

IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 234 of 2024

Prakash Bari, aged about 37 years, son of Late Jagmohan Bari, resident of Kuidbusu, P.O.-Barkundia, P.S.-Muffasil, District-West Singhbhum.

... .. Appellant

Versus

Poonam Champia, aged about 30 years, wife of Prakash Bari, Daughter of Late Shyamlal Champia, resident of Tuibir, P.O.-Barkundia, P.S.-Muffasil, District-West Singhbhum.

... .. Opp. Parties/Respondents

CORAM: HON’BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON’BLE MR. JUSTICE RAJESH KUMAR

For the Appellant : Mr. Rajendra Prasad Gupta, Advocate
For the Respondent : Mr. Anjani Kumar, Advocate

CAV/Reserved on 07.10.2025 Pronounced on 14/10/2025
Per Sujit Narayan Prasad, J.

1. The instant appeal under Section 19(1) of the Family Courts Act, 1984 is directed against the order/judgment dated 30.09.2024 passed by the learned Principal Judge, Family Court, Chaibasa in Original Suit No. 63 of 2024, whereby and whereunder, the learned court has dismissed the suit filed by the petitioner-husband for dissolution of marriage on the ground that the petitioner/husband (appellant herein) failed to establish that his wife (respondent herein), has solemnized second marriage with Dura Munduiya and is living with him.
2. The brief facts of the case as per the original matrimonial suit needs to be referred herein as under:

The marriage of petitioner and respondent was solemnized on 16.11.2012 according to Tribal customs at Village-Kuidbusu, PS-Muffasil, District- West Singhbhum in presence of the relatives and friends of both parties. After solemnization of marriage, both parties started conjugal life at the house of the petitioner at Village- Kuidbusu, PS-Muffasil, District-West Singhbhum up to 28.01.2022. One son,

namely, Pankaj Bari was born out of their wedlock, who is living at Champua Hostel and studying in Kerala English Medium School, Champua in Class-IV. When petitioner wanted to make physical contact with the respondent, she used to make one and another pretend and lastly refused to make physical relation. When he made inquiry then he found that respondent used to talk over the phone with her boyfriend, namely, Dura Munduiya and used to chat with him regularly in absence of the petitioner saying the word "you are my one true love." When petitioner tried to made her understand, she refused to live with him and left the matrimonial house on her own sweet will on 28.01.2022 and started living with Dura Munduiya. The petitioner is Sub Inspector in S.S.B. and at present posted as S.H.Q. Gangtok, Sikkim. When his villager Chandra Mohan Bari informed him that his wife/respondent has illegal relation with Dura Munduiya, he took leave and came to his village and he found that his wife is not at Home then he made inquiry and came to know that she is in the house of Bandra Killa, Khapparsai, Chaibasa then along with his mother Tungri Bari, as well as Chandra Mohan Bari went to the said house and opened the door forcibly and he found that his wife/respondent was in that house with Dura Munduiya and having physical relationship as well as Dura Munduiya was in the Bed room of Bandra Killa. When the petitioner asked the respondent why she cheated him then she clearly told that she had love affair with his boyfriend, Dura Munduiya, and he is capable to fulfill her physical demand which is not possible by you (petitioner) regularly. The respondent abused the petitioner and threatened him to face dire consequences, if he opposes or takes any action against her as well as Dura Munduiya.

Since then, respondent is living with Dura Munduiya and there is no contact with the petitioner and she also does not take care of her child, namely, Pankaj Bari. The respondent is regularly threatening the petitioner demanding money saying that if petitioner does not pay any maintenance then she will lodge false criminal case against him. Now respondent/wife has got second marriage with Dura Munduiya on 29.02.2024 without taking divorce and living with him at village Pampara, Chaibasa. The petitioner requested the respondent/wife to take divorce but

she is denying and her intention is to extort money from the petitioner regularly. Finding no way petitioner requested the village Munda, namely, Gurucharan Bari to call a meeting regarding second marriage of the respondent/wife then Village Munda called a meeting on 02.03.2024 and after meeting the entire proceeding was reduced in writing in presence of villagers. Petitioner had informed the police earlier but no action was taken against the respondent, then again, he submitted an application to Muffasil police station on 05.07.2024. The petitioner also informed the S.P. Chaibasa submitting a written application to him on 05.07.2024 and lodged online complaint No. 365948 dated 05.07.2024. A meeting was called by village Munda of Tuibir on 14.07.2024 and a written document was prepared regarding their dissolution of marriage. The respondent has decided not to lead conjugal life with the petitioner, she has got second marriage with Dura Munduiya and living according to her choice.

3. It is evident from the factual aspect as referred hereinabove which led to filing of the present appeal that, as per the Original Matrimonial Suit, the appellant married with the respondent and started living together. After some time of the marriage, one son, namely, Pankaj Bari was born out of their wedlock. On denial of making physical relation with the appellant used to refuse for such and on inquiry he found that respondent used to talk over the phone with her boyfriend, namely, Dura Munduiya and the respondent left the matrimonial house on 28.01.2022 and started living with Dura Munduiya.

When his villager Chandra Mohan Bari informed him that his wife/respondent has illegal relation with Dura Munduiya, he took leave and came to his village and he found that his wife is not at Home then he, along with his mother Tungri Bari, as well as Chandra Mohan Bari, went to the said house and found that his wife/respondent was in that house along with Dura Munduiya.

It is the case of the petitioner that her wife, the respondent herein, has solemnized second marriage with Dura Munduiya on 29.02.2024 without taking divorce from him and is living with Dura

Munduiya at village Pampara, Chaibasa and on making request for divorce respondent/wife denied for divorce.

A meeting regarding this was also held and after meeting the entire proceeding was reduced in writing in presence of villagers. Petitioner had informed the police earlier and again, he submitted an application to Muffasil police station on 05.07.2024. The petitioner also informed the S.P. Chaibasa submitting a written application to him on 05.07.2024 and lodged online complaint No. 365948 dated 05.07.2024.

