

IN THE HIGH COURT OF JHARKHAND AT RANCHI
F.A. No.241 of 2024

Birendra Kumar Singh, S/o Late Lalan Singh, aged about 58 years, resident of Ganesh Path, Kharangajhar, P.O. & P.S.-Telco, District-East Singhbhum, Jamshedpur.

... .. **Appellant/Petitioner**
 Versus

Pratima Devi, W/o Birendra Kumar Singh, residents of H. No.15, Zone No.1B, Birsanagar, P.O. & P.s.-Birsanagar, District-East Sinbhbhum, Jamshedpur.

... .. **Respondent/Respondent**

P R E S E N T

Coram: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD

.....

For the Appellant : Mr. Jitesh Kumar, Advocate

For the Respondent : None

.....

C.A.V. on 13.07.2026 Pronounced on 06/08/2026

Per Sujit Narayan Prasad, J.

Prayer:

1. The instant appeal has been filed challenging the legality and propriety of impugned judgment passed on 21.08.2024 and decree signed on 02.09.2024 by learned Additional Principal Judge, Additional Family Court-1, Jamshedpur whereby and whereunder the Original (Matrimonial) Suit No.32 of 2023 filed by the petitioner-appellant-husband under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 for a decree of divorce, has been dismissed.

Factual Matrix

2. The case of the appellant-husband, in brief as it can

be gathered from the plaint is that his marriage with the respondent Pratima Devi was solemnized on 20.05.1989 according to Hindu customs and ceremonies and after the marriage, they cohabited together as husband and wife in the house of the petitioner.

3. It has been further stated that out of their wedlock, they were blessed with three children Ranjan Kumar Singh born on 14.07.92, Vipul Kumar Singh born on 07.11.95 and Harshal Kumar Singh born on 18.10.96.

4. Petitioner's case is that he and respondent lived together continuously for 31 years in a very cordial environment but unfortunately since 25.06.2020, respondent's behaviour suddenly changed and the respondent kicked him out of his own house in Birsanagar and as such petitioner is living in a rented house in Kharangajhar Ganesh Path.

5. The petitioner has averred that his wife-respondent has filed a case u/s 125 of Cr.P.C vide Misc. Case No.246/2022 against him claiming maintenance allowance from him and on 26.06.2020, she had expressed her desire that she did not want to continue this marital relationship with the petitioner.

6. The petitioner has prayed to the court to dissolve his marriage with the respondent by granting him decree of divorce under the provision of section 13(1)(ia), (ib) of the

Hindu Marriage Act on the ground of cruelty and desertion.

7. For securing the appearance of the respondent, notice through registered post was sent and as per track consignment report, the same was duly served on the address of the respondent on 09.01.2024. Notice sent through Nazarat reveals that notice was also served to the respondent by hanging it on the front door of her house. Despite that when the respondent did not appear before the court, notice was also published in the local newspaper Chamakta Aaina and when respondent did not cause her appearance, *ex parte* proceeding has been initiated against the respondent vide order dt. 05.07.2024.

8. The case proceeded for evidence during which the appellant has produced and examined only himself as P.W.1. No documentary evidence has been adduced on behalf of the petitioner.

9. The learned Principal Judge, after hearing learned counsel for the petitioner-appellant, decided the suit against the appellant-husband and in favour of respondent-wife and decreed the suit on contest in the following terms :

“the suit of the petitioner for decree of divorce on the ground of cruelty and desertion is hereby dismissed.”

10. The appellant-husband, being aggrieved with the judgment passed on 21.08.2024 and decree signed on 02.09.2024 by learned Additional Principal Judge,

Additional Family Court-1, Jamshedpur approached this Court by filing the instant appeal.

