

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

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

Civil Proceeding No. 41 of 2011

Ashutosh Sarangi, aged about 34 years,
S/o-S.K. Sarangi,
At-M-37, Baramunda Housing Board Colony,
P.O.-Baramunda, P.S.-Khandagiri, Dist-Khurda,
Presently working as Executive Officer,
Indian Naval Ship, BEDI at Bombay.

... Petitioner

... Versus...

Mrs. Reeta Dhara, aged about 29 years,
D/o-Sri Chittaranjan Dhara,
W/o-Ashutosh Sarangi,
At-229, Katari Bagh, Naval Base,
Kochi-682004.

... Respondent

Date of Argument : 06.09.2014

Date of Judgment: 25.09.2014

J U D G M E N T

1. This order arises out of a petition u/s. 13 (1) (ia) (iii) of the Hindu Marriage Act, 1955 (in short, the Act 1955) praying for a decree of dissolution of marriage of the petitioner with the respondent on the ground of cruelty.
2. The admitted facts of the parties are that their marriage was solemnized in Hotel Presidency, Bhubaneswar in presence of their respective parents, relatives, friends and well-wishers on 08.05.2008 and no child is born out of their wedlock.
3. The case of the petitioner is that on 09.05.2008, i.e. the next day of the marriage, the respondent forced him twice for consummation of marriage but due to presence of parents, relation and other nearer and dears it was not

possible for which the respondent became furious and behaved him in a very discourteous manner. When he asked the reason for her abnormal behaviour for sexual intercourse the respondent replied she wants a child immediately so that she would be able to establish her legal claws and they would act as per her desire. The petitioner has averred that out of depression he could not keep sexual relationship with the respondent for which the respondent complained to his parents and other relations who were present in the house on occasion of marriage that he is an impotent person and required for medical checkup for which he was insulted in front of others which caused humiliation to him and later although they have sexual intercourse yet the respondent was not satisfied as she always wanted vigorous sex even preferring its abnormality which was dissuaded by him for sake of health. Despite such constructive advise of the petitioner was taken as adverse. The abnormality, violent and aggressive behaviour of the respondent gradually came to the knowledge of the neighbours at Bhubaneswar and it became talk of the locality for which he could not show his face to his neighbours. After few days of marriage, when they were going to sister-in-law's house for dinner due to some telephone calls it was little late for which the respondent became furious and aggressive and behaved abnormally and threatened for severe consequences including committing suicide. In the month of May, 2008 when her left Bhubaneswar to join his unit for sailing, the respondent started torturing his mother and made a unreasonable demand for going back to her parental home instead of looking after his old ailing mother and disobeying his mother went to her parental home for which he became mentally shocked and perplexed. In the month of June, 2008 when the petitioner was on his unit at Vizag, the respondent in the middle of the night over telephone questioned to his character and made false allegations that the he has got illicit relationship and extramarital affairs. The respondent also used to disturb him over phone during the working hour even uttering in a slang languages without any rhyme or reason. The respondent and his family members threatened the petitioner that they have link with Maoist on Jharkhanda and Orissa Boarder and they are capable of causing grievous harm to the entire family of the

petitioner. It is further averred that the petitioner got quarter from 29-8-2008 and the respondent stayed with him and made his life miserably and wanted to see his nomination papers. The respondent exploited him to the fullest and disobeying the petitioner and committing acts which are both harmful and inimical to service career of the petitioner. According to him, he came back from sailing on 30th Sept. 2008 and he realized that the respondent was attending various outside functions without his knowledge. It is averred that the petitioner took an attempt to take the respondent to a doctor but she refused. The respondent always threatened him to spoil his life. When the petitioner returned home in the evening, the respondent used vulgar languages at him. Although he had provided all luxurious articles to the respondent yet the respondent wanted for sex always with him. The respondent did not perform household works and she was in habit of watching TV on extra marital affairs, read cheap glossy magazines full of pornographic and lurid stories. She also threatened the petitioner that she will stop the promotion and the respondent and her mother time and again expressed their inner feeling to find her some other officers of the rank of Lt. Cdr. in the Navy. On 16.12.2008, the respondent denied to go with the petitioner to Muzaffar Nagar to his parents house. It is alleged that some times in between 9th to 26th January, 2009 the respondent was missing from Kochi and had gone again to her parents place without any knowledge of the petitioner. He has averred that all the attempts became futile because of the fact that the respondent is a schizophrenic patient having an incurable and unsound mind. It is further averred that during 28.4.2009 to 21.5.2009 the respondent had complained before the new C.O. At Kochi the respondent had assaulted the sister of the petitioner. The petitioner is a defence personnel who was not entitled to A.C facility in his Government Quarters but the respondent without his knowledge installed an A.C unauthorized. As the respondent treated the petitioner with cruelty frequently, the latter has filed his suit for divorce, Hence the suit.

