

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

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

Civil Proceeding No. 4 of 2011
U/s.27 of the Special Marriage Act, 1954

Sneharanjita Moharana, aged about 22 years,
W/o-Shuvendu Panda
D/o-Dr. Narahari Moharana,
Vill.-Bachhara, P.O.-Jatni,
P.S.-Jatni, Dist-Khurda
At present residing at Qtr No. D-74, BJB Nagar,
(BJB Flat), P.S.-Badagada, Bhubaneswar,
Dist-Khurda.

....Petitioner.

... Versus ...

Shuvendu Panda, aged about 31 years,
S/o-Late Niranjana Panda,
Vill./P.O.-Behela, P.S.-Komma,
Dist-Nuapada,
At present residing at Plot No. 132(P), Paikanagar,
P.S.-Nayapalli, Bhubaneswar,
Dist-Khurda.

.... Respondent.

Civil Proceeding No. 3 of 2011
U/s. 22 of Special Marriage Act, 1954

Shuvendu Panda, aged about 31 years,
S/o-Late Niranjana Panda,
At/P.O.-Behela,
P.S.-Komma,
Dist-Nuapada,
at present residing at Plot No. 132 (P),
Paikanagar, P.S.-Nayapalli,
Bhubaneswar

... Petitioner

... Versus...

1. Sneha Ranjita Maharana, aged about 22 years,
W/o-Shuvendu Panda.

2. Narahari Maharana, aged about 53 years,
 S/o-Lingaraj Maharana
 Both are R/O-Vill-Bachhara,
 P.O/P.S.-Jatni, Dist-Khurda,
 at present residing at Qtr No. D-74,
 BJB Flat, BJB Nagar,
 P.S.-Badagada, Bhubaneswar,
 Dist-Khurda.

... Respondents

Date of Argument : 13.10.2014

Date of Judgment: 28.10.2014

J U D G M E N T

The petitioner Sneharanjita Moharana has filed C.P. No. 4 of 2011 against the respondent Shuvendu Panda U/s. 27 of the Special Marriage Act, 1954 (in short, the Act 1954) for dissolution of marriage praying for a decree of divorce, whereas in C.P. No. 3 of 2011, the petitioner Shuvendu Panda filed petition U/s. 22 of Special Marriage Act, 1954 (in short, the Act 1954) against the respondents Sneharanjita Moharana and her father Narahari Moharana praying for decree of restitution of conjugal rights. Both the case are taken together for a common Judgment as per direction of the Hon'ble Court vide order dated 17.05.2013 passed in W.P. (C) No. 10475 of 2013.

2. The fact of the case of the petitioner Sneharanjita in C.P. No. 4 of 2011 are as follows:-

The case of the petitioner is that when she was continuing her study in +3 Second Year Arts in BJB College, she came in contact with the respondent and latter developed their love and intimacy with each other through computer chatting and at that time the respondent had misrepresented her that he was working as a Govt. Veterinary Doctor and completed Master Degree in Veterinary Science and in the year 2005 the respondent continued to meet the petitioner for about six months at BJB College Campus while she was reading in +3rd year Art. The respondent further told her that he is Brahmin by caste and decided to marry her and had confirmed her, the

willingness of his parents for such marriage. It is further averred that when the respondent contacted with his widow mother and sister both did not give their consent for which the respondent assured the petitioner to register their marriage before Sub-Registrar, Nuapada and the entire proposed plan was made behind the back of the parents of the petitioner. Accordingly, the marriage of the petitioner with respondent was solemnized before the Marriage Officer, Nuapada on 08.02.2006 as per Special Marriage Act in presence of the two sisters of respondent i.e. Pranati Panda and Niyati Panda and in presence of another witness Udhab Charan Pradhan (brother-in-law) of the respondent and the said marriage solemnized between them with conditions that after registration of marriage both of them will not live together upto December, 2007, their marriage will be solemnized as per Hindu rites and customs after marriage of the elder brother of the respondent and thereafter both will stay together and the respondent will not keep any contact with her parent or relatives during the said period. It is further averred that after registration of marriage the respondent returned to Bhubaneswar alone and left the petitioner in his sister's house at Nuapada with an assurance that the respondent along with his elder sister was/is residing at Ashok Nagar at Bhubaneswar will convince the widow mother of the respondent. Fifteen days thereafter the respondent came back to petitioner and showed his indifferent behaviour with her and abused her in filthy languages and forced the petitioner to inform the matter to her parents who will arrange a separate resident for them and demanded cash of Rs. 10,00,000/- and gold ornaments. It is alleged that the respondent forcibly made sexual intercourse with her at Nauapada and when the petitioner protested the respondent assaulted her and when the petitioner was ill she came to know that a Saline was fixed in her body by a Doctor. It is further averred that on 02.03.2006 the respondent took the petitioner to Bhubaneswar and both of them had stayed at Hotel Venus-INN i.e. from 03.03.2006 to 07.03.2006 where the respondent tortured the petitioner in

