

IN THE COURT OF THE JUDGE, FAMILY COURT,
BHUBANESWAR.

Present : Shri Pravakar Mishra, OSJS (SB),
Judge, Family Court, Bhubaneswar.

Civil Proceeding No. 02 of 2012
U/s. 13 (1) (i-a) of the Hindu Marriage Act, 1955

Amiya Ranjan Panda, aged about 39 years
S/o-Late Bishnu Charan Panda,
At village-Palasuni, P.O.-G.G.P. Colony,
P.S.-Mancheswar, Dist-Khurda

....Petitioner

... Versus ...

Jayanti Rath, aged about 29 years
D/o-Sri Jaganath Rath,
At present residing at Type-1, Qtr. No. 6,
Income Tax Colony, Vani Vihar,
P.O./P.S.-Saheed Nagar, Bhubaneswar,
Dist-Khurda.

.... Respondent

Criminal Proceeding No. 203 of 2011
U/s. 125 of Cr.P.C., 1973

Jayanti Rath, aged about 28 year,
W/o-Sri Amiya Ranjan Panda,
D/o-Sri Jaganath Rath,
At present residing at Type-1, Qtr. No. 6,
Income Tax Colony, Vani Vihar,
P.O./P.S.-Saheed Nagar, Bhubaneswar,
Dist-Khurda.

... Petitioner

... Versus...

Amiya Ranjan Panda, aged about 46 years
S/o-Late Bishnu Charan Panda,
Permanent resident of Plot No. 3606,
Palasuni, P.O.-Rasulgarh,
P.S.-Mancheswar, Dist-Khurda

... Opp. Party

Date of Argument: 19.02.2015

Date of Judgment : 10.03.2015

J U D G M E N T

The petitioner Amiya Ranjan Panda has filed C.P. No. 02 of 2012 against the respondent Jayanti Rath U/s. 13 (1) (i-a) of Hindu Marriage Act, 1955 (in short, the Act 1955) for dissolution of marriage passing a decree of divorce, whereas in C.R.P. No. 203 of 2011, the respondent-wife Jayanti Rath has filed petition U/s. 125 Cr. P.C. (in short Cr.P.C) claiming monthly maintenance of Rs. 10,000/- from the above named petitioner. Both the cases are taken up together for a common Judgment as the parties are same in both the proceedings.

2. The fact of the case of the petitioner Amiya Ranjan Panda in C.P. No. 02 of 2012 are as follows:-

The marriage of the petitioner with respondent was solemnized as per Hindu customs and rite on 30.06.2010. According to the petitioner, the marriage was a dowry less marriage. It is further averred by the petitioner that two days after the marriage, at 6 P.M., the respondent started misbehaving him and his family members in front of his relatives who were invited to attend the marriage ceremony. Half an hour thereafter, the parents of the respondent along with some unknown persons came to his house and made conversation with the respondent in his room and sometimes thereafter, they started scolding him and his family members in front of their relatives and when he tried to know about the reason of scolding from the respondent and she loudly in front of all told that she does want to live with him in a joint family. It is the further case of the petitioner that on the fourth night the respondent did not allow him to sleep in the bed. Two days thereafter the respondent told him that she wanted to go her parental home and when he tried to convince her that as per their custom they are suppose to go to her parental home after Astamangala but hearing such from him, she became furious and informed to her mother such fact and sometimes thereafter her mother came to his house and both of them went to the parental home of the respondent without his willingness and willingness of his family members. In the late night the respondent with

