

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

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

Civil Proceeding No. 283 of 2010
U/s. 13 (1) (i-a) of the Hindu Marriage Act, 1955

Nisith Pattnaik, aged about 35 years
S/o-Dr. Biswanath Pattnaik,
Resident of Padma Hospital Building,
Plot No. 210/1320, Sarala Nagar,
Budheswari Colony, P.S.-Laxmisagar,
Bhubaneswar-6, Dist-Khurda.

....Petitioner

... Versus ...

Tapasi Das Mohapatra, aged about 29 years
W/o-Nisith Pattnaik,
D/o-Dr. Pancha Gopal Das Mohapatra,
Resident of Flat No. 005, Swastik Enclave,
Vivekananda Marg, Bhubaneswar,
P.O-Old Town, P.S.-Lingaraj, Bhubaneswar-751002,
Dist-Khurda.

.... Respondent

Date of Argument : 11.01.2016

Date of Judgment: 25/30.01.2016

J U D G M E N T

The petitioner-husband, Nisith Pattnaik has filed C.P. No. 283 of 2010 against the respondent Tapasi Das Mohapatra U/s. 13 (1) (i-a) of Hindu Marriage Act, 1955 (in short, the Act 1955) for dissolution of his marriage with the respondent by passing a decree of divorce on the ground of cruelty.

2. Admitted facts of the case of the parties are that their marriage was solemnized according to Hindu rites and customs in Royal Palace, Tankapani Road, Bhubaneswar on 22.02.2010 and they have no issue out of their wedlock and both the parties have been living separately since 02.04.2010.

3. The facts of the case of the petitioner Nitish Pattnaik are as follows:-

According to the petitioner, on the day marriage, the father of the respondent had given an account payee cheque bearing No. 574034 amounting Rs. 1,50,000/- to him but he returned the same to the elder brother of the respondent on 23.02.2010 as his family members had not demanded any dowry from them and in the same night the respondent told him "Tu jane bhadrakumari bhikari, toro ta rojagar nahi. Mo bapa jeun Rs. 1,50,000/- deithile, to kahinki pheraeilu?" and due to such behaviour of the respondent he was mentally shocked. It is averred by the petitioner that on the day of reception in Hotel Kalinga Ashok (Kapilas), Kalpana Square, Bhubaneswar, the respondent did not respond his friends and relatives and when he requested her not to behave them in such a manner, she became furious and told him that she would behave according to her own will and wish. On 25.02.2010 i.e. fourth day of the marriage during performance of Chaturthi Homa Karma, the respondent did not follow the marriage custom and passed nasty comments at his family members and relatives for which he, his family members and other relative present there became astonished and shocked mentally. In the night when he called the respondent to bed, the respondent refused to sleep and told him "To sahita akathi soeibaku ghruna laguchi. Moro toro baha heba pain adoun ichha nathila. Kebala gharaloka badhya karibaru mu baha hoeichi" and thereafter all his efforts for cohabitation went in vain as a result of which he suffered mental agony throughout the night. On next night, the respondent after taking dinner went to the bedroom and locked the room inside and when he requested to open the door, the respondent did not hear anything for which he has to sleep in another room. The respondent during her stay in his house avoided for sexual intercourse by taking some plea or other. The respondent also misbehaved him and his parents in order to oust them from his house and when he protested it, the respondent asked him for living separately from his parents. On 01.03.2010 during the celebration of Holi when he requested the respondent to play Holi with his family members, she misbehaved him

by passing comments “To au to bapa, maanka pari chotoloka, bhikari manaka sahita mu holi kheliparibi nahi. Mote mo bapa maanka pakhaku neiki chala. Mu aama ghare holi khelibi”. In the evening during celebration of his birthday when he cut the cake and gave a piece of it in the mouth of the respondent, suddenly the respondent became furious and threw away the cake and her shoe and abused him and his family members in filthy languages. On 03.03.2010 i.e. the on day of Dasa Mangala when both of them visited to the parental home of the respondent, she and her parents abused him by passing ugly comments at him and his family members by saying “Mu au se bhikarimanaka gharak jibi nahi. Mote sethare kukura manaka bhitare rahilabhali laguchi. Semane sabu choto loka”. It is averred by the petitioner that the respondent is an adamant and egoistic lady and did not take his care and the care of his family members. The respondent also did not follow his family custom and tradition for which his family life was disturbed. On 05.03.2010 when he refused the proposal of the respondent for living separately from his other family members, the respondent became violent and assaulted him. The respondent also gave a slap on his face and told him to leave his house and live in a rented house. It is further averred by the petitioner that the respondent is in habit of creating disturbances in the family on some plea or other in presence of his friends and relatives. The respondent also tried to defame his family social status and prestige in public. The respondent during her stay in his house did not perform her marital obligations. On 23.03.2010 in the night when he requested the respondent to come to their bed room for cohabitation, she refused and threatened him to file false dowry torture case against him and his family members and also to defame him in public. On 02.04.2010 the respondent left his house with her parents and other family members along with her gold ornaments and personal belongings with her without listening his request to stay in his house. On 18.04.2010 when his mother's gall stone was operated, the respondent in spite of his request did not attend his mother in medical. On 14.07.2010 with prior permission of the father of the respondent, his parents, maternal uncle, cousin brother and he himself went

