

IN THE HIGH COURT OF JHARKHAND AT RANCHI
F.A. No. 190 of 2023

Mahesh Mahato, aged about 34 years, Son of Jugal Mahato, Resident of Village-Tentoposi, P.O.-Sindhukopa, Seraikella-Kharsawan.

... Appellant/Petitioner

Versus

Shibani Mahato, Wife of Mahesh Mahato, Daughter of Late Nirmal Mahato, Resident of Village- Krishnapur, Raidih, P.O.-Adityapur, P.S.-RIIT, Dist.-Seraikella Kharsawan.

... Respondent/Respondent

CORAM : HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Appellant

: Mr. Sanjay Prasad, Advocate

: Mr. Rajiv Lochan, Advocate

For the Respondent

: Mr. Abhishek Kumar Dubey, Advocate

: Mr. Harsh Utsav, Advocate

: Ms. Akriti Aprajita, Advocate

CAV/Reserved on 18.12.2025

Pronounced on: 15/01/2026

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 23.06.2023 (decree signed on 04.07.2023) passed by the learned Principal Judge, Family Court, Seraikella Kharsawan in Original Suit No. 55 of 2021, whereby and whereunder, the said Suit filed by the appellant-husband under the provisions of Sections 13(1), (i) & (i-a) of the Hindu Marriage Act, 1955 against his wife has been dismissed.

2. The brief facts of the case as per the original matrimonial suit and the pleading made in the instant appeal needs to be referred herein which reads under:

This suit had been filed by the appellant/petitioner for a decree of divorce mainly on the ground of cruelty against the respondent Shibani Mahato, under Section 13(1), (i) & (i-a) of Hindu Marriage Act, 1955. The marriage of the appellant-husband and respondent-wife was solemnized according to Hindu rites and rituals on 09.05.2012 and thereafter the respondent came to the house of the appellant and stayed there only for one month.

After marriage, the respondent came to the petitioner's house at Tentopasi and only after stay of one week, both went to Ghirajganj and stayed there for one month and thereafter the respondent went back to her parental house at Krishanpur.

It is further case that being compelled by the respondent, the petitioner shifted to a rented house at Dindli Basti Adityapur where they spent six months and ignoring the advice of the petitioner, the respondent shifted to her parental house in stage of her pregnancy where she gave birth to a male child in Nursing Home of Dr. Bina Singh at 08.06.2016, cost having been borne by the petitioner.

It is further case that after the birth of child, the respondent was witnessed by the petitioner in compromising position with villager Mintu Mahato in June 2020, he immediately called brother, two sisters and mother of the respondent in the room and seeing them, the said paramour Mintu Mahato fled away but instead of being ashamed, she threatened and assaulted the petitioner.

It is further pleaded that the petitioner get reliable information that respondent was and is in habit of establishing physical relationship with her lover Mintu Mahato by taking advantage of absence of the petitioner during his working hours, who shifted the family to Satbahani Adityapur after six months of child birth to save the prestige and in order to reform the respondent, who even after giving promise did not amend her behaviour and always asked for divorce. It is pleaded that respondent is living separately from the petitioner since long two years in her parental house, making the future of the boy bad and depriving him the love and affection of the father and under the circumstances it is no longer possible for the petitioner to live with the respondent.

As such, a suit being Original Suit No. 55 of 2021 had been filed by the appellant/petitioner for grant a decree of divorce, which had been dismissed, against which the present appeal has been filed.

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 marriage of the appellant/petitioner was solemnized with respondent as per Hindu Rites and Customs on 09.05.2012 at Krishnapur Rahargora.

4. After the marriage, the appellant/petitioner and respondent lived together as husband and wife for 6 months in his rented house at Dindli Basti, Adityapur, and out of their wedlock they have been blessed with a son on 08.06.2016.

5. It is alleged by the petitioner in his plaint that the respondent, left the matrimonial house after 6 months and she began to reside at her parental house. It is alleged that after the birth of child, the respondent was witnessed by the petitioner in compromising position with another person in June 2020. It is stated that the petitioner(appellant herein) get reliable information that respondent was and is in habit of establishing physical relationship with her lover by taking advantage of absence of the petitioner during his working hours, who shifted the family to Satbahani Adityapur after six months of child birth to save the prestige and in order to reform the respondent, who even after giving promise did not amend her behaviour and always asking for divorce. It has further been stated that respondent is living separately from the petitioner since long two years in her parental house and under the circumstances it is no longer possible for the petitioner to live with the respondent.