several ways and gave her some medicines with food and kept forceful sexual intercourse with her and told her if her father did not give a Flat at Bhubaneswar in his name and pay cash of Rs. 10,00,000/- he will not accept her for which she was mentally harassed. It is further averred that on 07.03.2006 the respondent left her in a Working Women Mess at Siripur Chhack at Bhubaneswar and left the place. It is further averred that out of fear the petitioner could not inform the matter to her parents with hope that she will continue her stay with the respondent. After completion of her +3 Final Year examination, the respondent did not take any initiation for continuance of marriage and threatened her with dire consequence and to divorce her. According to the petitioner, the respondent has finally deserted her on 08.03.2006 and since then they have no physical relationship. Finding no other alternative, the petitioner informed the matter to her parents and her father along with uncle went to the mother of the respondent who abused them in filthy languages and demanded a Flat and cash of Rs. 10,00,000/-. Latter on she came to know that the respondent was working as a Live Stock Inspector but not a Veterinary Doctor as told by him previously. She has further averred that the respondent is a fraud and mischievous person and since several attempts for conciliation had failed she took shelter of her parents on 15.03.2006. According to her, both them filed C.S. No. 15 /2007 for mutual divorce. In the meantime, the respondent on 12.09.2007 threatened her to expose the vulgar photograph of her and show her naked C.D. in public which will harm to her and to damage her reputation. The respondent also threatened to kill her father and uncle. According to the petitioner, the respondent with a malafie intention withdrew his consent in the mutual divorce petition on 17.01.2007 for which the said case was dropped. Petitioner further averred that during her stay with the respondent, the respondent tortured her both physically and mentally and deserted her. The respondent has made false allegations against her by filing ICC case No. 3375/2008 claiming that the petitioner terminated her pregnancy with

connivance with her father. Since the torture and cruelty became unbearable she has filed this proceeding seeking a decree of divorce.

3. The respondent contested the proceeding by filing W.S. and denied all the allegations made by the petitioner against him. He has admitted about the registration of the marriage before the Marriage Officer, Nuapada. He has stated that he is National level Foot-ball player and while he was playing football in BJB College Football ground the petitioner came in contact with him and offered him red roses and she took his telephone number and made contact with him or several times and gave proposal to marry him and even from 2004 the petitioner forced to keep physical relationship with him. On 19.12.2005 the petitioner voluntarily left her house deserting her parents, reached in the office of the respondent and told him to take her to his native place and to register his marriage there and out of force, the respondent took her to Nuapada and got the marriage registered and after marriage, they stayed at Nuapada for about two months. It is averred that the father of the respondent is well aware about the stay of the petitioner at Nuapada. Respondent has further averred that on 10.02.2006, he along with the petitioner went to the house of the petitioner at Bhubaneswar where the father of the petitioner suggested as it is a inter-caste marriage, the petitioner will stay with him till arrangement of a separate house by the respondent and the petitioner forced him to stay with her in her parent's house and as per consent of the father of the petitioner, they both stayed in Hotel Venus-INN and stayed there for five days. According to him, the petitioner took Rs. 2,00,000/- from him by saying that she will pay the said amount to her father for purchase of Video Indoscopy Machine for his clinic and in the month of May, 2006 she executed an undertaking in Nuapada Court that she will repay the amount within one year. Respondent has further averred that the petitioner was reluctant to give birth a child for about 4 to 5 years and behaved indifferently towards him. The respondent arranged a house in Bhubaneswar in August, 2006 and the father of the petitioner denied the

petitioner to perform her marital obligation with the respondent and also denied to return Rs. 2,00,000/- to him. The father of the petitioner also threatened him to file a false dowry case against him. Further, the petitioner terminated her pregnancy on 09.03.2006 in Annapurna Memorial Hospital. It is further averred that S.D.J.M. Bhubaneswar has taken cognizance against the father of the petitioner in ICC case No. 3375 of 2008. According to the respondent the petitioner has voluntarily withdrew herself from his society without reasonable cause and therefore, he claimed for restitution of conjugal rights.

