

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

FAT 298 of 2020

Rina Sen

Versus

Anupam Sen and another

With

COT 7 of 2021

With

IA NO: CAN 2 of 2022

Anupam Sen

Versus

Rina Sen and another

For the Appellant (in COT 7 of 2021)	: Mr. Kallol Basu,
And	Mr. Apalak Basu,
For the Respondents (in FAT 298 of 2020)	Mr. Nazir Ahmed,
	Ms. Sanghamitra Mridha.

For the Respondents (in COT 7 of 2021)	: Mr. Siddhartha Banerjee,
And	Mr. S. Mitra.
For the Appellant (in FAT 298 of 2020)	

Judgment on : 10.06.2025

Supratim Bhattacharya, J.:

1. The appeal and cross-objection arise from the judgment of the Trial Court dated 15.02.2020, passed in Matrimonial Suit No. 41 of 2015 whereby and where under the suit has been decreed on contest against the respondent No. 1 and *ex-parte* against the respondent No. The Trial Court has granted a decree of divorce and dissolution of marriage between the appellant and the respondent.
2. The appellant in COT 7 of 2021 was the plaintiff before the Trial Court, and is the respondent in FAT 298 of 2020.
3. The appellant in FAT 298 of 2020 was the respondent No. 1 before the Trial Court and is the respondent in COT 7 of 2021.
4. The respondent No. 2 in the COT 7 of 2021 is the person with whom it is alleged by the husband that the wife maintained an adulterous relationship. He has been impleaded as a proforma respondent in FAT 298 of 2020.
5. The Cross Objection has been filed by the plaintiff/husband since the Trial Court has passed a decree of divorce and dissolution of marriage only on the ground of desertion while the other two grounds i.e. cruelty and adultery have been rejected by the Trial Court.
6. Brief facts as per the plaintiff (appellant in COT 7 of 2021) is that he was knowing the respondent since the time she was a student, i.e. since 1994 when they were having courtship. Their relationship finally culminated in marriage on 20th May, 1997 under

the Special Marriage Act 1954. The marriage was consummated. The husband alleges that few days thereafter the wife started misbehaving with him as well as his ailing father on trivial issues and on slightest opportunities. He alleges that the wife's behaviour became quarrelsome and abusive. Within a month of her marriage it is alleged that she removed her sankha, pola and sindoor and when the appellant's parents objected to this, she abused them using filthy language. It is however alleged that few months thereafter the appellant husband discovered that the wife was having a special relationship with one Ajit Das. On this issue also when she was confronted she started to quarrel and insisted to continue to have such a relationship. She further stated that the marriage was solemnized with the appellant only to enjoy financial stability and facilities available to the appellant by virtue of being a Central Government employee. The continuous acrimonious behaviour of the wife forced the appellant to move to a single room on the second floor of the house, severing his relationship with his parents.

7. A daughter has been born because of the wedlock on 11.02.2000. The respondent wife even objected to the petitioner's looking after and supporting his father during his illness. She threatened him with implication in a false criminal case under Section 498 A I.P.C.

8. It is further alleged that the continuous turmoil in the family resulted in his father's death on 18.09.2002. His brother was also forced to leave the house along with his wife. The respondent was

thus alone in the house all day. After the appellant left for office at 9 AM in the morning. He would return home at about 8 PM in the evening and immediately upon his reaching home the wife would start quarrelling on some flimsy ground or another. She had also tried to commit suicide by hanging herself, only to falsely implicate the petitioner in a criminal case. It is also alleged that during the night of 20.05.2006 she ran after the appellant's old mother with a dagger in her hand whereafter the appellant's mother requested the appellant to leave the house. The appellant's wife was pregnant at that point of time. The appellant, however, shifted to a rented residence along with his wife and minor daughter near Shree Kalyan Samiti Club. Thereafter, it has also been alleged that they never stayed as husband and wife under the same roof. Their second child who is a male child has taken birth on 26.08.2006.

9. As per the request of the wife, the appellant thereafter changed the rented accommodation to Balia nearer to the wife's paternal home. The husband has also stated that his wife did not do any household work. She was busy tormenting the appellant and whenever he retaliated, she used to quarrel and assault the appellant. Even his brother-in-law assaulted him and claimed Rupees twenty thousand per month. For this the appellant claims to have lodged a General Diary entry before the local police station. It is specifically stated by the husband in the petition for divorce that after shifting to rented accommodation she never led a normal marital life with the husband and did not allow him to even share the

bed with her. It is thereafter alleged that in 2010 the appellant's son was admitted to school. For his safe comfortable journey to and from his school the appellant hired a tata sumo vehicle and found an abnormal relationship of his wife with the poolcar driver namely Raju Naskar. The minor son and his sister allegedly informed their father on various occasions that during the afternoon every day the poolcar driver used to visit their house and that his wife and the driver used to lock themselves in the room. When this was objected to by the husband, the wife started to quarrel and abuse him in most filthy language. On objections being raised by the husband, the poolcar Association arranged another car for transportation of the appellant's son. The wife thereafter forced the husband to re-arrange the car of Raju Naskar. It is alleged that these facts were reported by the husband to the Municipal Council on 07.11.2011 as well as the Sonarpur Police Station through General Diary entry.