4. The respondent filed written statement and counter claim for restitution of conjugal rights, maintenance and other consequential relief as deems

according to law. She denied all the allegations made against her by the petitioner. On one occasion, petitioner's sister gave her a push, as a result, of which, her face collided with the wall causing swelling on her ye-brow. She has alleged that the petitioner and his family members were torturing her physically and mentally for non-fulfillment of additional dowry. The petitioner avoided to keep physical relationship with her. She has averred that she was not given proper food by the petitioner. She has further contended that the parents of the petitioner created situation to keep the husband and wife separate from each other so that they shall not lead a happy conjugal life. She has contended that the petitioner called her as beggar and rustic girl and threatened to divorce her. He attempted to kill her by hitting the bike knowingly with an iron pole while driving. She has further contended that the petitioner is a self center, egoistic, instinctive liar and always tried his best to irritate the respondent and blackmail her with a motive to extract further dowry. Instead of being caring her, the petitioner remain absent from house without any just cause or justification. According to her, she heard about the adulterous relation of the petitioner. Further case of the respondent is that the petitioner was leading an adulterous life. Therefore, she has contented to live with the petitioner and has prayed for dismissal of the proceeding.

5. The following points are formulated to resolve the controversy:-

- (1) Whether the respondent treated the petitioner with cruelty?
- (2) Whether the petitioner is entitled to be relief of dissolution of marriage as sought for in the plaint?
- (3) Whether the respondent is entitled to restitution of her conjugal rights with the petitioner?
- (4) Whether the petitioner is entitled get permanent alimony or monthly maintenance from the respondent and what would be the quantum thereof?

6. The petitioner in order to prove his case has examined himself, as P.W. 1, his mother as P.W.2, his maternal uncle as P.W. 3, his sister as P.W. 4 and one Lobsang Dundup as P.W. 5 and relied on some documents i.e. Ext. 1 is the letter dated 16.05.2009, Ext. 2 is the letter dated 16.05.2009 of Garrsion

Engineer, Ext. 3 is the letter issued by the Commander, Commander Quartering Officer to the Director Integ., Ext. 4 is the letter issued by Commander Quartering Officer, Ext. 5 is the letter of for penalty imposed for illegal retention of the Quarter, Ext. 6 is the letter dated 28.07.2011 for eviction of the Quarter, Ext.7 is the letter dated 02.09.2011 issued by the Captain Command Administration and Personal Officer regarding taking accommodation occupied by the spouse of Asutosh Sarangi, Ext. 8 is the show cause notice issued by the Commander (Joint Director) for recovery of maintenance allowance, Ext.9 is the Bank Particulars issued to Rita Dhar by the Commanding Officer, Ext. 10 is the letter dated 11.06.2010 issued by the Commander Director (AOL) to the Secretary IMSC, Ext. 11 is the letter dated 11.06.2010 issued by the Commander Director (AOL) to Mess Secretary Western Naval Command Officer Mess, Ext. 12 is the letter dated 04.02.2010 of the respondent for recovery of maintenance of Rs. 25,000/-, Ext. 13 is the office copy of the letter dated 16.02.2010 issued by Rita Sarangi to the Director Integ requesting to retain the transit house, Ext. 14, to 14/e are the applications of the respondent under RTI Act to obtain the official date and salary of the petitioner, Ext. 15 is the application of the petitioner dated 23.01.2013 and Ext. 16 & 16/1 is the seal and signature of the Commander Officer, M. Gobardhan Raju. The respondent in order to negate the claim of the petitioner, she, herself, has been examined as O.P.W. 1 and placed reliance on Ext. A is the R.C. Book of car bearing registration No. OR-02-AT-0440, Ext. B is the money receipt of Godrej Almirah, Ext. C is the money receipt of A.C, Ext. D is the Transport packing voucher from Kochi to Mumbai and Ext. E is the letter of the respondent dated 24.01.2011 showing interest to reside together.