4. Further, the present respondent has filed C.P. No. 3/2011 claiming for restitution of conjugal rights. He has averred that the entire disturbance has happened by the respondent-wife with connivance with her father in order to harass him and therefore, he prayed for a decree of restitution of conjugal rights. The respondent-wife has filed written objection denying all the allegations made against her. Further, she has denied for restitution of conjugal rights claiming that the petitioner-husband is a fraud and mischievous person and further continuance of marriage will not possible on her part.

5. The question that requires to be adjudicated is whether, there exists any desertion and cruelty on the part of the respondent to allow the petition for divorce?

6. Whether the respondent-wife had voluntarily withdrawn herself from the society of the petitioner-husband without any reasonable cause and whether the petitioner-husband is entitled for a decree of restitution of conjugal rights?

7. The petitioner-wife in C.P. No. 4 of 2011 in order to prove her case she, herself, has been examined as P.W. 1 and relied one document i.e. Ext. 1 is the Marriage Certificate. In order to negate the claim of the petitioner-wife, the respondent-husband, has been examined as R.W. 1 and one Sk Sarwar Ali as R.W. 2 and relied on some documents i.e. Ext. A is the signature of the petitioner on Stamp paper, Ext. A/1 is signature of the petitioner on Stamp

paper, Ext. A/2 is the signature of the petitioner on acknowledgment receipt. Ext. B is the Computer generated mail of the petitioner, Ext. C is the photo copy of the affidavit sworn before Executive Magistrate, Nuapada, Ext. D is the notice with plaint copy in C.S. No. 28/2008 received by the respondent, Ext. E is the notice of Hon'ble Court with writ application, Ext. F is the copy of petition in CRLMC No. 2388 of 2008, Ext. G is the letter written by the petitioner to the Badanani of the respondent, Ext. H is the prescription dated 07.03.2006 of Annapurna Memorial Hospital, Bhubaneswar, Ext. J is the letter given by the petitioner to the respondent, Ext. K is the certified copy of the order dated 24.09.2009 in ICC Case No. 3375 of 2008 of S.D.J.M., Bhubaneswar, Ext. L is the certified copy of the order of the Hon'ble Court dated 26.04.2010 in CrI. Misc. Case No. 2388 of 2008, Ext. M is the certified copy of the order of the Hon'ble High Court dated 13.05.2010, Ext. N is the certified copy of the Hon'ble High Court for modification of impugned order of lower court in Writ petition No. 20 of 2011, Ext. P is the certified copy of the order of S.D.J.M, Bhubaneswar in ICC case No. 3375 of 2008 dated 15.05.2010, Ext. Q is the letter No. 371 (RTI) dated 28.09.2010 of the Commissionarate of Police, Ext. Q/1 is the copy of respondent's petition sent under that letter, Ext. R is the certified copy of Judgment in C.S. No. 48/2009 of Civil Judge, (Sr. Division), Bhubaneswar, Ext. S is the Memo No. 592 dated 09.07.2013 showing duty performance of the respondent for the period from 01.02.2006 to 15.03.2006 issued by the Principal, Veterinary Officers Training Institute, Laxmisagar, Bhubaneswar and Ext. T is the certified copy of the evidence affidavit of the petitioner in C.S. No. 48/2009 of the Court of the 1st Addl. C.J. (S.D.), Bhubaneswar.

