

IN THE HIGH COURT OF JHARKHAND AT RANCHI

First Appeal No.65 of 2021

Rambha Kumari, aged about 35 years, daughter of Harish Chandra Rai, wife of Rajesh Choudhary, resident of Kunwar Singh Road, New Olidih, P.O. Mango, P.S. Olidih, District East Singhbhum at Jamshedpur.

..... **Appellant/Defendant**

Versus

Rajesh Choudhary, son of Ram Bihari Choudhary, resident of Chhaya Nagar, P.O. & P.S. Sitaramdera, District East Singhbhum at Jamshedpur, permanent resident of Lane No. 3B, Road No. 3, Subhash Colony, P.O. Mango, P.S. Olidih, District East Singhbhum at Jamshedpur.

..... **Respondent/Plaintiff**

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

For the Appellant : Mr. Rahul Kumar, Advocate
For the Respondent : Mr. Bhashwat Prakash, Advocate
Mr. Anurag Kashyap, Advocate

C.A.V on 05.12.2025

Pronounced on 18/12/2025

Per Sujit Narayan Prasad, J.

1. The instant appeal under section 19(1) of the Family Courts Act, 1984 is directed against the judgment dated 07.10.2021 and the decree dated 01.11.2021 passed in Original Suit No.548 of 2015 by the learned Principal Judge, Family Court, Jamshedpur, East Singhbhum (in short, Family Judge) whereby and whereunder the petition filed under section 13 (1) (i) (i-a) (i-b) of the Hindu Marriage Act, 1955 by the respondent-husband against the appellant-wife, has been allowed by granting a decree of divorce in favour of the respondent-husband.

2. At the outset, it requires to refer herein that vide order dated 15.09.2022 passed by this Court, the present matter was referred for mediation at JHALSA. But as per the report of learned Mediator,

JHALSA bearing letter no. 2677 dated 27.09.2022 the mediation between the parties had failed.

3. Thereafter, vide order dated 17th July, 2025 matter was again referred before the Mediator under the Special Mediation Drive-Mediation 'For the Nation'. As per the mediation report dated 09.10.2025, due to absence of both the parties Mediation is set to be non-started.

4. Further from perusal of order dated 12th September, 2025 it is evident that on the prayer of learned counsel for the parties matter was referred for Lok Adalat which was scheduled on 13th September, 2025, for ready reference the order 12th September 2025 is being quoted as under:

Order No.07/Dated: 12th September, 2025

1. *The learned counsel appearing for the respondent submits that he wants to live with the appellant-wife.*
2. *The learned counsel appearing for the parties have submitted that this matter may be referred to the Lok Adalat.*
3. *Accordingly, the present matter is being referred to the Lok Adalat scheduled to be held tomorrow, i.e., on 13th September, 2025.*
4. *Parties are directed to appear before the Lok Adalat.*

5. But again, the mediation between the parties failed and, accordingly, the instant appeal was listed "for hearing" on 05.12.2025. On that day the instant appeal was heard at length and on conclusion of hearing the instant appeal was reserved for adjudication on merit.

Factual Matrix

6. 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 case is that the appellant-wife was married to the respondent-husband in accordance with Hindu rites and customs on 27.04.2009 at Jamshedpur.
- (ii) The respondent-husband is an Advocate, practicing in the Civil Court, Jamshedpur and he is suffering from physical

deformity by birth in his right hand as well as in his left leg after a road accident.

- (iii) The marriage between the respondent-husband and appellant-wife was solemnized after due enquiry made by the family of appellant-wife and after being satisfied that deformity would not imperil the normal life of the parties. The said marriage was an arranged marriage after due thought.
- (iv) The further case is that after solemnization of marriage appellant-wife came to the house of respondent's father in Subhas Colony, Mango, Jamshedpur, where the respondent-husband used to live with his other family members and started living as husband and wife as a result of which, a female child begotten to them on 10.11.2010, namely, Mithee @ Anushree.
- (v) The further case is that appellant-wife became infuriated to see the deformity of the plaintiff and refused to live with him from the very first day.
- (vi) During the period of six months, the appellant-wife attempted to finish her life by drinking mosquito repellent liquid and consequently threatened the respondent-husband and his family.
- (vii) All the family members of the respondent-husband/plaintiff started living in fear of unexpected incident that might ensure in future to act of the appellant-wife.

- (viii) It is the case of the respondent/plaintiff that after marriage, the appellant-wife/defendant started quarreling with mother and father of respondent-husband on trivial issues. She would never enter into the kitchen to cook food nor do any house-hold work and kept herself closed in her room for hours and only open the door when her own mother would come and talk her out of it and such behaviour of the appellant-wife started taking a toll on the respondent's/plaintiff mental well-being which in turn started hampering his legal practice.
- (ix) The further case is that when the appellant-wife conceived, she fought with the respondent-husband and insisted to abort the child, on which, he refused to abort the child and due to which, she left the house bare footed in anger and all the neighbors were watching on road the scene being created by her and by doing so, she thrashed the image of family and brought disrepute to the respondent-husband and his family members.
- (x) Thereafter, the appellant-wife started quarrelling with the respondent-husband on trivial issues and started abusing him by using unbearable filthy language and when any female client visited in the Chamber of the respondent-husband she started quarrelling on the basis of doubt.
- (xi) It has been stated in the plaint that the respondent-husband asked the appellant-wife to save the marriage on all occasions and taking advantage of this unfortunate condition, she insisted and compelled him to leave her at

her parents' house for child birth, despite better facilities and better care available at the house of the respondent-husband.

