Jharkhand High Court
Gautam Mahanty vs Smt. Jayshree Mahanty on 9 February, 2021

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IN THE HIGH COURT OF JHARKHAND AT RANCHI

First Appeal No. 52 of 2007

Gautam Mahanty ... ... Appellant
Versus
Smt. Jayshree Mahanty ... ... Respondent

CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh Hon'ble Mrs. Justice Anubha Rawat Choudhary

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Through: Video Conferencing

For the Appellant : In person
For the respondents : Mr. Rohitashya Roy, Advocate

40/09.02.2021 Heard the appellant is person and Mr. Rohitashya Roy for the respondent.

2. The appellant is in appeal against the dismissal of Title (Mat) Suit No. 13 of 2003 vide judgment dated 30.03.2007, decree dated 09.04.2007, passed by the learned Principal Judge, Family Court, Bokaro, whereby the suit for divorce on the grounds of cruelty and desertion under Section 13 of the Hindu Marriage Act, 1955 has been dismissed.

3. The case of the appellant briefly stated as under:

> The appellant and the respondent are Hindus and are governed by the provisions of Hindu Marriage Act, 1955. The marriage between appellant and respondent was solemnized on 09th May, 1997 at Manbazar, at the house of the defendant as per Hindu rites and customs. Thereafter out of the wedlock, a female child was born in the month of November, 1998 at Bankura Sammilani Medical College. At that point of time, the appellant was posted as Executive Engineer, in Damoda Colliery and had been allotted an official quarter by the BCCL authorities. After marriage, he took his wife and daughter to his official quarter with lots of sweet conjugal dreams. The parents of the appellant welcomed the respondent in the matrimonial home and all sorts of co-operation was extended to the newly wedded bride so that she could adjust herself. The behaviour of the wife, respondent herein, since the first day she came to her matrimonial home at Bokaro, was very peculiar and repulsive towards the appellant as well as to the parents of the appellant. Appellant was very shocked due to such disrespectful behaviour of his wife towards his parents and others but he

kept silent. The appellant after observance of "Asta-

Mangala" went to Kathmandu (Nepal) with his wife for honeymoon but faced serious trauma from the behaviour of his wife (respondent herein). The latter's approach towards the appellant was totally unpredictable and the respondent used to be totally withdrawn. She showed absolute indifference towards her family obligations and did not even respond to the calls of the appellant. The appellant in order to have peace and tranquillity used to concede to all irrational demands and desires of the respondent but marital relationship instead of improving steadily deteriorated due to uncompromising behaviour and capricious attitude of respondent. The appellant in his sincere endeavour to pacify his wife even had to face slaps and fists besides abusive languages. Repeated recurrence of such ill-temperament even in presence of parents and the friends of the appellant made the life of the appellant hell. The appellant being the only son of his parents felt extreme mental humiliation and in order to relieve his parents shifted the respondent to Damoda at his place of work. The respondent was extremely reluctant to accompany the appellant for attending any invitation, social gathering and even officer's family meet. The respondent on most of the days for no reasons did not cook or arrange food for the appellant. On asking for reasons for the same, the respondent used to attack the appellant physically causing even bodily harm due to infliction of scratches with nails. The appellant in such state of affairs sought for intervention of his parents-in-law but instead of improving the situation it worsened to the lowest ebb.

4. Lastly, the appellant, having no other alternative, requested his parents-in-law to take their daughter for few days on the expectation that their company and good advice might bring changes in her behaviour and attitude of the respondent. Respondent in the meantime conceived. However, such conception instead of bringing change of her approach, made her all the more cruel not only towards the appellant but also the baby in her womb.

Filthy and slang abuses, physical humiliation at the hands of the respondent became almost a regular phenomenon in the life of the appellant and his parents and friends were mere onlookers to his such ordeal. The situation assumed such proportion that the appellant felt seriously apprehensive of his personal safety and even expressed such mental state to others. The appellant being utterly disgusted and apprehensive had mentally broken down. Finding him in such condition, his father requested father of the respondent to come and to take decision. The father of the respondent arrived and on witnessing everything arranged to take his daughter with him with all her belongings. It was disclosed by the father of the respondent that after smooth delivery and total recovery of the respondent, he would send information to the appellant for doing the needful. The respondent before her final departure in June, 1998 was shifted by the appellant to his father's quarters at Bokaro Steel City where she spent 7/10 days. On 2-3 occasions within those few days, Respondent on flimsy pretext became extremely frenzied and her tantrums continued for hours. Her target was the appellant who was not only physically humiliated but was also abused in filthiest possible language. Nonetheless the appellant used to keep telephonic contact to have information about respondent. Unfortunately, he was abused by her in such ugly way that he had to disconnect the line. Appellant was also not given the information about the hospitalization of the respondent and birth of the child in the first week of November, 1998. The appellant was shocked to learn that his wife has filed a complaint before the learned C.J.M. Purulia against him, his parents and married

sister on unfounded, false and baseless allegations. On the basis of the same, Manbazar P.S. Case No. 48/99 had been instituted under Sections 498A/406/34 of the Indian Penal Code and Section 4/5 of the Dowry Prohibition Act causing damage and injury to the reputation of the appellant and his family. The conduct of the respondent became such that it had become intolerable for the appellant to suffer any longer and it was impossible to live together. It was averred that the respondent had caused cruelty, physically and mentally in many ways as aforesaid and the marital tie between the appellant and the respondent has broken down irretrievably and could not be saved. The appellant stated that it would not be conducive for him to continue the marital tie. The cause of action for the suit arose within the jurisdiction of the Family Court on 09.05.1997, when the solemnization of the marriage took place, in the month of November, 1998 and in December, 1999 when the respondent initiated false and baseless criminal proceedings and on various subsequent dates and the same is still subsisting. Case of the Respondent:

5. The respondent stated in her written statement that there was no cause of action for the suit and the suit is not maintainable in the law and on facts as stated by the appellant. The respondent had reason to believe that the father of the appellant had pressurised the appellant to put his signature on the petition drafted as per the dictation of the father- in-law, as the father of the respondent was unable to satisfy the additional demand of dowry of Rs. 3 lacs for purchasing a car. It was further stated that the appellant and the respondent are Hindus and they are governed by the Hindu Marriage Act, 1955. The marriage was solemnized on 9th May, 1997 at Manbazar within P.S. Manbazar and within the district of Purulia according to Hindu rites and customs. The respondent after marriage went to her matrimonial home and started living with her husband as husband and wife. At the time of 'Astamangala', the appellant and the respondent returned to Manbazar on 16 th May, 1997 and stayed for one day only. Thereafter the appellant and the respondent started living together as husband and wife at Bokaro in the quarter of her father-in-law from May 1997 to October 1997 except a few days when during "Durga Puja" the respondent went to her parent's house at Manbazar. The appellant and the respondent lived at Jamadoba in the quarter of the appellant till March, 1998. In the meantime, respondent conceived and she was taken to Bokaro for medical check-up. She was treated by Dr. Limaya and other doctors. It is stated by the respondent that the appellant used to misbehave with the respondent on the instigation of his parents for not giving the Motor Car in the marriage by the father of the respondent. The respondent due to torture and neglect meted by the members of the matrimonial family seriously fell ill. The appellant asked the respondent to write to her father for money for medical check-up and accordingly the father of the respondent went to Bokaro and gave Rs. 10,000/- for the treatment of the respondent. The respondent at the time of delivery was admitted in Bankura Sommilani Medical College Hospital and delivered a female child in the said Hospital. The appellant and his family members neither visited the respondent nor any information of the respondent was taken even after the birth of the child. It is stated that at the time of marriage, the father of the respondent had given Rs. 2,10,000/- through Bank draft to the appellant and Rs. 1,50,000/- was fixed in the name of the respondent. Gold ornaments worth Rs. 1,00,000/- was also given to the appellant at the time of marriage. The appellant had demanded Rs. 3,00,000/- for purchasing a car and due to non-fulfilment of demand, the appellant did not take the respondent back to Bokaro where the parents and other members of the appellant stayed. It is further stated that the appellant on 28.11.1999 came to Manbazar and threatened the respondent that he would not provide her shelter in her house unless Rs. 3,00,000/-

is paid. The allegations made by the appellant at para 5 are mischievously false and motivated. The respondent had a fixed deposit of Rs. 50000/- from before her marriage. It is submitted that the respondent never demanded anything or put any pressure upon the appellant at any time. Further allegation against the appellant is that he is of uncompromising behaviour, capricious attitude and ill tempered. The allegation made against the respondent that she ran into tantrums humiliating the appellant both mentally and physically are all mischievously false and motivated. The respondent was taken to "Damoda" his place of work to live together as his parents thought it proper and necessary for the couple to live together. The respondent denied all other allegations made at para 8 of the plaint. The allegations made at para 9 were denied as equally false and motivated. The respondent as usual used to take part in social gatherings, officer's family meet and attended the invitation whenever occasion arose and the colleagues of the appellant and his family members praised the sweet behaviour of the respondent. The respondent performed all household work, cooked and served delicious food to the appellant. It is further stated that when the appellant fell seriously ill during the period of conception, the father of the respondent was called as he is a medical practitioner. The respondent was sent as the condition of her health was very much deteriorated. It is further stated that on one occasion, the appellant came to Manbazar on 28.11.1999 and threatened the respondent with demand of additional 3 lacs rupees for purchasing car. On refusal the respondent was kicked and the appellant attempted to kill her. As such, a criminal case had been filed at Purulia court. The allegation of para 15 of the plaint does not depict the correct state of things. The respondent submitted that in view of the aforesaid facts, there was no cause of action for the suit as the marriage was solemnized at Manbazar, within District Purulia on 09.05.1997 as also no part of cause of action arose in the month of November, 1998 and December, 1999.

6. Based on the rival pleadings of the parties, the following issues were framed on re-cast by the Family Court:-

> (i) "Whether the suit is maintainable in its present form?
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> (ii) Whether the plaintiff has got any valid cause of action for this suit?
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> (iii) Whether the respondent treated the plaintiff with cruelty and whether the respondent ever misbehaved with the plaintiff or her in-laws during her stay at the matrimonial home entitling the plaintiff to a decree of divorce?
>
> (iv) Whether the plaintiff is entitled to a decree of divorce on the ground of desertion by the defdt.?
>
> (v) Whether the plaintiff is entitled to any other relief or reliefs?"

7. During course of trial, appellant examined 5 witnesses, namely, Mithileshwar Narayan (P.W.-1), plaintiff-Gautam Mahanty (P.W.-2), Sanjay Singh (P.W.-3), Awdhesh Kumar Singh (P.W.-4) and plaintiff's father Gopal Prasad Mahanty (P.W.-5). Examination-in-chief were filed in the form of affidavits of the 5 witnesses and they were subjected to cross-examination. Defendant Jayshree

Mahanty examined herself as D.W.-1, Dr. Raj Kumar Mahapatra as D.W.-2 and defendant's brother Jimut Bahan Mahanty as D.W.-3. No documentary evidences were brought on record by either of the parties in the case. Learned trial court proceeded to answer each of the issues as under:-

Issues No.-(iii) relating to cruelty on the part of the respondent was answered against the appellant. According to the learned Family Court, petitioner/appellant herein had not evidenced even a single circumstance and the manner in which the respondent allegedly indulged in outburst of extreme anger, nor was any such occasion pointed out. Such an allegation was found to be unwarranted. Regarding institution of the case under Section 498-A of the IPC by the respondent, the learned Family Court opined that the case was still subjudice and it would not be proper to make any comment on the truth or falsity of the allegation relating to torture for dowry meted out to the respondent by the plaintiff. It was further observed that unless and until it is finally held by judicial pronouncement that the dowry case was based on purely concocted and baseless allegation and the prosecution was malicious, the woman can't be held responsible for causing cruelty by instituting a dowry case.

Learned Family Court then took up issue No.-(iv) relating to 'desertion' on the part of the respondent and decided it against the petitioner/appellant. Learned Family Court once again observed that it was not proper for it to pass any comment regarding the story of torture by the defendant regarding non-payment of Rs. 3,00,000/- for purchasing a car and the stand of the respondent that she could not go back to the matrimonial home after delivery of the child. It also took into account that efforts for settlement through conciliation proceeding had failed earlier though the defendant had clearly expressed her desire to live with the plaintiff on any terms and conditions.

