

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

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

Civil Proceeding No. 403 of 2010

Siba Narayan Kanungo, aged about 32 years,
S/o- Chitta Ranjan Kanungo,
Plot No. 3554, Kanchi Road, Old Town,
Bhubaneswar-751002, Dist-Khurda

... Petitioner

... Versus...

Asima Pattnaik, aged about 25 years,
D/o-Amiya Pattnaik,
"Somya Sudha", 107, Jagannath Bihar,
Road No. II, Lane No. IV, Bhubaneswar,
Dist-Khurda

... Respondent

Date of Argument : 09.09.2014

Date of Judgment: 27.09.2014

J U D G M E N T

This order arises out of a petition u/s. 13 (i) (i-a) and (iii) of the Hindu Marriage Act, 1955 praying for a decree of dissolution of marriage of the petitioner with the respondent on the grounds of desertion and cruelty.

2. The admitted facts of the case of the parties are that their marriage was solemnized at Blind Association, Near Big Bazar, Bhubaneswar as per Hindu rites and customs on 01.07.2009 and both parties have been living separately since August, 2009.

3. The facts of the case of the petitioner are that after marriage both of the spouses and his parents went to Kolahpur at the service place of the petitioner. They lived peacefully for ten to fifteen days and thereafter the respondent did not like the presence of his parents and she could not bear the

advice of her mother-in-law relating to household work and got irritated and used to scold her in filthy language. Petitioner has averred that the respondent behaved in arrogant manner to his parents and also to him and also pressurized him for separate living failing which she would commit suicide. In order to save his conjugal life his parents left Kolahapur but there was no change in the behaviour of the respondent. Rather she was always misbehaved the petitioner in vulgar language and also stopped cooking for which he was going to office without taking lunch and went to bed without dinner. He has averred that the respondent insisted him to visit luxurious hotels, parties, picnic spots and bazar for marketing frequently. He has further averred that respondent was avoiding for conjugal life. The respondent also misbehaved his office friends who used to come to his residence at times and was always quarreling with him at loud voice in front of his friends and so also in front of neighbours which was unbearable and due to such abnormal attitude the petitioner lost his prestige before the intellectual neighbours and society. He has further averred that the respondent always compelled him to come to Bhubaneswar lest she should commit suicide and even once she also attempted by taking some tablets and after examination of the rest of the tablets he came to know that those were antacid tablets. In the month of December the petitioner had forced to fly with the respondent to Bhubaneswar hoping that the respondent may change her behavior and attitude and on arrival at Bhubaneswar she had gone to her parental house but did not turn up and told him she would not return as she was going to join service which she had already arranged before leaving Kolahapur for Bhubaneswar. At the time of her departure, she had taken all the jewellery, certificates and valuables with her and it was a pre-plan by the respondent that she wanted to leave him forever and break the matrimonial relationship. He left for Kolahapur with a thought that after some day of stay at her parental house the respondent might change her attitude and behavior and correct herself but she did not join her in-laws or with him and also stopped talking with him. He has further averred that he and his family

members and well wishers of both the families had tried their best to reunite but the respondent being adamant and arrogant was not willing to return to his company to perform matrimonial obligation and always stayed away from him by depriving him of conjugal rights. The respondent's denial for physical relationship caused irretrievable breaking down of marriage which amounts to mental cruelty. He has averred that since August 2009 they have no physical relationship. Since the torture and cruelty on the part of the petitioner became unbearable, he has filed this proceeding seeking a decree of divorce against the respondent.

