

IN THE HIGH COURT OF JHARKHAND AT RANCHI**First Appeal No.98 of 2023**

Prabhat Kumar aged about 32 years son of Sri Bijay Kumar Seth permanent address-Main Road, Hirua, PO+PS-Hirua, District-Nawada (Bihar) at present resident of Flat No.116, Hill View Garden, Block-A, Near New Suman Hotel, Dimna Chowk, Mango, PO+PS-Mango, District-East Singhbhum (Jharkhand) **Petitioner/ Appellant**

Versus

Smt. Neelam Kumari wife of Prabhat Kumar, daughter of Shiv Kumar Bhadani, Permanent resident of Village+P.O-Buddhia, P.S-Giridih, District-Giridih at present residing at Hotel Kaveri, Gandhi Chowk, Station Road, P.O +P.S-Giridih, District-Giridih.

... ... **Respondent**

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD**

For the Appellant : Mr. Arvind Kumar Choudhary, Advocate
For the Respondent : Mr. Shailendra Jit, Advocate

C.A.V on 30.06.2026**Pronounced on 21/07/2026****Per Sujit Narayan Prasad, J.**

1. The instant appeal under section 19(1) of the Family Courts Act, 1984 is directed against the judgment dated 31.03.2023 and the decree dated 14.04.2023 passed in Original Suit No.09 of 2019 by the learned Principal Judge, Family Court, Giridih (in short, Family Judge) whereby and whereunder the petition filed under section 13(1) (i-b) and (iii) of the Hindu Marriage Act, 1955 by the appellant-husband against the respondent-wife has been dismissed.

2. The brief facts of the case as pleaded in the plaint having been recorded by the learned Family Judge, needs to be referred herein as:

- (i) The marriage of the appellant-husband and respondent-wife solemnized on 30.01.2015 at Hotel Kaveri, Gandhi Chowk as per Hindu religion rites.
- (ii) After performance of marriage, the respondent-wife came to her matrimonial house and both of them started living together.
- (iii) Further, the appellant found that his wife did not know about the relation of husband and wife as she was suffering from mental disorder.
- (iv) The respondent-wife was suffering from chronic and incurable mental disorder and is not fit in after mental state to lead a married life.
- (v) Thereafter, the parents of respondent-wife were informed about her physical and mental condition upon which her parents came to his house and got angry upon appellant-husband and also threatened him and returned back.
- (vi) The respondent-wife is suffering from mental illness and though she was under medication by suppressing the material facts the marriage was solemnized with the appellant.
- (vii) Further, the appellant took his wife before a psychiatrist and also at different places such as Bangalore, Gaya, Ranchi, Jamshedpur, Durgapur where she was medically examined by various specialist doctors but the doctors opined that the disease by which the respondent is suffering was incurable.

3. On the aforesaid grounds of *desertion* and *mental disorder*, the appellant-husband instituted proceedings seeking a decree of dissolution

of marriage against the respondent–wife, by filing Original Suit No. 09 of 2019 before the learned Family Court.

4. Upon issuance of the notices, the respondent-wife has appeared and filed a written statement denying all the allegations levelled against her by the appellant-husband.

5. The respondent has stated in her written statement that after the marriage she and the petitioner both were living together happily for a period of three months and in this period her husband gave good treatment to her. But later on, her husband and his family members started demanding her to bring money from her parents and her husband used to insist her to go to her parental house to bring additional dowry because her husband and his family members were not satisfied with the dowry and they have been making additional demand. When her parents received information about torture to her with respect to demand of additional dowry then her father for ensuring that his daughter lead a happy and peaceful marriage life deposited Rs.1 lakh through RTGS in the account of her husband.

6. It is averred in the written statement that in spite of fulfillment of demand of additional dowry of Rs.1 lakh, her husband and in-laws did not satisfy and repeatedly started demand further dowry in the shape of Rs.2 lakhs and when such demand of dowry was not fulfilled by her parents, then she was subjected to physical and mental cruelty and even her husband (the appellant herein) has stopped to provide her food and started brutally assaulting her. On several occasion, the respondent was deprived of food and clothes.

7. It is averred that it is the petitioner who continued to torture the respondent-wife due to non-fulfilment of demand of dowry and lastly, he left her at her *maike* on 10.07.2017 and thereafter never tried to bring back her. It is stated in the written statement that the respondent and her family members tried several times to pacify the matter but in vain as the petitioner refused to keep her with him and, thus, she was compelled to leave the matrimonial house and live in her *maike*. On the aforesaid ground a prayer has been made that the original suit is liable to be dismissed.

8. Learned Family Judge, after institution of the said case, taking into consideration of the pleadings of the parties has formulated the issues and has decided the *lis* by refusing to grant divorce to the petitioner/appellant.

9. The aforesaid judgment by which divorce has not been granted is under challenge by filing the instant appeal.

Submission of behalf of the appellant-husband:

10. Mr. Arvind Kumar Choudhary, the learned counsel appearing for the appellant-husband has taken the following grounds:

(i) There is an error in the impugned judgment, since, each and every aspect of the matter has not been taken into consideration based upon the evidences.

(ii) The element of desertion and mental disorder has been found to be there if the evidences adduced on behalf of the appellant-husband will be taken into consideration but without appreciating the same properly the learned Family Judge has come to the finding by holding that no element either of cruelty or mental

disorder is there and, as such, the impugned judgment and decree suffers from an error.