some unknown person came to his house and when he wanted to know their identification, the respondent started scolding him in filthy languages. The respondent thereafter stayed for ten days in his house and during her stay, she did not share anything with the petitioner and his family members and misbehaved his old parents and his family members. The respondent also did not keep any conjugal relationship with him. On the 10th day of marriage, the respondent went to her parental home and stayed there for one month and ten days without his willingness and wiliness of his family members. During her stay at her parental home, he had gone twice and tried to convince her as to why she is behaving rudely to him and his family members, the respondent openly told him that she was not interested to marry him but her parents forcibly got her married and thus, she is not interested to live with him and keep any conjugal relation with him. Such version of the respondent gave him immense mental trauma and on 20.08.2010 he took back the respondent to his house and the respondent stayed till 23.08.2010 and on 23.08.2010 about 1 P.M. she left his house in absence of the family members by taking all the gold ornaments, sarees etc. without informing him and his mother. On 20.12.2010 in between 11 A.M. to 3 P.M. the respondent along with her mother and eight to nine unknown persons came to his house, scolded his mother and tried to manhandle her mother and when his mother shouted, being afraid they left his house and while leaving they scolded his mother in obscene languages and gave threat to face dire consequences. Thereafter on his arrival his mother narrated the incident before him and apprehending danger to her life, she went to the police for lodging of FIR but it was not received by the local police station for which she has filed a complaint case before leaned S.D.J.M., Bhubaneswar on 22.12.2010 vide 1CC No. 3680/2010 which is pending for disposal. After knowing about the complaint case filed by her mother, the respondent lodged an FIR before Mahila Police Station against him and his family members U/s. 498 (A), 506, 34 I.P.C. read with Section 4 of the D.P. Act. After filing of the FIR when police searched him and his family members vigorously, his father being shocked succumbed to death in

heart attack on 13.01.2011 but the respondent did not allow him and his brother to perform the funeral ceremony of his father and on 20.01.2011 they got the anticipatory bail from the Hon'ble Court. It is further stated by the petitioner that he has no physical relationship with the respondent from the date of the marriage and due to mental shock his father had died in heart attack and having no fault, the respondent deserted him. Since, it is not possible for him to continue marital tie with the respondent as her behaviour caused him pain, injury, physically and mentally, getting no other way, he sought for a decree of divorce from the respondent on the ground of cruelty.

3. The respondent-wife contested the proceeding by filing W.S. and denied all the allegations made by the petitioner against her. She has averred that there is no cause of action to file such petition against her and also suppressed some material fact. Further on 14.01.2011 when she heard the death of the father of the petitioner, she immediately rushed to the house of the petitioner and seeing her, the petitioner and his family members became furious and started abusing her and tore her sarees and threatened to murder her by throttling and pressing her neck by crow-bar. Being afraid she ran away to the house of neighbours but the petitioner forcefully took her in a bike towards Laxmisagar and beaten her there severely and thrown her on the road and left the spot. Thereafter she was rescued by Laxmisagar Police and finding no alternative, she has lodged an FIR before the Mahila Police Station vide Mahila P.S. Case No. 7 dated 14.01.2011 and police arrested the petitioner but they were released on bail. On 15.07.2012, Mahila Police seized some furniture, dresses and utensils from the house of the petitioner and gave the same in her zima. The petitioner till date did not return the dowry amount of Rs. 3,12,000/- and gold chain and rings. According to her, she has no source of income and now is depending upon her old parents and is facing financial hardship for which she has filed a maintenance case before this court against the respondent vide C.R.P. 203 of 2011. She has further stated that she is now interested and willing to

reside with the petitioner. Several attempts have been made from her side to settle the dispute but all were in vain.

