

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

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

Civil Proceeding No. 822 of 2011
U/s. 27 of the Special Marriage Act, 1954

Debi Prasad Mohanty, aged about 37 years
S/o-Dr. Sambhu Keshab Mohanty,
At-Srinivaspur (Karansahi),
P.O./P.S.-Banpur, Dist-Khurda, PIN-752031.

....Petitioner

... Versus ...

Sasmita Lenka, aged about 40 years
W/o- Debi Prasad Mohanty,
D/o-Balaram Lenka,
Plot No.-39, Madhusudan Nagar, P.S.-Kharavel Nagar,
Bhubaneswar, Dist-Khurda.

.... Respondent

Civil Proceeding No. 510 of 2013
U/s. 22 of Special Marriage Act, 1954

Sasmita Lenka, aged about 40 years,
D/o- Balaram Lenka,
W/o- Debi Prasad Mohanty,
At-Vill.- Madhapur, P.O./P.S./Dist.- Kendrapara,
At present Plot No. 39, Unit-IV,
Madhusudan Nagar, P.S.-Kharavelnagar, Bhubaneswar,
Dist-Khurda.

... Petitioner

... Versus...

Debi Prasad Mohanty, aged about 40 years,
S/o-Sambhu Kesab Mohanty,
Vill.-Srinibashpur (Karanasahi)
P.O./P.S.-Banpur, Dist-Khurda.
At present working as B.D.O.- Chandabali Block,
Dist-Bhadrak.

... Respondent

Date of Argument : 04.08.2015
Date of Judgment : 25.08.2015

J U D G M E N T

1. The petitioner, husband-Debi Prasad Mohanty has filed C.P. No. 822 of 2011 against the respondent, wife-Sasmita Lenka U/s. 27 of the Special Marriage Act, 1954 (in short, the Act 1954) praying for dissolution of marriage by passing a decree of divorce, whereas the respondent-wife, Sasmita Lenka has filed C.P. No. 510 of 2013 U/s. 22 of Special Marriage Act, 1954 (in short, the Act 1954) against the petitioner-husband-Debi Prasad Mohanty praying for a decree of restitution of conjugal rights.

2. The pleadings of the petitioner-husband in C.P. No. 822 of 2011 are his W.S. in C.P. No. 510 of 2013. The W.S. of the respondent-wife in C.P. No. 822 of 2011 are her pleadings in C.P. No. 510 of 2013. For the sake of brevity, I picked up the pleadings of the parties in C.P. No. 822 of 2011. Both the cases are heard analogously and therefore, both the cases are being disposed of by this common judgment.

3. Admitted facts of the case of the parties are that their marriage was solemnized before the Marriage Officer-cum-District Sub-Registrar, Bhubaneswar on 01.10.2009 and thereafter they have conducted their marriage in Arya Samaj, Bhubaneswar on 16.02.2011. Further the petitioner is an OAS officer and the respondent is an OFS officer. Both the parties have been living separately since 20.03.2011.

4. The fact of the case of the petitioner-husband Debi Prasad Mohanty in C.P. No. 822 of 2011 are as follows:-

It is the case of the husband that they have registered their marriage without adopting due course of law and without consent and knowledge of their parents. It is alleged by the husband that while he was undergoing training in Gopabandhu Academy of Administration, the wife assaulted, scolded and threatened to kill him by showing a revolver but he was narrowly rescued by his friends. It is further alleged by the husband that few days after the marriage, the wife made his life and his family life miserable. According to the husband, the wife is an adamant woman. Since the beginning of the

