

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

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

Civil Proceeding No. 295 of 2010

Santosh Kumar Senapati, aged about 38 years,
S/o-Bauri Bandhu Senapati,
of Plot No. 3596, Gouri Nagar,
P.O.-Bhubaneswar-2, P.S.-Lingaraj,
Dist-Khurda.

... Petitioner

... Versus...

Aradhana Tripathy, aged about 29 years,
W/o-Santosh Kumar Senapati,
C/o-Mrs. Ahalya Tripathy,
At-Darji Pokhari Chhak,
P.O.-Station Bazar,
VIP Road, Police Line, Puri,
Dist-Puri, PIN-752002.

... Respondent

Date of Argument: 24.02.2015

Date of Judgment : 16.03.2015

For petitioner:- Sri Sanatan Das and his associates.

For respondent:- Sri Rama Chandra Sarangi and his associates.

J U D G M E N T

This order arises out of a petition U/s. 13 (1) (i-a) of the Hindu Marriage Act, 1955 (in short, the 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 Puri on 03.05.2009 and they have no child out of their wedlock and both have been living separately since 23.08.2010.

3. The facts of the case of the petitioner are that after marriage both of them had gone to Sisilo, the native village of the petitioner and stayed there till 05.05.2009 and thereafter on 06.05.2009, they came to his Bhubaneswar

residence to reside with his brother, sister-in-law, nephew and mother in a joint family. The respondent during her stay in his village at Sisilo told before all the family members that she wants to live separately with her husband and if her aim is not fulfilled she would spoil and disintegrate the house, which gave terrible shock to him and his family members, as it was not expected from a newly married bride. On 05.05.2009 after reception function of the marriage when all the female members of his family asked the respondent to come to the dining table for dinner, she bluntly refused to sit with them and took her food separately for which his family members were shocked. On 06.05.2009, on the day of fourth night, the respondent disclosed before him that this marriage was conducted without her consent as she had decided to marry one boy namely Pinku of Chandanpur and also she hates Senapati Brahmin as she hails from high class Brahmin having Tripathy title and also demanded Rs. 10,000/- as pocket money excluding her day to day expenses such as sarees, gold ornaments, cosmetics without questioning her how she spends the pocket money and in the same night the respondent also made allegations against his mother, sister and sister-in-law. She has also expressed before him that she was not willing to bear a child. She had taken decision unilaterally not to take pain to bear a child. However, after long persuasion there was consummation of marriage with protection i.e. condom which she had brought from her house. In the same night being a doctor, he detected that the respondent is having vision defect which found to be a genetical disease. On the next morning, the respondent left the bed at 7.45 AM and after leaving the bed demanded for separation and when he and his sister-in-law asked her to come to breakfast, she told them that she is not habituated with taking fruits, jam, butter, bread, milk, juice tea and coffee as she used to take Roti and potato fry in the morning and evening and left the dining table and slept on the bed. When he offered a cup of tea to her in the bed room, she threw it for which he was mentally shocked. On the seventh day of the marriage and also on 14.05.2009, when one of his elder brothers with his wife and his childhood friend and his wife came to his house, he and his family members were

humiliated due to abnormal behavior of the respondent. On the day of Astamangala when he and the respondent went to the parental home of the respondent, there the mother of the respondent told him whether the joint family property of his village has been separated, if not then separate it immediately and sold the same and to have a separate establishment in town preferably at Puri and in case it is not done, the respondent will not stay with him and they will create problem for the petitioner and his family members. When he refused their proposal, the respondent started rebuking and insulting him and his family members. On the 9th day of marriage, due to respondent, his other family members started separately preparing their food in separate kitchen so also the respondent and for the first time in his life, he took his food separately under one roof apart from his family members. Most of the times the respondent asked him to bring food from good hotels in order to avoid cooking to which his mother-in-law supported it. On 20.05.2009 the respondent over phone informed him to come immediately by 3.30 P.M. as she has had to go to meet one of her friends in I.G. Park, Bhubaneswar at 4 P.M. to which he replied that he could not do the same as he was preoccupied with U.G. classes from 3.20 P.M. to 5 P.M., but could accompany her after completion of classes. After completion of classes when he reached at home, he found the respondent absent and out of curiosity when he went to I.G. Park, he found the respondent was gossiping with a young boy. The respondent did not introduce him with her guest for which he waited half an hour and thereafter both of them came to his house. On 01.06.2009 the respondent went to her parental home and stayed there for 30 days. During her stay when he visited there, he was misbehaved by the respondent and her family members even he was not offered a cup of tea and on one occasion he had to take his food outside. When he and his family members requested the mother of the respondent to send her back to Bhubaneswar, their request was dishonored on the plea that the respondent was not feeling well even though she was hail and hearty. On 01.07.2009 his brother went to the parental home of the respondent to bring her back but the mother of the respondent refused to send the respondent to