ISSUE NO. 1,2 AND 3

7. P.W. 1, the petitioner has stated that the respondent wanted vigorous sex to which he denied on health ground and when the same was denied the respondent imputed him as an impotent person. She even threatened to murder him and stop his promotion and take half of his salary. P.W. 1 has

further stated that the respondent used to frequent her father's house without the knowledge of the petitioner and his parents. He has also stated that the respondent complained before the Commanding Officer of the petitioner for which he was cautioned. He has further stated that the respondent tried to spoil the career of the petitioner lodging false and frivolous allegations against him before his higher authority. The petitioner exhibited some documents which were dispatched by the respondent to the higher authority. The respondent fitted A.C in the Quarter for which, the petitioner was penalized. From Ext. 5, it is apparent that due to illegal retention of the quarter by the respondent, the department has imposed penalty on the petitioner. The respondent in her evidence as well as in her written statement alleged that the petitioner has extra marital relations with some girls, which were unfounded allegations as she could not say the name of the girls with whom the petitioner has kept such relation. The only allegation against him is that, she was tortured by the petitioner and his family members due to non fulfillment of additional demand of dowry and non transfer of the car in the name of the petitioner. There is no shred of evidence from the side of the respondent what was the kind of additional demand and the amount if any.

8. P.W. 2 is the mother of the petitioner. She has stated that the respondent gave threat to commit suicide when the petitioner delayed in attending the invitation of her sister for dinner. She has further stated that the respondent addressed her "Pagal and her family members are also Pagal" (Mad). She has further stated that the respondent was not loyal to the family.

9. P.W. 3 has stated that the respondent insulted the petitioner saying he is an impotent which requires medical checkup. He has further stated that the respondent accuses the petitioner for illicit relationship and extra marital affairs. During cross examination, it has been elicited that the respondent discloses before his wife that the petitioner is an impotent.

10. P.W. 4 has stated that once when he visited Kochi to her brother's place, the respondent did not allow her to enter into the room and assaulted her. she has further stated the respondent and her mother brought out the knife to kill and when she cautioned them that she would inform the police, the

respondent ran to the commanding officer and complained regarding her presence and hearing such incident her brother came to the quarter, saved her and took her to the Defence Mess. She has further stated that the respondent accuses her brother to have extra marital relation.

11. P.W. 5 has stated that due to baseless and vague complaints of the respondent the petitioner was humiliated and warned by the superior authority. He has further stated that the respondent did not serve food to the guest of the petitioner. During cross examination, he has admitted that the petitioners reputation and career is damaged /desegregated due to continued and constant baseless complaint of the petitioner.

12. All these witnesses were cross examined at length but nothing has been brought out during cross examination to shatter their evidence. On the other hand, the sole testimony of the respondent is nothing but denial of the aforesaid fact let into in evidence by the petitioner and his witnesses. The respondent even failed to examine her mother who was all along with her at the service place of the petitioner to support her testimony.

13. P.W. 1 is a Naval Officer. Strict discipline is observed in three wings of the Army. Slightest deviation on the part of any defence personnel would entail the consequence of disciplinary action. Knowing all these facts, the respondent made commissions and omission which were not conducive for defence department. From the evidences of P.W. 1 to 5, it is crystal clear that the respondent treated the petitioner with cruelty and for that reason the petitioner suffered from mental agony. The respondent withdrew herself from the society of the petitioner without justifiable cause. The petitioner tried her best to reconcile the matter but the respondent did not cooperate. Making scandalous and frivolous allegations retention of quarters unauthorizedly by the respondent, not to be respectful to the family members of the petitioner and making complaints before the higher authority of the petitioner are unfounded allegation of extra marital relation of the petitioner with some girls are the circumstances attracting mental cruelty and such cruelty being weighty and grave, it is impossible for the petitioner to live with the respondent. Additionally, the marriage is dead both emotionally and

practically. The petitioner even did not want to talk with the respondent while both met in the court during recording of their evidence. Similarly, the respondent did not talk with the petitioner. Yet, the marriage being dead, the continuance of it would be cruelty. Additionally, once serious allegation has made against the petitioner, it becomes clear that there is no chance of parties coming together or living together especially, when the wife put forward an allegation against husband that he was having un-disable association with girls. Therefore, in my considered opinion, it is a fit case to snap out the marriage between the parties least it would lead to tortuous litigation and continued agony resulting, the mental cruelty.