(xii) It is further case of the respondent-husband that after the birth of child, defendant/wife came to his house and she became intolerable day by day.

(xiii) The appellant-wife alleged that since her father-in-law had a bad eye on her and she demanded a separate house to live separately and an amount of Rs.10,000/- as monthly allowance to sustain herself and her daughter.

(xiv) It is stated that when the respondent-husband refused to fulfill the said demand of the appellant-wife, she consumed naphthalene balls to threaten him and his family members as a result thereof, they had agreed to fulfill such demand of the appellant-wife to live in a separate house but she did not agree to leave her matrimonial house and demanded that her in-laws should leave the matrimonial house.

(xv) It is the further case of the respondent-husband that when the respondent and his family members did not agree to leave the matrimonial house, she became angry and left her matrimonial house with her daughter in September, 2011 and started living at her parent's house.

(xvi) The further case of respondent-husband is that he went to see his child and convince his wife to come back several times, but the appellant-wife neither allowed him to see the child nor agreed to return to him.

(xvii) The further case of the respondent-husband/plaintiff is that the family members of appellant-wife acted against saving of this marriage. The father of the appellant-wife came in the Court where the respondent-husband does his practice and spread rumors among the colleagues of the respondent-husband that since he is having illicit relationship with some unknown lady and, as such, he is avoiding his wife and child.

(xviii) The mother of the appellant-wife called the father of the respondent-husband and asked him to partition the house, then only her daughter will keep her foot in her *sasural*.

(xix) It has further been stated that defendant-wife has behaved, in such a way that the respondent-husband cannot reasonably be expected to live with her and marriage has broken down irretrievably, due to torture and desertion by the appellant-wife.

3. On the aforesaid ground of cruelty and desertion, the respondent-husband has filed a suit before the learned Family Court and prayed for a decree of dissolution of the marriage between him and the appellant-wife.

4. Accordingly, notice was issued. The appellant-wife appeared and filed her written statement, wherein, she has denied all the allegations levelled against her, however, admitted the factum of her marriage with the respondent/plaintiff. In the written statement it was stated that she had knowledge about physical deformity of her husband in his right hand but she had no knowledge about the physical deformity in his right leg.

5. It is stated that she wanted to live in her matrimonial house with her husband but she was meted to cruelty and was harassed for bringing less

dowry from her *mai*ke. She alleged that her husband and in-laws forcefully caught hold her and poured “All Out” mosquito repellent liquid with intention to kill her so that the respondent-husband would get married to another girl. It is stated that thereafter the appellant was taken to the hospital for treatment and after getting recovery she returned back to her matrimonial house to fulfill her duties as a wife and daughter-in-law.

6. It has further been stated that the appellant-wife was forced to abort her pregnancy and she was even not being taken care of at her matrimonial house during the period of pregnancy, so she came to her parents’ house for better care and facilities required at the time of birth of her daughter. It is stated that she gave birth to a female child on 10.11.2010 but neither the respondent nor his family members came to see her or the infant baby.

It is stated that for better care and treatment she was stayed at her *mai*ke for about seven months after birth of baby child but during that period neither her husband nor his family members visited to see her or her child.

7. It is stated that the appellant on her own wish had come to her matrimonial house to live a peaceful conjugal life but there she was subjected to mental as well as physical cruelty at the hands of the respondent and his family members on 08.11.2011, thereafter an oral information was given to Olidih Police Station wherefrom she went to the MGM Hospital with assault marks on her head, face and hands where she was treated.

8. It is further alleged that the respondent and her family members used to abuse her in filthy language and demanded Rs.10,00,000/- from her parents’ house as dowry since she had given birth to a girl child. The torture was continuing and being compelled, the appellant made a written complaint to the Mahila Helpline Desk, Jamshedpur whereafter the

respondent assured that he would arrange for a separate rented house for them to live and the matter was compromised but he did not fulfill his promise to live separately in a rented house.

9. It is stated that in spite of best efforts of the appellant-wife, the physical and mental torture and demand of dowry of Rs.10,00,000/- was so frequent by the respondent and his family members that it became intolerable to the appellant to live there and being compelled, she was forced to lodge a case under section 498A/34 IPC against the respondent and his family members which is pending.

10. It has been stated that she is willing to live with her husband with dignity and respect. She has also denied that her father had gone to the Court to spread rumors about illicit relation of her husband and her mother never called the father of respondent/plaintiff for partition of the matrimonial house. The defendant/wife has stated that she does not want divorce rather she is still willing to live a normal life with her husband.

11. Learned Family Judge, after institution of the said case, taking into consideration of the pleadings of the plaintiff/husband (respondent herein) and the respondent/wife (appellant herein) has formulated the issues and has decided the *lis* by granting divorce to the respondent-husband.