Learned Family Court on consideration of the pleadings on record and the evidence adduced by the parties observed that there was total absence of animus deserendi on the part the defendant wife at any point of time in the past. Therefore, physical desertion alone could not entitle the plaintiff for a decree of divorce. Issue No-(i) relating to maintainability was decided in favour of the plaintiff, but issue No.-(ii) relating to a valid cause of action was decided against him in view of the findings recorded in relation to issue No.-(iii) and (iv). Learned Family Court also referred to the decisions cited by the plaintiff, but opined that they were not rendered in the similar facts of the case. Accordingly, the suit was dismissed on context, but without cost.

8. In the impugned judgment, it was taken note of that the respondent was getting Rs. 2,000/- per month for her maintenance and Rs. 1,500/- for the maintenance of her daughter as maintenance pendente lite under Section 24 of the Hindu Marriage Act, 1955 vide order dated 15.04.2004. The plaintiff was directed to continue the aforesaid amount for the maintenance of the defendant and daughter until he brings them back to the matrimonial home. During the proceedings of this appeal, vide order dated 02.02.2016, the interim maintenance was enhanced to Rs. 10,000/- per month in favour of the respondent wife and Rs. 5,000/- per month to the respondent's daughter. The General Manager, Phularitand Barora Area I, BCCL was directed to deduct Rs. 15,000/- per month from the salary of the appellant and deposit in the bank account of the respondent.

9. In order to complete the narrative, it is also pertinent to state here that during pendency of this appeal, the criminal case lodged under Section 498-A r/w 34 of the IPC being G.R. Case No. 938 of 1999 (T.R. No. 1442 of 2003) by the respondent against the appellant and his family members was decided vide judgment dated 20.05.2011 passed by learned Judicial Magistrate 3rd court, Purulia and brought on record as Annexure-2 to the supplementary affidavit dated 21.08.2015 filed by the appellant. The learned trial court held that the prosecution failed to prove the case under Section 498-A IPC against the accused beyond the shadow of reasonable doubts. Accused (i) Gautam Mahanty i.e. plaintiff (ii) Gopal Prasad Mahanty (father) (iii) Urmila Mahanti (mother) (iv) Rupali Sannigrahi (sister) were found not guilty to the accusation against them under Section 498-A/34 of the IPC. They were acquitted of the charges and released from their bail bonds.

10. Respondent has brought on record an order passed in Misc.

Case No. 90 of 2013 dated 12.03.2020 (Annexure-S/1) through supplementary affidavit dated 16.12.2020. The domestic violence case has been decided by the court of learned Judicial Magistrate, 1st Court, Purulia by the ex-parte order dated 12.03.2020. The opposite party Gautam Mahanty (appellant) has been directed to pay Rs. 7,000/- per month as maintenance for the petitioner-wife and Rs. 3,000/- for his child in total Rs. 10,000/- by tenth day of every English month without fail. He has been restrained from inflicting any act of domestic violence upon the petitioner i.e. respondent herein.

Appellant has pointed out that the factum relating to increase of the maintenance amount pursuant to the order dated 02.02.2016 passed by this Court in the present appeal was not brought to the notice of the learned Judicial Magistrate, 1st Class, Purulia, during the proceedings in the domestic violence case.

11. Appellant has been appearing in person. He has assailed the impugned judgment and decree inter alia on the following grounds:

That the parties lived together as spouses only for a brief period after the marriage on 09.05.1997 till 16.06.1998 when she was taken to her parents house. Since then till date, there has been no cohabitation between the parties. A daughter was born on 05.11.1998 at Bankura Medical College, Bankura while the respondent was staying with her parents. During her stay in the matrimonial home, her conduct was oppressive and abusive without any instigation on the part of the appellant. She refused to cook or arrange food for the appellant and on being asked for reasons became arrogant and aggressive at times. She also used to throw tantrums by throwing articles which resulted in bodily injuries. Appellant tried to maintain contact with her telephonically, but she used to disconnect the line in an ugly manner. He was not given any information about the hospitalization of the respondent and birth of the child in 1 st week of November, 1988. Appellant was shocked to learn the institution of the criminal case being Manbazar P.S. Case No. 48 of 1999 under Section 498-A/406/34 of the IPC r/w Section 4/5 of the Dowry Prohibition Act against himself and his parents and sister.

The respondent without any cause chose to stay away from the matrimonial home. The appellant, his parents and his sister all were subjected to intense humiliation on account of institution of the false criminal case. The criminal case ended in acquittal of all the accused persons. It was on account of such studied neglect and indifference to the matrimonial life amounting to physical and mental cruelty that the appellant had to institute a suit for divorce in the year 2003 before the learned Family Court, Bokaro. The criminal proceedings continued for 12 years leading to their acquittal, but in the process, the appellant, his parents and his sister suffered persecution on unfounded allegation. Even though, the respondent was not living with the appellant since June, 1998, but a false case under Domestic Violence Act was instituted before the court at Purulia being Misc. Case No. 90 of 2013. The case was decided ex-parte. The learned Judicial Magistrate, 1st Class, Purulia was not even informed regarding the increase of maintenance amount from Rs. 3,500/- to Rs. 15,000/- by this Court vide order dated 02.02.2016 which amounted to suppression of material facts from the court in a judicial proceeding. The learned court being misled by deliberate acts of suppression was persuaded to increase the maintenance amount which the appellant has already been paying.

12. Appellant has referred to the deposition of the prosecution witnesses in order to support the charge of cruelty. He has referred to the statements made by the plaintiff (P.W.-2) at paragraphs 28, 29 and 34 in cross-examination that the respondent indulged in blackmailing the appellant on threats of institution of false criminal case within 7 years of the marriage and sending him to jail. She also used to indulge in abusive language towards his father while addressing him. It is submitted that the father of the plaintiff has also supported the charge of cruelty perpetrated by the respondent during her stay in the matrimonial home. She left in 2 nd week of June, 1998 and since then has been staying with her parents. Father of the plaintiff was not informed of the birth of the only grand- daughter. Appellant has also narrated the factum of institution of criminal case under Section 498-A of the IPC read with other allied sections at paragraphs 23, 24 and 25 of his examination-in-chief. Appellant has submitted that the learned trial court in the judgment of acquittal has categorically held that no instances of torture were established by any witness on the part of prosecution. D.W.-2 who was the brother of the respondent did not appear in the criminal case to depose in support of the allegations made by her. His deposition during the trial of the matrimonial suit also goes to show that he was not even sure about the year of the marriage of his sister with this appellant. At one place, he has stated as the year 1996 and the other place he says 1997. Appellant has also taken a plea of desertion without any reasonable cause against the respondent. According to him, her continued absence from the matrimonial home without any reasonable cause for more than 22 years fulfils the ingredients of animus deserendi. Appellant has placed reliance upon the following decisions in support of the plea of cruelty: (i) 2018 SCC Online (Jhar.) 1776; (ii) 2019 SCC Online (Chatt.) 89.