to the parental home of the respondent i.e. Flat No. 005, Swastik Enclave, Vivekananda Marg, Bhubaneswar for settlement of the dispute and also to bring her back but they were insulted, threatened and driven out by her family members. Thereafter on 09.06.2010 he and her uncle namely K.P. Mohanty went to the parental home of the respondent to bring the respondent to observe "Sabitri and Sudasa Brata" the two sacred festivals but the mother of the respondent refused to send her. The mother of the respondent also misbehaved them. Thereafter several attempts have been made from his side to bring her back but all were in vain. On 14.09.2010 the respondent lodged a written complaint before Mahila Police Station, Bhubaneswar against him and his family members U/s. 498(A), 34 of IPC and 4 DP Act vide P.S. Case No. 140 dated 14.09.2010 in order to humiliate them in Public. 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, getting no other way, he sought for a decree of divorce against the respondent on the ground of cruelty.

4. The respondent-wife contested the proceeding by filing W.S. and denied all the allegations made by the petitioner against her. According to the respondent she has stayed 38 days in her matrimonial home. During her stay there she had looked after the family members and followed the family customs of the petitioner. It is the case of the respondent that at the time of marriage her parents had given all the house hold articles and a cheque of Rs. 1,50,000/- to the father of the petitioner but on the next day i.e. 23.02.2010 the said cheque was returned to her elder brother and was asked to give cash instead of cheque and On 28.02.2010 her elder brother had given the cash of Rs. 1,50,000/- to the father of the petitioner after encashing the cheque from UCO Bank, Master Canteen Branch on 27.02.2010. It is averred by the respondent that after marriage till her departure from her in-laws house, she was subjected to torture both physically and mentally due to non fulfillment of their additional demand of A.C., LCD TV, fridge, flat, four wheeler etc and Bhara. It is further averred by the respondent that in fourth night of the marriage, i.e. on 25.02.2015, the

petitioner entered to the bed room and purposefully kept the Handy-cam in recording mode on an aluminum stand and thereafter started conversation with her in vulgar/un-parliamentary languages. The petitioner asked her "Is this your first time? Or you have practise sex with anybody else?, Our bed room is a Randikhana and you have to entertain me, my friends namely Bikram, Bunu and Sontosh Behera on the bed as per his wish and order, do you have any boy friend? You are my third wife, To sustain Visa, he had to marry one green card holder in USA, after returning back to India, he again got married to his ex-girl friend Anindita Mohanty and lastly you are my Mall". Thereafter, the petitioner kept physical relation with her. It is averred by the respondent that the petitioner had kept physical relationship with her for 32 nights by keeping one door and two windows open. During her stay there she was deprived of contacting with her family members as the petitioner and his family members have forcefully switched off her mobile bearing No. 097777903281 from 06.03.2010. It is further averred by her that the birthday of petitioner does not fall on 1st March for which the allegations made against her are false. The respondent has averred that in spite of the torture on her she behaved normally with her in-laws and relatives. She had also gone to Airport to see off the sister of the petitioner namely Litu. During her stay there, she has done entire household chores and also taken care of her parents-in-law like a maid servant. The petitioner and his family members have also ordered to do some work of Padma Hospital like sweeping the Chamber of Dr. Biswanath Pattnaik. Even she was asked to clean the Puja Room, keep flower in the morning and wash the utensils of Puja. The mother of the petitioner has stated her that she should not conduct any puja till the time she became the devotee of Baba Aviram. The respondent further averred that if the petitioner had not kept any physical relation with her, then why her pregnancy test was conducted by the petitioner and his family members in their family nursing home on 28.03.2010. It is averred by the respondent when the torture by the petitioner and his family members became unbearable, she called her parents to her matrimonial home and went with them to her parental home