10. It is alleged that in August 2010 the wife took admission for pursuing a (B.D.P.) course and also started attending tuition at a coaching centre. As a result she would return home at around 11 pm in the night, neglecting the family. Even after returning, she used to be on phone till late hours speaking to various male friends. The husband has also alleged filing of false and fabricated complaint before the husband's employer against him with a *mala fide* intention of maligning and defaming him in the office. The husband was all along trying to resolve the issue with the intervention of the authorities or social organizations.

11. Respondent wife lodged an FIR bearing No. 9 dated 04.01.2012. The FIR was lodged with Sonarpur Police Station. The same contained allegations under Sections 498A/406/313 I.P.C. The petitioner thereafter sought privilege of anticipatory bail which was granted to him. He was acquitted from the allegations vide judgment dated 07.09.2015 passed by the learned Judicial Magistrate, Baruipur. In the meantime, the wife left the rented accommodation on 28.01.2012 on her own volition with all the furnitures, household articles, bank pass-book, key of lockers of the two banks containing valuables without any intimation to the appellant. The husband came to know of the wife's departure from his landlord, who informed him regarding her shifting to 27A Palbazar Road in Jadavpur.

12. Being a dutiful husband, he sent two letters and one money order to the said address which returned undelivered since the address was found to be vague. The husband thus, lodged a missing diary with the local police station on 02.02.2012. In the meantime, the husband vacated the rented accommodation since the landlord had sent a notice to vacate. He thereafter shifted to his official quarter at Ultadanga near his office. The husband thereafter alleges that his efforts to contact his wife failed because she would disconnect the call on hearing his voice. She in fact threatened the husband on 10.02.2012 stating that she would seek cancellation of bail granted to him if he tries to contact her again. The husband also lodged a complaint with the local police station since he could not even ascertain the whereabouts of his son and daughter. He was also

compelled to file an application for custody of the children under Guardians and Wards Act, being Act VIII case No. 52 of 2014. The same was pending before the learned ADJ at Alipur at the time of filing of the petition for divorce.

13. The wife was also driven out of her paternal home by her brother because of the relationship which she maintained with the poolcar driver. It is thus alleged that his wife led a bohemian life shifting from one accommodation to another. It is also alleged that the wife deprived their son of education. The acts of cruelty also include allegation that the husband was assaulted by the wife and Raju Naskar by stone, bricks etc and he sustained injuries on his ankle and arm for which he was treated in the emergency of M.R.Bangur Hospital on 07.02.2013. This incident gave rise to case No. C 657 of 2013 under Sections 323/324/504/34 of I.P.C. pending in the Court of learned ACJM Baruipur. Another case was instituted against Raju Naskar and Rina Sen containing allegation under Section 323/379/506/498 being Bidhannagar North P.S. Case No. 23 of 2013. The wife was arrested by police on 07.06.2015.

14. The wife thereafter filed a case under Section 125 Cr.P.C. seeking maintenance for herself and the two minor children. In terms of certain orders passed therein she is getting an interim maintenance for herself and for her children since December 2013. One case has also been lodged under the Protection of Women from Domestic Violence Act, 2005 against the husband by the wife. The

same is numbered as C/2444 of 2013 which is pending before the 8th Judicial Magistrate at Alipore.

15. There is also allegation of lodging another criminal case containing false and fabricated allegations against the husband and his witnesses in the criminal case lodged by him, vide Sonarpur Police Case No. 555 of 2015 under Section 341/323/354/384/504/506/34 of I.P.C. This case has also been dismissed as per Police Report dated 05.06.2015.

16. The husband, however, claims that he has been incurring the expenses of his two children over and above the interim maintenance granted by the Court. The two minor children regularly visit their father and their grand-mother at their house in the evening from Monday to Friday. As per an order dated 19.08.2014 passed by the Court in the custody case, the two children stay with their father from morning of every Saturday till night of every Sunday. The husband also claims that he is looking after his two children by guiding their studies and also arranging for nourishment, requirements including re-creation/ amusement during their leisure time and spending quality time with them during vacations.

