

IN THE HIGH COURT OF JHARKHAND AT RANCHI

First Appeal No.12 of 2022

Shakuntala Devi, aged about 49 years, wife of Mahabir Prasad, resident of Village-Shivpuri, PO + PS+District-Latehar **Appellant**

Versus

Mahabir Prasad, aged about 52 years, son of Sitaram Mahto resident of village Shivpuri, PO+PS+District-Latehar, At present R/o-Thana Chowk, Latehar, PS + District-Latehar ... **Respondent**

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

For the Appellant : Mr. Avishek Prasad, Advocate

For the Respondent : Mr. Dilip Kumar Prasad, Advocate

C.A.V on 16.04.2025

Pronounced on 30/04/2025

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 21.12.2021 and the decree dated 06.01.2022 passed in Original Suit No.24 of 2017 by the learned Principal Judge, Family Court, Latehar (in short-Family Judge) whereby and whereunder the marriage between the appellant-wife, namely, Shakuntala Devi and the respondent-husband, namely, Mahabir Prasad has been dissolved by a decree of divorce on contest with effect from the date of decree.

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

- (i) The marriage of the plaintiff, namely, Mahabir Prasad was solemnized with the defendant, namely, Shakuntla Devi in Jagarnath Mandir, Ranchi in the year 1987 as per Hindu Rites and Rituals. Both parties are administered by Hindu Law and Hindu Marriage Act. After marriage defendant lived in her matrimonial home with her husband/plaintiff and gave birth to two sons and one daughter. Out of them only two sons namely, Anmol Kumar, aged about 22 years and Ravi Kumar, aged about 20 years are alive. In order to meet out expenses of his family affairs and education of his

children, plaintiff has opened and running a shop of electronic gadgets and goods in a rented small room. Nature and behavior of his wife/defendant became changed about the year 2012 towards plaintiff. She started abusing him blaming illicit relationship with another woman. She frequently stormed into his shop, vandalized and ransacked at all the working hours. She excruciating mental pain compelled him to leave his house and take shelter in a rented house about 4 years ago.

- (ii) In the year 2015 despite the petitioner equanimity and stoical tolerance she persisted in vandalizing the shop, lowering his prestige in society and sharp decline of his business. He was forced to made complain to the Mahila Police Station but it was arrived at cryptic and iconic by the S.I. of Mahila P.S. Thereafter, on several occasions during last 4 years defendant lodged several complaints against her husband before authorities but no positive out turn has come out since it was made on false basis.
- (iii) Out of such complaints, one complaint petition dated 02.12.2016 was filed by the defendant to the D.C., it is obvious that the plaintiff was forced to desert the society for 2 years until the condition remains the same which is appearing from the letter dated 08.01.2017 of the defendant sent to the Mahila Kalyan Ayog, Ranchi and complaint petition dated 13.01.2017 was sent by her to the Mukhya Mantri Jansanwad Kendra, Ranchi. Plaintiff when could not bear torture of his wife he filed a Complaint Case in the Court of Learned C.J.M, Latehar on 15.05.2015 registered as Complaint Case No. 162/2015, under sections 323, 324, 504, 506 and 380 of I.P.C which was sent to the concerned P.S. for investigation under the provisions of section 156 (3) of Cr.P.C.
- (iv) In order to resolve their dispute a 'Panchayati' of respectable persons in locality was convened on 29.10.2017 but

defendant never appeared before the 'Panchayati' and all efforts went in vain. Marital status between both the parties has become collapsed and conjugal relationship has been irretrievably broken. The defendant has withdrawn huge amount from joint account with her husband/plaintiff.

3. It is evident from the factual aspect as narrated hereinabove that the marriage in between the appellant and the respondent, the wife and the husband, respectively was solemnized sometime in the year 1987 as per Hindu rites and rituals. Out of the said wedlock two sons and one daughter were born to the couple out of whom only two sons are alive. Thereafter, some dispute arose in between the parties which ultimately lead to filing of several cases against each other and finally a suit under sections 13(1) (i-b) of the Hindu Marriage Act, 1956 has been filed by the husband for dissolution of their marriage on the ground of cruelty and desertion.