(iii) It has been contended that the appellant has been meted out with cruelty at the hands of the respondent due to her abnormal behaviour as would be evident from the evidence adduced on behalf of the appellant-husband, but the same has not been taken into consideration.

(iv) It has been contended that though the learned Family Judge has proceeded the matter and dismissed the original suit, but he has failed to appreciate the evidences adduced on behalf of the appellant as in the trial, the evidence has come that it was the respondent-wife who has deserted the petitioner.

11. The learned counsel, based upon the aforesaid ground, has submitted that the impugned judgment and decree is suffering from perversity, therefore, needs interference.

Submission of behalf of the respondent-wife:

12. Mr. Shailendra Jit, the learned counsel appearing for the respondent-wife has taken the following grounds:

- (i) There is no error in the impugned judgement. The learned Family Judge has considered the entire issue and on the basis of evidence as led by the parties has passed the order impugned as such same may not be interfered with.
- (ii) The appellant has sought divorce on the ground that the respondent-wife is of unsound mind or has been suffering continuously or intermittently for mental disorder and the appellant cannot reasonably be expected to live with the

respondent but the learned Family Court, after taking into consideration the evidences, has held that the entire allegations levelled in are absolutely illegal, uncalled for and has rightly dismissed the suit.

- (iii) It has also been submitted that the learned Family Court after taking into consideration the material available on record has found that the conduct of the appellant/ husband has never been towards salvaging the institution of marriage as it is he who has come for dissolution of the marriage, therefore, on the pretext of the aforesaid categorical finding of the Family Court, the impugned order requires no interference.

13. Learned counsel, based upon the aforesaid grounds, has submitted that if on that pretext, the factum of desertion and mental disorder has not been found to be established, hence, the impugned judgment cannot be said to suffer from an error.

Analysis:

14. We have heard the learned counsel appearing for the parties, gone through the impugned judgment as well as the Trial Court Records, as also the testimonies of the witnesses.

15. The learned Family Judge has formulated altogether five issues, for ready reference the same are being quoted hereinbelow:

- i) *Is the suit as framed maintainable?*
- ii) *Whether the applicant has valid cause of action?*
- iii) *Whether the respondent has deserted the applicant?*
- iv) *Whether the respondent has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind*

and to such an extent that petitioner cannot reasonably be expected to live with the respondent?

v) Whether the applicant is entitled to a decree of divorce on the ground of desertion and insanity?

vi) To what other relief or reliefs the applicant is entitled to?

16. First of all, the learned Family Judge has taken into consideration the issue no.(iii), i.e., the ground of desertion “Whether the respondent has deserted the applicant”?

17. The learned Family Judge has considered the evidence adduced on behalf of the parties for deciding the issues involved in the Suit.

18. This Court in order to appreciate the aforesaid rival submission before entering into the legality and propriety of the impugned judgment needs to discuss herein the relevant part of the evidences adduced on behalf of the parties before the learned Family Court.

19. During the trial, two witnesses have been examined on behalf of the appellant-husband who himself has been examined as PW1. PW2-Bijay Kumar Seth is the father of the appellant-husband.

20. On the other hand, in support of her contention, the respondent-wife has also examined four witnesses including herself as OPW1. OPW 2-Shiv Kumar Bhadani is the father of the respondent, OPW-3-Kailash Ram and OPW4-Kuldeep Kumar Bhadani are the near relatives of the respondent who knows both the parties.

21. The appellant-husband PW1 in his evidence on oath has stated that he got married to the respondent as per Hindu rites and customs on 30.01.2015 in presence of relative of both the parties. After marriage, the respondent/wife came to his house, thereafter it was discovered that the respondent suffers from a chronic and incurable mental disorder and is not in a fit mental state to lead a married life. The fact that the respondent

is suffering from mental disorder, has been suppressed by the parents of respondent before the marriage. Thus, there is fraud played upon the parents of respondent with him concealing the fact that the respondent suffered from unsoundness of mind and his consent has been obtained for marriage by suppression. It was further detected that before the marriage, the respondent was under treatment for long time. This witness has further stated that the behavior of the respondent was very cruel against his family members and she irritated in petty matters and started to cry also. On account of serious mental illness which is of incurable and that he cannot be expected to live with her. There is every chance of violent acts, which could be dangerous to his life. The father of the respondent/wife fraudulently concealed the fact of mental illness and obtained his consent by fraud. However, she was treated by various Doctor. In the course of treatment, the respondent was taken to Bangalore, Gaya, Ranchi, Jamshedpur and Durgapur, etc. but in vain. This witness has further deposed that the marriage could not be consummated because of the mental illness of the respondent and the respondent was/is unable to procreate any child or to establish sexual relationship with the petitioner.

In his cross-examination, this witness has stated that marriage of both parties was solemnized on 30.01.2015 at Giridih District in which his father and entire family including relatives were participated. The alleged marriage was performed with his consent. This witness has admitted that before marriage he met with respondent in the Hotel Ashoka in which his family members were also participated. At that time, he was talking with the respondent for a period of five minutes. The respondent was medically examined by the Doctors but the result is negative. The

respondent is suffering from mental illness and though she was under medication, suppressing the material facts the father of the respondent negotiated the marriage of the respondent with him. He was cheated by the parents of the respondent.