3. The respondent entered contest the proceeding and filed written statement. She denied all the allegations made by the petitioner against her. She has contended that at the time of marriage, her father had given cash of rupees two lakhs along with gold jewellery weighing eight bharies along with household articles and other valuables to the petitioner and also her father had also given twelve bharis of gold ornaments to her. But the petitioner and his family members were not satisfied. The petitioner did not like the presence of her parents. It is contended that the petitioner mercilessly assaulted her on silly matter and tortured her mentally and physically and finding no other way, she informed the above facts to her parents and other relatives to resolve the dispute amicably but the petitioner and his family members did not cooperate. They always under estimated her and her parents. The parents of the petitioner were also avoided for any settlement of dispute. The petitioner always threatened her for divorce and while she opposed and tried to put forth her grievance to her parents, the petitioner snatched away the mobile phone and pushed her and locked door of the car. In spite of several requests of the parents and uncle, the petitioner did not turn up to take her back to his society. On 17.8.2011 while the respondent contacted the petitioner over phone, he replied that he is not ready to take her back. In spite of physical and mental torture she was waiting for reunion and in the meantime, she has received a notice from the court and came to know that the petitioner has filed the present case for divorce. She has further

averred that she has no intention to live separately from the petitioner, for which, she seeks for dismissal of the petition.

4. From the aforesaid rival pleadings of the parties, the question that requires to be adjudicated is whether, there exists any cruelty on the part of the respondent to allow the divorce petition and secondly whether the respondent is entitled to any permanent alimony in the event, the marriage is dissolved by passing a decree of divorce in favour of the petitioner?

5. The petitioner in order to buttress his case he, himself, has been examined as P.W.1, his father as P.W. 2, his second brother namely Gautam Patnaik as P.W. 3, his maternal uncle namely Ram Sankar Patnaik as P.W. 4. The respondent in order to negate the claim of the petitioner she, herself has been examined as R.W. 1, one of her cousin uncle namely Manoj Kumar Pattnaik as R.W.2, her grandfather as R.W. 3, one of his family friend namely Smt. Nivedita Das as R.W.4, one Dillip Kumar Mohanty as R.W.5 and her paternal uncle namely Sushanta Kumar Pattnaik as R.W.6, her father as R.W.7 and relied on one document i.e. Ext. A is the original list of articles given at the time of marriage and Ext. B series are the marriage photographs.

6. The respondent submitted that the present proceeding is neither maintainable nor there is any cause of action for initiation of the present proceeding. In a Hindu Marriage the prayer for a decree of divorce is a harsh remedy and last resort by a spouse, when all the doors of conciliation and settlement is closed and when the continuance of married life is more painful than the severance. But in the present case, the petitioner is despondently failed to establish a case that the initiation of this proceeding for divorce was inevitable. Except some concocted and self-serving statements, nothing is brought to the notice of this Hon'ble Court by the petitioner to show even a prima facie case is made out in his favour. In the petition the petitioner pleaded at para-8 and 9 which are also repeated in his cross examination-in-chief para8 and 9 that "since her arrival at Bhubaneswar from Kolahpur neither she joined her in-laws nor her husband and she stopped talking to her husband. The petitioner and his family member and well wishers of both

families had tried their best to unite both the parties, but the Opp. Party adamant and arrogant, was not willing return to petitioner's company to perform matrimonial obligation and always stayed away from her husband by depriving him of conjugal rights". The respondent in her written statement had specifically denied such version of the petitioner. Through the above pleading and statement is not admitted by the respondent, but for the sake of argument, if the above statement of the petitioner is admitted to be true, then the remedy is already available to the petitioner under Sec. 9 of the Hindu Marriage Act seeking the relief of restitution of conjugal rights. In such circumstances, this Hon'ble Court reserves the jurisdiction and authority to direct the respondent to join the matrimonial society of the petitioner. But the petitioner without approaching this Hon'ble Court for the relief of restitution of conjugal rights(if he was really desirous for a happy married life with the respondent), directly come to this Hon'ble Court with the prayer for dissolution of marriage, just after completion of one year of marriage, which establishes the ill-intention and cruel attitude of the petitioner towards his legally married wife. Even the petitioner did not think for a while that what shock would be caused to the sentiment of the respondent and to their innocent parents and other family members, when they would receive the summons of this case intended for a decree of divorce. Hence in the circumstances as shown by the petitioner as the petitioner has come to this Hon'ble Court directly with the prayer for a decree of divorce without availing the remedy for restitution of conjugal rights, the present application is premature and not maintainable at all.