4. In the divorce suit, the appellant-wife has appeared and filed her written statement denying all the allegations levelled against her by her husband. In the written statement she alleged that it is the respondent-husband who himself deserted her and her two sons. It is alleged that her husband is keeping concubine and living with her in another place. It is further alleged that the respondent-husband has not cared her or her two sons and she is facing difficulty to survive with her two sons.

5. Altogether five witnesses have been examined on behalf of the respondent-husband. The husband himself has been examined as PW1.

6. The appellant-wife herself has examined as DW1 and certain documents have been exhibited on behalf of both the parties.

7. The learned Family Court, Latehar has formulated four issues, one of the issues is as to whether the defendant has treated her husband/plaintiff with cruelty. The issues have been answered in favour of the respondent-husband and accordingly, the judgment of dissolution of marriage has been passed and decree for the same has been prepared in favour of the respondent-husband. The respondent-husband was directed to pay an amount of Rs.15,000/- per month as maintenance to the appellant-wife.

8. The said judgment and decree have been challenged by the wife by filing the instant appeal.

Argument on behalf of the appellant-wife:

9. On behalf of the appellant-wife, the following grounds have been taken to assail the impugned judgment:

(i) The suit although has been filed on the ground of cruelty but no substantive evidence has come rather the material has come to make out the ground for cruelty and in absence thereof the ground of cruelty which has been taken as a ground for dissolution of marriage has been accepted and based upon that judgment for dissolution of marriage of the parties has been passed.

(ii) The cruelty is to be established by the party by taking the ground of cruelty for the purpose of dissolution of marriage by making specific pleadings in the plaint, but in the instant case if the pleadings of the husband will be taken into consideration which is available on record that it would be evident that the sole ground has been taken of creating disturbances in the shop owned by the husband, the plaintiff, which has been taken as a ground of cruelty.

(iii) If the deposition of the husband will be taken in to consideration it would be evident that both the sons of the parties, who are aged about 20 years and 22 years, have been said to create the disturbances in the shop and as per the respondent-husband, that due to the aforesaid occurrence said to be the sole occurrence, the social dignity of the husband has ruined.

(iv) It has been contended that if as per the version of the husband itself, the allegation of creating disturbances in the shop owned by the husband is upon both the sons, then how can the same be taken as a ground of cruelty said to be committed by the appellant-wife herein. But the learned Family Judge, Latehar has not appreciated the aforesaid aspect of the matter and even though there is no version of the appellant regarding commission of cruelty said to be committed by the wife which is the sole occurrence rather it was committed by the sons of the parties herein even then the said has been treated to be cruelty meted out by the wife to the husband and

on the said ground, a decree for divorce has been granted by the learned Family Judge.

(v) The contention has been raised by referring the impugned judgment that the ground of living separately since the year 2013 has also been taken for consideration of granting decree for divorce even though there is no ground of desertion has been taken for dissolution of their marriage.

10. The learned counsel based upon the aforesaid ground has submitted that the impugned judgment therefore suffers from error and , as such, not sustainable in the eyes of law.

Argument on behalf of the respondent-husband:

11. Mr. Dilip Kumar Prasad, the learned counsel appearing for the respondent-husband has defended the impugned judgment on the following grounds

(i) It has been submitted that there is no error in the impugned judgment, since, the learned Family Judge by taking into consideration the fact about the behaviour of the appellant-wife of poisoning the mind of two sons also amounts to cruelty and the same has been taken as a ground for dissolution of marriage of the parties, hence, the judgment impugned cannot be said to suffer from an error.

(ii) The ground has been taken by referring the testimony of the appellant as was recorded in the proceeding before the learned Family Judge wherein the ground of keeping concubine has been taken which has also been taken a ground for dissolution of marriage.

(iii) It has been submitted that the issue of concubine, although, has been taken by way of the evidence and, hence, the same has also been taken a ground for passing a decree of divorce and the same cannot be said to suffer from an error.

(iv) The submission has been made that the learned Family Judge has also taken into consideration the fact that both the parties have been living separately since the year 2013 and if the same has been

taken into consideration for the purpose of granting a decree of divorce the same cannot be said to suffer from an error.

