IN THE HIGH COURT OF JHARKHAND AT RANCHI
F.A. No. 213 of 2019

Priyanka Sahi, wife of Mr. Siddarath Rao @ Rahul, presently residing at Mohalla Pipra Kalla, Garhwa PO & PS & Dist. Garhwa, Permanent resident of village Sapha Garulha, PO and PS Ramkola, District Khusi Nagar (U.P.) …. … Appellant/ Petitioner

Versus

Siddarth Rao son of Dinesh Kumar Rao, presently residing at Khurd Mines, Sindeshwar, PO and PS Dariba Sub Division Rail Magara Dist. Rajasmand (Rajasthan) Permanent resident of village Sapha Garulha PO and PS Ramkola District Khusi Nagar (U.P.)

…. … Respondent/Respondent

With

F.A. No.23 of 2018

Siddarth Rao @ Rahul, son of Dinesh Kumar, aged about 31 years, permanent resident of village and post-Sapha Garulha, PS: Ramkola,District Kushi Nagar, Uttar Pradesh, presently residing at Khurd Mines Sindeshar, PO: Dariba, PS Dariba, Sub-Division Rail Magara, District: Rajasmand,Rajasthan …. Respondent/ Appellant

Versus

Priyanka Sahi, wife of Mr. Siddarth Rao @ Rahul, daughter of Yashwant Kr. Sahi, permanent resident of village and post-Sapha Garulha, PS Ramkola, District Kushi Nagar, Uttar Pradesh, presently residing at Mohalla-Pipra Kalla, Garhwa, PO and PS and District Garhwa, Jharkhand. …. … Petitioner/ Respondent

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CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellant : Mr.Ashish Gautam, Advocate;
Mr. Pankaj Srivastava, Advocate
For the Respondent : Mr. Sunil Singh, Advocate

C.A.V. ON: 22.12.2025 **PRONOUNCED ON:21/01/2026**

[Per: Sujit Narayan Prasad, J.]

1. Both the appeals have been preferred under section 19(1) of the Family Courts Act, 1984.

2. Since both the appeals arise out of the common judgment dated 16.02.2017 passed by the Principal Judge, Family Court, Garhwa in Original M.M.Suit No. 68 of 2016, as such, both the appeals have been

tagged together and taken up together for analogous hearing and are being disposed of by this common order.

3. F.A. No. 213 of 2019 has been filed by the petitioner/appellant-wife against part of the judgment dated 16.2.2017 and decree dated 06.3.2017 passed by the learned Principal Judge, Family Court, Garhwa in Original M.M.Suit No. 68 of 2016whereby and whereunder the Learned Family Court while allowing the petition filed under Section 12(1) (C) of Hindu Marriage Act, 1955 by appellant/petitioner/wife has granted Rs. 30,00,000/-(Thirty Lakh) as permanent alimony to appellant and herein the amount of alimony has been challenged on the ground of miscalculation.

4. F.A. No. 23 of 2018 has been filed by the respondent/appellant-husband against the impugned judgment dated 16.2.2017 passed in Original M.M. Suit No.68 of 2016 passed by the learned Principal Judge, Family Court, Garhwa whereby and whereunder the learned Principal Judge, Family Court, Garhwa has been pleased to *ex-parte* disposed of the respondent's-wife petition filed under section 12(1)(C) of the Hindu Marriage Act, 1955 for declaration of marriage as void between the parties and further the appellant-husband was directed to deposit a sum of Rs. 30,00,000/- to the respondent-wife as permanent alimony within six months from the date of the order.

Factual Matrix

5. The brief facts of the case, leading to filing of the petition filed under Section 12(1)(C) of the Hindu Marriage Act, 1955, by the petitioner-wife, needs to be referred herein which are as under:

6. The petitioner's [the appellant in FA No. 213 of 2019] case, in brief, is that the marriage of petitioner-appellant and respondent-husband [the respondent in FA No. 213 of 2019] was solemnized on 02.12.2015 as per Hindu rites and rituals at Gorakhpur. The *Chheka* between petitioner and respondent was performed at Garhwa in presence of their relatives. The parent of the petitioner gave a sum of Rs. 2,50,000/- in cash and other precious gifts. Various utensils, furniture and jewellery were also given to the respondent and his family members worth Rs. 50,000/- and Rs. 10,70,000/- was also given for purchasing a car and Rs. 50,000/- for insuring the delivery of car, total Rs. 11,20,000/- was transferred by father of the petitioner in the bank account of Chambal Motor Car LLP having A/C No. 52000011838169 apart from this a sum of Rs. 50,000/- has been transferred in the account of Sushant Rao maternal brother of respondent in account No. 815314096894 on 10.11.2015.

7. Similarly, a sum of Rs. 1,50,000/- was also transferred in the Bank account of respondent vide account No. 088301502202 and on the same day a sum of Rs. 4,80,000/- was also transferred in bank account of Manish Rao the maternal brother of respondent in account No. 30819109305.These transfers have been made by the father of the petitioner as per desire and request of respondent and his family members.

8. The petitioner after marriage went to her marital home(Sasural) where she was introduced by family members of respondent including one Meeruta Sharma as a girl-friend of respondent. Later this petitioner came to know that the respondent is leading live-in-relationship life with

Meeruta Sharma prior to the marriage with this petitioner/appellant and this fact was concealed and, as such, the marital life of this petitioner was devoid of conjugal happiness and pleasure, since the first day of marriage.

9. It is further stated that despite stupendous events, the petitioner/appellant tried to accept the live-in-relationship of her husband with Meeruta Sharma and tried to adjust herself in such environment but soon thereafter a demand of Rs.15,00,000/- in cash was made by the respondent and other members of his family which was declined to fulfill by the petitioner and her parents. The petitioner further says that she has been a subject of physical and mental torture at the hands of respondent and other members of his family in order to fulfill the demand of more dowry. The parent of the petitioner also requested the respondent to maintain good relationship with his daughter but no any heed was paid by the respondent and there was no any change of behaviour. The respondent neither offered any care, regard and respect towards the petitioner in order to give devotion so as to give the occasion to consummate the marriage at any point of time.

10. It is further stated that the petitioner also came to know that respondent is addicted to drinking who cannot pass even a day without taking wine and in this way the life of petitioner became hellish. The callous attitude of respondent and his family members gradually increased with the passage of time and the petitioner continued to be subject of humiliation and atrocities.