4. It is evident from the factual aspect that the appellant had a motion by filing a petition under Section 7(1) explanation (b) of the Family Court Act, 1984 for dissolution of marriage on the basis that the respondent has solemnized her second marriage with Dura Munduiya and is living with him.
5. The learned Family Judge has called upon the respondent-wife. The wife has filed written statement and altogether five issues have been framed by the learned Family Court which are as follows:
 - (I) Whether the suit is maintainable in its present form?
 - (II) Whether there is any cause of action for filing the suit?
 - (III) Whether the Respondent Poonam Champia is residing with Dura Munduiya and has solemnized her second marriage with him on 29.02.2024 as well as she was found having physical relationship with Dura Munduiya without obtaining divorce from petitioner Prakash Bari?
 - (IV) Whether the petitioner Prakash Bari had informed the Village Munda Gurucharan Bari for convening a meeting but the respondent did not attend the meeting and evading to face the meeting?
 - (V) Whether the marriage between the parties have been broken down irretrievably for all purposes as the respondent has solemnized second marriage during subsistence of first marriage?

(VI) Whether petitioner is entitled other relief/relieves what-so-ever on the basis of pleading?

6. The evidences have been led on behalf of both the parties. Thereafter, the judgment has been passed dismissing the suit by holding that the petitioner has failed to establish that the respondent has solemnized her second marriage on 29.02.2024 with Dura Munduiya, which is the subject matter of the present appeal.

Submission of the learned counsel for the appellant:

7. It has been contended by Mr. Rajendra Prasad Gupta, learned counsel on behalf of the appellant/petitioner that the factual aspect which was available before the learned court supported by the evidences adduced on behalf of the appellant/petitioner has not properly been considered and as such, the judgment impugned is perverse, hence, not sustainable in the eyes of law.
8. It has been submitted that just after the second marriage of the respondent with Dura Munduiya on 29.02.2024, a meeting was convened by Village-Kuidbushu on 02.03.2024 in presence of the villagers and the entire proceeding of that was reduced in writing in the village register and the same register was produced before the Court as also P.W.-1, P.W.-2, P.W.-3 and P.W.-4 as also P.W.-5 have put their signature but the said aspect of the matter has not properly been considered by the learned family court.
9. Learned counsel for the appellant/petitioner, based upon the aforesaid grounds, has submitted that the judgment impugned suffers from perversity, as such, not sustainable in the eyes of law.

Submission of the learned counsel for the respondent:

10. *Per contra*, Mr. Anjani Kumar, learned counsel for the respondent-wife, while defending the impugned judgment, has submitted that there is no error in the impugned judgement. The learned Family Judge, considering all the issues in right perspective and having come to the conclusion that no evidence has been adduced to establish that the respondent has

solemnized her second marriage with Dura Munduiya, has dismissed the petition.

11. Learned counsel, based upon the aforesaid ground, has submitted that if on that pretext, the factum of solemnization of second marriage by the respondent has not been found to be established, based upon which the decree of divorce has been refused to be granted, the impugned judgment cannot be said to suffer from an error, as such, the present appeal is fit to be dismissed.

Analysis:

12. This Court has heard the learned counsel for the parties and gone through the finding recorded by the learned Family Judge in the impugned judgment.
13. The case has been heard at length. The admitted fact herein is that the suit for dissolution of marriage has been filed on the ground that the respondent has solemnized her second marriage with Dura Munduiya, i.e., by filing an application under Section 7(1) explanation (b) of the Family Court Act, 1984 and accordingly, issues have been framed.
14. The evidences have been led on behalf of both the parties before the Family Court. For better appreciation, the evidences led on behalf of the appellant are being referred as under:

- (I) **P.W.-1 Chandramohan Bari** deposed that the suit has been filed by Prakash Bari against Poonam Champia for getting divorce. The marriage of Prakash Bari and Poonam Champia was solemnized on 16.11.2012 at Village- Kuidbusu according to Ho customs and rituals. However, the marriage of Dura Munduiya and Poonam Champia was solemnized on 29.02.2024 at Village- Pampara. One son namely Pankaj Bari was born out of the wedlock of Prakash Bari and Poonam Champia, who is presently aged about 10 years. He resides with his father and nowadays he is getting study in Class-Vth at Kerela Public School, Champua, Odisha. The altercation ensued in between Prakash Bari and Poonam Champia in the year 2022. So, Poonam Champia arrived to Village- Tuibir.

Both Poonam Champia and Prakash Bari are residing separately since 2022. Poonam Champia does not reside with her husband Prakash Bari. Prakash Bari is posted as Sub Anspector in S.S.B, at Sikkim. When Prakash Bari tried to make physical relation with Poonam Champia then she used to refuse the same. It has also been deposed by P.W.-1 in para -8 that on 28.02.2024, they caught Dura Munduiya @ Rahul Munduiya with Poonam Champia in objectionable position in a room at Village-Khapparsai. His wife Damyanti Bari took photo through Mobile. The mother of Prakash Bari namely Tungri Bari was also there, but he does not know that who was the owner of that house. The P.W.-1 identified the photographs having four photos which have been marked as Mark-X. The P.W.-1, further, deposed that the marriage of Dura Munduiya and Poonam Champia was solemnized on 29.02.2024 at Village Pampara in the house of Bamiya Munduiya but he was not present there. One meeting was convened on 2nd of March, 2024 at Village-Kuidbusu in regard to marriage of Dura Munduiya and Poonam Champia in the leadership of Munda Gurucharan Bari but neither Poonam Champia nor anyone attended on her behalf. The persons appeared on behalf of Prakash Bari only. The entire proceeding of meeting was reduced in writing in Village Register kept by Village Munda on which he also put his signature at Sl. No.-44 which has been marked as Ext.-1.

During cross examination, the P.W.-1 deposed in para-18 that no one appeared on behalf of Poonam Champia in village meeting. P.W.-1 further deposed in para-19 that no date of marriage has been mentioned in Village Register. P.W.-1 deposed in para-22 that he has no knowledge that what is the relation in between Prakash Bari and Soniya Sinku. P.W.-1 further deposed in para-25 that a meeting was also convened in the village of Poonam Champia where Poonam Champia had demanded some documents from Prakash Bari but he did not provide her. P.W.-1 deposed in para-31 that Prakash Bari used to keep his wife Poonam Champia in the house situated behind the S.P. resident at Chaibasa and

whenever he came from his duty, he used to reside with his wife at Chaibasa. P.W.-1 deposed in para-32 that Prakash Bari came 4-5 times to his village in 2024.