17. The husband, prior to the present case for divorce, had filed a divorce suit being MAT Suit No. 925 of 2012. On assurance made by the wife, he withdrew the same to reconcile the rift between the parties. The wife, however, immediately changed her colour after withdrawal of the suit and refused to stay with the husband and

demanded money as a pre-condition to agreeing for mutual divorce. She again started threatening him with false criminal cases.

18. In the above circumstances, the husband has claimed a decree of divorce and dissolution of marriage on the ground that the wife was leading a reckless adulterous life and subjecting him to physical and mental torture, lodging false criminal cases against him and also deserting him by refusing to stay with him.

19. The wife had filed the written statement. Respondent No. 2 (Raju Naskar) did not appear in the proceeding.

The wife has alleged the plaint to be harassing, misconceived and motivated. She has stated that all the allegations are false and concocted only to harass her and to deprive her of her due rights as a wife. Each and every allegation has been denied and disputed. It is her case that the husband was residing in the same area and the families were well-known to each other. She has specifically denied the allegations of her being quarrelsome, abusive or resorting to filthy language against her husband or his family members. She has even denied in specific terms the allegation regarding her abnormal relationship with one Ajit Das (alleged boyfriend), or that she had solemnized marriage with the intention of availing a luxurious and secured life since the husband was a Central Government employee. The families of the parties were known to each other for quite some time and the marriage solemnized is not a love marriage.

20. It is the wife's case that the petitioner is a very suspicious type of person and the allegations levelled against her are false and

baseless. She has maintained due loyalty with her husband and has been a dutiful wife. In fact, her in-laws showered love upon her and due to the constant suspicious remarks of her husband a rift was created between her and the parents of her husband. The husband had voluntarily shifted to one room in the second floor only for his betterment. The wife had no role to play. In fact, she supported the petitioner in taking care of his parents and took all due and necessary care. The allegation of any turmoil in the family and the other allegations regarding the brother being forced to move out of the paternal home etc. have all been denied. The alleged extortion by the wife's brother to the tune of rupees twenty thousand has also been denied in specific terms. The allegations regarding her relationship with Raju Naskar has also been specifically denied. She has denied the knowledge of any complaint dated 07.11.2011 to the poolcar association for changing the vehicle of Raju Naskar. The husband himself had asked her to take admission in the B.D.P. course. In fact, he used to drop her on time for pursuing her course. There is also specific denial of her chatting with many male friends till late in the night. She has stated that the husband compelled her to leave the house at Balia. She has in specific terms denied that she left the said accommodation on her own volition or that she took any furniture, household articles, bank passbook, key of the locker and other belongings. She has denied the claim of her husband of writing letters or sending money orders. She has also denied the lodging of false cases. It is her specific assertion that the husband has

manufactured and fabricated the allegations regarding her deserting the husband on 28.01.2012. In fact, she has alleged that it is the husband who for his unlawful gain has separated and he cannot be allowed to take advantage of his own wrong. The allegation of the wife changing her colour after withdrawal of the Matrimonial Suit No. 952 of 2012 has also been specifically denied.

21. Though the COT 7 of 2021, the Trial Court decree has been assailed by the husband since the Trial Court has rejected the allegation of cruelty and adultery. It is submitted by the learned Counsel for the husband that cruelty is writ large in the above noted facts and circumstance of the case. In order to substantiate the plea of cruelty Mr. Kallol Basu appearing for the husband relied upon the note dated 28.01.2012 which the wife left at the time when she walked out of the house without any intimation to her husband. Referring to the note he submits that she has specifically mentioned in the note that she is vacating the house at her sole risk and responsibility. It has also been mentioned that the husband's belongings are kept in a locked room which will be taken after clearing all rent and dues. The note was written and signed by her at 5 pm on 28.01.2012 which is a glaring proof that in fact she has vacated the premises behind the back of her husband. The learned Counsel has also relied upon acquittal of the husband in the case filed by the wife under Section 498A of I.P.C. The second criminal case also filed against the husband resulted in filing of F.R.T. by the police in Sonarpur Police Station case no. 555 of 2015. The F.R.T.