11. The matter was heard by this Court on 9th February, 2026 on which date learned counsel for both the parties jointly prayed to refer the matter to JHALSA for mediation and acceding to the prayer made by the learned counsel for both the parties, this Court had sent the matter before JHALSA for mediation, the order dated 9th February, 2026 is being referred herein :-

“Order No. 09 : Dated 9th February, 2026

1. Mr. Vincent Rohit Marki, has entered appearance by filing Vakalatnama on behalf of respondent-wife in terms of order dated 22nd January, 2026.
2. As jointly prayed by learned counsel for the parties, let this matter be referred to JHALSA, Ranchi, for mediation by appointing a mediator, as both the parties have agreed to appear before the mediator on 16th February, 2026 at 11.00 a.m.
3. Let the matter be listed on 26th February, 2026 along with the mediation report.
4. Let a copy of this order be sent forthwith to the learned Member Secretary, JHALSA, Ranchi for needful.”

12. Thereafter, both parties appeared before the mediator but the mediation failed as both parties could not come to any final conclusion.

13. Thereafter, the case was admitted for hearing the matter on merit. But, learned counsel for the respondent did not appear on two consecutive dates. As such, learned counsel for the appellant was heard on merit and the judgment was reserved.

Submission of the learned counsel appearing for the appellant-husband:

14. Learned counsel appearing for the appellant-husband has taken following grounds in assailing the impugned judgment: -

- (i) The Judgment dated 21.08.2024 passed by learned Additional Principal Judge, Additional Family Court, is wrong, illegal, against the weight of evidence and materials on record and are liable to set aside.
- (ii) The learned Family Court has passed the impugned judgment totally against the facts and circumstances and the case law and is therefore, unsustainable.
- (iii) The impugned judgment passed by learned court is fit to be set aside in view of the fact that it has no merit.
- (iv) The judgment and award of the learned Family Court are not sustainable in the eyes of law and are fit to be set aside inasmuch as the learned Family Court has totally failed to appreciate that there is evidence on record in favour of the petitioner's case but the learned Family Court has not appreciated the same in right prospective.
- (v) The learned Family Court has failed to appreciate that the evidences were available on record to establish that the appellant has been subjected to cruelty by the respondent in various ways and the marriage between

the parties has irretrievably been broken down and there are no chances of resumption of their cohabitation, therefore, their marriage deserves to be dissolved by decree of divorce.

- (vi) The learned Family Court has committed serious illegality in not appreciating the fact that the petitioner tried his level best to bring the respondent back but the respondent refused to live with the petitioner/appellant.
- (vii) The learned Family Court has committed serious illegality in not appreciating the fact that the respondent has willfully withdrawn herself from the society of her husband and thus, the same amount to willful desertion.
- (viii) The learned Family Court has also failed to take into consideration that admittedly the parties are living separately since long and there is no chance of restoration of their matrimonial life.
- (ix) The learned Family Court has also committed serious illegality in not appreciating the fact that aforesaid acts of the respondent are the act of cruelty and the appellant is entitled for decree of divorce.
- (x) The learned Family Court has committed serious illegality in not considering the fact that there is no chance of compromise amongst the parties, as such in

the interest of justice, learned court below ought to have passed a judgment allowing the suit for declaration of the marriage of the appellant to be dissolved.

- (xi) The learned Family Court has committed serious illegality in not adjudicating the issue that the parties are residing separately since a long time and which is a valid ground for getting decree of the dissolution of marriage by the appellant from the respondent.
- (xii) It has been submitted that the learned Trial Court has failed to appreciate the oral and documentary evidence produced on behalf of petitioner / appellant and, thus, came to wrong conclusion.
- (xiii) The learned court below has also failed to take into consideration that admittedly the parties are living separately since long and the conduct of the respondent shows that the respondent does not want to join the appellant and hence there is no chance of restoration of their matrimonial life.

15. Learned counsel appearing for the appellant, on the basis of aforesaid grounds, has submitted that the judgment passed by the learned Additional Principal Judge, Additional Family Court-1, Jamshedpur is perverse and requires interference.

Analysis

16. We have heard the learned counsel for the appellant-husband and perused the material available on record and the finding recorded in the impugned order.

