

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

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

Civil Proceeding No. 322 of 2011
(U/s. 13 (1) (i-a) of the Hindu Marriage Act, 1955)

Sahadev Behera, aged about 36 years
S/o-Late Heera Behera,
Resident of Samanta Sahi,
P.O./P.S.-Paralakhemundi,
Dist-Gajapati,
At present:-Qrs. No. 2R-153,
Unit-6, P.S.-Capital,
Near Capital Hospital,
Bhubaneswar, Dist-Khurda.

....Petitioner

... Versus ...

Smt. Manashi Behera, aged about 32 years
W/o- Sahadev Behera,
D/o- Jagannath Singh,
of Qrs. No. 2R-7/12, Unit-9, (Flat),
P.S.-Saheed Nagar, Bhubaneswar,
Dist-Khurda.
At present:- Qrs. No. 2R-153,
Unit-6, P.S.-Capital,
Near Capital Hospital,
Bhubaneswar, Dist-Khurda.

.... Respondent

Civil Proceeding No. 534 of 2011
(U/s. 18 (2) of Hindu Adoption and Maintenance Act, for
maintenance and grant of separate residence)

Smt. Manashi Behera, aged about 39 years
W/o- Sahadev Behera,
D/o- Jagannath Singh,
At present:- Qrs. No. 2R-153,
Unit-6, Near Capital Hospital, Ganganagar,
P.S.-Capital, Bhubaneswar,
Dist-Khurda.

... Petitioner

... Versus...

1. Sahadev Behera, aged about 44 years
S/o-Late Heera Behera,
Resident of Somanatha Sahi,
P.O./P.S.-Parelakhemundi,
Dist-Gajapati.
Now working as Peon,
Office of the Chief Engineer,
National High Ways,
Unit-IV, Bhubaneswar,
Dist-Khurda.
2. The Directorate of Estate,
G.A. Department, Govt. of Odisha,
Odisha Secretariat, Bhubaneswar,
Dist-Khurda.

... Respondents

Civil Proceeding No. 763 of 2011
(U/s. 9 of Hindu Marriage Act, 1955)

Manashi Behera, aged about 37 years
W/o- Sahadev Behera,
D/o- Jagannath Singh,
At present:- Qrs. No. 2R-153, Unit-6,
Near Capital Hospital, Ganganagar, P.S.-Capital
Bhubaneswar, Dist-Khurda.

... Petitioner

... Versus...

Sahadev Behera, aged about 41 years
S/o-Late Heera Behera,
Resident of Samanta Sahi,
P.O./P.S.-Paralakhemundi,
Dist-Gajapati.
Now working as Peon,
Office of the Chief Engineer (NHI)
Unit-IV, Bhubaneswar,
Dist-Khurda.

... Respondent

Date of Argument: 24.03.2015

Date of Judgment : 08.04.2015

J U D G M E N T

The petitioner-husband Sahadev Behera has filed C.P. No. 322 of 2011 against the respondent-wife Manashi Behera U/s. 13 (1) (i-a) of Hindu Marriage Act, 1955 (in short, the Act 1955) for dissolution of marriage by passing a decree of divorce, whereas in C.P. No. 534 of 2011, the wife Manashi Behera has filed petition for permanent maintenance and grant of residence against the respondent No.1-husband and the Directorate of Estate, G.A. Department, Govt. of Odisha, Odisha, Secretariat, Bhubaneswar and also the wife has filed C.P. No. 763 of 2011 U/s. 9 of Hindu Marriage Act, 1955 (in short, the Act 1955) against the respondent-husband Sahadev Behera praying for a decree of restitution of conjugal rights. All the above three cases are taken up together for a common Judgment as the parties are same in all the proceedings.

2. The facts of the petitioner in C.P. No. 322/2011 are his defence in C.P. No. 763 of 2011 and C.P. No. 534/2011 filed by the wife-respondent. Similarly, the facts of the case of the wife-respondent in C.P. No. 763/2011 and C.P. No. 534/2011 are her defence in C.P. No. 322/2011 filed by the husband-petitioner. Therefore, for sake of brevity and in order to preserve the unit of expression, I picked up the facts of the case of the parties in C.P. No. 322/2011.

