IN THE HIGH COURT OF JHARKHAND AT RANCHI

**F.A. No. 312 of 2023**

Rachita Mashi Mewa, aged about 39 years, wife of Jowel Mewa, resident of Village Haranganj, P.O. and P.S. Korrah, District Hazaribag, Jharkhand ... **O.P./Appellant**

Versus

Jowel Mewa, aged about 45 years, son of Late Jayant Kumar Mewa, resident of Haranganj, P.O. and P.S. Korrah, District Hazaribag, Jharkhand … ***Petitioner/Respondent***

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**CORAM: HON'BLE THE CHIEF JUSTICE**
**HON'BLE MR. JUSTICE MANOJ PRASAD**

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For the Appellant: Mr.Nikhilesh Kr Chatterjee, Advocate
Mr Shiv Prasad, Advocate

For the Respondent: Mrs Vani Kumari, Advocate
Ms Vaishnavi Kaushik, Advocate

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**Reserved on 05.10.2026** **Pronounced on 27/10/2026**

***Per*: Manoj Prasad, J.**

**1.** Heard Mr Nikhilesh Kumar Chatterjee, learned counsel for the appellant, who appears with Mr Shiv Prasad, and Mrs Vani Kumari, learned counsel for the respondent, who appears with Ms Vaishnavi Kaushik.

**2.** The present First Appeal has been filed by Rachita Mashi Mewa, the opposite party/appellant, under Section 19(1) of the Family Courts Act, 1984, impleading the petitioner, Jowel Mewa, as the respondent. It challenges the judgment and decree passed by the learned Additional Principal Judge, Additional Family Court, Hazaribagh, in Original Matrimonial Suit No. 29 of 2021, vide judgment dated 20.09.2023, with the decree sealed and signed on 20.09.2023 itself. The learned Additional Principal Judge decreed the

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suit of the petitioner/respondent, Jowel Mewa, which was instituted under Section 22 of the Divorce Act, 1869, with a prayer for judicial separation on the grounds of cruelty and desertion.

**3.** This appeal was admitted on 06.03.2024.Both the parties were represented with their respective Advocates who have appeared through vakalatnama.

**4.** The appellant-wife challenges the decree for judicial separation, bringing counter-allegations of cruelty and desertion, and other grounds, alleging that she has been subjected to treatment by the present respondent. It is further alleged that the respondent failed to satisfy the requirements of Section 22 of the Divorce Act.

**5.** The brief facts of the case are that the petitioner-respondent filed an application for a decree of judicial separation under Section 22 of the Indian Divorce Act, 1869, leading to the institution of Original Suit No. 29 of 2021 on 28.01.2021, wherein the present respondent claimed that the marriage between the parties was solemnised on 25.04.2007 under the Roman Catholic Rites. Thereafter, the present appellant and the respondent lived together as husband and wife and were blessed with two children, born out of wedlock, who, on the date of institution of the Suit, were aged about 12 years and 9 years. However, the present appellant is alleged to be an ill-tempered lady and to have had frequent quarrels with the respondent. Despite all this, the parties lived together at different places in the course of his posting with the Indian Army. In October, 2013, on completion of 17 years of service with the Indian Army, the

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respondent came down to Hazaribagh and, after waiting for six months, joined Tata Iron & Steel Company (TISCO) as a Security Guard, and since then he has been working there as a security guard. Both husband and wife started living together in the quarter given by TISCO. However, during the COVID pandemic, the wife and daughter were sent to Hazaribagh. Thereafter, the relationship between the husband and wife became strained, and the respondent alleges that frivolous allegations were levelled against him relating to an illicit relationship with a lady constable. The appellant even physically assaulted her mother-in-law and picked frequent quarrels with the respondent. A false and frivolous case under Section 498A of the IPC and Section 3/4 of the Dowry Prohibition Act was also instituted, and they were even harassed by the police at the instance of the appellant. It is further stated that the present appellant has deserted the respondent with no intention of restoring conjugal life, and therefore a decree for judicial separation was prayed for.

