rent and also stopped providing the household expenses.

43. In the cross-examination also respondent and her witnesses have remained consistent and supported the case of the respondent that respondent due to her injuries of ear had to undergo treatment from Dr. Samit Lal, prescription of Dr. Samit Lal has been filed and marked as "Y" for identification. They have also reiterated in cross-examination that petitioner sought application under RTI Act from which it appeared that the petitioner was intending to get the admission of respondent cancelled from B.Ed. Course. Respondent in cross-examination has categorically denied that she has herself left the matrimonial home rather she was compelled to leave the matrimonial home as she along with her daughters

was pushed out from the matrimonial home. She denied the suggestion that she operated the joint locker alone and took away her jewelries and also jewelries of late mother of the petitioner. The respondent also reiterated in her cross-examination that when she came to Ranchi after mediation in Original Suit No. 532/2017, she was not allowed to live in the matrimonial home and she was kept by the petitioner in a rental house and the petitioner also discontinued to pay the rent of the said house and she is paying the rent from her own source and with the help of others.

44. The fact about filing of suit by taking plea of cruelty and desertion is admitted one as per the evidences adduced on behalf of the appellant-husband.

45. The appellant-husband all along has alleged the issue of cruelty, and desertion 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.

46. Having heard learned counsel for the parties and upon consideration of the impugned judgment, the materials available on the record, and the evidence referred to by the parties, the following points arise for determination:

(i) Whether the appellant-husband has established that the respondent-wife treated him with cruelty within the meaning of Section 13(1)(ia) of the Act, 1955?

(ii) Whether the appellant-husband has established that the respondent-wife deserted him within the meaning of Section 13(1)(ib) of the Act, 1955?

(iii) Whether the impugned judgment and decree suffer from any illegality, perversity, or material error warranting interference by this Court in exercise of its appellate jurisdiction?

47. It needs to refer herein that since appellate jurisdiction has been invoked herein, therefore, before entering into appreciation of aforesaid issues, at this juncture it would be purposeful to discuss the appellate jurisdiction of the High Court.

48. Under section 7 of the Family Courts Act, the Family Court shall have and exercise all the jurisdiction exercisable by any District Court or any Sub- ordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature which are described in the explanation to section 7(1).

49. Sub-section (1) to section 19 of the Family Courts Act provides that an appeal shall lie from every judgment or order not being an interlocutory order of a Family Court to the High Court "both on facts and on law". Therefore, section 19 of the Family Courts Act is parallel to section 96 of the Code of Civil Procedure, the scope of which has been dealt with by the Hon'ble Apex Court in series of judgments.

50. The law is well settled that the High Court in a First Appeal can examine every question of law and fact which arises in the facts of the case and has powers to affirm, reverse or modify the judgment under question. In ***"Jagdish Singh v. Madhuri Devi" (2008) 10 SCC 497*** the Hon'ble Supreme Court observed that it is lawful for the High Court acting as the First Appellate Court to enter into not only questions of law but questions of fact as well and the appellate Court therefore can reappraise,

reappreciate and review the entire evidence and can come to its own conclusion. For ready reference the relevant paragraph of the said judgment is being quoted as under:

> *"It is no doubt true that the High Court was exercising power as the first appellate court and hence it was open to the Court to enter into not only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a rehearing of the main matter and the appellate court can reappraise, reappreciate and review the entire evidence--oral as well as documentary--and can come to its own conclusion."*

51. Further, it needs to refer herein that under section 3 of the Indian Evidence Act a fact is said to be proved when the Court either believes it to exist or considers its existence so probable that a prudent man under the circumstances would proceed on the supposition that such fact really exists. Therefore, the normal rule of preponderance of probability is the rule which governs the civil proceedings like this.

52. The expression "preponderance of probability" is not capable of exact definition nor can there be any strait-jacket formula or a weighing machine to find out which side the balance is tilted. The preponderance of probability would imply a positive element about possibility of existence of a fact. This means a higher degree of probability of happening of something and existence of a fact.

53. In ***"A. Jayachandra v. Aneel Kaur" (2005) 2 SCC 22*** the Hon'ble Apex Court has observed that the concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife.

54. Since this Court is exercising the power of appeal as referred hereinabove and as per the settled position of law which require the consideration of the appellate Court is that the order/judgment passed by the appropriate Forum, if suffers from perversity, the same is to be taken as a ground for its reversal.

55. This Court while appreciating the argument advanced on behalf of the appellant-husband 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.

