CGHC010451692024 2026:CGHC:46234-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 436 of 2024

Varsha Sahu W/o Rajesh Kumar Sahu Aged About 33 Years R/o B.T.I. Road, Mahasamund, Tehsil And District - Mahasamund, Chhattisgarh At Present R/o Ramantola, Near Gaura Shiv Mandir, Mahasamund, Tehsil And District - Mahasamund Chhattisgarh

--- Appellant

versus

Rajesh Kumar Sahu S/o Bhagwat Prasad Sahu Aged About 34 Years R/o Ward No. 28, Thetwaar Para, Mangal Bazar, Chhwani, Bhilai, Tehsil - Bhilai, District Durg Chhattisgarh

---- Respondent

(Cause-title taken from Case Information System)

For Appellant : Mr. Shobhit Koshta, Advocate

For Respondent : Mr. Anmol Sharma, Advocate

Division Bench

Hon'ble Shri Parth Prateem Sahu, Judge

Hon'ble Smt. Sushma Sawant, Judge

Judgment On Board
(30.10.2026)

Per **Parth Prateem Sahu, Judge**

1. Appellant/non-applicant-wife has filed this appeal questioning the legality and sustainability of the impugned judgment and decree dated 27.11.2024, passed in Civil Suit No. 56-A/2024, whereby the Judge,

Family Court, Mahasamund, District – Mahasamund, has allowed the application/suit of respondent/applicant-husband filed U/s.13 (1) (i-a) (i-b) of the Hindu Marriage Act, 1955 (In short 'the Act, 1995') granting decree of divorce.

2. The facts relevant for disposal of this present appeal are that a suit under Sections 13 (1) (i-a) and (i-b) of the Hindu Marriage Act, 1955 was filed by the applicant-husband (respondent herein) against the non-applicant-wife (appellant herein) seeking a decree for dissolution of marriage solemnized between the parties on the ground of cruelty and desertion. It was pleaded that marriage of non-applicant/wife was solemnized with respondent/husband on 18.04.2018 as per Hindu rites and rituals at Mahasamund. After marriage out of their wedlock, one son Prateek Sahu was born on 22.11.2020, who was presently residing with non-applicant/wife. It was pleaded that after marriage, applicant and non-applicant lived in a joint family with his parents. Non-applicant/wife, however, started insisting for living separately within a few months of marriage and frequently quarrelled with applicant and his parents. She allegedly used abusive language towards his parents and disturbed the family atmosphere. Applicant further alleged that whenever he try to make her understand, she quarreled with him and sometimes refuse to allow him to sleep in the same room. She also pressurized him to seek a transfer to Mahasamund, where her parental home is situated, and threatened to harm herself and lodge a false complaint against him if he refused. It was further stated that since September 2022, non-applicant has been residing at her parental home in Mahasamund along with their minor son. Despite repeated efforts by applicant, his family members

and members of the community to persuade her to return to matrimonial home, she has refused to resume cohabitation. Applicant also claimed that he and his family provided her financial assistance while she was living at her parental home and that he continued to visit her and their child and give her money for expenses. It was further pleaded that the non-applicant had filed a maintenance case against him, during the proceedings of which both parties were counselled. Pursuant thereto, applicant stayed at the non-applicant's parental home for about a month, but behaviour of non-applicant did not improve. He further stated that he is paying monthly maintenance of Rs.12,000/- to non-applicant. It was also pleaded that despite his willingness to continue the marital relationship, the non-applicant is unwilling to return to the matrimonial home. Non-applicant had voluntarily deserted him since September 2022 by leaving the matrimonial home and residing at her parental home without sufficient cause. Her conduct had caused him mental cruelty and it is no longer possible for them to live together. Accordingly, he sought a decree of divorce.

