



CGHC010406442023

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on 08.07.2026

Judgment pronounced on 24.09.2026

Judgment uploaded on 24.09.2026

FA (MAT) No. 335 of 2023

Smt. Rajji Kaur @ Rajni W/o Jasmeet Singh Makkad D/o Shri Uttam Singh Tuteja aged about 30 years R/o Ward No. 14, Pithoura, Thana and Tehsil- Pithoura, District Mahasamund (C.G.)

... **Appellant**

versus

Jasmeet Singh Makkad S/o Shri Surendra Singh Makkad, aged about 33 years Caste- Sikh, R/o In front of Uttam Cycle Stores, Station Road, Mahasamund, Tehsil and District Mahasamund (C.G.)

... **Respondent**

For appellant : Ms. Kanchan Kalwani, Advocate

For Respondent : Mr. Navin Shukla, Advocate

DB: Hon'ble Shri Justice Parth Prateem Sahu

Hon'ble Shri Justice Sachin Singh Rajput

Per Sachin Singh Rajput, J

This is an appeal by the appellant/wife against the judgment and decree dated 07.11.2023 passed by learned Family Court, Mahasamund, CG in Civil Suit No. 50-A/2021 dissolving the marriage between the parties.

2. **Case of the respondent/husband in short:** His marriage with appellant/wife was solemnized on 10.12.2011 in a Gurudwara situated at Mahasamund as per the Hindu rites and rituals prevailing in the society, and out of their wedlock a son was born who at the time of instituting the suit was aged about 8 years. After some

months having passed by, she started picking up disputes over trivial matters and also did not pay respect to her in-laws. She did not spend much time with him after marriage and in every 15 days she used to visit her parents' house, and that whenever she returned to his house on being insisted for, her quarrelsome attitude did not cease at the cost of peace and tranquility in the family. All efforts to make her understand went in vain. This went on relentlessly. Six months after marriage when she went to her parents' house, she did not back for a long period of three months in spite of his best efforts. Baseless excuses were given by her for not being back. Once the aunt of appellant/wife brought her back to his house and sought for being excused for her acts. After staying over there for some time, she again started acting as earlier and 2-3 months thereafter she again left for her parents' house hurling a threat of implicating him and his family members in a false case. In a social meeting held in a Gurudwara at his call on 09.09.2012 the appellant/wife was asked to live peacefully with him and would not create any disturbance in the family, and if anything to the contrary was done, she herself would be responsible for that. Pursuant to this lesson from Gurudwara Head, she came back to his house and lived with him for nearly one and half year, but her attitude during this period did not exhibit any improvement. She always told him that she was with them not out of her sweet will but in the honour of the words given at Gurudwara. After birth of the child, her attitude worsened and was always in the mood of creating a scene. She also pressurized him to live at her parents' house, and that being educated cannot live in his family as she was not needing him. All this made him mentally unstable. Mother of the appellant/wife was instrumental in adding fuel to fire, which made the appellant/wife more furious successively. She did not follow the religious norms and was also in the habit of breaking the fast kept on *Karawachouth* in between saying that since she did not want to live with him, what benefit the fast would fetch. This conduct of the appellant/wife has brought disrepute to their status in the society. If put succinctly, the appellant/wife is a woman of promiscuity, disrespectful to her in-laws and to the social norms governing the society, and has developed a habit of

somehow harassing him and his parents. She also lodged a report for an offence under Section 498-A IPC, and sought maintenance by filing an application for that, and this conduct on her part also amounts to cruelty to him. In a case relating to Domestic Violence a compromise was arrived at by them, and pursuant to that she lived with him for about nine months. However, on 03.07.2018 she again left for her parents' house without any reasonable excuse and is living there since then. Domestic violence related matter is again said to be filed by her.