11. It is further mentioned that when all sincere efforts could not reach to its required destination and the petitioner has reason to believe that she has been cheated and defrauded by the respondent and his family members, the petitioner was ousted from her Sasural on 02.03.2016 by the respondent and other members of his family after depriving her all of her belongings and Stridhan.

12. The petitioner anyhow reached Garhwa and narrated the entire pathetic story to her parents and the parents took all possible efforts to get the matter resolved but all went in vain and the respondent was adamant to demand more dowry from the petitioner. But consent of marriage of the petitioner was given after having been defrauded by the respondent that he was a man of good character and reputation but the petitioner has no reason to continue the marital relation.

13. The cause of action for the suit arose on 20.02.2015 and 26.04.2015 when Chheka and formal ring ceremony was held and also on 02.12.2015 when marriage was performed.

14. The cause of action also arose on several other dates when petitioner was subjected to fraudulent and deceitful act of respondent and his family members. It is further contended that respondent is the head of Instrumentation of Khurd Mines Sindeshar(Rajasthan) and is getting a handsome annual package of Rs.16,00,000/-, besides this the respondent has also valuable ancestral property about forty acres land and he has also residential plots of Rs.50,00,000/- at Alwar. Respondent thus belongs to a well-to-do prosperous family. The father of the petitioner is

also a Production Manager at Jain Irrigation Alwar and has also a handsome annual salary.

15. The petitioner/appellant/wife by filing of the suit sought reliefs from the court to annul the marriage between the petitioner and the respondent by passing a decree of nullity and further to pass a decree of permanent alimony and maintenance to the tune of Rs. 100,00,000/- (Rs.One Crore) in favour of the petitioner against the respondent U/s 25 Hindu Marriage Act. Besides these reliefs, the petitioner also sought a decree regarding exclusive ownership of the properties and materials and valuable things which were given to the respondent in lieu of marriage and cash amount of Rs. 26,40,000/- with interest @ 14% payable thereon u/s 27 of the Hindu Marriage Act.

16. It is evident from record that despite summon and notices issued against the respondent/husband Siddarth Rao @ Rahul, has neither appeared in this case nor filed any written statement against the claim of the petitioner, thereafter when on several repeated opportunities given to the respondent, he miserably failed to appear in this case and has not filed written statement, then the learned Family Court has proceeded *ex-parte* vide order dated 29.07.2016.

17. The evidence has been laid on behalf of the petitioner/appellant. She has examined two witnesses in her favour.

18. Thereafter, the judgment dated 16.02.2017 has been passed by the learned Principal Judge, Family Court, Garhwa allowing the Suit by holding that the marriage between the petitioner, namely, Priyanka Sahi, appellant herein with the respondent Siddarth Rao, respondent herein, is

ordered to be ceased and extinct and is hereby declared annulled by a decree of nullity and further the husband was directed to deposit a sum of Rs. 30,00,000/- in favour of his wife in the form of permanent-alimony within six months from the date of order through account-payee cheque and the decree was signed on 06.03.2017.

19. The petitioner/appellant/wife (in F.A. No. 213 of 2019) has preferred the instant appellant against the part of the order/ judgment dated 16.02.2017 passed by the learned Family Court whereby while allowing the suit filed by the appellant/wife under Section 12(1) (C) has determined the permanent alimony of the Rs. 30,00,000/- in the favour of appellant and the said amount of the alimony has been challenged herein on the ground of inadequately fixed alimony.

20. The respondent/appellant/husband (in F.A. No. of 23 of 2018) had challenged the order/ judgment dated 16.02.2017 whereby suit filed by the respondent/petitioner/wife for annulment of the marriage on the ground of fraud/concealment of fact, has been allowed ex-parte in favour of the respondent/petitioner/wife.

Arguments advanced on behalf of the petitioner/ appellant-wife(in both the First Appeals):

(i) The learned counsel for the appellant-wife has submitted that while fixing the permanent alimony no formula was followed and a lump sum amount was fixed without giving any reason.

(ii) It is further stated that the learned Family Court while deciding the issue of alimony has not considered the total amount of the income received by the appellant/husband and, also not

considered the status of the appellant , therefore the amount of permanent alimony as determined by the Learned Family Court requires interference by this Hon'ble Court.

(iii) It is further stated that the learned Court below has not considered that no order under section 24 of the Hindu Marriage Act could be passed though the petition has been filed as such the expenses incurred by the appellant should be added in permanent alimony under section 25 of the Act.

(iv) The Court below has not properly assessed the permanent alimony and maintenance as required by law and in-spite of the pleadings and evidences adduced by the appellant-wife no order was passed under section 27 of the Hindu Marriage Act though the fact was noted in the judgment.

(v) So far, the order/judgment of annulment of marriage is concerned, there is no element of perversity as the learned Family Court has taken into consideration each and every aspect of the evidences available on record and therefore the order/judgment of annulment of marriage passed by the learned Family Court requires no interference.

Arguments advanced on behalf of the respondent-appellant/husband:

(i) The learned counsel appearing for the respondent-husband has submitted that the impugned Judgment is bad in law, as well as on facts and is contrary to all norms of reasonableness and deserves to be quashed and set-aside.

(ii) The learned Court below erred in taking the judicial note that no summon or notice have been served to the respondent-husband and proceeded in the suit as ex-parte only on the basis of the track record of the postal service filed by the appellant-wife.

(iii) The learned Court below overlooked and failed to consider the baseless allegations alleged by the appellant-wife in her written defence as well as baseless allegations of infidelity, drug addiction and mental torture alleged by the mother of the appellant-wife against the respondent-husband and his family members which in itself amounts to cruelty.

(iv) Further the learned Court below failed to take into consideration not only the continuous threats of filing and implicating the respondent-husband by the appellant-wife in false cases but also subsequent lodging of false cases on several occasions before Police Station at Garhwa including a case for the offences punishable under Sections 498(A), 406, 420, 323 read with Section 34 of the IPC, which in itself amounts to cruelty.

(v) It is further stated that the learned Court below erred in coming to the conclusion that there is no any instance of cruelty by the respondent-husband against the appellant-wife. The Learned Court failed to appreciate that the allegations of mental torture and cruelty were made soon

after two years of marriage between the Appellant and Respondent.