At para-12 he has stated that after two days of marriage at 2 AM in the night, he noticed abnormal behaviour of the respondent while she was standing in front of the wardrobe, applying *kajal* and lipstick due to which he was scared. This witness has fairly conceded the fact that he knows about mental illness of the respondent in 2015, but the divorce petition was instituted in the year 2017. This witness has denied the fact that he has extra marital relation with another woman.

22. P.W-2, Bijay Kumar Seth, who is father of the petitioner, has stated that the respondent is legally married wife of the petitioner. The respondent was staying in the matrimonial home for a period of four months, thereafter she started to reside in her parental home because she is mentally ill lady. Before marriage the fact that the respondent is suffering from mental disease, has been suppressed by the respondent's father. This witness has further narrated that the respondent is unable to bear the child. This witness has further stated that after discovery the mental problem of the respondent, she was medically examined in which huge amount was spent but no avail. The respondent had taken medicine every day.

In his cross-examination, this witness has stated that the petitioner is his younger son and the respondent is wife of the petitioner. The marriage between both was solemnized as per Hindu rites on

30.01.2015. This witness has admitted that before marriage, he, and his son (the petitioner) saw the respondent inside the hotel situated at Giridih and at that time this witness and his family members put several questions from the respondent for the period of 5 minutes.

This witness has further stated that after marriage, the respondent stepped her leg inside his house and after two days it was found that the respondent is suffering from mental disorder and she had taken regular medicine about her mental health. The alleged fact was informed to the father of the petitioner. This witness has further stated that the respondent was staying in his house for the period of 2 ½ years, thereafter, she was taken to her parental home by the petitioner and thereafter the respondent never came to his house. This witness has further stated that after reaching the respondent to her parental home, the petitioner instituted this divorce petition. This witness has further narrated that the respondent was examined by the Doctor and Doctor reported that the respondent was not able to bear child.

23. On the other hand, the respondent-wife herself as OPW1 has deposed that the divorce petition has been filed by her husband. She was married to the petitioner, Prabhat Kumar as per Hindu rites and customs on 30.01.2015 at Kaveri Hotel, Giridih. At the time of marriage, her parents gave sufficient gifts. After solemnizing the marriage, she went to her matrimonial home and joined the society of her husband and started to perform her matrimonial obligation with her husband. She lived happily for some period in her matrimonial home, thereafter, her husband and her in-laws started demanding her to bring money from her parents. The

matter was informed by her to her father then her father gave Rs. 1.00 lakh to her husband through RTGS. Again, her husband started to demand Rs. 2.00 lakh as an additional dowry but the alleged demand of additional dowry was not fulfilled by her father. This witness has further stated that after ending one year of her marriage, her husband and in-laws started to torture and harass on account of greed of dowry and due to the said reason, she was kept confined without food till several days. Thereafter, her husband and in-laws started to blame to her saying that she is suffering from mental disorder and without any disease or any problem she was brought before doctor several times. This witness has further stated that by doing so the petitioner and his family members started to collect evidence so that they instituted a case against her for divorce. This witness has further stated that she is never suffering from any mental illness or any other mental disorder problem. She is absolutely a normal lady and after the marriage, she was living with her husband and started leading a conjugal life, but after some time of the marriage she was being subjected to torture and cruelty by the hands of her husband and his family members with respect of non-fulfillment of additional dowry of Rs. 2.00 lakh.

In her cross-examination, she has stated that she knows about contents of affidavit. At para-20, she has admitted that prior to marriage her treatment was not done anywhere. At para-23, she has denied the suggestion that her parents had concealed the factum of her mental disorder at the time of marriage. At para-24 and 25, she has stated that she is residing in her *maike* since 10.07.2017 and since then neither her husband nor her in-laws had visited or approached her.

At para-26, she has admitted that she had filed a case for her maintenance which is pending in the Court. At para-27 she has narrated that when she was residing at her inlaws' house with her husband at Jamshedpur, a girl named, Mintu was residing in the neighborhood with her brother and mother. At para-28 she has denied the suggestion that when she was residing at her inlaws' house she never does any household work or even refused to cook food at her inlaws' house. At para-29 she has denied the suggestion that at the time of residing at her *maike* her husband tried several times for *bidai* for her better treatment but her father never allowed him to do so and she had refused to go with her husband.

24. OPW2-Shiv Kumar Bhadani is the father of the respondent. He has corroborated the factum of marriage of his daughter with the petitioner. He has stated that at the time of marriage, he gave sufficient gift to the petitioner. After marriage, her daughter entered appearance in her matrimonial home where she started to live with her husband and in-laws. After some time of the marriage, his son-in-law and his family members started demanding dowry from his daughter in the shape of cash amount and due to non-fulfillment, his daughter was being tortured. To settle the issue, he gave Rs.1 lakh through RTGS to the petitioner. But again, demand was enhanced to Rs.2 lakhs and on non-fulfillment of demand of dowry, his daughter was being tortured physically and mentally at the hands of the petitioner and his family members. He has further deposed that the petitioner and his family members confined her daughter in a room and even stopped to provide food on several occasions. He has further deposed that the petitioner started to collect false paper

with respect to treatment of her daughter and lastly, she was left by the petitioner.

In his cross-examination, he has stated that her daughter was living happily with her husband for about 2 ½ years of marriage, but later on due to non-fulfillment of demand of dowry she was being tortured at the hands of the petitioner and his family members. He has further stated that his daughter had been left by the petitioner in July, 2017 at his house and since then she is residing there. This witness has further narrated that his son-in-law (the petitioner) has deliberately and intentionally deserted his daughter without any reasonable cause and his son-in-law has not provided anything for her.