on 02.04.2010 and on 14.02.2010 she has lodged an FIR before Mahila Policie Station and police have seized some of her belongings from the house of the petitioner. From the date of filing of the case, she has been continuously threatened over phone by the petitioner and some unknown persons to withdraw the case. The respondent has further averred that on 09.06.2010 she was appearing her examination (IPR) and her father was also absent from the house and the petitioner, his father and uncle came to her parental home around 1.30 P.M. and hearing such her father immediate returned to the house and as her life was constant threat in the house of the petitioner, her parents refused to let her go to their house and also stated that until the time they have confidence on the petitioner, their daughter will not join with him. It is further averred by the respondent that in no Oriya Calendar Sudasa Brata is performed in the month of June. It is averred by the respondent that several attempts have been made from her side to settle the dispute but all were in vain due to non cooperation of the petitioner and his family members. It is further averred by her that the respondent has also suppressed the fact of his earlier two marriages before his marriage with her. It is further averred by the respondent that since the torture meted out on her by the petitioner and his family members during her living of 38 days in her matrimonial home is unbearable and her life is insecure in the house of the petitioner as well as the petitioner and his family members have not showed any improvement in their behaviors and attitude towards her, it is not possible on her part to reside with the petitioner and if the divorce is allowed in favour of the petitioner, she may be granted permanent alimony of Rs. 3, 70, 80,000/- after considering the status and income of the petitioner.

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

- (I) Whether the petition is maintainable?
- (II) Whether there exists any cruelty on the part of the respondent-wife to allow the petition for divorce?
- (III) Whether the respondent-wife is entitled for any monthly or permanent alimony in case of divorce is allowed?

6. The petitioner in order to prove his case, he, himself, has been examined as P.W. 1 and placed reliance on seven documents. They are:- Ext. 1 is the certified copy of the FIR lodged by the respondent against him wherein she has mentioned that he was unemployed and her marriage with him by cheating her, Ext. 2 is the deposition of the respondent in G.R. Case No. 2551 of 2010 where the respondent has mentioned that after marriage she came to know that her husband was doing no job and a cash of Rs. 1,50,000/- was not utilized for her at para-18, Ext. 3 is the statement of the father of the respondent wherein the father of the respondent has stated that subsequently they came to know that the petitioner was unemployed and told them falsely that he was in job at USA at para-4 of his deposition, Ext 4 is the certified copy of the deposition of Chinmaya Das Mohapatra, the brother of the respondent in G.R. Case No. 2551 of 2010 wherein he has stated that Nisith is unemployed and previously he was married at para-17 of his deposition, Ext. 5 is the certified copy of the deposition of the mother of the respondent in G.R. Case No. 2551 of 2010 where she has stated that she came to know that Nisith was unemployed and that he had no job and that he had no earning at para-4 of her deposition, Ext. 6, 6/a, 6/b and 6/c are the letters of the company showing termination of job and penalty of the petitioner and Ext. 7 is the xerox certified copy of the order passed in G.R. Case No. 3464 of 2011 where, the petitioner was directed not to leave the jurisdiction of the court of the S.D.J.M., Bhubaneswar. In order to negate the claim of the petitioner, the respondent herself, has been examined as R.W.1 and placed reliance on twenty one documents. They are:- Ext. A is the order of the Hon'ble high Court passed in CRLMC No. 3291 of 2012 wherein condition No.2 in the order passed by the S.D.J.M. in G.R. 3464 of 2011 has been modified, Ext. B is the paper printing dated 06.12.2009 and the content of that caption is true and correct, Ext. C is the certified copy of the FIR in G.R. Case No. 3464, Ext. D is the xerox certified copy of memorandum of association of Syscom Enterprises Solution, Pvt. Ltd. Ext. F is the certified copy of the FIR of G.R. Case No. 2761/2011, Ext. G is the xerox copy of the report of Addl. D.C.P, Crime showing the status of the