3. Non-applicant/wife filed written statement/reply denying the averments/allegation made in the plaint. It was pleaded that after marriage, she came to know that applicant was addicted to alcohol and other intoxicants. Whenever she objected to his habits, he abused and assaulted her and demanded a car as dowry. Parents of applicant and brother also harassed and assaulted her when she complained about his conduct. It was pleaded that in October 2018, applicant, under the influence of alcohol, assaulted her, causing a head injury which required eight stitches. When she sought help from her mother-

in-law, she poured kerosene on her and attempted to set her on fire. Thereafter, she stayed at her parental home for about two and a half months. In January 2019, the applicant and his family members persuaded her to return at her matrimonial home and assured her that such incidents would not be repeated. It was further pleaded that after returning to the matrimonial home, the applicant again started consuming alcohol and other intoxicants. During her pregnancy, neither applicant nor his family members provided her proper care and treatment. On 19.07.2019, the applicant and his family members forcibly throw her out of the matrimonial home. She thereafter stayed at her parental home, where she gave birth to a son, and the delivery expenses were borne by her family. It was also pleaded that on 16.01.2020, applicant and his family members brought her back to the matrimonial home. However, behaviour of applicant did not improve. He continued consuming intoxicants, assaulted her and neglected the child, including his medical expenses. She also alleged that applicant was admitted to de-addiction centre at Rajnandgaon, but after a few days, applicant started consuming alcohol and other intoxicants. In October 2020, applicant again assaulted her, due to which she sought police assistance by calling 112. A case was also registered against applicant at Police Station Jamul under Sections 294, 323 and 506 of the IPC. It was pleaded that despite a compromise between the parties, applicant continued to abuse and assault her. On 07.08.2022, the plaintiff and his family members again assaulted her and throw her out of the matrimonial home. Thereafter, her family members took her to Mahasamund, where she has been residing with her minor son. Applicant and his family members had kept her clothes and jewellery

and were not returning them. She denied having deserted the applicant or having insisted that he live separately from his family or seek a transfer to Mahasamund. It was pleaded that she was always willing to resume her matrimonial life, but the plaintiff was unwilling to keep her with him and had been pressuring her to seek a divorce.

4. Learned trial Court based on the pleadings made by respective parties have formulated as many as four issues for consideration and upon considering the evidence brought in record by the respective parties, allowed the suit filed by applicant-husband, holding that the non-applicant-wife had subjected applicant-husband to cruelty by refusing to resume cohabitation and continue their matrimonial life and granted decree of divorce in favour of applicant-husband. Being aggrieved with the judgment and decree of divorce passed by learned Family Court, appellant-wife has filed this appeal.

5. Learned counsel for appellant would submit that learned trial Family Court has passed the judgment and decree allowing the application U/s. 13 of the Act, 1955 only on the basis of the presumption and assumption. He contended that on the one hand, learned Family Court has rejected the prayer made by respondent/applicant for grant of decree of divorce on the ground of desertion observing that there was sufficient reason for appellant-wife to reside separately, on the other hand have granted decree of divorce observing that as appellant-wife is residing separately for sufficient time and thereby caused cruelty upon respondent-husband. He contended that in fact from the pleadings made in the reply as also the evidence available in record, it is apparent that it is the respondent/husband who treated

appellant/wife with cruelty. She was abused harassed and also assaulted in intoxicated condition frequently. Appellant/wife when found that respondent/husband is assaulting and abusing her in drunken condition and it exceeded, she also lodged a report on which MLC was done wherein in the report which is placed in record mentions injuries due to assault. In above facts of the case, merely non-residing of appellant-wife with respondent-husband will not come within the purview of cruelty to have been committed by appellant-wife upon respondent-husband. He also submits that as the impugned judgment and decree is perverse to the pleadings and the evidence available in record, hence, it be set-aside.

6. Learned counsel for respondent opposes the submission made by learned counsel for appellant and supports the impugned judgment and decree passed by learned Family Court. He submits that the conduct and behaviour of the appellant-wife amount to cruelty, as she has voluntarily left the respondent-husband without any sufficient reason. He submits that despite repeated efforts by the respondent to bring her back, appellant is neither willing nor ready to return to the matrimonial home and resume cohabitation with him. He submits that refusing to live with husband to continue marital life is also a cruelty. The appellant is residing separately for more than 5 years and there is no chances of reconciliation between the parties. He submits that learned Family Court after appreciation of the documentary and oral evidence brought on record has passed the impugned judgment and decree of divorce, which does not call for any interference. He relied upon the decision of High Court of Madhya Pradesh in case of **Neelam Singh Rawat Vs. Smt. Lalita Rawat, Neutral Citation No.**

2026:MPHC-GWL: 5953, judgment of this Court in case o**f Ayushi Ginora (Agrawal) Vs. Sumit Agrawal, FA (MAT) No. 287 of 2025, decided on 07.07.2026** and in case of **Prashant Jha Vs. Isha Jha, in F.A.(MAT) No. 41 of 2024, decided on 31.01.2025**.