3. Admitted facts of the above three cases are that their marriage was solemnized as per Hindu rights and customs on 14.07.2004 at Bhasuni Temple, Samantrapur, Bhubaneswar and they have no child out of their wedlock and the respondent is residing in the Quarters of the petitioner-husband in Qrs. No. 2R-153, Unit-6, Near Capital Hospital, P.S.-Capital, Bhubaneswar separately from the petitioner-husband since 06.01.2006.

4. The fact of the case of the petitioner Sahadev Behera in C.P. No. 322 of 2011 are as follows:-

After marriage both them resided together in his Quarters No. 2R-153, Unit-6, Near Capital Hospital, P.S.-Capital, Bhubaneswar. During their stay, the respondent always insisted him to reside in her father's Qrs. No. 2R-7/12, Unit-9(Flat) as domestic son-in-law and when he refused for the same, the respondent started torturing him both physically and mentally. She has failed to discharge her matrimonial obligations. As the respondent hails from a richer family than him, she neglected and abused him in vulgar languages. He has further averred that the respondent is egoistic and adamant lady. She has also disrespected his family customs and tradition. It is the further case of the petitioner that the respondent also did not allow him for cohabitation since 06.01.2006. The petitioner further averred that the respondent lamented marrying him who is illiterate and ugly person. When he informed the cruel conducts of the respondent on him before her parents, they did not pay any heed to it. Rather they threatened to file false dowry torture cases against him. It is the further case of the petitioner that the respondent did not keep any sexual relationship with him on the plea that he is not matching to her and a poor class-IV employee and her beauty would be lost if there would be any issue out of their wedlock. She has always threatened to file dowry torture cases against him and his family members in order to humiliate them in public. She has also paid no respect to the older persons and not allowed his family members to stay in his quarters. The respondent always demanded money from him for her parents. When he denied it, the respondent abused him as street beggar. He has also further stated that the respondent during her stay used to leave his house and return in the late hours of night. When he protested the same, she abused him in loud voice for which the neighbours were disturbed in the late hours of night. She has also threatened to commit suicide unless he fulfilled her desires. It is the further case of the petitioner that the parents of the respondent insisted her to leave him and thereafter they would arrange another

marriage for her and being instigating her parents, the respondent started torturing him and demanding to fulfill her desires. On 06.01.2006 the respondent demanded Rs. 10,000/- and when he refused the said demand of the respondent, she kicked on his chest and gave fist blows on his face and told him if she would not be given Rs. 10,000/-, she would commit suicide. Thereafter the respondent did not allow him to enter into the house for which he was compelled to stay outside throughout the night. Since, it is not possible for him to continue marital tie with the respondent as her behaviour caused him pain, injury both physically and mentally, finding no other way, he sought for a decree of divorce from the respondent on the ground of cruelty.

5. The respondent-wife contested the proceeding by filing W.S. denying all the allegations made by the petitioner against her. She has stated that the case is not maintainable and the petitioner has no cause action to file this case before the Court. It is the case of the respondent that she is the daughter of Jgannath Singh, a low paid salaried employee who served under Govt. of Odisha. At the time of marriage her father had given cash of Rs. 40,000/-, 12 tolas of gold ornaments, one Hero Honda Splendor Plus Motor Cycle along with household articles. After marriage they stayed in the residence of the brother of the petitioner at Poonama Gate Area in Bhubaneswar and consummated their marriage. After fourth night, the sister-in-law (Bhauja) of the petitioner had forcible taken away her gold ornaments from her person and also taken away cash of Rs. 5,000/- which was given to her by her friends and relatives as gift at the time of marriage. During her short stay there, she found the illicit relationship of the petitioner with his sister-in-law (Bhauja). After some days they shifted to the quarters of the petitioner. The sister-in-law (Bhauja) used to come every Sunday in order to harass and defame her. The sister-in-law of the petitioner intentionally played mischief in her family life. She destructed the food items and made false allegation against her before the petitioner, abused her in filthy

