



NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment Reserved on- 07.05.2026

Judgment Delivered on- 06.08.2026

Judgment Uploaded on -06.08.2026

FA(MAT) No. 71 of 2024

... Appellant-

versus

... Respondent

HIFZURRAHMAN
ANSARI

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HIFZURRAHMAN
ANSARI
Date: 2026.08.06
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For Appellant	:	Mr. Rakesh Kumar Thakur, Advocate
For Respondent	:	Mr. Vivek Kumar Agrawal, Advocate

**D.B. : Hon'ble Shri Justice Parth Prateem Sahu &
Hon'ble Shri Justice Sachin Singh Rajput**

CAV Judgment

Per Sachin Singh Rajput, J.

1. The present appeal has been preferred under Section 19(1) of the Family Courts Act, 1984 (for short, “the Act of 1984”) challenging the judgment and decree dated 12.12.2023 passed in Civil Suit No. 7-A/2022 by the learned Principal Judge, Family Court, Biaspur, (C.G.) (hereinafter referred to as “Family Court”).
2. By the impugned judgment and decree, the application filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (for short, “the Act of 1955”) has been allowed and the marriage dated 21.02.2019

solemnized between the appellant-wife and the respondent-husband has been dissolved by a decree of divorce.

3. It is an admitted fact that the marriage between the appellant-wife and the respondent-husband was solemnized on 21.02.2019 at Bilaspur.
4. The respondent-husband filed an application under Section 13 of the Act of 1955 seeking dissolution of marriage on the grounds of alleged cruelty and desertion, contending that the appellant-wife frequently quarreled with him and his family members and refused to cohabit, taunted him regarding his complexion and having private employment. She also left the matrimonial home on 07.01.2020 without any sufficient cause. The respondent-husband further alleged that despite several reconciliation efforts and social interventions, the appellant-wife failed to return to the matrimonial home, threatened to implicate him and his family in false dowry cases and remained living separately for a considerable period.
5. The application was resisted by the appellant-wife by filing written statement contending that she never refused to discharge her matrimonial obligations and had always been willing to reside with the respondent-husband. She alleged that the respondent-husband and his family members subjected her to physical and mental harassment for dowry, demanded Rs.5,00,000/-, her salary, ATM card and compelled her to lodge complaints before the competent authorities. The appellant-wife further submitted that she had resided in the matrimonial home from 29.08.2021 to 29.09.2021 in an effort to preserve the marital relationship, but the respondent-husband failed to cohabit with her, and thus, prayed for dismissal of the application.
6. On the basis of the aforesaid pleadings, the learned Family Court framed the following issues:

1. Whether the respondent-wife, after the solemnization of the marriage between the parties, treated the appellant-husband with cruelty?	“Yes”
2. Relief and cost.	“As per Paragraph 16”

7. In support of his case, the respondent-husband examined three witnesses including himself as PW-1, Samaru Lal as PW-2 and Jayant Vastrakar as PW-3. The appellant-wife also examined herself as DW-1.
8. After appreciation of the oral and documentary evidence available on record, the learned Family Court decided the issues in favour of the respondent-husband and against the appellant-wife and by the impugned judgment and decree, declared the marriage dated 21.02.2019 solemnized between the appellant-wife and the respondent-husband dissolved by decree of divorce, which has led to filing of the present appeal.
9. Learned counsel for the appellant-wife submits that the impugned judgment and decree are contrary to the settled principles of law, facts on record and the evidence adduced by the parties. He submits that the learned Family Court seriously erred in granting a decree of divorce on the grounds of cruelty and desertion despite the consistent stand of the appellant-wife that she was always willing and ready to reside with the respondent-husband and discharge her matrimonial obligations. It was further argued that the disputes between the parties arose due to the conduct of the respondent-husband himself and not on account of any act of the appellant-wife. He further submitted that the respondent-husband failed to establish the allegations of cruelty and desertion

by cogent and reliable evidence. The appellant-wife's testimony remained substantially un rebutted and no material evidence was produced to prove that she had treated the respondent-husband with cruelty or had voluntarily deserted him. It was also contended that she being a Government servant posted at Dhamdha, the appellant-wife was required to reside at her place of posting, which could not be construed as desertion. The learned Family Court failed to appreciate the admissions made by the respondent-husband during cross-examination and erroneously concluded that the appellant-wife had abandoned the matrimonial home. Learned counsel also emphasized that the appellant-wife had obtained a decree for restitution of conjugal rights under Section 9 of the Act of 1955 which remained uncomplied with by the respondent-husband. Therefore, in the absence of proof of cruelty or desertion and in view of the respondent-husband's failure to comply with the decree for restitution of conjugal rights, the respondent-husband was not entitled to a decree of divorce. Accordingly, it was prayed that the impugned judgment and decree dated 12.12.2023 may be set aside.