8. The petitioner-husband in C.P. No. 3 of 2011 in order to prove his case he, himself, has been examined as P.W. 1 and relied on some documents i.e. Ext. 1 is the certified copy of the Email send by the respondent, Ext. 2 is the certified copy of affidavit of the respondent dated 21.12.2008, Ext. 3 is the Certified copy of Plaint copy of C.S. No. 28 of 2008 filed by the respondent

before Civil Judge, Jr. Division, Ext. 4 is the certified copy of notice in W.P (C) No. 18500 of 2005, Ext. 5, 5/a are the copies of the letters written by the respondent, Ext. 6 certified copy of the prescription of the respondent No.1 of Annarpuna Hospital, Ext. 7 is the certified copy of the order dated 24.09.2008 passed by the Hon'ble S.D.J.M. Bhubaneswar in ICC No. 3375/2008, Ext. 8 is the certified copy of the order dated 13.05.2010, Ext. 9 is the certified copy of the Judgment passed by the Hon'ble Civil Judge, Sr. Division, Bhubaneswar in C.S. No. 48/2009, Ext. 10 is the certified copy of the evidence affidavit filed by the respondent in C.S. No. 48/2009 before Hon'ble Civil Judge, (S.D.), Bhubaneswar, Ext. 11 is the certified copy of the duty performance certificate of the petitioner, Ext. 12 is the certified copy of the letter obtained under R.T.I Act from the office of the Commissioner of Police, Ext. 13 is the certified copy of the order dated 26.04.2010 passed by the Hon'ble High Court in CRLMC No. 2388/2008, Ext. 14 is the certified copy of the petitioner filed by the respondent No.2 in CRLMC No. 2388/2008 before the Hon'ble High Court, Ext. 15 is the certified copy of the undertaking dated 16.05.2006 executed by the respondent No.1, Ext. 15/A is the signature of the respondent No.1 on Ext. 15 Ext. 16 is the acknowledgment receipt dated 16.05.2006 executed by the respondent No.1, Ext. 17 is the certified copy of the order dated 05.05.2010 passed by the Hon'ble S.D.J.M, Bhubaneswar in ICC No. 3375/2008, Ext. 18 is the certified copy of the order dated 16.05.2011, Ext. 19 is the certified copy of the notice along with plaint of C.S. No. 28 of 2009 filed by the respondent No.2 before Hon'ble Civil, Judge, Jr. Division, Bhubaneswar. In order to negate the claim of the petitioner, respondent No.1-wife, herself has been examined as R.W. 1 and did not choose to file any document.

9. Petitioner-wife in her evidence in C.P. No. 4 of 2011 has stated that when she was reading in +3rd Arts and when the respondent was working as Live Stock Inspector, they started to know each other through internet charting and by that time she was given impression by the respondent that he

is a Veterinary Doctor. She is the only daughter of her father who is a reputed Govt. doctor, Surgery Specialist and his brother is well placed and therefore, she told that her father and brother might not agree for their marriage but the respondent arranged the marriage before the Marriage, Officer, Nuapada and took her there and in presence of his sisters, their marriage was performed. After marriage, the respondent left her alone in his sister's house at Nuapada and he returned to Bhubaneswar and after fifteen days, he came to Nuapada and by that time his attitude was almost changed towards her who told her that his mother would accept her if a Flat at Bhubaneswar and a cash of Rs. 10,00,000/- and other gold ornaments are given by her father and otherwise he would not accept her as his wife for which she was mentally tortured. The respondent also forcibly wanted to keep sexual relationship with her against her will and brutally assaulted her for which she became senseless and when she was in a semi-conscious stage, the respondent took her signatures on blank papers. On 02.03.2006 she along with the respondent came to Bhubaneswar but instead of taking her to his house, took her to Venus-INN hotel and told her that her mother is reluctant to accept her and will not allow them to stay in their house. She has further stated that she stayed there for five days i.e. from 03.03.2006 to 07.03.2006 and during her stay in the hotel she was physically and mentally tortured by the respondent who showed unnatural attitude, wanted to keep unnatural sexual relationship, took some of her vulgar pictures with ulterior motive against her will and consent. On 06.03.2006 in the midnight, she heard that Opp. Party having conversation with somebody over phone that he will not accept her as his wife unless her father was gives him a flat at Bhubaneswar and a cash of Rs. 10,00,000/- to him for which she was shocked and mentally harassed and on the next day morning the Opp. Party left her in a working Women's Hostel at Siripur, Bhubaneswar and she continued to stay there till 15.03.2006 and thereafter she called her father who rescued her from there. Since 09.03.2006 she has no physical relation with the respondent and the respondent deserted her. She