languages and induced the petitioner to assault her. The petitioner on the pep-talk of his sister-in-law used to assault her. His sister-in-law time and again, insisted him to drive her away from the house and to marry another girl of her family with plenty of dowry. The petitioner used to spend most of the time with his sister-in-law taking advantage of absence of his brother from Bhubaneswar. The petitioner used to return home in late hours of night in a drunken condition. He did not take her care at the time of her illness. Though she is always accommodative to the petitioner yet the petitioner has always maintained distance from her. In August, 2005, the petitioner and his family members compelled her to bring an amount of Rs. 1,00,000/- from her father for purchasing of land and when she refused for the same, the petitioner started torturing her both physically and mentally. On 22.11.2006 the petitioner made her naked, broke her bangles and assaulted her brutally and thereafter forcibly drove her out from his house in the late hour of night for which she reported the matter before the Mahila Police Station, Bhubaneswar and according, S.D entry No. 398 dated 22.11.2006 was made and police warned the petitioner for his such conduct. Since that day the petitioner intentionally deserted her and stayed in his sister-in-law's house. She has tried all her best to contact him but failed. She has been waiting for the petitioner with a hope of his return but to her surprise she received notice from the Court in 1st week of January 2007 in C.P. No 322/2011 filed by the petitioner for divorce against her with an ulterior motive that after obtaining a decree of divorce, he will contact for the second marriage. On receipt of the notice in the aforesaid divorce proceeding when she contacted with the husband, the latter threatened her to vacate his quarters immediately or else she will be driven out forcibly by his henchman. Finding no other alternative she has lodged a complaint before the Mahila Police Station vide Mahila P.S. Case No. 15/2007 in which her husband was released on bail and that matter is pending for disposal. It is the further case of the wife that she has filed

I.A. No. 32/2007 before this Court for interim maintenance and after considering her destitute condition, this Court awarded Rs. 1,000/- per month in her favour and directed him to pay it regularly. Her husband after releasing from bail, has applied various methods to vacate the quarters. Seeing the attitude of the her husband she sent a notice U/s. 80 of C.P.C. to his authority requesting to consider her case on humanitarian point of view and not to consider the case of the her husband in case of his application to surrender the quarter till he is in service or till finalization of the Mat Case in Court. She has been staying in the said quarters as wife of the petitioner and is paying electricity bill, gas etc. While the matter stood thus, on 15.12.2009 at about 8 A.M. the J.E. electrical Sub-Station, Unit-6, disconnected the electric connection to the said quarters followed by his GED staff to remove the electrical accessories from the said quarters. Being asked by her, they told her that her husband had applied to surrender the quarter to the G.A. Department. On the same day being guided by the petitioner, the P.H.D. staff came and disconnected the water supply and her husband threatened her to vacate the quarter at once or else the official staff will evict her forcibly from the quarter. Finding no other alternative, she has lodged a written complaint in Mahila Police Station, Bhubaneswar and she also filed a case in the Court of S.D.J.M., Bhubaneswar U/s. 17 of Protection of Woman from Domestic Violence Act, 2005 for her protection. It is the further case of the wife that the petitioner is not giving the maintenance regularly. According to the wife in case of surrender of the quarter it is not possible on her part to search for a suitable accommodation with safety and pay the house rent out of the interim maintenance and she is entitled to reside in the accommodation provided by her husband and to be maintained by him. She has further stated that husband is getting more than Rs. 1,00,000/- per annum towards his salary with other benefits given by the Govt. from time to time. Besides, that he has got landed property in his native village from

