IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 143 of 2025

Niraj Kathuria, aged about 34 years, son of Late Purushottam Kr. Agarwalla, Resident of Near Shiv Shakti Colony, Dhirendra Puram, Near Rani Talai, Dhayia, P.O., P.S. & District Dhanbad, Jharkhand.

… … Plaintiff/Appellant

Versus

Palak Kathuria @ Palak Agarwal, aged about 32 years, wife of Niraj Kathuria, Resident of 302, Alaknanda Apartment, 3rd Floor, Shanti Bhawan, P.O., P.S.-Bank More and District-Dhanbad.

… … Defendant/Respondent

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellant : Mr. Ajit Kumar, Sr. Advocate
Mr. Abhishek Abhi, Advocate
Mr. Kshitiz Priyanshu, Advocate

For the Respondent : Mr. Akhouri Awinash Kumar, Advocate
Ms. Ashwini Priya, Advocate
Mr. Kaushik Chakraborty, Advocate
Mr. S.R. Mukherjee, Advocate

CAV/Reserved on 31.08.2026 **Pronounced on: 08.10.2026**

Per Sujit Narayan Prasad, J.

1. The instant appeal under Section 19 of the Family Courts Act, 1984 is directed against the order/judgment dated 17.01.2025 and decree signed on 29.01. 2025 passed by the learned Additional Principal Judge, Additional Family Court-II, Dhanbad in Original Suit No. 536 of 2021, whereby and whereunder, the learned court has dismissed the suit filed under Section 13(1) (i-a) of the Hindu Marriage Act, 1955 by appellant-husband against the respondent-wife for dissolution of marriage on the ground of cruelty.

Factual Matrix

2. The brief facts of the case as per the original matrimonial suit needs to be referred herein which is as under: -

2.1 The marriage of the appellant with the respondent was solemnized on 29.04.2018 as per Hindu Rites and Customs at Sonotel Hotel, Saraidhela, Dhanbad. After marriage both the appellant and respondent had been living together as husband and wife in the house of appellant. Out of their wedlock there is no issue.

2.2 It is the case of the appellant that the respondent has disturbed the peace of her marital home since the inception of the marriage the respondent is extremely moody and under the active influence and instigation of her mother and treated the appellant with cruelty causing mental agony to him. The dream of petitioner to lead a happy conjugal life appeared to be turning into the nightmare from the initial days of marriage because of abhorrent and cruel behaviour of the respondent towards the appellant.

2.3 It is the further case of the appellant that after marriage the respondent continued with aggravated from the abnormal behaviour towards the appellant and his family members and relatives. The respondent denied physical relationship or even a physical touch on the very first night itself. The appellant accepted the behavior of the respondent gladly thinking that she requires some more time to settle. However, it was found that the respondent kept herself confined to the room alone talking to somebody on her mobile all the time, ignoring the existence of appellant as well as his family members and just after seven days of marriage the respondent expressed her unwillingness to continue with the relationship stating that she made the wrong choice of getting married with appellant and she wanted to take divorce from him and return to her parental home.

2.4 It is the further case of the appellant that the mother of the respondent who has played a vital role in breaking the matrimonial ties of the parties beyond repair by actively interfering, instigating and encouraging the respondent for all such commission and omission in married life of the parties. On 15.08.2018, they both had gone for Honeymoon in Udaipur but there also she used to quarrel with him on trivial issues. She also did not allow him to come close to her. Due to cold and insensitive behaviour of respondent they returned from the honeymoon one week prior.

2.5 Thereafter, on 19.06.2018, the respondent had abused in filthy language to him and his family members. He tried several times to persuade his wife and asked to change her behaviour towards him but she was not ready for the same. She never gave respect to appellant and his family members. On 17.09.2018 on the eve of birthday of the respondent he invited his friends and other family members but before all of the gathered persons she behaved abnormally and also misbehaved with all of them and on the festival of *Karwa Chouth* his parents wanted to give some gifts to the respondent but she refused to take the same and got aggressive.

2.6 Thereafter, on 03.06.2021, the respondent left her *sasural* and went to her *maika* and thereafter on 12.07.2021 he met with his wife at City Centre Dhanbad but she started crying due to which the meeting remained fruitless. The respondent and his family members always threatened him to implicate him in false case. The mother of the respondent always interfered on day-to-day life of spouses and

suggested her daughter to grab money from her husband and it became difficult to lead conjugal life with respondent.

2.7 On the basis of the aforesaid reasons, the appellant filed the original suit bearing Original Suit No.536 of 2021 under Section 13(1) (i-a) of the Hindu Marriage Act, 1955 for dissolution of marriage in between the parties.

2.8 The respondent appeared and contested the suit by filing written statement and has stated that the suit was not maintainable either in fact or in law. It had been stated by the respondent that it is the admitted fact the appellant and respondent are legally wedded husband and wife and out of their wedlock, a female child was born but unfortunately, she died.

2.9 It has been stated by the respondent in the written statement that the appellant and his family members started taunting the respondent that she has not bought enough dowry and always forced her to bring more dowry. The appellant disturbed her privacy since the beginning and he kept her under CCTV surveillance and he also had downloaded spy software in her mobile only with the purpose to track her. The appellant being a habitual drunker and hobnobbed with young girls had subjected the respondent of inhuman sexual cruelty and made her life a living hell. The appellant had sent immoral, private and objectionable content of the respondent to his friends from her mobile only to put stains on her character. During the course of pregnancy, the appellant and her in-laws had demanded more dowry from and to non-fulfillment of the demand of dowry the appellant hit the

respondent on her womb. The appellant even forced the respondent to drink liquor and smoke hookah during lactating stage of the baby. Thereafter, a female child was born with liver infection and died within 22 months.