3. In his evidence, the respondent/husband has admitted that the appellant/wife was always persistent in visiting her maternal home and she did not want to live in her matrimonial home. Over this, she also was in the habit of picking-up quarrel with his parents, brother and sister. Not only this, the appellant/wife was also pressurizing him to live in her parental house. According to the respondent/husband, the appellant/wife was not even observing the sacramental rituals being performed in his family and also shown disrespectful attitude to his parents. The respondent/husband has further admitted that the appellant/wife had also instituted a case against him and his family members under section 498-A I.P.C. and thus caused cruelty to him.

4. **Case of appellant/wife in short:** Appellant/wife denied that she ever misbehaved or disrespected her in-laws in any manner whatsoever and thus created tension or discord in her matrimonial home. She did not leave her matrimonial home or stayed at her parental home without any sufficient cause. There is a plain denial that she was unwilling to maintain a peaceful matrimonial relationship or that she refused to cooperate with the respondent/husband, rather she herself was subjected to physical and mental cruelty on account of dowry demands, and was abused and assaulted by him and his family members, which compelled her to seek shelter at her parental home. She has stated that with the intervention of relatives and elderly persons, a settlement was arrived at on 09.09.2012, pursuant to which she returned to her matrimonial home and continued to reside there for about one and a half years. She has admitted that a male child

was born from the wedlock on 06.08.2013. The allegations that she was quarrelsome, extravagant, disrespectful, unwilling to follow family or religious customs, desirous of living separately, or accustomed to threatening the respondent/husband and his family with false cases has been straightaway denied. She has stated that such allegations have been made falsely and only to create grounds for seeking dissolution of the marriage. According to her, after the birth of the child she was subjected to dowry-related demands, physical assault and mental cruelty. She is also stated to have initiated legal proceedings under Section 498-A IPC and also for maintenance. She has stated that certain earlier proceedings were disposed of pursuant to a settlement between the parties, but after the settlement and on her return to the matrimonial home, the harassment and dowry demands again started. She has stated that on 02.07.2018 she was assaulted by the respondent/husband and his family members and was even confined in a room, and somehow she managed to get out and reach the Gurudwara, from where she telephonically informed her parents and thereafter approached the police. She is stated to have sustained injuries and received medical treatment for that. She is denied to have deserted the respondent/husband on 03.07.2018 or that she has been living separately out of her own free will without sufficient cause. She rather has stated that she was residing at her parental home for her safety and because of the alleged cruelty and dowry harassment suffered at the matrimonial home. The allegation that there is no possibility of reconciliation between the parties and that dissolution of the marriage solemnized on 10.12.2011 is necessary, is also denied.

5. In her evidence she has stated that she is always ready and willing to live with the respondent/husband so that her future is not put at stake. She has stated that when showed her willingness to live with him, he and his family members asked her and her parents to sign a paper and only then he would keep her. The respondent/husband always asked her to bring money from her parents which was spent at the time of birth of her child. She has stated that demand of dowry including cash of Rs. 2 lacs from her husband and that her mother-in-law assaulted her and

caused injury on her head. She is stated to have utmost love and affection towards her husband, the in-laws and the son, and she always has been mindful to her duties towards her in-laws. On 02.07.2018 when she was cooking, her mother-in-law and sister-in-law (*Devrani*) came there, asked her to get money from her father and on her refusal to do so they assaulted her with fist-blows. Meanwhile, her husband came and dragged her to the room by hair, confined her there and did not provide her food. The assault by her husband led to fracture of her tooth and she took treatment for that. She has reiterated that on account of immense love and affection towards her husband, she is ready and willing to live with him and thus discharge the matrimonial obligations.

6. On the basis of these pleadings of the parties, the issues with regarding to cruelty, desertion on the part of the appellant/wife and that of his entitlement for a decree of divorce have been decided in positive, and consequently the suit filed by the respondent/husband has been decreed in his favour. Hence this appeal by the appellant/wife.