was submitted based on a finding in investigation regarding a mistake of fact. The husband was thus discharged. After filing the case under the Domestic Violence Act, 2005 being. C/2444 of 2013 the wife has not prosecuted the same. The proceeding under Section 125 Cr.P.C. being Case No. 360 of 2012 is still pending before the ACJM, Baruipur. The Trial Court has taken note of the normal relationship between the husband and the wife. The Trial Court has held that the prosecution failed to make out any case against the husband for the offence under Section 498 A I.P.C. and acquitted the appellant vide judgment dated 07.09.2015. In fact, it is apparent from the petition filed by the respondent in Case No. 52 of 2014 that she was seeking a direction upon the husband to transfer the LPG cylinder to her name as early as possible. The learned Counsel has also referred to the deposition of P.W.2, a junior office colleague of the husband namely Sanjib Kumar Das to submit that the colleague has corroborated the allegation regarding the respondent pressurizing the appellant for divorce and huge alimony. He has also corroborated allegation of assault by brick by the respondent along with one Raju Naskar upon the appellant in front of his office. He has stated that the respondent told him that she wanted to start her life with the said Raju Naskar. The learned Counsel has also referred to the copy of the F.I.R. in respect of Sonarpur Police Case No. 555 of 2015 alleging assault against the husband. It is submitted that the husband was discharged in the said case also which is apparent from Exhibit-38 certified copy of the information dated 12.12.2019

supplied by the Court which shows that the F.R.M.A. was accepted by the learned ACJM, Baruipur on 03.03.2018. The wife has not lodged any protest petition against the acceptance of F.R.M.A. which shows that the allegation was false, fabricated and only to torture and torment the husband. All the three criminal cases have ended either in acquittal or discharge of the husband meaning thereby that they were all false criminal complaints, the object of which obviously was only to subject the husband to cruelty.

22. It is further submitted that the wife also tried to lower the dignity of the husband in the office. She made a complaint to the superiors in office on 29.11.2011. The complaint was taken note of by his superiors namely the Deputy Accountant General (Admin) and had asked the appellant that he is expected to maintain reasonable and decent standard of conduct in his private life and not bring discredit to his service. The petitioner was thus advised to reach an amicable settlement and report within six months. In this regard, the learned Counsel has relied upon the decision of the Apex Court in the case of **Joydeep Majumdar Vs. Bharti Jaiswal Majumdar** reported in **(2021) 3 SCC 742** referring to the same it is submitted that lodging of complaints before the superiors of the husband in the office, as has been done in the present case leads to the husband's career and reputation, suffering and, therefore, the lodging of such complaints itself amounts to cruelty. The Trial Court has overlooked this aspect of the matter. The Trial Court has also overlooked that the filing of three criminal cases against the appellant would also

constitute cruelty in view of the fact that none of the three complaints were found to be sustainable in Court. In respect of this submission, he relies upon a decision of the Apex Court in the case of ***K. Srinivas Vs. K. Sunita*** reported in **(2014) 16 SCC 34**. Referring to the decision of the Apex Court in the case of ***Samar Ghosh Vs. Jaya Ghosh*** reported in **(2007) 4 SCC 511** it is submitted that the instances of cruelty indicated by the husband before the Trial Court and the material in support thereof would undoubtedly constitute the circumstance where the husband has suffered an acute mental pain, agony and suffering making it impossible for the parties to live with each other. The husband cannot be asked to put up with such conduct of the wife. The repeated acts of cruelty have caused deep anguish, disappointment and frustration to the husband. The abusive and humiliating treatment meted out by the wife constitutes mental cruelty and therefore, the Trial Court's conclusion overlooking these facts is unsustainable.

23. It is further submitted that the wife did not cross-examine the husband on the point of desertion, cruelty or adultery. The refusal to cross-examine supports the submission on behalf of the husband that the wife did not dispute the allegation of the husband. In this connection he has relied upon decisions of the Apex Court in the case of ***Muddasani Venkata Narsaiah (Dead) Through Legal Representatives Vs. Muddasani Sarojana*** reported in **(2016) 12 SCC 288** (para 15), in the case of ***Samar Ghosh Vs. Jaya Ghosh***

reported in **(2007) 4 SCC 511** (para 101), in the case of **Poulomi Biswas Vs. Shamik Biswas** reported in **(2023) SCC Online Calcutta 6136** and in the case of **K. Srinivas Vs. K. Sunita** reported in **(2014) 16 SCC 34**.

24. Insofar as the issue of adultery is concerned, the learned Counsel for the appellant has relied upon Exhibit-1 dated 15.11.2011 and 01.12.2011, the two complaints made to the Officer-in-Charge Sonarpur Police Station. It is submitted that the allegation regarding the wife having an abnormal relationship with Raju Naskar was specifically alleged by the husband in these complaints which are proof of this fact.

25. The learned Counsel for the respondent (wife) has submitted that the ground on which the Court has granted decree of divorce, that is desertion has not been proved at the trial.

26. The admitted position is that the marriage was under the Special Marriage Act. Desertion as a ground for divorce was, therefore, required to be proved in terms of Section 27(b) read with the Explanation to Section 27. We, therefore, take note of the relevant extract of the Section 27 of the act which reads as follows:

“[27. Divorce.](#)—[23](#)[(1)] Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent—

...