- (II) **P.W.- 2 Juggu Bari** deposed that Poonam Champia has solemnized her second marriage. So, Prakash Bari has filed the suit for divorce. The marriage of Prakash Bari and Poonam Champia was solemnized in the year 2012. One son namely Pankaj Bari was born out of their wedlock, who resides with his father Prakash Bari. Prakash Bari and Poonam Champia have been living separately since 2022. It has been deposed that Poonam Champia and Rahul Munduiya were found in a room at Village Khapparsai. At that time Chandramohan Bari, Prakash Bari and the mother of Prakash Bari were also present there. The wife of Chandramohan Bari has taken photographs. It has also been deposed that Rahul Munduiya and Poonam Champia have solemnized their marriage at Village- Pampara. A meeting was convened at Village- Kuidbusu in the leadership of Gurucharan Bari in regard to marriage of Poonam Champia and Rahul Munduiya. The entire proceeding of meeting was reduced in writing in Village Register. He also put his signature at Sl. No.48. The signature of Juggu Bari has been marked as Ext.-1/1.

During cross examination, P.W.-2 deposed that he was not present in the marriage ceremony of Poonam Champia and Rahul Munduiya. He has also deposed in Para.-12 that the mother of Prakash Bari had told him about the occurrence of Khapparsai. P.W.-2 deposed in Para-13 that Prakash Bari and Poonam Champia resided at Chaibasa. It has also been deposed in Para-16 that it is not true that the marriage of Poonam Champia and Rahul Mundurya was not solemnized.

- (III) **P.W.-3 Amit Kumar Bari** deposed that the suit has been filed by Prakash Bari against Poonam Champia for divorce. The marriage of Prakash Bari and Poonam Champia was solemnized in the month of November, 2012. One son namely Pankaj Bari was born

out of their wedlock who resides with his father. Prakash Bari is posted as S.I. in Gangtok, Sikkim. P.W.-3 further deposed that when Prakash Bari goes to his duty place then Poonam Champia and Dura Munduiya both visits together. Poonam Champia and Dura Munduiya were found in Bandrakila at Village-Khapparsai. P.W.-3 further deposed that Dura Munduiya and Poonam Champia solemnized their marriage on 29.02.2024 according to Ho rites and rituals. While he was returning from his village during Maghe-Parv then he heard the sound of Drum so he went there and saw that the marriage of Dura Munduiya and Poonam Champia was going on. He took the photos of marriage ceremony as well as did video recording too. He sent the audio and video to Prakash Bari through his mobile but the mobile phone was not in order, so, he did not deposit the same before the Court. A meeting was convened on 02.03.2024 in the leadership of Village Munda Gurucharan Bari in regard to the marriage of Poonam Champia and Dura Munduiya. The entire proceeding was reduced in writing and he put his signature on Sl. No.-3 which has been marked as Ext.-1/2.

In his cross examination, P.W.-3 deposed in Para-13 that it has not been mentioned in Village Register that by whom the photo attached with the Register was taken. P.W.-3 further deposed in Para.-14 that no one was present on behalf of Poonam Champia in Village meeting. The witness deposed in Para.-17 that he cannot produce any evidence that he was present on 29.02.2024 at Village Pampara. The witness deposed in Para.-18 that he did not give any information to Village Munda of Pampara about the marriage of Dura Munduiya and Poonam Champia. The witness deposed in Para.-21 that Lilmuni was also present in marriage ceremony but he did not take her photo. The witness deposed in Para.-23 that he cannot state the name of that person, who told him about the incident of Khapparsai. The witness deposed in Para.-30 that it is true that one inquiry is going on by the police about the incident of Prakash Bari and Poonam Champia.

(IV) **P.W.-4 Prakash Bari**, the petitioner herein, deposed that his marriage was solemnized with Poonam Champia on 16.11.2017 according to Ho rites and rituals. One son, namely, Pankaj Bari was born out of their wedlock who resided within the father. He further deposed that he and the respondent are living separately since 28.01.2022. The witness deposed in Para.-5 that he came to know from Chandramohan Bari that Poonam Champia and Dura Munduiya have been living as husband and wife in Bandrakilla at Khapparsai. The witness, further, deposed that when Chandramohan Bari, Juggu Bari, Amit Bari, Tungri Bari had gone to Khapparsai village then they found that the door was closed from inside and when it was opened, Dura Munduiya and Poonam Champia were in bedroom. Damyanti Bari took photographs and sent it to him through Mobile. The video recording was also made. He got print out from the Mobile and filed the same before the Court. Poonam Champia and Dura Munduiya used to chat with each other and they had gone to visit at Puri, Odisha. He has seen one chatting in the Mobile of Poonam Champia which was sent by one Randhir Kumar as *"you are my one true love..... my wife"*. The witness deposed in Para.-9 that he has filed Pen-drive in which 17 photos and four videos have been uploaded. The video was recorded by Lilmuni and she sent photographs and videos to him. The witness further deposed that in photographs in which Dura Munduiya and Poonam Champia are worshiping was sent by Bamiya Munduiya to him. The witness has identified the Pen-drive filed by him which has been marked as Exhibit-2. One meeting was convened on 02.03.2024 at village Kuidbusu in regard to marriage of Poonam Champia and Dura Munduiya in the leadership of Village Munda Gurucharan Bari where 69 persons attended the meeting. The witness deposed in Para.-13 that no one was present in the meeting on behalf of Poonam Champia. The witness further deposed that no notice was given to Poonam Champia as she was changing her place. The witness deposed in Para.-14 that his Sasural is 2 kms away from his village. The

witness identified his signature on Register which was reduced in writing on 02.03.2024 which has been marked as Ext.-1/3. He had filed complaint before Muffasil P.S. Chaibasa as well as made on-line complaint about the marriage of Poonam Champia and Dura Munduiya but the F.I.R. has not been registered till date. The inquiry is going on.