**6.** Countering the respondent's allegations, the present appellant filed a detailed written statement denying them and reasserting that the respondent and his mother began torturing the present appellant for non-fulfilment of a dowry demand, for which the Korrah police registered an FIR under Section 498A of the IPC. The defence of the appellant also reasserts an allegation of an illicit relationship with a lady constable, and she further alleges that she was neglected by her husband, who was also unfaithful to her. The education of their children became the responsibility of the present appellant, and the

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respondent ignored this responsibility. Other allegations were also denied. It is stated that the maintenance case was also instituted as Maintenance Case No. 33 of 2022, and with such assertions, a prayer was made to dismiss the respondent's Suit.

**7.** The learned trial court, upon consideration of the parties' pleadings, framed issues for determination, including the issue as to whether the present appellant had treated the present respondent with such cruelty as to justify passing a decree for judicial separation on the ground of cruelty in terms of Section 22 of the Divorce Act. The other issues were also as to whether the present respondent was deserted by his wife for a continuous period of two years or more immediately preceding the application for judicial separation in terms of Section 22 of the Divorce Act.

**8.** After the issues were framed, three witnesses were examined on behalf of the present respondent, including the respondent himself, the respondent's mother and the respondent's sister-in-law (Bhabhi). Certified copies of the FIR of Korrah P.S. Case No. 124 of 2019 and of the chargesheet in the said case have also been filed.

**9.** On behalf of the O.P. (appellant herein), three witnesses have also been examined, including the respondent, her mother and her brother. No documentary evidence is on the record on behalf of the present appellant/wife.

**10.** The learned trial court, after considering the oral and documentary evidence, decided the issue with regard to cruelty by the wife against the husband, observing that although the marriage

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was solemnised in 2007 and the couple lived happily for a sufficiently long period, the relationship between the parties began to deteriorate after the husband's retirement on completion of 17 years of service with the Indian Army. The learned trial court also discussed the filing of the complaint leading to the registration of the FIR, which was instituted at the instance of the present appellant, with allegations of demand for dowry and harassment. Discussing the evidence of the witnesses examined on behalf of the present appellant, the trial court observed that the allegations of demand for dowry or cruelty by the husband against the wife were not supported by their evidence. The trial court referred to the judgment of the Hon'ble Supreme Court in the case of **Mangayakarasi vs. M. Yuvaraj, (*2020) 3 SCC 786,*** wherein the Hon'ble Supreme Court held that if the husband and his family members are exposed to criminal litigation and it is ultimately found that such allegations are unwarranted and without basis, the same amounts to mental cruelty on the husband.

**11.** The trial court also observed that on account of such behavior of the present appellant, her mother-in-law was forced to stay away from herown house along with the present respondent.

**12.** Further reliance is placedonthe judgmentof the Hon'ble Supreme Court in the case of **Joydeep Majumdar vs. Bharti Jaiswal Majumdar** reported in ***(2021) 2 JBCJ 60 SC,*** wherein the Hon'ble Supreme Court has held that if allegations are likely to affect the Career and reputation of the husband, the same amounts to



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cruelty. The Court therefore considering that false and frivolous allegations,made out of vengeance,which were unverified and unsubstantiated including allegations of adultery affecting the reputation of the present respondent, amounted to cruelty and held that the present respondent succeededin establishing the case that he hadsuffered sufficient mental pain and agony because of conduct of the respondent (appellant herein) and accordingly, held that the present respondentwas entitled to a decree for judicial separation.