2.10 It has further been stated therein that the respondent was ousted from her matrimonial home on 03.06.2021 and she was left to lead a life of vagrancy and uncertainty. The respondent has filed a C.P. Case no.2155/21 and 52156/21 for demand of dowry and cruelty under Domestic Violence Act and the entire allegation made by the appellant has been totally denied by the respondent. On 16.08.2023 respondent-wife had gone to her *sasural* but her mother-in-law and her husband did not allow her in her matrimonial house. She wants to lead conjugal life with her husband and the appellant has filed the false and concocted case against her. She has stated that she never committed cruelty with the appellant. She loves her husband and wants to lead conjugal life with him and is not interested in taking divorce from the husband.

3. It is evident from the factual aspect as referred hereinabove which led to filing of the present appeal that, as per the Original Matrimonial Suit, the marriage of the appellant with the respondent was solemnized on 29.04.2018. After marriage both the appellant and respondent had been living together as husband and wife in the house of appellant. Out of their wedlock there is no issue. It is the case of the appellant that the respondent has disturbed the peace of her marital home since the inception of the marriage. The respondent is extremely moody and under the active influence and instigation of her mother has treated the appellant with cruelty causing mental agony to him. It is the further case of the appellant

that after marriage the respondent continued with aggravated from the abnormal behaviour towards the appellant and his family members and relatives. The respondent denied physical relationship or even a physical touch on the very first night itself. However, it was found that the respondent kept herself confined to the room alone talking to somebody on her mobile all the time, ignoring the existence of appellant as well as his family members and just after seven days of marriage the respondent expressed her unwillingness to continue with the relationship stating that she made the wrong choice of getting married with appellant and she wanted to take divorce from him and return to her parental home.

4. It is the further case of the appellant that the mother of the respondent who has played a vital role in breaking the matrimonial ties of the parties beyond repair by actively interfering, instigating and encouraging the respondent for all such commission and omission in married life of the parties. On 15.08.2018, they both had gone for Honeymoon in Udaypur but there also she used to quarrel with him on trivial issues. She also did not allow him to come close to her. Due to cold and insensitive behavior of respondent they returned from the honeymoon one week prior.

5. Thereafter, on 19.06.2018, the respondent had abused in filthy language to him and his family members. On 17.09.2018 on the eve of birthday of the respondent he invited his friends and other family members but before all of the gathered persons she behaved abnormally and also misbehaved with all of them and on the festival of *Karwa Chouth* his parents wanted to give some gifts to the respondent but she refused to take the same and got aggressive. Thereafter, on 03.06.2021, the respondent left her *sasural* and went to her *maika* and thereafter

on 12.07.2021 he met with his wife at City Centre Dhanbad but she started crying due to which the meeting remained fruitless.

6. On the basis of the aforesaid reasons, the appellant filed the original suit bearing Original Suit No.536 of 2021 under Section 13(1) (i-a) of the Hindu Marriage Act, 1955 for dissolution of marriage in between the parties.

7. The respondent appeared and contested the suit by filing written statement and has stated that it is the admitted fact the appellant and respondent are legally wedded husband and wife and out of their wedlock, a female child was born but unfortunately, she died. It has been stated by the respondent in the written statement that the appellant and his family members started taunting the respondent that she has not bought enough dowry and always forced her to bring more dowry. The appellant disturbed his privacy since the beginning and he kept her under CCTV surveillance and he also had downloaded spy software in her mobile only with the purpose to track her. The appellant being a habitual drunker and hobnobbed with young girls had subjected the respondent of inhuman sexual cruelty and made her life a living hell. The appellant had sent immoral, private and objectionable content of the respondent to his friends from her mobile only to put stains on her character. During the course of pregnancy, the appellant and her in-laws had demanded more dowry with her and non-fulfillment of the demand of dowry the appellant hit the respondent on her womb. The appellant even forced the respondent to drink liquor and smoke hookah during lactating stage of the baby. Thereafter, a female child was born with liver infection and died within 22 months. It has further been stated therein that the respondent was ousted from her matrimonial home on 03.06.2021 and she was left to lead a life of vagrancy and uncertainty. The respondent has filed a C.P. Case no.2155/21 and 52156/21 for demand of dowry and cruelty under Domestic Violence Act.

On 16.08.2023 respondent-wife had gone to her *sasural* but her mother-in-law and her husband did not allow her in her matrimonial house. She has stated that she never committed cruelty with the appellant. She loves her husband and wants to lead conjugal life with him and is not interest in taking divorce from the husband.

8. On the basis of the pleading in the suit, the learned Family Judge framed altogether four issues which are as follows:

(1) Whether the suit is maintainable in its present form?

(2) Whether the petitioner has got valid cause of action for the suit?

(3) Whether the marriage of the petitioner and respondent is fit to be dissolved on the ground of cruelty u/s 13(1)(i-a) of Hindu Marriage Act.

(4) Whether the petitioner is entitled for relief a claimed for?

9. The evidences have been made on behalf of both the parties. Thereafter, the judgment has been passed dismissing the suit by holding that the appellant has not been able to prove his case against the respondent even to the extent of preponderance of probabilities, which is the subject matter of the present appeal.