During cross examination, the witness deposed in Para.-23 that the contents of Ext.-2 was sent by Lilmuni and Bamiya Munduiya to him. The witness deposed in Para.-26 that he never resided at Chaibasa with Poonam Champia. The witness deposed in Para.-30 that it was not discussed in meeting held in his village about the date of marriage as well as the person who took the photographs of the marriage of Poonam Champia with Dura Munduiya. The witness deposed in Para.-31 that it is wrong to say that on 27.01.2024 he and Poonam Champia had gone to visit Bihar and they were at Bodh Gaya on 24.01.2024 and 26.01.2024 and both shared their photos in their family group. The witness deposed in Para.-32 that he has not made party to Dura Munduiya in the Suit. The witness deposed in Para.-33 that he has written his name as the husband of Poonam Champia in the suit and has not made witness to Dura Munduiya. The witness deposed in Para.-36 that it is wrong to say that he wants to marry with Soniya Sinku, therefore, he has filed the suit for getting divorce from Poonam Champia.

- (V) **P.W.- 5 Gurucharan Bari** deposed that the suit has been filed by Prakash Bari against Poonam Champia for getting divorce. One son was born out of the wedlock of Prakash Bari and Poonam Champia, who is aged about 12 years and resides with his father Prakash Bari. Prakash Bari does job in army. The witness, further, deposed that one meeting was convened in his leadership on 02.03.2024 at Village Kuidbusu where it was discussed that Poonam Champia has solemnized his second marriage. The entire proceeding was reduced in writing by Birendra Bari and 67

persons put their signatures. He also put his signature as well as put the seal of village Munda which has been marked as Ext.-1/4. One photograph was also attached with that Register which consists the photo of Poonam Champia and Rahul Munduiya. The witness deposed that the entire proceeding was reduced in writing which consists three pages and he knows about the entire proceeding which has been marked as Ext.-1/5. It has also been deposed that Poonam Champia and Prakash Bari reside separately nowadays.

During cross examination, the witness deposed that he has not seen Rahul Munduiya. The witness deposed in Para.-10 that the date of marriage of Dura Munduiya @ Rahul Munduiya and Poonam Champia has not been mentioned in Ext.-1/5. The witness deposed in Para.-11 that whenever Prakash Bari came from his duty, he used to reside with Poonam Champia. The witness deposed in Para.-13 that none was present on behalf of Poonam Champia on 02.03.2024. The witness clearly deposed that he had not sent any notice to the family members of Poonam Champia. The witness also deposed in Para.-14 that he did not call the village Munda of Village Pampara in meeting convened on 02.03.2024. The witness also deposed in Para.- 15 that he did not call Dura Munduiya to ask that he has solemnized his marriage with Poonam Champia or not?

- (VI) **P.W.- 6 Tungri Bari** has deposed that Poonam Champia is her daughter-in-law. The marriage of her son Prakash Bari was solemnized with Poonam Champia in 2021. One son namely Pankaj Bari was born out of their wedlock, who resides with them. Her son is posted in S.S.B. at Gangtok. The witness further deposed that Poonam Champia and Prakash Bari have been living separately since 2022 but Poonam Champia resides at Chaibasa beside the S.P. residents. The witness, further, deposed that she heard that Poonam Champia and Dura Munduiya are visiting together and they are living at Village-Khapparsai. So, she went

there and knocked the door at 08:00 A.M. then Dura Munduiya opened the door, she saw that Poonam Champia was standing in skirt but did not say anything. Chandramohan talked with her and thereafter they came out from the room. At that time she, Chandramohan, Damyanti, Sishupal and Amit Bari were there. Poonam Champia has solemnized her second marriage with Dura Munduiya at Village-Pampara and the marriage was solemnized at the residence of Dura Munduiya. Lilmuni Deogam and Raimuni Deogam were present there. No one was present from village Kuidbusu. One meeting was convened at her village where she put her signatures at Sl. No.13 which has been marked as Ext.-1/6.

During cross examination, the witness deposed in Para.-11 that Poonam Champia and Prakash Bari resided at Chaibasa. The witness, further, deposed that Prakash Bari used to come to meet with his mother at his village in vacation but after meeting with her mother, he return back. The witness further deposed that Poonam Champia had come to her house to take rice. The witness deposed in Para.-16 that she has no knowledge that her son Prakash Bari and Soniya Sinku has illicit relation and whenever her son comes from duty used to go to meet with Soniya Sinku. The witness deposed in Para.-19 that his son used to come two to three times to his village within a year and spent 60 days but he did not stay a single day with her. He resides with his wife. The witness deposed in Para.-20 that her son never resides with her after his marriage.

(VII) **P.W.- 7 Lilmuni Deogam** deposed that she knows Prakash Bari, who is the resident of Village-Kuidbusu. The marriage of Prakash Bari was solemnized with Poonam Champia. One son was born out of the wedlock of Prakash Bari and Poonam Champia. Prakash Bari does duty in Army. Poonam Champia was at Village-Khapparsai for a month thereafter, she got her marriage solemnized with Dura Munduiya. She was also present in the marriage ceremony. She put Haldi Lepam and Oil Lepam to Rahul

Munduiya and Poonam Munduiya. The marriage ceremony was performed in the house of Dura Munduiya. She does not know that by whom photographs were taken. Dura Munduiya has performed two marriages but she does not know about the first wife of Dura Munduiya. The witness deposed in Para.-10 that at the time of marriage Dabung Munduiya was beating Drum. Bablu Munduiya, Menjhari Munduiya, Suman Munduiya and Gurwarı Munduiya were present there. The step-mother of Dura Munduiya was present there but Bamiya Munduiya was not there. The witness deposed in Para.-14 that her house is 100-150 meters away from the house of Dura Munduiya. The witness deposed in Para.-17 that he has not seen Poonam Champia and Dura Munduiya together going to market or visiting at any place.

(VIII) **P.W.- 8 Raimuni Deogam** deposed that the marriage of Rahul Munduiya and Poonam Champia was solemnized where she put Haldi Lepam to Rahul Munduiya and Poonam Champia. The witness further deposed that five houses are situated in between her house and the house of Rahul Munduiya. The witness deposed in Para.-4 that no one from the house of Poonam Champia was present at the marriage ceremony. Bamiya Munduiya and the step-mother of Dura Munduiya were present there. The Munda and Mukhia of Pampara village were not present there. The witness deposed in Para.-8 that she does not know that by whom photographs were taken as she was busy in Haldi Lepam.

During Cross examination, the witness deposed in Para.-11 that the marriage of Dura Munduiya and Poonam Champia was performed without the consent of their parents. The witness deposed in Para.-13 that after marriage Dura Munduiya and Poonam Champia resided at Village- Pampara for a week, thereafter, the guardians of Poonam Champia arrived from village Tuibir and took her.

