IN THE HIGH COURT OF JHARKHAND AT RANCHI
F.A. No.86 of 2022
----- -

Rahul Choubey, Aged about 40 yrs S/o Sri Ramji Choubey, R/o Village-Meru, P.O. Meru B.S.F. Camp, P.S.-Muffasil, Dist-Hazaribagh. **... ... Appellant**

Versus

Poonam Pathak, aged about 39 years, W/o Rahul Choubey, D/o Hrishikesh Pathak, R/o 203, Ramdas Plaza, Adarsh Path, CDA Colony More, West Patel Nagar, P.O., P.S. & Dist - Patna (Bihar). **... ... Respondent**

P R E S E N T
HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD

.....

For the Appellant : Mr. Shekhar Prasad Gupta, Advocate
For the Respondent : Mr. Atanu Banerjee, Amicus Curiae

.....

C.A.V. on 25.08.2026 Pronounced on 15/09/2026

Per Sujit Narayan Prasad, J.

Prayer:

1. The instant appeal has been filed challenging the legality and propriety of impugned judgment passed on 16.07.2022 and decree signed on 01.08.2022 by learned Principal Judge, Family Court, Hazaribag whereby and whereunder the Original Suit No.148 of 2019 filed by the appellant-husband under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 for a decree of divorce, has been dismissed.

Factual Matrix

2. The case of the appellant-husband, in brief as it can be gathered from the plaint is that the Plaintiff/Appellant and the respondent are legally married husband and wife and

their marriage was solemnized on 21.11.2008 at Patna, Bihar according to Hindu Rites and custom and out of the wedlock one child has been born namely Akriti Choubey who is now 11 years old.

3. The couple started their matrimonial life in peace and love and she was fully respected by the mother and father of the Appellant. However, after few days the respondent/ started going to Patna every now and then which was later revealed by the Defendant/Respondent that her parents want him to leave his parents and to live with them at Patna as *Gharjamai* which was not accepted by the Petitioner as his parents are already old and ailing.

4. The respondent Poonam Pathak went to Patna on 24.02.2013 and since then she never came to her matrimonial house and on asking she used to ask the Petitioner to live as *Gharjamai* and as his parents were old and ailing and there was no one to look after them, but the appellant always denied this demand.

5. The respondent is now doing Job at Patna and does not want to live at her matrimonial house and is adamant that the appellant leaves his parents and stay at Patna as *Gharjamai.* Due to this act of the respondent the appellant has been in tremendous mental pressure and also facing social stigma and as such he has lodged the case for decree of divorce.

6. The petitioner has prayed to the court to dissolve his marriage with the respondent by granting him decree of divorce under the provision of section 13(1)(ia) of the Hindu Marriage Act on the ground of cruelty.

7. For securing the appearance of the respondent, notice through registered post was sent and as per acknowledgment, the same was duly served upon her. Despite that when the respondent did not appear before the court, notice was also published in the Hindi daily newspaper "Prabhat Khabar" dated 06.03.2020 and when respondent did not cause her appearance, *ex parte* proceeding has been initiated against the respondent vide order dated 17.05.2022.

8. The case proceeded for evidence during which the appellant has produced and examined two witnesses including himself.

9. The learned Principal Judge, after hearing learned counsel for the petitioner-appellant, decided the issues of cruelty against the appellant-husband and in favour of respondent-wife.

10. The appellant-husband, being aggrieved with the judgment passed on 16.07.2022 and decree signed on 01.08.2022 by learned Principal Judge, Family Court, Hazaribagh approached this Court by filing the instant appeal.

Submissions advanced by the learned counsel appearing for the appellant:

11. Learned counsel appearing for the appellant-husband has taken the following ground in support of his case: -

(i) Learned counsel appearing for the appellant has submitted that the order passed by learned family court suffers from infirmities apparent on the face of it, and as such the same is bad and not sustainable in the eye of law.

(ii) He has submitted that the order refusing divorce passed by the learned Family Court in favour of the wife (respondent herein) is palpably wrong, manifestly erroneous and demonstrably unsustainable.

(iii) Learned counsel has further submitted that the learned Family Court failed to appreciate on the larger background that the respondent wife has deserted the appellant and does not wish to continue her matrimonial life with the appellant and seemed not at all interested in contesting the Title Matrimonial Suit even after receiving the notice and also paper publication of the said notice.