10. Per contra, learned counsel for the respondent-husband supported the impugned judgment and decree and submits that the learned Family Court, upon proper appreciation of the oral and documentary evidence on record, rightly concluded that the appellant-wife had treated the respondent-husband with cruelty and had deserted him for a prolonged period without any justifiable cause. It was contended that despite several efforts made by the respondent-husband to resume cohabitation, the appellant-wife failed to discharge her matrimonial obligations and chose to live separately. It was therefore argued that the findings recorded by the learned Family Court are based on cogent evidence and do not warrant interference in the present appeal. Accordingly, dismissal of the appeal was prayed for. Learned counsel

for the respondent-husband placed reliance upon the Division Bench judgment of this Court in case of ***Prashant Jha v. Isha Jha*, F.A. (MAT) No. 41 of 2024, delivered on 30.01.2025**. Reliance was also placed on another Division Bench decision of this Court in case of ***Shailendra Kumar Chandra v. Smt. Bharti Chandra*, First Appeal (M) No. 124 of 2017, delivered on 27.04.2022**.

11. We have heard learned counsel for the parties and perused the entire record with utmost circumspection.
12. It is not in dispute that the marriage between the parties was solemnized as per the Hindu rites and rituals. What is significant to mention here is that the marriage proved a fragile one and hardly months thereafter the acrimony between the two started appearing on the surface for one reason or the other. There are allegations and counter allegations between the parties. The respondent-husband applied for a decree of divorce on the ground that just after the marriage the appellant-wife did not like to stay with him and frequented to her parents' house within short intervals. The allegation made by the respondent-husband that since the appellant-wife was a nurse by profession, she did not find him compatible to her status and for that she used to pick up quarrels with him does not appear to have any substance because their present status was well known to each other even before marriage. Had there been anything like this in the mind of the appellant-wife, she would have refused for marriage in the inception particularly when they were in acquaintance with each other beforehand and used to meet even before marriage. The record also reveals that a social meeting was convened where the respondent-husband and appellant-wife were asked to live amicably. To find a viable solution, the respondent-husband was also asked to live at the place where appellant-wife was posted for a period of 15 days and the same

thing was asked to be observed by the appellant-wife as well. However, there is nothing on record to indicate that any effort to go on with the matrimony was made by the respondent-husband. Refuting the allegation of her leaving the matrimonial house time and again without the consent of the respondent-husband, the appellant-wife has categorically stated that she was always willing to live with the respondent-husband and had full respect for him and his family members as well. She has further stated that she never uttered any ill sounding word to the respondent-husband nor she ever refused for establishing sexual relations with him. According to her, she never insisted the respondent-husband to visit her maternal home but it is her employment related obligation which made her live at the place of posting. She has further stated that the respondent-husband was well aware of her being in job but he readily accepted the same before marriage and the situation started worsening after she stepped into her matrimonial home. She has emphatically stated that as soon as she received the legal notice from the respondent-husband she visited him within no time, but he left the house and did not turn up for almost a month and during this long period she was constrained to live alone in his house. The respondent-husband had even switched off his cell phone to avoid any contact with her. The material available on record further reveals that after the appellant-wife came to know about institution of a divorce suit by the respondent-husband, she immediately moved the court for restitution of conjugal rights under section 9 of the Act of 1955 where though the respondent-husband did not appear, he was directed to start restitution within two months from the date of order being passed.