7. We have heard learned counsel for parties and perused the record of the trial Court.

8. To prove his case, respondent/applicant-husband examined himself as (A.W.-1) and one Urmila Bai as (A.W.-2) and placed on record information dated 27.06.2024 regarding non-cognizable offence as (Ex.P-1), receipt of application made to Superintendent of Police and Station House Officer, City Kotwali as (Ex.P-2), Ration Card as (Ex.P-3), and photographs of marriage as Article 1 and 2. Appellant/non-applicant-wife has also examined herself (NAW-1) and one Smt. Shyama Sahu as (N.A.W.-2)

9. The marriage between the parties is not in dispute. It is also not in disputed that a son, namely, Prateek Sahu, was born out of their wedlock. Applicant-husband has filed application U/s. 13 of the Act, 1955 on two counts i.e. grounds under Section 13 (1-a) cruelty and Section 13 (1-b) desertion.

10. So far as the issue with regard to desertion and thereby caused cruelty upon respondent/husband has been found to be not proved by learned Family Court. Learned Family Court in its order impugned in para 57 has recorded that mother of respondent/applicant-husband had admitted in her evidence that respondent/applicant was consuming intoxicants and was also admitted in the hospital. Family Court in para-58 also on appreciation of evidence has observed that though the

respondent/applicant-husband had denied the suggestion of committing assault upon appellant/wife, however, taken note of the documentary evidence of medical prescription dated 14.10.2024 (MLC) of Lalbahadur Shashtri Hospital, Bhilai (OPD) mentioning that assault case and further that appellant/non-applicant wife has stated she has lodged report against respondent/husband of assault in Police Station – Jamul and thereafter, she went to hospital for treatment. Learned Family Court further on appreciation of evidence on record that the mother of respondent/husband (P.W.-2) had admitted that his son has quarreled and assaulted non-applicant-wife upon which non-applicant/wife lodged report in Police Station – Jamul. Above incident was denied by non-applicant/husband in his cross-examination.

11. The aforementioned facts and evidence as discussed by learned Family Court is upon proper appreciation of evidence from which it is clearly appearing that respondent/husband has not pleaded or stated the correct facts and have tried to suppress the material facts from the Courts. The said act of the respondent husband can be considered that the respondent husband has not approached the learned Family Court with clean hands.

12. Section 13 (1b) of the Act, 1955 talks of desertion and it reads that either husband or wife has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. In explanation appended to Section 13 (1) of desertion is that desertion means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful

neglect of petitioner by other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly. The key word in the application for invoking the ground of desertion as provided under Section 13 (1) (i-a) is one party deserted the other to the marriage, without reasonable cause.

13. The law with regard to 'desertion' is well settled. Hon'ble Supreme Court In **Savitri Pandey v. Prem Chandra Pandey, (2002) 2 SCC 73,** has explained that desertion means the intentional and permanent leaving of one spouse by the other without consent and without any reasonable cause and held as under :-

> "**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."

9. Following the decision in *Bipinchandra case* [AIR 1957 SC 176] this Court again reiterated the legal position in *Lachman Utamchand Kirpalani* v. *Meena* [AIR 1964 SC 40] by holding that in its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there (*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. For holding desertion as proved 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.

10. To prove desertion in matrimonial matter it is not always necessary that one of the spouses should have left the company of the other as desertion could be proved while living under the same roof. Desertion cannot be equated with separate living by the parties to the marriage. Desertion may also be constructive which can be inferred from the attending circumstances. It has always to be kept in mind that the question of desertion is a matter of inference to be drawn from the facts and circumstances of each case.