25. O.P.W 3, Kailash Ram, has stated that he knows both the parties. He was visiting term with the house of respondent and had noticed that the respondent is/was not suffering from any disease alleged by the petitioner. However, the respondent was driven out by the petitioner and his family members.

In his cross-examination, he has stated that the respondent Neelam Kumari has been living in her parental home since the year 2017.

26. O.P.W 4, Kuldeep Kumar Bhadani, has stated that he knows both the parties. He was visiting term with the house of respondent and had noticed that the respondent is/was not suffering from any disease alleged by the petitioner. However, the respondent was driven out by the petitioner and his family members.

In his cross-examination, he has stated that the respondent Neelam Kumari has been living in her parental home since the year 2017.

27. The learned Family Judge has appreciated the entire facts and evidence and has come to the conclusion that the appellant-husband has failed to make the ground either desertion or mental disorder and, as such, has dismissed the suit which is under challenge in the instant appeal.

28. The fact about filing of suit on the ground of desertion and mental disorder is admitted one as per the evidences adduced on behalf of the appellant.

29. The appellant-husband all along has alleged the issue of desertion and mental disorder and in order to establish the same the evidences has been laid as has been referred hereinabove.

30. From the testimony so recorded of the appellant-husband and respondent-wife the learned Principal Judge, Family Court has come to the conclusion that in the instant case, except the vague and omnibus allegations made by husband against his respondent-wife, neither any cogent or clinching evidence, nor any concrete documentary evidence has been led to substantiate the charges of desertion and mental illness. The onus to prove the grounds taken for divorce squarely rests on the husband which are required to be discharged by leading a cogent, tangible and reliable evidence.

31. This Court while appreciating the argument advanced on behalf of the appellant on the issue of perversity needs to refer herein 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.

32. 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 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. In the context of the aforesaid factual aspect only seminal issue has to be decided herein that “Whether the plaintiff is entitled to get divorce dissolving the marriage of the petitioner/appellant with OP/wife U/s 13(1) (i-b) & (iii) of the Hindu Marriage Act, 1955?”

Issue of desertion

34. Further, it requires to refer herein that the word ‘desertion’ has been given in *Explanation* to Section 13 (1) wherein it has been stated that “the expression 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 willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

35. It is pertinent to note that the word ‘desertion’, as has been defined in *Explanation* part of Section 13 of the Act, 1955, 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 willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

36. *Rayden on Divorce*, which is a standard work on the subject at p. 128 (6th Edn.), has summarised the case-law on the subject in these terms:

“Desertion is the separation of one spouse from the other, with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse; but the physical act of departure by one spouse does not necessarily make that spouse the deserting party.”

37. The legal position has been admirably summarised in paras-453 and 454 at pp. 241 to 243 of *Halsbury's Laws of England* (3rd Edn.), Vol. 12, in the following words:

“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. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases.

38. Desertion is not the withdrawal from a place but from a state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state; the state of things may usually be termed, for short, ‘the home’.

39. The offence of desertion is a course of conduct which exists independently of its duration, but as a ground for divorce it must exist for a period of at least two years immediately preceding the presentation of the petition or, where the offence appears as a cross-charge, of the answer.

40. Desertion as a ground of divorce differs from the statutory grounds of adultery and cruelty in that the offence founding the cause of action of desertion is not complete, but is inchoate, until the suit is constituted, desertion is a continuing offence.

41. It is, thus, evident from the aforesaid reference of meaning of desertion that the quality of permanence is one of the essential elements which differentiates desertion from wilful separation. If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. 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.

42. 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.

43. The Hon'ble Apex Court in ***Debananda Tamuli vs. Kakumoni Katakya, (2022) 5 SCC 459*** has considered the definition of 'desertion' on the basis of the judgment rendered by the Hon'ble Apex Court in ***Lachman Utamchand Kirpalani v. Meena, AIR 1964 SC 40*** which has been consistently followed in several decisions of this Court.

44. The law consistently has been laid down by this Court that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there

is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be *animus deserendi* on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home.

45. This Court, on the premise of the interpretation of the word “desertion” has considered the evidence of the petitioner as has been incorporated by the learned Family Court in the impugned judgment dated 31.03.2023.

46. It is evident from the record that the petitioner–appellant did not disclose the precise date of desertion in his evidence. Turning to the testimony of P.W.-2, Bijay Kumar, father of the petitioner–husband, this witness stated that his daughter-in-law, the respondent Neelam Kumari, resided in his house for about two and a half years. Thereafter, the appellant dropped the respondent at her parental home.

47. On perusal of this statement, it emerges that after marriage the respondent entered her matrimonial home at Jamshedpur and continuously resided there with her husband and his family for a period of two and a half years. It is settled law that an admission is the best piece of evidence, and here P.W.-2 has specifically admitted that the respondent lived in his house for that period. Further, O.P.W.-1 in her deposition stated that she had been residing in her parental home since 10.07.2017. Thus, considering the evidence of P.W.-2 and O.P.W.-1, it is clear that the respondent remained in her matrimonial home until 10.07.2017, while the

divorce petition on the ground of desertion was filed on 11.07.2017-merely one day after her separation.

