IN THE HIGH COURT OF JHARKHAND AT RANCHI
F.A. No. 82 of 2024

Dr. Shimpy Kumari aged about 32 Years daughter of Mr. Murlicharan Saw, resident of Charhi, P.O. and P.S. Charhi, District Hazaribag, (Jharkhand) **… … Petitioner/Appellant**

Versus

Dr. Raj Kapoor Soni son of Mr. Satnarayan Prasad, resident of Tundi, P.O. and P.S. Tundi, District Dhanbad (Jharkhand)

… … Respondent/Respondent

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

For the Appellant : Mr. Abhishek Thakur, Advocate
Mr. Pratyush Navneet, Advocate
For the Respondent : Mr. Soumitra Baroi, Advocate

CAV on 17/08/2026 **Pronounced on 23/09/2026**

Per Sujit Narayan Prasad, J.

Prayer

1. The instant appeal under Section 19(1) of the Family Court Act, 1984 is directed against the order/judgment dated 17.11.2023 passed by the learned Principal Judge, Family Court Hazaribagh in Original Suit No. 75 of 2022, whereby and whereunder, the petition filed by the appellant/wife under Section 13(1) (i-a) of the Hindu Marriage Act, 1955 seeking a decree of divorce on the ground of cruelty, has been dismissed.

Factual Matrix

2. The brief facts leading to the institution of the divorce petition by the petitioner-wife (appellant herein) may be delineated thus:

(i) The petitioner solemnized marriage with the respondent-husband on 24.02.2018 at Charhi, District Hazaribagh (Jharkhand), in accordance with Hindu rites and customs. No issue has been born of the said wedlock.

(ii) The parties cohabited at Dhanbad, both being medical practitioners, the respondent-husband serving at the PHC, Tundi, Dhanbad, and the petitioner-wife employed at BCCL, Dhanbad. It is further on record that since 05.09.2019 the parties have been residing separately. The respondent-husband, in the first instance, instituted a suit for restitution of conjugal rights before the Family Court, Dhanbad, on 18.01.2022. As the petitioner-wife did not enter appearance to contest the said proceeding, the suit was decreed ex parte by judgment dated 17.01.2023.

(iii) It is an admitted position that, in the interregnum, the petitioner-wife instituted a suit for dissolution of marriage on 05.04.2022, invoking Section 13(1)(i-a) of the Hindu Marriage Act, 1955, on the ground of cruelty. The record further discloses that the petitioner-wife has unequivocally expressed her unwillingness to resume conjugal life, whereas the respondent-husband has, contrariwise, manifested his desire to restore cohabitation.

(iv) It is further the case of the petitioner-wife (appellant herein) that the respondent-husband has developed an illicit relationship with one widow, namely Mousami Ghosh @ Julie. The petitioner-wife asserts that upon her protest against such relationship, and subsequent family intervention, the respondent-husband executed a bond undertaking that there would be no repetition of such conduct. Notwithstanding the said assurance, the petitioner-wife avers that she was thereafter subjected to physical cruelty on account of her protest, resulting in grievous assault whereby she suffered slip-disc and traumatic

osteoarthritis, amongst other ailments. On this premise, she instituted the suit for divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955.

(v) The respondent-husband, in his written statement, has raised regular defences and, save and except the undisputed facts, has denied the allegations of the petitioner-wife. He has contended that the petitioner-wife procured frivolous medical documents from Sushila Nursing Home, Charhi, and that the prescriptions dated 11.04.2019 and 15.04.2019 issued by Ortho Clinic, Dhanbad, do not record any such disease as claimed. On these grounds, the respondent-husband has prayed for dismissal of the suit.

3. The learned Family Judge, in view of the above factual aspects, has framed altogether four issues, which are as follows:

(i) *Whether the suit as framed is maintainable in its present form?*

(ii) *Whether the parties are legally married husband and wife?*

(iii) *Whether the respondent-husband treated the petitioner-wife with cruelty after marriage?*

(iv) *Whether the petitioner-wife is entitled for relief of divorce on the ground of cruelty or any other relief/reliefs?*

4. The learned Family Court, upon appreciation of the evidence adduced by both sides, proceeded to dismiss the suit. It was held that the petitioner-wife (appellant herein) had disclosed regarding no cause of action for instituting the proceeding and the suit was not maintainable for the relief sought. The court further recorded that the petitioner had failed to discharge the burden of proof so as to entitle her to get decree of divorce on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, which is the subject matter of the present appeal.