11. There is another aspect of the matter which disentitles the appellant from seeking the relief of divorce on the ground of desertion in this case. As desertion in matrimonial cases means the withdrawal of one party from a state of things i.e. the marital status of the party, no party to the marriage can be permitted to allege desertion unless he or she admits that after the formal ceremonies of the marriage, the parties had recognised and discharged the common obligation of the married life which essentially requires the cohabitation between the parties for the purpose of consummating the marriage. Cohabitation by the parties is an essential of a valid marriage as the object of the marriage is to further the perpetuation of the race by permitting lawful indulgence in passions for procreation of children. In other words, there can be no desertion without previous cohabitation by the parties. The basis for this theory is built upon the recognised position of law in matrimonial matters that no one can desert who does not actively or wilfully bring to an end the existing state of cohabitation. However, such a rule is subject to just exceptions which may be found in a case on the ground of mental or physical incapacity or other peculiar circumstances of the case. However, the party seeking divorce on the ground of desertion is required to show that he or she was not taking the advantage of his or her own wrong. In the instant case the appellant herself pleaded that there had not been cohabitation between the parties after the marriage. She neither assigned any reason nor attributed the non-resumption of cohabitation to the respondent. From the pleadings and evidence led in the case, it is apparent that the appellant did not permit the respondent to have cohabitation for consummating the marriage. In the absence of cohabitation between the parties, a particular state of matrimonial position was never permitted by the appellant to come into existence.

> In the present case, in the absence of cohabitation and consummation of marriage, the appellant was disentitled to claim divorce on the ground of desertion."

14. In the case at hand from marshaling of documentary and oral evidence it would reveal that appellant/non-applicant-wife in written statement filed before the learned trial Court has very categorically and specifically pleaded that respondent/applicant used to consume liquor, Ganja, Tabacoo, Cigarette and is addicted to all types of intoxicants. It is also pleaded that her husband used to return home under intoxicated condition each day and upon asking not to do so she was being abused and assaulted by respondent/husband. She also pleaded that from their wedlock they were blessed with a baby boy and upon continuous request made to the respondent/husband of not coming to home under intoxicated conditions, he started living in other room and not even taking care of child. He was admitted de-addicted center of Rajnandgaon twice initially for 20 days and 15 days and it was in like manner admitted for four times. After few days, he again started consuming liquor and coming to home in intoxicated conditions and assaulting the appellant/wife. After assault, she lodged report to the Police Station Jamul on 14.10.2020, she was sent for hospital for her examination and it was also pleaded that based on report in Police Station Jamul Crime No. 457 of 2020 was registered in which under the assurance given by respondent/husband, case was closed on submission of compromise/settlement in the month of January, 2022. From the aforementioned facts of the case, it is appearing that conduct of the respondent/husband of coming into home under intoxicated conditions regularly abusing, harassing, and assaulting the

appellant/wife, based upon which criminal case was also registered, is sufficient to show that it is not the respondent/husband, who was being treated with cruelty but act of respondent/husband against appellant/wife to be cruel which gives cause and reason to the appellant/wife to reside separately from her husband along with minor child.

15. Mother of the respondent/husband (P.W.-2) in her evidence admitted that respondent/husband was addicted to intoxicants. The aforementioned facts and evidence has been correctly taken into consideration by the learned Family Court in the impugned order. Accordingly, the learned trial Court has recorded the finding in para -67 of the impugned judgment that it is not being proved by respondent/husband that appellant/non-applicant wife has deserted him without any reasonable cause and decided the issue No.1 to be not proved.

16. However, the learned trial Court in para -68 of the judgment after recording the reasons for residing separately of appellant/non-applicant-wife from respondent/husband to be addicted to intoxicants and under the intoxicated conditions used to abuse and assaulted the appellant/wife but then erroneously considered separate residence of appellant/wife to be act of cruelty. The said finding recorded by learned Family Court is contradictory to the finding recorded to the Issue No.1, which is not sustainable.

17. From the impugned order and the findings recorded by the Family Court it appears that learned Family Court in para-66 of the impugned judgment had considered that there was continuously quarrel between

the two, police report was made, and further taking one line of evidence of appellant/non-applicant wife, that she could not leave alone in the company of her husband and thereby further concluded that the marital relationship between the parties had deteriorated and there was no possibility of reconciliation, to be the ground to record that such act of not staying the appellant/non-applicant wife to be a cruel act.

18. The spouse treated with cruelty is to be ascertained upon evaluating the pleadings and the evidence in its entirety. By taking any instance in isolation or one sentence of evidence or pleading recording conclusion and finding would not be correct and lawful.