15. The evidences led on behalf of the opposite party/respondent are being referred as under:

- (I) **R.W.-1 Sunil Kumar Champia** deposed that Poonam Champia is his younger sister. Her marriage was solemnized with Prakash Bari in the month of November, 2012. Poonam Champia resided at her matrimonial home for some days, thereafter, she shifted with her husband and started residing beside the S.P. residence, Chaibasa. One Son was born out of their wedlock. Prakash Bari does work in S.S.B. (Sima Surksha Bal). Earlier he was posted at Gaya, Bihar but now he has been transferred from Gaya, Bihar. Poonam Champia and Prakash Bari had gone to visit Gaya in 2024 and photographs were taken during Gaya visit and it was sent in WhatsApp group. His sister does not want to live with her husband Prakash Bari as because Prakash Bari has illicit relation with Sonia Sinku.

During cross examination, the witness deposed in Para.-07 that his sister does not want to live with her husband now. The witness deposed in Para.-10 that he and his sister did not file any complaint in writing before police station or S.P. office, Chaibasa in regard to relation of Prakash Bari and Sonia Sinku. The witness deposed in Para.-12 that it is wrong to say that Poonam Champia has solemnized her marriage with Dura Munduiya.

- (II) **R.W.- 2 Anil Kumar Champia** deposed that Poonam Champia is his younger sister. Her marriage was solemnized with Prakash Bari in the year 2012. One son namely Pankaj Bari was born out of their wedlock. After marriage Poonam Champia went to her matrimonial home at Village-Kuidbusu but thereafter she and her husband shifted to Chaibasa in their own house situated behind the S.P. residence, Chaibasa. Prakash Bari used to come in vacation. The witness further deposed that he has not heard ever that Poonam Champia has solemnized marriage with Dura Munduiya. Prakash Bari and Poonam Champia had gone to Gaya, Rajgir and Bodh Gaya together and they sent the photos to their groups. The photographs are still in his mobile as well as in the mobile of Prakash Bari. The witness deposed in Para.-6 that he wanted that

Prakash Bari and Poonam Champia resided together and look after their son properly.

During cross examination, the witness identified the photographs of his sister but did not identify the photos of male member, who is accompanied with his sister. The photographs have been marked as Mark-X/1. The witness also identified the photographs marked earlier as Mark-X and told that the same photographs were sent by his elder sister Sunita Kudada to him. The witness deposed in Para.-11 that the photographs attached with village Register is not concerned with his sister. The witness deposed in Para.-12 that his sister had gone to visit Gaya on 27.01.2024 and his sister Poonam Champia informed through WhatsApp chat that she has come with her husband.

- (III) **R.W.-3 Sunita Kudada** deposed that Poonam Champia is her younger sister. The marriage of Poonam Champia was solemnized with Prakash Bari on 16.11.2012. After marriage both resided at Village- Kuidbusu thereafter they shifted to Chaibasa and started residing at Village Tambo beside the S.P.'s residence. Both were residing well but Prakash Bari used to talk with Soniya Sinku and it came to the knowledge of her sister that there is relation in between Prakash Bari and Soniya Sinku. His sister used to send video to her but she has no photograph or video in which Prakash Bari and Soniya Sinku are together. The witness deposed in Para.-4 that she tried to understand Prakash Bari not to talk with Soniya Sinku. Then he assured that he will not talk with Soniya Sinku in future. Prakash Bari had gone to Gaya with her sister in the month of January, 2024 at that time Prakash Bari was posted at Gaya. Her sister returned from Gaya to Chaibasa on 28.01.2024.

During cross examination, the witness identified after seeing photographs marked as Mark-X & X/1 and only recognized her sister but did not recognize the male, who is with her. The witness deposed in Para.-10 that she has no knowledge that her

sister has solemnized her marriage with Rahul Munduiya @ Dura Munduiya.

- (IV) **R.W.-4 Poonam Champia** deposed that Prakash Bari is her husband and her marriage was solemnized with Prakash Bari on 16.11.2022 at Village- Kuidbusu according to Ho rites and customs. After marriage both started residing at Village-Kuidbusu but thereafter they shifted to village- Tambo beside the S.P, residence, Chaibasa. In the month of November, 2012 one Son was born out of their wedlock on 22.03.2014 in Sadar Hospital, Chaibasa. He resides with his father and presently getting study at Champua, Odisha. His entire educational expenses are borne by his father. She used to go to meet with him and lastly, she had gone to meet with her son in the month of May, 2024. The witness deposed that she is unemployed and having no source of income. Therefore, she is maintained by her brother Anil Kumar Champia. The witness deposed that nowadays she resides at her parental home at Village- Tuibir which is five kilometers away from Civil Court, Chaibasa. The witness, further, deposed that her husband is Sub Inspector in S.S.B. (Sima Suraksha Bal) and presently he is posted in Gangtok, Sikkim. Her husband gets salary of Rs.98,000/- per month. Her husband is not paying any maintenance to her since 2024. The witness further deposed that she resided with her husband in the month of January, 2024 and at that time both had gone to visit Gaya and Bodhgaya. Some photographs were shared in their group. She has filed Pen-drive having loaded with photographs. One video related to Soniya Sinku and Prakash Bari is also uploaded in Pen-drive. Her husband used to pay money to Soniya Sinku and the phone of Soniya Sinku is also recharged by her husband. One message is also in Pen-drive in which Soniya addressed to Prakash Bari that "*Teri Bibi meri didi ko kyo call ki*". She has filed two Pen-drive in the Court, out of which one copy is clone one. The witness, further, deposed that there is joint saving account in Canara Bank, Kolhan University branch which is still working. She wants to live with Prakash Bari. The witness

deposed that the family members of Prakash Bari had made viral a fake video about her. Her husband has filed the instant suit for divorce so that he could solemnize her marriage with Soniya Sinku.