48. This Court has also noted paragraph 17 of the deposition of P.W.-1, the husband, wherein he stated that he was engaged in the respondent's treatment from 2015 to 2017. This version further indicates that the respondent was living with him until 2017. Examining the evidence of O.P.W.-1, Neelam Kumari, it is revealed that her husband brought her from Jamshedpur to Giridih under the pretext of attending a house-warming function at Dhanbad, but after leaving her there, he absconded. She specifically narrated that she was left at her parental home on 10.07.2017, a fact corroborated by O.P.W.-2, Shiv Kumar Bhadani.

49. On the basis of the aforesaid, this Court is of the view that it was the petitioner-husband who dismantled the matrimonial home, and therefore, he cannot take advantage of his own wrong in view of Section 23 of the Hindu Marriage Act, 1955, which mandates that the party seeking relief must not be taking advantage of his own misconduct. The record further shows that the petitioner repeatedly told the respondent that she had no child-bearing capacity.

50. Moreover, in the course of proceedings under Section 9 of the Family Courts Act, 1984, both parties were called on 21.02.2023 for reconciliation. On inquiry, the respondent expressed her readiness and willingness to resume cohabitation with her husband, without hesitation, and to lead a blissful matrimonial life. However, the petitioner refused to take her back to the marital home without any valid reason.

51. Accordingly, this Court finds that the petitioner-husband withdrew from the company of the respondent without just cause, and

there is no evidence that he made any effort to restore her to the matrimonial home. The respondent's consistent willingness to return demonstrates that she never intended to desert the husband or abandon the conjugal relationship. It is thus evident that the respondent lacked *animus deserendi* and always showed readiness to resume matrimonial life.

52. Thus, as per the discussions made hereinabove and law laid down by Hon'ble Apex Court which has also been referred herein above this Court has no reason to take different view that has been taken by the learned Family Court proving the ground of desertion.

Issue of Mental unsoundness/illness:

53. So far as the issue of mental illness is concerned it is evident from the impugned order that the learned Family Court has categorically held that no cogent evidence has been adduced by the plaintiff/husband in order to prove the mental illness of OP- wife and, therefore, the Family Court has also decided this issue against the appellant/husband.

54. In the aforesaid context, it needs to refer herein Section 13(1) (iii) of the Act 1955 which reads as under:

13. Divorce. — (1) Any marriage solemnized, whether before or after the commencement of the Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

(iii) has been incurably of unsound mind, or has suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation- In this clause—

(a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and include schizophrenia;

(b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party and whether or not it requires or is susceptible to medical treatment; or.....”

55. The aforesaid provision shows that there are two separate grounds in the provision viz. (a) incurable unsound mind; and, (b) respondent spouse has been suffering continuously or intermittently from mental disorder and the disorder is of such kind and of such extent that the petitioner cannot reasonably be expected to live with the respondent.

56. From the wording of the aforesaid provision, it can be said that the mental condition like incurable unsound mind mentioned in the first part or the mental disorder mentioned in the second part needs to be proved by expert evidence and that evidence needs to satisfy the Court that such mental condition exists.

57. From the said provision, it can be said that the second part of the provision has wide scope. For this part, it is not necessary that mental disorder is incurable. However, the mental disorder must be of such kind and extent that the Court needs to be satisfied that it is not advisable to ask the petitioner to live with the respondent. The scope shows that there is no limit to the kind of mental disorder as no specific kind is mentioned. However, the term “has been suffering” shows that the period of illness must not be too short or the petition should not be based on one or two

instances showing such mental disorder.

58. The term “intermittently” cannot be misread in this provision to infer that the mental illness returns after the treatment within few days. The term “extent” is also important and on that also the Court needs to be satisfied to come to the conclusion that the petitioner cannot be reasonably expected to live with the opposite party.

59. Thus, it is evident that the relief is discretionary and while using discretion, the Court is expected to keep in mind the aforesaid things as mentioned above. Further, the burden to prove mental disorder mentioned as second part of the aforesaid provision or the burden to prove incurable unsound mind lies on the party who seeks to use the ground.

60. It needs to refer herein that Psychiatrist is an expert but in view of provision of section 45 of the Evidence Act, it is up to the Court to either rely on the opinion or to refuse to do so. Further, he being a witness, his credibility can be impeached like the credibility of any other witnesses and his veracity can be tested as provided in section 146 and other provisions of Evidence Act. A psychiatrist is expected to give evidence on the basis of the examination of the patient done by him, the symptoms noted by him, the treatment and the follow up treatment given by him and the record created by him needs to be considered both for corroboration and contradiction purpose. In such a case the evidence of other witnesses or the circumstances which relates to the behaviour of the respondent can be considered by the Court as that can help strengthening the opinion or create probability that the opinion has no justification and it is weak.

61. The Hon'ble Apex Court in the case of ***Kollam Chandra Sekhar v. Kollam Padma Latha***, (2014) 1 SCC 225 has categorically observed that the ideas of unsoundness of 'mind' and 'mental disorder' occur in the section as grounds for dissolution of a marriage, require the assessment of the degree of the 'mental disorder'. Its degree must be such that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for grant of decree. If the mere existence of any degree of mental abnormality could justify dissolution of a marriage few marriages would, indeed, survive in law. For ready reference the relevant paragraph of the aforesaid judgment is being quoted as under:

22. The relevant portions with regard to "unsoundness of mind" and "mental disorder" from the case referred to supra are extracted hereunder: (Ram Narain Gupta case [(1988) 4 SCC 247] , SCC pp. 254-56, paras 20-24)

"20. The context in which the ideas of unsoundness of 'mind' and 'mental disorder' occur in the section as grounds for dissolution of a marriage, require the assessment of the degree of the 'mental disorder'. Its degree must be such that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for grant of decree. If the mere existence of any degree of mental abnormality could justify dissolution of a marriage few marriages would, indeed, survive in law.

