

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

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

Civil Proceeding No. 156 of 2011

Smt. Lohita Shree Ray, aged about 27 years,
W/o- Dillip Kumar Biswal
D/o-Sri Srinibash Balabantaray,
Vill.-Baligadia, P.O.-Jankia,
P.S.-Jankia, Dist-Khurda
At present:- Qrs. No. IVR-11/4,
Unit-I, Bhubaneswar, P.S.-Capital,
Dist-Khurda.

... Petitioner

... Versus...

Dillip Kumar Biswal, aged about 30 years,
S/o-Muralidhar Biswal,
of Vill.-Alasahi, P.O./P.S.-Astaranga,
Dist-Puri.

... Respondent

Date of argument : 15.10.2014

Date of order : 18.10.2014

J U D G M E N T

This order arises out of a petition u/s. 13 of the Hindu Marriage Act, 1955 praying for a decree of dissolution of marriage of the petitioner with the respondent on the ground of cruelty.

2. The admitted facts of the case of the parties are that their marriage was solemnized at Bhubaneswar on 06.07.2007 as per Hindu rites and customs and consummated in the house of the petitioner at village Alisahi.

3. The facts of the case of the petitioner are that at the time of marriage her father had given Rs. 3,00,000/- along with gold ornaments and other household articles as per demand of the respondent. According to the petitioner on 05.07.2007 her father had purchased one Splender Plus Motor

Cycle from Bharat Motors in the name of the respondent vide invoice No. BML-772/07-08 at the cost of Rs. 40,752/- and given to the respondent as per demand. After marriage they led happy marital life for a period of seven to eight days. On 13.07.2007 the respondent demanded all the gold ornaments from the petitioner for the purpose of marriage of his niece namely Baby, who was staying with them from her child hood and when she did not agree, the respondent started mental and physical torture to her on various manners. She has further averred that the respondent and his family members demanded a Santro Car along with Rs. 50,000/-. After one month of marriage, the respondent went to his service place and after his departure, the family members of the petitioner started torturing her for further dowry and did not give sufficient food to her for which she became serious and was admitted in S.C.B Medical College and Hospital, Cuttack by her father and the entire expenditure was borne by her father. On 11.10.2007 she had gone to Bangalore to the service place of the respondent and there also the respondent tortured her both physically and mentally with the spell of alcohol for additional demand of a Santro Car and Rs. 50,000/- and there she stayed about four months. She has averred that the respondent forcibly sent her to her paternal house by train from Bangalore to Bhubaneswar and advised her to come to his house at the time of marriage of his brother but the respondent did not intimate and call her to attend the marriage function of his brother. During her stay at her husband's place, the respondent did not return from his office on some night and when she complained before him, the respondent told her not to interfere in his personal affairs. The respondent also reluctant to keep sexual relationship with her on false and frivolous grounds for which she has suffered mental and physical agony. When torture became unbearable she was forced to leave her matrimonial home with her parents on 24.02.2008 and filed a criminal case at Mahila P.S. Bhubaneswar U/s. 498 (A)/506/34 of IPC and 4 D.P. Act against the respondent and his family members which is now subjudice before the learned S.D.J.M. Since the date of leaving of her matrimonial home, she has been staying with her parents at Bhubaneswar. It

is further averred that their marriage has irretrievably broken down as they have no physical relationship since long. Since the torture and cruelty on the part of the petitioner became unbearable, she has filed this proceeding seeking a decree of divorce.

4. The respondent entered contest the proceeding and filed written statement and denied all the allegations made by the petitioner. The facts of the case of the respondent are that, the petitioner with an ulterior motive has filed this proceeding without any justifiable cause. He denied his non-participation for consummation of marriage. He has averred that after marriage within the short stay of the petitioner in his house, the petitioner was always gossiping over mobile phone with somebody at the late night and sometimes went to the roof of the building and did not co-operate him. After few days of stay at her parental home at Bhubaneswar, the petitioner went to Bangalore with her father and stayed there for five days and left for Bhubaneswar. On the next day of departure of his father-in-law for Bhubaneswar when the respondent returned to his house at Bangalore at about 6 P.M. found the petitioner was absent and she returned 8.30 P.M. and on being asked, the petitioner told him that one of her friends met her and they were moving in the market and being doubtful to her reply, he took leave from the office, went on searching the activities of her and on the next day he left the house at 8 A.M. as usual and arrived at the house at 12 O' clock and found in the gap of the window that the petitioner and her uncle Pravat Kumar were in objectionable condition. Due to such illegal sexual relationship between the petitioner and her uncle, the relationship between them became worst for which a meeting was held at Sidheswar Temple, Nimapara between the two families and local gentleman of both the parties but all the attempts were in vain. He has further stated that both have been living separately since four years and there was no physical relationship between them and there is not possibility of their reunion.