7. Learned counsel for the appellant/wife submits that the learned Family Court has ignored the material available on record and has erroneously granted decree of divorce in favour of the respondent/husband. She submits that the appellant/wife was living in her parents' house just because of the tortuous attitude of the respondent/husband and not out of her sweet will, and for that the finding of the Family Court in this regard is perverse and liable to be set aside. She further submits that the findings recorded by learned Family Court are not based on facts and circumstances of the case and therefore liable to be struck down. She submits that by virtue of utmost love and affection, the appellant/wife has consistently stated that she had been always ready and willing to live in the company of the respondent/husband. She submits that learned Family Court committed a gross illegality in believing the version of the respondent/husband reading between the lines. According to her, the respondent/husband has examined himself and one other witness but they both have utterly failed to prove his case. She further submits

that the respondent/husband once assaulted her to the extent that her tooth got fractured, which shows his cruel mental frame. In support of his submissions, reliance is placed on the decision of the Supreme Court in the matter of **Adhyatma Bhattar Alwar vs. Adhyatma Bhattar Sri Devi** reported in **(2002) 1 SCC 308** and on a decision of High Court of Delhi in the matter of **Kamlesh Sharma Vs. Yogendra Kumar Sharma** reported in **2023 SCC OnLine Del 4779**.

8. On the other hand, counsel for the respondent/husband supports the impugned judgment and decree and submits that little after marriage, the appellant/wife started mentally harassing him by several possible ways including frequent squabbling, quarrel with him and also with his family members, and deserted him without any reasonable cause. He submits that keeping in view all these things, learned Family Court granted decree of divorce in his favour, and therefore, no interference with the well reasoned conclusion recorded in the impugned judgment is called for. Appeal thus is prayed to be dismissed. In support of his submission, reliance is placed on the decisions of the Supreme Court in the matter of **Narendra vs. K. Meena** reported in **(2016) 9 SCC 455** and that of this Court in the matter of **FAM No. 94 of 2013 (Dr. Ramkeshwar Singh vs. Smt. Sheela Singh @ Madhu Singh)** delivered on **13.07.2022**. **Debananda Tamuli vs. Smti Kakumoni Katakya** reported in **2022 LiveLaw (SC) 167**, in the matter of **Rani Narasimha Sastry vs. Rani Suneela Rani** rendered on **19.01.2019** in **Civil Appeal No. 8871 of 2019**.

9. We have considered the rival submissions, the pleadings of the parties, the evidence referred to before us as also the decisions relied upon by learned counsel for the parties. It is an admitted fact that the marriage between the parties was solemnized on **10.12.2011** and a male child was born out of the wedlock on **06.08.2013**. The record shows that pursuant to the decision taken in the meeting held in the Gurudwara, the appellant/wife returned to the matrimonial home and lived there for about one and a half year.

10. The first question which falls for consideration is whether the conduct attributed to the appellant/wife constitutes cruelty within the meaning of Section 13(1)(ia) of the Act of 1955. Cruelty, in matrimonial jurisprudence, is not to be inferred merely from ordinary occasional skirmishes between the spouses coupled with difference of opinion or incompatibility of temperament, rather to establish the cruelty the conduct complained of by either party must be of such a nature and intensity that the aggrieved spouse cannot reasonably be expected to continue matrimonial life with the other. This assessment has to be based on the cumulative effect of the entire matrimonial relationship and not merely on stray and isolated incidents.

11. So far as the case in hand is concerned, the respondent/husband has alleged that the appellant/wife used to quarrel on trivial matters; did not respect his parents; frequently visited her parental home; insisted upon living separately; did not observe the rituals such as related to the occasion of Karwachouth undertaken in the family and occasionally threatened to implicate him and his family members in criminal cases. Even assuming that some of these allegations are established, they cannot, in the absence of further cogent evidence demonstrating their gravity automatically constitute cruelty. Likewise, the fact that the appellant/wife went to her parental home on different occasions also cannot, by itself, constitute cruelty because in order to decide the cruelty, the surrounding circumstances in which she left the matrimonial home have to be examined. The wife's consistent case is that she was subjected to dowry demands, assault and mental cruelty and that she went to her parental home to find out the security and safety cover to her life. This fact gets strengthened by her statement where she has specifically set out that on 02.07.2018 she was assaulted, confined in a room and thereafter managed to reach a Gurudwara and informed her parents and the police, and that she received medical treatment on account of the injuries suffered by her. As regards the plea of the respondent/husband that the act of appellant/wife in initiating criminal proceedings against him under Section 498-A IPC and also seeking maintenance