her matrimonial home as she has to keep the respondent with her for all the time as she has no son and daughter-in-law for which his brother returned Bhubaneswar. However, on 09.07.2009 the respondent, her mother and elder sister came to his house after causing insult to his elder brother. On 09.07.2009 when there was heavy rain and he was discussing with his family members in his brother's room, the respondent called him for going to cinema hall to see a movie but when he did not accede to the proposal of the respondent as it was raining heavily and was busy in discussing serious family matters, the respondent threatened him to commit suicide if he would keep any relation with his family members. On 11.07.2009 when his mother gave the prescribed medicine to the respondent with a glass of water as the respondent was suffering from fever, the respondent threw the tablet on the face of his mother and gave a blow to the glass of water. The mother of the respondent was interfering in their family matter by giving bad remarks at him by frequently visiting to his house. It is the further case of the petitioner that the respondent most of the times refused sexual relation with him. The respondent after each ejaculation was telling shamelessly with pretension "we both are interested for a child but unable to produce a child" for which he was humiliated and also interpreted that he is an impotent. In some occasions when he desires for sex, the respondent was pulling his penis resulting severe pain to him. Once, when he was anxiously to have sex, she squeezed both his testicles heavily, for which he got severe pain for the whole night and in the next morning it was found that there was orchid. According to the petitioner, on 27.07.2009 the respondent left his house without his consent and consent of his family members deserting him and while leaving his house, she had taken away all her gold ornaments presented to her along with the gold chain presented to him and stayed in her parental home at Puri. Thereafter several attempts have been made from his side to bring her back but all were in vain. On 18.04.2010 his eldest brother and sister-in-law who are staying in Bangalore went to the parental home of the respondent to bring her back but she bluntly refused to return alleging that he has not yet arranged separate

establishment for her and also threatened to file criminal case U/s. 498 (A) to teach a lesson to him and his family members. Thereafter both his brother and sister-in-law returned after humiliation. He has further averred that the respondent lodged an FIR in Kumbharapada Police Station, Puri U/s. 498 (A) for which on 24.04.2010 the police personnel along with one of the relation of the respondent came to his house and threatened with dire consequence. According to the petitioner, his marital life has been strained since the date of marriage and he had no sexual relation with the respondent since 27.07.2009. Due to her frequent rudeness of language, uncivilized remarks, dominating character, petulant manner, in-differences towards him and negligence reached in such a degree that it made his married life absolutely intolerable and their matrimonial bond is beyond repair and also due to her cruel conduct and unrealistic temperament have caused a reasonable apprehension in his mind for which it will be harmful and injuries for him to live with her. He has further stated that due to willful desertion of the respondent for pretty long time is complete denial of conjugal relationship which amounts to mental cruelty. On 08.06.2010 a team of Kumbharapada Police Station, Puri headed by Mr. Khireswar Sahu took him to the police station and detained there upto 10.06.2010 claiming that the respondent had lodged a complaint against him for dowry demand and torture but they did not show the complaint petition of the respondent to him. On the other hand, the IIC Khumbharapada P.S. and Mr. Sahu told him that he was not right person to know about the complaint. On 10.06.2010, the IIC Khumbharapada Police Station forced him to write an undertaking for keeping his wife in a rented house and to cut all his relations from his mother and other family members and relatives. However, the police did not forward him to the Court though he demanded for the same from the date of his detention in police station. Thereafter, the respondent came to his native village along with her mother and one cousin brother namely Bapuni Satpathy in a car hired by him. From the date of their stay in his native village, the respondent started misbehaving him and his family members. It is further averred that the respondent demanded Rs. 7,00,000/- from him for