Submission of the learned senior counsel for the appellant/husband:

10. It has been contended on behalf of the appellant/husband that the factual aspect which was available before the learned court supported by the evidences adduced on behalf of the appellant/husband has not properly been considered and as such, the judgment impugned is perverse, hence, not sustainable in the eyes of law.

11. The ground has been taken that the electronic evidence was produced by way of pen-drive at the time of filing of the plaint but the same has not been taken into consideration by not bringing it on record reason being that the copy thereof has not been supplied to the respondent-wife.

12. It has been contended that the learned Family Judge has committed gross error in not considering the electronic evidence merely because the copy thereof has not been supplied to the respondent-wife even though the application has been filed on behalf of the appellant-husband to supply the copy of the pen-drive to the respondent by the Court itself.

13. Learned counsel for the appellant/husband, based upon the aforesaid grounds, has submitted that the judgment impugned suffers from perversity, as such, not sustainable in the eyes of law.

Submission of the learned counsel for the respondent/wife:

14. *Per contra*, learned counsel for the respondent /wife, while defending the impugned judgment, has submitted that there is no error in the impugned judgement.

15. The learned Family Judge has considered the issues in its entirety and based upon the cogent evidences has dismissed the original suit filed for dissolution of marriage under Section 13(1) (i-a) of the Hindu Marriage Act.

16. It has been submitted that the appellant now wants to take advantage of the pen-drive which has not even been admitted for consideration by bringing in on record since the copy thereof has not been supplied in favour of the respondent.

17. The learned Family Judge has granted opportunities to the appellant-husband to supply the copy of the pen-drive but even after ample opportunities by passing orders, the copy of the pen-drive has not been supplied in favour of the respondent-wife and as such, it has rightly not been admitted as evidence to make it in consonance with the provision of Evidence Act.

18. Learned counsel, based upon the aforesaid ground, has submitted that if on that pretext, the judgment has been passed dismissing the original suit filed for dissolution of marriage, the impugned judgment cannot be said to suffer from an error, as such, the present appeal is fit to be dismissed.

Analysis:

19. This Court has heard the learned counsel for the parties and gone through the finding recorded by the learned Family Judge in the impugned judgment.

20. The case has been heard at length. The admitted fact herein is that the suit for dissolution of marriage had been filed by filing an application under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 and accordingly, issues have been framed by the learned Family Court wherein primarily issue no.3 pertains to whether the marriage of the petitioner/appellant and respondent-wife is fit to be dissolved on the ground of cruelty u/s 13(1)(i-a) of the Hindu Marriage Act.

21. Now adverting to the factual aspect of the case.

22. It is evident that the evidences have been led on behalf of both the parties before the Family Court. For better appreciation, the evidences led on behalf of the appellant/husband are being referred as under:

(i) **P.W-1** Prashant Agarwal, who is the brother-in-law of the petitioner has supported the evidence of P.W.-2 in his examination-in-chief. In cross he has stated that he has no individual knowledge about the honeymoon trip of both parties. After third day of the marriage, he returned back to his house from Dhanbad**.** He has stated in his cross-examination at para-41 that the averment of para-6 of his examination-in-chief were told by Niraj to him and he has no any

individual knowledge about the same**.** It is true that after one year of the marriage a daughter was born to respondent. Niraj has never stated that child born to his wife is not his child. He never saw the respondent talking with another boy. It is true that both husband and wife had gone for the treatment of the child in Hyderabad and Chennai and Jamshedpur and they both resided together for about two years. It is true that at the time of treatment of her father-in-law respondent Palak was present in Ravindranath Tagor Hospital for ten days.

(ii) **P.W.-2 Niraj Kathuria** is the appellant/petitioner himself who has stated in his examination-in-chief that his marriage was performed on 29.07.2018 with respondent Palak Kathuria @ Agarwal. After marriage he was residing with his wife in his house. Out of the wedlock a daughter was born but due to indifferent attitude of respondent the child got died who was suffering from liver disease which caused mental Trauma to him. Respondent is lady of loose temper and her behaviour is cruel towards him. In sasural, the behaviour of the respondent was abnormal towards him and his family members and relatives. She also refused to take part in religious or family functions. On the first day of the night, she did not allow him even to touch her. In sasural, his wife confined herself in a room and kept on talking on mobile with another person's and she disturbed his mental peace. The mother of the respondent was playing active role to end the marital life of both spouses. He has further stated in his evidence that on 15.08.2018 they both had gone for Honeymoon in Udaypur but there also she used to quarrel with

him on trivial issues. She also did not allow him to come close with her. Due to cold and insensitive behavour of respondent they returned from honeymoon trip one week prior to the fixed period of trip. On 19.06.2018, the respondent had abused in filthy language to him and his family members. He tried several times to persuade his wife and asked to change her behaviour towards him but she was not ready for the same. She never gave respect to the respondent and his family members. She did not allow him to enter into her room in night and she always created tension. He has further deposed that on 17.09.2018 on the eve of birthday of the respondent he invited his friends and other family members but before all of the gathered persons she behaved abnormally and also misbehaved in presence of all of them. On festival of *Karwa Chouth* his parents wanted to give some gifts to the respondent but she refused to take the same and got aggressive as because she wanted some precious gift. On 03.06.2021, the respondent left her sasural and went away to her maika and thereafter on 12.07.2021 he met with his wife at City Centre Dhanbad but she started crying due to which the meeting remained fruitless. The respondent and his family members always threatened him to implicate in false case. The mother of the respondent always interfered on day-to-day life of spouses and suggested her daughter to grab money with her husband. Physical and mental health of petitioner got affected due to cruel behaviour of the respondent. Now it is very much tough to lead conjugal life with respondent.