13. Having thus seen the material available on record including the evidence of the witnesses it is manifest that the respondent-husband was hell-bent in getting rid of the appellant-wife on one pretext or the other. The allegation that

the appellant-wife did not like him on account of his being a dark complexioned, does not appear to have any substance for the reason that before being married, the appellant-wife and the respondent-husband had a liking for each other. If assuming for a moment that there was no liking for the appellant-wife towards the respondent-husband, she would not have entered into the wedlock by nipping the things at the bud itself. If the evidence on record is seen in its entirety, the allegation made by the respondent-husband appears to be a concocted one. From the record it is also apparent that a possibility was tried to be explored to ensure preservation of the matrimonial tie by convening a social meeting where both the parties were advised to spend time at the place of each other, but there is nothing on record to indicate that an endeavour in this direction was made by the respondent-husband. Having thus traversed the material produced in the case file with full rigour and vigour, nothing of the sort surfaced to indicate that the allegation made by the respondent-husband against the appellant-wife has any foundation to stand. The record further unravels the fact that in the social meeting so convened, both the parties were asked to stay at the place of each other for a period of 15 days but the respondent-husband does not appear to have gone to the place of appellant-wife to stay with her. Though, the respondent-husband has alleged that the appellant-wife did not turn up to live with him after the decision taken in social meeting, there a categorical statement by the appellant-wife that after receiving legal notice from the respondent-husband, she had been to his house but it is he who left his house after picking up quarrel with her as a result of which she was required to stay over there for a period of almost one month in the absence of respondent-husband. The stand of the respondent-husband that in pursuance of the decision taken in society, the appellant-wife did not come to his house to stay, appears to be without any

force because in the said meeting it was not asked that it the appellant-wife who should first visit the house of the respondent-husband. Thus, the overall analysis demonstrates to the contrary where the respondent-husband evidently appears to have evaded the company of the appellant-wife when she visited his house in a gesture to live with him. The intention of the appellant-wife to live with the respondent-husband also get crystallized from her statement where she has categorically stated that since she was having a government employment and the respondent-husband was in a private employment and for that he could have come to stay with her at the place where she was posted till she was transferred to Bilaspur so that the matrimony between them could go on smoothly and peacefully, but there is nothing on record to show that the respondent-husband ever made any efforts in this direction. Not only this even the decision taken in the social meeting making them live for a period of 15 days at the place of each other also does not appear to have been honored by the respondent-husband.

14. The concept of cruelty under Section 13(1)(ia) of the Hindu Marriage Act has been explained by the Hon'ble Supreme Court in the matter of **Samar Ghosh v. Jaya Ghosh** reported in **(2007) 4 SCC 511**, would be a relevant guideline wherein the Court has indicated certain illustrative instances at para 101 whereby the inference of mental cruelty can be drawn. Para 101 reads as under :-

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the

parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the

relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

15. If the parameters determined by the Supreme Court are applied to the facts of the case in hand, it gets crystallized that mere trivial instances involving minor skirmishes between the spouses and would not amount to mental cruelty. Mere unhappiness and dissatisfaction of one party at the instance of other cannot by itself constitute cruelty warranting dissolution of marriage. Thus, the elements required for establishing the cruelty are wholly missing in this case.
16. To establish desertion within the meaning of Section 13(1)(i-b) of the Act of 1955, the respondent-husband is required to prove not only the factum of separation but also the intention on the part of the other spouse to permanently forsake the matrimonial relationship (*animus deserendi*). In the present case,

the elements of *animus deserendi* are completely missing. It is for the reason that the evidence on record does not disclose that the appellant-wife intended to permanently abandon the respondent-husband or terminate the marital relationship. On the contrary, her conduct of visiting the matrimonial home with a view to resuming cohabitation and subsequently instituting proceedings under Section 9 of the Act in response to the legal notice clearly indicates her willingness to preserve the matrimonial bond.

17. In view of the foregoing discussion, this Court is unable to concur with the findings recorded by the learned Family Court, Bilaspur. The respondent-husband has failed to discharge the burden of proving the ingredients of cruelty and desertion by leading cogent, reliable and convincing evidence. The findings recorded by the learned Family Court are founded upon an erroneous appreciation of the evidence on record and, therefore, cannot be allowed to stand. With due respect the case laws relied upon by the respondent-husband in the given facts & circumstances and evidence available on record may not come to his rescue.
18. Accordingly, the appeal deserves to be and is hereby allowed. The impugned judgment and decree dated 12.12.2023 passed by the learned Principal Judge, Family Court, Bilaspur, are set aside.
19. There shall be no order as to costs.
20. A decree be drawn accordingly.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Sachin Singh Rajput)
Judge