6. In the aforesaid circumstances, the petitioner filed the suit being O.S. Suit No. 55 of 2021 for grant a decree of divorce.

7. It is evident that the appellant-husband has made out a case by making allegation of cruelty and the ground has been taken that the respondent-wife is unfaithful to him and she is having illicit sexual relationship with other person and, as such, the behavior which has been meted out in the family life has made the life of the appellant difficult which amounts to mental cruelty.

8. It is evident from the factual aspect that the appellant/plaintiff had a motion by filing a petition under Section 13(1), (i) & (i-a) of the Hindu Marriage Act, 1955 for decree of divorce.

9. The learned Family Judge has called upon the respondent-wife. The wife has filed written statement wherein she has denied the allegation and has stated that she stated that at the time of marriage her father has given jewellery of Rs. 1,50,000/- and cash amount of Rs. 1,00,000/- however, she has been tortured and assaulted on several occasion.

10. In the backdrop of the aforesaid submission of the parties, 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 the petitioner has got valid cause of action for the suit?

(iii) Whether the petitioner is entitled for a decree of divorce under Section 13(1), (i) & (i-a) of the Hindu Marriage Act, 1955?

(iv) Whether the petitioner has deserted by the respondent since long?

(v) Whether the petitioner is entitled for any other relief?

11. The evidences have been laid on behalf of both the parties and the witnesses have been examined on behalf of both the parties, however no documentary evidence has been placed before the learned Family Court.

12. The learned Family Judge has considered the statements of the witnesses and has come to the conclusive finding that the petitioner/appellant/ husband has not produced any material evidence

in order to substantiate his allegation and accordingly, the judgment has been passed dismissing the suit by holding that the appellant/petitioner has not been able to prove his case for divorce on the grounds taken against the respondent and the appellant/petitioner is not entitled to get a decree of divorce, which is the subject matter of the present appeal.

Submissions of the learned counsel for the appellant-husband:

13. It has been contended 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.

14. The learned counsel for the petitioner-appellant assailing the impugned judgment has submitted that there is unequivocal evidences on record laid by the Appellant that the respondent has been found in illicit relationship and she was committing extra-marital relationship with one Mintu Mahto but the said fact has not been appreciated in proper manner by the learned Family Court as such the impugned judgment requires interference of this Court.

15. It has been submitted by the learned counsel for the appellant/petitioner that after 6 months, the respondent left the house and started living at her paternal house. Further, the appellant-petitioner found that the respondent is having extra-marital relationship which gave rise to mental cruelty to the appellant-petitioner.

16. It has been submitted that the issue of cruelty has not been taken into consideration in the right perspective even though the fact about the same as also the fact of living separately has well been established.

17. 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.

Submissions of the learned counsel for the respondent-wife:

18. *Per contra*, the 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 has considered the issue of cruelty and having come to the conclusion that no evidence has been adduced to establish cruelty, as such, dismissed the petition.

19. It has been argued that virtually the petitioner and his family were adamant to ask and demand more money, and on non fulfillment of the same, they tortured the respondent in various ways and ultimately making a false case of adultery with alleged Mintu Mahato.

20. It has further been submitted that there is no proof of any witness regarding any such allegation on the record except the wild allegation by the petitioner in his examination-in-chief but in cross-examination he has failed to give any date or day of making such serious allegation and further no case regarding that alleged act or thereafter allegedly living in adultery with Mintu Mahato was ever reported to any of the authority

which show that these entire allegations are imaginary and no ground thus proved u/s 13(1) (i) of the Act 1955.

21. Learned counsel, based upon the aforesaid ground, has submitted that if on that pretext, the factum of cruelty 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:

22. 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 and the trial court records.

23. It is evident from record that the said suit of decree of divorce was filed under Section 13(1), (i) & (i-a) of the Hindu Marriage Act, 1955 however, while framing the issues the learned Family Court has framed the issue of separation also along with the primary issue of cruelty.