(vi) It is further stated that the learned Court below has gravely erred in summarily granting the relief against the respondent-husband without examining the present case in detail and without considering that the parties are involved in multifarious litigations and there have been irreconcilable differences between the parties which has led to irretrievable breakdown of marriage. Reliance is placed upon ***K. Srinivas Rao Versus D.A. Deepa (AIR 2013 SC 2176) and K. Srinivas Versus K. Sunita (Civil Appeal No. 1213 of 2006).***

(vii) It is also stated that the learned Court below failed to appreciate that the act of the appellant-wife and behaviour adopted by her clearly constitutes cruelty and is a fit case to grant a decree of divorce.

Response of the learned counsel for the petitioner/appellant/wife:

21. The contention of the learned counsel for the respondent/appellant/husband that no adequate opportunity has been provided to him is totally fallacious in the light of observation given by the learned Family Court at para 3 of impugned order/judgment dated 16.02.2017 wherein it has been specifically observed that despite summon and notices issued against the respondent/husband Siddarth Rao @ Rahul, he neither appeared in this case nor filed any written statement against the claim of the petitioner, thereafter when on several repeated

opportunities given to the respondent, he miserably failed to appear in this case and has not filed written statement, then the learned Family Court has proceeded *ex-parte* vide order dated 29.07.2016. It has further been submitted that since adequate statutory opportunity has been provided to respondent/appellant/husband and he himself chosen not to appear, therefore the contention of the learned counsel for the appellant/husband is not fit to be accepted.

Analysis

22. We have heard learned counsel for the parties, perused the documents and the testimony of witnesses as also the finding recorded by learned trial Court in the impugned order.

23. This Court, before appreciating the arguments advanced on behalf of the parties as also the legality and propriety of the impugned judgment, deems it fit and proper to refer the testimonies of the prosecution witnesses. For ready reference, the relevant portion of their testimonies is quoted as under:

24. PW-1,Priyanka Shahi is the appellant-wife herself. She has deposed that she has filed this application for declaring marriage annulled by decree of nullity against the respondent whose marriage was solemnized on 02.12.2015. She further deposed that at the time of marriage and before solemnization of marriage her parents had given Rs. 26,40,000/- to the respondent by transferring the amount in several bank accounts standing in the name of respondent and his maternal brother. PW1 further says that at the time of marriage the respondent was presented by his family members as a man of good

character and reputation and also behaved in a very cordial manner that is why the appellant and all her family members became impressed and marriage was settled. PW1 further says that Rs.10,70,000/- was transferred as per direction of respondent in the account of Chambal Motor Car L.L.P. and Rs.6,30,000/- was transferred in the bank account of Ravi Pratap and Manish who are maternal brother of respondent Rs.50,000/- was also transferred for securing number of car.

PW1 further says that when she went to her Sasural soon after her marriage she was introduced by the family members of the respondent-husband including one Meeruta Sharma who is introduced to be a girl-friend of respondent who are leading live-in-relationship before the marriage. PW1 further deposed that respondent and his family members put additional pressure upon her to accept live-in-relationship between her husband and Meeruta Sharma and has also been demanding Rs. 15,00,000/-more in the name of dowry and when the petitioner made her protest against the illegitimate demand of respondent she was subjected to cruelty and mental torture.

She has further deposed that respondent is badly addicted to drinking and cannot pass even a day without taking wine. PW1 further says that on 2.3.2016 she was ousted from her Sasural after taking all her Stridhan and forced her to take shelter of her Naihar. PW1 further says that due to fraudulent and deceitful act of respondent her life has become hellish and she is passing through a deep sense of pain and pathos which cannot be compensated in terms of money in

future.Therefore, she has filed this application U/s 12(1)(C) of Hindu Marriage Act.

25. PW-2 Chhaya Shahi, is the mother of the petitioner-appellant. She has deposed similar to that of PW-1and averred that the marriage of petitioner was solemnized with respondent on 02.12.2015 as per Hindu custom and at the time of solemnization of marriage and before marriage the parentsof petitioner transferred Rs.26,40,000/- in different bank accounts standing in the name of respondent and his maternal brother Manish and Ravi Pratap Rao of different dates at the request and pleasure of respondent. PW2 further deposed that when petitioner went to her marital home(Sasural) she was introduced by other members of respondent family including one Meeruta Sharma who was leading live-in-relationship life with the respondent even prior to solemnization of marriage and when her daughter objected the illegitimate relationship between respondent and Meeruta Sharma, the family members of respondent-husband put pressure on her daughter to accept this relationship and in this context she was also subjected to cruelty and mental torture.

P.W.2 further deposed that soon thereafter at her Sasural the respondent and his family members have started demanding Rs.15,00,000/- in cash in the name more dowry to fulfill the lusty desire of respondent and when petitioner expressed her inability to fulfill the illegitimate demand, she was subjected to cruelty and she also suffered mental agony at the hands of respondent and his family members. She further deposed that petitioner has also come to know this fact that the

respondent is addicted to drinking and cannot pass even a day without taking wine. When demand of additional dowry of Rs. 15,00,000/-was not fulfilled by the parents of the petitioner, the petitioner was ousted from her marital home(Sasural) on 2.03.2016 and forced her to take shelter at her Naihar at Garhwa. It is further deposed that parents of the petitioner tried several times to get the matter resolved in between the petitioner and respondent but due to stubborn attitude of respondent the matter could not be resolved and respondent was adamant to demand additional cash of Rs.15,00,000/- in the name of dowry. This has necessitated the petitioner to file this case for dissolution of marriage by a decree of nullity U/s 12 (1)(C) of Hindu Marriage Act.

26. Admittedly the marriage between the parties was solemnized on 02.12.2015as per Hindu rites and rituals at Gorakhpur.

27. It has been stated that the parent of the petitioner gave some amount in cash and other precious gifts including various utensils, furniture and jewellery were also given to the respondent and some amount was also given for purchasing a car.

28. The petitioner after marriage went to her marital home (Sasural) where this petitioner came to know that the respondent is leading live-in-relationship life with Meeruta Sharma prior to the marriage with this petitioner/appellant and this fact was concealed.

29. It has further been stated that soon thereafter a demand of Rs.15,00,000/- in cash was made by the respondent and other members of his family which was declined to fulfill by the petitioner and her parents. It is further stated that the petitioner also came to know that respondent is

addicted to drinking who cannot pass even a day without taking wine.The petitioner was ousted from her Sasural on 02.03.2016 by the respondent and other members of his family after depriving her all of her belongings and Stridhan.