(iii) In cross he has stated that he did not go to house of his neighbours. He also did not go to the house of his uncle namely Pradeep Kumar

Agarwal and both sisters have married and he rarely visits to the house of her sisters. He had gone to Bengal along with respondent on the birthday of daughter of his sister. In December 2020 he had gone to attend the marriage of Ankit Goyelka along with respondent. He also had visited on 29.12.2020 in resort along with the family of Ankit Goyalka and others on the request of his wife. After returning from Raycheck Resort he had gone to attend the family function on the request of his wife Palak. After three months of their marriage, a child was born on 18.04.2019. It has also been deposed that prior to filing of the case he had not made complaint against the respondent and her family Members. He has no knowledge that the respondent has done the course of fashion designing and she is an educated lady. After death of his father respondent came to his house at the time of funeral rites and stayed for twelve days. His wife wants to live with him but he is not interested to keep her. She has filed a case for Restitution of Conjugal rights also against him. On 16.08.2023 his wife wanted to enter in his house but his mother prevented her from entering in his house. His wife has filed maintenance case against him and an order was passed by High Court to pay maintenance Rs.25,000/- per month and in recent four months he has paid only Rs.15,000/- to his wife. In CP case he was granted bail by the High Court. He was physically as well as mentally tortured by his wife and so he does not want to keep her.

23. The evidences led on behalf of the respondent/wife are being referred as under:

(i) **D.W.-1 Palak Agarwal @ Palak Kathuria (Respondent-wife)**, has deposed in her examination-in-chief that appellant has made totally false allegation only with intention to humiliate and harass her. After marriage she came to sasural where they resided together and on the first day of the night dt 30.04.2018 they had physical relationship. After ten days of the marriage, they had gone for honeymoon on 11.05.2018 and they fully enjoyed marital life and in honeymoon trip also they spent quality time. He had gone in May 2018 to the house of petitioner's uncle where they fully enjoyed. She also had visited in the Sagai celebration of the daughter of his Bua in the month of July 2018 where she enjoyed the family functions. In the meantime, she got pregnant in the month of August, 2018. The appellant disturbed his privacy since the beginning and he kept her under supervision of CCTV camera. He also had downloaded spy software app in her mobile only with purpose to track her. He black-mailed and tortured her. She also participated in the marriage ceremony of the sister of petitioner on 24.12.2018 and by discharging her duty as wife she took part in every function. She has further stated in her evidence that appellant had demanded more dowry with her and she was tortured by her. Her daughter was also properly not cared and got treated and liver of her daughter matched with the liver of the appellant but he refused to donate the liver due to which her daughter died on 07.02.2021. He also has participated in the marriage ceremony of the friend of the appellant namely Ankit Goyalka on 06.12.2020 and they had enjoyed the picnic trip along with her family members of Ankit Goyalka. She has further stated in her evidence that her father-in-law

died in the month of April 2021. He died in Ravindranath Tagor Hospital, Kolkata but at the time hospitalization she stayed there and she participated. He also looked after her father-in-law and after his death she participated in all the ritual ceremony. She also participated in the marriage ceremony of the cousin brother of petitioner on 03.05.2021 and she executed the *Nekchar* ceremony prudent in Marwadi family. On 03.06.2019 due to non-fulfillment of demand of dowry she was driven out from her matrimonial home. In this regard she has filed complaint case no-2155/21 which is pending in Civil Court Dhanbad. In spite of order of court passed in OM case No-505/21 the appellant did not provide her maintenance. On 16.08.2023 he had gone to her *sasural* but her mother-in-law and her husband did not allow her in her matrimonial house. She wants to lead conjugal life with her husband till whole life and the appellant has filed the false and concocted case against her. She has never committed cruelty with appellant. She loves her husband and wants to lead conjugal life with him.

(ii) In cross she has stated that CP case no.-2156/21 was withdrawn by her with their mutual consent. It is not true that by alleging false allegation she instituted false case against her husband and thereafter withdrew the same one sided. She has filed a case for demand of dowry and under Domestic Violence Act against her husband after filing of the divorce case but she came to know about this divorce case after filing of maintenance case. Both the parties tried to settle the dispute in court campus as well as before the people of society for about 20 times, but the same was fruitless. Her husband asked her

to keep her but later on denied. It is not true that she has committed cruelty against her husband due to which the marital life has now broken.

(iii) **D.W.-2 Sumitra Agarwal** is mother of the respondent who has supported the evidence of D.W.-1 in examination-in-chief. In cross she has stated that in May 2018 her daughter and her son-in-law had gone to attend the marriage of the daughter of Bua of the appellant. She did not go to attend the marriage in the family of appellant rather her daughter had gone. She did not give any application against her son-in-law in Thana on 30.06.2021. Her son-in-law is financially sounder than her. She talks with her daughter on telephone sometimes. It is not true that the behaviour of her daughter towards her husband was cruel and she has tortured her husband physically and mentally.

24. The learned Family Judge has appreciated the evidences led on behalf of the parties as also the submission made in the pleading, i.e., plaint and written statement, and on consideration of the aforesaid, has dismissed the suit filed under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 by the appellant against the respondent for dissolution of marriage on the ground of cruelty.