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

18. In order to substantiate the case, the petitioner Birendra Kumar Singh has examined himself as P.W.1. No documentary evidence has been adduced on behalf of the petitioner/appellant. The petitioner has filed this suit on the ground of cruelty and desertion alleging that because of the acts of cruelty perpetuated upon him, he is under apprehension that it will not be desirable and safe to stay with the respondent and to continue their marital relationship petitioner himself pleaded that he and his wife after their marriage on 20.05.89 cohabited together and lived in peaceful environment continuously for 31 years and out of the wedlock, they were also blessed with three children, who all are now major and well settled. Though the petitioner has claimed the relief of decree of divorce on the ground of cruelty by alleging that after peaceful and cordial relationship for continuous period of 31 years, suddenly behaviour of respondent/wife changed on 25.06.2020 and she not only kick him out of his own house but also filed a case under

section 125 Cr.P.C claiming maintenance from him. In para 5 of his examination-in-chief stated that when he was living with his wife at his house in Birsanagar, his wife tortured him on several time by locking door of toilet (lavatory) and sometimes by disconnecting water connection of the bathroom and did not allow him to keep cow in the house. The petitioner stated that all these unjustified acts and conduct of the respondent/wife created apprehension in his mind that it would be dangerous and injurious for him to live with the respondent/wife.

19. It is evident from impugned judgment that the respondent/wife did not appear before the learned Family court, and when respondent did not cause her appearance, ex-parte proceeding has been initiated against the respondent vide order dt. 05.07.2024.

20. From the testimony so recorded of the appellant-husband, the learned Additional Principal Judge, additional Family Court-1 has come to the conclusion that in the instant case, the petitioner/appellant has completely failed in proving the alleged cruelty and desertion.

21. In the context of the aforesaid factual aspect only seminal issue has to be decide herein that “*Whether the plaintiff/ appellant is entitled to get divorce dissolving the marriage of the petitioner/appellant with OP/wife on ground of cruelty and desertion U/s 13(1) (i-a), (1-b) of the Hindu*

Marriage Act, 1955?”.

22. Since the learned counsel for the appellant has raised the issue of perversity by contending that the findings recorded by the learned Additional Family Court while answering issue no. (iii) (desertion) are perverse, therefore, before addressing the aforesaid seminal issue it would be apt to discuss herein the appropriate meaning of word “perverse”.

23. 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.

24. 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."

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

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

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

Sohan Devi, (2016) 14 SCC 197.

Issue of Cruelty

28. Since, submission has been made on behalf of the appellant-husband that the respondent-wife committed cruelty against him as such it would be apt for this Court to appreciate the element of cruelty.

29. It needs to refer herein the definition of ‘*cruelty*’ as has been defined by Hon’ble Apex Court in the judgment rendered in ***Dr. N.G. Dastane Vs. Mrs. S. Dastane [(1975) 2 SCC 326]***, wherein it has been held that the Court is to enquire as to whether the charge as cruelty, is of such a character, as to cause in the mind of the petitioner, a reasonable apprehension that, it will be harmful or injurious for him to live with the respondent.

30. The cruelty has also been defined in the case of ***Shobha Rani Vs. Madhukar Reddi [(1988) 1 SCC 105]***, wherein the wife alleged that the husband and his parents demanded dowry. The Hon’ble Apex Court emphasized that “cruelty” can have no fixed definition.

31. According to the Hon’ble Apex Court, “cruelty” is the “conduct in relation to or in respect of matrimonial conduct in respect of matrimonial duties and obligations”. It is the conduct which adversely affects the spouse. Such cruelty can be either “mental” or “physical”, intentional or unintentional. For example, unintentionally waking your spouse up in the middle of the night may be mental cruelty;

intention is not an essential element of cruelty but it may be present. Physical cruelty is less ambiguous and more “a question of fact and degree.”

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

33. The nature of allegations need not only be illegal conduct such as asking for dowry. Making allegations against the spouse in the written statement filed before the court in judicial proceedings may also be held to constitute cruelty.