12. The learned counsel appearing for the respondent-husband, based upon the aforesaid grounds, has submitted that the impugned judgment therefore needs not to interfere with.

Analysis:

13. We have heard the learned counsels appearing for the parties, gone through the Trial Court Records, as also the impugned judgment, the testimonies of the witnesses and the documents exhibited therein.

14. This Court before considering the legality and propriety in the impugned judgment needs to refer herein that two issues have been formulated by the learned Court as to whether the factum of cruelty is available on the basis of the pleadings made or not can be said to be the proper consideration based upon the testimony available before the learned Family Judge, but before consideration of the aforesaid fact it needs to refer herein the admitted fact related to the pleadings.

15. The ground of divorce has been taken in the pleadings of cruelty and that is the reason the application was filed under section 13(1) (i-b) of the Hindu Marriage Act, 1955 which speaks of dissolution of marriage upon on the ground of cruelty. The ground has been taken in the pleading, particularly, at paragraph no.11 of the Original Suit No.24 of 2017 wherein it has been stated that the appellant-wife has come to the shop of the respondent-husband and created disturbances in public ruined social status of the husband. It is further evident from the pleadings as available in the plaint that save and except the aforesaid ground no other ground has been taken.

16. The proceeding commenced. The appellant-wife appeared in the proceeding before the Family Court and filed a written statement denying the same.

17. The evidences on behalf of both the parties have been recorded. The evidence of the respondent-husband who has been examined as PW1 has been recorded during the trial.

18. It is evident from the evidence of the husband as recorded, particularly, paragraph nos.8, 10, 11 and 18, wherein he has admitted that

the appellant-wife has poisoned the mind of their two adult sons who have created disturbances in the shop of the respondent-husband ruining social status.

19. For ready reference, the statements to the aforesaid effect made in the evidence of the respondent-husband on oath is being referred herein for better appreciation :

“8. यह कि इसके बाद भी जब मैंने विपक्षी के व्यवहार और कृत्यों का कोई जवाब नहीं दिया तो मेरे दोनों लड़को को विपक्षी ने मेरे विरुद्ध उकसाना शुरू कर दिया तथा इसके बाद मेरे बच्चे व विपक्षी मुझे घर में तथा घर के बाहर मारपीट भी करने लगे।

9. यह कि वर्ष 2013 में विपक्षी व मेरे दोनों बालिग लड़को ने मुझे मारपीट कर मेरे घर के बाहर निकाल दिया, जिसके बाद से मैं विपक्षी व अपने बच्चों के व्यवहार व कृत से मानसिक व शारीरिक रूप से प्रताड़ित होकर मजबुरन इंस्पेक्टर बंगला, लातेहार के पीछे, थाना चौक, ग्राम, पोस्ट, थाना व जिला-लातेहार में एक एस्बेस्टस का छोटा सा मकान किराया पर लेकर रहने लगा।

10. यह कि इसके बाद भी विपक्षी दोनों लड़कों को लेकर बराबर थाना चौक स्थित मेरे दुकान पर आकर मुझे गाली-गलौज करने लगी, परन्तु जब वे मुझे व ग्राहको को गाली-गलौज करते थे तो मैं अपने दुकान को किसी व्यक्ति के भरोसे या बंद कर वहां से चला जाता था, जिसके कारण समाज में मेरी प्रतिष्ठा व दुकान के शाख में तेजी से गिरावट हो गया तथा मेरा व्यापार घाटे में जमते लगा

11. यह कि दिनांक-14.05.2015 को विपक्षी मेरे दोनों लड़को को लेकर थाना चौक स्थित मेरे दुकान पर आकर मुझे गाली-गलौज करने लगे तथा जब मैंने उसका विरोध किया तो वे लोग मुझे दुकान में ही मारपीट करने लगे तो मैं वहां से जाने के उपरान्त विपक्षी व दोनों लड़को के द्वारा मेरे दुकान में बुरी तरह से तोड़फोड़ किया गया दुकान के काउंटर में रखे रूपया व पैसा को वे लोग निकाल कर चल दिए थे इस घटना को लेकर मैंने दिनांक-15.05.2015 को मुख्य न्यायिक दण्डाधिकारी, लातेहार के न्यायालय में शिकायत वाद संख्या-162/15 के माध्यम से एक वाद भी दाखिल किया था जिसे न्यायालय के द्वारा दण्ड प्रक्रिया संहिता की धारा 156 (3) के तहत थाना को भेज दिया गया था, परन्तु थाना में दोनों पक्षों को बुलाकर मामले को सुलह करा दिया गया था।

