

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

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

Civil Proceeding No. 522 of 2011
U/s. 13 (i-a) of the Hindu Marriage Act, 1955

Saurav Ranjan Lenka, aged about 30 years,
S/o-Sri Hemanta Kumar Lenka,
At present temporarily residing at Flat No. 105,
Sai Simran Residency, Mythrinagar, Road No.2,
Near Reliance Fresh, Madinaguda,
Heyderabad-500050.
Permanent resident of Plot No. 20,
Glass Palace Lane, Badambadi, Cuttack, Odisha.

....Petitioner

... Versus ...

Sanghamitra Mohanty, aged about 26 years
D/o-Sri Kishore Chandra Mohanty,
Resident of Qrs No. IV 31/3,
Unit-2, Ashok Nagar, Bhubaneswar, Odisha,
Pin-751009.

.... Respondent

Civil Proceeding No. 310 of 2010
U/s. 18 of Hindu Adoption and Maintenance Act of 1955

Smt. Sanghamitra Mohanty, aged about 29 years,
W/o-Saurav Ranjan Lenka,
Plot No. 20, Glass Place Lane,
Badambadi, Cuttack
P.S.-Madhupatna, Dist-Cuttack.
At present residing with her father
Sri Kishor Chandra Mohanty,
Qrs. No. IVA-31/3, Unit-2, Nursery Lane,
P.S.-Capital, Bhubaneswar, Dist-Khurda.

... Petitioner

... Versus...

Saurav Ranjan Lenka, aged about 32 years,
S/o-Hemanta Kumar Lenka,
Plot No. 20, Glass Palace Lane, Badambadi,

Cuttack, Odisha.

Presently the father of the respondent is serving
As an officer in the office of Steel Authority of India Ispal Bhawan
At/P.S-Paradeep, Dist-Jagatsinghpur,
At present the respondent working as Sr. Manager,
Seat No. 435, 6th Phase, Virtusa India Pvt. Ltd., 3rd Floor,
My home tycona, Life Style Building, Begampet Hyderabad,
Andhra Pradesh.

... Respondent

Date of Argument : 25.06.2015

Date of Judgment : 10.07.2015

J U D G M E N T

The petitioner Saurav Ranjan Lekna-husband has filed C.P. No. 522 of 2011 against the respondent Sanghamitra-wife U/s. 13 (i-a) of Hindu Marriage Act, 1955 (in short, the Act 1955) for dissolution of his marriage with the respondent, whereas the respondent-Sanghamitra-wife being petitioner in C.P. No. 310 of 2010 has filed a petition U/s. 18 of Hindu Adoption and Maintenance Act, 1955 (in short, the Act 1955) against the respondent Saurav Ranjan Lekna-husband for maintenance of Rs. 50,000/- and house rent of Rs. 20,000/- per month and litigation of Rs. 2,00,000/-. Both the cases are taken up together for a common Judgment as the parties are same in both the proceedings. For the sake of brevity, the parties are referred as husband and wife hereinafter.

2. Admitted facts of the case of the parties are that their marriage was solemnized in Hotel Meghdoot, Bhubaneswar on 10.03.2007 and they have been living separately since 06.04.2008.

3. The fact of the case of the husband-petitioner, Saurav Ranjan Lekna in C.P. No. 522 of 2011 are as follows:-

According to the husband, the behavior of his wife became unsavory within a week or two after their marriage. He was prosecuting his MBA in Indian School of Business, Gachibowli, Hyderabad availing loan of Rs. 15,00,000/- from the H.D.F.C. Bank, Basheerbargh Branch, Hyderabad.