(iv) The learned Family Court failed to appreciate the case in its entirety and as a result a grossly perverse finding has been given by the learned

court below and has also erred in framing the issue as the issue of desertion and cruelty was not framed even though respondent has deserted the Appellant since 2013.

(v) Learned counsel for the appellant has submitted that the learned Family Court was manifestly unfair with the appellant and as such it proceeded on an assumption and presumption as the main issue of desertion was not framed and also it did not take into account that asking the appellant to leave his old and ailing parents who are dependent on appellant's income and settle at Patna as Gharjamai amounts to mental cruelty.

(vi) Learned counsel has further submitted that the most vital mistake committed by the learned Family Court was that no serious attempt was made to understand the predicament of the appellant who was being subjected to cruelty and whose life has come to a halt and he is unable enjoy his matrimonial rights and neither is able to proceed further in life.

(vii) It has been submitted that the learned Family Court failed to take note of various apex court judgments wherein time and again the Hon'ble

Apex Court has given guidelines in the matter of deciding cruelty for the purpose of granting divorce in terms of section 13(ia) of the Hindu Marriage Act. As held by the Hon'ble Apex Court in ***Narendra v. K. Meena 2016 SCC Online SC 1114*** that "Persistence effort of wife to constrain the husband to be separated from family would be torturous and will constitute as act of Cruelty.

(viii) The learned Family Court has failed to appreciate that the respondent wife was not ready to cohabit with the appellant for no plausible reason at all and the respondent has flatly refused time and again to once again start matrimonial life afresh with the appellant and has deserted him and has not been residing with the appellant since 2013 and the matrimonial accord has been severed to the point of irretrievability.

(ix) The learned Family Court has failed to appreciate that when the matrimonial relationship between the parties had earnestly broken down beyond repair for 9 years (Approx) of marriage now and none of the party were ready to restore ties in any manner whatsoever then in order to avoid multiplicity of the litigation should have had

granted divorce to the appellant. As it was held by the Hon'ble Apex Court in the Case of ***Naveen Kohli V. Neeta Kohli (2006) 4 SCC 558*** that once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The Court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then the divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

(x) The learned Family Court has failed to appreciate this fact that even after several try made by the Appellant to bring the respondent back the respondent was never willing and neither willing to perform matrimonial obligation and such the case has come to a stage of irreparable breakdown and continuation of the case will only lead to misery of the parties.

(xi) Learned counsel has further submitted that the learned Family Court has failed to adduce the

conduct of the respondent not only demonstrate a clear intention on her part to dessert the appellant but also her lack of sensitivity to physical and emotional need of the appellant. It was further held by the Hon'ble Apex Court in the case of ***Samar Ghosh V. Jaya Ghosh (2007) 4 SCC 511*** that "We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised 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."

(xii) Learned counsel appearing for the appellant has submitted that the learned Family Court has failed to understand the conduct of the respondent who has without any rhymes and reason has deserted the appellant and did not

even appear before the learned Family Court at the time of hearing even after notices.

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

Submissions advanced by the learned Amicus Curiae appearing for the respondent:

13. Learned counsel for the respondent-wife, defending the impugned order, has taken the following grounds: -

(i) The learned counsel appearing on behalf of the respondent-wife has submitted that the respondent-wife has never committed any cruelty against the petitioner and his family members rather it is the petitioner himself and his parents who committed cruelty against her.

(ii) Learned counsel has submitted that after marriage she performed all the marital obligations towards the petitioner-husband and his parents but the respondent was being abused by her father-in-law and husband in drunken state and that too in front of her daughter.

(iii) Learned counsel has further submitted that after the birth of the girl child, the appellant was not happy and the respondent was being physically,

mentally and economically tortured. However, the respondent tolerated everything by remaining silent in hope of a peaceful and happy conjugal life in future and that is the reason she did not take any recourse of law thinking that her husband would one day realize his mistake.

(iv) Learned counsel has submitted that during the pendency of the original suit before the Family Court, the respondent came to know that the appellant intended to solemnize a second marriage. Consequently, she promptly filed an application before the concerned Police Station, asserting that she is the legally wedded first wife and requesting that the appellant be restrained and the proposed marriage ceremony be cancelled.

(v) Learned counsel for the respondent has submitted that the respondent never thinks about dissolution of marriage rather she wants to live with the petitioner- husband, hence, this suit may kindly be dismissed.

(vi) Learned counsel for the respondent has further submitted that learned trial court has rightly held that the appellant is not entitled for the decree of divorce on the ground of cruelty

because the court did not find that there is any serious nature of cruelty for which a decree of divorce may be granted to the appellant.