marriage, the respondent did not perform her marital obligations as a wife and daughter-in-law and despite his request she did not change in her behaviour. It is averred by the petitioner that the respondent has told him that she is a Class-I Officer and it is an insult to her dignity to do the daily chores in the house and she is designed for bigger things and the minor matters like cooking, washing and the daily household works should be done by his parents or servants. The respondent also refused to wear bangles and put vermilion powder on her forehead saying that those hampered her image and position. It is further alleged by the petitioner that the respondent insisted him to stay outside from his house leaving his old aged parents and being the only son of his parents when he refused for the same, the respondent started disturbance in his house. She has also used to tell him that she had done a favour by marrying him, as a beggar of his stature could never have married such a girl. The respondent always insisted him to sever all his ties with his family members and never to have any relation with his parents. It is further alleged by the petitioner that the respondent in presence of his friends and relatives of both parties misbehaved him and his parents for which he and his parents were tortured mentally. Several attempts have been made from his side to amend her behaviour but all were in vain. Many times the respondent attempted for committing suicide but fortunately, she was rescued by him. After registration of marriage, the respondent did not allow in the connubial bed, unless he agrees to all her proposals and sever all the relationship with his family members. On 20.03.2011 the respondent without rhyme or reason left his house. Thereafter several attempts have been made from his side for their reunion but all were in vain due to willful refusal of the respondent. Whenever he and his parents tried to make her understand, the respondent used to shout and create a scene at that moment. The respondent has also threatened to file several criminal cases against him and his parents regarding dowry torture and put them behind the bar and due to such act of the respondent he and his family members were tortured both physically and mentally. It is further alleged by the petitioner that during pendency of the

present case, the respondent has lodged many false complaints against him and his old parents and sister before Mahila Police Station, Bhubaneswar vide P.S. Case No. 230 of 2011 U/s. 498(A), 323/506/34/417 IPC and 4 DP. Act and 168(15) of 2012 U/s. 506/507/294 and 34 IPC. Further the respondent had also made false statements in the News papers and in different News channels against him. The respondent also lodged written complaint before the Election Commission of Odisha, Mahila Commissioner of Odisha and Commission-cum-Secretary Revenue and Disaster Management Department. Since, it is not possible for him to continue marital tie with the respondent as her behaviour caused him pain, injury, physically and mentally, getting no other ways, he sought for a decree of divorce from the respondent on the ground of cruelty.

5. The respondent-wife contested the proceeding by filing W.S. and denied all the allegations made by the petitioner-husband against her. She has averred that the petition is not maintainable and there is no cause of action to file the present case. It is the case of the respondent that the petitioner palming her off as an IPS officer of Meghalaya Cadre woned her love when she was undergoing training in Central Academy Deharadun and subsequently they were tied with the marriage knot by going through Gandharva form of marriage i.e. by exchange of garland in Tapokeswar temple at Deharadun on 14.08.2008 and lived as husband and wife there till April, 2009. Some days after the marriage the petitioner started avoiding her and showed indifferent attitude towards her. The petitioner deferred her proposal for solemnization of marriage as per social tradition and lastly he did not contact her and changed his phone number and absconded and on her query it came to light that the petitioner has cheated her by committing fraud and by playing mischief with evil intention to impress her to achieve his gain. Immediately she approached Mahila Police Station at Bhubaneswar on 13.08.2009 and disclosed the above facts before IIC, Smt. Sarita Tripathy, ACP, Smt. Bilasini Nayak and others. After interrogation to the petitioner and his parents, they conceded the facts and the petitioner agreed to marry her in Court and accordingly, on

01.10.2009 their marriage was registered before the Marriage Officer Khurda at Bhubaneswar. The petitioner after registration of marriage did not take her to his house on plea that his parents will never accept her as daughter-in-law as she belongs to a lower caste and working lady and the petitioner fled away to Jammu and changed his phone number in order to avoid her but on her query she came to know that the parents of the petitioner wanted social recognition of marriage through performance of traditional form of ceremony. When her parents tried to negotiate the petitioner and his parents, they avoided it by taking different pleas. Finding no other alternative, in the month of May, 2010 she went to the native place of the petitioner but there the petitioner and his parents did not accept her and demanded more dowry and with the intervention of Sri Alekha Prasad Mohanty, advocate Banpur and other relatives a date for social marriage was fixed by both parties and accordingly the formal marriage ceremony was conducted in Arya Samaj, Sahidnagar, Bhubaneswar on 16.02.2011. On 05.02.2011 the petitioner asked her that he is ill and to meet him in the evening in Gopabandhu Academy at Bhubaneswar and when she went there, the petitioner and his three other friends locked her inside room No. 331 of Brahamani Hostel in Gopabandhu Academy and forced her to sign on divorce paper. They have also threatened to shoot her by gun by hiring goondas for which she immediately informed the matter to the IIC Kharavelnagar Police Station about the incident. From there she narrowly escaped and informed the matter to IIC, Mahila Police Station, Bhubaneswar over phone and before registering the FIR in police station, the petitioner and his father came to her parental home and repented for the activity and begged apology before her parents and relatives and on good faith she forgave him and gave a chance to rectify his mistakes. It is further alleged by the respondent that the petitioner by giving threat to leave her has taken away Rs. 5,00,000/- from her to purchase a car prior to the marriage. It is also alleged by the respondent that after social marriage she was permitted to live in her matrimonial home for five days and during her stay there most of the times the petitioner tortured her both physically and