Submission of the learned counsel for the appellant-wife

5. It has been contended on behalf of the learned counsel for the appellant that there is an apparent error in the impugned judgment, since, each and every aspect of the matter has not been taken into consideration and the learned trial Court has failed to take into consideration the evidences available on record.

6. It has been contended by the learned counsel for the appellant that the learned Family Judge has committed serious illegality in passing the impugned judgment.

7. It has been submitted that learned Family Court has not properly considered the pleadings of the parties in right perspective while dismissing the suit on erroneous consideration.

8. The learned Family Judge has itself recorded at para-2 of the impugned judgment that the parties are living separately since 05.09.2019 which itself a valid ground for grant of divorce under the provisions of Hindu Marriage Act.

9. It has also been submitted that the learned Family Court has gravely erred in not relying the FIR of Charhi P.S. Case No.64 of 2019 on erroneous consideration as also has gravely erred in not relying upon the oral testimony/deposition of the petitioner, P.W.1, father of the petitioner, P.W.2 and uncle of the petitioner P.W.3. without showing any cogent reason.

10. The learned Family Court has committed jurisdictional error for not granting the petitioner sufficient opportunity to produce evidence in support

of her case knowing fully well that the petitioner is a government lady Doctor and she is living in Dhanbad.

11. Learned counsel for the appellant, based upon the aforesaid grounds, has submitted that the judgment impugned suffers from an error as such, not sustainable in the eyes of law.

Submission of the learned counsel for the respondent-husband

12. It has been contended on behalf of learned counsel for the respondent-husband that it is incorrect on the part of the appellant-wife to take the ground that the issue of cruelty has not been taken into consideration in right perspective. The learned Family Court has well considered the fact which has been produced by the petitioner (appellant herein) as the same is sufficient to establish the case.

13. It has been submitted that the learned Family Judge has proceeded and decided the matter on the basis of the material available on record, as such, it cannot be said that the judgment suffers from any error.

14. The argument has been advanced that it is not available for the appellant-wife to take the ground by raising the impropriety in the impugned judgment.

15. It has been submitted that the father of the petitioner-wife owns Sushila Nursing Home situated at Charhi from where she has obtained frivolous medical documents. In support thereof, the respondent-husband has exhibited the medical prescriptions of the petitioner-wife.

16. It has been contended that initially, the husband has filed suit for restitution of conjugal right on 18.01.2022 but she was not turned up to

contest, rather, she has filed the suit, which is the subject matter of the present appeal.

17. Learned counsel for the respondent-husband, based upon the aforesaid grounds, has submitted that the judgment impugned passed by the learned Family Judge, therefore, suffers from no error.

Analysis:

18. We have heard the learned counsel for the parties as also gone through the finding recorded by the learned Family Judge in the impugned judgment as also the Trial Court Records.

19. This Court, before entering into the illegality and propriety of the impugned judgment, first needs to refer herein the purport and intent of the provision of Section 19 of the Family Courts Act. Sub-section (1) to section 19 of the Family Courts Act provides that an appeal shall lie from every judgment or order not being an interlocutory order of a Family Court to the High Court "both on facts and on law". Therefore, section 19 of the Family Courts Act is parallel to section 96 of the Code of Civil Procedure, the scope of which has been dealt with by the Hon'ble Apex Court in catena of judgments.

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

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

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

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

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

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

24. Since this Court is exercising the power of appeal as referred hereinabove and as per the settled position of law which require the

consideration of the appellate Court is that the order/judgment passed by the appropriate Forum, if suffers from perversity, the same is to be taken as a ground for its reversal.