25. The learned counsel for the appellant/husband has argued that the evidence led before the learned Family Court has not properly been considered and as such, the judgment suffers from perversity, hence, not sustainable in the eyes of law.

26. While on the other hand, argument has been advanced on behalf of the respondent/wife that the judgment is well considered one, as such, the judgment

impugned passed by the learned Family Court may not be interfered with as the same has been passed after consideration of all the aspects of the matter and material, evidences and exhibits placed on record.

27. It needs to refer herein that since appellate jurisdiction has been invoked herein, therefore, before entering into merit of the case, at this juncture it would be purposeful to discuss the appellate jurisdiction of the High Court.

28. It needs to refer herein that under section 7 of the Family Courts Act, the Family Court shall have and exercise all the jurisdiction exercisable by any District Court or any Sub- ordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature which are described in the explanation to section 7(1).

29. Sub-section (1) to section 19 of the Family Courts Act provides that an appeal shall lie from every judgment or order not being an interlocutory order of a Family Court to the High Court "both on facts and on law". Therefore, section 19 of the Family Courts Act is parallel to section 96 of the Code of Civil Procedure, the scope of which has been dealt with by the Hon'ble Apex Court in series of judgments.

30. The law is well settled that the High Court in a First Appeal can examine every question of law and fact which arises in the facts of the case and has powers to affirm, reverse or modify the judgment under question. In ***"Jagdish Singh v. Madhuri Devi" (2008) 10 SCC 497*** the Hon'ble Supreme Court observed that it is lawful for the High Court acting as the First Appellate Court to enter into not only questions of law but questions of fact as well and the appellate Court therefore can reappraise, reappreciate and review the entire evidence and can come to its own conclusion. For ready reference the relevant paragraph of the said judgment is being quoted as under:

> *"It is no doubt true that the High Court was exercising power as the first appellate court and hence it was open to the Court to enter into not only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a rehearing of the main matter and the appellate court can reappraise, reappreciate and review the entire evidence--oral as well as documentary--and can come to its own conclusion."*

31. Further, it needs to refer herein that under section 3 of the Indian Evidence Act a fact is said to be proved when the Court either believes it to exist or considers its existence so probable that a prudent man under the circumstances would proceed on the supposition that such fact really exists. Therefore, the normal rule of preponderance of probability is the rule which governs the civil proceedings like this.

32. The expression "preponderance of probability" is not capable of exact definition nor can there be any strait-jacket formula or a weighing machine to find out which side the balance is tilted. The preponderance of probability would imply a positive element about possibility of existence of a fact. This means a higher degree of probability of happening of something and existence of a fact.

33. In ***"A. Jayachandra v. Aneel Kaur" (2005) 2 SCC 22*** the Hon'ble Apex Court has observed that the concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife.

34. Since this Court is exercising the power of appeal as referred hereinabove and as per the settled position of law which require the consideration of the appellate Court is that the order/judgment passed by the appropriate Forum, if suffers from perversity, the same is to be taken as a ground for its reversal.

35. Further, this Court while appreciating the argument advanced on behalf of the parties on the issue of perversity needs to refer herein the interpretation of the word "perverse" as has been interpreted by the Hon'ble Apex Court which means that there is no evidence or erroneous consideration of the evidence. The Hon'ble Apex Court in ***Arulvelu and Anr. vs. State [Represented by the Public Prosecutor] and Anr., (2009) 10 SCC 206*** while elaborately discussing the word perverse has held that it is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law. Relevant paragraphs, i.e., paras-24, 25, 26 and 27 of the said judgment reads as under:

> ***"24.*** *The expression "perverse" has been dealt with in a number of cases. In Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501] this Court observed that the expression "perverse" means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.*
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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.*
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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 pleading and law is a perverse order. In Moffett v. Gough [(1878) 1 LR 1r 331] the Court observed that a "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey [106 NW 814] the Court defined "perverse" as turned the wrong way, not right; distorted from*

the right; turned away or deviating from what is right, proper, correct, etc.

27. *The expression "perverse" has been defined by various dictionaries in the following manner:*

1. Oxford Advanced Learner's Dictionary of Current English, 6th Edn.

"Perverse.—Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable."

2. Longman Dictionary of Contemporary English, International Edn.

Perverse.—Deliberately departing from what is normal and reasonable.

3. The New Oxford Dictionary of English, 1998 Edn.

Perverse.—Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

4. The New Lexicon Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.)

Perverse.—Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

5. Stroud's Judicial Dictionary of Words & Phrases, 4th Edn.

"Perverse.—A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.""

36. From the aforesaid it is evident that if any order made in conscious violation of pleading and law then it will come under the purview of perverse order. Further "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

37. Thus, "perversity" refers to a finding or decision so unreasonable or irrational that no reasonable person acting judicially could have reached it. It signifies a gross and unreasonable assessment of evidence or law by a court.

38. Further Perversity is a high threshold for intervention, distinguishing it from a mere error of fact or law. The "safest approach on perversity is the classic

approach on the reasonable man's inference on the facts but inadequacy of evidence or a different reading of evidence is not perversity, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Damodar Lal v. Sohan Devi, (2016) 14 SCC 197.***

39. On the basis of the aforesaid factual aspect and settled position of law, the question which primarily arises for consideration in the present appeal is *whether the appellant-husband has been able to establish, on the basis of the evidence brought on record, that the respondent-wife treated him with cruelty within the meaning of Section 13(1)(i-a) of the Hindu Marriage Act, 1955 so as to entitle him to a decree of divorce.*

40. Since in the present matter, a submission has been advanced on behalf of the appellant-husband that the respondent-wife subjected him to mental cruelty, it becomes necessary to advert to the statutory element of cruelty as contemplated under Section 13(1) (i-a) of Hindu Marriage Act 1955.