21. The answer to the apparently simple—and perhaps misleading—question as to 'who is normal?' runs inevitably into philosophical thickets of the concept of mental normalcy and as involved therein, of the 'mind' itself. These concepts of 'mind', 'mental phenomena', etc. are more known than understood and the theories of 'mind' and 'mentation' do not indicate any internal consistency, let alone validity, of their basic ideas. Theories of 'mind' with cognate ideas of 'perception' and 'consciousness' encompass a wide range of thoughts, more ontological than epistemological. Theories of mental phenomena are diverse and include the dualist concept—shared by Descartes and Sigmund Freud—of the separateness of the existence of the physical or

the material world as distinguished from the non-material mental world with its existence only spatially and not temporally. There is, again, the theory which stresses the neurological basis of the 'mental phenomenon' by asserting the functional correlation of the neuronal arrangements of the brain with mental phenomena. The 'behaviourist' tradition, on the other hand, interprets all reference to mind as 'constructs' out of behaviour. 'Functionalism', however, seems to assert that mind is the logical or functional state of physical systems. But all theories seem to recognise, in varying degrees, that the psychometric control over the mind operates at a level not yet fully taught to science. When a person is oppressed by intense and seemingly insoluble moral dilemmas, or when grief of loss of dear ones etch away all the bright colours of life, or where a broken marriage brings with it the loss of emotional security, what standards of normalcy of behaviour could be formulated and applied? The arcane infallibility of science has not fully pervaded the study of the non-material dimensions of 'being'.

22. Speaking of the indisposition of science towards this study, a learned author says:

'... we have inherited cultural resistance to treating the conscious mind as a biological phenomenon like any other. This goes back to Descartes in the seventeenth century. Descartes divided the world into two kinds of substances: mental substances and physical substances. Physical substances were the proper domain of science and mental substances were the property of religion. Something of an acceptance of this division exists even to the present day. So, for example, consciousness and subjectivity are often regarded as unsuitable topics for science. And this reluctance to deal with consciousness and subjectivity is part of a persistent objectifying tendency. People think science must be about objectively observable phenomena. On occasions when I have lectured to audiences of biologists and neurophysiologists, I have found many of them very reluctant to treat the mind in general and consciousness in particular as a proper domain of scientific investigation.

... the use of the noun 'mind' is dangerously inhabited by the ghosts of old philosophical theories. It is very difficult to resist the idea that the mind is a kind of a thing, or at least an arena, or at least some kind of black box in which all of these mental processes occur.' [John R. Searle, Minds, Brains and Science-Reith Lectures (Harvard University Press, 1984), pp. 10 and 11.]

23. Lord Wilberforce, referring to the psychological basis of physical illness said that the area of ignorance of the body-mind relation seems to expand with that of knowledge. In *McLoughlin v. O'Brian* [(1983) 1 AC 410 : (1982) 2 WLR 982 : (1982) 2 All ER 298 (HL)] , the learned Lord said, though in a different context: (AC p. 418 B : All ER p. 301)

'... Whatever is unknown about the mind-body relationship (and the area of ignorance seems to expand with that of knowledge), it is now accepted by medical science that recognisable and severe physical damage to the human body and system may be caused by the impact, through the senses, of external events on the mind. There may thus be produced what is as identifiable an illness as any that may be caused by direct physical impact. It is safe to say that this, in general terms, is understood by the ordinary man or woman who is hypothesised by the courts....'

24. But the illnesses that are called 'mental' are kept distinguished from those that ail the 'body' in a fundamental way. In *Philosophy and Medicine*, Vol. 5 at p. X the learned editor refers to what distinguishes the two qualitatively:

'Undoubtedly, mental illness is so disvalued because it strikes at the very roots of our personhood. It visits us with uncontrollable fears, obsessions, compulsions and anxieties....'

... This is captured in part by the language we use in describing the mentally ill. One is an hysteric, is a neurotic, is an obsessive, is a schizophrenic, is a manic-depressive. On the other hand, one has heart disease, has cancer, has the flu, has malaria, has smallpox....''

(emphasis in original)

The principle laid down by this Court in the aforesaid case with all fours is applicable to the fact situation on hand wherein this Court has rightly referred to Section 13(1)(iii) of the Act and Explanation to the said clause and made certain pertinent observations regarding "unsound mind" or "mental disorder" and the application of the same as grounds for dissolution of marriage. This Court cautioned that Section 13(1)(iii) of the Act does not make a mere existence of a mental disorder of any degree sufficient in law to justify the dissolution of marriage.

35. In the English case of *Whysall v. Whysall* [1960 P 52 : (1959) 3 WLR 592 : (1959) 3 All ER 389] , it was held that a spouse is "incurably of unsound mind" if he or she is of such mental incapacity as to make

normal married life impossible and there is no prospect of any improvement in mental health, which would make this possible in future. The High Court of Judicature of Calcutta, in Pramatha Kumar Maity v. Ashima Maity [AIR 1991 Cal 123] has held that mental disorder of the wife, even if proved, cannot, by itself, warrant a decree of divorce and it must be further proved that it is of such a nature as the husband could not be expected to live with the wife.