7. She has further submitted that as per Section 23 of the Hindu Marriage Act, this Hon'ble Court, at the time of passing a decree, is to be satisfied that, the party seeking the decree of divorce on the ground of cruelty, has to prove that the alleged cruelty could not be condoned in any manner. As per Section 23(2) of the Act, endeavour should have been made by the Hon'ble Court to bring about a reconciliation between the parties before granting the relief. In the instant case, there is nothing pleaded or deposed by the petitioner that he

had taken any steps for condonation of alleged cruelty of the respondent. Further so far as the provisions contained in Section 23 (2) of the Act is concerned, this Hon'ble Court was pleased to take utmost care and endeavour to bring about reconciliation between the parties prior to beginning and even after end of the hearing, but the same could not be fulfilled due to the ill intention of the petitioner. Because the petitioner has already made his intention clear at para-11 of his original application by stating there in that "... the marriage between the parties has completely broken down and there is no a chance of reconciliation between the parties". Hence as the petitioner has come to this Hon'ble Court with close mind and heart to cut off the sacred marital relation with the respondent and with the sole motto to get a decree of divorce, the endeavour made by this Hon'ble Court has resulted futile. If the petitioner is really interested to take back the respondent then he is free to withdraw this proceeding or to convert the present application to application under Section-9 of the Hindu Marriage Act for Restitution of Conjugal Rights. Therefore, in view of the above, it can be safely concluded that the present application for a decree of divorce is bad, pre-planned, illegal, thoroughly misconceived and is not maintainable at all and no cause of action arose for initiation of such harsh proceeding in the given facts and circumstances.

8. The respondent has further submitted that, if this Hon'ble Court holds negative to the assertion made above and is pleased to come to the conclusion that the application for the decree of divorce is maintainable and the petitioner has cause of action to bring this proceeding then the question arose that whether the petitioner is entitled to get a decree of divorce against the respondent on the ground of Section 13 (i), (i-a) of Hindu Marriage Act as alleged by the petitioner in the present proceeding. In reply to the above, the respondent begs to submits that under the heading of "Provision of Law" and in para-13 of the application, the petitioner pleaded that, "thus this case of cruelty for the purpose of Section 13 (i), (i-a) and (iii) is well established."

In such circumstances, the respondent begs to reproduce the above said provisions of Hindu Marriage Act as follows:-

Section 13-Divorce (1) Any marriage solemnized, whether before or after the commencement of this Act, may on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the grounds that the other party,-

- (i) has, after solemnization of marriage, had voluntary sexual intercourse with any person other than his or her spouse; or
- (i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty; or
- (iii) has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

In the instant, case, the petitioner has not whispered a single word in his pleading that the respondent has after the marriage, had any voluntary sexual intercourse with any person other than her husband/the petitioner. Hence the false implication of Section 13(I) of Hindu Marriage Act under the heading of "Provision of Law" and at para-13 of the petitioner is unfortunate, bad and illegal and may be seriously viewed by this Hon'ble Court.

Similarly on perusal of the entire pleading and deposition made by the petitioner, nothing would be found that the respondent has been incurably of unsound mind or has been suffering from any kind of mental disorder. Hence, the implication of the said provision in his petition for divorce is nothing but a clear case of cruelty of the petitioner as against the respondent. It also proves that the petitioner with some ulterior motive and to oust the respondent from his matrimonial life has foisted such a false case against the respondent.

9. Section 13 of the Hindu Marriage Act provides for grant of divorce in certain cases. It enacts that any marriage solemnized whether before or after the commencement of the Act may be dissolved on a petition presented either by the husband or by the wife on any of the grounds specified therein. Clause (ia) of Sub-Section (I) of Section 13 declares that a decree of divorce may be passed by a Court on the ground that after the solemnization of marriage, the

Opp. Party has treated the petitioner with cruelty. Therefore, non filing of a proceeding U/s. 9 of Hindu Marriage Act will not debar the petitioner from filing the present proceeding. The petitioner if would establish the ground of cruelty he can get a decree of divorce. Therefore, the submission of the respondent being sophistry does not merit consideration.