aforesaid G.R. Case, Ext. J is the xerox copy of the RTI letter of the status of the company till the year 2010, Ext. H is the Xerox of the certified copy of the deposition, Ext. K is the photograph during marriage, Ext. L, L/1 and L/2 are the xerox copies of the seizure lists of articles on an inventory made by the police in presence of the respondent and my presence and my signatures are found in the seizure lists, Ext. M is the xerox copy of the charge sheet, Ext. N is the xerox copy of the writ petition, Ext. N/1 is the relevant portion and Ext. N/2 is the relevant portion of annexure-2. Ext. P is the photograph relating to Mudipindha, Ext. R is the xerox copy of the Panji of the year 2010-2011, Ext. S is the xerox copy of the bail application of the petitioner in G.R. Case No. 2551/2010, Ext. T, T/1, T/2, T/3, T/4, T/5, T/6, T/7, T/8 and T/9 are the xerox copies of the land records, Ext. V is the candidate summary of the Dr. Biswanath Pattnaik, Ext. W, W/1 and W/2 are the xerox copies of Form No.1 certificate of the incorporation of the companies of the petitioner, Ext. Y is the xerox certified copy of registration of NGO Lokvikashs, Ext. Z is the xerox copy of the writ petition vide W.P (Crl.) No. 1277 of 2011, Ext. AA is the xerox copy of the cheque for Rs. 1,50,000/- given to the petitioner and Ext. BB is the sworn affidavit of the respondent stating not practicing as a lawyer.

Point No. (I)

7. Whether the petition is maintainable?

The respondent challenged the proceeding on the ground that the present petition was presented by the petitioner within one year of the marriage without seeking leave from the Court as per the provision of Section 14 of the Act of 1955. Expatiating this point, the respondent submitted that the marriage was solemnized on 22.02.2010 and the present petition was presented on 19.11.2010 i.e. after nine months of the marriage and the petitioner has not obtained leave from the Court to present the present petition after expiry of one year from the date of marriage and as such, the present proceeding is not maintainable. Perused the order sheet and found that a petition U/s. 14 was filed by the petitioner along with presentation of the present petition vide order No. 4 dated 24.10.2010 and in

the petition U/s. 14 of the Act of 1955, the petitioner has stated that there was no physical relationship between the parties even after the marriage till departure of the respondent from his house. Besides, the petitioner mentioned that soon after the respondent deserting him on 02.04.2010 filed a Criminal Case on 14.09.2010 in which case, he and his family members were arrested and remanded to jail custody and subsequently released from bail. The conduct of the respondent in treating the petitioner constituted the exceptional circumstances and utmost hardship and discomfiture. The Court while considering these aspects has admitted the present proceeding on 05.01.2011. Apart from that unwittingly, if a person filed a petition for divorce without seeking leave and much water has already been flown under the bridge in dealing with the said petition, it would not be proper to dismiss the petition on the technical ground after lapse of five years as in this case and it would amount to throwing the baby along with the bathe-water. The respondent appeared and field her W.S. and participate in the hearing of the case by cross examining the witness of the petitioner. She has not raised this question at any earlier point of time before closure of the evidence. She has submitted the court for trial and now she has raised the question and therefore, the present proceeding cannot be dismissed on this technical point and if done so, it would amount to throwing the baby along with the bathe-water. According this point is answered in negative against the respondent.

Point No. (II)

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

9. The petitioner 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.

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) (i-a) of the Act in the context of human

conduct and behavior in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of the one spouse which adversely affects the other spouse. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of degree which is relevant. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the other spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of conduct and its effect on the complaining spouse. There may, however, be cases bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Mens rea is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or willful ill-treatment.

17. In *V. Bhagat V. D. Bhagat (Mrs)* reported in AIR 1994 1 SCC 337, the court observed:- "Mental Cruelty in Section 13 (1) (i-a) can broadly be defined as that the conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must 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 whether 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 matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

18. The Apex Court in Chetan Das V. Kamala Devi reported in AIR 2001 4 SCC 250 stated:- Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and

porous society. The institution of marriage occupies an important place and role to 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”.

19. Mental cruelty has also been examined by the Apex Court in *Parveen Mehta Vrs. Inderjit Mehta* reported in AIR 2002 5 SCC 706:- “Cruelty for the purpose of Section 13 (1) (i-a) is to be taken as a behavior by one spouse towards the other, which causes reasonable apprehension in the mind of the later that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioral pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehavior in isolation and then pose the question whether such behavior is sufficient by itself to cause mental cruelty. The approach should be take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.”