41. Cruelty, for the purposes of matrimonial law, may be physical or mental. However, an allegation of cruelty cannot be accepted merely because the matrimonial relationship has become strained or because the conduct of one spouse has caused unhappiness to the other. The conduct complained of must be established by reliable evidence and must be of such nature and gravity as to satisfy the legal requirement of cruelty.

42. It is equally well settled that the matrimonial dispute has to be considered on the basis of the totality of the circumstances brought on record. Isolated incidents, ordinary wear and tear of matrimonial life, trivial disagreements or differences arising between spouses cannot, without more, constitute cruelty.

43. So far the allegation of cruelty is concerned, it needs to refer herein the definition of '*cruelty'* as has been defined by Hon'ble Apex in the judgment rendered in ***Dr. N.G. Dastane Vs. Mrs. S. Dastane [(1975) 2 SCC 326],*** wherein it has been held that the Court is to enquire as to whether the charge as cruelty, is of such a character, as to cause in the mind of the petitioner, a reasonable apprehension that, it will be harmful or injurious for him to live with the respondent.

44. The cruelty has also been defined in the case of ***Shobha Rani Vs. Madhukar Reddi [(1988) 1 SCC 105],*** wherein the wife alleged that the husband and his parents demanded dowry. The Hon'ble Apex Court emphasized that "cruelty" can have no fixed definition.

45. According to the Hon'ble Apex Court, "cruelty" is the "conduct in relation to or in respect of matrimonial conduct in respect of matrimonial duties and obligations". It is the conduct which adversely affects the spouse. Such cruelty can be either "mental" or "physical", intentional or unintentional. For example, unintentionally waking your spouse up in the middle of the night may be mental cruelty; intention is not an essential element of cruelty but it may be present. Physical cruelty is less ambiguous and more "a question of fact and degree."

46. The Hon'ble Apex Court has further observed therein that while dealing with such complaints of cruelty that it is important for the Court to not search for a standard in life, since cruelty in one case may not be cruelty in another case. What must be considered include the kind of life the parties are used to "their economic and social conditions" and the "culture and human values to which they attach importance."

47. 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.

48. In ***V. Bhagat vs. D. Bhagat (Mrs.), (1994)1 SCC 337***, the wife alleged in her written statement that her husband was suffering from "mental problems and paranoid disorder". The wife's lawyer also levelled allegations of "lunacy" and "insanity" against the husband and his family while he was conducting cross-examination. The Hon'ble Apex Court held these allegations against the husband to constitute "cruelty".

49. In ***Vijay Kumar Ramchandra Bhate v. Neela Vijay Kumar Bhate, (2003)6 SCC 334*** the Hon'ble Apex Court has observed by taking into consideration the allegations levelled by the husband in his written statement that his wife was "unchaste" and had indecent familiarity with a person outside wedlock and that his wife was having an extramarital affair. These allegations, given the context of an educated Indian woman, were held to constitute "cruelty" itself.

50. 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.

51. "Cruelty" has an inseparable nexus with human conduct and is always dependent on social strata or milieu to which parties belong, their ways of life, relationship, temperaments and emotions that are conditioned by their social status, reference be made to the judgment rendered by the Hon'ble Apex Court in the case ***Vishwanath Agrawal* v. *Sarla Vishwanath Agrawal*, (2012) 7 SCC 288**.

52. The Hon'ble Apex Court in the case of ***K. Srinivas Rao* v. *D.A. Deepa*, (2013) 5 SCC 226** has observed that cruelty is evident where one spouse so treats other and manifests such feelings in other, as to cause reasonable apprehension in mind of other that it would be harmful or injurious to reside with other spouse and cruelty may be physical or mental. It has further been observed that staying together under the same roof is not a precondition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof.

53. In matrimonial relationship cruelty mean absence of mutual respect and understanding between spouses which embitters relationship. Sometimes it may take form of violence, or at times may just be an attitude or approach. Silence in some situations may also amount to cruelty reference be made to the case of ***Ravi Kumar v. Julmidevi, (2010) 4 SCC 476.***

54. For considering dissolution of marriage at instance of a spouse who alleges mental cruelty, result of such mental cruelty must be such that it is not possible to continue with matrimonial relationship reference may be taken from the judgment rendered by the Hon'ble Apex Court in the case of ***Joydeep Majumdar v. Bharti Jaiswal Majumdar, (2021) 3 SCC 742.***

55. Further the word 'cruelty' is used relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and

obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of **Vinita *Saxena* v. *Pankaj Pandit*, (2006) 3 SCC 778.**

56. Further, in the case of ***Manish Tyagi* v. *Deepak Kumar*, (2010) 4 SCC 339** the Hon'ble Apex Court has categorically observed that to constitute 'cruelty', it is enough that conduct of one of parties is so abnormal and below accepted norm that another spouse could not reasonable be expected to put up with it. Conduct is no longer required to be so atrociously abominable which would cause reasonable apprehension that it would be harmful of injurious to continue cohabitation with another spouse. Hence, it is not necessary to establish physical violence. Continued ill-treatment, cessation of marital intercourse, studied neglect, indifference may lead to inference of cruelty.