Appellant submits that the marriage has irretrievably broken down and there is no chance of reconciliation. If such a marriage is not dissolved, it would amount to perpetrating mental cruelty upon the appellant at the behest of the respondent. The respondent should not be allowed to get advantage of her own wrong. Therefore, it is submitted that the appeal be allowed by a decree of dissolution of marriage.

13. Learned counsel for the respondent Mr. Rohitashya Roy has taken the court through the relevant pleadings on record. The factum of marriage, the separation of the parties since June, 1998, the birth of the daughter out of their wedlock in November, 1998 and the institution of the criminal complaint by the respondent against the appellant and his family members at Purulia under Section 498-A and allied sections of the IPC and the Dowry Prohibition Act have not been disputed. Learned counsel for the respondent submits that the respondent had categorically denied the allegations of cruelty attributed to her in her defence. She had also stated that the divorce suit was instituted as her family was unable to satisfy the demands of dowry. She was subjected to torture by the family members of the plaintiff and they demanded a car from her father. On account of such torture, she fell ill. She was asked by the plaintiff to ask her father for money for her treatment. Accordingly, her father came to Bokaro and gave Rs. 10,000/- for her treatment. As desired by the parents of the plaintiff, she was taken to Manbazar, Purulia and admitted in Bakura Medical College & Hospital for delivery. However, plaintiff and his family members did not care to seek any information regarding the birth of the child. According to the respondent, at the time of marriage, the demand of the plaintiff's family of Rs. 2,10,000/- was fulfilled through cash and demand draft and a fix deposit of Rs. 1,50,000/- was also made in the name of the defendant. Other valuables were also demanded and given at the time of marriage. The cash certificate had been encashed by the plaintiff. On 28.11.1999, plaintiff came to Manbazar and demanded Rs. 3,00,000/-. He threatened that on failure to meet the demand, the defendant and the child will not be taken back to the matrimonial home. Respondent was always ready and willing to reside with the plaintiff and continue with the matrimonial tie. Therefore, she prayed for dismissal of the suit.

14. Learned counsel for the respondent submitted that learned trial court disbelieved the case of the plaintiff on both charges of cruelty and desertion after due appreciation of the case of the parties and the evidences on record. Learned counsel for the respondent further submitted that the judgment of acquittal passed by the learned Judicial Magistrate, 3rd court, Purulia was on account of the reason that the prosecution had failed to prove the case beyond shadow of all reasonable doubts and not a clean acquittal. The judgment has been brought on record through a supplementary affidavit without seeking amendment of the plaint or by filing any application under Order 41 Rule 27 of the CPC. Learned counsel for the respondent has also sought to distinguish the decisions rendered in the case of K. Srinivas Rao vs. D.A. Deepa reported in (2013) 5 SCC 226 and in the case of K. Srinivas vs. K. Sunita reported in (2014) 16 SCC 34 on the plea of mental cruelty due to acquittal in a criminal case. He submits that in the case of K. Srinivas Rao (supra) the Hon'ble Supreme Court had taken note of the multiple complaints lodged by the wife and her nasty allegations against the father-in-law and mother-in-law. In the case of K. Sunita (supra), a false complaint case was lodged after institution of the divorce case. Therefore, the Hon'ble Supreme Court in both instances observed that institution of such false complaints amounted to mental cruelty. Learned counsel has also placed reliance upon the decision of Hon'ble Calcutta High Court in the case of Palash Chandra Karan vs. Sujata Karan reported in 2011 SCC Online (Cal.) 976 para 11,12 13 to 15 relating to a matrimonial dispute. He submits that the Calcutta High Court has held that the judgment in criminal case can't be relied upon in a civil proceeding to substantiate the charge of cruelty. The allegations of cruelty have to be substantiated by the weight of pleadings and evidence adduced during the civil proceedings i.e. the matrimonial suit. Section 40 of the Evidence Act has also been relied upon. In support, reliance has been placed in the case of Om Prakash Gupta

vs. Ranbir B. Goyal reported in (2002) 2 SCC 256 paragraphs 11 and 12. He submits that in the case of Ravi Kumar vs. Julmi Devi reported in (2010) 4 SCC 476, the Apex Court has held that in order to substantiate the grounds of cruelty material particulars with specific details are required to be pleaded and proved and in absence thereof decree cannot be granted. He submits that the plaintiff-appellant has neither pleaded any specific instance of torture and cruelty on the part of the respondent's wife nor been able to substantiate such allegations during trial.

15. Learned counsel for the respondent has also placed reliance upon the decisions rendered by the Apex Court in the case of Ravindeer Kaur vs. Manjeet Singh (Dead) through Legal Representatives reported in (2019) 8 SCC 308 and Mangayakarasi versus M. Yuvaraj reported in (2020) 3 SCC 786. It is submitted that the Apex Court held that every acquittal in every criminal case filed by either of the parties in a matrimonial suit cannot automatically be treated as a ground for divorce, as it would be against the statutory provisions. Mere initiation of a legal proceeding on the part of the wife to protect herself and possession of her property as shield from assault cannot be treated as mental cruelty. It is submitted that the judgment of acquittal passed in the case of the appellant and his family members, therefore, could not be held to substantiate the charge of mental cruelty against the appellant in order to seek a decree of divorce.

The decision in the case of Ajay Narayan Das vs. Aasha Devi reported in 2018 SCC Online (Jhar.) 1776, according to him, was rendered in the circumstances when the case of murder lodged by the wife and her father against the husband were found to be false by the police during investigation. Since a final form was submitted, the Hon'ble Court held that lodging a false criminal case of murder by the respondent's wife amounted to mental cruelty. In the case of Chandana Singh vs. Sangita Singh relied upon by the appellant, the Hon'ble Chattisgarh High Court found that the respondent's wife had made vulgar and nasty allegations in her deposition against her father-in-law and she also refused to cohabit with her husband. In view of such conduct, the decree of divorce was granted. It is submitted that the judgments relied upon by the appellant are not applicable to the facts and circumstances of the case. Merely because, the respondent in her criminal case could not prove the allegations beyond shadow of reasonable doubt could not mean that the allegations were false. Lastly, learned counsel for the respondent has submitted that the future of the daughter of the appellant and her marital prospects is an important factor to be kept in mind while adjudicating this appeal. She is pursuing a Master's Degree in Engineering. In this regard, he has referred to para-15 of the judgment in the case of M. Yuvraj (supra).