(b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or;

...

[Explanation.—In this sub-section, the expression “desertion” means 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;]
 ...”

27. This Court now delves into the facts and circumstances of the present lis. From the contentions of the parties it transpires that the wife has filed the present appeal assailing the judgment passed by the Trial Court on the ground that the learned Trial Judge has not properly interpreted the facts of the case and has thus come to an erroneous finding that the appellant/wife has deserted her husband. Thus, there is challenge by the appellant wife as regards to the granting of the decree of divorce on the ground of desertion.

28. On the other hand, the husband /respondent has preferred cross-objection on the ground that the learned Trial Judge has misinterpreted the facts and circumstances of the case by not granting order of divorce on the ground of cruelty and adultery.

29. The entire facts and circumstances leading to the institution of the lis has been chronologically mentioned hereinabove. From the above facts and circumstances it transpires that the marriage between Rina Sen and Anupam Sen took place on 20.05.1997 and dispute started to arise within few months thereafter and it has been a long drawn process of allegation and counter allegation which includes several litigations being initiated by both the husband and the wife.

30. It is worth mentioning that because of the said wedlock a girl child has been born on 11.02.2000 and a male child took birth on 26.08.2006. Thus presently the age of the girl is about 25 years while the son is aged about 19 years. Both the children though now have attained majority have been witnessing the tussle between their parents since their birth which is very much unfortunate and the children, in spite of having both their parents have been compelled to face the undesirable darker side of human behaviour.
31. From the pleadings it transpires that earlier a suit was filed by the husband seeking divorce which was ultimately withdrawn by him on the pleading of the wife for forgiveness and request made to the husband to accept her. The husband considering the future of the minor children withdrew the said suit and had tried to reconcile the rift between them but after the withdrawal of the said suit the wife once again refused to stay with her husband.
32. It transpires that the wife had left the home on 28.01.2012 along with both the children. The husband being unable to trace his wife and children had lodged complaint on 02.02.2012. In the meantime the wife had preferred an application under Section 125 Cr.P.C. during the year 2012. It is the contention of the husband that on 07.02.2013 he was allegedly assaulted by his wife and her paramour and consequently on 08.02.2013 he lodged an FIR. The wife had also lodged a case under the Protection of Women from Domestic Violence Act, 2005. In the year 2014 the husband applied for custody of the children under the Guardians and Wards Act,

1890. From the averments it also transpires that the husband has been paying maintenance of Rs. 13000/- per month and apart from that he has also been paying the school fees and has been bearing the other expenses which are required for education and well being of the children. During this period the children used to come regularly in the evening to visit their grand-mother (mother of their father) and used to stay with their father and grand-mother during the weekends.

33. The case filed by the wife under Section 498A of the Indian Penal Code has been dismissed on 07.09.2015 and has attained finality. The allegations and counter allegations lodged on behalf of the husband and wife has reached to such an extent that both of them do not have slightest confidence upon the other party as it is evident from the written statement of the wife wherein she has stated that “... *it is the petitioner who compelled your respondent to leave the said house otherwise he could have murdered your respondent*”. Faith of the wife upon her husband degraded to such an extent that she could express the aforementioned words in her written statement but it is astonishing to note that soon after leaving her home on 28.01.2012 the wife did not lodge any complaint on this issue.

34. On the contrary the husband lodged a letter of complaint before the Sonarpur PS seeking for the whereabouts of his wife and children. In the said letter of complaint a list of articles have been mentioned which includes bed, sofa-cum-bed, almirah, refrigerator, television, water filter, a bank pass book, utensils and even one gas

stove with two gas cylinders. This long list of articles do not reflect that the wife left her husband only for few days on the contrary it indicates otherwise. This has not been controverted by the wife in her averment and it is worth mentioning that she has not cared to adduce evidence before the Trial Court. In her written statement there is no averment reflecting that she had not taken along with her the articles which has been mentioned in the complaint lodged by her husband being Exhibit-4 before the Sonarpur PS on 02.02.2012 and received by the said PS on the self-same date. In this regard there is mere denial and the wife in support of such act has stated that she was compelled to leave the said house otherwise she would have been murdered by her husband. This apprehension of being murdered and the allegation of being compelled to leave the house in absence of any material in this regard is hard to believe. More so, on perusal of the said letter of complaint wherein it has been categorically stated as “ ... *that I was not in my house situated at above mentioned address for few days due to some unavoidable circumstances. On 01.02.2012 at about 07.45 pm when I returned my home, I found the room was under lock and after entering the house I noticed that my wife Rina Sen left the house along with my two children name- Pratyusa Sen (daughter, aged -12 years), Swarnabha Sen (son aged- 5 years 5 months) and articles along with furnitures...*”. Through the said letter of complaint the husband had prayed before the police authorities to take effective steps and to help him to find out his wife and two children. This also weighs in favour of the