10. 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.

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)(ia) 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) (ia) 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 Dass 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) (ia) 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 be considered.

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

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

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 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.

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 three aspects i.e. *(i) Separate living of the respondent from the company of the*

husband/petitioner without any justifiable cause and thereby depriving the petitioner from his conjugal life, (ii) Exhibiting in-temperament behavior by the respondent towards the husband and her-in-laws and (iii) Threatening and attempting to commit suicide by the respondent on flimsy grounds.

24. P.W. 1, the petitioner has stated that they lived peacefully for ten to fifteen days at Kolahapur and thereafter better filing arose in their conjugal life as the respondent did not like the presence of his parents. She could not bear the advice of his mother relating to household management and she got irritated and used to scold in filthy language at times saying to his mother that "Choto loko bhali kathabarta karuchanti". She always behaving in arrogant manner to my parents. This part of the evidence have not been challenged by the respondent through her cross-examination. So it is an unchallenged testimony. That apart of the evidence of the petitioner has been corroborated by his father P.W. 2 who had accompanied with his wife to the service place of the petitioner at Kolahapur for brief period. P.W. 1 has further stated that the respondent pressurized him to say his parents to leave Kolahapur as soon as possible failing which she would commit suicide as a result of which the parents of the petitioner had been forced to leave Kolahapur in order to save the conjugal life. It is submitted by the respondent, that since the mother of the respondent has not been examined, this part of the evidence cannot be accepted. When the respondent herself admitted the presence of P.W. 2 in the residence of petitioner at Kolahapur, it is held that P.W. 2 is a natural witness to the situation and therefore, non- examination of the mother cannot corrode the credibility of P.W.2. P.W. 1 has further stated that the respondent used to stop cooking for which he was going to office without taking lunch and went to bed without dinner. He has also stated that the respondent was constantly and continuously avoiding to sleep with him in one bed and also deprived him to have matrimonial relation. He has also stated that the respondent had misbehaved his office friends. The wife-respondent though denied the said fact has admitted the presence of the friends of the petitioner in his house. She has stated that she protested the

petitioner when his friends shouted in the house being drunk. She also admitted that the petitioner on one or two occasions had brought packed meals. These circumstances clearly spell out altercation between the parties and refusal of the wife to cook food amounting to cruelty. P.W. 1 has further stated that the respondent has attempted to commit suicide on two occasions when her demand has not been acceded to. Threatening to commit suicide and taking attempt to commit suicide in one occasion is also a conduct of cruelty. Another significant piece of evidence which prompted the court to attribute the wife's cruel conduct is her career ambition. R.W. 1 at paragraphs-3 of her evidence has stated that she has cleared MBA course before her marriage and was interested for a job before marriage. She has further admitted that as she was interested for a job, she was not willing for marriage with the petitioner. She has admitted that when they were staying at Kolahapur she had attained an interview for IDBI Bank at Mumbai and another examination of Oriental Bank of Commerce at KIIT Campus at Bhubaneswar. Thus, it is clearly evident from the conduct of the respondent that she has no mind to continue her marital life with the petitioner. The marriage between the parties was solemnized on 01.07.2009 and after a brief stay in her in-laws house the respondent went to the service place of the petitioner at Kolahapur. Admittedly, the respondent left Kolahapur in the month of December, 2009 and thereafter she has not joined the company of her husband. It has not been specifically alleged by the respondent that she was either mentally or physically tortured by the petitioner or his parent. The respondent has insisted the petitioner to leave her at Bhubaneswar as she was interested in joining service there and on such instance of the respondent the petitioner has left her at Bhubaneswar and thereafter the respondent has never returned. It has been elicited from the respondent in her cross examination that she was not interested in marriage and as she wanted to lead an independent life by taking some job. So the mental attitude of the respondent for not being interested in marriage to lead an independent life and her subsequent conduct of being interested in doing some job after her

marriage coupled with her obstinate attitude of not joining the company of her husband in spite of several attempts by the well wishers and by this Hon'ble Court, the respondent has refused to join the company of her husband, cumulatively proved that the respondent treated the petitioner with cruelty.