16. We have considered the submissions of learned counsel for the parties. We have also taken into account the relevant pleadings and the evidence on record relied upon by the parties from the Lower Court Records. We have also perused the impugned judgment and gone through the decisions cited at the Bar. It is common case of the parties that the marriage took place on 09.05.1997 and since June, 1998, the parties have been living separately. A daughter was born out of the wedlock on 05.11.1998 at Bakura Medical College, Bakura while the respondent was staying at her matrimonial home. Respondent lodged a criminal complaint on 03.12.1999 against the appellant and his family members i.e. his father, mother and sister under Section 498-A/ 406/34 of the IPC read with Section 4 and 5 of the Dowry Prohibition Act. The suit for divorce was instituted by the appellant in 2003 before Family Court, Bokaro. Learned Family Court framed the issue of cruelty and desertion

in marriage besides the formal issues. On both counts, it was held that the petitioner/appellant failed to substantiate the charge by any cogent piece of evidence. The suit was dismissed on 30.03.2007.

17. During pendency of this appeal, the learned Judicial Magistrate, 3rd court, Purulia vide judgment dated 20.05.2011 acquitted the appellant and his family members from charges under Section 498-A/34 of the IPC on the ground that the prosecution had failed to prove its case beyond shadow of reasonable doubt. That judgment of acquittal has been brought on record by way of a supplementary affidavit. The appellant during trial in the Matrimonial Suit, in his deposition had made categorical reference to the institution of the criminal case against him and his family members stating that they were completely false. It was stated that the institution of the false criminal case after 18 months of her departure from the matrimonial home against him, his aged parents and his married sister with an infant baby in arms caused serious hazards and mental agony of going behind the bars to them. They had to run from District Court of Purulia to Hon'ble High Court, Calcutta and even to the Hon'ble Supreme Court of India for obtaining anticipatory bail. Appellant also stated that the allegations were craftily drafted to deliberate misuse the process of law. The criminal case lodged before institution of the divorce suit in 2003 has ultimately ended up in an acquittal of the appellant and his family members. The judgment of acquittal passed during pendency of this appeal can certainly be taken into account as a subsequent development in relation to a prosecution which was lodged before the institution of the divorce case and in regard to which the appellant had also made categorical statements in his deposition. The Apex Court in the case of K. Sunita (supra) has taken into account the judgment of acquittal, a subsequent development after the conclusion of the matrimonial suit, as a factor to be taken into account on the plea of cruelty. In this regard, reliance is also placed on the decision of reported in (2014) 16 SCC 34 (K. Srinivas vs. K. Sunita). As such, this Court is of the opinion that the judgment of the learned Judicial Magistrate, 3rd court, Purulia in the criminal case instituted between the parties leading to acquittal of the appellant can certainly be taken into consideration while deciding this appeal.

18. On a perusal of the judgment of acquittal by the learned trial court of Judicial Magistrate, 3rd Purulia, it is found that while discussing the allegations of torture, cruelty and harassment during marriage in relation to the written complaint marked as Exhibit-1 it has observed that the written complaint containing seven typed pages was prepared first, thereafter the same was read over to the complainant and thereafter she signed the same. Nowhere it was stated or claimed by the complainant that the complaint petition was prepared as per her instruction or dictation. As per learned Trial Court undoubtedly this complaint was drafted by a fertile brain and the complainant had only put her endorsement. The fact of trying to kill by setting fire on the complainant's saree by her husband on 28.11.1999 had not been stated by the complainant during course of her examination. She also did not state about assault made on her by her husband and the fact of not providing proper food to her. None of the other witnesses had even whispered to that effect. The learned trial court observed that omission of this magnitude is vital and amounts to contradiction from the FIR (Ext. A). During trial, 8 prosecution witnesses were examined including the Investigating Officer as P.W.-8. Learned trial court while rendering a finding with regard to the charge under Section 406 of the IPC held that there was not even an iota of evidence of entrustment of the gift articles to the accused. The gifted articles as per the complainant could not be termed as

dowry. It may be termed as stridhan. None of the witnesses stated that mother-in-

law of complainant had snatched all gifted articles while she returned with her father. Therefore, allegations under Section 406 IPC were not proved. The learned trial court after consideration of the evidence of the prosecution further opined that the prosecution had failed to make out the essential ingredients of Section 498-A of the IPC. The manner of torture or harassment was not stated by any witnesses and there was a lot of exaggeration, embellishment and embroidery in the case. At one point, learned trial court upon perusal of the evidence of the prosecution also observed that it was a failed marriage coloured with criminal liability. There was no evidence that the complainant suffered any health hazard due to torture by the husband. The role played by each accused was not specifically stated by the witnesses. Keeping all these facts in mind, the learned trial court held that prosecution had failed to prove the case under Section 498-A IPC against the accused beyond shadow of all reasonable doubts. The accused persons i.e. the appellant- Gautam Mahanty, his parents (Gopal Prasad Mahanty and Urmila Mahanti) and his sister (Rupali Sannigrahi) were not found guilty of the accusation under Section 498-A/34 of the IPC. They were acquitted of the charges. On the part of the respondent, the order dated 12.03.2013 passed in Domestic Violence Case No. 90 of 2013 by the learned Judicial Magistrate, 1st Court, Purulia has been brought on record. A perusal thereof shows that though it was known to the respondent and that she has been receiving enhanced maintenance of Rs. 10,000/- for her and Rs. 5,000/- for her daughter pursuant to the interim order dated 2nd February, 2016 passed in the instant appeal, the said fact was not brought to the notice of the learned Judicial Magistrate, Purulia while deciding the domestic violence case. As a result, the learned court directed the O.P./appellant herein to pay Rs. 7,000/- per month as maintenance and Rs. 3,000/- per month for his child i.e. in total Rs. 10,000/- by tenth day of every English month vide judgment dated 12.03.2020 (Annexure-S/1) brought on record by the respondent through supplementary affidavit dated 16.12.2020. It further appears that the disposal of the maintenance case under Section 125 of the Cr.P.C. vide order dated 21.01.2015 was also not brought to the notice of the learned Judicial Magistrate, 1st Class, Purulia. The learned court has observed on the basis of submission made on behalf of the petitioner/respondent herein that the petition under Section 125 Cr.P.C. is also pending before the court and the petitioner and her daughter are unable to support herself with a paltry sum of Rs. 3,500/- per month.