**13.** Similarly deciding the issue with regards to desertion for a continuous period of 2 years and more immediately preceding the presentation of the petition, the Court considered that in order to prove desertion for the purpose of judicial separation,it is not only that the factum of physical separation is sufficient but there should be also ***animus deserendi*** on part of the desertingspouse.The respondent in his evidence on affidavit has stated to be living separately since 08.08.2019 which fact was also admitted by the appellant that her husband is living separate from the date when she had lodged a case of dowry harassment against them. The Court concluded that there has been sufficient evidence on record to show that there has been desertion of the present respondent by the appellant for a period of 2 years or more before filing of the application under Section 22 of the Divorce Act and hence decided the said issue also in favour of the present respondent. Consequently,the suit of the present respondent was decreed and a decree for judicial separation was passed.

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**14.** The Learned Advocate appearing on behalf of the present appellant submits that the Learned Trial Court committed manifest error of law and fact in passing the impugned judgment and decree. Desertion for a period of 2 years or more is a prerequisite for granting a divorce under Section 22 of the Indian Divorce Act, and, as per the admitted case of the parties, this desertion took place only after the lodging of the FIR, which has been brought on record as Exhibit-1 and is dated 08.08.2019. The minimum period of 2 years from that date would have lapsed on 07.08.2021, while the Original Matrimonial Suit was instituted in January 2021, i.e., on 28th day of January 2021. Thus, no ground for desertion was made out, and this was not considered by the Learned Trial Court. The findings of the Learned Trial Court therefore suffer from manifest perversity, if not from failure to follow the mandate of law as contained under Section 22 of the Divorce Act.

**15.** So far as the alleged grounds of cruelty are concerned, learned counsel submits that an FIR was registered at the instance of the present appellant against the present respondent and her mother, and the police, after investigation, submitted a chargesheet under Section 498A of the IPC. At the time of submission of the chargesheet, the Investigating Officer found a lack of sufficient evidence against the mother-in-law, i.e. the mother of the respondent. However, in the course of the hearing, the judgment passed in the said case, i.e. G.R Case No. 5 of 2020, which has been brought on record and is not disputed, shows that the present respondent was acquitted of the

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charges levelled against him, holding that the prosecution failed to prove the charges for the offence under Section 498A of the IPC beyond the shadow of a reasonable doubt, and that, as there was a lack of sufficient evidence, the accused was acquitted of the charge levelled against him.

**16.** Learned counsel submits that mere acquittal in a criminal case does not amount to the institution of a false case, and, apart from that, no other allegation of cruelty is made. Rather, the present appellant was the victim of the respondent's illegal acts, who now seeks a decree for judicial separation. Considering these facts, a prayer is made to set aside the impugned judgment and decree and allow the present appeal.

**17.** Per contra, learned counsel appearing on behalf of the respondent submits that the impugned judgment and decree do not warrant any interference. Admittedly, the parties have been living separately since 2019, and by now almost 7 years have lapsed, yet no effort has been made for restitution of conjugal rights. Levelling false allegations imputing the husband's character amounts to cruelty. Lodging a false case against the husband's aged mother and against the husband is also cruelty, and these aspects of the case have been considered by the learned trial court while passing the impugned judgment. Learned counsel submits that the impugned judgment does not warrant any interference. Prayer is made to dismiss the appeal.

**18.** Having heard the parties the point for determination which falls for our consideration is***whether the respondent established***



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***itscase of desertion and cruelty by the appellant so as to entitle him to a decree for judicial separation in terms of Section 22 of the Divorce Act, 1869.***

**19.** Section 22 of the Divorce Act, 1869 is quotedfor the sake of conveniencehereunder:

> *"No decree shall hereafter be made for a divorce a mensa et toro, but the husband or wife may obtain a decree of judicial separation, on the ground of adultery, or cruelty, or desertion for two years or upwards, and such decree shall have the effect of a divorce a mensa et toro under the existing law, and such other legal effect as hereinafter mentioned."*