which he is getting Rs. 50,000/- per annum. She is merely a house wife having no source of income and her father is not able to maintain her and due to intervention of the Court she is getting Rs. 2,000/- as interim maintenance per month which is not sufficient in the present day cost of living and prays for a direction to the respondent No. 1 for arrangement of a suitable accommodation at his cost and to pay Rs. 5,000/- to her as there is every chance of eviction of quarters by his officials at any moment. She has also further stated that she should not be compelled to vacate the quarters till she is provided with a separate residence by her husband and the monthly rent for the said quarters should be realized from the salary of her husband as before. So the Director of Estate, G.A. Department Govt. of Odisha who is respondent No.2 in C.P. No. 763 of 2011 should be restrained from evicting and/or taking steps to evict her from the said quarters till she is provided with a separate residence by the respondent No.1 at his own cost and allow her to remain in the said quarters as the wife of the petitioner. In fine, she submitted to dismiss C.P. No. 322 of 2011 by allowing the reliefs she claimed in C.P. No. 534 of 2011 and C.P. No. 763 of 2011.

6. The questions that requires to be adjudicated are as follows:-

- (I) Whether there exists any cruelty on the part of the respondent-wife to allow the petition for divorce?
- (II) Whether the wife is entitled for a decree of restitution of her conjugal rights with the husband on the ground of his willful desertion to the wife?
- (III) Whether the respondent-wife is entitled for any monthly or permanent alimony in case of divorce is allowed?

7. The petitioner-husband in C.P. No. 322 of 2011 in order to prove his case he, himself, has been examined as P.W. 1 and relied on two documents. They are:- Ext. 1 is the written report before the IIC Capital Police Station, Bhubaneswar dated 09.01.2007 and Ext. 2 is the certified copy of the formal FIR in G.R. case No. 327/2007. In order to negate the

claim of the petitioner-husband, the respondent-wife, has been examined as R.W. 1, her brother as R.W. 2 and one Bimbadhar Barik as R.W. 3 and relied on one document i.e. Ext. A is the letter addressed to the petitioner.

8. In C.P. No. 534 of 2011 the petitioner-wife in order to prove her case she, herself, has been examined as P.W. 1 and relied on three documents. They are:- Ext. 1 is the Pay slip of the respondent, Ext. 2 is the electricity Bill and Ext. 3 is the letter of the G.A. Department. In order to negate the claim of the petitioner-wife, the respondent himself, has been examined as R.W. 1 but did not choose to file any documentary evidence from his side.

9. In C.P. No. 763 of 2011 the petitioner-wife in order to prove her case she, herself, has been examined as P.W. 1. In order to negate the claim of the petitioner-wife, the respondent, has been examined himself as R.W. 1. Both the parties did not choose to file any documents on their behalf.

Point No.1 and 2 are taken up together to avoid repetition to preserve the unit of expression lest it may lose the charm of hearing.

Point No.1 is whether there exists any cruelty on the part of the respondent-wife to allow the petitioner for divorce? and point No.2 is whether the wife is entitled for a decree of restitution of her conjugal rights with the husband on the ground of his willful desertion to the wife?

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

11. 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.

12. 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."

13. 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.”

14. 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)*

15. 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....”*

16. 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.

17. 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.

18. 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 begin 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 a 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.”

19. 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 play 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”.

20. 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.”

21. 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.”

22. 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 been considered.

The legal concept of the cruelty which is not defined by the statute is generally described as conduct of such character as to have caused danger to life, limb or health (bodily and mental) or to give rise to reasonable apprehension of such danger. The general rule in all questions of cruelty is that the whole matrimonial relations must be considered, that rule is of a special value when

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

23. In *Samar Ghos Vrs. Jaya Ghos* (2007) 4 SCC 511, this Apex Court held:- "No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior which may be relevant in dealing with the case of "mental cruelty". The instances indicted in the succeeding paragraphs are only illustrative and not exhaustive.