56. 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."*

57. Thus, from the aforesaid, it is evident that any order said to be perverse 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.

58. Thus, "perversity" refers to a finding or decision so unreasonable or irrational that no reasonable person acting judicially could have reached it. It signifies a gross and unreasonable assessment of evidence or law by a court.

59. Further, perversity is a high threshold for intervention, distinguishing it from a mere error of fact or law. The "safest approach on perversity is the classic approach on the reasonable man's inference on the facts but inadequacy of evidence or a different reading of evidence is not perversity, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Damodar Lal v. Sohan Devi, (2016) 14 SCC 197.***

60. In the instant case, the ground for divorce has been taken on the ground of cruelty, therefore, it would be apt for this Court to discuss the element of cruelty in order to appreciate the claim of the husband that whether he has been subjected to cruelty by his wife.

61. 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.

62. 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.

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

64. 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."

65. 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.

66. 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".

67. 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.

68. 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.

69. "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 of "***Vishwanath Agrawal* v. *Sarla Vishwanath Agrawal", (2012) 7 SCC 288***.

70. 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.

71. 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.***

72. 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.***

73. 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.***

74. 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.

75. 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.

76. Since desertion has also been taken as ground by the appellant for dissolution of marriage, therefore at this juncture, it would be apt to refer the definition of desertion as defined under explanation part of Section 13 which means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage.

77. Further, it requires to refer herein that the word 'desertion' has been given in Explanation to Section 13 (1) wherein it has been stated that "the expression desertion means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

78. It is pertinent to note that the word 'desertion', as has been defined in Explanation part of Section 13 of the Act, 1955, means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

79. ***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."*

80. 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.*

81. 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.

82. 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.

83. 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.

84. 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.

85. The Hon'ble Apex Court in "***Debananda Tamuli vs. Kakumoni Kataky", (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*** .

86. It has been observed by the Hon'ble Apex Court that 'desertion' means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be *animus deserendi* on the part of the deserting spouse. There must be an absence of consent on the part of the

deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home. The view taken by the Hon'ble Apex Court has been incorporated in the Explanation added to sub-section (1) of Section 13 by Act 68 of 1976. The said Explanation reads thus:

> *"**13. Divorce**.—(1) ...*
>
> *Explanation.—In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly."*

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

88. In the instant case as per pleadings of both the parties the marriage between them as per Hindu rites is admitted fact. Further the birth of two children out of the wedlock is also admitted fact.

89. In the present case, the appellant-husband, has alleged that the respondent-wife frequently quarrelled with him, abused him in derogatory language, physically assaulted him, scratched his face with her nails, tore his clothes, threw household articles at him, and repeatedly threatened to commit suicide.

90. He has also alleged that the respondent-wife objected to his aged father and the children of his deceased sister residing in the matrimonial home and insisted upon separate accommodation. According to him, the cumulative effect of such conduct caused him severe mental distress and ultimately affected his employment.

91. On examination of material available on record, it appears that several allegations of serious misconduct have been made, but the supporting evidence is limited.

92. During cross-examination, the appellant-husband admitted that he could not produce documentary evidence to establish that the respondent-wife had consumed twenty sleeping pills, resulting in the termination of her pregnancy. He also admitted that he had not produced documentary evidence to establish that the respondent-wife used to transfer money to her father's account. He further admitted that he had not lodged any police complaint concerning the alleged wrongful conduct of the respondent-wife.

93. The appellant-husband has also admitted that he stopped paying rent for the accommodation at Singh More, Hatia in April 2019 because the parents of the respondent-wife had started residing with her. This admission is relevant to the subsequent course of the matrimonial relationship and has to be considered along with the respondent-wife's account of the circumstances in which the parties lived separately.

94. Although the witnesses have supported the allegations of cruelty in their examination-in-chief, their cross-examination reveals material limitations in their personal knowledge of several disputed incidents.

95. The appellant-husband has further relied upon the allegation that the respondent-wife subjected him to cruelty by insisting upon separate accommodation and objecting to the presence of his father and other family members.

96. In this regard, it is necessary to distinguish between a spouse's unreasonable conduct and a demand for separate residence which may arise from the circumstances of the matrimonial relationship. A spouse's

preference for independent accommodation cannot, in every case, be treated as cruelty. The surrounding circumstances, the needs of the parties, their obligations towards dependent family members, and the manner in which the demand was made must all be considered.