24. The evidence has been led on behalf of both the parties before the Family Court. For better appreciation, the evidences led on behalf of the appellant/petitioner are being referred as under:

(i) P.W. 1 Indra Mahato has deposed in his testimony that the marriage of the appellant-husband and respondent-wife was solemnized on 09.12.2012 according to Hindu customs and rites. After marriage, the respondent-wife came to the house of appellant. He had further deposed that the husband and wife, after 7 days, shifted in a rented house and

further in one months, the respondent-wife went back to her matrimonial home. It has further been stated that the respondent-wife pressurized and convinced the appellant-husband to live in her matrimonial village and in the meantime, on 08.06.2016, the respondent wife gave birth to a male child. Further, she deposed in her testimony that the respondent-wife was having extra-marital relationship with one Mintu Mahato and the appellant-husband and respondent-wife are living separately for last 2 years.

In his cross-examination he had stated that the petitioner/appellant has told him that the respondent lives with other persons.

(ii) P.W. 2 and P.W. 3 (the father of the appellant-petitioner) have stated on the same line as has been stated by P.W.1.

In cross-examination, P.W. 2 has deposed that since last 10 to 12 years, respondent is residing in her matrimonial home. P.W.2 has also stated that he heard about the incident and on the say of Mahesh Mahato he has come court to give evidence.

(iii) P.W.4, the appellant-petitioner himself, has deposed in his testimony that his marriage with the respondent-wife was solemnized according to Hindu rites and rituals on 09.12.2012 and thereafter the respondent came to his house and stayed there only for one week. After marriage, the respondent came to the petitioner's house at Tentopasi and only after stay of one week, both went to Ghirajganj and stayed there for one month and

thereafter the respondent went back to her parental house at Krishnapur. He had further stated that being compelled by the respondent, the petitioner/husband shifted to a rented house at Dindli Basti Adityapur where they spent six months and ignoring the advice of the petitioner, the respondent shifted to her parental house in stage of her pregnancy where she gave birth to a male child in Nursing Home of Dr. Bina Singh at 08.06.2016, cost having been born by the petitioner. He had further deposed that after the birth of child, the respondent was witnessed by him in compromising position with villager Mintu Mahato in June 2020, he immediately called brother, two sisters and mother of the respondent in the room and seeing them the said paramour Mintu Mahato fled away but instead of being ashamed, she threatened and assaulted the petitioner. It is further deposed that the respondent is living separately from the petitioner since long two years in her parental house.

25. On the behalf of the Respondent wife two witnesses have been examined i.e. DW.1 Sunil Mahto and DW.2 Shibani Mahto (respondent herself)

(i) D.W.1 is brother of the respondent wife and has stated that appellant-husband and respondent-wife was solemnized on 09.12.2012 according to Hindu customs and rites at village Krishnapur and during marriage apart from incurring all other expenses, gold and silver jewelry worth 1,50,000/- were given by her parents to the petitioner and 1,00,000/- cash was also given to the petitioner. He had further deposed that further demand to purchase motor cycle persisted in matrimonial

house by the petitioner and his in-laws and on non-fulfillment, she was continuously harassed, assaulted physically with threatening of dire consequences like to be driven out of the house for begging. The allegations of relationship of respondent with other person has flatly been denied by this witness and had stated that on 15.04.2021 she was finally drove out from the matrimonial house in the mid night.

In cross-examination he has categorically stated that his sister stayed after marriage at Tentoposi for two years and thereafter she had further stayed for two years at Dhirajganj.

(ii) DW.2 had stated that her marriage was solemnized with the petitioner on 09.12.12 as per the Hindu ritual at Krishnapur and after marriage she had stayed at Dhirajganj with her husband/petitioner and from the said wedlock she has blessed with a child . It has further been stated that during marriage apart from incurring all other expenses, gold and silver jewelry worth 1,50,000/- were given by her parents to the petitioner and 1,00,000/- cash was also given to the petitioner. She had further stated that and further demand to purchase motor cycle persisted in matrimonial house by the petitioner and his in-laws and on non-fulfillment, she was continuously harassed, assaulted physically with threatening of dire consequences like to be driven out of the house for begging and on 15.04.2021 she was finally drove out from the matrimonial house in the mid night and also on 10.11.2021 the petitioner threatened over phone to provide 1,00,000/- within a week otherwise he would divorce her on false

ground of adultery, other charges and will remarry another girl of his choice.