4. Further, the present-respondent has filed C.R.P. No. 203/2011. The facts of the case of the present respondent is that at the time of marriage, her father had given cash Rs. 3,12,000/- one costly motor cycle, gold chain, ring colour T.V., along with household articles including dress for the Opp. Party sofa, dining table, gold chain, ring and dress for the Opp. Party as per demand. After marriage, she lived in her matrimonial home for a period of one month and twelve days and during her stay, the Opp. Party, her mother-in-law, brother-in-law and sister-in-law were torturing her both physically and mentally for non-fulfillment of their additional demand of Rs. 2,00,000/-. The Opp. Party and her in-laws members abused her several times. Sometimes the Opp. Party in the late hours of night assaulted her. Several attempts have been from her side to settle the dispute but all were in vain. Gradually the torture became unbearable. Despite the ill treatment she did all the household work and also had taken care of all the family members of the Opp. Party. On 13.08.2010, the Opp. Party forcibly had driven her out from his house. Finding no alternative, she has taken the shelter of her parental home and since then she has been residing there. She has further stated that on 14.01.2011 she has gone to her matrimonial home to attend the funeral ceremony of her father-in-law but the Opp. Party and his family members abused her in obscene languages and did not allow her to enter into their house. When the torture became unbearable, she had lodged an FIR in Mahila Police Station vide Mahila P.S. Case No. 7/2011 U/s. 498(A), 506, and 34 IPC read with Section 4 of the D.P. Act against the Opp. Party and his family members. She had also lodged a complaint before the State Women Commission for undue harassment and torture. According to the petitioner, she has no independent source of income and is depending upon her parents for her maintenance. She has further averred that the Opp. Party has established an Industry in Mancheswar Industrial Estate for printing of packing covers and his annual income is Rs.5,00,000/-. Apart from that he is also getting interest from bank deposits, house rent and

agriculture. Having sufficient means the respondent deliberately neglected her, for which she has filed this proceeding claiming monthly maintenance of Rs. 10,000/- for self from the Opp. Parties.

7. The respondent-husband has filed his objection denying all the allegations made against him. It is the further case of the Opp. Party that the application is not maintainable either in law or in fact, as such, is liable to be dismissed with exemplary cost. Further the petitioner has no locus-standie to institute the present proceeding against him which has been based upon concocted facts and she has filed this application for maintenance without any justifiable grounds enumerated under the Act. Further, the petition has been filed with an ulterior motive in order to harass him and his family members by entangling them in false cases. His further facts in the show cause are the replica of his petition in civil proceeding No. 02 of 2012, which I do not like to geminate to avoid prolixity as well as to lose the charm of hearing.

8. The questions that require to be adjudicated are as follows:-

(I) Whether there exists any cruelty on the part of the respondent-wife to allow the petition for divorce?

(II) Whether the respondent-wife is entitled for any monthly or permanent alimony in case of divorce is allowed?

9. The petitioner-husband in C.P. No. 02 of 2012 in order to prove his case, he, himself, has been examined as P.W. 1 and one Sarbeswar Panda, mediator of the marriage as P.W. 2 but did not chose to file any documentary evidence in his behalf. In order to negate the claim of the petitioner-husband, the respondent-wife, has been examined as R.W. 1 and she also did not chose to file any document in her favour.

10. In C.R.P. No. 203 of 2012, the petitioner-wife in order to prove her case she, herself, has been examined as P.W. 1 but did not chose to file any documentary evidence on her behalf. In order to negate the claim of the petitioner-wife, the Opp. Party-husband, has been examined as O.P.W. 1 and he had also did not chose to file any document in his favour.

11. The petitioner sought divorce on the ground of cruelty. It deems appropriate to examine the concept of cruelty both in English and Indian Law, in order to evaluate whether petitioner's petition based on the ground of cruelty deserves to be allowed or not.

12. Now it is well settled that the expression 'cruelty' includes both (i) physical cruelty; and (ii) mental cruelty. In this connection, I bestow my attention to English as well as Indian authorities. I will refer to some of them.

13. The concept of cruelty has been dealt with in Halsbury's Law of England (Vol.13. 4th Edition Para1269) as under:-

"The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or conduct as having or lacking the nature or quality which renders them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complaint's capacity for endurance and the extent to which that capacity is known to the other spouse."

14. In Gollins V. Gollins, 1964 (AC 644: (1963) 2 All EF 955, Lord Reid Stated:-

“No one has ever attempted to give comprehensive definition of cruelty and I do not intend to try to do so. Much must depend on the knowledge and intention of the respondent., on the nature of his (or her) conduct, and on the character and physical or mental weakness of the spouse, and probably no general statement is equally applicable in all cases except the requirement that the party seeking relief must show actual or probably injury to life, limb or health.”