18. यह कि मामला न्यायालय में चल रहा है फिर भी दिनांक-04.11. 2018 शाम लगभग 5:30 बजे विपक्षी व मेरे बेटे अनमोल कुमार दुकान में आकर भद्दी-भद्दी गाली और धमकी देते रहे यह सिलसिला लगातार दिनांक-05.11.2018, दिनांक-06.11.2018, दिनांक-07.11.2018 व दिनांक-08.11.2018 को जारी रखा इस दौरान विपक्षी ग्राहको से भी उलझती रही जिसका सी० सी० टी० भी का फुटेज एवं विडीयो रिकॉर्डिंग व कॉल रिकॉर्डिंग उपलब्ध है जिसे सीडी के माध्यम से न्यायालय में समर्पित किया जा रहा है।“

20. The evidence of the appellant-wife has also been recorded. In her evidence, the wife has deposed about the factum of keeping the

concubine by the husband. The factum of keeping the concubine although has been tried to be dilated by putting question in the cross-examination. The learned Family Judge has passed the judgment for dissolution of marriage on the basis of the statement recorded in course of evidence of the parties by accepting the cruelty as has been pleaded in the plaint which is the subject matter of the instant appeal.

21. The ground for seeking dissolution of marriage, as per the pleading made in the plaint, is only the cruelty.

22. The cruelty although has not been defined under the Hindu Marriage Act rather the same 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.

23. 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 husband and his parents demanded dowry. The Hon'ble Apex Court emphasized that "cruelty" can have no fixed definition.

24. 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."

25. 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."

26. 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.

27. 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 hallucination 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”.

28. 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.

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

30. It is, thus, evident that the Hon’ble Apex Court in the recent judgment passed in ***Joydeep Majumdar v. Bharti Jaiswal Majumdar*** (supra) has been pleased to lay down 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.

31. However, in course of argument, the learned counsel appearing for the appellant-wife has submitted that the learned Family Court has also taken into consideration the factum of keeping the concubine by the husband which has also been taken as a ground for divorce.

32. The emphasis of argument is that when such was not the plea taken in the plaint, then it could not have been made basis of passing the judgment of decree of divorce.

33. This Court has considered the said submission and for the aforesaid purpose has also considered the pleading made in the plaint wherefrom it is evident that the fact about keeping the concubine has not been taken as a ground, however, the learned Family Judge by taking note of the evidence of wife has taken the same a ground for keeping concubine. The learned Family Judge has also taken the ground of desertion by making reference of the parties living separately since the year 2013.

34. The law is well settled that the original Court having jurisdiction to adjudicate is to confine itself with the pleadings without deviating therefrom otherwise the same is principle of sticking the statement made in the pleadings as already settled by the Hon’ble Apex Court in the case of **“Akella Lalitha v. Konda Hanumantha Rao & Anr.”** reported in **2022 SCC OnLine SC 928**, for ready reference the relevant part of the said judgment is being quoted hereunder as:

“17. In the case of “Messrs. Trojan & Co. Ltd. Vs. Rm.N.N. Nagappa Chettiar” AIR 1953 SC 235, this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under:-

“It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case.”

18. In the case of “Bharat Amratlal Kothari & Anr. Vs. Dosukhan Samadkhan Sindhi & Ors.” AIR 2010 SC 475 held:

"Though the Court has very wide discretion in granting relief, the Court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner."

35. This Court has considered the testimony of the respondent-husband herein and found, particularly, from paragraph nos.8 and 9 as referred herein above, that in order to prove the element of cruelty the evidence as has been given by him that the appellant-wife has poisoned the mind of two adult sons who had created disturbances in the shop owned by the husband leading to mental trauma and social assassination amounting to cruelty which has been accepted to be cruelty by the learned trial Judge.

36. It is, thus, evident from the evidence of the husband whatever disturbances which has been taken as a ground to substantiate the element of cruelty said to be committed by the husband is by two sons.