mentally to which the other family members have supported. It is further averred by her that her sister-in-law, Smt. Nibedita Mohanty demanded one gold necklace and a plot of land in her name at Bhubaneswar which was not possible on her part to fulfill the same. The petitioner and his family members also forced her to give up the Govt. service and forced her to work as a housewife and the petitioner himself forcibly left her at her working place at Bhubaneswar on 20.02.2011. It is averred by the respondent that she is always willing and ready to stay with her husband and parents-in-law at her service place, Bhubaneswar for which she has arranged a Govt. Quarters for their accommodation because she is always busy to attend unavoidable works in the office and filed being a Forest Officer. She has assured the petitioner and his parents that she is trying to get transfer her posting nearest to his house i.e. Chilika Development Authority/ Chilika Wild Life Division but the petitioner and his parents never co-operated her. Rather the petitioner threatened to cut all sort of relationship and warned to file a divorce case if she does not agree to give up the Govt. job at once. After marriage, she used to visit her matrimonial home on holidays and shown them good behavior and sought their affection but the petitioner played hide and seek role with her by changing phone numbers and whereabouts from time to time and when he did not respond to her letters and telegrams, on 02.04.2011, she went to her matrimonial home to meet her in-laws at Banpur but her parents-in-law scolded her in filthy languages and did not allow her to enter into the house. Thereafter they have changed their phone numbers and tried to cut all sorts of relationship with her. On 27.02.2011 the petitioner called her to Railway Station to go to her matrimonial home and when she reached there, the petitioner started abusing her and assaulting her when she did not agree to his unlawful and illegal proposal and left the spot leaving her alone on street in the night. She being harassed and helpless went to register an FIR in Chandaka Police Station but the petitioner and his parents used their trick and convinced her parents not to repeat the incident again in future and on the advice of both parents they have stayed in a rented house at Bangalisahi,

Cuttack till 20.03.2011 and while residing there, the petitioner insisted her to sign on divorce paper in order to get marry his beloved and when she refused the same, the petitioner has not kept any relationship with her since 20.03.2011. Since the petitioner has neglected her by depriving her right to lead conjugal life, she took the help of Women President of Society namely Smt. Sarojini Mohanty and went to her matrimonial home along with her and other ladies for amicable settlement on 13.06.2011 but the petitioner and his parents did not allow her to enter into their house. The petitioner also did not respond to her letters and telegrams sent by her on different dates. Thereafter several attempts have been made from her side to resolve the dispute between them in order to lead conjugal life with the petitioner but all were in vain due to willful refusal of the petitioner. According to her, the petitioner is living in adultery with his beloved namely Anita Panda of Brahmeswarpatna, Tankapani Road, Bhubaneswar and in order to marry her he has filed false divorce case by making false and fabricated allegations against her. The petitioner has been avoiding her since 27.02.2011 and on 14.12.2011 he over telephone threatened to kill her. On 19.12.2011 at about 12.30 AM night, the petitioner along with some strangers came to her parental home and threatened to kill her if she will not agree to divorce him. Finding no other alternative, she has filed C.P. No. 510 of 2011 for restitution of conjugal rights on 19.06.2011 and therefore, the divorce petition of the petitioner be dismissed.