**20.** Apparently, to be entitled to a decree for judicial separation on the ground of desertion, the minimum requirement is that such desertion should be for 2 years or upwards. By the 2001 Amendment, the words 'without reasonable cause' have been omitted after the word 'desertion' and before the words 'for 2 years or upwards'. Thus, desertion simpliciter for 2 years or upwards is sufficient ground for the purpose of obtaining a decree for judicial separation. In the facts of the present case, the respondent, in its plaint, has alleged at paras 17 and 18 that the opposite party, i.e. the present appellant, instituted a false case under Section 498A of the IPC against the petitioner (respondent herein) on 08.08.2019 and prevailed upon the officer-in-charge, Korrah P.S. Thereafter, the petitioner and his mother-in-law were taken into police custody and were badly beaten up. Thereafter, the opposite party (present appellant) never allowed the petitioner (present respondent) to enter his own house, confined the mother of the petitioner inside the house,

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and on and off assaulted her in the most inhuman manner. Thus, the pleading of desertion at the most begins from 08.08.2019. This fact also has come up in the evidence, and the present appellant has admitted the same in her evidence. Admittedly, the Suit was instituted on 28.01.2021, as it appears from the 1st order sheet. The minimum period of 2 years prior to the institution of the Suit, or to the presentation of any application for the grant of a decree for judicial separation, was not complete. Therefore, the cause of action for a decree for judicial separation on the ground of desertion was premature. **The finding of the learned trial court on the issue of desertion is, therefore, *ex facie,* not in accordance with law, and the timeline has not been considered. To that extent, the decree for judicial separation on the ground of desertion is not in accordance with law, and the same is set aside.**

**21.** However, the present respondent also invoked an additional ground of cruelty to obtain a decree for judicial separation. The contentions relate to the filing of a false case against the present respondent and his mother by the present appellant for the offence under Section 498A of the IPC. On perusal of exhibits 1 and 2, i.e. the FIR and the chargesheet, it is apparent that the FIR was also lodged by the present appellant against her mother-in-law, but the police found no material to send the mother-in-law for trial and found a lack of evidence against her. *Prima facie, this is evidence of the false implication of the mother-in-law (*mother of the respondent*)*. **The law is settled that filing false cases against the husband's**



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**parents amounts to cruelty on the husband**. Further, as brought on record during the course of the hearing, the case against the present respondent, registered as G.R. Case No. 5 of 2020 (Rachita Mashi Mewa vs Jowel Mewa), was heard by the learned Judicial Magistrate 1st Class, Hazaribagh, and by judgment dated 28.01.2026, the present respondent-Jowel Mewa was acquitted, observing that the prosecution failed to prove the charges against him and that there was insufficient evidence to support the allegations against him. This also corroborates the assertions that cruelty was meted out to the respondent by the appellant.

**22.** Another dimension of cruelty, as alleged by the respondent, was levelling offalse allegations of adultery, which hada bearing on his character. Such allegations also stand substantiatedin the written statement filed by the present appellant, whichwerenot corroborated by any convincing evidence on record.

**23.** We therefore hold the considered view that such allegations, which bear on a person's character and remain uncorroborated by any convincing evidence, amount to cruelty towards that person (the husband herein).

**24.** We therefore areof the considered view that the learned trial Court did not commit any error in law or fact in concluding that the present respondent was entitled to a decree for judicial separation on the ground of crueltymeted out by the present appellant against the respondent.

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**25.** Predominantly, these allegations of cruelty related to mental cruelty,which were corroborated by the evidence and the materials on record, as discussed by us.

**26.** We are therefore of the considered view that, although the respondent was unable to make out a case of desertion as required under Section 22 of the Divorce Act, 1869, the respondent succeeded in establishing a case of cruelty for the purpose of being entitled to a decree for judicial separation in terms of Section 22 of the said Act. The point for determination, as formulated by us, accordingly stands answered.

**27.** In view of our preceding discussions, despite holding that the finding of the learned trial court on the point of desertion was not in accordance with law, we still affirm the decree for judicial separation under Section 22 of the Divorce Act on the ground of cruelty.

**28. The present appeal, therefore, stands disposed of.**

**(M.S. Sonak, C.J.)**

**(Manoj Prasad, J.)**

**27th October, 2026**

A.F.R.

Pramanik/
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