37. The cruelty which has been interpreted by the Hon’ble Apex Court in the judgment referred hereinabove clarifies the issue of cruelty which is to be taken into consideration for the purpose of taking the ground for dissolution of marriage. The individual attributability is to be there upon either of the parties for the purpose of considering the element of cruelty for taking the ground for dissolution of marriage.

38. The evidence which has been laid by the husband has not come out with a specific case by taking the instance of committing cruelty upon him save and except the aforesaid version as quoted and referred hereinabove.

39. The learned Family Judge has considered the aforesaid aspect of the matter as cruelty said to be committed by the wife without taking into consideration the testimony of the husband even though he has not stated in specific term of commission of cruelty by the wife upon him.

40. The learned Family Judge has also taken into consideration the issue of desertion, since, he has made an observation by taking a ground that both the wife and husband have been living separately since the year 2013.

41. There is no evidence to that effect and it cannot be, since, the ground of divorce is not based upon the issue of desertion.

42. We are exercising the power of appeal and the settled position of law which require to be 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.

43. This Court while appreciating the argument advanced on behalf of the parties 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. 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.”

44. This Court has considered the judgment passed by the learned Family Judge on the issue of perversity, since, perversity has been interpreted by the Hon’ble Apex Court that if any material fact even though produced before the concerned adjudicator if not being considered or erroneously been considered then the same will under the fold of perversity.

45. Herein, as per the pleading the ground of cruelty has been taken for dissolution of the marriage. The single instance of committing disturbances in the shop owned by the husband leading to social assassination of the present respondent-husband and also mental trauma has been taken as a ground for cruelty, but as per the evidence laid by the husband, no specific plea, in support of such statement as has been pleaded in the plaint to substantiate the element of cruelty has been taken save and except the statement, in the evidence, that the appellant-wife has poisoned two sons, both are major, who have created disturbances in the shop owned by the husband.

46. The learned trial Court has found the said statement to be an element of cruelty even though no specific attributability of commission

of cruelty has been alleged to be there in the evidence of the husband but that has been accepted to be there by the learned trial Judge, in absence of any evidence. Even accepting the statement as has been made by the husband as recorded in the evidence that the wife has poisoned the mind of two sons which also clarifies that even the husband is admitting the fact that the disturbance was created in the shop by the sons and not by the wife. However, allegation of poisoning of mind of sons has been made which has been accepted by the learned Family Judge to be an instance of cruelty.

47. This Court is of the view that the aforesaid consideration as has been given by the learned Family Judge cannot be said to be proper since cruelty is to be taken into consideration at the end of the wife and if anything has been committed by the sons, it is by the sons and the same cannot be attributed upon the wife to have the ground of cruelty for the purpose of divorce.

48. Further, the ground of desertion has also been taken by making an observation that both the husband and wife have been living separately since the year 2013.

49. The definition of desertion is required to be referred herein 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.

50. 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.”

51. This Court, after going through the judgment in entirety, has found that no such consideration has been given in order to come to the conclusion of the ground of desertion rather simplicitor it has been said that the husband and wife are living separately since the year 2017.

52. This Court is of the view based upon the consideration that the word desertion as has been interpreted by the Hon'ble Apex 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.

53. 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 as per the interpretation made by the Hon'ble Apex Court with respect to the element of cruelty in the judgment referred hereinabove.

54. This Court, therefore, is of the view that the impugned judgment cannot be said to be passed on proper consideration of the ground of divorce, i.e., the element of cruelty. As such, the impugned judgment needs interference and, accordingly, the judgment dated 21.12.2021 and the decree dated 06.01.2022 passed in Original Suit No.24 of 2017 by the learned Principal Judge, Family Court, Latehar is hereby quashed and set aside.

55. Consequently, the matter is remitted back to the learned Family Judge for consideration of the matter afresh.

56. In the result, First Appeal No.12 of 2022 is allowed.

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

(Sujit Narayan Prasad, J.)

I Agree.

(Rajesh Kumar, J.)

(Rajesh Kumar, J.)

Sudhir
Dated: 30/04/2025
Jharkhand High Court, Ranchi
AFR