15. Lord Pearce also made similar observation:-

“It is impossible to give a comprehensive definition of cruelty, but when the reprehensibly conduct or departure from normal standards of conjugal kindness causes injury to health or an apprehension of it, it, I think, cruelty is a reasonable person, after taking due account of the temperament and all the other particular circumstances would considered that the conduct complained of is such that this spouse should not be called on to endure it”

(See also Russel V. Russell, (1897) AC 395: (1895-99) All ER Rep 1)

16. The test of cruelty has been laid down by the Apex court in the leading case of N.G. Dastane V S. Dastane, reported in AIR 1975 2 SCC 326, thus:- *“The enquiry therefore has to be whether the conduct charged 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....”*

17. In Sirajmohmedkhan Janmohamadkhan V. Haizunnisa Yasinkhan & Anr. Reported in AIR 1981 4 SCC 250, by the Apex Court stated that the concept of the legal cruelty changes according to the changes and advancement of social concept and standards of living. It was further stated that to establish legal cruelty, it is not necessary that physical violence should be used. Continuous cessation of marital intercourse or

total indifference on the part of the husband towards marital obligations would lead to legal cruelty.

18. In *Shobha Rani V. Madhukar Reddi* reported in AIR 1988 1 SCC 105, this Court examined the concept of cruelty. It was observed that the term "cruelty" has not been defined in the Hindu Marriage Act. It has been used in Section 13 (1) (i-a) of the Act in the context of human conduct and behavior in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of the one spouse which adversely affects the other spouse. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of degree which is relevant. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the other spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of conduct and its effect on the complaining spouse. There may, however, be cases 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. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Mens rea is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or willful ill-treatment.

19. In *V. Bhagat V. D. Bhagat (Mrs)* reported in AIR 1994 1 SCC 337, the court observed:- "Mental Cruelty in Section 13 (1) (i-a) can broadly be defined as that the conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably

be asked to put up with such conduct and continue to live with the other party. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must be as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, 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. The absence of intention should not make any difference in the case, for by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or willful ill-treatment or conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such a conclusion, regard must be had to the social status, educational level of the parties, the society they live in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

20. The Apex Court in *Chetan Das V. Kamala Devi* reported in AIR 2001 4 SCC 250 stated:- Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with

the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to pay in the society, in general. Therefore, it would not be appropriate to apply any submission of "irretrievable broken marriage" as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case".

21. Mental cruelty has also been examined by the Apex Court in *Parveen Mehta Vrs. Inderjit Mehta* reported in AIR 2002 5 SCC 706:- "Cruelty for the purpose of Section 13 (1) (i-a) is to be taken as a behavior by one spouse towards the other, which causes reasonable apprehension in the mind of the later that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioral pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehavior in isolation and then pose the question whether such behavior is sufficient by itself to cause mental cruelty. The approach should be take the cumulative effect of the facts and circumstances emerging from the evidence on record and then

draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.”

22. In *A. Jayachandra Vrs. Aneel Kaur* reported in AIR (2005) 2 SCC 22, the Apex Court observed that:- “The expression ‘cruelty has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to the cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse, same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept proof beyond the shadow of doubt, it is to be applied to criminal tries and not to civil matters and certainly not to the matters of such delicate personal relationship as those of husband and wife. Therefore, one has to be what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complaint spouse because of the acts or omission of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may be not at the same time be direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial dispute.”

23. In *Vinita Saxena Vrs. Pankaj Pandit* reported in AIR (2006) 3 SCC 778, the Apex Court said:- It is settled by the catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such willful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case. The word "cruelty" has not been defined and it has been used in relation to human conduct or human behavior. 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 causes 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."

It was further stated:- 'Each case depends on its own facts and must be judged on these facts. The concept of cruelty has varied from time to time, from place to place from individual to individual in its application according to social status of the persons involved and their economic conditions and other matters. The question whether the act complained of was a cruel act is to be determined from the whole acts and the matrimonial relations between the parties. In this connection, the culture, temperament and status in life and many other things are the factors which have be considered.