- (i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the board parameters of mental cruelty.
- (ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation

is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental Cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behavior of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

24. 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 eleven aspects. They are as follows:-

- (a) Wife insisting the petitioner to reside with her parents as domestic son-in-law.
- (b) Wife insulted the petitioner and his family members in presence of his family members, neighbours and guests.
- (c) Wife not doing household work.
- (d) Wife disrespected the family customs and tradition.
- (e) Abstained from cohabiting with the petitioner alleging the petitioner is a Class-IV employee and ugly looking.
- (f) Giving threat of filing dowry torture case against him and his family members.
- (g) Not paying respect to the older persons and not allowing his family members to stay in his quarters.
- (h) Demanding money from him and when he denied the same she abused him like a street beggar and dealt kicks and fist blows on the chest of the petitioner.
- (i) Frequently leaving the house and returning home at late hours.
- (j) Threatening to commit suicide unless he fulfilled her desires.
- (k) Complaining of her husband's illicit relations with his sister-in-law (Bhauja).

25. The allegations of the petitioner husband that the respondent insisted him to reside in her father's house as a domestic son-in-law. The petitioner while being examined as P.W. 1 has stated the said fact. The respondent has a brother. The father of the respondent is a retired Class-IV employee. In his back ground, it appears preposterous that the respondent insisted the petitioner to reside in her father's house as a domestic son-in-law when she has a brother alive.

26. As regards to the circumstances and back grounds of cruel conduct of the respondent on the petitioner delineated (b) to (j) suffice to say except the ipsi-dixit statement of P.W. 1 there has been no corroborating evidence. The family members, friends and neighbours

were not examined to support P.W. 1. Therefore, the uncorroborated statement of P.W. 1 is bereft of faith and as such the petitioner could not establish the aforesaid circumstances and back ground of cruel conduct of the respondent on him.

27. The next allegation of cruel conduct of the respondent is that she made an allegation, the petitioner has illicit relationship with his sister-in-law. The respondent while being examined as R.W. 1 at paragraph-3 of her affidavit evidence has stated that due to illicit relationship of her husband with his sister-in-law differences of opinion started between them. Again she at paragraph-2 of her cross examination has stated that she had seen the petitioner has extra marital relation with his sister-in-law (Bhauja) at Pokhariput. She has further stated that the mediator has also seen the petitioner has illicit relationship with his sister-in-law when he visited the Old town house for getting money for mediating the marriage. The mediator has been examined as R.W. 3 and on traverse to his testimony, I found no shred of evidence ad-rem. Therefore, sine-dubio, it is concluded that the allegations of the respondent against the petitioner for having his extra marital relation with his sister-in-law has no leg to stand. Therefore, this allegation per-se is sufficient to draw an illation that the petitioner suffered mental cruelty at the hands of the respondent as the respondent failed 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 was proved or not but what is certain is that once, such allegation is made by the wife and husband as has been made in this case then it is obvious that marriage of the two cannot in 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.

28. In the case of R. Balsubramaniam Vrs. Smt. Vijayalakshmi Bala Subramaniam 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). Admittedly, allegations though raised in the written statement as well as let in evidence yet allegation was not proved by any evidence, therefore, the allegation is certainly false to the knowledge of wife and therefore very well amounts to cruelty. 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 on 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 allegation 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 of ten to fifteen days 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.

29. In the present case, the situation is still worse. The parties have been living separately since 06.01.2006. Even they are not in talking terms in as much as not looking at the face of each other while appearing before this Court. In the facts situation, the marriage between the parties is dead both practically and emotionally. Once the marriage is dead, both emotionally and practically between the parties and the

parties cannot live together, allowing them to live together, it will injurious and harmful for both of them. The only solution is to snap out the marital relation between the two. Accordingly, point No. 1 and 2 are answered in favour of the petitioner.