12. The impugned judgment by which divorce has been granted is under challenge by filing the instant appeal.

Submission of behalf of the appellant-wife:

13. Mr. Rahul Kumar, the learned counsel appearing for the appellant-wife 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) The element of cruelty and desertion was not found to be there if the evidences adduced on behalf of the appellant-wife will be taken into consideration, but without appreciating the same properly, the learned Family Judge has come to the finding by holding that element of cruelty or desertion is there and, as such, the impugned judgment and decree suffer from an error.

(iii) It has been contended that the divorce suit of the respondent-husband based on the false allegation of cruelty and desertion upon the appellant-wife is not maintainable because the respondent-husband has failed to prove that the appellant-wife had treated him with cruelty and deserted on her own wish.

(iv) It has come in the evidence that the appellant-wife had tried to commit suicide but it was rebutted by her as it was the respondent-husband who along with his family members forced her to commit suicide so that he would marry with another girl.

(v) The learned Family Judge has not appreciated the fact that the appellant-wife wanted to lead a happy conjugal life in spite of the fact that the respondent-husband was handicapped as she gave birth to a female child out of the said wedlock which falsifies the fact that she was not ready to live with the respondent-husband.

(vi) The learned Family Judge has not appreciated the fact that the appellant-wife was forced to leave her matrimonial home during her pregnancy and to save the life of her daughter as well as herself, she went to her *mai*ke where she was being cared by her parents.

(vii) So far as the issue of desertion by the appellant-wife is concerned, she had not left her matrimonial house on her own rather she was compelled to leave her matrimonial house after being tortured at the hands of her husband and in-laws on the pretext that for non-fulfillment of demand of dowry and this fact has not been properly considered by the learned Family Judge.

(viii) It has been contended that the appellant-wife has been meted out with cruelty at the hands of the respondent-husband and her in-laws due to abnormal and cruel behaviour as would be evident from the evidence adduced on behalf of the appellant-wife, but the same has not been taken into consideration.

(ix) It has been contended that though the learned Family Judge has proceeded the matter while allowing the Original Suit No.548 of 2015, but he has failed to appreciate the evidences adduced on behalf of the appellant-wife as in the trial, the evidence has come that it was the respondent-husband who along with his family members has committed cruelty upon her by his cruel behaviour and act and even not come to see the appellant or her female child after birth.

(x) It has been contended that even accepting that a criminal case under section 498A of Indian Penal Code and under section 3 and 4 of Dowry Prohibition Act has been lodged against the appellant but as has been submitted on behalf of the learned counsel appearing for the appellant-wife that the said criminal case is still pending and, as such, merely because the case has been instituted under section 498 A of the Indian Penal Code that cannot prove the element of cruelty.

14. 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-husband:

15. Per contra, Mr. Anurag Kashyap, the learned counsel appearing for the respondent-husband has taken the following grounds:

- (i) There is no error in the impugned judgement as the learned Family Judge has considered the entire issue and on the basis of evidence laid by the parties has passed the order impugned as such same may not be interfered with.
- (ii) The respondent-husband has sought 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 oral and documentary evidence, has rightly held that the appellant-wife on her own wish has remained out of the matrimonial home off and on

and she had made allegation of demand of dowry against the respondent-husband and her in-laws in separate proceeding in different ways and, as such, has allowed the divorce petition by granting a decree for dissolution of marriage.

- (iii) It has been contended that the issue of desertion has been proved, since, the issue of desertion requires to be considered on the basis of the factum that if the wife has left the matrimonial house on her own and this fact has already been shown by the respondent in his evidence during trial on the basis of which the learned Family Judge has rightly held that the appellant-wife has deserted the respondent in the year 2011 without any reasonable excuse and since then she is continuing act of desertion for a period of four years before presentation of the suit.

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

Analysis:

17. We have heard the learned counsel appearing for the parties, gone through the impugned judgment as well as the Records, as also the testimonies of the witnesses and the materials available on record.

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

I. Whether the suit as is maintainable in its present form?

II. *Whether the plaintiff has got a valid cause of action for the suit?*

III. *Whether the marriage solemnized between the plaintiff and defendant is fit to be dissolved on the ground of cruelty?*

IV. *Whether the marriage solemnized between the plaintiff and defendant is fit to be dissolved on the ground of desertion?*

V. *Whether the plaintiff is entitled for the relief claimed?*

19. The learned Family Judge has considered the evidence adduced on behalf of the parties for deciding the issues involved in Original Suit No.548 of 2015.

20. 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.

21. During the trial, four witnesses have been examined on behalf of the respondent-husband who himself has been examined as PW1 before learned Family Court. He has also relied upon the documents which have been exhibited during the trial which are (i) certified copy of plaint of Misc. Case No.128 of 2018 (Ext-1) and (ii) Certified copy of FIR of Mahila PS Case No.10 of 2016, Jamshedpur (Ext-2).

22. In support of her contention, the respondent-wife (appellant herein) has also examined two witnesses including herself as DW2 and also produced documentary evidence which are - (i) documents related to MGM Hospital dated 08.11.2011 (Ext. A to A/1), and (ii) photocopy of written complain dated 01.02.2013 addressed to Mahila Helpline, Jamshedpur (Ext.-B).