The legal concept of the cruelty which is not defined by the statute is generally described as conduct of such character as to have caused danger to life, limb or health (bodily and mental) or to give rise

to reasonable apprehension of such danger. The general rule in all questions of cruelty is that the whole matrimonial relations must be considered, that rule is of a special value when the cruelty consists not of violent act but of the injurious reproaches, complaints, accusations or taunts. It may be mental such as indifference and frigidity towards the wife, denial of a company to her, hatred and abhorrence for wife, or physical, like acts of violence and abstinence from sexual intercourse without reasonable cause. It must be proved that one partner in the marriage however mindless of the consequences has behaved in a way which the other spouse could not in the circumstances be called upon to endure, and that misconduct has caused injury to health or a reasonable apprehension of such injury. There are two sides to be considered in a case of apprehension of such injury. There are two sides to be considered in case of cruelty. From the appellants, ought this appellant to be called on to endure the conduct? From the respondent's side, was this conduct excusable/ The Court has then to decide whether the cumulative conduct was sufficiently serious to say that from a reasonable persons point of view after a consideration of any excuse which the respondent might have in the circumstances, the conduct is such that the petitioner ought not be called upon to endure.

24. In *Samar Ghos Vrs. Jaya Ghos* (2007) 4 SCC 511, this Apex Court held:- "No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior which may be relevant in dealing with the case of "mental cruelty". The instances indicted 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 board 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 behavior of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and 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.

25. Bearing the above parameters of law, in my mind, I proceed to analyse the evidence adduced by the parties to determine whether there is existence of any cruelty either physical or mental, so that the Court can pass a decree of dissolution of marriage. Herein the instant case, there is no physical violence or physical cruelty. The petitioner attributed mental cruelty on three aspects. They are as follows:-

- (i) The respondent does not like to reside in joint family
- (ii) The father and the respondent scolded the petitioner and his family members in front of the relatives.

(iii)The respondent did not allow to consummate the marriage as she did not like to marry the petitioner and solemnized her marriage with the petitioner by force.

26. On the contrary, the wife made the following allegations against the petitioner:-

(a) On 13.09.2010, the petitioner and his family members started torture on her due to non-fulfillment of their additional demand of Rs. 6,00,000/-. She was threatened to be murdered and petitioner will marry again after obtaining divorce against the respondent unless she will meet their aforesaid demand.

(b) On 14.01.2011, when she had gone to her matrimonial home hearing the death news of her father-in-law, the petitioner and his family members abused her tore her saree and threatened to murder her by throttling and pressing her neck by crow-bar but she gave good entreaty to the neighbours house.

(c) The petitioner took her in a bike towards Laxmisagar and severely beaten her there thrown out from the motor cycle but she was rescued by the Laxmisagar Police and accordingly, she filed Mahila P.S. Case No. 7 dated 14.01.2011.

27. In the instant case, sufficient materials have not been produced by the husband to conclude that the allegations of cruelty out in the petition for divorce have been adequately substantiated. It was the duty of the husband to produce some corroborative evidence of the inmates of his house to prove that allegation of cruel acts of the wife. Though the petitioner has examined one Sarbeswar Panda, the mediator to the marriage, yet, he has deposed that he does not know anything about the disputes between the petitioner and the respondent. On the other hand, he had admitted that the mother of the respondent call him to her house and reported him that the petitioner was not supplying food to the respondent. He is a man of different village. Therefore, the evidence of the P.W. 2 does not help to the petitioner in any way. As regards to non-consummation of marriage in the forth night of the marriage and subsequent thereto, the enigmatic part of the evidence

of P.W. 1 is that he has not disclosed to any of the family member of the respondent that the respondent refused to cohabit with him. Therefore, the circumstances, attributing cruel conduct of the respondent are got up stories to get rid up the criminal cases instituted by the respondent.