14. The respondent relying on Smt. Mayadevi Vrs. Jagdish Prasad reported in Civil appeal No. 877 of 2007 (arising out SLP (C) No. 3686 of 2006), Samar Ghosh Vrs. Jaya Ghosh reported in (2007) 4 Supreme Court Cases 511, Gurbux Singh Vrs. Harmider Kour reported in 2010 (II) OLR (SC)-1093, Smt. Sucheta Pradhan Vrs. Sri Sankarsana Nayak reported in 2006 (Supp.-II), OLR-207, Sri Kiran Kumar Parida Vrs. Parveen Samal reported in 2012 (Supp.-II) OLR-316 and Manoj Kumar Tripathy Vrs. Mayarani Praharaj reported in 2010 (Supp.-I) OLR-214 submitted that unless the conduct complained of should 'grave and weighty' so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse and the same must be more serious than 'ordinary wear and tear of married life' there cannot be any mental cruelty much less any cruelty. Further it was submitted that when the evidence of the respondent herself exists her eagerness to resume matrimony there should not be a decree of divorce. No one combat on the aforesaid proposition of law. But there is always peril is treating the words of a judgment as though they are words is a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of the particular case. Circumstantial flexibility one additional or different fact may make a world of difference between conclusions in two cases. Each case depends on its on facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases (as

said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the board resemblance to another case is not at all decisive. Herein the instance case, the conduct of the respondent which I have delineated are no doubt amounted to cruelty which are equally 'grave and weighty' for the petitioner to live with the respondent. In Smt. Sanatana Banarjee Vrs. Sachindra Nath Banerjee reported in AIR 1990 Calcutta 367 under a pari-materia fact, it has been laid down that where wife making false allegations against husband that he was having illicit sexual relation with some lady such act of wife amounted to mental cruelty justifying a decree of divorce. 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, issue No. 1 to 3 are answered in favour of the petitioner.

ISSUE NO. 4

15. P.W. 1 is Naval Officer. The respondent is a house wife. The respondent is aged about 33 years old. There is no more chance of her remarriage. The petitioner has been paying Rs. 14,000/- to the respondent towards monthly interim maintenance. The life expectancy of a person is 60 years now a days. The petitioner would go on paying this amount till the respondent attains the age of 60 years. The petitioner being the husband has to support his wife until her death or remarriage or otherwise disqualified under the statute. Therefore, the respondent is entitled for permanent alimony from the petitioner. Considering the aforesaid facts and circumstance it is would be just and proper to fix the permanent alimony at Rs. 30,00,000/- (Thirty Lakhs). Accordingly this issue is answered in favour of the respondent. Hence, it is ordered.

O R D E R

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 permanent alimony of Rs. 30,00,000/- (Thirty Lakhs) to the respondent.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 25th day of September, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1	Asutosh Sarangi
P.W.2	Pratima Sarangi
P.W.3	Ashok Kumar Dash
P.W.4	Alpana Sarangi
P.W.5	Lobsang Dondup

Witnesses examined for the respondent:

R.W. 1	Rita Dhar @ Sarangi
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List of documents by petitioner:

Ext. 1	Letter dated 16.05.2009
Ext. 2	Letter dated 16.05.2009 of Garrison Engineer
Ext. 3	Letter issued by the Commander, Commander Quartering Officer to the Director Integ.
Ext. 4	Letter issued by Commander Quartering Officer
Ext. 5	Letter for penalty imposed for illegal retention of the Quarter.
Ext. 6	Letter dated 28.07.2011 for eviction of the Quarter
Ext.7	Letter dated 02.09.2011 issued by the Captain Command Administration and Personal Officer regarding taking accommodation occupied by the spouse of Asutosh Sarangi.
Ext. 8	Show cause notice issued by the Commander (Joint Director) for recovery of maintenance allowance
Ext.9	Bank Particulars issued to Rita Dhar by the Commanding Officer

- Ext. 10 Letter dated 11.06.2010 issued by the Commander Director (AOL) to the Secretary IMSC
- Ext. 11 Letter dated 11.06.2010 issued by the Commander Director (AOL) to Mess Secretary Western Naval Command Officer Mess
- Ext. 12 Letter dated 04.02.2010 of the respondent for recovery of maintenance of Rs. 25,000/-
- Ext. 13 Office copy of the letter dated 16.02.2010 issued by Rita Sarangi to the Director Integ requesting to retain the transit house
- Ext. 14, to 14/e Applications of the respondent under RTI Act to obtain the official date and salary of the petitioner
- Ext. 15 Application of the petitioner dated 23.01.2013
- Ext. 16 & 16/1 Seal and signature of the Commander Officer, M. Gobardhan Raju.

List of documents by respondent:

- Ext. A R.C. Book of car bearing registration No. OR-02-AT-0440
- Ext. B Money receipt of Godrej Almirah
- Ext. C Money receipt of A.C.
- Ext. D Transport packing voucher from Kochi to Mumbai
- Ext. E Letter of the respondent dated 24.01.2011 showing interest to reside together

JUDGE, FAMILY COURT,
BHUBANESWAR.