construction of a market complex-cum-residence at her parental home at Puri in her mother's name from the date of her staying and also threatened to kill either by poisoning herself or by hired gundas at any place of petitioners native village and Bhubaneswar if he would delay in payment of her aforesaid demand and also would not stop keeping relationship with his parents and other family members and thereby she will be able to grab his properties, Govt. Service and bank balances which was evident from the local police station on 19.07.2010, 29.07.2010 and 02.08.2010 and in Station Dairy No. 448 and 567 dated 23.08.2010 and 27.08.2010 respectively. The respondent during her stay did not do any household work and also misbehaved to his elder family members and his relatives and also called them by their names only. From the date of her stay in his native i.e. 10.06.2010, the respondent was not willing to share bed with him. She has also falsely claimed that she was pregnant and when he asked for a second pregnancy test in his presence, the respondent denied for the same and cautioned him that if he will pursue it further then she would left his house and to report to the police station alleging that he was giving her mental and physical torture. On 04.08.2010 when her pregnancy test was conducted, it was found negative and further she again exhibited the sings of menstruation on 08.08.2010 corresponding to her last period on 08.07.2010. Thereafter they have no cohabitation between them. On 23.08.2010 at about 11.30 A.M. she left his house willfully with her mother and one of her cousin brother namely Akash Rath without listening to her sister-in-law who was the only member present at that time. He has further stated that on 30.08.2010 he met an accident and sustained fracture on his right clavicle bone and five ribs for which he was undergoing complete bed rest until his recovery. During his sufferings when his well wishers informed the respondent and her mother, they gave remark that her daughter could not take care of a patient, struggling to recover from death. It is further stated by the petitioner that during the pendency of the case, the respondent has lodged an FIR before Mahila Police Station, Bhubaneswar against him and his family members on 19.03.2011 and he was sent to jail custody for six days and was

suspended from his service on 20.03.2011 and was unable complete his Ph.D. course for which his academic and service carrier was damaged. The respondent in order to satisfy her grudge, filed false case with an ulterior motive to defame him. She also wrote a letter to the Chief Minister's Grievance Cell requesting him not to reinstate him and take action against his other family members. She has also taken attempt to defame him through electronic and print media on daily Odia News Paper 'The Dharitri' on 21.03.2011. He has averred that by filing different cases without any reasonable cause the respondent had shown her cruel behavior at him. Hence, the petition for divorce was filed by the husband on the aforesaid grounds of cruelty.

4. The respondent-wife contested the proceeding by filing W.S. and denied all the allegations made by the petitioner against her. She has raised objection as regards to the maintainability of the proceeding on the grounds of lack of cause of action and jurisdiction of this court as their marriage was solemnized at Puri. The specific case of the respondent is that, the petitioner was much older than her at the time of marriage and suppressed his age and has a curved right hand, prior to marriage. Before marriage, the petitioner had demanded Rs. 8,00,000/- for a car as he is an Asst. Professor, but it was settled at Rs. 6,00,000/- and paid the same along with gold ornaments of 16 tolas, and 50 tolas of silver ornaments and other costly household goods as dowry. Subsequently further a sum of Rs. 2,00,000/- and other goods were also given to the petitioner. She has further averred that she is a simple, educated and fatherless and is now staying with her mother at Puri, who is working as a clerk in agriculture office, Puri. Prior to her marriage she was working in a private firm and was getting Rs. 20,000/- per month but she had given up her job after the marriage. The petitioner is an Assistant Professor of Veterinary Medicine of O.U.A.T and is earning huge amount from his profession and also earning a lot from his roaring private practice. He is a man of high profile. The petitioner is vegetarian whereas she is a non vegetarian. The petitioner is over sexed man, ill tempered and greedy and therefore was not interested for marriage as he has been keeping extra marital relationship with his sister-in-law, Sarmistha