28. Mental cruelty may consist of verbal abuse or insult by using filthy and abusive languages leading to constant disturbance of mental peace of the other party. The petitioner has singularly failed to produce the exact abusive words uttered by the respondent at him as well as to his parents and relatives. Thus, in the instant case, the cumulative effect of the facts and circumstances emerging from the evidence of the petitioner and P.W. 2 is not sufficient to hold that he petitioner was subjected to mental cruelty due to the conduct of the respondent.

29. On the contrary, the wife-respondent submitted that she was subjected to torture by the petitioner and his mother for non-fulfillment of their additional demand of dowry of Rs. 6,00,000/-. Persistent unlawful demand of dowry of any amount by the mother of the husband to the wife with the support of the husband would amount to mental cruelty. In such a case the wife has to prove the plea of cruelty by leading such evidence inspire confidence in the mind of the court (Pusha Rani Smt. Vrs. Vitay Pal Singh reported in AIR 1994 All 216 at page 20-21).

30. A girl dreams of great days ahead with hope and aspiration when entering into a marriage, and if from the very next day the husband and his mother started torturing her for not bringing dowry and calling her ugly, there cannot be greater mental torture, harassment or cruelty for bride.

31. The allegation of the petitioner that on the two days of the marriage, the respondent told him that she does not like to reside in a joint family, far from the being sufficient to demonstrate cruelty, it is also frivolous considering that the parties lived together for as little as two days by when each of them have not interacted due to social custom in as much as the respondent has had any acquaintances with the family member and relatives of the petitioner and that all this supposed to have happened very

soon after the marriage. The foundation for a case of cruelty in a marriage, cannot certainly be built on such frivolous pleas.

32. The petitioner has filed the present proceeding on 02.12.2012. The respondent has stated that the petitioner has filed the present proceeding after she has filed criminal case U/s. 498(A) and maintenance case U/s. 125 Cr.P.C. The criminal FIR relates to Mahila P.S. case No. 7/2022 and the maintenance case U/s. 125 Cr.P.C. was filed on 12.09.2011. thus it appeared from the case record that the present divorce petition had been filed by the petitioner one year three months after the respondent initiated proceeding against him merely with a view to create defence in his own favour with regard to proceedings under Section 498 (A), IPC etc and also with a view to avoid the maintenance amount to be granted to the respondent under Section 125 Cr.P.C.

33. There are different shades of a troubled marriage where parties are unable to live together for various reasons. All of those reasons may not answer the description of cruelty. At the same time, the court cannot be unmindful of the fact that the status of a divorce woman in society is still fragile and she at distinct disadvantage in fending herself. Therefore, the court would be cautious in easily accepting the case of cruel treatment by the wife of the husband. If a person by his own conduct creates a situation where he is reasonably expect to face some consequences action leading to that consequence cannot be deemed to be cruelty. Pursing a legal remedy for the protection of the limb/body of a person cannot be cruelty, acquittal in such a case is relevant only when the court or authority come to a finding that it is false, frivolous, vexatious or malicious. Here in the instant case, the wife-respondent left the matrimonial home for the situation created by the husband. It is true that leaving matrimonial home without consent and not returning thereafter would amount to mental cruelty. It has not established by the petitioner-husband in the present case that the respondent-wife had permanently left the matrimonial home without the consent of the petitioner and never returned. On the other hand, the respondent is still willing to return the company of the petitioner. Further the respondent instituted a

report with the Mahila Police Station, Bhubaneswar against the petitioner and his family members under Section 498(A) IPC and they were arrested and released on bail. After investigation, Mahila Police Station, Bhubaneswar submitted the charge sheet which prima facie shows that criminal case under Section 498 (A) was made out. Wife-respondent received all the household goods in the garb of the instituting the criminal case and submitted receipts as has been admitted by R.W.1. The mother of the petitioner also filed a complaint case against the respondent and her father and others. Thus, for this reason, the wife-respondent has sufficient reason to leave the matrimonial home to save her life and acquires peace from the harassment. Such leaving of matrimonial home cannot amount to mental cruelty.