30. Thereafter suit was filed for annulment of the marriage on the ground of fraud and concealment of the fact under section 12(1) (C) wherein relief was sought from the court to annul the marriage between the petitioner and the respondent by passing a decree of nullity and further to pass a decree of permanent alimony and maintenance to the tune of Rs. 100,00,000/- (Rs.One Crore) in favour of the petitioner against the respondent U/s 25 Hindu Marriage Act. Besides these reliefs, the petitioner also sought a decree regarding exclusive ownership of the properties and materials and valuable things which were given to the respondent in lieu of marriage and cash amount of Rs. 26,40,000/- with interest @ 14% payable thereon u/s 27 of the Hindu Marriage Act.

31. From paragraph 3 of the impugned judgment it is evident that despite summon and notices issued against the respondent/husband Siddarth Rao @ Rahul, he neither appeared in this case nor filed any written statement against the claim of the petitioner, thereafter the learned Family Court has proceeded *ex-parte* vide order dated 29.07.2016.

32. The evidence has been laid on behalf of the petitioner/appellant. She has examined two witnesses in her favour including herself and her mother.

33. Thereafter, the judgment dated 16.02.2017 has been passed by the learned Principal Judge, Family Court, Garhwa allowing the Suit by holding that the marriage between the petitioner, namely, Priyanka Sahi,

appellant (in FA No. 213 of 2019) with the respondent Siddarth Rao, respondent/husband herein,(appellant in FA No. 23 of 2018) is ordered to be ceased and extinct and is hereby declared annulled by a decree of nullity and further thehusband was directed to deposit a sum of Rs. 30,00,000/- in favour of his wife in the form of permanent-alimony within six months from the date of order through account-payee cheque and accordingly the decree was signed on 06.03.2017.

34. The appellant-wife being aggrieved and dissatisfied with the part of the impugned judgment dated 16.02.2017 and decree dated 06.03.2017 specifically in respect of grant of alimony of Rs. 30, 00,000/-has preferred the appeal herein being F.A. No. 213 of 2019.

35. The respondent/appellant/husband has also preferred First Appeal being F.A. No. 23 of 2018 against the impugned judgment dated 16.02.2017 on the ground that no sufficient opportunity has been given to him and further ground has been taken that there is no possibility of reconciliation between appellant/ husband and respondent/wife as there is irretrievable breakdown of marriage between the parties.

36. In the backdrop of the aforesaid factual aspect this Court deems it fit and proper to appreciate the issue that *whether the order/judgment of annulment of marriage passed by the learned Family Court on the ground of implication of Section 12(1) (C) is in consonance with the material/evidence available on record.*

37. Further, this Court, while appreciating the argument advanced on behalf of the plaintiff/appellant on the issue of perversity, needs to refer herein the interpretation of the word "perverse" as has been interpreted by

the Hon'ble Apex Court which means that there is no evidence or erroneous consideration of the evidence. 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.*
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> *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. pleading*
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> *26. In M.S. Narayanagouda v. Girijamma [AIR 1977 Kant 58] the Court observed that any order made in conscious violation of 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."

38. This Court before proceeding to deal with the respective submissions of the counsel as also before appreciating the evidence adduced on behalf of the parties, as taken note of above, deems it appropriate to have a glance to the relevant provisions which may assume some importance in addressing the issue. Section 5 of the Hindu Marriage Act contains the conditions for the valid marriage solemnized between any two Hindus. The said section is reproduced hereunder:

***"5. Conditions for a Hindu Marriage**.- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:*

(i) neither party has a spouse living at the time of the marriage;

(ii) at the time of the marriage, neither party-

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insantity

(iii) the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;

(iv) the parties are not within the degree of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;"

39. Thus, the Section 5 of the Act 1955 provides that a marriage may be solemnized between any two Hindus if the conditions specified in the section are fulfilled. On a plain reading of the said provision, it is manifest that the conditions prescribed in that section, if established, disentitles the party to a valid marriage. Such conditions in the very nature of things call for strict standard of proof.

40. It needs to refer herein that the Section 7 of the Act relates to the ceremonies for the Hindu Marriage to be performed with Customary Rites of either party including Saptapadi i.e. taking of seven steps by bridegroom and bride jointly before the sacred fire to complete the marriage. The marriage shall be declared null and void at the option of either of the parties if it contravenes any of the provisions specified in Clause (i), (iv) & (v) of Section 5 of the said Act.

41. Section 12 of the Act, which is pertinent in the present case, can be resorted to either of the parties for annulling the marriage as the grounds set fourth therein are satisfied. Section 12 of the Act is quoted below:

> *"**12. Voidable marriages**. - **(1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:***
>
> *(a) that the marriage has not been consummated owing to the impotence of the respondent; or*
>
> ***(b)** that the marriage is in contravention of the condition specified in clause (ii) of section 5; or*
>
> ***(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act 1978 (2 of 1978), the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent; or***
>
> *(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.*
>
> *(2) Notwithstanding any thing contained in sub-section (1), no petition for annulling a marriage:*
>
> *(a) on the ground specified in clause (c) of sub-section (1) shall be entertained if:*
>
> *(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or*
>
> *(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;*
>
> *(b) On the ground specified in clause (d) of sub-section (1) shall be entertained unless the Court is satisfied:*

> *(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;*
>
> *(ii) that proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such commencement and in the case of marriages solemnised after such commencement within one year from the date of the marriage; and*
>
> *(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the said ground."*

42. Section 12 of the Hindu Marriage Act embodies grounds on which a marriage can be declared void and annulled by a decree of nullity. Clause (c) of sub-section (1) of the said section provides for such annulment, when the consent of the petitioner is obtained by force or fraud under circumstances mentioned in the said Clause. It is settled position of law that Section 12(1)(c) of the Hindu Marriage Act does not deal with fraud in a general way, nor deals with every misrepresentation or concealment, the object of which may be fraudulent.

43. It needs to refer herein that under the Hindu Law, a marriage is not a contract but sacrament. The Hindu Marriage Act has no doubt made an inroad into the close preserve of the ancient Hindu Law strongly suggesting the marriage as sacrament and not contract which still goes strong. The fraud contemplated by Section 12 of the said Act is not required to be interpreted in tune with the definition engrafted under Section 17 of the Contract Act. Both the Hindu Marriage Act and Contract Act are not pari materia as the former deals with marriages and the other deals with contract and commerce. Therefore, the definition of fraud given under the Contract

Act cannot be brought with lock, stock and barrel to a marriage which is sacrament.