25. An attempt was made by this court to persuade the parties to live together but the wife respondent did not agree to reside with the husband alleging that he apprehend danger to her life. During cross examination of R.Ws. on 25.06.2014 this court asked the parties to submit their views of reunion and living together and accordingly the respondent submitted her views on 02.07.2014. In point No. 3, she has mentioned that she should be allowed to peruse for education and seek employment so as to safeguard her future carrier gives values to her studies/her qualification apart from discharging role of a daughter in law. At point No.10 she has stated that she has no objection to join in-laws family provided the Hon'ble Court may ensure for her protection against the apprehended danger to her life at their house because of arrogant and revengeful attitude of her husband and his family members. When there was no physical violence on the respondent at any point of time, there is no question of apprehended danger to her life. Therefore, her statement that she is willing to join with company of the petitioner is a sham. From point No.3, it is quite apparent that she is carrier oriented regardless for restoration of marital obligation. In *Suman Kapoor Vrs. Sudhir Kapoor* reported in AIR 2009 Supreme Court 589, it has been laid down that "where wife is carrier oriented lady wanting to peruse her professional carrier to achieve success constantly and continuously avoiding staying with husband and preventing him to matrimonial relation amounted to mental cruelty and therefore, it is a fit case of divorce. Accordingly, this issue is answered in favour of the petitioner.

26. Apart from that the parties have been living separately since August, 2009, therefore, the marriage is dead emotionally and practically. Therefore, continuance of marital alliance would be cruelty. Therefore, in my considered opinion, it is a fit case to snap out the marriage between the parties lest it

would lead to tortuous litigation and continued agony of the parties resulting, the mental cruelty.

27. As regards to the permanent alimony, the parties are their prime stage of the youth and therefore there exist of their remarriage. Therefore, if permanent alimony is allowed to the respondent it would amounts to an unjust enrichment and therefore, I decline to grant any permanent alimony. From the record, I found that the respondent has been allowed interim monthly maintenance of Rs. 15,000/-. The respondent has singularly failed to lead any concert evidence regarding the present salary of the petitioner. Therefore, I think it would be just and proper to direct the petitioner to pay Rs. 25,000/- towards monthly permanent alimony to the respondent. It is made clear that the monthly alimony shall be paid from this date of order till the respondent gets the remarried or otherwise disqualified to get maintenance under the stature. Accordingly, this issue is also answered in favour of the respondent. Hence, it is ordered.

ORDER

The suit and the same be decreed in favour of the petitioner. 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. The petitioner is directed to pay Rs. 25,000/- per month towards alimony to the respondent from this date of order till the respondent gets remarried or otherwise disqualified to get maintenance under the statute. The petitioner is also directed to pay Rs. 10,000/- to the respondent towards litigation charges.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 27th day of September, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Siba Narayan Kanungo
P.W.2 Chitta Ranjan Kanungo
P.W.3 Sri Gautam Patnaik
P.W.4 Sri Ram Sankar Patnaik

Witnesses examined for the respondent:

R.W.1 Asima Patnaik
R.W.2 Manoj Kumar Patnaik
R.W.3 Benudhar Patnaik
R.W.4 Nivedita Das
R.W.5 Dillip Kumar Mohanty
R.W.6 Sushanta Kumar Patnaik
R.W.7 Amiya Kumar Pattnaik

List of documents by petitioner:

Nil

List of documents by respondent:

Ext. A Original list of articles given at the time of marriage.
Ext. B series Photographs relating to marriage.

JUDGE, FAMILY COURT,
BHUBANESWAR