husband reflecting that the husband had taken initiative to have his wife and children back. From the said exhibit it transpires that the husband was not in the said house for few days prior to the incident as such there was no circumstance indicating any basis for fear of being tortured, on the contrary the said document reveals that the husband had taken step to have his children and wife back. Despite such efforts, there is nothing on record to show that the wife thereafter has resumed matrimonial life with the husband.

35. From the above contentions it is apparent and clear that the wife left the house of her husband having the intention of not returning to the house of her husband as such *animus deserendi* is clear from her acts. The husband on the contrary had taken step to have his wife and children back to him. This incident took place during the month of January, 2012 and the present lis seeking divorce has been instituted during the year 2015. Thus, the wife has been residing separately since 28.01.2012, i.e. for more than 3 years since leaving her husband's house which is a ground for divorce as the wife has deserted her husband for more than 2 years.

36. As per law abandonment or desertion must be a) wilful and deliberate, b) without consent, express or implied, of the deserted party, c) against the wish of the party deserted and d) without reasonable cause. From the above facts and circumstances it is apparent that there has been wilful and deliberate desertion and intention to bring cohabitation to an end by the wife without consent

of her husband and against the wish of her husband and that too without reasonable cause. As such the husband has a cogent ground for having an order of divorce against his wife.

37. In this regard this Court relies upon Paragraph 8 of the judgment passed by the Hon'ble Apex Court in the case between **Savitri Pandey and Prem Chandra Pandey** reported in **(2002) 2 SCC 73**. Paragraph 8 of the said judgment lays as follows:

“8. “Desertion”, for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations i.e. not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. After referring to a host of authorities and the views of various authors, this Court in Bipinchandra Jaisinghbai Shah v. Prabhavati [AIR 1957 SC 176] held that if a spouse abandons the other in a state of temporary passion, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion. It further held: (AIR pp. 183-84, para 10)

“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 (animus deserendi). 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. The petitioner for divorce bears the burden of proving those

elements in the two spouses respectively. Here a difference between the English law and the law as enacted by the Bombay Legislature may be pointed out. Whereas under the English law those essential conditions must continue throughout the course of the three years immediately preceding the institution of the suit for divorce, under the Act, the period is four years without specifying that it should immediately precede the commencement of proceedings for divorce. Whether the omission of the last clause has any practical result need not detain us, as it does not call for decision in the present case. Desertion is a matter of inference to be drawn from the facts and circumstances of each case. The inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If, in fact, there has been a separation, the essential question always is whether that act could be attributable to an animus deserendi. The offence of desertion commences when the fact of separation and the animus deserendi coexist. But it is not necessary that they should commence at the same time. The *de facto* separation may have commenced without the necessary animus or it may be that the separation and the animus deserendi coincide in point of time; for example, when the separating spouse abandons the marital home with the intention, express or implied, of bringing cohabitation permanently to a close. The law in England has prescribed a three years' period and the Bombay Act prescribed a period of four years as a continuous period during which the two elements must subsist. Hence, if a deserting spouse takes advantage of the locus poenitentiae thus provided by law and decide to come back to the deserted spouse by a bona fide offer of resuming the matrimonial home with all the implications of marital life, before the statutory period is out or even after the lapse of that period, unless proceedings for divorce have been commenced, desertion comes to an end and if the deserted spouse unreasonably refuses the offer, the latter may be in desertion and not the former. Hence it is necessary that during all the period that there has been a desertion, the deserted spouse must affirm the marriage and be ready and willing to resume married life on such conditions as may be reasonable. It is also well settled that in proceedings for divorce the plaintiff must prove the offence of desertion, like and other matrimonial offence, beyond all reasonable doubt. Hence, though corroboration is not required as an absolute rule of

law the courts insist upon corroborative evidence, unless its absence is accounted for to the satisfaction of the court.”

38. This Court now deals with the judgments cited on behalf of the wife.

39. In the case between ***Bipin Chandra Jaisinghbai Shah Vs. Prabhavati*** reported in ***AIR 1957 SC 176*** the husband namely Bipin had not taken any initiative to bring back his wife Prabhavati on the contrary it was said by the husband that the wife should not be sent. So the said judgment is not applicable in the case in hand.