26. This court in order to appreciate the arguments advanced on behalf of the parties as referred herein above, first needs to refer herein the interpretation of the word “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.

27. 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.

28. 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.”

29. 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."

30. 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.

31. 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".

32. 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.

33. It is the settled position of law that cruelty is a mixed question of law and fact. Cruel treatment can be inferred from the entire course of conduct and incidents showing display of temperament, emotion and perversion by one spouse whereby one gives vent to his or her feelings, without intending to injure the other. Where there is proof of a deliberate course of conduct on the part of one, intended to hurt and humiliate the other spouse, and such a conduct is persisted cruelty can easily be inferred. Neither actual nor presumed intention to cause hurt to other spouse is a necessary element in cruelty reference in this regard be made to the judgment rendered by the Hon'ble apex Court in the case of ***Sujata Uday Patil v. Uday Madhukar Patil, (2006) 13 SCC 272.***

34. 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.

35. The Hon'ble Apex Court in the case of ***Vidhya Viswanathan v. Kartik Balakrishnan, (2014) 15 SCC 21*** has specifically held that cruelty is to be

determined on whole facts of the case and the matrimonial relations between the spouses and the word 'cruelty' has not been defined and it has been used in 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.

36. Thus, from the aforesaid settled position of law it is evident that "Cruelty" under matrimonial law consists of conduct so grave and weighty as to lead one to the conclusion that one of the spouse cannot reasonably be expected to live with the other spouse. It must be more serious than the ordinary wear and tear of married life.

37. Cruelty must be of such a type which will satisfy the conscience of the Court that the relationship between the parties has deteriorated to such an extent that it has become impossible for them to live together without mental agony. The cruelty practiced may be in many forms and it must be productive of an apprehension in the mind of the other spouse that it is dangerous to live with the erring party. Simple trivialities which can truly be described as a reasonable wear and tear of married life cannot amount to cruelty. In many marriages each party can, if it so wills, discover many a cause for complaint but such grievances arise mostly from temperamental disharmony. Such disharmony or incompatibility is not cruelty and will not furnish a cause for the dissolution of marriage.

38. Since the appellant husband has also contended the issue of desertion therefore, it would be apt to discuss herein the element of "desertion". It

needs to refer herein that the word 'desertion' has been given in Explanation to Section 13 (1) of the Hindu Marriage Act, 1955 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."

39. 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.

40. *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."

41. 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."

42. Deserion 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 deserion 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.

43. The offence of deserion 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.

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

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

46. 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.

47. The Hon'ble Apex Court in ***Debananda Tamuli vs. Kakumoni Kataky, (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.

48. 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.

49. Thus, from the aforesaid settled position of law, it is evident from the interpretation of the word “cruelty” that daily tear and wear is not construed to be the cruelty while on the other hand desertion means parting away one spouse from the other, but while deciding the issue of desertion the factum of parting away is to be seen as to whether the parting away is due to compulsion or with her volition.

50. The learned counsel for the appellant has contended that since unequivocal evidences on record laid by the Appellant that the respondent has been found in illicit relationship and she was committing extra-marital relationship with one Mintu Mahto, has not been appreciated in proper manner by the learned Family Court as such the impugned judgment is suffering from element of perversity.

51. *Per contra*, the learned counsel for the respondent has contended that the since petitioner has failed to prove the charges of adultery as well as any ground of the cruelty against the respondent and if taking into consideration the aforesaid fact, the learned Family Court has dismissed the suit, the same cannot be said to be suffer from an element of perversity.

52. At this juncture it requires to refer herein 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."

53. In the backdrop of the aforesaid factual aspect and settled position of law this Court is now proceeding to examine the finding so recorded by the learned Family Judge in the impugned judgment in the touch stone of the interpretation of the word cruelty and definition of the word desertion.