19. That institution of criminal case on false allegations amounts to mental cruelty now stands well-settled by virtue of the decisions rendered by the Apex Court in the case of K. Srinivas Rao (supra). The Apex Court at paragraphs 28, 29 and 38 held as under:-

> "28. Pursuant to this complaint, the police registered a case under Section 498-A IPC. The appellant husband and his parents had to apply for anticipatory bail, which was granted to them. Later, the respondent wife withdrew the complaint. Pursuant to the withdrawal, the police filed a closure report. Thereafter, the respondent wife filed a protest petition. The trial court took cognizance of the case against the appellant husband and his parents (CC No. 62 of 2002). What is pertinent to note is that the respondent wife filed criminal appeal in the High Court challenging the acquittal of the appellant husband and his parents of the offences under the Dowry Prohibition Act and also the acquittal of his parents of the offence punishable under Section

498-A IPC. She filed criminal revision seeking enhancement of the punishment awarded to the appellant husband for the offence under Section 498-A IPC in the High Court which is still pending. When the criminal appeal filed by the appellant husband challenging his conviction for the offence under Section 498-A IPC was allowed and he was acquitted, the respondent wife filed criminal appeal in the High Court challenging the said acquittal. During this period the respondent wife and members of her family have also filed complaints in the High Court complaining about the appellant husband so that he would be removed from the job. The conduct of the respondent wife in filing a complaint making unfounded, indecent and defamatory allegation against her mother-in-law, in filing revision seeking enhancement of the sentence awarded to the appellant husband, in filing appeal questioning the acquittal of the appellant husband and acquittal of his parents indicates that she made all attempts to ensure that he and his parents are put in jail and he is removed from his job. We have no manner of doubt that this conduct has caused mental cruelty to the appellant husband.

29. In our opinion, the High Court wrongly held that because the appellant husband and the respondent wife did not stay together there is no question of the parties causing cruelty to each other. 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. In a given case, while staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable. This is what has happened in this case.

38. Before parting, we wish to touch upon an issue which needs to be discussed in the interest of victims of the matrimonial disputes. Though in this case, we have recorded a finding that by her conduct, the respondent wife has caused mental cruelty to the appellant husband, we may not be understood, however, to have said that the fault lies only with the respondent wife. In matrimonial disputes there is hardly any case where one spouse is entirely at fault. But, then, before the dispute assumes alarming proportions, someone must make efforts to make parties see reason. In this case, if at the earliest stage, before the respondent wife filed the complaint making indecent allegations against her mother-in-law, she were to be counselled by an independent and sensible elder or if the parties were sent to a mediation centre or if they had access to a pre-litigation clinic, perhaps the bitterness would not have escalated. Things would not have come to such a pass if, at the earliest, somebody had mediated between the two. It is possible that the respondent wife was desperate to save the marriage. Perhaps, in desperation, she lost balance and went on filing complaints. It is possible that she was misguided. Perhaps, the appellant husband should have forgiven her indiscretion in filing complaints in the larger interest of matrimony. But, the way the respondent wife approached the problem was wrong. It portrays a vindictive mind. She caused extreme mental cruelty to the appellant husband. Now

the marriage is beyond repair."

20. It has further been held in the case of K. Sunita (supra) at paragraphs 1,2, 5 and 6 as under:-

"1. In this appeal, the counsel for the appellant has sought to draw our attention to all the arguments that had been addressed before the High Court on behalf of the appellant husband in support of his claim for dissolution of his marriage to the respondent by a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. We have, however, restricted him to the ground of alleged cruelty on account of the filing of a criminal complaint by the respondent against the appellant and several members of his family under Sections 498-A and 307 of the Penal Code, 1860 (IPC). We did this for the reason that if this ground is successfully substantiated by the petitioner, we need not delve any further i.e. whether a marriage can be dissolved by the trial court or the High Court on the premise that the marriage has irretrievably broken down. This nature of cruelty, in the wake of filing of a false criminal case by either of the spouses has been agitated frequently before this Court, and has been discussed so comprehensively and thoroughly that yet another judgment on this well-settled question of law, would be merely a waste of time. A complete discourse and analysis on this issue is available in a well-reasoned judgment in K. Srinivas Rao v. D.A. Deepa in which numerous decisions have been cited and discussed. It is now beyond cavil that if a false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce.

2. The marriage of the parties was celebrated according to Hindu rites at Hyderabad on 11-2-1989. A male child was born to the parties on 8-5-1991, after which the respondent wife, as per her pleadings, started suffering from Sheehan's syndrome. On the night of 29-6-1995/30-6-1995, the respondent left the matrimonial house and ever since then she has been living with her brother, who is a senior IAS officer. On 14-7-1995, the appellant filed an original petition praying for divorce on the ground of cruelty as well as of the irretrievable breakdown of their marriage. The respondent wife retorted by filing a criminal complaint against the appellant as well as seven members of his family for offences under Section 307 read with Sections 34, 148-A, 384, 324 IPC, and Sections 4 and 6 of the Dowry Prohibition Act, 1961. It is pursuant to this complaint that the appellant husband and seven of his family members were arrested and incarcerated. The respondent wife also filed a petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. On 30-6-2000, the learned Vth Additional Metropolitan Sessions Judge, Mahila Court, Hyderabad, acquitted the appellant and his family members, and this order has attained finality. Meanwhile, by its judgment dated 30-12-1999, the Family Court at Hyderabad, granted a divorce to the appellant on the ground of cruelty as also irretrievable breakdown of marriage; it rejected the respondent's petition under Section 9 of the Hindu Marriage Act. The respondent wife successfully appealed against the said judgment in the High Court, and it is this order dated 7-11- 2005 that is impugned

before us.