34. A marriage concerns not only the two persons, who have entered into matrimony but also the society. It is the concern of the society apart from the interest of two individuals affected that marriage, as such as far as possible, be preserved. The law must watchful vigilance, as marriage vitally affects the public welfare. Law does not favour dissolution of marriage and its policy is to uphold the marital status. The proceeding as to dissolution of marriage is no doubt between the parties concerned but the marriage relationship, though consensual at its beginning cannot be discarded by mere volition of either party or both parties. It is for this reason that the legislature has made stringent rules. Before marriage can be dissolved the court has to zealously see, whether the relief sought for dissolution of marriage, is within the permissible bounds of law. The case in which the enforcement of law may conceivably result in unhappiness of either or both parties, cannot be helped, if law does not provide relief. The court will not grant a decree of divorce except on production of clear and convincing evidence.

35. It is contended that charges made in the written statement are unproved and therefore, amount to "cruelty" I am not gullible to sustain such a submission. What is further necessary for the petitioner to prove is that the said charges are false. The burden cannot be thrown on the

respondent because the respondent has not come to the court for seeking any relief. It is settled law that in all matrimonial causes burden of proof is on the petitioner. Particularly in cases of cruelty, it is for the petitioner to prove the element of legal cruelty. It is the fact and circumstances of the case from evidence led on both sides, the Court comes to the conclusion that irrespective of the burden of the proof there is sufficient allegations is not only proved but is false, it will be open for the petitioner to take advantage of such finding. However, it is sine-qua-non that the petitioner must show that the respondent's allegations are false and therefore, they amount to mental cruelty.

36. Concatenating the aforesaid fact and circumstances of the case, since the husband has baffled in proving cruelty on him by the wife-respondent, his petition seeking relief of divorce against the respondent is liable to be dismissed and in fact, I dismissed the same.

37. In Cr.P. No. 203 of 2011, the wife-respondent has claimed a monthly maintenance of Rs. 10,000/- from her husband. I have ascribed the reason that the wife have sufficient reason to live apart from the husband. It is has been established from the evidence that the wife is a house wife and therefore, she is unable to maintain herself having no separate independent income. It is also equally established that the husband is an Industrialist and therefore, is a man of means. He has not provided a single penny to the wife from the date of leaving from her matrimonial home till date. Thus, there is no cavil of doubt that the husband has willfully not only neglected but also refused to maintain the wife. Therefore, the wife is entitled to get maintenance from the husband.

38. Now the next question for consideration is about the quantum of maintenance amount. The wife has stated that the income of the husband is Rs. 5,00,000/- per annum. Thus, the income of the husband per month comes around Rs. 40,000/-. Hence, in my considered opinion, it would be just and proper to grant a sum of Rs. 8,000/- per month to the wife. Accordingly, it is ordered;

ORDER

The C.P. No. 02/2012 filed by the petitioner-husband against the respondent-wife praying for dissolution of marriage is dismissed on contest in favour of the respondent-wife and Cr.P. No. 203 of 2011 filed by the wife against the husband is allowed on contest. The petitioner-Opp. Party is directed to pay maintenance of Rs. 8,000/- (Rupees eight thousand) to the wife-petitioner. He also directed to pay the monthly maintenance to the wife- petitioner from the date of filing of the application i.e. from 12.09.2011. The husband-Opp. Party is further directed to clear up the arrear maintenance within two months hereinafter. He is also directed to pay the monthly maintenance within the 1st week of the succeeding month. Failure to carry out the order by the husband-petitioner, the wife-respondent is at liberty to levy execution through due process of law.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 10th day of March, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

In C.P. No. 02 of 2012Witnesses examined for the petitioner:

P.W.1 Amiya Ranjan Panda

P.W.2 Sarbeswar Panda

Witnesses examined for the respondent:

R.W.1 Jayanti Rath

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

In C.R.P. No. 203 of 2011Witness examined for the petitioner

P.W.1 Jayanti Rath

Witness examined for the Opp. Party

O.P.W.1 Amiya Ranjan Panda

List of documents by petitioner:

Nil

List of documents by Opp. Party:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.