54. It needs to refer herein that Section 13(1)(i) of the Hindu Marriage Act, 1955, allows for divorce if the other spouse has, after the marriage, had voluntary sexual intercourse with anyone other than their spouse and providing a ground for divorce for either husband or wife. This is one of the several grounds under Section 13(1) for dissolving a Hindu marriage,

alongside cruelty (13(1) (ia)), desertion (13(1) (ib)), conversion, mental disorder, and venereal disease. For ready reference the said section is being quoted herein which reads as under:

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

22[(i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or"

55. In the instant case, there is allegation of finding the respondent in her paternal house in compromising position with alleged paramour namely Mintu Mahato but from the statement of appellant who has been examined as P.W.4 it is evident that he in his entire evidence had nowhere stated the day or date of the alleged incident and he has simply stated that he had witnesses the alleged occurrence in the month of June 2020.

56. Further P.W.1 has stated that it was told by the petitioner/appellant that Shibani Mahato(respondent) residing in her maike with another person. P.W.2 has also stated that he heard about the incident and on the say of Mahesh Mahato he has come Court to give evidence. These witnesses are thus hearsay witness on the allegation of making sexual intercourse by the respondent with another person as well as on the allegation of living in adultery by the respondent.

57. The petitioner/appellant in his cross-examination has also failed to give any date or day of the incident and on disclosure of the occurrence to

his in-laws he was assaulted and abused by them but no report of such adulterous act and assault made to him, has been made to any authority by the petitioner/appellant.

58. Petitioner has also tried to make a case that even at his house, in absence when he used to go for work, respondent used to make physical relationship with the said Mintu Mahato but no person of near by vicinity who witnessed the said Mintu Mahato or any third person coming and going out from the house of petitioner, have been examined on behalf of the petitioner/appellant.

59. The learned Family Judge after taking into consideration the aforesaid factual aspect has observed that there is no direct evidence of the charge of adultery of the respondent and the petitioner has failed to give any date or day of such nasty allegation against his wife imputing her character.

60. This Court is conscious with the fact that in the case of civil nature like matrimonial suits, the proof of the facts based on the principle of preponderance of probability but since herein a serious charge on the character of spouse has been leveled, and such serious issue cannot be decided on mere preponderance of probability.

61. On the basis of discussion made hereinabove, this Court is of the considered view that the said finding of the learned Family Court cannot be said to suffer from an error, and as such there is no need to take the distinct

view and further the finding of the impugned order requires no interference on the point of alleged adultery by this Court.

62. Admittedly from the perusal of the evidence laid by the petitioner/appellant, it is evident that in the present case, there is no allegation of physical cruelty on the part of the respondent rather her alleged conduct of indulging in adulterous act and behaviour have been taken as grounds of cruelty, as such this aspect has to be seen that as to whether it has proved to bring under the domain of mental cruelty which has to be seen in view of the interpretation as made by Hon'ble Apex Court which has been referred and quoted hereinabove in the preceding paragraphs.

63. The mental cruelty as stipulated in Section 13(1) (ia) of the Act 1955 can broadly be defined as that conduct, which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. To put it differently, the mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together.

64. The petitioner/appellant has put forth lot of acts constituting cruelty by the respondent but the same has vehemently been denied by the respondent in his written statement and evidence laid on her behalf.it is evident from the record that there is no allegation against the respondent that she ever ill-treated the petitioner/appellant and his other family members in the matrimonial house.

65. It has been alleged that respondent did not live in her matrimonial house and compelled the petitioner/appellant to shift in a rented house at Dindali Basti at Adityapur and from there also she shifted to her parents' house ignoring the advice of the petitioner/appellant and thereafter it has further been alleged that the appellant had witnessed the respondent in compromising position with her co-villager Mintu Mahato in June 2020 at her maike on sudden visit and the same was seen by other family members of the respondent and this aspect has been pleaded as allegedly giving mental pain and cruelty to the petitioner.

66. From the evidence, it has come on record that the relationship between the parties is not cordial and the respondent in her written statement also made counter allegation that it is the petitioner who has ill-treated her on account of further demand of dowry despite giving handsome amount at the time of marriage along with jewelry and was subjected to mental and physical torture. It is the specific case of the respondent that she was always compelled to give Rs. 1,00,000/- otherwise she will be driven ou from the matrimonial house on the false charge of extra marital affair and finally she was driven out from the house on 15.04.2021.

67. The witness D.W. 1 being her brother, have supported the fact as stated by the respondent and he has denied the allegation of finding his sister in compromising position and on protest the petitioner was assaulted.