25. It needs to refer herein that 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 so 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 numberof 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.*
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> ***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."*

26. From the aforesaid it is evident that if any order made in conscious violation of pleading and law then it will come under the purview of perverse order. Further "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

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

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

29. In the backdrop of the aforesaid settled position of law this Court is now adverting to the impugned judgment wherefrom it is evident that the learned Family Judge has rejected the contention of the appellant wife and has observed that the petitioner had failed to discharge the burden of proof so as

to entitle her to a decree of divorce on the ground of cruelty under Section 13(1) (i-a) of the Hindu Marriage Act, 1955.

30. The admitted fact herein is that the suit for divorce has been filed by the appellant-wife on the ground of cruelty, i.e., by filing an application under Section 13(1) (i-a) of the Hindu Marriage Act, 1955 and the respondent-husband has appeared there and thereafter, matter was proceeded.

31. Accordingly, issues have been framed by the Family Court primarily the issue no.(iii) which pertains to cruelty.

32. The evidence has been led on behalf of the petitioner-wife (appellant herein) before the learned Family Court. Altogether four witnesses have been examined on behalf of the petitioner-wife, i.e., PW 1- Dr. Shimpy Kumari, petitioner herself, PW 2- Murli Charan Saw (father of the petitioner-wife), PW 3- Kali Charan Saw (uncle of petitioner-wife) and, PW 4- Satish Kumar Sahu (brother of petitioner-wife).

P.W.1, Dr. Shimpy Kumari, petitioner herself, has deposed that her marriage was solemnized with the Respondent according to traditional Hindu Vedic rites on the 24th Feb of 2018 at Charhi, Dist:-Hazaribagh. After the said marriage, both the parties cohabited and lived together at the Petitioner's Matrimonial house for few days then came back to her parental home. Again, after gauna ritual went back to matrimonial home on 18 April 2018. Petitioner deposed that from the month of April 2018 (After gauna ritual) when she went back to matrimonial home, the Respondent began to ill-treat her and also respondent moved to Dhanbad to continue his job and when petitioner said she also want to go with him, respondent directly denied and

left her in Matrimonial home. After lapse of approx. two months, she also moved for job to Dhanbad.

The appellant-wife has further deposed that after the marriage, when the parties began residing together at Dhanbad, the respondent-husband habitually absented himself from the matrimonial flat during nights. On being questioned about such conduct, the respondent-husband, instead of offering any explanation, subjected her to physical assault. She has specifically stated that she was beaten many times with a mop stick as also with a broom, resulting in serious injuries. Consequent upon such repeated assaults, she suffered from slip-disc and traumatic osteoarthritis. She had further deposed that later on she came to know that respondent has illicit relation with a widow named Mousami Ghosh @ Julie. She tried to handle the situation in amicable manner but respondent not changed his behaviour. The petitioner's family member tried to settle the matter by organising meeting in which a Bond was furnished and as per that Bond Respondent will not continue illicit relationship with Mousami Ghosh. She has further stated that even thereafter, the Respondent continued to treat her in a cruel and violent manner i.e Respondent not change his mind set and also respondent said that if petitioner want to continue her life with respondent, then she should stay with Mosami Ghosh @ Julie as younger sister.

In her cross-examination she has stated that she is MBBS Doctor. She was doctor prior to marriage. At present, she is posted at BCCL, Dhanbad. Since September - 2019, she has been living in her parental house voluntarily (para-19). Shiv Sushila Nursing Home belongs to her father. She did not lodge any case at Dhanbad. Mediation took place between the parties.

She is not ready to resume conjugal life (para-28), since respondent-husband treats her with cruelty and has got illicit relationship.

P.W.2, Murli Charan Saw (father of the petitioner-wife), has deposed in his cross-examination that since respondent-husband was treating petitioner-wife with cruelty in further demand of dowry, she is not willing to resume conjugal life (para-14). He owns Sushila Nursing Home at Charhi. Petitioner-wife has lodged dowry cruelty case with Charhi PS/vide Charhi Case No.64/2019. No case was lodged at Dhanbad. Respondent-husband is posted at PHC, Tundi, Dhanbad.

PW 3, Kali Charan Saw (uncle of petitioner-wife), has deposed in his cross-examination that petitioner-wife has been living in her parental house voluntarily for two years. She informed regarding illicit relationship of respondent-husband, but did not show any proof.