Senapati, wife of Manas Ranjan Senapati's and with his students. The allegations that she did not cooperate with the petitioner for sex and she did not like to be mother of any child is out and out false. Rather it is the inner reflection of the mind of the petitioner. The petitioner at the initial stage of marriage did not show any interest in sex. The respondent is a very simple girl who thought everything may come normal gradually. On the contrary, she noticed that the petitioner is very close to his sister-in-law Sarmistha Senapati and is spending more and more time with her in late hour of night. After the marriage the sister-in-law and the mother-in-law entrusted the entire household work on her, including taking care of the nephews. The respondent ungrudgingly was doing everything, feeling the same as her duty. Though she was interested for a child of her own, the petitioner instead of begetting a child of his own persuaded the respondent to adopt the son of his brother and to stay in a joint family to uphold the family bondage strong. She though not vehemently opposed, for keeping peace in the family, the petitioner has also given a proposal to her to suggest her mother to execute a power of attorney in his favour in respect of the ancestral landed property, so that he would undertake remodeling of her Puri dwelling house but the petitioner backed out from such proposal. It is further averred by the respondent that from that date the petitioner, his brother and mother forced her to obtain the power of attorney from her mother. When the petitioner wanted to take her to Puri to give proposal to her mother, she refused to go to Puri but the petitioner promised before her that he would not propose for power of attorney to her mother. Believing on the words of the petitioner, she went to Puri but there the petitioner created a scene by observing fasting and remained obstinate for power of attorney. When she opposed it, the petitioner misbehaved her and proposed at least execute and to register Puri house in his name but her mother tackled the situation assuring the petitioner that her elder daughter has enough money and landed property at Puri and in the long run, the Puri town house will be given to him. However, he did not hear anything and told unless he got any written assurance, he would not touch even water in her

house and returned Bhubaneswar leaving the respondent in her parental home. From that date the petitioner did not keep any link with her. She felt awkward at Puri as the relations and neighbours started criticizing her. The petitioner also spread rumors at Bhubaneswar amongst her relations that he had divorced her. Thereafter, she approached the I.I.C, Kumbhrapada P.S. to intervene and conciliate the matter but not to take any coercive steps against the petitioner because of that may wreck their marriage. On 10.06.2010 the IIC Khumbharapada P.S. called her and there on her persuasion, the petitioner acted in a perfect manner and in presence of witness and the IIC Khumbarapada P.S. wrote in his own hand to take back her to his house and would not torture and thereafter he took her to his house. It is further averred by the respondent that during her stay, the elder brother of the petitioner namely Trilochan Senapatri and Manas Ranjan Senapati and his sister-in-law Arati Senapati, Sarmistha Senapati and mother-in-law Chanulata Senapati etc. blamed her as to why she went to the police station and brought disrepute to the family. The petitioner started torturing her again at his Bhubaneswar residence and also the elder brother of the petitioner Manas Ranjan Senapati used sexually coated unbearable words at her and tried to keep physical relationship with her. Strangely the entire family members not only supported but also enjoyed the same. All the family members have insisted her to share bed with the brother of the petitioner and when she refused for the same, they assaulted her and gave hot shock (fire touch) for which she sustained serious burn injuries on her person and escaped from that place and lodged a report in Mahila P.S. She has further stated that the petitioner has been remanded to judicial custody for six days for the offences U/s. 498(A), 354, 323, 294, 324, 506, 509/34 IPC. The petitioner cunningly got an order of bail for his family members from the Hon'ble Court and it was unfortunate that the Hon'ble Court without hearing from her or Home Department, passed caustic remark against her and all the police officers of the State and the said caustic remarks though has no force in the eye of law, the entire police force have been demoralized and particularly the Mahila P.S. is not taking any steps to seize her dowry

articles though she desires to get her articles back. The petitioner is now disposing of her dowry articles only to defraud her. She has further averred that the petitioner and his family members assaulted her in such a manner that she only to save her reputation and chastity virtually fled away from the house of the respondent, leaving all her ornaments, utensils clothes, and other household articles but the petitioner very cleverly to avoid to give her gold ornaments might have lodged false report, and might have created false documents. Therefore, the respondent has prayed for dismissal of the case.

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

(I) Is the present proceeding maintainable?