6. The question that requires to be adjudicated:-

- (i) Whether, the petitioner has proved that the respondent has treated him with cruelty?
- (ii) Whether wild, reckless and baseless allegations against the petitioner relating to his relationship with another lady as made in the written statement can by itself amounts to cruelty in matrimonial law?
- (iii) Whether the petitioner-husband had voluntarily withdrawn himself from the society of the respondent-wife without any

reasonable cause and whether the respondent-wife is entitled for a decree of restitution of conjugal rights?

- (iv) Whether the marriage between the parties is liable to be dissolved by a decree of divorce?
- (v) To what relief if any, the parties are entitled to?

7. The petitioner-husband in order to prove his case has examined three witnesses. He himself, has been examined as P.W. 1, his mother namely Bijaya Mohini Pattnaik as P.W. 2 and his cousin brother namely Kamakhi Prasad Pattnaik as P.W.3. He has also relied upon five documents. They are:- Ext. 1 is the Daily Samad dated 13.01.2012 and Ext. 1/a is the relevant news item, Ext. 2 is the Samaj dated 15.01.2012 and Ext. 2/a is the relevant news item, Ext. 3 is the summons received from Mahila Commission, Ext. 4 is the Xerox copy of the letter of Govt. of Odisha, Panchyatraj Department and Ext. 5 is the Marriage Certificate. In order to negate the claim of the petitioner-husband, the respondent-wife has examined six witnesses. She herself has been examined herself as R.W. 1, her father namely Sri Balaram Lenka as R.W-2, Assistant Conservator of Forests, Chandaka, Wild Life Division namely Sudhansu Mohan Mishra as R.W.-3, her nephew namely Babaji Charan Lenka as R.W. 4, Sub-Divisional Manager, Bhanjanagar namely Udaya Nath Hota as R.W. 5 and one of her colleague namely Smt. Ansu Pragyam Das, Divisional Forest Officer, Mahanadi Wildlife Division, Nayagarh as R.W. 6. She has also placed reliance on ten documents. They are:- Ext. A to A/4 are the joint photographs, Ext. B and B/1 are the photographs taken on boat while going on Kalijai picnic, Ext. C and C/1 are the letters, Ext. C/2 is the postal A.D., Ext. D is the receipt in respect of telegram, Ext. F is the forwarding letter regarding allotment of quarters, Ext. G is the letter regarding allotment of quarters, Ext. H is the notification dated 27.02.2012, Ext. J is the FIR, Ext. K is the office copy of the acknowledgment of FIR of Kharavel Nagar Police Station, Ext. L is the letter of the respondent.

8. All the points are conflated to avoid repetition lest it should lose the charm of hearing and to avoid prolixity of the order.

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 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 a conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

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, discomode 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-husband attributed mental cruelty on thirteen aspects. They are as follows:-

(a) Respondent is a lady of adamant temper.

- (b) Misbehaving the petitioner and his parents.
- (c) Telling the petitioner that she is a Class-I officer and it was an insult to her dignity to do the daily chores in the house and she was destined for bigger things to do the daily chores in the house and the minor matters like cooking, washing and daily household works should be done by his parents or servants.
- (d) Refusing to wear bangles and vermilion powder on her forehead on the ground those hampered her image and position.
- (e) The respondent after three days of marriage insisting him to live separately from his parents and when refused for the same she started disturbances in the family.
- (f) Telling the petitioner that she had done a favour by marrying him, as a beggar of his stature could never have married such a girl.
- (g) Demanding to sever all his ties with his family members after third of marriage and when the petitioner refused for the same being the only son, the petitioner started disturbances in the family.
- (h) Attempting to commit suicide for many times
- (i) Threatening to kill the petitioner by showing a revolver in Gopabandhu Academy of Administration by the respondent.
- (j) Not allowing the petitioner in connubial bed after registration of marriage on the plea to severe all ties with his family members.
- (k) Threatening to file several criminal cases against him and his family members and put them behind the bar.
- (l) Making false publication in the News papers and different News Channels against the petitioner.
- (m) Lodging written complaint before the Election Commissioner of Odisha, Mahila Commission of Odisha and Commissioner-cum-Secretary Revenue and Disaster Management Department.