has further stated that the family members of the respondent and her family members tried for conciliation but failed. The respondent has further stated that both of them filed a mutual divorce case vide Mat Case No. 15/2007 on 11.05.2007, however, later the respondent did not cooperate rather, the respondent threatened her to expose the obscene photographs which he has taken to malign her by circulating the naked C.Ds prepared by him in Public and also threatened by sending false SMS to kill her father and brother. One day in July, 2010 when her father was working as the CDMO Puri and she was alone in the house, the respondent came and tried to enter inside the house, threw some Newspapers along with a chit containing defamatory statement against her and her father, threatened her with a gun by demanding Rs. 5,00,000/- for which she lodged an F.I.R. before the Mahila P.S. vide P.S. case No. 95/2010. She has also filed a suit for defamation against the respondent which is pending before the Civil Judge (Sr. Division), Bhubaneswar in C.S. No. 48 of 2009. When the respondent withdrawn that mutual application, she has filed this application seeking divorce on the ground of cruelty and will-full desertion.

10. The R.W.1 has stated that she met the petitioner-wife on 22.07.2004 in the BJB College Playground while he had gone there as a player in a friendly football match and he has been representing for Kishore Club since 1996 as a football player. As a spectator of the football match, the petitioner congratulated him on the same day. Later on the petitioner started discussion with him and went to his office and told him that she was loving him and also gave marriage proposal, to which he did not agree with the proposal and when the petitioner threatened to commit suicide, he convinced her. According to him, after that there was exchange of mails between them and when the petitioner forced her to marry, finding no other alternative he agreed with her proposal. According to him, before marriage, he had sexual intercourse with the petitioner. The family members of the petitioner opposed their marriage. It is further stated that on 19.12.2005, the petitioner told him over phone that

her family members tortured her severally and insisted her to take her to a distant place for solemnization of marriage. On 20.12.2005 the petitioner proceeded to Nuapada by bus with his consent and on 21.12.2005, the brother-in-law of respondent convinced her to change her mind but the petitioner sworn an affidavit vide Ext.C before Executive Magistrate, Nuapada to the effect that she was going to marry him voluntarily. According to him, the petitioner applied for marriage before the Marriage Officer, Nuapada and their marriage was solemnized on 08.02.2006. Prior to marriage, the proclamation for their intended marriage was issued to the parents of the petitioner before one month of the marriage and after receipt of said notice the father of the petitioner contacted over phone to his brother in-law who lived at Nuapada. R.W.1 has further stated that on 09.02.2006 they left Nuapada for the father's house of petitioner and reached there on 10.02.2006 where the petitioner stayed with a view to appear in her +3 Degree Final Examination. The father of the petitioner instructed the respondent to take the petitioner after arranging a rented house near his house. Further according to him as per instruction and arrangement of the father of the petitioner they stayed as husband and wife in Venus INN Hotel from 03.03.2006 to 07.03.2006 and the petitioner left the hotel on 07.03.2006 with a pretext that her grandmother was ill at Bachhera of Jatni. R.W.1 has further stated that, the petitioner requested him to finance her father and on his request his brother in-law- N.P.Joshi paid loan of Rs. 2 Lakhs executing an agreement vide Ext.A and promised to repay the same within one year. After three days of obtaining the loan, petitioner came to Bhubaneswar from Nuapada and from the month of May, the petitioner behaved him with differently at Nuapada and advised him to use contra-ceptive during intercourse. According to him, he made several attempts to bring back the petitioner, but her father did not cooperate. When he demanded for return of loan amount, the father of the petitioner threatened to start torture case against him if he did not give consent for mutual divorce and out of fear he signed in the petition for mutual divorce. According to him,

the petitioner on several times contacted with him and his relatives stating that she was interested to stay with the respondent but her father threatened her. Since the petitioner was interested to continue the marital relationship, he withdrew his consent for which the mutual divorce petition was dismissed on 25.03.2008. Further after getting notice in C.P.No.3/2011 the father of the petitioner approached him and threatened him to withdraw the case or else to kill him. The petitioner also terminated her pregnancy in Annapurna Memorial Hospital, Bhubaneswar at the instance of her father. R.W.1 has further stated that he has filed a complaint case against the father of petitioner and as per order dtd.26.04.2010 in CrI.Misc.Case No.2388 of 2008 the Hon'ble Court has directed the father of the petitioner to surrender before the lower court and further the father of the petitioner withdrew the Writ Petition No.18500 of 2008 and R.W.1 has proved the certified copy of order dtd.13.05.2010 of Hon'ble Court vide Ext.M. According to him, on 17.07.2010 the petitioner filed an FIR against him in Mahila Police Station on false allegation and also had filed one defamation suit against him in the Court of Civil Judge,(Sr.Division), Bhubaneswar vide C.S.No.48/2009 and the said suit was decreed ex parte against the respondent. According to the petitioner, after fifteen days of marriage, he had never gone to Nuapada nor stayed with the petitioner for four days nor had assaulted her, nor tortured her mentally and physically. He has denied about any demand of dowry. R.W.1 has stated that the petitioner has filed this proceeding at the instance of her father and after filing this case, she has initiated several other litigations against her. The petitioner has voluntarily left his company for which, he has filed the case for restitution of conjugal rights. R.W.2 Sk. Sarwal Ali has stated that respondent is a football player and the petitioner frequently visited him and later on he came to know that in the year 2006 the respondent married her.