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

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

6. The petitioner in order to buttress his case he, himself, has been examined as P.W.1, one Nrusingha Charan Swain and relied twelve numbers of documents. They are:- Ext. 1 is the certified copy of the petition in Misc. Case No. 95/2010, Ext. 2 is the certified copy of order in CrI. Misc. Case No. 95/2010 dated 10.06.2010 and 11.06.2010, Ext. 3 is the copy of Station Diary entry No. 253 dated 10.06.2010 of Khumbharapara P.S. Puri (three sheets) obtained under R.T.I. Act, Ext. 4 is the Copy of the FIR dated 22.08.2010 of Balakati Out Post, Ext. 5 is the relevant station diary entry No. 567 dated 27.08.2010, Ext. 6 and 7 are the certified copy of Bail order in BLAPL Case No. 23870/2010 and Misc. Case No. 389/2011 respectively, Ext. 8 is the certified copy of FIR and Formal FIR in G.R. Case No. 838/2011, Ext. 9 is the certified copy of order in G.R. Case No. 838/2011 dated 25.03.2011, Ext. 10 is the Disability Certificate, Ext. 11 is the treatment advice of AIMS and Ext. 12 is the information obtained under R.T.I. Act. Vide application No. 16 of 2014-15. The respondent in order to nix the allegation of the petitioner she, herself, has been examined as R.W. 2, one Dr. Pravati Mishra as R.W. 1, one Umakanta Satpathy as R.W. 3, one Akash Ranjan Rath as R.W. 4 and one Pabitra Mohan Sahu as R.W. 5 and relied sixteen

documents. They are:- Ext. A is the prescription given by the petitioner, Ext. B is the signature on the S.R. dated 22.02.2011, Ext. C is the prescription of petitioner and D is the treatment and investigation reports filed by the petitioner, Ext. E is the prescription of P.W. 1, Ext. F is the Blood report of the petitioner, Ext. G is the Outdoor Ticket dated 23.08.2010 of Puri Hospital, Ext. H is the Outdoor Ticket of Capital Hospital dated 19.03.2011, Ext. J is the Certified copy of the Hon'ble Court dated 13.02.2012 in Misc. Case No. 1288/2011, Ext. K to N are the four Pass Book of Ahalya Tripathy, Ext. P is the Information obtained from Central Public Information Officer dated 26.03.2013, Ext. Q is the Station Diary Entry dated 21.01.2011 of Mahila Police Station, Bhubaneswar, Ext. R to R/9 are the Xerox copies of RORs filed by the respondent.

Point No.1:-Is the proceeding maintainable?

7. The respondent questioned the maintainability of the proceeding on twin grounds. They are:-Firstly, lack of cause of action in view of condonation of matrimonial cruelty of the wife in view of the compromise vide Ext. 3 and secondly, lack of territorial jurisdiction as the marriage was solemnized at Puri. Mr Sarangi, the learned counsel appearing for the respondent demystifying the first point submitted that the matrimonial proceeding was filed on 21.05.2010 and the petitioner and the respondent voluntarily decided on 10.06.2010 to reside together as a result of which they have started residing at Sisilo irrespective of any previous allegations prior to the date of filing of matrimonial application as the petitioner has condoned the matrimonial cruelty committed by the respondent be-tided before filing of MAT Case No. 961 of 2010. Per contra Mr. Das, the learned counsel for the petitioner submitted that the mere resumption of cohabitation would not mean condonation of the acts of cruelty to claim the benefit of condonation. It has to be proved while resuming cohabitation, the other party has completely forgiven the conjugal offence. The compromise entered into between the parties in the police station is a shut-gun arrangement to avoid police harassment. The petitioner has never intended the matrimonial cruelty of the

respondent even after resumption of cohabitation vide Ext. 3. Had he condoned the same, he would not have perused the present matrimonial proceeding.