24. On the contrary, the respondent wife has also made certain allegations against the petitioner-husband. They are follows:-

- I. Torturing her both physically and mentally due to additional demand of dowry.
- II. Palming off an IPS Officer of Meghalaya Cadre owned her love when she was undergoing training in Central Academy Deharadun and subsequently they were tied with the marriage knot by going through Gandharva form of marriage i.e. by exchanging garland in Tapakeswar temple at Deharadun on 14.08.2008 and lived as husband and wife there till April, 2009.
- III. Avoiding to take her to her matrimonial home on the plea that his parents will never accept her as daughter-in-law as she belongs to a lower caste and working lady and fled away to Jammu and changed his phone number.
- IV. In the month of May, 2010 when she went to the native place of the petitioner, the petitioner and his parents did not accept her and demanded more dowry.
- V. Confining her in room No. 331 of Brahamani Hostel in Gopabandhu Academy and forcing to sign on divorce petition.
- VI. Threatening to shoot her by gun by hiring goonds.
- VII. The petitioner by giving threat to leave her has taken away Rs. 5,00,000/- for purchasing a car prior to the marriage.
- VIII. Demanding a plot of land at Bhubaneswar and one gold necklace by the sister-in-law.
- IX. Forcing her to give up the Govt. job and to work as a housewife.
- X. Scolding in filthy languages and not allowing her to enter into her matrimonial home by the parents of the petitioner on 02.04.2011.
- XI. The petitioner abused and assaulted her in the Railway Station on 27.02.2011.
- XII. Insisting her to sign on divorce papers while residing in Bangalisahi, Cuttack till 20.03.2011.
- XIII. Living in adultery with his beloved namely Anita Panda of Brahmeswarpatna, Tankapani Road, Bhubaneswar.

25. cruelty is to be inferred from the whole relations between the husband and wife, it would not be a proper approach to take up each alleged incident one by one and to hold that it is trivial or that it is not hurtful or cruel and then to say that cumulatively they do not amount anything grave, weighty or serious. In general cruelty is in its character a cumulative charge. It is not necessary that the acts complained of must be of a certain character. The conduct may consist of a number of acts each of which is serious in itself, but it may well be even more effective if it consists of a long continued series of minor acts no one of which could be regarded as serious if taken in isolation. Every such act must be judged in relation to its attendant circumstances, and the physical or mental condition or susceptibility of the innocent spouse and offender's knowledge of the actual or probable effect of his conduct on the other hand. The age, environment, standard of culture and status in life of the parties are also matters which may be decisive in determining on which side of the life a particular act or course of conduct lie. The acts and incidents complained of as also the conduct of the parties must be taken together to form a composite picture from which alone it can be ascertained whether the acts of one spouse on other should, judged in relation to all the surrounding circumstances, be found to amount to cruelty.

26. There are thorns in the blossomed rose of marriage life of the parties from the very beginning. The conduct of the respondent has been very bad since very beginning, so as it has become impossible for him to live together and continued with the married life in future and he has been mentally and physically tortured by the respondent to such an extent that it was impossible to live with her. Let me m-unify it. There has been no evidence on record to show how and under what circumstances the parties became acquainted with each other. The respondent has pleaded in her W.S. nay, led evidence that the petitioner introduced himself as an IPS Officer of Meghalaya Cadre to which she believed and they had gone for a marriage in Tapokeswar temple at Deheradon and the petitioner after staying some days with her left her