However, he took his wife to Hyderabad to have a happy matrimonial life and they put in a rented house even he was not financially well-up then. His wife instead of staying unflappable in such financial difficult situation made unflattering comments that her husband was not providing her the warmth and cosines of kitchen as her husband was devoting all the time for his study. His wife did not cook meal and serve it to him and thereby failed to discharge her marital obligation. On 03.05.2007 when he was about to leave the house to attend his classes his wife designed a situation that she has consumed overdose of pills to commit suicide which was proved wrong by the doctors of Apollo Hospital, who on the other hand suggested for psychiatric counseling of his wife. His wife used to visit her parents at Cuttack travelling by flight and thereby put him much financial hardship. It is further averred by the husband that the father and uncle of his wife used to give threat to file criminal cases of dowry torture against him and his family member if he failed to provide comfort to his wife as well as if they told anything to his wife. The father of his wife had also written two letters to his father intimating it for which his grandmother succumbed due to mental hemorrhage. According to him his father is a cardiac patient and mother is a B.P. Patient and they are living in constant threats from his wife and her family members. It is further case of the husband that his wife during her visit to her parental home had taken all her jewellery and other articles given to her by her family members at the time of marriage. His wife had also sent a threatening SMS to his father's mobile as "I ask again, are you ready to transfer Cuttack house to my name or I will file a dowry case. Tiki". Thereafter several attempts have been made from his side to settle the dispute but all were in vain. Since, it is not possible for him to continue marital tie with his wife as her behaviour caused him pain and injury, both physically and mentally, getting no other way, he sought for a decree of divorce from the respondent on the ground of cruelty.

4. The respondent-wife did not chose to file any W.S. on her behalf.
5. The wife has filed C.P. No. 310/2010 claiming maintenance. The facts of the case of wife are that at the time of marriage, her father had given cash Rs.

4,00,000/-, gold ornaments of 200 grams, silver ornaments of 3 Kg and other household articles worth of Rs. 1,00,000/- to the Opp. Party. After marriage, her husband and his family members demanded additional dowry of a Santro Car and cash and when she showed her inability to fulfill the same, she was subjected to torture both physically and mentally by her husband and his family members. It is the further case of the wife that on 30.05.2007 at Hyderabad she was assaulted by her husband, his parents and his brother. They have also given her over dose of medicine intending to kill her but she was saved in Apollo Hospital, Hyderabad. It is further averred by the wife that her father hearing torture on her from her, wrote two letters and sent two telegrams to the father of her husband with a hope that the torture on her will be abated but it could not be proficient. It is further averred by the wife that on 06.04.2008 she was sent to Cuttack on the plea that her husband has been transferred to Chennai with an assurance she will join with her husband soon after his joining and when she arrived at her matrimonial home, she found the house was under lock and key and seeing it when she tried to contact her in-laws and her husband over phone, to her dismay, their mobile phones were switched off and then she returned to her father's Quarters No. IVA-31/3, Unit-2, Nursery Lane, Bhubaneswar. It is further averred by her that she came to know that her husband was preparing for his second marriage, she tried to contact him over the mobile phones of her husband and father-in-law over phone but she could not contact them as they switched off their mobile phones. On 06.07.2008, she and her parents along with some gentlemen went to Hyderabad for settlement of the dispute but on their arrival, her mother-in-law and brother-in-law who were residing there did not allow her and her parents to enter into their house and maltreated them for which they returned to Bhubaneswar and on 29.07.2008 she brought the matter before the Orissa State Commission for Women and Mahila Police Station, vide P.S. Case No. 133 of 2008 on 01.08.2008 corresponding to G.R. Case No. 3285 of 2008 U/s. 498(A), 506, 323/34 I.P.C. and Section 4 of the D.P. Act. Thereafter when the parents of her husband moved for anticipatory

bail before Hon'ble Court vide BLAPL No. 11048/2008, the Hon'ble Court after hearing from both sides passed an order mentioning therein that *"It was decided that the husband and wife will live together for a period of three months without communicating with their family members and relatives and there will be personal appearance of both the parties again before the Hon'ble Court on 4th January, 2009. The father-in-law and mother-in-law in this bail application were also directed not to make any communication with the couple and they will be allowed to live alone for a period of three months. The father-in-law and mother-in-law (petitioner) shall not be arrested in connection with Bhubaneswar Mahila P.S. Case No. 133 of 2008, till the boy and girl and the father-in-law and mother-in-law (petitioners) continue to abide by the arrangement noted above"*. In pursuant to the above order of the Hon'ble Court her husband took her and kept her in different hotels at Cuttack as per his sweet will and did not stay with her and used to come in the late hours of night in drunken condition. During her stay in the hotel when she was tortured both physically and mentally she wrote a letter to her father on 23.12.2008. On 06.01.2009 night her husband assaulted her for which she sustained bleeding injury on her person. Her husband also tried to murder her by throttling her neck and pressed a pillow on her face in Hotel Sri Jagannath, Dolamundai, Cuttack and she informed that said fact to then standing counsel Orissa High Court Sri Satyabrata Pradhan over phone who communicated the said fact to her father on 07.01.2009 at about 8 A.M. and advised them to proceed to that hotel and getting the information her parents reached there before whom she narrated the above facts. Her husband also threatened her if she will disclose this fact before her parents or before the police he will murder her. It is further averred by the wife that at the time of hearing of the anticipatory bail application, the Hon'ble Court has orally instructed the standing counsel Sri Pradhan to inspect the hotel periodically in order to know about her condition. Thereafter her father lodged an FIR in Cuttack Mahila Police Station vide Case No. 1 of 2009 U/s. 498(A), 307, 506 IPC and the respondent was arrested and produced before the SDJM,