8. Condonation means, the complete forgiveness and blotting out a conjugal offence followed by cohabitation, the whole thing done with full knowledge of all the circumstances of the offence forgiven, so as to restore the offending party to the same position, he or she occupied before the offence was committed. The law is well settled that condonation at times and/or living together in an attempt to repair the fissures in the relationships of husband and wife by themselves may not amount to condonation. To constitute condonation the offended spouse must accept the offending partner with a spirit of forgiveness and by wiping off the unpleasant memories, start the conjugal life as if in a clean slate. Herein the instant case, it does not appear that the husband accept the wife with a spirit of forgiveness and started the conjugal life as if on a clean slate by wiping off all unpleasant memories. With an offended soul he made attempt to repair of the matrimonial home but to no effect. That apart, the wife even after institutional of the suit indulged in making reckless, false and motivated allegation like the petitioner has extra marital relations with his Bhabijis (Sister-in-law) and other girl students against the petitioner not only in her written statement but also in her deposition. Therefore, the attempt of the petitioner in entering into a compromise in the police station either voluntarily or duress is nothing but an attempt to retain the fission in the relationship to avoid police harassment. No doubt, the petitioner is an Asst. Professor in Veterinary Department of O.U.A.T., Bhubaneswar and as such the step taken by him is nothing but a shut-gun arrangement not intending to condone the matrimonial cruelty of the respondent. Therefore, the argument of Mr. Sarangi, the learned counsel for the respondent that the proceeding is hit by lack of cause of action being sophistry stands rejected.

9. The cookie-cutter to the second submission of Mr. Sarangi is Section 19 of the Act. 1955. The said section spells out the local jurisdiction of the Court to

entertain matrimonial proceedings and Section 19 (iii) caters our need. It speaks that matrimonial proceeding can be presented to the local civil courts where the parties to the marriage last resided together. As per the averments of the respondent in her W.S. it is pellucid that after entering to a compromise in Khumparada P.S. on 10.06.2010, the parties went to Sisilo, the native village of the petitioner to reside together and they resided there till the respondent left her for her parental home on 23.08.2010. Sisilo is under Baliana Police Station and therefore within the jurisdiction of the Court. Therefore, the aforesaid excoriation of Mr. Sarangi does not buy him much water.

Point No.2:- Whether there exists any cruelty on the part of the respondent-wife to allow the petition for divorce?

10. The respondent sought divorce on the ground of cruelty of the wife on him. 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 before appreciating the circumstances and back ground complained of as cruelty to confirm the same as a legal cruelty for a ground of divorce.

11. 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."

12. 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."

13. 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)

14. 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...."*

15. 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.

16. 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.

17. 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 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, if 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 conclusion, regard must be had to the social status, educational level of the parties, the society they move 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."

18. 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".

19. 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.”

20. 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.”

21. 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 to 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' side, 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 person's 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 to be called upon to endure.

22. 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 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 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.

23. 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 the following aspects. They are:-

- (a) The respondent demanded separate residence from the joint family.
- (b) Misbehaving him and his other family members.
- (c) Not doing any household work and watching T.V
- (d) The respondent has also disclosed before him that she was not interested to marry to him and was interested to marry one Pinku of Chandanpur and deminating his caste by telling that he belongs to lower Brahmin caste and the respondent belongs to high Brahmin caste for which she has heartedness towards Senapati Brahmins and demanded pocket money of Rs. 10,000/- for day to day expenses and not to question about the expenditure in the fourth night of marriage.
- (e) Forced to use protection while keeping sexual relation with the respondent.
- (f) Ordering him to bring foods from hotel to avoid cooking.
- (g) Calling the elders of his family members in their names.
- (h) Throwing the tablet on the face of his mother and gave blow to the glass of water while giving medicines by his mother on 11.07.2009.
- (i) Due to assault of the respondent he has filed several complaints in the police station which is evident from station diary entries made by the police.
- (j) The respondent has also caused bodily injury to him.
- (k) At the instant of the respondent police personnel of Khumbharapada Police Station detained him for three days i.e. from 08.06.2010 to 10.06.2010 and there on 10.06.2010, the IIC, Khumbharapada Police Station forced him to write an undertaking for keeping the respondent in a rented house.
- (l) Threatening him and his family members to put them in jail on false allegations like dowry torture.
- (m) Further threatening to kill him by poisoning or by her gundas, if he would not give Rs. 7,00,000/- for construction of a market complex over her residential plot at Puri.

- (n) Not sharing bed from the date of stay in his native village i.e. from 10.06.2010 but claiming her pregnancy during those days.
- (o) Having extra marital relation with some boy for which she wants a child in the name of the petitioner.
- (p) Due to F.I.R. lodged by the respondent he was arrested by the Mahila Police Station, Bhubaneswar on 19.03.2011 for which he lost his academic and service carrier.
- (q) Tried to defame him in public by publishing news in the daily Odia New Paper "The Dharitri" and also sent letter to Chief Minister's Grievance Cell not to reinstate him and to take steps against his family members.