30. The respondent relying on P.Malleswaramma Vrs. P. Prathap Reddy reported in AIR 2006 Andhra Pradesh-4 submitted that the allegation of the wife being an outcome of emotion after institution of the case and especially when the wife is willing to live with the husband such an aberration in family fabric which is quite natural and would get healed up or subsided after some point of time cannot be created as an act of cruelty. Herein in the present case, the respondent four days after her marriage suspected her husband had extra martial relation with his sister-in-law which allegation was not proved by any evidence and therefore, the allegation is certainly false to the knowledge of the wife. In R. Balasubramanian's case cited supra the Hon'ble Apex Court under some what a similar facts situation of the present case have held that when such allegations have been made by the wife which was not proved by evidence certainly amounts to mental cruelty. The case law relied by the respondent, on perusal, it is noticed that the aforesaid decision of the Apex Court has not been relied on. Therefore, though the principle laid down in the judgment of the case law relied by the respondent is unexceptionable but the same is not applicable to the present state of facts, particularly in view of the authoritative pronouncement made by the Apex Court in R. Balasubramanian's case cited supra.

Point No.3

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

31. The respondent wife while being examined as P.W. 1 in C.P. No. 534 of 2011 filed pay particulars of the petitioner-husband which has been proved and marked as Ext. 1. Reference made to Ext. 1 mention has been made that

the gross salary of the petitioner is Rs. 20,000/- per month which is subject to revision from time to time. The petitioner-husband has not disputed the said fact. Therefore, without any hesitation, it can be held that the gross salary of the petitioner-husband is Rs. 20,000/- per month. Admitted that the respondent-wife is a house wife. She was 32 years old in the year 2006 and by now she will be 41 years. She was granted Rs. 2,000/- per month as interim maintenance. The petitioner was aged about 36 years old in the year 2006 and by now he will be 45 years old. The life expectancy of a woman in Indian climate is 70 years. The service tenure of a State Govt. Employee 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. 25,00,000/- (Rupees Twenty Five lakhs) only as permanent alimony to the respondent. Accordingly this issue is answered in favour of the respondent.

32. Since the respondent has been granted permanent alimony in C.P. No. 322/2011, no further maintenance allowance is allowed in C.P. No. 534 of 2011. Since divorce has been allowed in C.P. No. 763 of 2011 filed by the respondent-wife for restitution of conjugal rights is liable to be dismissed. Consequently, both the C.P. filed by the respondent are dismissed. Hence, it is ordered;

ORDER

The C.P. No. 322/2011 filed by the petitioner-husband against the respondent-wife praying for dissolution of marriage is allowed on contest in favour of the petitioner- husband. A decree of divorce is passed and the marriage between the petitioner-husband and the respondent-wife is hereby declared dissolved with effect from the date of decree subject to payment of Rs. 25,00,000/- (Rupees Twenty Five Lakhs) by the petitioner-husband to the respondent-wife towards her permanent

alimony. Consequently C.P. No. 534 of 2011 and C.P. No. 763 of 2011 filed by the respondent-wife are dismissed on contest.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 8th day of April, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

In C.P. No. 322 of 2011

Witnesses examined for the petitioner:

P.W.1 Sahadev Behera

Witnesses examined for the respondent:

R.W.1 Smt. Manasi Behera

R.W. 2 Sri Rama Chandra Singh

R.W. 3 Sri Bimbadhar Barik

List of documents by petitioner:

Ext. 1 Written report before IIC Capital Police Station,
Bhubaneswar dated 09.01.2007

Ext. 2 Certified copy of the formal FIR in G.R. case No.
327/2007

List of documents by respondent:

Ext. A The letter addressed to the petitioner

In C.P. No. 534 of 2011

Witnesses examined for the petitioner:

P.W. 1 Smt. Manasi Behera

Witnesses examined for the respondent:

R.W. 1 Sri Sahadev Behera

List of documents by petitioner:

Ext. 1 Pay slip of the respondent

Ext. 2 Electricity Bill

Ext. 3 Letter of G.A. Department

List of documents by respondent:

Nil

In C.P. No. 763 of 2011

Witness examined for the petitioner

P.W. 1 Smt. Manasi Behera

Witness examined for the respondent

R.W. 1 Sri Sahadev Behera

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.