44. There are still strong reasons to hold that the Hindu Marriage is not a contract but sacrament, as the contract can at the will of the parties be dissolved but the parties who contract a marriage cannot except, of course, divorce by mutual consent as provided under Section 13B of the said Act.

45. Further the appellant/husband has contended that issue of cruelty has not been appreciated by the learned Family Court in proper manner rather the cruelty has been caused by the petitioner/appellant/wife upon him.

46. In the aforesaid context it needs to refer herein that the "cruelty" has been interpreted by the Hon'ble Apex Court in the case of **Dr. N.G. Dastane vs. Mrs. S. Dastana, (1975) 2 SCC 326** wherein it has been laid down that the Court has to enquire, as to whether, the conduct 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.

47. This Court deems it fit and proper to take into consideration the meaning of "cruelty" as has been held by the Hon'ble Apex Court in **Shobha Rani v. 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.

48. According to the Hon'ble Apex Court, "cruelty" is the "conduct in relation to or in respect of matrimonial conduct in respect of matrimonial obligations". It is the conduct which adversely affects the spouse. Such cruelty can beeither "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."

49. The Hon'ble Apex Court has further observed therein that while dealing with such complaints of cruelty 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."

50. 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.

51. 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 a cross-examination. TheHon'ble Apex Court held these allegations against the husband to constitute "cruelty".

52. In **Vijaykumar 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.

53. 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.

54. Further in the case of **Vishwanath Agrawal v. Sarla Vishwanath Agrawal, (2012) 7 SCC 288,** the Hon'ble Apex Court has held as follows:

> *"22. The expression "cruelty" has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.*
>
> *25. After so stating, this Court observed in Shobha Rani case about the marked change in life in modern times and the sea change in matrimonial duties and responsibilities. It has been observed that : (SCC p. 108, para 5)*
>
> *"5. ... when a spouse makes a complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance."*

26. Their Lordships in Shobha Rani case referred to the observations made in Sheldon v. Sheldon wherein Lord Denning stated, "the categories of cruelty are not closed". Thereafter, the Bench proceeded to state thus: (Shobha Rani case, SCC p. 109, paras 5-6)

"5. ... Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty. 1. These preliminary observations are intended to emphasise that the court in matrimonial cases is not concerned with ideals in family life. The court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Reid Gollins v. Gollins : (All ER p. 972 G-H) observed in „... In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman."'"

55. In the case of **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511** it has been held by the Hon'ble Apex Court as follows:—

99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. Theconcept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to

adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

56. 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.

57. 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.

58. Now re-adverting to the fact of the instant case. Admittedly the respondent/ husband had not appeared before the learned Family Court and has taken ground herein that there was no proper service of summon upon him by the concerned Family Court.

59. This Court has gone through the order sheet of the trial Court record as well as impugned judgment it is evident that summon was served upon the petitioner properly and thereafter all the possible step has been taken

by the learned Family court on order to secure the appearance of the respondent/husband and the aforesaid fact has also been mention at paragraph 3 of the impugned judgment, for ready reference the same is being quoted as under:

> *3. On the other hand, despite summon and notices issued against the respondent Siddarth Rao @ Rahul, he neither appeared in this case nor filed any written statement against the claim of the petitioner. When on several repeated opportunities given to the respondent, he miserably failed to appear in this case and to file written statement, the Court was left no other option than to proceed ex-partee against him and as such the case was proceeded ex-partee against the respondent vide order dated 29.07.2016."*

60. Thus, on basis of the aforesaid discussion it is considered view of this Court that the contention of the respondent/appellant/husband that proper opportunity had not been provided by the learned Family court is not fit to be accepted.

61. Now coming to the impugned order/Judgment wherefrom it is evident that learned Family Court has taken into consideration the evidences led by the appellant/wife and has passed the order of annulment of marriage.

62. It has been stated by the appellant/wife that at the time of solemnization of marriage the Consent of the petitioner/appellant/wife and guardian was obtained by practicing fraud on them and represented the respondent/husband as a man of noble character and reputation but after marriage when she reached at her marital home then she has come to know that prior to the marriage the respondent/husband has been living with another lady in live-in-relationship.

63. From the testimony of PW2(mother of the appellant wife) and PW1(appellant herself) had specifically deposed that soon after marriage

when petitioner went to her marital home the respondent have started demanding Rs.15,00,000/- in the name of more dowry and when demands are not fulfilled the petitioner/appellant was subjected to cruelty and mental harassment and the evidence of PW1 is fully supported and corroborated with the evidence of PW2 the petitioner/appellant herself narrated the pathetic story to her parents when she was ousted from her Sasural on 02.03.2016 in order to fulfill the demand of Rs. 15,00,000/-

64. Since the status of prior live-in-relationship of the respondent/husband with other lady has not been disclosed to the appellant wife, therefore, it may be inferred herein that consent of the petitioner/appellant/wife and her guardian was obtained by practicing fraud by the respondent/husband as required U/S 12(1)(C) of Hindu Marriage Act, 1955.

65. The learned family court taking into consideration these facts has passed the order for annulment of marriage and decreed the suit. However the learned Family Court has also taken into consideration that the appellant/wife was subjected to cruelty and torture but since the suit was filed on the basis of availability of Section 12(1) (c), therefore the learned Court has based its finding on the said issue and has allowed the suit, therefore it is considered view of this Court that the finding of the learned Family Court about the annulment of marriage is not perverse.

66. Further, it needs to refer herein that admittedly both the parties have been living separately after three month of marriage i.e. from year 2016, in the aforesaid circumstances and the admitted facts which has been mentioned and referred in the preceding paragraphs, it is the considered view of this Court that now the marital relation between the parties has

become "dead wood marriage" and marital relation has become lifeless and without emotional or practical value.

67. It is settled proposition of law that when a marriage is deemed a dead wood situation, Courts may consider it a valid reason to grant a divorce, recognizing that forcing a couple to remain in such a relationship only prolongs their suffering and no purpose will be served in sailing the dead wood.