38. We are of the view that the High Court in exercise of its appellate jurisdiction has rightly come to a different conclusion that the respondent is not suffering from the ailment of schizophrenia or incurable unsoundness of mind. Further, the High Court has rightly rejected the finding of the trial court which is based on Ext. B-10 and other documentary and oral evidence by applying the ratio laid down by this Court in Ram Narain Gupta v. Rameshwari Gupta [(1988) 4 SCC 247] referred to supra. A pertinent point to be taken into consideration is that the respondent had not only completed MBBS but also did a postgraduate diploma in Medicine and was continuously working as a Government Medical Officer and had she been suffering from any serious kind of mental disorder, particularly, acute type of schizophrenia, it would have been impossible for her to work in the said post. The appellant husband cannot simply abandon his wife because she is suffering from sickness. Therefore, the High Court allowed both the CMAs and dismissed OP No. 203 of 2000 filed by the appellant for divorce and allowed OP No. 1 of 1999 filed by the respondent for restitution of conjugal rights wherein the High Court granted decree of restitution of conjugal rights in favour of the respondent.

62. The Hon'ble Apex Court in the aforesaid judgment has categorically held that marriage is highly revered in India and we are a nation that prides itself on the strong foundation of our marriages, come hell or high water, rain or sunshine. Life is made up of good times and bad, and the bad times can bring with it terrible illnesses and extreme hardships. The partners in a marriage must weather these storms and embrace the sunshine with equanimity. Any person may have bad health, this is not their fault and most times, it is not within their control. as in the present case, the respondent was unwell and was taking treatment for

the same. The illness had its fair share of problems. Can this be a reason for the appellant to abandon her and seek dissolution of marriage.

63. Thus, the Hon'ble Apex Court cautioned that Section 13(1)(iii) of the Act does not make a mere existence of a mental disorder of any degree sufficient in law to justify the dissolution of marriage.

64. Now adverting to the fact of the instant case, it is alleged at para-5 of the plaint that the parents of the opposite party never gave any information to the applicant or his guardians regarding mental problems of the respondent prior to solemnization of marriage. At para-8 of the plaint, it is pleaded that when applicant asked the parents of the opposite party that why they have not informed him or his guardians regarding mental problem of the opposite party prior to marriage, on that the parents of the opposite party became angry upon him some time in November, 2015. At para-12 of the plaint, it has been averred that the applicant has sufficient documents to prove that the opposite party is a mental patient prior to marriage.

65. However, these allegations have been denied by the respondent in her written statement as well as in her deposition. The respondent has specifically stated at para-6 of her examination-in-chief that after 1 ½ years of marriage, her husband and in-laws' began harassing her in various ways and they even stopped to provide food and started telling her that she was mentally unstable. She has further stated that they misled her by telling lie and started taking her to a doctor; but later, she and her father realized that they were fabricating medical treatment to gather evidence for divorce. They even started giving her the wrong medication,

which caused her health to deteriorate.

66. From scrutiny of the evidence on the point of mental disorder of the respondent adduced on behalf of both the parties, it is evident that though the petitioner-husband has stated that he has sufficient documents to prove the mental disorder of the respondent, but he has failed to produce any cogent documentary evidence with respect to medical treatment of the respondent. The petitioner has also failed to produce any witness either doctor or any staff of the hospital/clinic as expert evidence to corroborate the factum of mental disorder of the respondent where her treatment for mental disorder was done.

67. Further, the petitioner-husband himself has admitted in his cross-examination at para-4 that 15-20 days before the marriage, he met with the respondent at “Hotel Ashoka In”, Sakchi and if it is so, then he must have some talk with the respondent and he would have noticed her abnormal behaviour or talk but that was not done. Thereafter the marriage between the petitioner and the respondent was solemnized which clearly shows that the petitioner has consented for the marriage after being satisfied with the behaviour of the respondent.

68. So far as the mental disorder of the respondent is concerned, the petitioner in his cross-examination at para-12 has stated that he noticed abnormal behaviour when the respondent applied *kajal* and lipstick while standing in front of the wardrobe at night, which frightened him. However, the deposition nowhere indicates that the respondent behaved or acted like a mentally ill person. It is a general phenomenon for a newly married wife to adorn herself at any time after marriage.

69. The respondent-wife has stated that nothing was suppressed by her and her family at the time of her marriage or prior to marriage as alleged by the petitioner. She had further deposed that the petitioner/husband who is so cruel that he never took care of her and continued torturing her for the sake of dowry and finally filed this case for divorce with all sorts of false and manufactured allegations. In cross-examination, she had denied the suggestion that still she is suffering from mental illness and due to that reason, she damages the household articles. She has also deposed that the petitioner and his family members started to collect false evidence so that ground for divorce is to be made as the petitioner wants to marry with another girl.

70. Further, OPW-2, the father of the respondent has deposed that his daughter is completely healthy and she is not having any mental illness but due to non-fulfillment of demand of dowry or Rs.2 lakhs the petitioner has filed this case on false facts. He has deposed that the allegations leveled by the petitioner is false and concocted.

71. From the evidence of P.W.-1, Prabhat Kumar (husband), it is apparent that prior to marriage the petitioner met the respondent. He specifically deposed that before marriage he saw the respondent at Hotel Ashoka, Giridih, in the presence of both families, and conversed with her. This version is corroborated by P.W.-2, father of the petitioner, who in para-13 of his cross-examination stated that his eldest son Pankaj Kumar, along with the petitioner, went to Giridih and met the respondent, where questions were put to her and she answered.