disgracefully. The respondent is a highly educated lady and hails from the cultured family, it is an otiose to think that the respondent being so highly educated without ascertaining whether the petitioner is an I.P.S. Officer of Meghalaya Cadre or not, gone for a temple marriage departing from regular established social norm of marriage and that too, without informing her family members and then make us to believe that the petitioner cheated him by impersonating himself as an I.P.S. Officer. If there was love between them and they decided to marry each other, the respondent should have informed to her parents for socialization of the marriage and in case there was any refusal from her parents side, then they should have gone for a registry marriage which is a recognized form of marriage under Special Marriage Act. Therefore, the action of the respondent is deplorable. When the aforesaid marriage was unsuccessful, she made a complaint before the Mahila Police Station, Bhubaneswar alleging cheating and impersonation of the petitioner and on her contact with the parents of the petitioner, the petitioner and his parents agreed for a registry marriage and accordingly, the registry marriage was solemnized before the Marriage Officer Khurda at Bhubaneswar on 01.10.2009 and after registration of the marriage, the petitioner did not take her to his native place on the plea that his parents will not accept her as daughter-in-law of her lower caste. Thereafter the petitioner absconded and after much endeavor, she located him at Jammu. In the month of May, 2010 she went to the native village of the petitioner but the petitioner and his parents did not accept her and with the intervention of Sri Alekha Prasad Mohanty, Advocate, Banpur and other relatives a date of social marriage was fixed and accordingly the marriage ceremony was solemnized in Arya Samaj, Sahidnagar, Bhubaneswar on 16.02.2011. P.W. 2, the mother of the petitioner stated that they agreed for registration of marriage as the respondent used to give threat to send them behind the bar. She has further stated that after registration of marriage, the respondent went to her house on her own way. Thus, from the aforesaid evidence, it is quite discernible that the registry marriage of the parties as well as the marriage in Arya Samaj was due to

situational compulsion and that too at the interference of the police and one Advocate of Banpur Bar and President of Mahila Society. Therefore, it is far distance to say that there were torture on the respondent for demand of any dowry. Be that as it may, there was no love and trust between the parties. A Matrimonial house cannot be built by bricks and stones but only built by love and affection. As there was no love lost between the parties, the house collapsed and that is why reconciliation failed.

27. The next significant allegation of cruelty alluded by the petitioner is that the respondent filed different criminal cases against him and made several complaints against him before his higher authorities and made publications in News items demeaning his prestige and honour and therefore, in a such a situation, it is not possible on his part to reside with the respondent.

28. The respondent wife has filed for restitution of her conjugal rights with the petitioner vide C.P. No. 514 of 2011 before Judge, Family Court, Cuttack on 20.06.2011 which is renumbered as C.P. No. 510 of 2013 by this Court on receipt of the case record on transfer. The respondent has admitted to have instituted Criminal Cases vide Mahila P.S. Case No. 230 of 2011 relating to the offence U/s. 498 (A)/323/419/506/ 34 IPC and U/s. 4 D.P. Act and another case bearing No. 168 (15) of 2012 U/s. 506/507/294 and 34 IPC vide Ext. J and K respectively besides, to have made complaints to the higher authorities of the petitioner vide Ext. 4 and to have made publication of News items alleging "*Swami ku khoji khoji O.F.S. Patni Bhadrak re, Giraf bhayare B.D.O. Swami ferar, nijaku I.A.S. Officer kahi baha hoeithile joutuka pain deuthile saririka nirjatana anya jane mahilanka saha rakhithile abaidha samparka parapurush saha sampark rakhibaku badhya karuthile*" vide Ext. 1 and *Duei Sasmita mamala: chintare Bhadrak ra duei prashasanika mukhya*" vide Ext.2. The respondent during cross examination has admitted that she has mentioned in her affidavit that the petitioner is cheat, imposter, impersonator egoist, materialistic and etc. and has filed criminal cases before Mahila Police and Mahila Commissioner with a view to get him arrested. She has further admitted that she has also lodged complaint before Mahila Police,

State Election Commissioner and Revenue and Disaster Management, Odisha. Therefore, it can be irrefragably stated that the respondent was conscious throughout about her actions and conduct. She was also conscious about her involvement in criminal proceedings to which her husband and in-laws were subjected to. She made allegations about the extra marital relation of the husband with Anita Panda and demand being raised in connection with dowry which is far from truth, when marriage was solemnized with pressure and fear and that too with the intervention of police. When the respondent has filed a civil proceeding for restitution of conjugal right, she should have waited for the result of the said proceeding, instead of complaining higher authority of the petitioner and making publication of News items castigating aspersion that the petitioner has some affairs with Anita Panda to whom she failed to add as a party. Be that as it may, her aforesaid conduct and behaviour was sufficient to create mental agony and a sense of uncalled for guilty in the mind of her husband and his relation who felt insulted and there was lowering down of their prestige with publication in the media. Thus, the conduct and behavior of the respondent amounts to cruelty (See Surbhi Agrawal (Smt.) Vrs. Sanjaya Agrawal reported in AIR 2000 M.P. 139 (DB)).