68. The Hon'ble Apex Court in the case of ***Durga Prasanna Tripathy v. Arundhati Tripathy, (2005) 7 SCC 353***, while taking into consideration the long period of separation of husband and wife has observed, which reads as under:

> "28. The facts and circumstances in the above three cases disclose that reunion is impossible. The case on hand is one such. It is not in dispute that the appellant and the respondent are living away for the last 14 years. It is also true that a good part of the lives of both the parties has been consumed in this litigation. As observed by this Court, the end is not in sight. The assertion of the wife through her learned counsel at the time of hearing appears to be impractical. It is also a matter of record that dislike for each other was burning hot.
>
> 29. Before parting with this case, we think it necessary to say the following:
>
> Marriages are made in heaven. Both parties have crossed the point of no return. A workable solution is certainly not possible. Parties cannot at this stage reconcile themselves and live together forgetting their past as a bad dream. We, therefore, have no other option except to allow the appeal and set aside the judgment of the High Court and affirming the order of the Family Court granting decree for divorce. ------."

69. The Hon'ble Apex Court in the case of **Sujata Uday Patil v. Uday Madhukar Patil, 2007 (3) PLR 521** has observed as under:

> *"Matrimonial disputes have to be decided by courts in a pragmatic manner keeping in view the ground realities. For this purpose a host of factors have to be taken into consideration and the most important being whether the marriage can be saved and the husband and wife can live together happily and maintain a proper atmosphere at home for the upbringing of their offsprings. Thus the court has to decide in the fact and circumstances of each case and it is not possible to lay down any fixed standards or even guidelines."*

70. This Court, taking into consideration the aforesaid settled position of law and admitted fact and also thetestimony of the appellant/wife and her mother, is of the view that theimpugned judgmentdated 16.02.2017 passed by the learned Principal Judge, Family Court, Garhwa in Original M.M.Suit No. 68 of 2016 so far, the annulment of marriage between the parties under Section 12(1) (C) is concerned, is hereby affirmed.

71. Now coming to the issue of permanent alimony which is the subject matter in the F.A.No. 213 of 2019. It has been contended by the appellant/ wife that the permanent alimony as determined by the learned Family Court is not based upon the proper calculation as such requires interference by this Court.

72. It requires to mention herein that permanent alimony has been dealt under Section 25 of the Hindu Marriage Act, 1955, which reads as under:

> *"25. Permanent alimony and maintenance.—(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other*

circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent (2) If the court is satisfied that there is, a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem jus (3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just."

73. The issue of permanent alimony has elaborately been dealt with by Hon'ble Apex Court in the case of **Rajnesh v. Neha & Anr. (2021) 2 SCC 324** which is the leading case law in the field, wherein the Hon'ble Apex Court taking into consideration all aspects of the matter in granting permanent alimony/maintenance, has given certain directives and also the yardstick have been given for assessing the permanent alimony. For ready reference, the relevant paragraphs of the judgment wherein law has been laid down for permanent alimony is quoted as under:

"73. Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the court concerned, for fixing the permanent alimony payable to the spouse. 74. In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid. 75. Provision for grant of reasonable expenses for the marriage of children must be made at the time of determining permanent alimony, where the custody is with the wife. The expenses would be determined by taking into account the financial position of the husband and the customs of the family 76. If there are any trust

funds/investments created by any spouse/grandparents in favour of the children, this would also be taken into consideration while deciding the final child support.

74. Further the Hon'ble Apex Court from paragraphs 77 to 85 has laid down the criteria for determining the quantum of maintenance taking into consideration the objection of granting interim/permanent alimony to ensure that dependent spouse is not reduced to destitution or vagrancy on account of failure of marriage and not as a punishment to the other spouse by taking into various factors viz. Status of the parties; reasonable wants of the claimant; the independent income and property of the claimant; the number of persons, the non-applicant has to maintain etc. For ready reference, the relevant paragraphs of the judgment is quotes as under:

"Criteria for determining quantum of maintenance

77. The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded .

78. The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. [Refer to Jasbir Kaur Sehgal v. District Judge, Dehradun, (1997) 7 SCC 7; Refer to Vinny Parmvir Parmar v. Parmvir Parmar, (2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290]

79. In Manish Jain v. Akanksha Jain [Manish Jain v. Akanksha Jain, (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712] this Court held that the financial position of the parents of the applicant wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.

80. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications. [Reema Salkan v. Sumer Singh Salkan, (2019) 12 SCC 303 : (2018) 5 SCC (Civ) 596 : (2019) 4 SCC (Cri) 339]

81. A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. [Chaturbhuj v. SitaBai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

82. Section 23 of the HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-

section (2) of Section 23 of the HAMA provides the following factors which may be taken into consideration : (i) position and status of the parties, (ii)reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (iv) value of the claimant's property and any income derived from such property, (v) income from claimant's own earning or from any other source.

83. Section 20(2) of the DV Act provides that the monetary relief granted to the aggrieved woman and/or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.

84. The Delhi High Court in Bharat Hegde v. Saroj Hegde [Bharat Hegde v. Saroj Hegde, 2007 SCC OnLine Del 622 : (2007) 140 DLT 16] laid down the following factors to be considered for determining maintenance : (SCC OnLine Del para 8) "1. Status of the parties. 2. Reasonable wants of the claimant. 3. The independent income and property of the claimant. 4. The number of persons, the non-applicant has to maintain. 5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home. 6. Non-applicant's liabilities, if any. 7. Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant. 8. Payment capacity of the non-applicant. 9. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed. 10. The non-applicant to defray the cost of litigation. 11. The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act."

85. Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable."

75. Since herein, appellant-wife is lawyer by profession, therefore, this Court is quoting relevant paragraph from case of Rajnesh (supra), wherein the factor where the wife is earning some income has also been dealt with by Hon'ble Apex Court. For ready reference, the said paragraph of the judgment is quoted as under:

"Where wife is earning some income:

90. The courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The courts have provided guidance on this issue in the following judgments:

90.1. In Shailja v. Khobbanna [Shailja v. Khobbanna, (2018) 12 SCC 199 : (2018) 5 SCC (Civ) 308; See also the decision of the Karnataka High Court in P. Suresh v. S. Deepa, 2016 SCC OnLine Kar 8848 : 2016 Cri LJ 4794 (Kar)] , this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. [Chaturbhuj v. SitaBai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] Sustenance does not mean, and cannot be allowed to mean mere survival. [Vipul Lakhanpal v. Pooja Sharma, 2015 SCC OnLine HP 1252 : 2015 Cri LJ 3451]

90.2. In Sunita Kachwaha v. Anil Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589] the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

90.3. The Bombay High Court in Sanjay Damodar Kale v. Kalyani Sanjay Kale [Sanjay Damodar Kale v. Kalyani Sanjay Kale, 2020 SCC OnLine Bom 694] while relying upon the judgment in Sunita Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589] , held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

90.4. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in Chander Parkash v. Shila Rani [Chander Parkash v. Shila Rani, 1968 SCC

> *OnLine Del 52 : AIR 1968 Del 174] . The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the court.*
>
> *90.5. This Court in Shamima Farooqui v. Shahid Khan [Shamima Farooqui v. Shahid Khan, (2015) 5 SCC 705 : (2015) 3 SCC (Civ) 274 : (2015) 2 SCC (Cri) 785] cited the judgment in Chander Parkash [Chander Parkash v. Shila Rani, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.*

76. This Court, in the touchstone of aforesaid judgment, is now coming to factual aspect involved in the present case so as to come to the conclusion that the quantum of permanent alimony as awarded to the respondent-wife requires interference or not.