72. It stands admitted that before marriage the petitioner and

respondent, along with their family members, met at Hotel Ashoka, Giridih. Thus, the petitioner had ample opportunity to interact with the respondent prior to marriage, and having availed that opportunity, he married her. It is therefore clear that the marriage was arranged, and the petitioner married the respondent after satisfying himself.

73. Further, the petitioner has not examined any medical practitioner to prove the alleged mental illness of the respondent. Admittedly, no medical evidence has been produced to substantiate this allegation nor has any document been filed to establish that the respondent was physically incapable of consummating the marriage or that she was mentally ill.

74. The impugned judgment also records that the respondent's conduct during lengthy cross-examination was consistent, and she gave proper answers to the questions put to her by the petitioner's side. If indeed the respondent had any health problems, the petitioner ought to have taken her to a competent doctor for examination. Merely because a wife suffers from some health issues cannot constitute a ground for divorce.

75. It further appears from the impugned judgment that on 21.02.2023, when the respondent appeared before the Family Court, she expressed her readiness and willingness to resume cohabitation with the petitioner. However, the petitioner consistently refused to accept her as his wife.

76. On the basis of the foregoing discussion, this Court is of the view that the appellant-husband has failed to prove that the respondent

was incurably of unsound mind or suffering from a mental disorder of such a nature and degree that he could not reasonably be expected to live with her.

77. It needs to refer herein that the learned Family Court while appreciating the issue of desertion and mental illness which has been formulated as Issue No.V, has observed at para-17 as under:

“ 17. Issue no-V- Whether the applicant is entitled to a decree of divorce on the ground of desertion and insanity?”

Issue no-VI- To what other relief or reliefs the applicant is entitled to?

These two issues invite common discussion and, hence, are being taken up together. A reading of the entire evidence gives an impression that it is the petitioner/husband who had left the respondent/wife at her parents home on 10.07.2017 and subsequently did not take any steps to bring her back. The husband could not be show and prove that the wife had destroyed him for a continuous period of not less than two years immediately preceding the presentation of the petition. Thus, the petitioner could not establish that it is the respondent/wife who deserted him. The respondent/wife was prevented from doing so by reason of the refusal on the part of the petitioner/husband to take her back to the matrimonial home. Further, I find that the petitioner failed to established that the respondent/wife was/is suffering from any mental disorder alleged by him. Thus, I am of the view that the petitioner/husband failed to make out a case for grant of degree of divorce as he could not establish his case of desertion at the instance of his wife and he could not establish that the respondent/wife is suffering from any mental disorder. Thus, in view of my findings on issues no-III and IV, the petitioner/husband is not entitled to any relief claimed by him. The petitioner/husband is not entitled to take advantage of his own wrong. On the basis of discussions made-above, I arrived at conclusion that the petitioner/husband, Prabhat Kumar is not entitled for decree of divorce on the basis of desertion as well as insanity (medical illness). Thus, these two issues, therefore, are decided accordingly.

ORDER

In the result, the petition of the petitioner/husband, namely, Prabhat Kumar for degree of divorce is hereby dismissed on contest.

Office is directed to prepare decree pursuant to this Judgment. Parties will bear their own costs.”

78. Thus, from the aforesaid, it is evident that learned Family Court

has observed that it was the petitioner–husband who left the respondent–wife at her parental home on 10.07.2017 and thereafter failed to take any steps to bring her back. Further the petitioner has not been able to prove that the respondent deserted him for a continuous period of not less than two years immediately preceding the presentation of the petition. It has further been observed that consequently, he has failed to establish that the respondent deserted him.

79. It has further been observed by the learned Family Court that the petitioner (appellant herein) has failed to establish that the respondent was suffering from any mental disorder as alleged. Learned Family Court has concluded that the petitioner has not made out a case for grant of a decree of divorce, since he could neither prove desertion at the instance of the respondent nor substantiate his allegation of mental disorder.

80. Thus, on basis of discussion made hereinabove, this Court is of the view that the aforesaid ground of mental illness and desertion has been raised by the appellant/ husband without any cogent and concrete evidence and taking into consideration the aforesaid factual aspect the learned Family Court has rightly decided the said issue against the husband/appellant as such requires no interference by this Court.

81. This Court after discussing the aforesaid factual aspect along with the legal position and adverting to the consideration made by the learned Family Judge in the impugned judgment has found therefrom that the issue of element of desertion and mental disorder has well been

considered by the learned Family Judge. The aforesaid reason has led the learned Family Judge to dismiss the suit.

82. This Court, on consideration of the finding arrived at by the learned Family Judge and based upon the aforesaid discussion, is of the view that the judgment and decree passed by the learned Family Judge is not coming under the fold of the perversity, since, the conscious consideration has been made of the evidences, as would be evident from the impugned judgment.

83. This Court, therefore, is of the view that the judgment dated 31.03.2023 and the decree dated 14.04.2023 passed in Original Suit No.09 of 2019 by the learned Family Judge need no interference and, accordingly, the instant appeal stands dismissed.

84. Pending I.As, if any, stands disposed of.

(Sujit Narayan Prasad, J.)

I Agree.

(Sanjay Prasad, J.)

(Sanjay Prasad, J.)

Sudhir
Dated: 21/07/2026
Jharkhand High Court, Ranchi
AFR

Uploaded on 22/07/2026.