19. If one spouse is compelled to leave the company of the other and live separately for valid and compelling reasons, such separate residence cannot be treated as an act of cruelty by the spouse living separately. Rather, the conduct of the spouse who, by his or her acts or behaviour, compels the other to live separately may itself amount to cruelty upon other**.** The spouse who by the act or the conduct treated the other spouse with cruelty if granted decree of divorce by allowing application submitted by him or her would be a situation awarding him or her, which is not the object under Section 13 of the Act, 1955. Application filed under Section 13 is to be considered only under the scope as provided under Section 13 and it is to be allowed only if the party filing an application U/s. 13 seeking dissolution of marriage by decree of divorce makes out the ground as mentioned therein.

20. From perusal of the para 68 of the impugned judgment would show that learned trial Court fell into error in concluding that it is not

appearing that the situation between the two can be normalizing and it is a cruelty.

21. The evidence of D.W.-1/appellant-wife would show that she in her evidence has denied the suggestion given by counsel for respondent/husband that she did not want to reside with respondent/husband but has specifically stated that if her husband correct his behaviour and conduct, today also she is ready and willing to reside with her husband.

22. From the aforementioned evidence of appellant/wife it is appearing that she left her matrimonial home under compelling circumstances when her husband used to come in intoxicated conditions regularly and used to abuse and assault her. In such circumstances, a normal person cannot be expected to live in such situation enduring all things and acts committed of assault and abuse by her husband upon her. Therefore, the respondent/husband should not in any manner be awarded of his own bad conduct by allowing his application for grant of decree of divorce.

23. The Hon'ble Supreme Court in case of **Ashok Kumar Jain Vs. Sumati Jain,** reported in **AIR 2013 SC 2916**, has held that a Court may justifiably refuse to grant relief where a party seeks to take advantage of his or her own wrong or disability. The relevant para of this judgment are as under :-

> "13. Under Sub-clause (a) of Clause (1) of Section 23, in any proceeding under the Act, if the Court is satisfied that any of the grounds for granting relief exists and the Petitioner is not in any way taking advantage of his or her own wrong or disability for the purpose of such

relief, the Court shall grant relief Under Section 23(1)(a) of the Act. Therefore, it is always open to the Court to examine whether the person seeking divorce "is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief". On such examination if it is so found that the person is taking advantage of his or her wrong or disability it is open to the Court to refuse to grant relief."

24. Hon'ble Supreme Court in case of **Chetan Dass v. Kamla Devi, (2001) 4 SCC 250,** while considering the question as to whether a party can be permitted to take advantage of his or her own wrong or disability, observed as under:-

> **"18.** Learned counsel for the respondent submits that in certain situations, relief would be denied to the petitioner where it is found that he is taking advantage of his own wrong for the purposes of making out a case to obtain the decree. He has drawn our attention to Section 23(1) clauses (*a*), (*b*) and (*e*) of the Hindu Marriage Act which are quoted below:
>
> > "23. *Decree in proceedings*.—(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that—
> >
> > (*a*) any of the grounds for granting relief exists and the petitioner except in cases where the relief is sought by him on the ground specified in sub-clause (*a*), sub-clause (*b*) or sub-clause (*c*) of clause (*ii*) of Section 5 is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and
> >
> > (*b*) where the ground of the petition is the ground specified in clause (*i*) of sub-section (1) of Section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and
> >
> > (*c*)-(*d*)***

> (*e*) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly."

25. The judgments relied upon by learned counsel for respondent, in **Neelam Singh Rawat (supra)** of High Court of Madhya Pradesh and in case of **Ayushi Ginora (Agrawal) (supra) and Prashant Jha (supra)** of this Court, are distinguishable on facts. The facts and circumstances of the present case are different from those of the aforesaid cases, therefore, it will not give any benefit to the respondent.

26. For the foregoing discussions and in view of the decision of Hon'ble Supreme Court we are of the considered opinion that learned Family Court committed error in recording a finding that there was a statement given by wife that she is having life threat she cannot reside alone, and thereby there is no chance of normalizing the matrimonial relationship to be a ground of cruelty overlooking the specific evidence/statement given by wife before the Court that if her husband improves his behaviour and conduct, she is ready and willing to reside with him, to be erroneous and perverse, which is not sustainable.

27. Accordingly, the appeal is allowed. The impugned judgment and decree dated 27.11.2024 is hereby set-aside.

28. Decree be drawn up accordingly.

Sd/-	Sd/-
(Parth Prateem Sahu)	**(Sushma Sawant)**
Judge	Judge

Balram