23. In his examination on oath as PW1, the respondent-husband has narrated entire things as pleaded in the plaint about his marriage with the

respondent. He had stated on oath that his marriage was solemnized with the respondent on 27.04.2009 in accordance with Hindu rites and customs. He had stated that he was handicapped and after knowing this fact the appellant and her family members were agreed to give consent for the marriage and marriage was performed. He has further stated that the appellant-wife, since very inception, misbehaved with him as he is handicapped and refused to cohabit with him by saying that she would not accept any handicapped person as her husband. She used to threaten them to implicate in false criminal cases by committing suicide. He has stated that due to that reason, no physical relation was established for about six months after marriage and even the respondent wife (appellant herein) did not allow him to live as husband and wife. He narrated the incident of trying to commit suicide by the respondent wife (appellant herein) by drinking mosquito repellent as she did not like him. He has further deposed that after much persuasion she agreed to accept him as husband and thereafter out of the said wedlock one female child was born on 10.11.2010. He has further deposed that she hurled filthy language and abused him and his family members and started quarrelling on trivial issues. He has further deposed that when any female client visited in the Chamber of the respondent, she started quarreling on the basis of doubt. She insisted to live separately from her in-laws after birth of female child and started demanding Rs.10,000/- as monthly maintenance. When the said demand of the appellant-wife was not fulfilled she attempted to commit suicide by swallowing naphthalene balls. He has further deposed that when his father told the appellant to live separately in a rented house, she became furious and replied that she would not leave the matrimonial house rather they would have to leave the house. Thereafter, the

respondent wife (appellant herein) with her baby girl went to her *maike* in the month of September, 2011 and never returned back. He has further deposed that the father of the appellant-wife came to the Court and spread rumors among his colleagues that the respondent was having illicit relationship with another lady and for that reason he neglected his wife and child. He has stated that due to cruel behaviour of the appellant, he filed the divorce suit in which his wife appeared on 06.06.2016. But soon thereafter she lodged F.I.R. on 13.06.2016 under section 498A/34 IPC and 3/4 DP Act being Mahila PS (East Singhbhum) Case No.10 of 2016 against him and his family members.

In cross-examination, PW1 has admitted the factum of marriage and stated that since very inception, his wife did not like him and accept him as her husband. He has deposed that after much persuasion of his family members the appellant was agreed to live with him as wife. At para-11 he has admitted that one female child was born out of their wedlock but he could not remember her date of birth. He also admitted that the incident of drinking mosquito repellent by the appellant is true but he also did not recall the day, date and time of the said incident and he did not mention the said occurrence in his examination-in-chief on oath. At para-17 he has admitted that he has borne the expenditure of birth of the female child but the document thereof has not been produced in the Court. At para-28 he has admitted that he does not want to live with the appellant.

24. PW2-Ram Bihari Choudhary is the father of the respondent husband. He has stated in the same line and manner in which the respondent has stated in his examination-in-chief. He has stated about the marriage of his son with the appellant/defendant. He has stated that on 03.09.2011 due to the cruelty and threatening to commit suicide by his

daughter-in-law (the appellant) he advised his son to live separately upon which the appellant started quarrelling with him and she left the matrimonial house and went to her *maike* with her baby child and thereafter never returned back. He has stated that his son (the respondent) is also living separately from them. He has corroborated the statement of the respondent about filing of criminal case under section 498A against them.

In his cross-examination, at para-6 PW2 has stated that he did not inform about the incident of drinking mosquito repellent by the appellant either to police or to his society. At para-8, he has stated that he had no knowledge that he has any grand-daughter and he does not know her name but at para-11 he has admitted that his grand-daughter took birth at MGM Hospital on 10.11.2010. At para-9 he has stated that he does not recall the date and year on which he informed to the parents of the appellant about cruel behaviour of the appellant and quarrel with his son. At para-13 he has stated that he does not remember the date when the mother of the appellant told him over phone that her daughter will stay with her in-laws until the said house would be divided into two parts.

25. PW3 Virendra Prasad is the neighbor of the respondent/husband. He has stated that the appellant used to quarrel with the respondent as he is handicapped and within six months of the marriage, she attempted to commit suicide by drinking mosquito repellent. He has stated that the appellant used to quarrel with the respondent and her in-laws on trivial issues and denied to do the household work even to cook the food. He has stated that the appellant wanted to live separately in her matrimonial house and for that she forced her husband to ask his parents to leave the

matrimonial house and upon refusal she started quarrelling with them and left the matrimonial house on 03.09.2011 and since then she is residing in her *maike* with her baby child. He has corroborated the statement of filing a criminal case by the appellant against her in-laws.