Cuttack. According to her, her husband is a man of questionable character having illicit relationship with his girl friends and also an alcoholic addicted person. According to her, at the time of marriage, her husband was working as Project Manager in M/s. Kanbay Software Pvt. Ltd. Hyderabad and was getting Rs. 90,000/- per month. She has further averred that her husband after completion of his MBA from ISB (Indian School of Business) Hyderabad is now working as Sr. Manager Seat No. 345, 6th Phase, Virtusa India Pvt. Ltd, 3rd Floor my Home Tycona life style building, Begum pet Hyderabad, Andhrapradesh and is getting Rs. 1,40,000/- per month excluding other incentives besides he is getting Rs. 15,000/- per month from house rent. Apart from that he is getting Rs. 2,00,000/- per annum from agriculture. It is further averred by her that she has no source of income and is unable to maintain herself and her father who is a retired Govt. Servant is unable to maintain her. Having sufficient means her husband deliberately neglected her, for which she filed this proceeding claiming monthly maintenance of Rs. 50,000/-, Rs. 20,000/- per month towards house rent and litigation of Rs. 2,00,000/- from the Opp. Parties.

6. The respondent-husband did not chose to file any written objection on his behalf.

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

(I) Whether there exists any cruelty and desertion on the part of the wife to allow the petition for divorce?

(II) Whether the wife is entitled for any monthly or permanent alimony in case of divorce is allowed?

8. The petitioner-husband in C.P. No. 522 of 2011 in order to prove his case he, himself, has been examined as P.W. 1 and relied ten documents. They are:- Ext. 1 is the medical reports of Apollo Hospital showing treatment of the respondent, Ext. 2 is the C.D. of conversation of the respondent with her family members, Ext. 3 and 4 are the two FIRs, one in Mahila Police Station, Bhubaneswar and another in Mahila Police Station, Cuttack respectively, Ext. 5 is the copy of calculation sheet along with

acknowledgment of the money receipts, Ext. 5/a is the Xerox copy of the Bank Draft showing payment of Rs. 25,300/-, Ext. 6 is the Xerox copy of the form 26-AS of Income Tax, Ext. 7 is the Xerox copy of the telephone bills, Ext. 8 is the Xerox copy of the Flight Ticket of the respondent for her travel from Hyderabad to Bhubaneswar, Ext. 9 is the Xerox copy of the cash memo jewellery purchased in Hyderabad and Ext. 10 is the Xerox copy of the loan statement. In order to negate the claim of the petitioner-husband, the respondent-wife, has been examined as R.W. 1 and her mother as R.W. 2 and relied on some documents. They are:- Ext. A is the paper advertisement for marriage, Ext. B is the Bio-Data, Ext. C and C/1 are two money receipts and bill of Hotel Meghdoot, Ext. D to D/3 are containing the PAN No. of the wife, Ext. F and F/1 are the Income Tax return, Ext. G is the certificate 'to whom concerned' filed by the respondent, Ext. J and J/1 are the certified copy of the FIR and seizure list, Ext. K and K/1 are the Xerox certified copy of the order sheet, Ext. L is the certified Xerox copy of the MATA Case No. 4 of 2012, Ext. M is the postal receipt for telegrams, Ext. M/1 and M/2 are the telegrams, Ext. N is the Xerox copy of the letter dated 31.05.2007, Ext. N/1 is the postal acknowledgment and Ext. P is the letter dated 23.12.2008 written by the respondent to her father.