(vii) Learned counsel for the respondent has submitted that the respondent still wants to live with the appellant and ready to lead a dignified life to which she is entitled as being wife of the appellant.

(viii) Learned counsel for the respondent has submitted that the appellant-husband wants to get married and thus the present suit has been filed by the appellant in the garb of cruelty.

14. Learned counsel for the respondent-wife on the aforesaid grounds has submitted that the impugned judgment requires no interference by this Court.

Analysis:

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

16. This Court, before looking into the legality and propriety of the impugned order, requires to refer the testimonies of the witnesses, as available on record.

17. The appellant, in support of his case, has adduced two witnesses including himself. The relevant portion of the

testimonies of the witnesses are mentioned as under:-

P.W.1 Rahul Choubey, the appellant himself, has stated in his examination-in-chief that he was married to Poonam Pathak on 21 November 2008 in Patna as per Hindu customs and traditions. After marriage, they began living as husband and wife at Meru B.S.F. Camp, Hazaribagh. After marriage, they had a daughter named Akriti Choubey, who was eight years old at the time of filing the case.

In village Meru, the mother and father of the appellant gave full respect to respondent but the respondent started going to her maternal home in Patna.

He has deposed that he could not understand why his wife kept going to Patna. Later, he learned that his wife, Poonam Pathak's parents, wanted to keep the appellant as a gharjamai (son-in-law). Since there was no one to care for my parents, so he did not agree to his wife’s proposal or her parents' wishes for a *gharjamai* (son-in-law).

He has stated that the respondent did not care for his parents or do any household chores.

Their daughter was born on 28.7.2011, even after that there was no change in the *behaviour* of

the respondent towards him and his parents and she continued to live with her parents and the respondent never came back home to Meru.

He has further deposed that he called the respondent and told her to come and live in the matrimonial house, but she repeatedly told him to come to Patna and live like a son-in-law, but it was not possible for the appellant because appellant's parents are old and there is no one to take care of them, so he rejected her request.

He has stated that on 13.05.2019, the respondent refused to live with him in his house and said that she did not want to have any relationship with the appellant or his family.

The respondent-wife is working in Patna and earning a lot, so she wants to live in Patna only. Therefore, he is being mentally and physically tortured by the wife/respondent and that is why he has filed this case for a decree of divorce.

P.W.2 Ramji Chouby, the father of the petitioner, has deposed more or less similar to the deposition of PW-1 (appellant).

He has stated that the plaintiff/appellant Rahul Choubey is his son whose marriage was

solemnized with Poonam Pathak on 21.11.2008 as per Hindu customs at Patna.

That after marriage, his son-plaintiff and Punam Pathak-defendant came to Hazaribagh and started living as husband and wife.

On 28.07.2011 my son was blessed with a daughter named Akriti Choubey who is about eleven years old now.

After marriage, Poonam Pathak treated his and his wife with respect, and we also treated her with respect. Subsequently, his daughter-in-law (defendant) repeatedly tried to visit her parents' home in Patna. Even when my son (plaintiff) tried to stop her from going to Patna, she refused.

He has deposed that despite repeated warnings to Poonam Pathak, there was no change in her behaviour and she went to Patna on 24.02.2013, thereafter she did not return to Meru, Hazaribagh.

He has stated that everyone tried to bring her back but she said that she would keep her husband Rahul Choubey in Patna only and her parents would keep him as their "gharjawai".

It has been stated that on 13.05.2019, a final attempt was made to bring the defendant Poonam

Pathak home, but this was unsuccessful and defendant refused to come to Meru, Hazaribagh. Therefore, his son (plaintiff) has filed this case.

He has deposed that at the time of marriage, Tilak, Madwa, date of marriage and later dates for marriage reception were fixed and marriage cards were printed.

He has proved the marriage card in which the date of Tilak is written as 14.11.2008, date of marriage as 21.11.2008 and date of reception as 25.11.2008, has been printed, the same has been marked as Ext.1.

He has lastly deposed that his son Rahul Choubey has not solemnized second marriage.

18. Since the respondent wife has not appeared in the case, the learned Family Judge, from the statements of the witnesses so produced on behalf of the appellant, has come to the conclusion that plaintiff/appellant has miserably failed to prove the grounds of alleged cruelty pleaded by him in his petition.