20. In *A. Jayachandra Vrs. Aneel Kaur* reported in AIR (2005) 2 SCC 22, the Apex Court observed that:- “The expression ‘cruelty has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful

and unjustifiable conduct of such character as to the cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse, same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept proof beyond the shadow of doubt, it is to be applied to criminal tries and not to civil matters and certainly not to the matters of such delicate personal relationship as those of husband and wife. Therefore, one has to be what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complaint spouse because of the acts or omission of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may be not at the same time be direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial dispute.”

21. In *Vinita Saxena Vrs. Pankaj Pandit* reported in AIR (2006) 3 SCC 778, the Apex Court said:- It is settled by the catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such willful treatment of

the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case. The word "cruelty" has not been defined and it has been used in relation to human conduct or human behavior. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be causes where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted."

It was further stated:- 'Each case depends on its own facts and must be judged on these facts. The concept of cruelty has varied from time to time, from place to place from individual to individual in its application according to social status of the persons involved and their economic conditions and other matters. The question whether the act complained of was a cruel act is to be determined from the whole acts and the matrimonial relations between the parties. In this connection, the culture, temperament and status in life and many other things are the factors which have 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. The petitioner attributed mental cruelty on ten aspects. They are as follows:-

(i) The respondent started abusing, misbehaving, ill-treating, passing bad comments at him, his parents, relatives and friends from the day one after the marriage.

(ii) Not following the family tradition, customs and also customs and ritual of the marriage by the respondent.

(iii) Refusing/ avoiding for consummation of the marriage by taking some plea or other in the fourth night of the marriage and subsequently.

(iv) Insisting the petitioner for separate living apart from his parents and other family members.

(v) Creating disturbances in the family.

(vi) Throwing cake and shoe at the petitioner on the birthday celebration of the petitioner.

(vii) Passing bad comments at him and his family members on 10th day i.e. Dasa Managala of the marriage when the petitioner and the respondent visited to the parental home of the respondent on 03.03.2010.

(viii) Not performing the marital obligation in his house.

(ix) Threatening to file dowry torture case and in fact filed criminal cases against him and his family members in order to humiliate them in public.

(x) Refusing to return to her matrimonial home and not co-operating for settlement of the marriage.

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

(a) Torturing both physically and mentally due to non fulfillment of additional demand of dowry of A.C., LCD TV, fridge, flat, four wheeler car, bhara etc by the petitioner and his family members.

(b) Keeping the Hany-cam in recording mode on an aluminum stand in the fourth night of the marriage and talking vulgar languages with the respondent.

(c) Suppressing the fact of the earlier two marriages.

(d) Keeping one door and two windows open while keeping physical relationships.

(e) Depriving of contacting her family members of the respondent by switching off her mobile.

(f) Forcing to do all the household chores as well as to do some work of Padma Hospital like sweeping the chamber.

(g) Asking to clean Puja room so also keeping flower and cleaning the utensils of Puja.

(h) Not allowing to conduct puja unless and until becomes a devotee of Baba Aviram.

- (i) Threats given to withdraw the criminal case by the petitioner and unknown persons.

25. Now, let me parse the evidence of the parties bearing the principle of law set out hereinbefore to ascertain whether the allegations and counter allegations made by the parties against each other is well established and that, if established whether they constitute cruelty. The petitioner in order to prove his case back grounds and circumstances attributing cruel conduct of the respondent on him, he, himself, while being examined as P.W. 1 has unequivocally narrated the same. A searching and lengthy cross examination was made to him but he did not break down under the pressure of such scathing cross examination. On the other hand, the respondent in order to prove her back grounds and circumstances attributing cruel conduct of the petitioner on her, while she, herself, has been examined as R.W.1 yet, being scared by the cross examination has withdrawn herself from the Court to face the cross examination for which her evidence has been dispensed with. Speaking differently, the respondent has singularly failed to establish the back grounds and circumstances attributing the cruel conduct of the petitioner on her. Among all other back grounds and circumstances attributed by the petitioner against the respondent, one i.e. non consummation of the marriage appears grave and weighty construing mental cruelty. The petitioner has stated that the marriage was not consummated due to non cooperation of the respondent. Although the respondent has stated that during her total stay of 38 days in her matrimonial home, there was 32 times sexual intercourse between them. The same fact could not be testified on the touch stone of credibility since the respondent has withdrawn herself for cross examination from the Court. Therefore, the irrefragable conclusion would be that the statement of the P.W. 1 that there was no consummation of the marriage stands established. The success of a marriage depends upon vigorous sexual activities because sex is the anathema of the marriage. Without a vigorous and harmonious sexual activity it would be impossible for any marriage to continue for long. It cannot be denied that the sexual activity in marriage has an extremely