77. It is evident from the record that this Court had directed both parties to file affidavits disclosing their income and liabilities to enable assessment of all relevant factors and inconsequent to the said order both the parties have filed their income proof.

78. The respondent / husband is employed as Manager, Instrumentation, Hindustan Zinc Ltd, earning approximately Rs.1,56,000/- per month from his employment. The appellant/wife holds an LL.B. degree. She claims to be presently unemployed and she is not the income tax assessee.

79. The respondent/husband has produced his salary slip reflecting a income of around Rs.1.56 lakhs per month, along with his bank statements. The appellant asserts that he had purchased flat and having home-loan of Rs. 18,00,000/- at the rate of 8.45 percent per annum. He

had further stated that though the ancestral property does exist in the native village, but respondent currently do not possess any specific knowledge or documentation regarding any ancestral property of any nature, extent or in precise details.

80. It needs to refer herein that determination of alimony requires consideration of multiple factors. It is evident from the material on record that the respondent/husband has the capacity to pay a higher amount than that awarded by the Family Court. At the same time, although the appellant claims to be unemployed, she is highly qualified and has the ability to earn and sustain herself, therefore, a balanced approach, weighing the respondent's capacity and the appellant's needs, must therefore be adopted.

81. The power is conferred on the Matrimonial Court to grant permanent alimony or maintenance on the basis of a decree of divorce passed under the Hindu Marriage Act even subsequent to the date of passing of the decree on the basis of an application made in that behalf. Sub-section (2) of Section 25 confers a power on the Court to vary, modify or rescind the order made under Sub-section (1) of Section 25 in case of change in circumstances. The power under Sub- section (3) of Section 25 is an independent power. The said power can be exercised if the Court is satisfied that the wife in whose favour an order under Sub-section (1) of Section 25 of the Hindu Marriage Act is made has not remained chaste. In such event, at the instance of the other party, the Court may vary, modify or rescind the order under Sub-section (1) of Section 25 of the Hindu Marriage Act.

82. Admittedly, the main factors for determining permanent alimony, for a wife include financial circumstances, is income, assets, and earning capacity of both the spouses, along with the standard of living maintained during the marriage. But the other significant factors, for determining permanent alimony for a wife, are the duration of the marriage, the age and health of the spouses, child custody and care giving responsibilities, and the wife's educational qualifications and employment potential etc.

83. It needs to refer herein that no arithmetic formula can be adopted for grant of permanent alimony to wife. However, status of parties, their respective social needs, financial capacity of husband and other obligations must be taken into account. The Hon'ble Apex Court in the case of ***U. Sree v. U. Srinivas, (2013) 2 SCC 114*** has observed that while granting permanent alimony, no arithmetic formula can be adopted as there cannot be mathematical exactitude. It shall depend upon the status of the parties, their respective social needs, the financial capacity of the husband and other obligations. For ready reference the relevant paragraph is being quoted as under:

> **84.** *We have reproduced the aforesaid orders to highlight that the husband had agreed to buy a flat at Hyderabad. However, when the matter was listed thereafter, there was disagreement with regard to the locality of the flat arranged by the husband and, therefore, the matter was heard on merits. We have already opined that the husband has made out a case for divorce by proving mental cruelty. As a decree is passed, the wife is entitled to permanent alimony for her sustenance. Be it stated, while granting permanent alimony, no arithmetic formula can be adopted as there cannot be mathematical exactitude. It shall depend upon the status of the parties, their respective social needs, the financial capacity of the husband and other obligations. In Vinny Parmvir Parmar v. Parmvir Parmar [(2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290] (SCC p.116, para 12) while dealing with the concept of permanent alimony, this Court has observed that while granting permanent alimony, the court is required to take note of the fact that the*

> *amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party.*

85. Recently, the Hon'ble Apex Court in the case of **Rakhi Sadhukhan Vs. Raja Sadhukhan [2025 SCC OnLine SC1259]** has enhanced the amount of alimony subject to increase of alimony on every two years.

86. This Court has considered the factual aspect of the said case i.e**. Rakhi Sadhukhan Vs. Raja Sadhukhan(supra)** and on perusal of the fact, referred therein, it is evident that the appellant-wife and respondent-husband were married on 18.06.1997. A son was born to them on 05.08.1998. In July 2008, the respondent-husband filed Matrimonial Suit No. 430 of 2008 under Section 27 of the Special Marriage Act, 1954 seeking dissolution of marriage on the ground of cruelty allegedly inflicted by the appellant- wife. Subsequently, the appellant-wife filed Misc. Case No. 155 of 2008 in the same suit under Section 24 of the Hindu Marriage Act, 1955, seeking interim maintenance for herself and the minor son. The Trial Court, by order dated 14.01.2010, awarded interim maintenance of Rs. 8,000/- per month to the appellant-wife and Rs. 10,000/- towards litigation expenses. The appellant-wife then instituted Misc. Case No. 116 of 2010 under Section 125 of the Criminal Procedure Code, 1973. The Trial Court, vide order dated 28.03.2014, directed the respondent-husband to pay maintenance of Rs. 8,000/- per month to the appellant-wife and Rs. 6,000/- per month to the minor son, along with Rs. 5,000/- towards litigation costs. The Trial Court, vide order dated 10.01.2016, dismissed the matrimonial suit, finding that the