PW 4, Satish Kumar Sahu (brother of petitioner-wife), has deposed in his cross-examination that petitioner-wife narrated about the fact regarding ill-treatment with her. He is full blood brother of petitioner-wife. Due to cruelty, petitioner-wife does not want to resume conjugal life (para-15). He cannot state regarding demand of further dowry. Parties led conjugal life for 12 years only. Both parties are presently posted at Dhanbad.

33. The evidence has also been led on behalf of the respondent-husband and altogether five witnesses have been examined on behalf of the respondent-husband, i.e., R.W.1, Raj Kapoor Soni (respondent himself), R.W.2, Ajay Kr. Verman (sister's son of petitioner-wife), R.W.3, Praveen Kr. Jaiswal (medical shop owner), R.W.4, Lalu Prasad (driver of respondent-husband) and R.W.5, Pappu Verma (Bahnoi of respondent-husband).

R.W.1, Raj Kapoor Soni (respondent himself) has deposed in his cross-examination that they led conjugal life in Gokuldham Apartment, Koyala Kusumbihar at Dhanbad. His family members were not visiting there. On 05.09.2019, the police did not come to said Apartment. The petitioner-wife has got account in State Bank of India, Koyala Nagar Branch. He was guaranter. No panchayati took place at Dhanbad. He does not know any Mausami Ghosh. He had lodged a suit for restitution of conjugal rights on 19.06.2019. Since the petitioner-wife resumed the conjugal life, he withdrew the suit. He has identified his photo over Mark X and X/1 for identification photographs, but was surprised regarding presence of a lady there. Further he deposed that at present he is posted as Medical Officer in Tundi Block at Dhanbad, upon contractual basis. Before marriage, wife-petitioner complained of waist pain. In April - 2018, he got the petitioner-wife treated. He has purchased one Swift D'zire vehicle from Reliable Industry, Dhanbad by loan. Upon demand he used to provide Bank A/c Pass-book, cheque book, ATM etc. to the petitioner-wife. During conjugal life, there was no problem of slip-disc of petitioner-wife. Police or people of Gokuldham Apartment never came to interfere regarding any dispute between the parties.

R.W.2, Ajay Kr. Verman (sister's son of petitioner-wife) has deposed in support of the case of the respondent-husband that he never saw the respondent-husband treating the petitioner-wife with cruelty.

In his cross-examination, he has deposed that since his conscious, he has been living in Tundi. Respondent-husband lives in Gukuldham, Flat no.102 at Kusumbihar, Koyala Nagar (Dhanbad). It was arranged marriage. He was present in marriage. Petitioner-wife was insisting him for some magical remedy (जादु-टोना). RW-4-driver of respondent-husband was also

found in the Apartment of respondent-husband (para-26). He has got no knowledge regarding Mausami Ghosh.

R.W.3, Praveen Kr. Jaiswal, has deposed in his cross-examination that his house is at Tundi. Apartment of respondent-husband is at Saraidhela, Dhanbad. It is 2 BHK. He is a medical shop owner. He knows the respondent-husband since year 2017. During his visit to the Apartment of respondent-husband, he found the parties only (para-23). He did not see any maid servant nor any relation of respondent-husband there.

R.W.4, Lalu Prasad (driver of respondent-husband) has deposed in his cross-examination that since the year 2015-16, he is driver. He works with respondent-husband since year 2018. He never saw RW-2 and RW-3 visiting Apartment of respondent-husband (para-16). His duty was till 9:00 night. In case it is late, respondent-husband himself used to drive the vehicle (para-24). There was cordial relation between the parties (para-25). He used to take the petitioner-wife to Dhanbad PMCH (para-27). Family members of respondent-husband never visited his apartment.

R.W.5, Pappu Verma, (bahnoi of respondent-husband) has deposed in his cross-examination that he is a goldsmith. The father of the petitioner-wife has got clinic. The respondent-husband is a doctor in Tundi PCH. He came to depose at the instance of the respondent-husband. No panchayati took place in his presence.

34. The learned Family Court, after appreciation of evidences led by the parties has dismissed the suit for dissolution of marriage, against which, the present appeal has been filed by the appellant/wife.