5. From the aforesaid rival pleadings of the parties, the question that requires to be adjudicated is whether, there exists any cruelty on the part of

the respondent to allow the divorce petition?

6. The petitioner in order to buttress her case she herself has been examined as P.W.1 and her uncle Pravat Chandra Mohanty as P.W. 2 and she relied on document i.e. train ticket dtd.16.11.2007 vide Ext. 1. The respondent has not chosen to adduce any evidence from his side and on the other hand, he proved Ext. A i.e. the train ticket dated 11.10.2007 through P.W. 2.

7. The petitioner in her evidence has supported the facts as stated in her petition and has stated that the respondent has been torturing her physically and mentally and he has not cooperated for consummation since beginning of the marriage. She has further stated that the respondent and her family members tortured her both physically and mentally and also assaulted her and threatened to kill her due to non-fulfillment of additional demand of dowry of Rs. 50,000/- along with a Santro Car and after that her father had gone to Bangalore and given Rs. 50,000/- cash to the respondent and advised both of them to live peacefully as husband and wife. She has further stated that after giving Rs.50,000/- to the respondent, he did not stop torture on her but reluctant to maintain conjugal relationship with her and threatened unless she bring the dowry articles from her father she will not live with him at Bangalore. She has further averred that when she came back from Bangalore to Bhubaneswar, some days there after the respondent came to her parental home and threatened her and abused her in filthy languages and assaulted her in presence of her family members and when the torture became unbearable she had filed a written report before Mahila P.S. Bhubaneswar vide P.S. case No. 78 dated 10.05.2008 U/s. 498 (A), 506 and 34 IPC against the respondent and his family members. The evidence of P.W.1 remains unchallenged through cogent and reliable evidence from the side of the respondent. Hence, there is no reason to disbelieve the unchallenged testimony of P.W.1. She has further stated that several attempts have been made from her side for settlement of dispute, but the respondent and his family members did not cooperate. The behavior of the respondent was very

cruel and adamant towards the petitioner and her family members.

8. P.W.2 the uncle of the petitioner has supported the evidence of P.W.1 by stating that the respondent and his family members without any reasonable cause has subjected her to cruelty.

9. The respondent although has averred that the petitioner has got illicit relationship with her uncle, but he failed to prove the same through cogent and reliable evidence. Rather, respondent has stated that they have no physical relationship since long. Alleging extra marital relationship by the respondent against his wife-petitioner without any sufficient proof is nothing but a manner of cruelty. From the above admitted averments of the respondent it seems there has been no cohabitation between the parties since 24.02.2008. From the unchallenged evidence of the petitioner, it is clearly established that the respondent without any rhyme or reason willfully withdrew the cohabitation with the petitioner. There is no evidence on record that denial of sexual intercourse is the result of sexual weakness of the petitioner disabling her from having a sexual union with the respondent but it was willfully refused by the respondent. The result is frustration and misery to the petitioner due to denial of normal sexual life and hence cruelty. Marriage without sex is an anathema. Sex is the foundation of marriage and without a vigorous and harmonious sexual activity it would be impossible for any marriage to continue for long. It cannot be denied that the sexual activity in marriage has an extremely favourable influence on a man's mind and body. The result being that if she does not get proper sexual satisfaction it will lead to depression and frustration. It has been said that the sexual relations when happy and harmonious vivifies a man's brain, develops his character and trebles his vitality. It must be recognized that nothing is more fatal to marriage than disappointment in sexual intercourse. Further, the petitioner has stated that the respondent without any rhyme and reason withdrew himself from his society, for which, she is suffering mental agony. There is nothing to disbelieve the unchallenged evidence of the petitioner. This conduct of the parties is a continuous one for last four years as admitted by

the parties. There is also blick chance of their reunion. Therefore, it is a fit case to snap out the marital relation between parties by passing a decree of divorce. Hence, it is ordered;

O R D E R

The petition of the petitioner is allowed on contest without cost. A decree of divorce is passed and the marriage between the petitioner and the Opp. Party is hereby declared dissolved with effect from the date of decree.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 18th day of October, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Lohita Shree Ray

P.W.2 Pravat Chandra Mohanty

Witnesses examined for the respondent:

None

List of documents by petitioner:

Ext. 1 Railway ticket dated 09.11.2007.

List of documents by respondent:

Ext. A Railway ticket dated 11.10.2007

JUDGE, FAMILY COURT,
BHUBANESWAR.