In his cross-examination, PW3 has stated that he does not recall the date when the appellant had attempted to commit suicide by drinking mosquito repellent though he has admitted that distance between the respondent and his house is about 500 feet. He was unable to answer the question on putting a question as to how he came to know about the suicide when your house was 500 feet away. He has denied the fact that he had no knowledge as to whether the respondent-husband had told her in-laws about the quarrel. He has admitted the fact that he had no knowledge that how much did it cost when daughter of the respondent was born and who incurred the expenses. At para-10 he has admitted the fact of quarrel of the appellant with her father-in-law on 03.09.2011 as he went there for legal advice of his client, namely, Sambhu Prasad but he does not remember the case of the said client. He has further admitted at para-11 that the respondent is living separately from his parents in a house situated at Chaya Nagar Basti, Sitaram Dera but he had no knowledge that who was the landlord of the said house. He has admitted at para-13 that the appellant had lodged FIR for dowry demand at Sakchi Mahila PS being Sakchi Mahila PS Case No.10 of 2016 but he had no knowledge about the fact that the appellant had made a complaint in writing to Mahila Help Line, Jamshedpur Police on 01.02.2013 for demand of dowry.

26. PW4 Devendra Kumar is also a neighbour of the respondent. He has stated that the respondent used to quarrel with her husband and her in-

laws on trivial issues and even refused to cook food. He has corroborated the fact that the appellant attempted to commit suicide, wanted to live separately from her in-laws and on refusal she started quarrelling with her in-laws and went to her *mai*ke with her baby child and thereafter never returned back there. He has deposed that the appellant has lodged FIR against her husband and in-laws under section 498-A IPC.

During cross-examination, PW4 has admitted about the factum of marriage between the appellant and the respondent in the year 2009 but he had no knowledge that with whom the respondent was married. At para-3 he has admitted that on being informed by the father-in-law of the appellant that the appellant attempted to commit suicide by drinking mosquito repellent he went there and tried to save her life but he did not recall the date of said incident. He has also admitted that the matter was not reported to the police station but when he went to the place of occurrence at that time the appellant took the mosquito repellent in her hand. At para-4 of cross-examination, he has admitted that the father-in-law of the appellant had informed him about the fact that the appellant used to quarrel with her in-laws on trivial issues but he did not recall the date. He has created a new story that a Panchayati was held to resolve the dispute in which father and mother of the appellant had come in which both the parties were agreed to live peacefully. At para-6 he has stated that the daughter of the respondent was born on 10.11.2010 at MGM Hospital, Jamshedpur but he did not know how much expenses were incurred for the same. Again, in the same paragraph, he has stated that the respondent had told him about the expenses on birth of her daughter at the gate of hospital and thereafter he returned from there. At para-7 he has stated that he had no personal knowledge about the quarrel by the

appellant and it was informed to him by the father of the respondent. At para-9 he has stated that he had knowledge that the mother-in-law of the respondent always used to say over phone that until the said house would be divided into two parts, her daughter will not go to her in-laws' house but he did not recall the date or phone number. He had also no knowledge about the complaint made on 01.02.2013 by the appellant before Mahila Police Station.

27. It needs to mention herein that PW3 and PW4 are the neighbours of the respondent and they came forward in support of the contention of the respondent that it was the appellant-wife who herself treated the respondent with cruelty and deserted him for her own. But after scrutinizing the evidences, it is apparent that the father of the respondent has himself admitted that he did not inform about the incident of drinking mosquito repellent by the appellant either to police or to his society and, as such, their trustworthiness is doubtful.

28. DW1 is the mother of the appellant/wife. She has stated in her examination-in-chief on oath that the marriage of the appellant was solemnized with the respondent on 27.04.2009 as per Hindu rites and custom. She has stated that the respondent is a handicapped since birth and this fact was concealed by his parents at the time of settlement of marriage. She has further stated that dowry was given at the time of marriage. After the marriage the appellant gave birth to a baby child on 10.11.2011 at MGM Hospital, Jamshedpur but the respondent did not incur a single penny on her birth. She has deposed that after the birth of a baby child, the respondent and his parents started torturing the appellant and demanded Rs.10,00,000/- in cash as well as furniture as more dowry. She has deposed that father-in-law of the appellant used to behave her

with bad intention and her in-laws started torturing her physically as well as mentally for demand of dowry for which the appellant had made a complaint to Mahila Help Desk, Jamshedpur on 01.02.2013. Thereafter, her daughter lodged a FIR being Case No.10 of 2016 at Sakchi Mahila PS against her husband and in-laws under the provision of Dowry Prohibition Act. She has further deposed that she tried her level best to reconcile the dispute but the respondent/plaintiff did not agree and with an intention to marry with another girl he has filed a divorce suit whereas her daughter wants to live with him.

During cross-examination, DW1 has admitted that after the marriage when the appellant came to know about the fact of the respondent being handicapped, she did not regret for the same. She has stated that after the marriage till birth of baby child, the appellant was residing in her matrimonial house peacefully and she came to know about the torture meted upon her daughter only after birth of baby child but she did not make any complaint to the police station in this regard.