favourable influence on a man's mind and body. The result being that if he does not get proper sexual satisfaction it will lead to depression and frustration. It has been said that the sexual relations when happy and harmonious vivifies a man's brain, develops his character and trebles his vitality. It must be recognized that nothing is more fatal to marriage than disappointment in sexual intercourse. The marriage in this case has been broken down for that cause. Therefore, it amounts to mental cruelty and as such the petitioner could prove the ground of cruelty and thus, is entitled for a decree of divorce.

26. Add salt to it, the unfounded allegations of the respondent in her W.S. attributing the petitioner having association with many ladies furthered the mental agony of the petitioner. The respondent in her W.S. at paragraph-33 attributed the family members of the petitioner as fraud under the mask of the gentleman and again at paragraph-34, the petitioner instead of filing restitution of conjugal rights has filed a divorce case and that means that the petitioner's conjugal life is not hampering at all or the petitioner is enjoying his conjugal life somewhere else as detailed by her in G.R. case No. 2761 of 2011 vide Ext. F. Such character assassination of the petitioner and his family members amounts to mental cruelty. In the decision reported in AIR 1987 Delhi 52 (Savitri Balchandni Vrs. Mulchan Balchandani) the Delhi High Court held that false, defamatory, scandalous, malicious, baseless and unproved allegations made in the written statement filed by one of the spouses amount to cruelty to the other party. The Delhi High Court in the decision reported in AIR 1987 Delhi 63 (Sh. Ashok Sharma Vrs. Santosh Sharma) flowed the same principles and held that such allegations made in the written statement as well as in affidavit evidence amounts to cruelty to the other party and that party would be entitled to get a decree of divorce on that ground in that case as well. In view of the aforesaid law cited supra since the respondent made a bald statement which she could not prove, I have no hesitation in holding that the acts of leveling false allegations by her have cast cruelty to the petitioner giving him a justification to the relief he sought for. Additionally, the respondent has admitted that on 14.07.2010

the petitioner and his family members came to her parental residence to resolve the misunderstanding and as the petitioner went on blaming her in her parental home instead of accepting his mistake, she was not willing to return to the company of the petitioner. The respondent further at paragraph-26 of her affidavit evidence has admitted that on 09.06.2010 at 1.30 P.M. the petitioner's father and uncle visited to her parental home and during discussion, her parents refused let the respondent go to her matrimonial house as her life was on constant threat in the petitioner's house and until they repose confidence on the petitioner regarding change of his behavior and assurance from his family members, the respondent will not join with the petitioner. The respondent has brought evidence on record by referring the representation of the petitioner before the Hon'ble Court while moving bail application that he has no objection to accept the respondent vide Exts. N/1 and N/2 but the respondent avoided to join with the petitioner on the lone ground that she felt in secure to her life in the house of the petitioner, especially when no reprehensible conduct of the petitioner and his family members has specifically been alleged, expect an allegation of torture relating to dowry. This Court has also observed the furious conduct of the respondent during cross examination of P.W. 1 by the respondent for which cross examination of P.W. 1 was frequently adjourned. From the conduct of the party, it is established that their marriage was dead and there was no chance of its being retrieved. A marriage which is dead emotionally and practically, it is better to bring it to an end instead of allowing to continue for name-sake. According point No. (II) is answered in favour of the petitioner.

Point No. (III)

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

The respondent claimed permanent alimony of Rs. 3,70,80,000/- from the petitioner. Her aforesaid claimed is based on the income of the petitioner from his monthly salary being the M.D of his own company Sycom Enterprises Solution Pvt. Ltd. The petitioner stated that he is unemployed.