During cross examination, the witness denied that she has been standing in front of the vehicle bearing Registration No.JH-05-CX-3325. The witness further deposed in Para.-17 that the photographs Mark-X & X/1 are fake. The witness also deposed in Para.-19 that the photographs attached with Village Munda Register is also fake. The witness deposed in Para.-21 that she has no knowledge that a Panchayati was convened at Village-Kuidbusu in regard to her marriage with Dura Munduiya. The witness deposed in Para.-22 that it is wrong to say that she has been living separately from her husband since 28.01.2022. The witness also deposed in Para.-23 that it is wrong to say that she solemnized her marriage with Dura Munduiya on 29.02.2024. The witness deposed in Para.-25 that it is wrong to say that her allegations about Soniya Sinku and her husband is false. The witness deposed in Para.-26 that it is wrong to say that the photographs loaded in Pen-drive are fake and concocted. The witness deposed in Para.-27 that it is wrong to say that Raimuni Deogam and Lilmuni Deogam put Halid lepan to her on 29.02.2024. The witness deposed in Para.-28 that the photographs marked as Mark-X/1 on which it has been written in English "*you are my true love.... my wife*" does not belong to her Instagram. The witness deposed in Para.-31 that it true that she has not filed any case against her husband as because she does not want to defame her husband.

16. The learned counsel for the appellant has argued that the evidence regarding the second marriage performed by the respondent with Dura Munduiya has not properly been considered and as such, the judgment suffers from perversity, hence, not sustainable in the eyes of law.

17. While on the other hand, argument has been advanced on behalf of the respondent that the judgment is well considered one and merely by committing fraud, the suit for divorce has been filed.
18. This Court while appreciating the argument advanced on behalf of the parties 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. 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.”

19. Admittedly, the ground, on behalf of the petitioner, for seeking divorce has been taken that the respondent-wife has performed her second marriage with Dura Munduiya on 29.02.2024 and is living with him.
20. This Court, for appreciation of the ground as has been taken on behalf of the petitioner, has gone through the judgment impugned passed by the learned family court wherein the learned family court has observed that the petitioner has alleged in Para-9 of his plaint that he was informed by Chandramohan Bari that his wife has illegal relation with Dura Munduiya then he took leave and came to his house and found that his wife is not in home and on enquiry, he came to know that she is in the house of Bandrakilla, Khapparsai, Chaibasa then he, along with his mother Tungri Bari as well as Chandramohan Bari, went to the said house and opened the door forcibly and found that his wife was in that house along with Dura Munduiya and having physical relationship.

But, during trial, Chandramohan Bari deposed in Para-08 that on 28.02.2024 Poonam Champia was caught red-handed with Dura Munduiya in objectionable position and his wife Damyanti Bari took photos of that incident but the plaint does not disclose that Damyanti Bari was present at the place of occurrence.

21. It has also been observed that the P.W.-2 Jaggu Bari deposed in Para-5 that Poonam Champia and Rahul Munduiya were found in a room at

Khapparsai and he was also present there but stated in Para-12 that the mother of Prakash Bari had informed about the occurrence. P.W.-3 Amit Kumar Bari deposed in Para-5 that Poonam Champia and Dura Munduiya were found in objectionable position in Village-Khapparsai where the mother of the Prakash Bari namely Tungri Bari, Chandramohan Bari, Damyanti Bari, Sishupal Bari and Jaggu Bari were also present there. However, in Para-9 of the plaint he has disclosed otherwise. P.W.-1 & P.W.-2 have not taken the name of Sishupal Bari, Jaggu Bari and Amit Kumar Bari that they were present at the place of occurrence. P.W.-3 has not stated the date on which Poonam Champia and Damyanti Bari were found in Bandrakilla at Khapparsai. During cross examination, the witness deposed that by whom he came to know about the occurrence of Khapparsai, has no knowledge and he does not want to disclose the name of that person.

22. The learned family court, on the aforesaid, has found that there are contradictions in Para-5 & 23 of P.W.-3 and P.W.-4 Prakash Bari (petitioner) deposed in Para-5 that he came to know through Chandramohan Bari that his wife Poonam Champia and Dura Munduiya are residing together as husband and wife. So, Chandramohan Bari, Jaggu Bari, Amit Kumar Bari, his mother Tungri Bari went there and found that the door was closed but petitioner does not depose that he was present at that day at Khapparsai. However, he has mentioned in Para-9 of the plaint that he was present physically at the time of occurrence, therefore, there is contradiction in the deposition of Prakash Bari about the fact mentioned in Para-9 of the plaint. The petitioner has deposed that Damyanti Bari was present at the time of occurrence occurred in Khapparsai but her name has not been disclosed in the plaint and she was not examined by the petitioner. P.W.-5 Gurucharan Bari has not stated anything about the occurrence took place at Bandrakilla at Village Khapparsai though he is the Munda of Village-Kuidbushu. P.W.-6 Tungri Bari deposed in Para.-5 that Poonam Champia used to visit with Dura Munduiya and one day she came to know that both are residing in Village-Khapparsai. So, early in the morning about 08:00 A.M. she went there and knocked the door, as a result Dura Munduiya opened the door where she found that Poonam

Champia has worn skirt, thereafter, they came out from the room at that time, Chandramohan Bari, Damyanti Bari, Sishupal Bari and Amit Kumar Bari were there but Tungri Bari has not stated the date, month and year of occurrence in her examination in chief. P.W.- 7 Lilmuni Deogam and P.W.-8 Raimuni Deogam have not deposed anything about the occurrence occurred in Village-Khapparsai.

23. The learned family court has taken into consideration that on the basis of evidences led by P.W.1 to P.W.-8, only P.W.-1 has deposed in Para-8 that the occurrence took place at Village-Khapparsai occurred on 28.02.2024 and none out of him has disclosed the date, time, month and year of occurrence either in their examination in chief or during cross examination.
24. This Court, on consideration of the impugned judgment, is of the view that if the respondent and Dura Munduiya were caught red-handed in Bandrakilla (house) at Village- Khapparsai despite that neither the occurrence was informed to Village Munda of Khapparsai nor any person were called from Khapparsai. The entire witnesses from P.W.-1 to P.W.-8 either belonged to Kuidbushu or village Pampara. It is said that Chandramohan Bari and Tungri Bari both had gone together and opened the door at Khapparsai at 08:00 A.M., but they did not bother to call any person from village Khapparsai. None has stated that who was the owner of Bandrakilla house.
25. This Court is also of the view that if such incident did occur, then why the F.I.R. was not instituted about the occurrence which is said to be occurred on 28.02.2024.
26. So far as the fact about convening of meeting by village munda of Village-Kuidbushu on 02.03.2024 in presence of villagers and second marriage having been performed by the respondent with Dura Munduiya is concerned, the entire proceeding of that meeting was reduced in writing in the register, as has been taken note in the impugned judgment, but the said register does not disclose either the date of marriage or any details regarding the persons who attended the marriage ceremony.