29. DW2 is the appellant herself. She has admitted the factum of marriage with the respondent on 27.04.2009 as per Hindu rites and custom. She had deposed that at the time of marriage her father gave Rs.3,70,000/- cash and one cheque of Gramin Bank, Bhilai Pahari Branch being No.072013 amounting to Rs.1,30,000/- to the respondent and his family along with other household articles. She has stated that she knew from before marriage about disablement of the respondent in his right hand but she was not aware that her husband was disabled in his right leg also and this fact was concealed at the time of marriage. She has further deposed that within six months of marriage the respondent and his family

members tried to kill her to drink mosquito repellent forcefully but after compromise the matter was settled and she started living there. She has deposed that she was leading a happy conjugal life with the respondent and out of the said wedlock she gave birth to a baby child. She has deposed that her husband and in-laws brutally assaulted her on the pretext of abortion thereafter she was admitted at MGM Hospital in support thereof the medical documents are exhibited as Annexure-A series. She has deposed that on 10.11.2011 she gave birth to a baby child, namely, Aarti Kumar @ Mithi @ Anushree but her husband or in-laws did not come there to see her or her baby child and no penny was incurred by them on her birth. Thereafter, her husband and in-laws started torturing her and demanding Rs.10 lakh cash for maintenance, good education and upbringing of the child and on non-fulfillment she was brutally assaulted by them. She has deposed that again her husband and in-laws have brutally assaulted and drove her out of the matrimonial house for which she made a complaint to Mahila Helpline Desk on 01.02.2013, the copy thereof is exhibited as Ext-B, thereafter they took back her to matrimonial house but again started torturing her for non-fulfilment of demand of dowry. She has deposed that her husband had brought her to her *maike* by saying that he would arrange a house on rent where they would continue their conjugal life peacefully. After some time, when the appellant asked the respondent about the rented house, he told her that he had filed a suit for divorce in the Court thereafter she was compelled to lodge a criminal case against him and his family members under section 498A/34 IPC on 13.06.2016 being G.R. Case No.1817 of 2016 which is pending in the Court of learned CJM. She has further deposed that she was compelled to file a case for maintenance against her husband which is pending. She has

further deposed that she wants to live with his husband but he never wanted to take her back to live with him.

During cross-examination, DW 2 has admitted the factum of marriage but she denied the fact that she refused to establish physical relationship with the respondent for about six months after the marriage. She has admitted at para-4 and 5 that her husband with the help of his father, sister-in-law (Bhabhi) and his sister forced her to drink mosquito repellent but she saved her life, thereafter her father came and took her for treatment but this incident was not informed to the police. She has stated that on the promise of fulfillment of Rs.10 lakhs by her father, her in-laws were agreed to keep her in matrimonial house. She has further admitted that on 11.08.2011 she was driven out of her matrimonial house after assault. She has further stated that since 08.11.2015 she is residing in her *maike* as her husband drove her from matrimonial house and she was compelled to sleep in severe cold night in the courtyard. At para-6 she has stated that her husband assured her that he would take her in a rented house and since the year 2015 there is no physical relationship between her and her husband as he never visited her. At para-7 she has denied that the documents produced by her with regard to treatment and application given on 01.02.2013 was forged one. She has denied that she wanted to abort the child and on refusal by her husband she started quarrelling with him and went to her *maike*. She had also denied the factum of being committing suicide, assault upon her father-in-law and the fact that she forced her husband to live separately from matrimonial house and demanded Rs.10,000/- cash for maintenance and on non-fulfillment she again attempted to commit suicide by swallowing naphthalene ball. At para-8 she has admitted that her husband had told her that her in-laws did

not allow her to live in matrimonial house and for the said reason her husband wanted to live with her in a rented house. At para-10 she has stated that it is not correct to say that since 01.09.2011 she was not living with her husband.

30. From scrutiny of the evidence adduced on behalf of the parties, it is evident that the appellant-wife was forced to leave her matrimonial house and it was the respondent-husband who after giving assurance to keep her separately in a rented house never took her with him and, thus, deserted her. It is also evident that after birth of the baby child no expenses were incurred by the respondent/husband or his family members as the respondent as PW1 himself has admitted that he does not know about the date of birth of her baby child. Further father of respondent/husband (PW2) has admitted that he does not know the name of his grand-daughter which shows that they never visited to see the baby child after her birth or incurred any expenditure on her birth and, thus, neglected to maintain them.

31. This Court while appreciating the argument advanced on behalf of the appellant-wife on the issue of perversity needs to refer herein the interpretation of the word “perverse” as has been interpreted by the Hon'ble Apex Court which means that there is no evidence or erroneous consideration of the evidence.

32. The Hon'ble Apex Court in *Arulvelu and Anr. vs. State [Represented by the Public Prosecutor] and Anr., (2009) 10 SCC 206* while elaborately discussing the word perverse has held that it is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if

the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law. Relevant paragraphs, i.e., paras-24, 25, 26 and 27 of the said judgment reads as under:

“24. The expression “perverse” has been dealt with in a number of cases. In Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501] this Court observed that the expression “perverse” means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.

25. In Parry's (Calcutta) Employees' Union v. Parry & Co. Ltd. [AIR 1966 Cal 31] the Court observed that “perverse finding” means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665 : AIR 1994 SC 1341] the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.

26. In M.S. Narayanagouda v. Girijamma [AIR 1977 Kant 58] the Court observed that any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough [(1878) 1 LR 1r 331] the Court observed that a “perverse verdict” may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

In Godfrey v. Godfrey [106 NW 814] the Court defined “perverse” as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.