35. In backdrop of the aforesaid factual aspect, it is admitted fact that the marriage between the appellant-wife and the respondent-husband was solemnized on 24.02.2018 at Charhi, District Hazaribagh, in accordance with Hindu rites and customs. No issue has been born of the wedlock. Both parties are medical practitioners, the respondent-husband serving at PHC, Tundi, Dhanbad, and the appellant-wife employed at BCCL, Dhanbad and since 05.09.2019 the parties have been residing separately.

36. It is further admitted fact that the respondent-husband initially instituted a suit for restitution of conjugal rights on 18.01.2022, which was decreed ex-parte on 17.01.2023. In the interregnum, the appellant-wife filed the suit for dissolution of marriage before the learned family Court on 05.04.2022 under Section 13(1)(i-a) of the Act, alleging cruelty.

37. The appellant-wife specifically alleged that the respondent-husband had developed an illicit relationship with one widow, Mousami Ghosh @ Julie, against which she protested. Upon family intervention, the respondent executed a bond undertaking not to repeat such conduct. Despite this, she was subjected to physical cruelty, resulting in slip-disc and traumatic osteoarthritis.

38. The respondent-husband denied the allegations, contending that the medical documents produced were frivolous and procured from Sushila Nursing Home, owned by the appellant's father.

39. The learned Family Court framed four issues, including whether the respondent-husband treated the appellant-wife with cruelty and whether she was entitled to divorce. Upon appreciation of evidence, the Court dismissed

the suit, holding that the appellant had failed to prove cruelty, against which the present appeal has been filed.

40. Now coming to the contention of the learned counsel for the parties, wherein, the learned counsel for the appellant-wife has argued that the evidences have not properly been appreciated and considered by the learned Family Court and as such, the impugned judgment suffers from perversity, hence, not sustainable in the eyes of law.

41. While on the other hand, argument has been advanced on behalf of the respondent-husband that the judgment has well been considered as such, order/judgment impugned requires no interference.

42. Based on the aforesaid factual aspect and contention of the learned counsel for the parties, the following issue arises for determination in this appeal:

> *(i) Whether the finding of the Family Court that the appellant-wife failed to prove cruelty is sustainable in law?*
> *(ii) Whether the appellant-wife is entitled to dissolution of marriage under Section 13(1)(i-a) of the Hindu Marriage Act, 1955?*

43. Herein, since the appellant has sought for a relief of dissolution of her marriage on the ground of cruelty. Therefore, this Court before proceeding further needs to discuss the term cruelty.

44. So far the allegation of cruelty is concerned, it requires to refer herein the definition of „cruelty' as has been defined by Hon'ble Apex in the judgment rendered in **Dr. N.G. Dastane Vs. Mrs. S. Dastane [(1975) 2 SCC 326],** wherein it has been held that the Court is to enquire as to whether the

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.

45. The cruelty has also been defined in the case of ***Shobha Rani Vs. 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.

46. According to the Hon'ble Apex Court, "cruelty" is the "conduct in relation to or in respect of matrimonial conduct in respect of matrimonial duties and 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."

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

48. 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.

49. In ***V. Bhagat vs. D. Bhagat (Mrs.), (1994)1 SCC 337,*** the wife alleged in her written statement that her husband was suffering from "mental problems and paranoid disorder". The wife's lawyer also levelled allegations of "lunacy" and "insanity" against the husband and his family while he was conducting cross-examination. The Hon'ble Apex Court held these allegations against the husband to constitute "cruelty".

50. In ***Vijay kumar 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.

51. 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.

52. Cruelty" has an inseparable nexus with human conduct and is always dependent on social strata or milieu to which parties belong, their ways of life, relationship, temperaments and emotions that are conditioned by their

social status, reference be made to the judgment rendered by the Hon'ble Apex Court in the case ***Vishwanath Agrawal v. Sarla Vishwanath Agrawal, (2012) 7 SCC 288.***

53. The Hon'ble Apex Court in the case of ***K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226*** has observed that cruelty is evident where one spouse so treats other and manifests such feelings in other, so as to cause reasonable apprehension in mind of other that it would be harmful or injurious to reside with other spouse and cruelty may be physical or mental. It has further been observed that staying together under the same roof is not a precondition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof.