40. Another judgment passed by Hon’ble three Judge Bench of the Hon’ble Apex Court in the case between ***Asma Lateef and Another Vs. Shabbir Ahmed and Others*** reported in ***2024 SCCOnline SC 42***, which has been cited on behalf of the wife deals with Order VIII Rules 5 and 10 of the Code of Civil Procedure and that too in an execution proceeding. Rule 5 of the said order deals with specific denial while Rule 10 deals with the procedure when party fails to present written statement called for by the Court. This issue has not made any impact in the case being dealt with. As such the said citation is not beneficial to the wife.

41. Another citation been reported in ***AIR 1991 Calcutta 176*** passed in the case between ***Elokeshi Chakraborty and Sri Sunil Kumar Chakraborty*** has been cited on behalf of the wife. The said judgment does not favour the wife on the contrary it is in support of the desertion by the wife and through the said judgment a coordinate

Bench of this Court has affirmed the judgment passed by the Trial Court on the ground of desertion. As such this citation is not of any help to the appellant/ wife.

42. The other judgment reported in **AIR 1999 Andhra Pradesh 1** passed in the case between **Naval Kishore Somani Vs. Punam Somani** has dealt with the issue of cruelty specifically mental cruelty. In the case in our hand divorce has been granted solely on the ground of desertion and not on the ground of cruelty. So the said judgment cited is of not much help to the appellant/ wife.

43. Another judgment cited by the appellant reported in **AIR 1995 Rajasthan 86** does not help the appellant in the present case as because in the cited case the husband had not taken initiative to have his wife back on the contrary the husband had waited for the dismissal of the maintenance petitions filed by the wife, to pray for divorce. Therein it could not be held that the wife had permanently deserted the husband with no intention to come back whereas in the present lis the list of articles taken with her reflects that the wife had left her husband's house with the intention of not returning back. On the contrary in the present lis the husband had taken initiative and appropriate step to have his wife and children back and had borne expenses for the education of his children apart from paying the maintenance charges.

44. As regards to the grounds of cruelty and adultery there has been allegations galore lodged by the husband but as regards to cruelty the husband has not been able to prove the same and as

regards to adultery apart from allegations nothing has been proved by the husband. It is settled law that to prove adultery a much higher degree of proof is required which lacks very much in the instant lis.

45. Insofar as the allegations of cruelty it is submitted that there is no direct evidence whatsoever to establish this allegation. The evidence of Sanjib Das (P.W. 2) is of no use since there is no compliance with Section 60 of the Evidence Act. He has not referred to any such fact seen or heard by him or perceived by any other sense or in any other manner, which could be taken to be compliance with Section 60 of the Evidence Act. Insofar as the allegations made in the criminal case or case filed under the Domestic Violence Act, or for maintenance, such allegations by themselves cannot be treated as an act of cruelty. Every case under Section 498 A cannot be taken as a ground for alleging cruelty. Only when allegation under Section 498A is disproved in a trial then only they may be taken as a ground of cruelty. The fact that the allegations could not be proved cannot in every case be taken as a ground to conclude that lodging of the criminal case would constitute cruelty.

46. In this connection, on behalf of the husband the learned Counsel has placed reliance on the case of **Joydeep Majumdar** (supra) to submit that lodging of the complaint before the superior constitutes cruelty. In the case of **Joydeep Majumdar** (supra)

Hon'ble Apex Court found that several defamatory complaints were made before the superior in the army. The same led to a court of inquiry by the army authorities against the husband. Court of inquiry had an adverse impact on the husband's career progress. The Hon'ble Apex Court further took note of the fact that the wife therein was making complaints to other authorities also such as the State Commission for the women. She has also posted defamatory material on other platforms, considering this totality of circumstances Hon'ble Apex court came to the conclusion that the husband in such circumstances cannot be expected to continue with the matrimonial relationship providing enough justification for him to seek divorce.

In the present case, on the other hand an isolated complaint dated 29.11.2011 made by the wife is relied upon. Subsequent to the said complaint the earlier matrimonial case filed by the husband was withdrawn. The other attending circumstances as existed in the case of Joydeep Majumder are absent in the present case. We therefore find that the reliance placed on the case of **Joydeep Majumder** (supra) is unsustainable in the facts of the present case.