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

- (i) The petitioner is an over sexed man, ill tempered and greedy and extra marital relationship of the petitioner with the sister-in-law of the petitioner and his students.
- (ii) Persuaded the respondent for adoption of young son of the elder brother of the petitioner.
- (iii) The petitioner and his family members tortured her both physically and mentally and forced to make power of attorney of her ancestral property in the name of the petitioner and when her mother assured the petitioner that her elder sister has vast landed property at Puri and in the long run, the Puri town resident will be given to him then and there he left her in her matrimonial home.
- (iv) The petitioner also spread rumors at Bhubaneswar amongst her relation that he divorced her for which she was humiliated and criticized by her neighbours and relations.
- (v) All the family members of the respondent insisted her to share bed with elder brother of the petitioner and when his elder brother tried to keep physical relationship with her and used sexually coated unbearable words and when she refused for the same, the

petitioner and his family members assaulted her and gave hot shock (fire touch) for which she was sustained serious burn injuries.

25. During hearing of the case, it is observed that the parties adopted very rough and rigid attitude. Prime of life is lost but the fire of dislike for each other was burning hot. I do not share feeling of wife expressed by the learned counsel that a conservative Hindu lady would not prefer to be known as divorcee in the society. At the same time, I cannot be oblivious of the impossible situation in which the parties have landed themselves which in deed is unfortunate.

26. Among the circumstances and back ground allegation of cruelty complained of delineated in para-23 hereinbefore illustrated circumstances are highlighted "n" to "q" are sufficient to draw an illation that the petitioner suffered mental cruelty at the hands of the respondent the petitioners as by letting the evidence proved the same. Whether the allegation of the wife that the petitioner was in habit of association with his sister-in-law and other girl students was proved or not but what is certain is that once, such allegations are made by the wife and husband as has been made in this case then it is obvious that marriage of the two cannot is any circumstances be continued any further. The marriage appears as from cruelty alleged by the wife it has turned out to be at least intimacy of the husband with his sister-in-law.

27. In the case of R. Balsubramanium Vrs. Smt. Vijayalakshmi Bala Subramanuim reported in AIR 1999 SC 3070 where husband alleging that wife all throughout suspected that he had extra marital affairs and husband's allegations are that wife had sexual inter course with other persons, it was held that such false allegations amount to cruelty. In the present case also it has been found proved from the evidence on record, that wife was suspecting illicit connection of husband with his Bhauja (sister-in-law) and his girl students. Admittedly, allegations through raised in the written statement yet allegation were not proved by any evidence, therefore, the allegations are certainly false to the knowledge of wife and therefore very well amounts to cruelty also in their pat. Such indiscriminate and irresponsible allegation

touching on the character of the petitioner would have its own deleterious effect upon both the parties accused of adultery and in the basis of such allegation the family would likely to be ruined, even before the truth or otherwise established. Therefore, making some unethical and unholy allegations linking up the character of the husband with the character of the sister-in-law and thereby bringing down the reputation of the family of sister-in-law of the husband only indicates the amount of abhorrence the wife gathered against her husband. Her thought process was absolutely going wrong in a short span 15 month of marriage life instead of understanding the husband or correcting the husband, if at all he is at fault and thereby make a good family by herself and for herself, the wife had resorted to demolish her own family members of the husband. This palpable from the very quality of her averments made in the counter. It is rather the quality of her perception about her husband, in spite of coming out of his family and preparing to lead on independent family life with his wife, is at the lowest ebb.

28. The paramount are the situation is still worse, not only the wife made complaint and got the husband and in-laws arrested she also resiled from the compromised reached at Khumbarapada Police Station vide Ext. 3. Admittedly, the husband and wife were living separately since 23.08.2010. This conduct of the wife clearly clinches her act of cruelty.

Point No.3:- Whether the respondent wife is entitled to any monthly or permanent alimony in case of divorce is allowed?