constitute cruelty, it cannot be accepted in the abstract. Mere institution of criminal or maintenance proceedings by a spouse does not necessarily constitute cruelty. If the proceedings are shown to be demonstrably false, reckless and malicious and the allegations are proved to have been deliberately fabricated, the matter may stand on a different footing. The Supreme Court in *Rani Narasimha (supra)* has observed that it is open for anyone to file complaint or launch prosecution for redressal for his or her grievances and mere lodging of complaint or FIR cannot *ipso facto* be treated as cruelty.

12. In the case in hand, the material indicates that after intervention by the elderly people in the meeting held at Gurudwara on 09.09.2012 the appellant/wife returned to the matrimonial home and lived with the respondent/husband for about one and a half years. Thereafter, pursuant to another settlement in the domestic violence proceedings, she again returned and admittedly lived with the respondent/husband for about nine months. This period of resumed cohabitation shows that the matrimonial relationship was not treated by the appellant/wife as permanently terminated. As regards the allegation that the appellant/wife repeatedly threatened to implicate the respondent/husband and his family members in a false case would certainly be relevant if established by reliable evidence. It however is not the case here. Of course, the Supreme Court in *Narendra v. K. Meena (supra)* has observed that the persistent effort of the wife to constrain the husband to be separated from the family would be torturous for the husband and may constitute an act of 'cruelty', but in the case in hand the respondent/husband has utterly failed to prove that the appellant/wife has been persistent in making such demand for living separately from his parents, and therefore this judgment of the Supreme Court would not stand to the rescue of the respondent/husband. On the contrary, the appellant/wife had been and has been always stated to be ready and willing to be in the company of the respondent/husband as she and her son both have utmost love and affection for him. Thus the cruelty on the part of appellant/wife towards the respondent/husband remains unproven by a substantive piece of evidence.

13. We now turn to the allegation of desertion under Section 13(1)(b) of the Act of 1955. Section 13 requires desertion to continue for a period of not less than two years immediately preceding the presentation of the divorce petition. More importantly, desertion involves two essential elements: (i) factum of separation and (ii) *animus deserendi* - the intention to bring cohabitation permanently to an end. The law holding the field mandates that the deserted spouse must establish absence of consent and absence of conduct giving reasonable cause to the other spouse to live separately. This position has been authoritatively reiterated by the Supreme Court in plethora of decisions. As regards the facts present in the case in hand, the evidence and circumstances narrated before us do not satisfactorily establish such *animus deserendi*. On the contrary, the appellant/wife has consistently asserted that she has been always ready and willing to resume matrimonial obligation driven by her immeasurable love and affection to the respondent/husband, forgetting the assault by him leading to fracture of her tooth which is evident from the medical papers.

14. The analysis made above thus shows that the Family Court has proceeded substantially upon the allegations made by the respondent/husband without examining closely whether the appellant/wife had a reasonable cause to live separately. The finding of cruelty and desertion in these circumstances narrated before us, cannot be sustained. Consequently, the appeal deserves to be allowed and the findings recorded by the learned Family Court that the appellant/wife treated the respondent/husband with cruelty and deserted him within the meaning of Section 13(1)(ia) and (ib) of the Act of 1955 are set aside.

15. Decree be drawn accordingly. No costs.

Sd/-

(Parth Prateem Sahu)
Judge

Sd/-

(Sachin Singh Rajput)
Judge

Jyotishi/Pawan