97. In the present case, the appellant-husband has alleged that the respondent-wife refused to reside in the matrimonial home and insisted that he arrange a separate flat. On the other hand, the respondent-wife has stated that the appellant-husband himself arranged the rented accommodation and that she was not permitted to reside with him in the matrimonial home.

98. The evidence establishes that the parties did, in fact, reside in rented accommodation at Singh More after the earlier mediation proceedings. However, the mere fact that the parties occupied separate accommodation does not, by itself, establish that the respondent-wife subjected the appellant-husband to cruelty.

99. The evidence must demonstrate that her conduct in this regard was of such a nature and degree as to satisfy the statutory test. A demand for separate accommodation, without sufficient evidence of accompanying oppressive or abusive conduct, cannot automatically be elevated to the level of matrimonial cruelty.

100. The appellant-husband has also placed reliance upon the alleged consumption of sleeping pills by the respondent-wife and the consequent termination of her pregnancy.

101. The respondent-wife, on the other hand, has alleged that she suffered miscarriages and that the appellant-husband subjected her to physical cruelty. Both parties have made allegations concerning the circumstances surrounding the pregnancies.

102. The appellant-husband has admitted during cross-examination that he has no documentary evidence to establish the allegation that the respondent-wife consumed twenty sleeping pills and that such consumption resulted in the termination of her pregnancy.

103. In the absence of reliable evidence establishing the incident and its circumstances, the said allegation cannot be treated as a proved act of cruelty on the part of the respondent-wife.

104. The appellant-husband has strongly contended that the respondent-wife lodged false complaints before the State Women Commission and the police authorities, and that such conduct amounts to mental cruelty.

105. It is well settled that the institution of a criminal complaint by one spouse against the other does not automatically constitute matrimonial cruelty. The nature of the allegations, the circumstances in which the complaint was made, the conduct of the complainant, and the outcome of the proceedings are relevant considerations.

106. Where a spouse knowingly makes false and reckless allegations of a serious nature against the other, and such allegations are established to be false in the circumstances of the case, the conduct may, depending upon its gravity and effect, constitute mental cruelty. However, a complaint cannot be treated as false merely because the other spouse disputes it or because the complainant fails to establish the allegations to the requisite standard in the relevant proceedings.

107. In the present case, the appellant-husband has asserted that the complaints made by the respondent-wife were false and had been dismissed as baseless. The respondent-wife, however, has maintained that

she approached the concerned authorities because she was subjected to cruelty and was compelled to leave the matrimonial home.

108. The evidence reproduced before this Court does not cogently establish or demonstrate, that the respondent-wife knowingly made false allegations with the intention of causing injury to the appellant-husband. In these circumstances, the contention that the institution of the complaints by the respondent-wife, by itself, establishes cruelty is not sustainable on the materials placed before this Court.

109. Further the medical prescriptions relating to the appellant-husband's treatment may be relevant to the question of his mental condition. However, the fact that a person has received psychiatric treatment does not, by itself, establish that the other spouse caused the condition through cruelty. A causal connection between the alleged conduct and the mental suffering must be assessed on the evidence available.

110. The allegation that the respondent-wife removed jewellery belonging to the deceased mother of the appellant-husband from the joint bank locker is also disputed.

111. The appellant-husband has stated that he saw a CCTV recording footage in which the respondent-wife allegedly took a bundle from the locker. However, during cross-examination, he admitted that he could not state when he had applied for the CCTV footage. One of his witnesses admitted that he could not say whether the respondent-wife had taken away the jewellery.

112. The respondent-wife has denied the allegation and has stated that she withdrew her own jewellery from the joint locker.

113. In the absence of sufficiently reliable evidence establishing that the respondent-wife wrongfully removed jewellery belonging to the deceased mother of the appellant-husband, the disputed allegation cannot be treated as a proved circumstance of cruelty against her.

114. Upon an overall consideration of the oral and documentary evidence, this Court finds that the existence of matrimonial discord and the breakdown of normal marital relations are not, by themselves, sufficient to establish cruelty within the meaning of Section 13(1)(ia) of the Act, 1955. The Court is required to determine whether the particular conduct complained of has been established and whether, in its cumulative effect, it satisfies the statutory threshold. On the evidence reproduced in the present appeal, the allegations of cruelty have not been established with sufficient cogency to warrant reversal of the finding of the learned Family Court.

115. On the issue of desertion, the appellant-husband has alleged that the respondent-wife left the matrimonial home on 04.05.2017 along with their two daughters and has not resumed normal matrimonial life thereafter. On this basis, he claims that the statutory ground of desertion stands established.