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

35. In *Vijay Kumar Ramchandra Bhate v. Neela Vijay*

Kumar Bhate, (2003)6 SCC 334 the Hon'ble Apex Court has observed by taking into consideration the allegations levelled by the husband in his written statement that his wife was "unchaste" and had indecent familiarity with a person outside wedlock and that his wife was having an extramarital affair. These allegations, given the context of an educated Indian woman, were held to constitute "cruelty" itself.

36. The Hon'ble Apex Court in **Joydeep Majumdar v. Bharti Jaiswal Majumdar, (2021) 3 SCC 742**, has been pleased to observe that while judging whether the conduct is cruel or not, what has to be seen is whether that conduct, which is sustained over a period of time, renders the life of the spouse so miserable as to make it unreasonable to make one live with the other. The conduct may take the form of abusive or humiliating treatment, causing mental pain and anguish, torturing the spouse, etc. The conduct complained of must be "grave" and "weighty" and trivial irritations and normal wear and tear of marriage would not constitute mental cruelty as a ground for divorce.

37. "Cruelty" has an inseparable nexus with human conduct and is always dependent on social strata or milieu to which parties belong, their ways of life, relationship, temperaments and emotions that are conditioned by their social status, reference be made to the judgment rendered by

the Hon'ble Apex Court in the case ***Vishwanath Agrawal v. Sarla Vishwanath Agrawal, (2012) 7 SCC 288.***

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

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

40. For considering dissolution of marriage at instance of a spouse who alleges mental cruelty, result of such mental cruelty must be such that it is not possible to continue with matrimonial relationship reference may be taken from the

judgment rendered by the Hon'ble Apex Court in the case of ***Joydeep Majumdar v. Bharti Jaiswal Majumdar, (supra)***.

41. Further, the word 'cruelty' is used relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of Vinita ***Saxena v. Pankaj Pandit, (2006) 3 SCC 778***.

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

treatment, cessation of marital intercourse, studied neglect, indifference may lead to inference of cruelty.

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

44. Now re-adverting to the fact of the case it has been stated by the appellant/husband that the respondent/wife used to quarrel and committed mental cruelty upon him by her cruel behavior. It has been further alleged that the after peaceful and cordial relationship for continuous period of 31 years, suddenly behaviour of respondent/wife changed on 25.06.2020 and she not only kick him out of his own house but also filed a case under section 125 Cr.P.C claiming maintenance from him.

45. Admittedly, the plea of cruelty has been raised by the

appellant husband thus onus is upon him to prove the fact of cruelty caused upon him by the respondent/wife.

46. Further, it is evident that the appellant husband has not produced any cogent evidence in regard to the cruelty which has been subjected to him by the respondent/wife as also he had not lodged any complainant regarding the alleged occurrence. Further, he has not given any specific instance of cruelty subjected upon him that made impossible for him to continue marital relationship with the respondent.

47. Though the petitioner during his evidence on affidavit stated that his wife tortured him on several time by locking door of toilet (lavatory) and sometimes by disconnecting water connection of the bathroom and that she did not allow him to keep cow in the house, but it is considered view of this Court that these alleged specific acts and conduct are not of such nature as to dissolve long marital relationship of almost 35 years.

48. Further it is settled position of law as discussed and referred hereinabove in the preceding paragraphs that in a petition for divorce on the ground of cruelty, the petitioner would be required to show that he/she was subjected to such conduct which was harmful for his/her existence. It is also settled law that in the matrimonial cases, facts of cruelty would need not be assessed from peculiar facts of

each case.

49. Further, it is admitted fact that the petitioner and respondent lived in very peaceful environment as happy married couple continuously for the period of 31 years and during that long period of cohabitation there was no complaint against each other. Further it has come on record that the divorce suit appears to have been filed only after filing of domestic violence case and maintenance case against the petitioner/appellant.

50. Thus, from the material available on record and taking into consideration the deposition of petitioner/appellant, it is apparent that allegations levelled by the petitioner/appellant remain unsubstantiated by the cogent evidence, as such mere assertions, without corroboration, cannot form the basis of a decree of divorce.