11. Before going to scrutinize evidence of the parties, in both the cases, it is pertinent to mention here that both the parties have filed mutual petition on 11.05.2007 for decree of divorce on mutual consent vide Mat Case No.

15/2007. On scrutiny of the mutual petition, it is found that both the parties have never made any allegations against each other rather they prayed for mutual divorce on the ground of their better future. R.W.1 has stated that since the father of the petitioner threatened him to kill finding no other alternative, he has filed the mutual petition, but latter on when the petitioner told him that she is an intention to continue her marital relationship with him and also told that her father threatened her, he had withdrawn his consent and accordingly the said petition was dismissed. The husband after withdrawing his consent from the mutual petition for divorce has filed this present petition (C.P. No. 3 of 2011) seeking restitution of conjugal rights whereas the wife has prayed for decree of divorce (C.P. No. 4 of 2011). Both the claim of the parties is after thought. Both the parties are educated and are well aware of their marital relationship.

12. The petitioner-wife sought divorce on twin grounds i.e. desertion and cruelty. The law of granting divorce on ground of desertion has also been well settled by the Supreme Court, Calcutta High Court and other High Courts. In a case reported in *Lachman Utmachand Kripalani Vrs. Meena in AIR 1964 S.C. 40*. It is was the majority view that in its essence desertion means the intentional permanent forshaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause meaning a total repudiation of the obligations of marriage. It has been settled by the Supreme Court that for the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (*animous deserendi*) and that two elements are essential so far as the deserted souse is concerned:- (1) the absence of consent, (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. In the above case the Supreme Court has reiterated its view taken in an earlier case reported in *Bipinchandra Jaisinghbai Shah Vrs Prabhavati in AIR 1957 SC 176*, that desertion is a

matter of inference to be drawn from the facts and circumstances of each case. It has been further made clear that the inference which may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If, the fact, there has been a separation, the essential question always is whether that act could be attributable to an animus deserendi. It has been further held by the Supreme Court that even if the wife where she is deserting spouse, does not prove just cause for her living apart the petitioner husband has still to satisfy the Court that the desertion was without just cause. In view of the Supreme Court the legal burden is on the husband to prove desertion without just cause. It has been further clarified by the Supreme Court in this case that once desertion, as defined in the Act is established there is no obligation on the deserted spouse to appeal to the deserting spouse to change his or her mind and the circumstance that the deserted spouse makes no effort to take steps to effect a reconciliation with the deserting spouse does not bedar him or her from obtaining the relief because once desertion is proved the deserting spouse so long as her or she evidences no sincere intention to effect a reconciliation and return to the matrimonial home is presumed to continue in desertion the intention to bring cohabitation permanently to an end as reported in *Narinder Kumar Vrs. Suresh Kumari Smt. in A.I.R 1988 Delhi 222 at P. 224.*

13. Bearing these parameters of law, when the evidence of the parties are analyzed it makes abundantly clear that the petitioner has started living separately from the respondent since 08.03.2006 and the petitioner went to her parental home with her father from the Working Women's Hostel, Siripur, Bhubaneswar. The evidence of the parties, shows, their marriage was a runaway marriage. The respondent palming off the petitioner as a Government Veterinary Doctor owns the love of the petitioner which resulted uniting them