57. The word "cruelty" under Section 13 (1)(a) of the Hindu Marriage Act has got no static connotation, and therefore, gives a very wide discretion to the Court to apply it liberally and contextually.

58. What is cruelty in one case may not be the same for another and has to be applied from person to person while taking note of the attending circumstances. Harm or injury to health, reputation, the working-career or the like, would be important considerations in determining whether the conduct of the defending spouse amounts to cruelty. It has to be shown that the defending

spouse has treated him with cruelty to cause reasonable apprehension in his/her mind that it will be harmful or injurious to live with the contesting spouse.

59. In the present case, the appellant has alleged that the respondent refused physical intimacy immediately after marriage, remained confined to her room, quarrelled over trivial matters, misbehaved with family members and guests and expressed her desire to leave the matrimonial relationship.

60. It is significant that the allegations made by the appellant have been specifically denied by the respondent. The respondent, on the other hand, has levelled serious allegations of cruelty against the appellant and his family members. Thus, the pleadings of the parties disclose competing versions of the matrimonial relationship.

61. In such circumstances, the burden remained upon the appellant, who sought dissolution of the marriage on the ground of cruelty, to establish the material facts pleaded by him. Mere allegations in the plaint, in the absence of satisfactory proof, cannot constitute the basis for granting a decree of divorce.

62. It is also necessary to bear in mind that ordinary differences, disagreements, incompatibility of temperament, occasional quarrels or isolated incidents of unpleasant conduct cannot automatically be elevated to the level of matrimonial cruelty. The Court is required to consider the nature and gravity of the conduct in the overall context of the matrimonial relationship.

63. The appellant has also attributed a substantial role to the mother of the respondent and alleged that she continuously interfered in the matrimonial relationship and instigated the respondent.

64. Even assuming that there was some interference by the mother of the respondent, the relevant question for the purpose of Section 13(1)(i-a) remains

whether the conduct attributable to the respondent herself, as established by evidence, amounted to cruelty towards the appellant.

65. A matrimonial decree cannot be granted merely on the basis of a general allegation that a relative of the spouse interfered in the matrimonial relationship, unless the acts complained of are established and are shown to constitute cruelty within the meaning of the statute.

66. Upon careful scrutiny of the evidences adduced by both parties, it is manifest that the allegations of cruelty levelled by the appellant-husband remain unsubstantiated. The testimony of P.W-1, being based on hearsay, lacks probative value. The deposition of P.W-2 (husband) is riddled with contradictions, inasmuch as he himself admitted that the respondent participated in family functions, accompanied him to social ceremonies, remained present during the treatment and funeral rites of his father, and even sought to resume cohabitation. His admission that the respondent attempted to enter the matrimonial home on 16.08.2023 but was prevented by his mother, coupled with the fact that he has failed to comply with the maintenance order, demonstrates that the husband himself obstructed the continuance of conjugal life.

67. Conversely, the evidence of D.W-1 (wife) is consistent and corroborated by D.W-2 (her mother). She has categorically deposed that she discharged her marital obligations, participated in family functions, cared for her father-in-law during illness, and expressed her desire to continue conjugal life. Her assertion that she was driven out of the matrimonial home on account of dowry demands finds support in the pending complaint case. The allegation that the husband refused to donate liver for their ailing child, resulting in the child's death, further reflects neglect and cruelty on his part.

68. From the record it clearly emerges that the respondent wife has consistently expressed her willingness to reside with her husband. However, the appellant/husband has categorically deposed that he does not wish to keep her with him, which is evident from Paragraph 63 of his cross-examination. This admission unequivocally demonstrates that the impediment to cohabitation is not attributable to the respondent wife but arises from the appellant's own refusal to resume matrimonial life.

69. In view of the aforesaid, this Court is of the considered opinion that the appellant-husband has failed to establish cruelty on the part of the respondent-wife. On the contrary, the conduct of respondent/wife reveals bona fide intention to preserve the marital bond, whereas the husband's conduct exhibits unwillingness to continue conjugal life.

70. Further, on the evidence available on record, the learned Family Court has not found the allegation to have been proved in such manner as would justify dissolution of marriage.

71. This Court has independently examined the reasoning of the learned Family Court and find that the conclusion is based upon appreciation of the evidence available before it. The appellant has not demonstrated any material piece of evidence which has been completely ignored or any finding which is demonstrably contrary to the evidence on record.

72. Further, the appellant has particularly relied upon electronic material allegedly contained in a pen-drive. From the submissions made before this Court, it is apparent that the said pen-drive was not effectively brought on record as evidence in accordance with the procedure adopted by the learned Family Court.

The respondent was admittedly not supplied a copy thereof despite opportunities granted by the Court.

73. It needs to refer herein that the mere production of electronic material does not, by itself, establish the truth of its contents. The material has to be brought on record and proved in accordance with the applicable law of evidence, subject to the nature of the electronic record and the manner in which it is sought to be produced.

74. At this juncture, it would be apt to refer herein the settled position of law as settled by the Hon'ble Apex Court that electronic evidence can be presented as evidence in the court, but they require proper authentication and compliance of Section 65B of the Indian Evidence Act (now replaced by the Bharatiya Sakshya Adhiniyam, 2023). This means a certificate is usually needed to confirm the authenticity of the evidence.