29. Well settled is the rule of law that when one party to the petition has sought divorce on some ground and the respondent to that petition does not merely defend it to get it defeated, but makes further serious allegations against the petitioner, it becomes a clear steps towards the dissolution of marriage. In the present case, the petitioner has approached the court seeking dissolution of his marriage. It is his case that there is a failure of the marriage and he seeks to point it out by invoking a ground available under the law. At that point of time, if the respondent makes a counter allegations in the written statement that by it self shows prima facie failure of marriage.

30. The respondent discovering a photograph of husband with a lady colleague namely Anita Panda marked as Ext. B and B/1. She became extremely suspicious. But she did not think it necessary to ascertain the truth to find whether there was any extra marital relationship between her husband

and the said lady colleague. The petitioner has stated that, Exts. B and B/1 were taken during a staff picnic in Chilika. On perusal of Ext. B and B/1, one would find these photographs are group photographs while moving in a boat. There are no obscenity and objectionable posture of the petitioner and Anita Panda. R.W. 2 at paragraph-6 of his cross examination has admitted that he has not seen any illicit relationship of Anita Panda with the petitioner but heard it from his daughter. He has further stated that he has seen Anita Panda in Gopabandhu Academy and Training when she was taking training with the petitioner. R.W. 3 at paragraph-3 of his cross examination though has stated that he had direct knowledge about the extramarital relation of the petitioner with Anita Panda yet, has admitted he had not seen the petitioner and Anita Panda moving together and both of them in any intimate position at any point of time. Therefore, his statement that he has direct knowledge about the extramarital relation of the petitioner with Anita Panda is a blatant lie. The fate of evidence of R.W. 4 takes the heel of that of R.W. 3. P.W. 5 has stated that he heard from the respondent that the petitioner has illicit relationship with Anita Panda. Therefore, the allegations of the respondent that the petitioner has illicit relation with Anita Panda is far from truth. On the other hand, she deposed that the petitioner after obtaining divorce from her would marry her. No attempt has been made from the side of the wife to substantiate such allegations. Allegations of extramarital relationship constitute grave assault on the character, honour reputation, status as well as the health of the petitioner and such aspersions of perfidiousness attributed to the husband, viewed on the context of an educated person and judged by the Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the petitioner being allowed, such allegations made in her own civil proceeding as well as in her W.S. in the Civil Proceeding filed by the petitioner and also by way of evidence satisfy the requirement of law.

31. In as much as in the words of the Supreme Court writing letters to the authorities making allegations against the husband so that the authority may

take action against the petitioner lends credence to the fact that the wife was persisting with them for a sufficiently long time, humiliating and wounding the feeling of the husband to such an extent as to make insufferable for the husband to live any longer with the wife.

32. It can be seen that the relationship between the petitioner and his wife are not normal. They have stayed together for a very short duration. The allegation is that wife has not allowed the petitioner to connubial bed. The petitioner may not have been wise enough to make clear averments in this regard. It would appear that he obviously meant to convey that he was denied normal sexual relationship by his wife when he averred that he was not permitted share connubial bed with the respondent. The respondent has not cross examined the petitioner in this regard. On the other hand, it has been elicited from P.W. 2, the mother of the petitioner that after registration of marriage, the respondent went to her parental home. The over all behaviour of the respondent which has been established by the un-rebutted evidence of the petitioner would go to show mental cruelty on her part towards the petitioner.

33. This is not a case of mere austerity of temper petulance of manner or a want of civil attention to the needs of the husband and the household. Passion and petulance have perhaps to be suffered in silence as the price of what turnout to be injudicious selection of partner. But the respondent is at the mercy of her inflexible temper. She delights in causing misery to her husband and relations and she willingly suffers the calculated insults by stating that she had done a favour by marrying the petitioner, as a beggar of his stature could never have married such a girl as alleged by the petitioner and same is accepted as true since there has been no effective cross examination to the testimony of P.W. 1. This out burst is not the ordinary wear and tear of married life but menace to the peace and well being of the household. Acts like not wearing bangles and putting vermilion powder saying those hampered her image and position as alleged by the petitioner and not disputed by the respondent are acts which tend to destroy the legitimate ends of objects of matrimony. Assuming there was some justification for occasional sallies or

show of temper, the pattern of behaviour which the respondent generally adopted was grossly excessive.