with marriage alliance. The difference arose when the petitioner disinterred that the respondent is a Live Stock Inspector. Even it was a runaway marriage, the petitioner was prevented from residing in her matrimonial home. After the marriage the petitioner was put in the residence of the sister of the respondent and thereafter she was brought to Bhubaneswar and lodged in Venus INN Hotel and from there, she was lodged in Working Women's Hostel although, the respondent has a dwelling house at Bhubaneswar. The respondent did not take the petitioner to his dwelling house on the pretext that his widow mother could accept the petitioner as the bride of the house if the petitioner's father would give a flat at Bhubaneswar and Rs. 10,00,000/- cash as dowry. This could not be materialized for which the respondent did not allow the petitioner to reside with him in his dwelling house either at Nuapada, the native village or at Bhubaneswar. The petitioner married the respondent with a dream that she has a shelter in her matrimonial home after her marriage with respondent and when the same was shattered, it is quite natural but obvious to cause a mental agony in her mind because a married lady never desire to have a pernickety either in hotel or hostel. It is stated by the respondent that the dispute arose when he asked for refund of two lakhs which he has advanced to the father of the petitioner for purchasing of a Video Indoscope Machine and in support of that, he has filed the agreement document of the petitioner marked under Ext. A. The rebuttal evidence adduced by the petitioner is that she was assaulted by the respondent at Nuapada for which she was unconscious and when she was semi-conscious, the respondent took signatures of her on some stamp papers. She has also stated when they were residing at together in Hotel Venus-INN the respondent took her naked photographs and threatened her to display publicly. This part of her evidence has not been challenged by the respondent. Therefore, it is obvious that the respondent has taken the blank signatures of the petitioner carte blanche on some stamp papers and utilized the same in execution of document like Ext. A. When the father of the petitioner is a reputed surgery

specialist and her brother is well placed, it is an otiose that the father of the petitioner borrowed money from the respondent who is low paid Govt. Employee like a Live Stock Inspector. Therefore, this is nothing but a got up theory of the respondent to black-mail the petitioner. The conduct of the respondent ab initio is malignant. Thus, it is the conduct and behavior of the respondent which compelled the petitioner to leave the company of the respondent with a clear intention not to resume her marital alliance with the respondent. The respondent is at fault for his own wrong doing justifying the petitioner to live separately from the respondent and hence, the respondent cannot take advantage of his own wrong.

14. The parties have been living separately since 2006. Eight years has been elapsed in the interregnum period. The respondent has not taken any attempt much less make any correspondences with the petitioner for reunion. When the petitioner was betrayed by the respondent and the respondent has misrepresented her as a Govt. Veterinary Doctor, it definitely caused mental agony to the petitioner which compelled her to take a decision not to resume cohabitation with the respondent. Additionally, in this case from the evidences of the parties, it is well established that the marriage is dead both emotionally and practically. Therefore, continuance of marital alliance for name shake is prolonging the agony and affliction. It cannot be disputed that the husband has not been dutiful and conscious of his responsibilities towards the respondent. He did not contribute anything towards the welfare of the wife. Yet, the marriage being dead, the continuance of it would be cruelty. Additionally, once serious allegation have made against each other, it becomes clear that there is no chance of parties coming together or living together. Therefore, the petitioner could able to prove both desertion and cruelty and as such she is entitled to decree of divorce. On the other hand, the respondent having singularly failed for resumption of marital alliance with the petitioner, his claim for restitution of conjugal life with the petitioner can be dislodged and hence ordered;

ORDER

The C.P. No. 4/2011 filed by the petitioner, Sneharanjita Moharana praying for dissolution of marriage by passing a decree of divorce is allowed on contest against the respondent and C.P. No. 3/2011 filed by Shuvendu Panda, the respondent in C.P. No. 4/2011 and petitioner in C.P. No. 3/11 stands dismissed on contest in favour of the petitioner, Sneharanjita Moharana. 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 and the Marriage Certificate is hereby cancelled.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 28th day of October, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

In C.P. No. 4 of 2011

Witnesses examined for the petitioner:

P.W.1 Sneharanjita Moharana

Witnesses examined for the respondent:

R.W.1 Shuvendu Panda

R.W.2 Sk Sarwar Ali

List of documents by petitioner:

Ext. 1 Marriage Certificate.