It has also come on record that the names of P.W.-7 and P.W.-8, who are said to be the eye-witnesses of the second marriage performed by the respondent with Dura Munduiya, has not been mentioned in the village register. P.W.-7 has deposed at para-10 that at the time of marriage, the step-mother of Dura Munduiya was present but his father was not present, however, P.W.-8 has deposed that the step-mother and father of Dura Munduiya both were present at the time of marriage but, both the persons, i.e., the step-mother and father of Dura Munduiya have not been produced before the Court for their evidence as also have not been made witness for proving the fact of marriage.

Even the fact that the respondent and Dura Munduiya were caught red-handed in objectionable position on 28.02.2024 has not been disclosed in the meeting convened on 02.03.2024.

27. Further from the impugned order it is evident that on behalf of the petitioner/husband some electronic evidence saved in the pen-drive had placed before the learned Family Court in order to prove the marriage between respondent and Daru Munduiya.
28. However, the same has been opposed on behalf of the respondent by taking the point that unless and until a certificate is issued by the petitioner himself or the person by whom the material contained in the pen-drive was cloned from primary evidence and a certificate is separately issued, the same is inadmissible in the evidence.
29. At this juncture, it would be apt to refer herein the settled position of law as settled by the Hon'ble Apex Court that electronic evidence can be presented as evidence in the court, but they require proper authentication and compliance of Section 65B of the Indian Evidence Act (now replaced by the Bharatiya Sakshya Adhiniyam, 2023). This means a certificate is usually needed to confirm the authenticity of the evidence. For ready reference the section 63 of Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023) corresponding to Section 65B of the Evidence Act, 1872 is being quoted as under:

“63. Admissibility of electronic records—(1) Notwithstanding anything contained in this Adhiniyam, any information contained in

an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media or semiconductor memory which is produced by a computer or any communication device or otherwise stored, recorded or copied in any electronic form (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely.—

(a) the computer output containing the information was produced by the computer or communication device during the period over which the computer or communication device was used regularly to create, store or process information for the purposes of any activity regularly carried on over that period by the person having lawful control over the use of the computer or communication device;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer or communication device in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer or communication device was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer or communication device in the ordinary course of the said activities.

(3) Where over any period, the function of creating, storing or processing information for the purposes of any activity regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by means of one or more computers or communication device, whether—

(a) in standalone mode; or

(b) on a computer system; or

(c) on a computer network; or

(d) on a computer resource enabling information creation or providing information processing and storage; or

(e) through an intermediary, all the computers or communication devices used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer or communication device; and references in this section to a computer or communication device shall be construed accordingly.

(4) In any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things shall be submitted along with the electronic record at each instance where it is being submitted for admission, namely: —

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of

showing that the electronic record was produced by a computer or a communication device referred to in clauses (a) to (e) of sub-section (3);

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person in charge of the computer or communication device or the management of the relevant activities (whichever is appropriate) and an expert shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it in the certificate specified in the Schedule.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer or communication device if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) a computer output shall be taken to have been produced by a computer or communication device whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment or by other electronic means as referred to in clauses (a) to (e) of sub-section (3).”

30. The electronic evidence saved in the pen-drive, in the context of the present case, is to be considered as the secondary evidence, and as such the requirement of a certificate under aforesaid provision is required.
31. However, here it would be relevant to refer Section 14 of the Family Courts Act, wherein it has been provided that Evidence Act, 1872 now the Bharatiya Sakshya Adhiniyam, 2023 will not be applicable in strict sense in the Family Courts Act, rather, it depends upon the Presiding Judge to accept or not to accept the WhatsApp messages depending upon its authenticity and genuineness. Reference in this regard be made to Section 14 of the Family Courts’ Act, which reads as under:

“14. Application of Indian Evidence Act, 1872.—A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).”

32. Thus, from perusal of Section 14 of the Family Courts Act, it is evident that it is not mandatory upon the family court to accept any type of electronic evidence rather same is to be accepted by the learned family judge in view of provision of Section 14 of the Family Courts Act and the genuineness of the electronic evidence is to be assessed by the learned family judge in order to come to the conclusion of the *lis*. The issue of authenticity is sine qua non in adjudication of the issue and if the

authenticity of the chat without verifying the same is to be accepted, then it will lead to miscarriage of justice and it will not come under the purview of fair trial. The evidence like that of Whatsapp chat can be accepted in view of Section 14 but it must be after verifying the authenticity of the chat for ascertainment of the fact that there is no tampering with the aforesaid electronic evidence.

33. Further, the authenticity of the Whatsapp message is required to be assessed in order to avoid any type of confusion or mischief. For example, suppose if any mobile phone/SIM has been purchased by the husband in the name of the wife and he used to make chat with the aforesaid mobile device/SIM to his mobile device purchased in his name, and the transfer of the Whatsapp messages/chat from both the mobile phones are there and after getting the chat from that mobile device if it will be accepted, then it will be acute miscarriage and that is the reason the authenticity of the Whatsapp chat/messages is to be ascertained to avoid any type of confusion before accepting the Whatsapp message or any conversation recorded there.
34. It needs to refer herein the ratio of judgment rendered by the Hon'ble Apex Court in the case of **Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473** wherein it has categorically been held that safeguards provided under Section 65-B of Act, 1872 are to ensure the source and authenticity of electronic records. As electronic records are more susceptible to tampering, alteration, transposition, excision, etc., without such safeguards, whole trial based on proof of electronic records can lead to travesty of justice. For ready reference the relevant paragraph is being quoted as under:

“16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.”