27. The expression “perverse” has been defined by various dictionaries in the following manner:

1. Oxford Advanced Learner's Dictionary of Current English, 6th Edn.

“Perverse.—Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.”

2. *Longman Dictionary of Contemporary English, International Edn.*

Perverse.—Deliberately departing from what is normal and reasonable.

3. *The New Oxford Dictionary of English, 1998 Edn.*

Perverse.—Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

4. *The New Lexicon Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.)*

Perverse.—Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

5. *Stroud's Judicial Dictionary of Words & Phrases, 4th Edn.*

*“Perverse.—A perverse **verdict** may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.”*

33. Since in the present appeal, the impugned order/judgment has been challenged which has been passed on the ground of cruelty and desertion., therefore it would be apt to discuss herein the element of cruelty and desertion.

Issue of cruelty

34. 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.

35. 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.

36. 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."

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

38. 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.

39. 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".

40. It requires to refer herein that the Hon'ble Apex Court in *Joydeep Majumdar v. Bharti Jaiswal Majumdar, (2021) 3 SCC 742*, has observed that while judging whether the conduct is cruel or not, what has to be seen is whether that conduct, which is sustained over a period of time, renders the life of the spouse so miserable as to make it unreasonable to make one live with the other. The conduct may take the form of abusive or humiliating treatment, causing mental pain and anguish, torturing the spouse, etc. The conduct complained of must be "grave" and "weighty" and trivial irritations and normal wear and tear of marriage would not constitute mental cruelty as a ground for divorce.

41. Now adverting to the factual aspect, it is evident from the impugned judgment that the allegations specific to the ground of alleged cruelty has been made by the respondent-husband.

42. It is evident from the testimony of P.W.1 respondent/husband that he had stated the incident of drinking mosquito repellent by the appellant/wife but at the same time he failed to recall the day, date and time of the said incident and further he did not mention the said occurrence in his examination-in-chief on oath. At para-17 he has stated that he has borne the expenditure of birth of the female child but cogent document in support of the said has not been produced before the trial Court.

43. It has come in the statement of the father of the respondent appellant (P.W.2) that he had no knowledge that he has any grand-daughter and he does not know her name but at the same time at para-11 he has admitted that his grand-daughter took birth at MGM Hospital.

44. Further from perusal of the testimony of P.W.3, who is neighbor, it is evident that P.W.3 has stated that he does not recall the date when the

appellant/defendant had attempted to commit suicide by drinking mosquito repellent though he has admitted that distance between the respondent and his house is about 500 feet. He was unable to answer the question on putting a question as to how he came to know about the suicide when your house was 500 feet away.

45. P.W.4 at para-7 has stated that he had no personal knowledge about the quarrel by the appellant and it was informed to him by the father of the respondent.

46. Further P.W.3 and P.W.4 had come forward in support of the contention of the respondent /husband that it was the appellant-wife who herself treated the respondent with cruelty and deserted him for her own. But after appreciating the evidences, it is apparent that the father of the respondent has himself admitted that he did not inform about the incident of drinking mosquito repellent by the appellant either to police or to his society and, as such, trustworthiness of P.W.3 and P.W.4 are doubtful on this point.

47. Thus, from the statement of the aforesaid witnesses who have been examined on behalf of respondent husband the factum of attempt to commit suicide by the appellant/wife has not been corroborated and it has also admitted herein that the said incident has not been reported by the respondent or his family members.

48. After going through the evidence adduced on behalf of the parties, it is evident that after birth of the baby child no expenses were incurred by the respondent/husband or his family members as the respondent as P.W.1 himself has admitted that he does not know about the date of birth of her baby child. Further, father of respondent/husband (P.W.2) has admitted that he does not know the name of his grand-

daughter which shows that they never visited to see the baby child after her birth or incurred any expenditure on her birth and, thus, neglected to maintain them.

49. Further, D.W.1 herself has admitted that after the marriage when the appellant came to know about the fact of the respondent being handicapped, she did not regret for the same.

50. Further, it is evident that the appellant had deposed that within six months of marriage the respondent and his family members tried to kill her to drink mosquito repellent forcefully but after compromise the matter was settled and she started living there. She has deposed that she was leading a happy conjugal life with the respondent and out of the said wedlock she gave birth to a baby child. Further, she has specifically stated that she wants to live with his husband but he never wanted to take her back to live with him.

51. Thus, on scrutiny of the evidence adduced on behalf of both the parties it is evident that the learned Family Judge has not appreciated the fact that the appellant-wife is ready to live with her husband, i.e, the respondent herein, and the respondent-husband who meted cruelty upon the appellant-wife and compelled her to live in her *maike* and even not incurred any expenditure or visited to see her or the baby child, which also amounts to cruelty.

52. On the basis of the discussion made hereinabove and taking into the consideration the aforesaid settled position of law as also the factual aspect as discussed and referred hereinabove, is of the view that the learned Family Court has not appreciated the issue of cruelty in proper manner and the alleged act of cruelty is mere wear and tear and not

pertaining to element of cruelty coming under the fold of definition of the word “cruelty”.

Issue of Desertion

53. 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.

54. ***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.”

55. 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.

56. 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.

57. 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.

58. 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.