List of documents by respondent:

Ext. A & A/1 Signatures of the petitioner on Stamp papers

Ext. A/2 Signature of the petitioner on acknowledgment receipt

Ext. B Computer generated mail of the petitioner

Ext. C Photo copy of the affidavit sworn before Executive Magistrate, Nuapada

Ext. D Notice with plaint copy in C.S. No. 28/2008 received by the respondent

Ext. E Notice of Hon'ble Court with writ application

Ext. F Copy of petition in CRLMC No. 2388 of 2008

Ext. G Letter written by the petitioner to the Badanani of the respondent

- Ext. H Prescription dated 07.03.2006 of Annapurna Memorial Hospital, Bhubaneswar
- Ext. J Letter given by the petitioner to the respondent
- Ext. K Certified copy of the order dated 24.09.2009 in ICC Case No. 3375 of 2008 of S.D.J.M., Bhubaneswar
- Ext. L Certified copy of the Hon'ble Court dated 26.04.2010 in CrI. Misc. Case No. 2388 of 2008
- Ext. M Certified copy of the order of the Hon'ble High Court dated 13.05.2010
- Ext. N Certified copy of the Hon'ble High Court for modification of impugned order of lower court in Writ petition No. 20 of 2011
- Ext. P Certified copy of the order of S.D.J.M, Bhubaneswar in ICC case No. 3375 of 2008 dated 15.05.2010
- Ext. Q Letter No. 371 (RTI) dated 28.09.2010 of the Commissionarate of Police
- Ext. Q/1 Copy of respondent's petition sent under that letter
- Ext. R Certified copy of Judgment in C.S. No. 48/2009 of Civil Judge, (Sr. Division) Bhubaneswar
- Ext. S Memo No. 592 dated 09.07.2013 showing duty performance of the respondent for the period from 01.02.2006 to 15.03.2006 issued by the Principal Veterinary Officers Training Institute, Laxmisagar, Bhubaneswar
- Ext. T Certified copy of the evidence affidavit of the petitioner in C.S. No. 48/2009 of the Court of the 1st Addl. C.J. (S.D.), Bhubaneswar

In C.P. No. 3 of 2011

Witnesses examined for the petitioner:

P.W.1 Shuvendu Panda

Witnesses examined for the respondent:

R.W.1 Sneharanjita Moharana

List of documents by petitioner:

- Ext. 1 Certified copy of the Email send by the respondent
- Ext. 2 Certified copy of affidavit of the respondent dated 21.12.2008
- Ext. 3 Certified copy of Plaintiff copy of C.S. No. 28 of 2008 filed by the respondent before Civil Judge, Jr. Division,
- Ext. 4 Certified copy of the notice in W.P (C) No. 18500 of 2005
- Ext. 5,5/a Copies of the letters written by the respondent
- Ext. 6 Certified copy of the prescription of the respondent No.1 of Annapurna Hospital
- Ext. 7 Certified copy of the order dated 24.09.2008 passed by the Hon'ble S.D.J.M. Bhubaneswar in ICC No. 3375/2008
- Ext. 8 Certified copy of the order dated 13.05.2010

- Ext. 9 Certified copy of the Judgment passed by the Hon'ble Civil Judge, Sr. Division, Bhubaneswar in C.S. No. 48/2009
- Ext. 10 Certified copy of the evidence affidavit filed by the respondent in C.S. No. 48/2009 before Hon'ble Civil Judge, (S.D.), Bhubaneswar
- Ext. 11 Certified copy of the duty performance certificate of the petitioner
- Ext. 12 Certified copy of the letter obtained under R.T.I Act from the office of the Commissioner of Police
- Ext. 13 Certified copy of the order dated 26.04.2010 passed by the Hon'ble High Court in CRLMC No. 2388/2008
- Ext. 14 Certified copy of the petitioner filed by the respondent No.2 in CRLMC No. 2388/2008 before the Hon'ble High Court
- Ext. 15 Certified copy of the undertaking dated 16.05.2006 executed by the respondent No.1
- Ext. 15/A Signature of the respondent on Ext. 15
- Ext. 16 Acknowledgment receipt dated 16.05.2006 executed by the respondent No.1
- Ext. 17 Certified copy of the order dated 05.05.2010 passed by the Hon'ble S.D.J.M, Bhubaneswar in ICC No. 3375/2008
- Ext. 18 Certified copy of the order dated 16.05.2011
- Ext. 19 Certified copy of the notice along with plaint of C.S. No. 28 of 2009 filed by the respondent No.2 before Hon'ble Civil, Judge, Jr. Division, Bhubaneswar

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.