35. However, the Hon'ble Apex Court in the case of ***Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801***, has observed that the requirement of certificate under Section 65-B(4) being procedural, can be relaxed by Court wherever interest of justice so justifies and thus, requirement of certificate under Section 65-B(4) is not always mandatory.
36. The Full Bench of the Hon'ble Apex Court in the case of ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1*** while overruling the judgment passed in the case of ***Shafhi Mohammad v. State of H.P. (supra)*** has settled the controversy surrounding the electronic evidence and has observed that the certificate under Section 65B (4) is unnecessary if the original document itself is produced and this can be done by the owner of the laptop, mobile phone etc. by stepping into the witness box. In cases where the “computer” happens to be a part of a “computer system” or “computer network” and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4). For ready reference the relevant paragraph is being quoted as under:

“73.1. *Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108], as clarified by us hereinabove, is the law declared by this Court on Section 65-B of the Evidence Act. The judgment in Tomaso Bruno [Tomaso Bruno v. State of U.P., (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54], being per incuriam, does not lay down the law correctly. Also, the judgment in Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] and the judgment dated 3-4 2018 reported as *Shafhi Mohd. v. State of H.P. [Shafhi Mohd. v. State of H.P., (2018) 5 SCC 311 : (2018) 2 SCC (Cri) 704], do not lay down the law correctly and are therefore overruled.**

73.2. The clarification referred to above is that the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where the “computer” happens to be a part of a “computer system” or “computer network” and it becomes impossible to physically bring such system or network to the court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under

Section 65-B(4). The last sentence in para 24 in Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] which reads as “... if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act ...” is thus clarified; it is to be read without the words “under Section 62 of the Evidence Act,...”. With this clarification, the law stated in para 24 of Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] does not need to be revisited.

73.3. The general directions issued in para 64 (supra) shall hereafter be followed by courts that deal with electronic evidence, to ensure their preservation, and production of certificate at the appropriate stage. These directions shall apply in all proceedings, till rules and directions under Section 67-C of the Information Technology Act and data retention conditions are formulated for compliance by telecom and internet service providers.

73.4. Appropriate rules and directions should be framed in exercise of the Information Technology Act, by exercising powers such as in Section 67-C, and also framing suitable rules for the retention of data involved in trial of offences, their segregation, rules of chain of custody, stamping and record maintenance, for the entire duration of trials and appeals, and also in regard to preservation of the metadata to avoid corruption. Likewise, appropriate rules for preservation, retrieval and production of electronic record, should be framed as indicated earlier, after considering the report of the Committee constituted by the Chief Justices’ Conference in April 2016.”

37. Taking into consideration the aforesaid settled position of law this Court is re-adverting to the impugned order wherefrom it is evident that the learned family court has categorically observed that on the basis of the discussion made above and in the light of direction and guidelines passed by the Hon'ble Apex Court until and unless the certificate is furnished under section 65B of the Indian Evidence Act, the material/contents of Pen-drive and photographs are inadmissible. It has further been observed that P.W.-3 took the photographs of marriage and also made video through mobile but he did not produce the original Mobile before the Court. It is also evident from the case record that Lilmuni Deogam recorded the photographs and video of marriage ceremony and sent to Prakash Bari but Lilmuni Deogam (PW-7) herself deposed that she does not know that by whom photographs were taken. PW-8 Raimuni Deogam, who is said to be present at the time of marriage has deposed in para-8 that she does not know that any photography was conducted at the time of marriage or not? For ready reference levant paragraph is being quoted as under:

*“29. On the basis of discussion made above and in the light of direction and guidelines passed by the Hon'ble Apex Court until and unless the certificate is furnished under section 65B of the Indian Evidence Act, the material/contents of Pen-drive and photographs are inadmissible. It is said that P.W.-3 took the photographs of marriage and also made video through mobile but he did not produce the original Mobile before the Court. It is also evident from the case record that Lilmuni Deogam recorded the photographs and video of marriage ceremony and sent to Prakash Bari but Lilmuni Deogam (PW-7) herself deposed that she does not know that by whom photographs were taken. PW-8 Raimuni Deogam, who is said to be present at the time of marriage has deposed in Para.-8 that she does not know that any photography was conducted at the time of marriage or not? P.W.-4 Prakash Bari deposed in Para. 6 that Damyanti Bari wife of Chandramohan Baril recorded the photographs but neither Damyanti Bari was examined by petitioner nor that mobile was produced before the Court. The petitioner (PW-4) has also deposed in Para.-10 that some photographs and videos were also sent by Bamiya Munduiya but neither Bamiya Mundiya was examined by the petitioner nor the mobile through which the photographs and video were recorded, produced before the Court. Therefore, the Court is of the finding that no original electronic document/primary evidence were produced before the Court. The petitioner could not explain that where the cloned Pen-drive were prepared and which computer set was used for preparing secondary evidence. No certificate has been filed by the petitioner. The person who cloned the Pen-drive and printed the photographs on paper did not appear before the Court as well as did not furnish any certificate U/S 65B of Indian Evidence Act. **The documents do not inspire the requisite amount of confidence in the lack of certificates, therefore, the electronic documents and photographs filed by both parties are inadmissible in evidence. Hence, the petitioner failed to establish by reliable, cogent and convincing evidence that the marriage of Poonam Champia was solemnized with Dura Munduiya.**”*

38. Thus, from the aforesaid it is evident that the learned family court after due consideration of all the aspects was not satisfied with respect to the authenticity and genuineness of the Electronic Evidence, as would be evidence from relevant paragraph of the impugned judgment quoted and referred hereinabove, which led the learned family Judge to dismiss the suit.
39. This Court, on consideration of the impugned judgment as also the material available on record, has found that no such cogent evidence has been produced by the appellant-husband to establish that her wife, the respondent herein, has performed second marriage with Dura Munduiya on 29.02.2024 and is living with him.
40. Thus, the learned Family Judge, on consideration of entire aspect, has not found the ground for dissolution of marriage and therefore, has dismissed the suit.

41. Thus, it is evident that the learned Family Judge has analyzed the evidences available on record in threadbare manner by taking into account each and every aspect of the matter, therefore, this Court is of the considered view that the order impugned requires no interference.
42. This Court, based upon the aforesaid discussion, is of the view that the appellant/petitioner has failed to establish the element of perversity in the impugned judgment as per the discussion made hereinabove, as such, the instant appeal deserves to be dismissed.
43. Accordingly, the instant appeal fails and is dismissed.
44. Pending interlocutory application(s), if any, also stands disposed of.

I agree

(Sujit Narayan Prasad, J.)

(Rajesh Kumar, J.)

(Rajesh Kumar, J.)

14th October, 2025

Saurabh/A.F.R.

Uploaded on: 15.10.2025