respondent-husband had failed to prove cruelty. Aggrieved, the respondent filed FAT No. 122 of 2015 before the High Court of Calcutta. During the pendency of the appeal, the appellant-wife filed CAN No. 4505 of 2025 seeking interim maintenance of Rs. 30,000/- for herself and Rs. 20,000/- for the son, along with Rs. 50,000/- towards litigation expenses. The High Court, by order dated 14.05.2015, directed the respondent-husband to pay interim maintenance of Rs. 15,000/- per month. Subsequently, by order dated 14.07.2016, the High Court noted that the respondent-husband was drawing a net monthly salary of Rs. 69,000/- and enhanced the interim maintenance to Rs. 20,000/- per month. Finally, the High Court, by the impugned order dated 25.06.2019, allowed the respondent's appeal, granted a decree of divorce on the ground of mental cruelty and irretrievable breakdown of marriage, and directed the respondent-husband to redeem the mortgage on the flat where the appellant-wife was residing and transfer the title deed to her name by 31.08.2019; allow the appellant-wife and their son to continue residing in the said flat; and continue to pay permanent alimony of Rs. 20,000/- per month to the appellant-wife, subject to a 5% increase every three years. Additionally, the High Court directed payment of educational expenses for the son's university education and Rs. 5,000/- per month for private tuition.

87. Aggrieved by the quantum of alimony awarded, the appellant-wife is approached the Hon’ble Apex Court.

88. The Hon’ble Apex Court, by interim order dated 07.11.2023, noting the absence of representation on behalf of the respondent-husband despite proof of service, enhanced the monthly maintenance to Rs. 75,000/- with

effect from 01.11.2023. The respondent-husband subsequently entered appearance and filed an application seeking vacation of the said interim order.

89. The appellant-wife contends that the amount of Rs. 20,000/- per month, which the High Court made final, was originally awarded as interim maintenance. She submits that the respondent-husband has a monthly income of approximately Rs. 4,00,000/- and the quantum of alimony awarded is not commensurate with the standard of living maintained by the parties during the marriage.

90. In response, the respondent-husband submits that his current net monthly income is Rs. 1,64,039/-, earned from his employment at the Institute of Hotel Management, Taratala, Kolkata. He has placed on record salary slips, bank statements, and income tax returns for the year 2023-2024. It is further stated that he was earlier employed with the Taj Hotel, drawing a gross annual salary of Rs. 21,92,525/-. He also submits that his monthly household expenses total Rs. 1,72,088/-, and that he has remarried, has a dependent family, and aged parents. The respondent-husband contends that their son, now 26 years of age, is no longer financially dependent.

91. The Hon’ble Apex Court taking note of the quantum of permanent alimony fixed by the High Court has come to the conclusion that it requires revision. The said revision is on the basis of the respondent-husband's income, financial disclosures, and past earnings which establish that he is in a position to pay a higher amount. The Hon’ble Apex Court has observed that the appellant-wife, who has remained unmarried and is

living independently, is entitled to a level of maintenance that is reflective of the standard of living she enjoyed during the marriage and which reasonably secures her future. It has also been observed, the inflationary cost of living and her continued reliance on maintenance as the sole means of financial support necessitate a reassessment of the amount.

92. Therefore, Hon'ble Apex Court has held that, a sum of Rs. 50,000/- per month would be just, fair and reasonable to ensure financial stability for the appellant-wife. The said amount shall be subject to an enhancement of 5% every two years. As regards the son, now aged 26, the Hon'ble Apex Court has expressed its view that the Court is not inclined to direct any further mandatory financial support. However, it is open to the respondent-husband to voluntarily assist him with educational or other reasonable expenses. It has been clarified that that the son's right to inheritance remains unaffected, and any claim to ancestral or other property may be pursued in accordance with law.

93. Accordingly, the appeal was allowed and the order of the High Court was modified to the extent that the permanent alimony payable to the appellant-wife shall be Rs. 50,000/- per month, subject to a 5% increase every two years, for ready reference the relevant paragraph of the said order is being quoted as under:

> *"7. Having considered the submissions and materials on record, we are of the view that the quantum of permanent alimony fixed by the High Court requires revision. The respondent-husband's income, financial disclosures, and past earnings establish that he is in a position to pay a higher amount. The appellant-wife, who has remained unmarried and is living independently, is entitled to a level of maintenance that is reflective of the standard of living she enjoyed*

> *during the marriage and which reasonably secures her future. Furthermore, the inflationary cost of living and her continued reliance on maintenance as the sole means of financial support necessitate a reassessment of the amount.*
>
> *8. In our considered opinion, a sum of Rs. 50,000/- per month would be just, fair and reasonable to ensure financial stability for the appellant-wife. This amount shall be subject to an enhancement of 5% every two years. As regards the son, now aged 26, we are not inclined to direct any further mandatory financial support. However, it is open to the respondent-husband to voluntarily assist him with educational or other reasonable expenses. We clarify that the son's right to inheritance remains unaffected, and any claim to ancestral or other property may be pursued in accordance with law.*
>
> *9. In view of the above, the appeal is allowed. The impugned order of the High Court is modified to the extent that the permanent alimony payable to the appellant-wife shall be Rs. 50,000/- per month, subject to a 5% increase every two years, as noted above."*

94. Herein admittedly, the respondent/husband is earning around 1.56 lakh per month and in his affidavit has not mentioned any liability except the purchase of Flat, on the basis of home loan. The appellant wife is an advocate by profession but she is still depending upon her father for her financial needs.

95. Having considered the submissions and the evidence on record, we find it just and equitable to enhance the permanent alimony to Rs.50,00,000/- as a one-time settlement. This amount will reasonably secure the appellant’s future and ensure a standard of living commensurate with her circumstances.

96. The amount of Rs.50,00,000/- shall be paid in five equal monthly installments in between February 2026 to June 2026.

97. The appellant shall furnish her bank account details to the respondent for the payments of the aforesaid amount.

98. While affirming the decree of divorce, we modify the learned Family Court's order to the extent that the permanent alimony payable to the appellant-wife shall be Rs.50,00,000/- as one-time settlement. All claims arising from the marriage and the present litigation shall stand fully and finally settled.

99. With the aforesaid modification and direction both these appeals are hereby disposed of.

100. Pending application(s), if any, shall stand disposed of.

I Agree **(Sujit Narayan Prasad, J.)**

(Gautam Kumar Choudhary, J.) **(Gautam Kumar Choudhary, J.)**

Dated: 21 /01 / 2026
KNR/AFR
Uploaded On: 22 /01 / 2026