75. Further from perusal of Section 14 of the Family Courts Act, it is evident that it is not mandatory upon the family court to accept any type of electronic evidence rather same is to be accepted by the learned family judge in view of provision of Section 14 of the Family Courts Act and the genuineness of the electronic evidence is to be assessed by the learned family judge in order to come to the conclusion of the lis. The issue of authenticity is *sine qua non* in adjudication of the issue and if the authenticity of the chat without verifying the same is to be accepted, then it will lead to miscarriage of justice and it will not come under the purview of fair trial.

76. It needs to refer herein the ratio of judgment rendered by the Hon'ble Apex Court in the case of ***Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473*** wherein it has categorically been held that safeguards provided under Section

65-B of Act, 1872 are to ensure the source and authenticity of electronic records. As electronic records are more susceptible to tampering, alteration, transposition, excision, etc., without such safeguards, whole trial based on proof of electronic records can lead to travesty of justice.

77. However, the Hon'ble Apex Court in the case of ***Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801***, has observed that the requirement of certificate under Section 65-B (4) being procedural, can be relaxed by Court wherever interest of justice so justifies and thus, requirement of certificate under Section 65-B (4) is not always mandatory.

78. The Full Bench of the Hon'ble Apex Court in the case of ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1*** while overruling the judgment passed in the case of ***Shafhi Mohammad v. State of H.P. (supra)*** has settled the controversy surrounding the electronic evidence and has observed that the certificate under Section 65B (4) is unnecessary if the original document itself is produced and this can be done by the owner of the laptop, mobile phone etc. by stepping into the witness box. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B (1), together with the requisite certificate under Section 65B (4).

79. Thus, the Hon’ble Supreme Court in ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (supra)*** while considering Section 65-B of the Indian Evidence Act, 1872, reiterated the legal requirements governing proof of electronic records. The Court clarified the distinction between production of the

original electronic device and reliance upon a copy/secondary electronic record and explained the circumstances in which certification under Section 65-B becomes relevant.

80. In the present case, however, it is not necessary for this Court to enter into an elaborate determination regarding the ultimate admissibility of the pen-drive, because the respondent was admittedly not supplied a copy thereof despite opportunities being granted.

81. The appellant's contention that an application had been filed for supplying the copy of the pen-drive cannot, by itself, establish the contents of the electronic record or make the same substantive evidence without the requisite foundational requirements being satisfied, the appellant cannot, therefore, seek to make the said electronic material the foundation for reversing the judgment of the learned Family Court when the material itself was not duly admitted and considered as evidence at the trial stage.

82. More importantly, even if the said electronic material is kept aside, the appellant was required to establish his case of cruelty casted upon him by the respondent/wife, through the other oral and documentary evidence available on record. However, the allegations, in order to constitute a legally sustainable ground of cruelty, were required to be established through cogent and reliable evidence.

83. The learned Family Court, after appreciation of the evidence led by the parties, has recorded a finding that the appellant failed to establish his allegations even on the standard of preponderance of probabilities. Upon consideration thereof, the learned Family Court has found that the appellant failed to prove the alleged cruelty.

84. The appellate Court, while exercising jurisdiction under Section 19 of the Family Courts Act, is certainly competent to reappreciate the evidence. However, interference is warranted where the findings recorded by the Court below are shown to be contrary to the evidence on record, perverse, arbitrary or otherwise unsustainable in law, in the present case, no such infirmity has been established.

85. Further, in the present case, the appellant has not been able to demonstrate that the findings recorded by the learned Family Court suffer from such infirmity. Merely because another view may be possible on appreciation of the evidence is not, by itself, sufficient to warrant interference with the judgment under appeal.

86. The allegation regarding refusal of physical relationship, the alleged conduct of the respondent during the honeymoon, her alleged misbehaviour with guests and family members, and the allegation regarding interference by her mother have all been considered in the context of the evidence available on record. The learned Family Court has not found the evidence sufficient to establish the ingredients of cruelty.

87. We are not persuaded to take a different view in the absence of any cogent material demonstrating that the findings of the learned Family Court are perverse or contrary to the record.

88. It is also relevant that the respondent has consistently taken the stand that she was willing to resume matrimonial life and did not desire dissolution of marriage. Such stand, by itself, does not defeat a claim for divorce if cruelty is otherwise established; however, in the present case, the material on record does not establish the appellant's allegations to the requisite standard.

89. The Court is conscious of the fact that matrimonial proceedings involve the personal relationship of the parties and that allegations and counter-allegations often emerge from a relationship which has become seriously strained. Nevertheless, the jurisdiction to dissolve a marriage on the ground of cruelty has to be exercised upon proof of the statutory ground and not merely on the basis of incompatibility, matrimonial discord or the subjective perception of one spouse.

90. On an overall consideration of the pleadings, evidence and findings recorded by the learned Family Court, we are of the considered view that the appellant has failed to establish that the respondent treated him with cruelty within the meaning of Section 13(1)(i-a) of the Hindu Marriage Act, 1955.

91. The learned Family Court has thus committed no error of law in dismissing the matrimonial suit. The impugned judgment dated 17.01.2025 does not suffer from any perversity, illegality or jurisdictional error warranting interference by this Court.

92. Accordingly, the present appeal is dismissed.

93. The judgment dated 17.01.2025 and decree signed on 29.01.2025 passed by the learned Additional Principal Judge, Additional Family Court-II, Dhanbad in Original Suit No. 536 of 2021 is hereby affirmed.

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

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

(Pradeep Kumar Srivastava, J.) **(Pradeep Kumar Srivastava, J.)**

08th Oct, 2026
Saurabh/**A.F.R.**

Uploaded on : 09.10.2026