116. The respondent-wife, however, has specifically denied that she voluntarily abandoned the matrimonial relationship. Her case is that she was assaulted and compelled to leave the matrimonial home along with the children. She has further stated that, following the earlier mediation proceedings, the appellant-husband arranged separate accommodation for her and the daughters and subsequently discontinued payment of rent and household expenses.

117. The parties have thus presented conflicting versions regarding the circumstances in which their separation occurred.

118. In order to establish desertion under Section 13(1)(ib) of the Act, 1955, it is not sufficient for the appellant-husband to prove only that the parties have been living separately for the requisite period. He must also establish that the respondent-wife abandoned the matrimonial relationship without reasonable cause, without his consent or against his wish, and with the intention of permanently bringing cohabitation to an end.

119. The element of intention is particularly important. Physical separation may result from circumstances in which one spouse is compelled to leave the matrimonial home, or where the parties mutually arrange separate accommodation during an attempt to reconcile their differences. In such circumstances, the fact of separation alone does not necessarily establish desertion.

120. It is an admitted circumstance that the appellant-husband instituted Original Suit No. 532 of 2017 under Section 9 of the Act, 1955, and that the matter was referred to mediation. The parties thereafter arrived at a settlement under which they contemplated resumption of a peaceful matrimonial life and compliance with certain obligations towards each other and their children.

121. The evidence further indicates that, following the settlement, the respondent-wife came to Ranchi and resided in rented accommodation at Singh-more. The appellant-husband himself has stated that he arranged the said accommodation because the respondent-wife was unwilling to reside with his father in the matrimonial home.

122. The respondent-wife, on the other hand, has stated that the appellant-husband did not permit her to reside in the matrimonial home

and that the rented accommodation was arranged pursuant to the circumstances prevailing after mediation.

123. Whatever the precise nature of the parties' disagreement regarding the accommodation, the evidence shows that the parties made an attempt to resume their relationship following mediation and that their subsequent separation occurred in the context of continuing disputes over residence, family responsibilities, and financial support.

124. The appellant-husband has admitted during cross-examination that he stopped paying the rent for the accommodation at Singh More in April, 2019 because the parents of the respondent-wife had started residing with her. This admission is relevant because it demonstrates that the subsequent course of the parties' separation cannot be assessed merely by reference to the respondent-wife's alleged departure from the matrimonial home in May, 2017.

125. The appellant-husband's own testimony indicates that the parties' relationship continued to be affected by disputes after the mediation settlement and that he subsequently discontinued payment of rent for the accommodation in which the respondent-wife was residing. It is also relevant that the appellant-husband has stated that he discontinued meeting the respondent-wife after her parents began residing with her.

126. These circumstances demonstrate the extent of the matrimonial discord, but they do not conclusively establish that the respondent-wife voluntarily and without reasonable cause abandoned the appellant-husband.

127. The respondent-wife has consistently maintained that she was compelled to leave the matrimonial home and that her subsequent residence in separate accommodation was not an act of voluntary

abandonment. Her version is supported by the fact that the parties' disputes continued even after the mediation settlement and by the appellant-husband's admission regarding the discontinuance of rent payments.

128. Thus, on the evidence reproduced before this Court, the requisite intention on the part of the respondent-wife to abandon the matrimonial relationship without reasonable cause has not been sufficiently established. The fact that the parties have remained separated for a considerable period cannot, by itself, entitle the appellant-husband to a decree of divorce under Section 13(1)(ib) of the Act, 1955. The statutory requirement is not merely prolonged separation but desertion as understood in matrimonial law.

129. Thus, on the materials available, the finding of the learned Family Court that the ground of desertion was not established does not suffer from any apparent illegality or perversity warranting interference.

130. 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 element of cruelty and desertion has well been considered by the learned Family Judge.

131. 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 desertion against the respondent-wife.

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

133. 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 and decree 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.

134. This Court, therefore, is of the view that the judgment dated 02.05.2025 and the decree signed on 16.05.2025 passed in Original Suit No.478 of 2020 by the learned Principal Judge, Family Court, Ranchi needs no interference and, accordingly, the instant appeal stands dismissed.

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

**(Sujit Narayan Prasad, J.)**

**I Agree.**

**( Pradeep Kumar Srivastava, J.)**

**(Pradeep Kumar Srivastava, J.)**

*Sudhir*
*Dated:29/10/2026*
*Jharkhand High Court, Ranchi*
*AFR*

*Uploaded on 29/10/2026.*