34. Normally, although I was inclined to grant only a decree for judicial separation yet, I desisted from doing so because of the long drawn out strained relations between the parties, the final rift brought about by the revelation of great misconduct of the respondent considerably aggravated by litigation as well as their present mental attitude and approach towards each other as such that it would be no use prolonging the agony for another one year. Therefore, it would be more in the interest of justice and in their own interest to grant a decree for dissolution of marriage out right now. The petitioner is already about 37 years while the respondent has attained the age of 40 years; they have thus already passed the ages of matrimony, judged from normal Indian standard, by waiting for another one year, in case a decree for judicial separation is passed and they could not have reconciled themselves during that period and resumed cohabitation, the situation become worst and would cause great hardship to both the partners in the matter of future matrimony. At any date, the case is one of exceptional hardship to the petitioner and of exceptional depravity on the part of the respondent and thus, the petitioner is granted dissolution of his marriage with the respondent.

35. Consequently, C.P. No. 510 of 2013 filed by the respondent for restitution of her conjugal rights stands dismissed.

36. When I allow the petition of the petitioner for dissolution of marriage, the next question comes for consideration is the alimony either permanent or monthly? The respondent has not made any application seeking alimony and in fact did so rightly due to her solvency being employed in the Odisha Forest Service (O.F.S.). a cadre equivalent to the present status of the petitioner. Therefore, no order for any alimony. Hence, it is ordered;

ORDER

The petition filed by the petitioner-husband vide C.P. No. 822 of 2011 for dissolution of marriage is allowed on contest in his favour without any

cost. The petition filed by the respondent-wife vide C.P. No. 510 of 2013 for restitution of conjugal rights is dismissed on contest. A decree of divorce is passed in favour of the petitioner and the marriage between the petitioner and the respondent is hereby declared dissolved with effect from the date of decree and the Marriage Certificate bearing No. 610 of 2009 is hereby cancelled.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 25th day of August, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

In C.P. No. 822 of 2011

Witnesses examined for the petitioner:

P.W.1 Debi Prasad Mohanty
P.W.2 Bijaya Mohini Pattnaik
P.W.3 Kamakhi Prasad Pattnaik

Witnesses examined for the respondent:

R.W.1 Smt. Sasmita Lenka
R.W.2 Balaram Lenka
R.W.3 Sudhansu Mohan Mishra
R.W.4 Sri Babaji Charan Lenka
R.W.5 Sri Udaya Nath Hota
R.W.6 Smt. Ansu Pragyan Das

List of documents by petitioner:

Ext. 1 Paper publication in daily Sambad dated 13.01.2012
Ext. 1/a The relevant news item.
Ext. 2 Paper publication in daily Samaj dated 15.01.2012
Ext. 2/a The relevant news item.
Ext. 3 Summons of Mahila Commission
Ext. 4 Xerox copy of the letter of Govt. of Odisha, Panchayatraj Department.
Ext.5 Marriage Certificate.

List of documents by respondent:

Ext. A to A/4 Joint photographs
Ext. B & B/1 Photographs taken on boat while going on Kalijai picnic party
Ext. C & C/1 Letters
Ext. C/2 Postal AD

Ext. D	Receipt in respect of telegram
Ext. F	Forwarding letter regarding allotment of Quarters
Ext. G	Letter regarding allotment of quarters
Ext. H	Notification dated 27.02.2012
Ext. J	Xerox copy of the FIR
Ext. K	Office copy of the acknowledgment of FIR of Kharavel Nagar Police Station.
Ext. L	Letter of the respondent

In C.P. No. 510 of 2013

Witnesses examined for the petitioner:

P.W.1 None

Witnesses examined for the respondent:

R.W.1 None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.