68. Since ground of adultery has not been proved by the appellant and apart from the alleged ground there is no allegation of cruelty against the respondent as such the contention of the learned counsel for the appellant that due to adulterous act of respondent, mental cruelty has been caused to the petitioner/appellant is not fit to be accepted.

69. Although ground of desertion has not been taken directly but it has been stated that the respondent is living away from the petitioner since long without any reason and virtually she has deserted him and not coming to his company, which is also cruelty against him but from the perusal of impugned order it is evident that this date has also not been disclosed and the respondent has categorically been able to give reasonable reason of living away and has led evidence as well.

70. Thus, herein, the issue of desertion though not appropriately worded to cover the grounds u/s 13(1) (i-b) of the Act 1955, but in the backdrop of the pleading which contains the element of desertion, it to be discussed that, as to whether the respondent has deserted the petitioner giving her ground for bringing the suit for divorce as contemplated under section 13(1) (ib) of the Act 1955.

71. The learned Family Court has also categorically observed that there is no date mentioned in the plaint that from when the respondent is living away from him and a vague period of 2 years has been pleaded. Though the ground of separation has not been taken in proper form as contemplated

u/s 13(1) (ib) of the H.M.A. but this ground since pleaded has been made as an issue.

72. In the written statement it has been admitted by the respondent that on 15.04.2021, she was finally driven out from the matrimonial house and since then, she is residing in her parental house, which negates the assertion of the petitioner that his wife is living separately from him on her own will is not acceptable herein, rather from the factual aspect it appears that she was compelled to leave the matrimonial house due to constant demand of the dowry and harassment.

73. The learned Family Court on the point of desertion has observed which reads as under:

"Having regard to the discussed facts in the backdrop of the evidence on record vis a vis, the parameters as ingredients required for desertion in the judgments supra, I find that the petitioner has not been able to prove the fact that his wife (respondent) is living separately since last 2 years and the respondent via her W.S. and during evidence has been able to show justifiable reason to live separately from her husband giving a specific date 15.04.2021, when she was thrown out of the matrimonial house. Accordingly, this issue No.4 is decided against the petitioner and in favour of the respondent."

74. This Court since has concurred with the view taken by the learned Family Judge so far as not proving the element of cruelty/adultery and, as such, is of the view that the moment, the accusation of adultery was leveled by the appellant-husband upon the respondent-wife, the same itself amounts to cruelty meted out to the wife by the husband and in that view

of the situation how can it be said that the respondent-wife at her own wish has left the company of her husband.

75. The learned Family Judge has taken into consideration the meaning of the word "desertion" and by coming to conclusion that the appellant husband has failed to substantiate that the responded wife at her own will had left the matrimonial house. We are conscious that as an appellate court if any finding found to be erroneous or perverse then certainly the appellate court may reverse the same. This court in order to consider the issue of perversity needs to refer herein the definition of perversity first which has been interpreted by the Hon'ble Apex Court as referred hereinabove which means that there is no evidence or erroneous consideration of the evidence and further, 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.

76. This Court, on consideration of the finding arrived at by the learned Family Judge and based upon the aforesaid discussion, is of the view that the judgment and decree passed by the learned Family Judge is not coming under the fold of the perversity as defined by the Hon'ble Apex Court as discussed and referred in the preceding paragraph, since, the conscious consideration and appreciation of all issues has been made as would be evident from the impugned judgment.

77. This Court after discussing the aforesaid factual aspect along with the legal position and advertiring to the consideration made by the learned Family Judge in the impugned judgment has found therefrom that the all the issues raised on behalf of the petitioner/appellant has been appreciated at length by the learned Family Judge, therefore the finding of the learned Family Court on the point of alleged cruelty/adultery/desertion, is not coming under the fold of the perversity.

78. This Court, therefore, is of the view that the judgment dated dated 23.06.2023 [decree signed on 04.07.2023] passed by the learned Principal Judge, Family Court, Seraikella Kharsawan in Original Suit No. 55 of 2021, need no interference.

79. Accordingly, the instant appeal fails and is hereby dismissed.

80. Pending interlocutory application (s), if any, also stands disposed of.

I agree

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)

(Arun Kumar Rai, J.)

Samarth/**A.F.R.**
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