The respondent has admitted the said fact in her W.S. vide paragraph-37. The respondent has also filed some RORs marked under Exts. T to T/9 and on perusal of the same, it is seen that all the RORs stand recorded in the name of the father of the petitioner and the petitioner is the only son of his father. It is also established that the petitioner is an Software Engineer having B.Tech degree. These facts unerringly proved that the petitioner is a highly qualified technical person and belongs to a well do to family. Keeping in view of the family status, potentiality of the petitioner to earn money and ancestral properties and that, there is every scope of remarriage of the parties, I feel it just and proper to grant monthly maintenance of Rs. 25,000/- (Rupees Twenty Five Thousands) instead of granting permanent alimony to the petitioner and the present grant of maintenance shall be given effect from 01.01.2016 until the respondent incurs dis-qualification under the statutes to get maintenance from the petitioner. Hence, it is ordered;

O R D E R

The petition filed by the petitioner-husband against the respondent-wife praying for dissolution of marriage is allowed on contest in favour of the petitioner-husband but without any cost. 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 monthly maintenance of Rs. 25,000/- (Rupees Twenty Five Thousands) only to the respondent and the present grant of maintenance shall be given effect from 01.01.2016 until the respondent incurs dis-qualification under the statutes to get maintenance from the petitioner.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 30th day of January, 2016.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Nisith Pattnaik

Witnesses examined for the respondent:

R.W.1 Tapasi Das Mohapatra

List of documents by petitioner:

- Ext. 1 Certified copy of the FIR lodged by the respondent against him wherein she has mentioned that he was unemployed and her marriage with him by cheating her
- Ext. 2 Deposition of the respondent in G.R. Case No. 2551 of 2010 where the respondent has mentioned that after marriage she came to know that her husband was doing no job and a cash of Rs. 1,50,000/- was not utilized for her at para-18
- Ext. 3 Statement of the father of the respondent wherein the father of the respondent has stated that subsequently they came to know that the petitioner was unemployed and told them falsely that he was in job at USA at para-4 of his deposition
- Ext 4 Certified copy of the deposition of Chinmaya Das Mohapatra, the brother of the respondent in G.R. Case No. 2551 of 2010 wherein he has stated that Nisith is unemployed and previously he was married at para- 17 of his deposition
- Ext. 5 Certified copy of the deposition of the mother of the respondent in G.R. Case No. 2551 of 2010 where she has stated that she came to know that Nisith was unemployed and that he had no job and that he had no earning at para-4 of her deposition
- Ext. 6, 6/a, 6/b & 6/c Letters of the company showing termination of job and penalty of the petitioner
- Ext. 7 Xerox certified copy of the order passed in G.R. Case No. 3464 of 2011 where, the petitioner was directed not to leave the jurisdiction of the court of the S.D.J.M., Bhubaneswar.

List of documents by respondent:

- Ext. A Order of the Hon'ble high Court passed in CRLMC No. 3291 of 2012 wherein condition No.2 in the order passed by the S.D.J.M. in G.R. 3464 of 2011 has been modified
- Ext. B Paper printing dated 06.12.2009 and the content of that caption is true and correct
- Ext. C Certified copy of the FIR in G.R. Case No. 3464
- Ext. D Xerox certified copy of memorandum of association of Syscom Enterprises Solution, Pvt. Ltd.
- Ext. F Certified copy of the FIR of G.R. Case No. 2761/2011
- Ext. G Xerox copy of the report of Addl. D.C.P, Crime showing the status of the aforesaid G.R. Case
- Ext. J Xerox copy of the RTI letter of the status of the company till the year 2010

Ext. H	Xerox of the certified copy of the deposition
Ext. K	Photograph during marriage
Ext. L, L/1 and L/2	Xerox copies of the seizure lists of articles on an inventory made by the police in presence of the respondent and my presence and my signatures are found in the seizure lists
Ext. M	Xerox copy of the charge sheet
Ext. N	Xerox copy of the writ petition
Ext. N/1	Relevant portion
Ext. N/2	Relevant portion of annexure-2
Ext. P	Photograph relating to Mudipindha
Ext. R	Xerox copy of the Panji of the year 2010-2011
Ext. S	Xerox copy of the bail application of the petitioner in G.R. Case No. 2551/2010
Ext. T, T/1 to T/9	Xerox copies of the land records
Ext. V	Candidate summery of Dr. Biswanath Pattnaik
Ext. W, W/1 and W/2	Xerox copies of Form No.1 certificate of the incorporation of the companies of the petitioner
Ext. Y	Xerox certified copy of registration of NGO Lokvikashs
Ext. Z	Xerox copy of the writ petition vide W.P (Crl.) No. 1277 of 2011
Ext. AA	Xerox copy of the cheque for Rs. 1,50,000/- given to the petitioner
Ext. BB	Affidavit of the respondent stating not practicing as a lawyer

JUDGE, FAMILY COURT,
BHUBANESWAR.