54. In matrimonial relationship cruelty mean absence of mutual respect and understanding between spouses which embitters relationship. Sometimes it may take form of violence, or at times may just be an attitude or approach. Silence in some situations may also amount to cruelty reference be made to the case of ***Ravi Kumar v. Julmidevi, (2010) 4 SCC 476.***

55. For considering dissolution of marriage at instance of a spouse who alleges mental cruelty, result of such mental cruelty must be such that it is not possible to continue with matrimonial relationship reference may be taken from the judgment rendered by the Hon'ble Apex Court in the case of ***Joydeep Majumdar v. Bharti Jaiswal Majumdar, (2021) 3 SCC 742***.

56. Further the word "cruelty" is used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is

bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Vinita Saxena v. Pankaj Pandit, (2006) 3 SCC 778.***

57. Further, in the case of ***Manish Tyagi v. Deepak Kumar, (2010) 4 SCC 339*** the Hon'ble Apex Court has categorically observed that to constitute "cruelty", it is enough that conduct of one of parties is so abnormal and below accepted norm that other spouse could not reasonably be expected to put up with it. Conduct is no longer required to be so atrociously abominable which would cause reasonable apprehension that it would be harmful or injurious to continue cohabitation with another spouse. Hence, it is not necessary to establish physical violence. Continued ill-treatment, cessation of marital intercourse, studied neglect, indifference may lead to inference of cruelty.

58. The word "cruelty" under Section 13(1)(i-a) of the Act has got no static connotation, and therefore, gives a very wide discretion to the Court to apply it liberally and contextually. What is cruelty in one case may not be the same for another and has to be applied from person to person while taking note of the attending circumstances. Harm or injury to health, reputation, the working-career or the like, would be important considerations in determining whether the conduct of the defending spouse amounts to cruelty. It has to be shown that the defending spouse has treated him with cruelty to cause reasonable apprehension in his/her mind that it will be harmful or injurious to live with the contesting spouse.

59. This Court, based upon the aforesaid discussions on the issue of

cruelty, has gone through the testimony of witnesses and found from the testimony of appellant-wife [PW 1] that the marital relationship between the parties has been marred by persistent cruelty. The petitioner's testimony establishes that soon after the *gauna* ritual, the respondent began to ill-treat her, denied her cohabitation at Dhanbad, and subsequently subjected her to repeated physical assaults with household implements, resulting in serious medical conditions such as slip-disc and traumatic osteoarthritis. Her evidence further discloses the respondent's illicit relationship with one widow, Mousami Ghosh @ Julie, which, despite family intervention and execution of a bond of assurance, continued unabated. The respondent's insistence that the petitioner should accept such relationship and live with Mousami Ghosh as a "younger sister" amount to mental cruelty of the gravest kind.

60. P.W.2, Murli Charan Saw (father of the petitioner-wife), has deposed in his cross-examination that since respondent-husband was treating petitioner-wife with cruelty in further demand of dowry, she is not willing to resume conjugal life (para-14). He had further stated that he owns Sushila Nursing Home at Charhi. He had further deposed that Petitioner-wife has lodged dowry cruelty case with Charhi PS/vide Charhi Case No.64/2019.

61. Thus, the statement of P.W.1 has fully been substantiated by the P.W.2 and the P.W.3 and 4 had also narrated on the same line. Further the medical records produced, coupled with her consistent oral evidence, lend credence to appellant/wife assertion of physical cruelty. The Family Court erred in discarding this evidence and further merely on the ground that the medical prescriptions emanated from a clinic owned by petitioner's /appellant's father the same cannot be discarded. The settled principle is that the source of medical documentation does not ipso facto render it unreliable,

unless specific infirmities are demonstrated.