59. 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.

60. Recently also, the Hon'ble Apex Court in ***Debananda Tamuli vs. Kakumoni Katakya, (2022) 5 SCC 459*** has considered the definition of 'desertion' on the basis of the judgment rendered by the Hon'ble Apex Court in ***Lachman Utamchand Kirpalani v. Meena, AIR 1964 SC 40*** which has been consistently followed in several decisions of this Court. The law consistently laid down by this Court is that 'desertion' means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be *animus deserendi* on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home. 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."

61. This Court, on the premise of the interpretation of the word "desertion" has considered the evidences of the witnesses as has been

incorporated by the learned Court in the impugned judgment dated 07.10.2021.

62. It has come in the testimony of the D.W.2 that her husband and in-laws have brutally assaulted and drove her out of the matrimonial house for which she made a complaint to Mahila Helpline Desk on 01.02.2013, the copy thereof is exhibited as Ext-B, thereafter they took back her to matrimonial house but again started torturing her for non-fulfilment of demand of dowry. She has deposed that her husband had brought her to her *mai*ke by saying that he would arrange a house on rent where they would continue their conjugal life peacefully. After some time, when the appellant asked the respondent about the rented house, he told her that he had filed a suit for divorce in the Court.

63. It is also evident that the appellant-wife has deposed that she is still ready to live with the respondent-husband as she does not want divorce.

64. It requires to refer herein that the desertion has been defined that if either of the parties on its own has left the house without any compulsion or coercion, then only such type of separation will come under the fold of desertion.

65. It is evident from the interpretation of desertion that the desertion parting away from the matrimonial house will not amount to desertion rather reason of parting away amounts to desertion, i.e., if the wife on her own has left the matrimonial house then certainly it will come under the fold of desertion, but if the wife has been forced to leave her matrimonial house, in such circumstances parting away from the matrimonial house will not come under the fold of desertion.

66. Herein, as per the facts of the case the appellant-wife, after being assaulted by her husband and in-laws, was compelled to leave her in-laws house and made a complaint before Mahila Help Desk due to non-fulfillment of demand of dowry and thereafter when the respondent-husband did not take her back to her matrimonial house to lead a conjugal life, she was compelled to lodge a case against him and her in-laws under the provision of Dowry Prohibition Act. Despite this, during her cross-examination she has shown her willingness to live with her husband to save her conjugal life but the respondent never tried to take her back either to her matrimonial house or in a rented house which shows that it is the respondent-husband who deserted the appellant-wife and compelled her to live in her *maike*.

67. This Court, taking into consideration the fact that the respondent-husband has failed in proving that the appellant-wife herself has left the matrimonial house on her own, is of the opinion that the learned Family Judge has erred in coming to the conclusion that the factum of the desertion has well been proved, which in our considered view suffers from an error.

68. This Court is of the view based upon the consideration that the word desertion as has been interpreted by the Supreme Court that all types of separation cannot come under the fold of desertion as has been taken into consideration by the learned Family Judge in the facts of the present case, rather the desertion is required to be proved and the same can only be said to be proved if evidence to that effect has come that it is the wife, who on her own will, has left the matrimonial house or the house of the husband. The wife if left the house of the husband on the ground of alleged torture and cruelty, then such type of separation will not come under the

definition of desertion, but the learned Family Judge has not taken into consideration the aforesaid aspect of the matter.

69. This Court is of the view that in deciding the issue no. III of cruelty and issue no. IV of desertion, the learned Family Judge has committed error in scrutinizing the evidence adduced on behalf of the parties as the appellant-wife as D.W.2 has categorically stated about the factum of cruelty and torture meted out to her at the hands of her respondent-husband and her in-laws and remained consistent during her cross-examination while saying that she was compelled to leave the matrimonial house and, as such, the same cannot come under the fold of desertion as per the judgment rendered by the Hon'ble Apex Court which has been quoted and referred hereinabove.

70. This Court, therefore, is of the view that it is a case where consideration is to be required to be there on the ground of perversity and, according to our considered view, the judgment impugned cannot be said to be well based upon the consideration of the element of cruelty and desertion as per the interpretation made by the Hon'ble Supreme Court with respect to the element of cruelty and desertion in the judgment referred hereinabove.

71. 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 and decree has found therefrom that the issue of element of cruelty and desertion by the appellant-wife has not been properly considered by the learned Family Judge.

72. This Court, on consideration of the aforesaid discussion, is of the view that the impugned judgment and decree passed by the learned Family

Judge is coming under the fold of the perversity, since, the conscious consideration has not been made of the evidences, as would be evident from the impugned judgment.

73. This Court, therefore, is of the view that the judgment dated 07.10.2021 and the decree dated 01.11.2021 passed in Original Suit No. 548 of 2015 by the learned Family Judge needs to be interfered with and, accordingly, it is quashed and set aside.

74. In the result, instant First Appeal is hereby allowed.

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

(Sujit Narayan Prasad, J.)

I Agree.

(Arun Kumar Rai J.)

(Arun Kumar Rai J.)

Sudhir
Dated: 18/12/2025
Jharkhand High Court, Ranchi
AFR

Uploaded on 19/12/2025