5. The respondent wife has admitted in her cross-examination that she did not mention all the incidents on which her complaint is predicated in her statement under Section 161 CrPC. It is not her case that she had actually narrated all these facts to the investigating officer, but that he had neglected to mention them. This, it seems to us, is clearly indicative of the fact that the criminal complaint was a contrived afterthought. We affirm the view of the High Court that the criminal complaint was "ill advised". Adding thereto is the factor that the High Court had been informed of the acquittal of the appellant husband and members of his family. In these circumstances, the High Court ought to have concluded that the respondent wife knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the appellant and seven members of his family and that such conduct unquestionably constitutes cruelty as postulated in Section 13(1)(i-

a) of the Hindu Marriage Act.

6. Another argument which has been articulated on behalf of the learned counsel for the respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events could have been looked into by the court. In any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was led, as also when arguments were addressed, objection had not been raised on behalf of the respondent wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf."

21. On the part of the respondent reliance has been placed on the decision of the Apex Court in the case of Ravinder Kaur (supra) on the proposition that initiation of legal proceedings by the wife to protect herself and her property as a shield from assault cannot be treated as mental cruelty. Such instances would not be convincing enough to lead conclusion that marriage is irretrievably broken down. In the facts of the present case, the criminal proceeding lodged by the respondent in the year 1999 continued up to the year 2011 ending up in the acquittal of the appellant and his family members since the prosecution had not been able to prove the charges beyond shadow of all reasonable doubts despite adducing eight prosecution witnesses including the complainant and other family members. Falsity of allegation upon acquittal of the accused persons is one thing, at the same time, the continuance of a criminal proceeding on such charges which the respondent failed to substantiate after a full drawn trial over a period of 12 years in itself would amount to prolong agony and a feeling of humiliation for the appellant and his family members facing trial. On account of such allegations, the accused persons had to run from one Court up to the Higher courts to seek protection from unnecessary arrest. In the case of M. Yuvraj (supra) relied upon by the learned counsel for the respondent at para-14 of the report, it has been held as under:-

> "14. It cannot be in doubt that in an appropriate case the unsubstantiated allegation of dowry demand or such other allegation has been made and the husband and his family members are exposed to criminal litigation and ultimately if it is found that such allegation is unwarranted and without basis and if that act of the wife itself forms the basis for the husband to allege that mental cruelty has been inflicted on him, certainly, in such circumstance, if a petition for dissolution of marriage is filed on that ground and evidence is tendered before the original court to allege mental cruelty it could well be appreciated for the purpose of dissolving the marriage on that ground. However, in the present facts as already indicated, the situation is not so. Though a criminal complaint had been lodged by the wife and husband has been acquitted in the said proceedings the basis on which the husband had approached the trial court is not of alleging mental cruelty in that regard but with regard to her intemperate behaviour regarding which both the courts below on appreciation of the evidence had arrived at the conclusion that the same was not proved. In that background, if the judgment of the High Court is taken into consideration, we are of the opinion that the High Court was not justified in its conclusion."

22. The Apex Court has observed that in an appropriate case the unsubstantiated allegation of dowry demand or such other allegation made against the husband and his family members who were exposed to criminal litigation which ultimately was found to be unwarranted and without basis would amount to mental cruelty upon the husband if such act of the wife found the basis for her husband to allege cruelty in marriage for the purposes of seeking dissolution of marriage. In the present case, the plaintiff/appellant not only did allege cruelty, but also made reference to the false allegation made by the respondent of demand of dowry and allegations of torture on non-fulfilment thereof against him and his family members. He also stated that the appellant and his parents and his sister had to run from Purulia court to Calcutta High Court to Hon'ble Supreme Court to seek protection from unwarranted arrest. The allegations of demand of dowry and torture remained unsubstantiated after a full drawn trial. Therefore, such an act on the part of the respondent could definitely be termed as inflicting mental cruelty upon the appellant. In the case of Samar Ghosh v. Jaya Ghosh, reported in (2007) 4 SCC 511, the Apex Court has cited illustrations which could amount to mental cruelty at para 101 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."

Though, the Apex Court has stated that these instances are only illustrative and not exhaustive, but 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 the 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. In the said case, the parties were living separately for more than sixteen and a half years and in those circumstances, the Apex Court came to the irresistible conclusion that the matrimonial bond had been ruptured beyond repair because of the mental cruelty caused by the respondent. As per the opinion rendered by the Apex Court in the case of K. Srinivas Rao, it is not necessary that mental cruelty can only be inflicted if the spouses live together. Even living in separation, but institution of false complaint cases would amount to mental cruelty upon the other spouse. Staying together under the same roof is not a pre-condition for mental cruelty. This has what has happened in this case also. As such, we are of the considered opinion that the charge of cruelty under Section 13 1 (i-a) of the Hindu Marriage Act stands substantiated against the respondent.

23. The suit was also instituted on the charge of desertion. In order to prove the offence of desertion, two essential conditions must be satisfied, namely:-

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(i)     The factum of separation; and
(ii)    The intention to bring cohabitation permanently to an
        end (animus deserendi)
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In this regard reliance is placed on the decision rendered by the Hon'ble Apex Court in the case of Savitri Pandey vs. Prem Chand Pandey reported in (2002) 2 SCC 73. Paragraphs 8 and 9 thereof relating to the ingredients of desertion are being profitably quoted herender:-

> "8. "Desertion", for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations i.e. not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual

> relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. After referring to a host of authorities and the views of various authors, this Court in Bipinchandra Jaisinghbai Shah v. Prabhavati held that if a spouse abandons the other in a state of temporary passion, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion. It further held: (AIR pp.