9. In C.P. No. 310 of 2010 both the parties did not chose to examine any witness or file any documents on their behalf.

10. The petitioner sought divorce on the grounds of desertion and cruelty.

11. It is needless to say Section 13(1) (i-b) of the Act, 1955 provides that the other party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. The pleadings of the parties established the fact that the respondent deserted the petitioner since 06.04.2008. The petition for divorce in this case is presented in the Court on 22.04.2008. Thus, it is clearly established that the petition has been filed before completion of two years from the date as alleged by the petitioner. Therefore, the ground of desertion held not established.

12. Now the next ground is 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.

13. 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.

14. 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.”

15. 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.”

16. 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)

17. 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...”*

18. 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.

19. 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.

20. 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 the 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 live 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.”

21. 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 pay in the society, in general. Therefore, it would not be appropriate to apply any submission of “irretrievable broken marriage” as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case”.

22. 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.”

23. 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.”

24. 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.

25. 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.

26. Bearing the above parameters of law, in my mind, I proceed to analyse the evidence adduced by the parties to determine whether there is existence of any cruelty either physical or mental, so that the Court can pass a decree of dissolution of marriage. Herein the instant case, there is no physical violence or physical cruelty. The petitioner attributed mental cruelty on eleven aspects. They are as follows:-

(a) Creating disturbance after one or two week of marriage as the behaviour and attitude of the respondent completely destroyed his hopes of peaceful life.

(b) Creating disturbance in the marriage ceremony by the sister of the respondent on the demand of a Scooty Vehicle.

(c) Picking up quarrel with the petitioner on the lack of luxury in her life for which the petitioner cannot concentrate in his study.

(d) Did not do the household work and not making food in time.

(e) Consuming over dose of medicines in order to commit suicide.

(f) Visiting her parental home frequently without his consent in order to harass him both financially and mentally.

(g) Threatening to file false dowry torture cases by the father and uncle namely Mr. Basant Kumar Mohanty of the respondent and due to such harassment his grandmother was expired due to brain hemorrhage.

27. On the contrary, the wife made the following allegations against the husband:- They are as follows:-

(a) Torturing her both physically and mentally due to additional demand of dowry of a Santro Car and cash of Rs. 3,00,000/- by the husband and his family members.

(b) Assaulting her by the husband and his mother and brother at Hyderabad and when she was ill, her husband, his brother and mother gave over dose of medicines in order to kill her on 30.05.2007.

(c) Not giving food to her and keeping her as their domestic servant.

(d) On 06.04.2008 after assaulting her without any rhyme or reason sent her to Cuttack by Flight on the plea of transfer from Hyderabad to Chennai and joining there he will bring her back and gave of cheque bearing No. 125658 dated 02.04.2008 of I.D.B.I., Bank Ltd. but subsequently, stopped its payment.

(e) After reaching when she found that his matrimonial home was under lock and key she contacted her husband and her father-in-law but they

have switched of their mobile and thereafter finding no other alternative she has taken shelter of her parental home.

(f) On 06.07.2008 when she and her parents along with some gentlemen arrived at Hyderabad for settlement of the dispute, the respondent, his brother and mother abused them in filthy languages and did not allow her to enter into their house.

(g) On 07.01.2009 the respondent assaulted her in Room No. 315 in the Hotel Sri Jagannath, Dolamundai, Cuttack, City and also throttled her neck and pressed her mount in a pillow in order to kill her.

(h) The respondent-husband has illicit relation with his girl friends and also an alcohol addicted person.

(i) Causing criminal intimidation for going to Hyderabad by her husband and her husband's brother.

28. Although the petitioner-husband has demonstrated about the above stated maltreatment attributing to both physical and mental cruelty yet none of the aforesaid circumstances can construe as grave and weighty circumstances amounting to cruelty. However, the wife made an imputation as a ground in her petition and at the time of her examination that her husband has illicit relation with his girl friend's and as an alcoholic, which she could not prove, could be taken into consideration granting a decree of divorce on the ground of cruelty to the husband. In the decision reported in AIR 1987 Delhi 52 (Savitri Balchandni Vrs. Mulchan Balchandani) the Delhi High Court again 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 amount 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 wife made a bald statement that her husband was living in adultery with his girl friend's 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 husband giving him a justification to the relief he sought for. Additionally, from the pleadings and evidence of the parties, it is clear that the party could not stay together despite the direction of the Hon'ble High Court in BLAPL No. 11048/2008. 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. Therefore, I allow the petition of husband for divorce vide C.P. No. 522 of 2011.