19. The appellant has taken the ground of cruelty that the respondent-wife and her relatives wanted him to live as *Gharjamai* which he did not agree since his parents are old and there is no one to look after them.

20. The next ground of the appellant towards cruelty is that

the respondent-wife was very frequently visiting her parental house.

21. The learned Family Judge, from the material available on record as also the submission made in the pleading, has found that the element of cruelty has not been established. The said finding of the learned Family Court has been assailed herein by way of filing the instant appeal.

22. Herein since appellate jurisdiction has been invoked therefore, before entering into merit of the case, at this juncture it would be purposeful to discuss the appellate jurisdiction of the High Court.

23. It needs to refer herein that under section 7 of the Family Courts Act, the Family Court shall have and exercise all the jurisdiction exercisable by any District Court or any Sub-ordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature which are described in the explanation to section 7(1).

24. 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 series of judgments.

25. 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:

> ***25.*** *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.*

28. 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 but herein since grave allegation of extra-marital affair has been alleged therefore cogent evidence is required to be laid by the plaintiff/appellant.

29. 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.

30. 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. Therefore, the Court has to see what are the probabilities in the case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse caused by the acts or omissions of the other.

31. Since this Court are 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.

32. 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 number of cases. In Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501] this Court observed that the expression “perverse” means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.*
>
> ***25.*** *In Parry's (Calcutta) Employees' Union v. Parry & Co. Ltd. [AIR 1966 Cal 31] the Court observed that “perverse finding” means a finding which is not only against the weight of*

evidence but is altogether against the evidence itself. In Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665 : AIR 1994 SC 1341] the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.

26. *In M.S. Narayanagouda v. Girijamma [AIR 1977 Kant 58] the Court observed that any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough [(1878) 1 LR 1r 331] the Court observed that a "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey [106 NW 814] the Court defined "perverse" as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.*

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

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

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

2. Longman Dictionary of Contemporary English, International Edn.

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

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

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

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

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

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

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

33. Thus, 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.

34. In the backdrop of the aforesaid settled position of law this Court is now adverting to examine that whether the prayer of the appellant for dissolution of marriage is fit to be allowed on the ground of cruelty alleged to be committed by the respondent wife.

Issue of cruelty

35. Now this court is adverting to the issue of cruelty. It

needs to refer herein that the "cruelty" has been interpreted by the Hon'ble Apex Court in the case of ***Dr. N.G. Dastane vs. Mrs. S. Dastana, (1975) 2 SCC 326*** wherein it has been laid down that the Court has to enquire, as to whether, the conduct charge as cruelty, is of such a character, as to cause in the mind of the petitioner, a reasonable apprehension that, it will be harmful or injurious for him to live with the respondent.

36. This Court deems it fit and proper to take into consideration the meaning of 'cruelty' as has been held by the Hon'ble Apex Court in ***Shobha Rani v. Madhukar Reddi, (1988)1 SCC 105*** wherein the wife alleged that the husband and his parents demanded dowry. The Hon'ble Apex Court emphasized that "cruelty" can have no fixed definition.

37. According to the Hon'ble Apex Court, "cruelty" is the "conduct in relation to or in respect of matrimonial conduct in respect of matrimonial obligations". It is the conduct which adversely affects the spouse. Such cruelty can be either "mental" or "physical", intentional or unintentional. For example, unintentionally waking your spouse up in the middle of the night may be mental cruelty; intention is not an essential element of cruelty but it may be present. Physical cruelty is less ambiguous and more "a question of fact and degree."

38. The Hon'ble Apex Court has further observed therein

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

39. 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.

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

41. In ***Vijaykumar Ramchandra Bhate v. Neela Vijay Kumar Bhate, (2003)6 SCC 334*** the Hon'ble Apex Court has observed by taking into consideration the allegations levelled by the husband in his written statement that his wife was "unchaste" and had indecent familiarity with a person outside wedlock and that his wife was having an extramarital

affair. These allegations, given the context of an educated Indian woman, were held to constitute "cruelty" itself.

42. 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.

43. Further in the case of ***Vishwanath Agrawal* v. *Sarla Vishwanath Agrawal*, (2012) 7 SCC 288,** the Hon'ble Apex Court has held as follows:—

> *22. The expression "cruelty" has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.*
>
> *26.After so stating, this Court observed in* Shobha Rani case *about the marked change in life in modern times and the sea change in matrimonial duties and responsibilities. It has been observed that : (SCC p. 108, para 5)*

"5. … when a spouse makes a complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance."