29. Admittedly the petitioner is working as Asst. Professor Veterinary, OUAT, Bhubaneswar and is also doing private practice. He has dwelling house both at Bhubaneswar and Sisilo. Besides, he has vast ancestral landed property from wherein he has a share. Equally, it is admitted that the respondent is a house wife. She was 29 years old in the year 2010 and by now she will be 34 years. She was granted Rs. 8,000/- per month as interim maintenance. The petitioner was aged about 38 years old in the year 2010 and by now he will be 43 years old. The life expectancy of a woman in Indian climate is 70 years. The service tenure of a Professor of a University is 60

years. Keeping in view of his length of service he has to avail the benefits of two Pay Commissions. There is remote chance of remarriage of the respondent. Keeping in view of the aforesaid factors and rising price of essential commodities of daily life, prospect of pay rise etc., it would be just and proper to allow Rs. 60,00,000/- (Rupees Sixty Lakhs) only as permanent alimony to the respondent. Other monetary benefits claimed by the respondent are declined in view of grant of lump-sum amount granted towards permanent alimony. The parties are directed to exchange the goods given to each of them and while taking steps for exchanging of goods, parties to show their honesty and sincerity to that effect. Hence, it is ordered;

ORDER

The petition of the petitioner is allowed on contest. A decree of divorce is passed and the marriage between the petitioner and the respondent is hereby declared dissolved with effect from the date of decree subject to payment of Rs. 60,00,000/- (Rupees sixty lakhs) only to the respondent towards permanent alimony. The parties are directed to exchange the goods given to each of them and while taking steps for exchanging of goods, parties to show their honesty and sincerity to that effect.

Sd/-

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 16th day of March, 2015.

Sd/-

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Santosh Kumar Senapati
P.W.2 Nrushinga Charan Swain

Witnesses examined for the respondent:

R.W.1 Dr. Pravati Mishra
R.W. 2 Aradhana Tripathy
R.W. 3 Umakanta Satpathy

R.W. 4 Akash Ranjan Rath
 R.W. 5 Pabitra Mohan Sahu

List of documents by petitioner:

- Ext. 1 Certified copy of the petition in Misc. Case No. 95/2010
 Ext. 2 Certified copy of order in CrI. Misc. Case No. 95/2010 dated 10.06.2010 and 11.06.2010
 Ext. 3 Copy of Station Diary entry No. 253 dated 10.06.2010 of Khumbharapara P.S. Puri (three sheets) obtained under R.T.I. Act
 Ext. 4 Copy of the FIR dated 22.08.2010 of Balakati Out Post
 Ext. 5 Relevant station diary entry No. 567 dated 27.08.2010
 Ext. 6 & 7 Certified copy of Bail order in BLAPL Case No. 23870/2010 and Misc. Case No. 389/2011 respectively
 Ext. 8 Certified copy of FIR and Formal FIR in G.R. Case No. 838/2011
 Ext. 9 Certified copy of order in G.R. Case No. 838/2011 dated 25.03.2011
 Ext. 10 Disability Certificate
 Ext. 11 Treatment advice of AIMS
 Ext. 12 Information obtained under R.T.I. Act vide R.T.I. application No. 16 of 2014-15.

List of documents by respondent:

- Ext. A Prescription given by the petitioner
 Ext. B Signature on the S.R. dated 22.02.2011
 Ext. C Prescription of the petitioner
 Ext. D Treatment and investigation reports filed by the petitioner
 Ext. E Prescription of P.W. 1
 Ext. F Blood report of the petitioner
 Ext. G Outdoor Ticket dated 23.08.2010 of Puri Hospital
 Ext. H Outdoor Ticket of Capital Hospital dated 19.03.2011
 Ext. J Certified copy of the Hon'ble Court dated 13.02.2012 in Misc. Case No. 1288/2011
 Ext. K to N Four Pass Book of Ahalya Tripathy
 Ext. P Information obtained from Central Public Information Officer dated 26.03.2013
 Ext. Q Station Diary Entry dated 21.01.2011 of Mahila Police Station, Bhubaneswar
 Ext R to R/9 Xerox copies of RORs filed by the respondent.

Sd/-
 JUDGE, FAMILY COURT,
 BHUBANESWAR.