62. This Court, upon consideration of the principles laid down by the Hon'ble Supreme Court on the issue of "cruelty" vis-à-vis matrimonial disputes, and upon appreciation of the evidence adduced by the appellant-wife, finds that the appellant-wife has specifically asserts that she was subjected to cruelty and that the respondent maintained an illicit relationship. PW-2 (father), PW-3 (uncle), and PW-4 (brother) corroborated her testimony. The FIR lodged at Charhi P.S. Case No. 64 of 2019 further substantiates her allegations of cruelty. The father, in his deposition, has corroborated this assertion by specifically stating that his daughter informed him that her husband used to beat her for fulfilment of dowry demands.

63. The medical documents, though disputed by the respondent/husband, cannot be brushed aside merely because they emanated from a clinic owned by the appellant's father. The testimony of the appellant regarding physical assault and resultant ailments stands unshaken.

64. Thus, it is considered view of this Court that the learned Family Court's finding has not appreciated the issue of cruelty in right manner by taking all the evidence in entireity rather the learned Court has appreciated the evidence in piece meal and has ignored the principle of preponderance of probability, therefore, the finding of the lerned family Court is perverse, inasmuch as the pleadings and evidence clearly disclose cruelty. Further, the learned Family Court failed to expressed its view on the issue that both the parties admittedly living separetly since year 2019 which is in the teeth of settled proposition of law as rendered by the Hon'ble Apex Court in ***Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511*** that prolonged separation itself constitutes mental cruelty.

65. In ***A. Jayachandra v. Aneel Kaur (supra)*** the Hon'ble Supreme Court held that cruelty need not be proved beyond reasonable doubt, but on the preponderance of probabilities. For determination of cruelty there cannot be uniform standard or guidance, yet there are some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". If on consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty. Further on comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party. Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty. A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse. Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty. Further where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

66. In light of the admitted fact that the parties have been living separately since 05.09.2019, coupled with the appellant-wife's categorical unwillingness

to resume conjugal life, it is manifest that the marriage has broken down and is beyond repair. The respondent-husband's professed desire to continue cohabitation cannot override the appellant's right to live free from cruelty, particularly when the evidence demonstrates a sustained pattern of physical violence, medical consequences, and adulterous conduct. The cumulative circumstances, as discussed in the preceding paragraphs, clearly satisfy the statutory ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955.

67. This Court, after discussing the aforesaid factual aspect along with the settled legal position as discussed and referred hereinabove in the preceding paragraphs and adverting to the consideration made by the learned Family Judge in the impugned judgment has found therefrom that the issue of element of cruelty by the appellant-wife has not been properly considered by the learned Family Judge.

68. On the basis of the discussion made hereinabove, this Court is of the considered view that the conduct of the respondent- husband has showed that it is the mental cruelty caused by him by having illicit relationship with another women and has forced appellant-wife to leave her matrimonial house as it was almost impossible for the appellant-wife to live with the respondent-husband where the thread of trust has already been broken. Relationship of wife and husband is based on the trust and respect to have upon each other and if it is broken it is non- repairable as the trust is the foundation of marriage. Marriage is a relationship built on mutual trust, companionship and shared experiences.

69. This Court, after discussing the aforesaid factual aspect along with the settled legal position as discussed and referred hereinabove in the preceding

paragraphs and adverting to the consideration made by the learned Family Judge in the impugned judgment has found therefrom that the issue of element of cruelty has not been properly considered by the learned Family Judge.

70. This Court, considering the aforesaid fact, is of the view that the judgment passed by the learned Family Court, therefore, needs interference.

71. Consequent to the aforesaid, the judgment dated 17.11.2023 passed by the learned Principal Judge, Family Court, Hazaribagh in Original Suit No. 75 of 2022 is quashed and set aside.

72. The marriage solemnized between the appellant-wife and the respondent-husband on 24.02.2018 is hereby dissolved by a decree of divorce, under the Hindu Marriage Act, 1955.

73. Accordingly, the instant appeal stands allowed.

74. Office to proceed accordingly.

75. Liberty is being reserved to the appellant-wife to approach the learned Family Court on the point of alimony under Section 25 of the Hindu Marriage Act, 1955, by instituting appropriate proceedings and leading evidence in support thereof.

76. Pending interlocutory application(s), if any, also stands disposed of.

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

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

23/09/2026

Rohit/**A.F.R.**

Uploaded on 24.09.2026