27. Their Lordships in Shobha Rani case *referred to the observations made in* Sheldon *v.* Sheldon wherein Lord Denning *stated, "the categories of cruelty are not closed". Thereafter, the Bench proceeded to state thus:* (Shobha Rani case, *SCC p. 109, paras 5-6)*

"5. … Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.

6. These preliminary observations are intended to emphasise that the court in matrimonial cases is not concerned with ideals in family life. The court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Reid observed in Gollins *v.* Gollins : *(All ER p. 972 G-H)*

'… In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman.'"

44. In the case of ***Samar Ghosh v. Jaya Ghosh, (supra)*** it

has been held by the Hon'ble Apex Court as follows: —

> *99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.*
>
> *100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.*

45. Thus, from the aforesaid settled position of law it is evident that "Cruelty" under matrimonial law consists of conduct so grave and weighty as to lead one to the conclusion that one of the spouses cannot reasonably be expected to live with the other spouse. It must be more serious than the ordinary wear and tear of married life.

46. Cruelty must be of such a type which will satisfy the conscience of the Court that the relationship between the

parties has deteriorated to such an extent that it has become impossible for them to live together without mental agony. The cruelty practiced may be in many forms and it must be productive of an apprehension in the mind of the other spouse that it is dangerous to live with the erring party. Simple trivialities which can truly be described as a reasonable wear and tear of married life cannot amount to cruelty. In many marriages each party can, if it so wills, discover many a cause for complaint but such grievances arise mostly from temperamental disharmony. Such disharmony or incompatibility is not cruelty and will not furnish a cause for the dissolution of marriage.

47. Herein allegation of cruelty has been specifically made by plaintiff/appellant wherein it has been stated that the differences arose between him and respondent (wife) as the respondent-wife and her relatives wanted him to live as Gharjamai which he did not agree since his parents are old and there is no one to look after them.

48. Further, the next ground of the appellant towards cruelty is that the respondent-wife was very frequently visiting her parental house.

49. From the testimony so recorded of the appellant-husband, the learned Principal Judge, Family Court has come to the conclusion that visiting parental house is as good as a right to every bride and it cannot be termed cruelty

for the purpose of divorce, at any stretch of imagination.

50. The learned Family Judge has also observed that practice of *Gharjamai* is a very old custom prevailing in our society but it remains to be absolute choice of groom to agree or not and there is no case that the appellant was compelled or forced to live as *Gharjamai*. Mere wish of respondent-wife that the appellant-husband should live as *Gharjamai* will not constitute cruelty for the purpose of Hindu Marriage Act.

51. Thus, on the basis of the discussion made hereinabove this Court is of the view that the appellant has failed to substantiate the commission of alleged cruelty of respondent upon him and since the learned Family Court while negating the claim of cruelty has duly appreciated the evidences brought on record, therefore the finding of the learned Court on the alleged act of cruelty, is not perverse.

52. This Court, based upon the aforesaid discussions is of considered view that the issue of cruelty as has been alleged by the appellant-husband against his wife could not be proved and the learned Family Judge has rightly observed that that visiting parental house is as good as a right to every bride and mere wish of respondent-wife that the appellant-husband should live as Gharjamai will not constitute cruelty for the purpose of Hindu Marriage Act and it cannot be termed cruelty for the purpose of divorce, at any stretch of imagination.

53. This Court, on the basis of discussions made hereinabove, is of the view that the judgment dated 16.07.2022 and decree signed on 01.08.2022 by learned Principal Judge, Family Court, Hazaribag whereby and whereunder the Original Suit No.148 of 2019 filed by the appellant-husband under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 for a decree of divorce has been dismissed, requires no interference by this Court.

54. Accordingly, the instant appeal fails and is dismissed.

55. Pending interlocutory application, if any, also stands disposed of.

56. Before parting with this Judgment, we must record that we have been given able assistance by learned *amicus curiae* Mr. Atanu Banerjee. We direct the Secretary, High Court Legal Services Committee, to make the payment of the prescribed remuneration to the learned *amicus curiae*.

57. Let a copy of this Judgment be sent to the Secretary, High Court Legal Services Committee, Ranchi, for the needful.

(Sujit Narayan Prasad, J.)

I agree.

(Sanjay Prasad, J.) **(Sanjay Prasad, J.)**

Dated : 15/09/2026
Birendra /**A.F.R.**

Uploaded on 18/09/2026