51. Further, from the impugned order it is evident that the learned family court has taken into consideration the entire factual aspect of the petitioner's claim and accordingly, hold that petitioner has failed to establish his entitlement for decree of divorce on the ground of cruelty. The relevant paragraphs of the impugned judgment are being quoted as under:

"9. Hence, considering the whole facts and circumstances together with the established law and evidence discussed above, this court has come to the conclusion that the petitioner has failed to discharge burden of proof that he was subjected to cruelty of such nature which has now

made impossible for him to continue his marital tie with the respondent, with whom he lived in peaceful atmosphere for very long period of 31 years. Accordingly, this court finds and hold that petitioner has failed to establish his entitlement for decree of divorce on the ground of cruelty.”

52. This Court, based upon the aforesaid discussions on the issue of cruelty, is of considered view that the issue of cruelty as has been alleged by the appellant-husband against his wife could not be proved because no cogent evidence to that effect has been produced by the appellant and further since, the learned Additional Principal Family Judge after appreciating the entire evidence had recorded its finding, therefore, it is considered view of this Court that the appellant/petitioner has failed to establish the element of perversity in the aforesaid finding of the learned Family Court.

53. This Court, based upon the aforesaid discussions on the issue of cruelty, is of considered view that the issue of cruelty as has been alleged by the appellant-husband against his wife could not be proved because no concrete evidence to that effect has been produced by the appellant.

54. 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 Additional Family Court proving the ground of cruelty.

Issue of desertion

55. Now coming to the issue of desertion, which is also taken as a ground for decree of divorce.

56. It needs 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.”

57. 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 wishes 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.

58. *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.”

59. 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.”

60. 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’. There can be desertion without previous cohabitation by the parties, or without the marriage having been consummated. The person who actually withdraws from cohabitation is not necessarily the deserting party.

61. 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.

62. 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.

63. It is, thus, evident from the aforesaid reference of meaning of desertion that the quality of permanence is one of the essential elements which differentiate 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.

64. 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 from the necessary intention aforesaid.

65. 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.

66. The law consistently has been laid down by the 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.

67. It is trite law that desertion, as a ground for divorce under Section 13(1)(ib) of the Hindu Marriage Act, 1955, requires proof of two essential conditions: (i) the factum of separation, and (ii) the intention to bring cohabitation permanently to an end (*animus deserendi*), and such desertion must continue for a statutory period of not less than two years immediately preceding the presentation of the petition.

68. In the instant case, the petitioner has deposed that on 18.08.2022 at about 7.00 P.M. he was allegedly dragged out of his matrimonial home and has since been residing at his brother's house at Kharangajhar. However, beyond this

assertion, the petitioner has failed to adduce cogent evidence to establish that the respondent, by her conduct or acts, evinced an intention to terminate cohabitation permanently. Mere physical separation, without proof of animus deserendi, cannot constitute desertion in the eye of law.

69. Further from impugned order it is evident that desertion has not been proved before the Family Court through concrete and tangible evidence. Consequently, the learned Family Court observed that petitioner/appellant is not entitled to a decree of divorce on the ground of desertion.

70. This Court, on the basis of discussions made hereinabove, is of the view that the appellant husband has not been able to prove the ground of desertion as one of the grounds for divorce before the learned Additional Family Court. As such, we have no reason to take a different view that has been taken by the learned Additional Family Court.

Conclusion

71. This Court, on the basis of discussions made hereinabove, is of the view that the judgment dated 21.08.2024 and decree signed on 02.09.2024 by learned Additional Principal Judge, Additional Family Court-1, Jamshedpur whereby and whereunder the Original (Matrimonial) Suit No.32 of 2023 filed by the appellant-husband under Section 13(1)(i-a), (i-b) of the Hindu Marriage

Act, 1955 for a decree of divorce has been dismissed, requires no interference by this Court.

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

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

(Sujit Narayan Prasad, J.)

I agree.

(Sanjay Prasad, J.)

(Sanjay Prasad, J.)

Dated : 06/08/2026

Birendra / **A.F.R.**

Uploaded on 07/08/2026