47. The learned counsel for the husband has also relied upon the decision of the Hon'ble Apex Court in the case of **Samar Ghosh** (supra) which in our opinion is also misplaced in the facts and circumstances of the present case. Insofar as the allegations made by the husband regarding physical cruelty, in support of which he

has relied upon the evidence of a junior colleague namely Sanjeeb Kumar Ghosh (PW2), it is the case of the husband that he is the witness of such incident including allegation of assault by the wife with bricks along with one Raju Naskar. He has also claimed that Sanjeeb Kumar Das witnessed the wife pressurising the husband for divorce and huge alimony and that she stated in his presence that she wanted to start a new life with Raju Naskar. Insofar as the alleged physical assault by brick, the testimony of Sanjeeb Kumar Das is self-contradictory. We find that in his further cross-examination he has stated that when the wife allegedly assaulted the husband with brick *“I was not present there as the incident happened at night and I was at my home. I heard about the incident”* this statement is at variance with statements in this regard earlier in his deposition. The statement of Sanjeeb Kumar Das lacks credibility and is unreliable to sustain the allegation of physical cruelty. Insofar as the decision of **Samar Ghosh** (supra) is concerned in that case the apex Court has taken into consideration the material on record that shows persistent acts of the wife over a long period of time including neglect of the husband while he was going through illness, living like a stranger in the matrimonial home and other extreme circumstances such as the wife along with her mother tutoring the daughter that the husband was not her father. The daughter was also thus estranged by the persistent efforts of the wife in the matrimonial home. The Hon’ble apex Court has taken into consideration other

factors also such as the wife cooking meals exclusively for herself. There are several instances of the husband being insulted and humiliated. There was also material on record in the said case to show that persistent tutoring in fact led to the daughter saying to others that the appellant therein was not her father. In the case of **Samar Ghosh** (supra) there were many instances supported by evidence and witnesses which taken in totality was found by the Hon'ble Apex Court to constitute cruelty. In the present case the husband has not brought any evidence or witness before the Trial Court to support the allegations of cruelty. He has chosen to rely upon lodging of two criminal cases only. We therefore find that the case of **Samar Ghosh** (supra) does not cover the case of the petitioner's. The third decision relied by the petitioner of COT is the decision in the case of K. Srinivas. In that case the Hon'ble Apex Court was of the opinion that there were sufficient material to conclude that the respondent wife knowingly and intentionally filed false complaint calculated to embarrass and incarcerate the appellant and several members of his family. The criminal case was filed after filing of the divorce petition. The Hon'ble Apex Court further took note of the fact that when evidence was led in this regard and arguments addressed no objection was raised by the wife that the cruelty alleged was beyond the pleadings. We are therefore of the opinion that the petitioner's case cannot derive any sustenance from the Hon'ble Apex Court's case of **K. Srinivas** (Supra).

48. Other submission in support of the alleged cruelty and adultery is that the wife did not cross-examine the husband on this point. In this connection the learned counsel has relied upon the decision of **Mudda Sahni** (supra) to submit that since the wife did not cross-examine the husband on the point of desertion and cruelty or adultery the submissions in support of desertion , cruelty and adultery made by the husband is clear indication of the fact that she did not dispute the husband's allegation as taken note of above. The husband has failed to bring material in support of his submissions and the reliance placed by him on the decisions in support of his contentions on the point of cruelty and adultery are inapplicable to the facts and circumstances of the present case. We thus find that the petitioner's case does not get any support from the Hon'ble Apex Court decision in the case of **Mudda Sahni** (supra).

49. Insofar as the issue of adultery is concerned no evidence whatsoever has been brought in support of such allegation. Apart from oral assertions there is no material in support of this allegation. It is also a settled proposition of law that to establish adultery very higher degree of proof is required as the reputation and character of the two parties are at stake and such allegations cannot be sustained merely being alleged.

50. The issue regarding adultery, according to the learned Counsel for the respondent also remains unsubstantiated by reference to any

evidence in support of such allegation. The making of such allegations is motivated only to achieve the desired objective of securing a divorce. The allegations have flatly been denied by the respondent. The plaintiff's mother who was also examined has not supported the allegations either in respect of cruelty or adultery. In the circumstances, it is farfetched to make such allegations. So the point for consideration is as to whether the judgment passed by the Trial Court is in accordance with law or not.

51. Thus, from the above discussion it is clear that there has been desertion by the wife, which has also been the opinion of the Trial Court as such this Court is of the view that the judgment passed by the trial court, passing an order of divorce on the ground of desertion does not require any interference.

52. As regards to cruelty and adultery this Court is of the view that the husband has not been able to prove the allegations of cruelty and adultery which has also been the view of the Trial Court.

53. This being the position, this Court is of the opinion that the judgment passed by the Trial court does not require interference.

54. In such situation the appeal being **FAT 298 of 2020** filed by the wife Smt. Rina Sen is **dismissed** and counter objection **COT 7 of 2021** preferred by the husband Anupam Sen is also **dismissed** without cost.

55. The judgment of the Trial Court is **affirmed**.

56. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

57. Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)