183-84, para 10) "For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively. Here a difference between the English law and the law as enacted by the Bombay Legislature may be pointed out. Whereas under the English law those essential conditions must continue throughout the course of the three years immediately preceding the institution of the suit for divorce, under the Act, the period is four years without specifying that it should immediately precede the commencement of proceedings for divorce. Whether the omission of the last clause has any practical result need not detain us, as it does not call for decision in the present case. Desertion is a matter of inference to be drawn from the facts and circumstances of each case. The inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If, in fact, there has been a separation, the essential question always is whether that act could be attributable to an animus deserendi. The offence of desertion commences when the fact of separation and the animus deserendi coexist. But it is not necessary that they should commence at the same time. The de facto separation may have commenced without the necessary animus or it may be that the separation and the animus deserendi coincide in point of time; for example, when the separating spouse abandons the marital home with the intention, express or implied, of bringing cohabitation permanently to a close. The law in England has prescribed a three years' period and the Bombay Act prescribed a period of four years as a continuous period during which the two elements must subsist. Hence, if a deserting spouse takes advantage of the locus poenitentiae thus provided by law and decide to come back to the deserted spouse by a bona fide offer of resuming the matrimonial home with all the implications of marital life, before the statutory period is out or even after the lapse of that period, unless proceedings for divorce have been commenced, desertion comes to an end and if the deserted spouse unreasonably refuses the offer, the latter may be in desertion and not the former. Hence it is necessary that during all the period that there has been a desertion, the deserted spouse must affirm the marriage and be ready and willing to resume married life on such conditions as may be reasonable. It is also well settled that in proceedings for divorce the plaintiff must prove the offence of desertion, like and other matrimonial offence, beyond all reasonable doubt. Hence, though corroboration is not required as an absolute rule of law the courts

insist upon corroborative evidence, unless its absence is accounted for to the satisfaction of the court."

9. Following the decision in Bipinchandra case this Court again reiterated the legal position in Lachman Utamchand Kirpalani v. Meena by holding that in its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation."

24. The Apex Court held that the offence of desertion commences when the fact of separation and the animus deserendi coexist. But it is not necessary that they should commence at the same time. The de facto separation may have commenced without the necessary animus or it may be that the separation and the animus deserendi coincide in point of time; for example when the separating spouse abandons the marital home with the intention expressed or implied of bringing cohabitation permanently to a close. In the present case, it is to be seen whether on the part of the deserted spouse i.e. the appellant, there was absence of consent and absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention. For the deserting spouse, two conditions are to be satisfied i.e., the factum of separation and the intention to bring cohabitation permanently to an end (animus deserendi). The allegations of demand of dowry and resultant torture due to non-fulfilment thereof assumingly had been a reason for the respondent to leave the matrimonial home in June 1998 but the acquittal of the appellant and his family members in the year 2011 in the criminal case instituted in the year 1999 establish that the appellant had not given reasonable cause to her to leave the matrimonial home as such charge could not be substantiated by her despite a full drawn trial. Respondent has not come back to the matrimonial home since her departure in June, 1998 and after the judgment of acquittal passed in 2011. In those circumstances, it can be safely concluded that though only the factum of physical separation may have existed while she moved out of the matrimonial home in June, 1998, but non-resumption of conjugal life thereafter for all these years leads to an inference of animus deserendi on the part of the respondent i.e. the intention to bring cohabitation permanently to an end. The charges of desertion also therefore stand established against the respondent. The proceedings of the matrimonial suit, the criminal trial and the instant appeal over a period of 14 years has created an unbridgeable rift due to prolonged acrimonious relationship between the parties which creates an impression that the marriage has irretrievably broken down. Though, irretrievable break down of marriage is not a recognized ground for divorce under Hindu Marriage Act, 1955, but taken together with other established grounds, it is an additional factor to be taken into account while deciding a plea of divorce.

True it is, that the only daughter born out of the wedlock on 05.11.1998 is now about 21 years old and pursuing M-tech course, her future and marital prospects are to be kept in mind, but the continued long separation between the spouses for about 22 years and more by now with only about 13 months of conjugal life do persuade us to come to a conclusion that there are no emotional bonds left between the spouses to revive. The marriage remains only a legal tie. When the matrimonial bond is beyond repair, by refusing to sever that tie, the law in such cases does not serve the sanctity of the marriage. On the contrary, it shows scant regard for the feelings and emotions of the parties. Such situations may themselves lead to mental cruelty, as observed by the Apex Court in the case of Samar Ghosh (supra), where the separation was more than sixteen and a half years. In the present case, the separation is more than 22 years by now. Therefore, on a considered view of the matter, since both the charges of cruelty and desertion stand established against the respondent and that the parties have been living separately for more than 22 years, we are of the view that the marriage deserves to be dissolved. Accordingly, the marriage between the parties stands dissolved.

25. The appellant is working as a Chief Engineer (Electrical & Mechanical) in the Bharat Coking Coal Ltd. Area No. 3, Dhanbad, Dhanbad. On query made to him, he has stated that he has a gross salary of Rs. 1,80,000/- and take home salary of Rs. 80,000/-. Appellant has stated that he has five years of service left. Appellant has also stated that he has made investment to the tune of Rs. 3,00,000/- for the purposes of being used during marriage of his daughter. The respondent and the daughter has been getting maintenance at the enhanced rate of Rs. 10,000/- and Rs. 5,000/- per month respectively by virtue of the order dated 02.02.2016. The respondent apparently has no independent source of income and the daughter is also studying in M-tech and is dependent. As a matter of fact, by virtue of the order passed by this Court earlier on 17.09.2020, appellant contributed half of her admission fee of Rs. 1,41,000/- i.e. Rs. 70,500/- for her admission in first year/1st semester of M-Tech course in the Wireless Technology in the discipline of Telecommunication and Electronics in BIT Mesra.

26. Taking all these factors into account, we are of the considered view that the appellant should pay a permanent alimony of Rs. 25,00,000/- (Rupees Twenty five Lakh only). Out of the permanent alimony of Rs. 25,00,000/-, Rs. 15,00,000/- is to be paid for the respondent- wife and Rs. 10,00,000/- in the name of the daughter. Out of the amount of Rs. 10,00,000/- awarded in favour of the daughter, Rs. 4,00,000/- should be used for her future education and remaining Rs. 6,00,000/- shall be kept for her marriage purposes. The investment made in the name of the daughter by the appellant should also be disbursed at the time of her marriage. The appellant shall pay the amount of permanent alimony within a period of four months from the date of decree. On payment of the permanent alimony, the interim maintenance being paid by the appellant to the respondent and the daughter shall come to an end. The impugned judgment dated 30.03.2007 passed in Title (Mat) Suit No. 13 of 2003 and decree dated 09.04.2007 by the learned Principal Judge, Family Court, Bokaro, is set aside. Appeal stands allowed. Let a decree be drawn accordingly.

27. Let the lower court records be returned to the court concerned.

28. Pending interlocutory applications are closed.

(Aparesh Kumar Singh, J.) (Anubha Rawat Choudhary, J.) Binit/Mukul