29. As regards to permanent alimony, from the 26 AS form of the husband filed by the wife shows that the husband is getting salary around rupees two lakhs. Admittedly the respondent-wife is a house wife. Both the husband and the wife are aged about 36 and 33 years respectively. The life expectancy of a woman in Indian climate is 70 years. The wife is in her prime stage of the youth and therefore there exists of her remarriage. Therefore, if permanent alimony is allowed to the petitioner would amount to an unjust enrichment and therefore, I decline to grant any permanent alimony. Keeping in view of the status of the parties, salary of the husband and present day of cost of living, I direct the husband to pay a sum of Rs. 30,000/- per month towards her maintenance until she remarries or otherwise disqualified to get the maintenance under the statute.

30. In view of the grant of maintenance in C.P. No. 522 of 2011, no further maintenance is allowed to the wife in C.P. No. 310 of 2010 filed by her. Accordingly, C.P. No. 310 of 2010 is disposed of. Hence, it is ordered;

O R D E R

The C.P. No. 522/2011 filed by the husband against the wife praying for dissolution of marriage is allowed on contest in favour of the husband and C.P. No. 310 of 2010 filed by the wife is disposed of in the light of maintenance granted to her in C.P. No. 522 of 2011 and the marriage between the husband and the respondent-wife is hereby declared dissolved with effect

from the date of decree. The husband is directed to pay monthly permanent alimony of Rs. 30,000/- to the wife from the date of order as the husband has been giving Rs. 25,000/- as interim maintenance to the wife until she remarries or otherwise disqualified to get the maintenance under the statute. Any deviation to comply the order of the Court, the petitioner is at liberty to take further action through due process of law.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 10th day of July, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

In C.P. No. 522 of 2011

Witnesses examined for the petitioner:

P.W.1 Saurav Ranjan Lenka

Witnesses examined for the respondent:

R.W.1 Sanghamitra Mohanty

R.W. 2 Kishore Chandra Mohanty

List of documents by petitioner:

- | | |
|------------|---|
| Ext. 1 | Medical reports of Apollo Hospital showing treatment of the respondent |
| Ext. 2 | C.D. of conversation of the respondent with her family members |
| Ext. 3 & 4 | Two FIRs one in Mahila Police Station, Bhubaneswar and another in Mahila Police Station, Cuttack respectively |
| Ext. 5 | Copy of calculation sheet along with acknowledgment of the money receipts |
| Ext. 5/a | Xerox copy of the Bank Draft showing payment of Rs. 25,300/- |
| Ext. 6 | Xerox copy of the form 26-AS of Income Tax |
| Ext. 7 | Xerox copy of the telephone bills |
| Ext. 8 | Xerox copy of the Flight Ticket of the respondent for her travel from Hyderabad to Bhubaneswar |
| Ext. 9 | Xerox copy of the cash memo jewellery purchased in Hyderabad |
| Ext. 10 | Xerox copy of the loan statement. |

List of documents by respondent:

| | |
|---------------|--|
| Ext. A | Paper advertisement for marriage |
| Ext. B | Bio-Data |
| Ext. C & C/1 | Two money receipts and bill of Hotel Meghdoot |
| Ext. D to D/3 | Containing the PAN No. of the wife |
| Ext. F & F/1 | The Income Tax return of the petitioner |
| Ext. G | Certificate 'to whom concerned' filed by the respondent |
| Ext. J & J/1 | Certified copy of the FIR and seizure list |
| Ext. K & K/1 | Xerox certified copy of the order sheet |
| Ext. L | Certified Xerox copy of the MATA Case No. 4 of 2012 |
| Ext. M | Postal receipt for telegrams |
| Ext.M/1 & M/2 | The telegrams |
| Ext. N | Xerox copy of the letter dated 31.05.2007 |
| Ext. N/1 | The postal acknowledgment |
| Ext. P | Letter dated 23.12.2008 written by the respondent to her father. |

In C.P. No. 310 of 2010Witnesses examined for the petitioner:

None

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.