

**IN THE COURT OF THE ADDL. DISTRICT JUDGE -CUM-  
SPECIAL JUDGE, C.B.I. COURT NO.II, BHUBANESWAR.**

PRESENT :

Dr.A.K.Mishra,  
Addl. District Judge -cum-  
Special Judge, C.B.I. Court No.II,  
Bhubaneswar.

**MAT APPEAL. NO. 7 OF 2010**

Arising out of judgment and decree dated  
19.5.2008 passed by the learned Civil Judge  
(Senior Division), Bhubaneswar in Matrimonial  
Case No. 712 of 2005.

Sri Brajesh Pradhan, aged about 39 years,  
S/o. Dr. Gopa Krishna Pradhan, resident of  
Badhei Sahi, P.O. Raja Bagicha, P.S. Purighat,  
City/Dist. Cuttack being an insane represented by  
his father Aulitum guardian Dr. Gopa Krishna Pradhan,  
Aged about 70 years, S/o. Late Karunakara Pradhan  
As next friend.

... Appellant.

Versus.

Smt. Manisha Pradhan @ Jena, aged about 32 years,  
D/o. Prasanna Kumar Jena, resident of  
New Colony, Jharatangi, Mukunda Prasad,  
By pass, P.O. P.N. College, Dist. Khurda.

... Respondent.

For the Appellant :Sri P.K. Patra and Associates, Advocates.  
For the Respondent :Sri A.K.Satpathy and Associates, Advocates.

Date of hearing : 11.3.2016  
Date of Judgment : 17.3.2016.

**JUDGMENT**

The appellant-husband represented by father guardian has assailed the judgment and decree dated 19.5.2008 passed in Mat. Case No.712 of 2005 by learned Civil Judge, Sr. Division, Bhubaneswar in allowing divorce on the ground of cruelty to wife with permanent alimony of Rs.5 Lakhs in favour of wife-petitioner.

**2.** The facts, adumbrated in brief, referring the marital status of the parties may be encapsulated thus:

The wife-petitioner married the Opp. Party-husband as per Hindu rites and customs on 11.5.1999. From their wedlock a female child was born on 13.2.2000. The husband was serving at Goa. The petitioner stayed with him there for sometimes happily. For non-fulfillment of demand of Rs.2 Lakhs towards dowry, the husband and his parents treated the wife-petitioner with cruelty. All efforts to calm down the tension bore no fruit. The plaintiff was forced to stay with her father's house at Bhubaneswar since 6.3.2003 with her daughter and filed the petition for dissolution of marriage on 9.12.2005.

**3.** The husband-Opp. Party on the plea of insanity was allowed to be represented through his father guardian under Order 32 Rule-3 C.P.C. vide lower court's order dtd.22.6.2007.

Written statement was filed by the father guardian challenging the maintainability of the proceeding against a mad man. Marriage was admitted. The factum of demand of dowry of Rs.2 Lakhs was denied. It was admitted that both the couples stayed at Goa. It is stated that wife-petitioner had filed one Criminal Case bearing ICC No.3525 of 2005 and the husband and his mother were kept in judicial custody on being arrested. The plea of insanity was advanced to repel the claim of cruelty.

**4.** The wife-petitioner amended the petition to add para-18-A that husband-defendant was suffering from recurring attack of insanity and she could not live with him further.

The respective pleas were put to three issues including issue No.3 as to whether wife-petitioner was entitled to a decree of divorce on the ground of cruelty and insanity.

The petitioner-wife examined herself only while neither any oral nor documentary evidence was adduced on behalf of husband. Though no documentary evidence was admitted into evidence from the side of wife-petitioner, the impugned judgment wrongly refers Ext.1 and Ext.2 which might be the outcome of ex-parte evidence adduced earlier. Clarity would clear the clouds.

**5.** Learned lower court relying upon the unchallenged testimony of wife-petitioner as P.W.1 accepted the plea of cruelty pleaded and evidenced clearly and cogently and decreed the dissolution of marriage under Sec.13(1)(a) of the Hindu Marriage Act, 1955. With regard to plea of insanity, the learned lower court was not persuaded with the photocopy of the medical certificate under which the doctor advised the wife-petitioner to provide emotional support for his treatment. Sequentially, while the learned lower court has dissolved the marriage by a decree of divorce on the ground of cruelty, has subjected the husband to pay a sum of Rs.5 Lakhs as permanent alimony to the wife under Sec.25 of the Hindu Marriage Act,1955.

**6.** Learned advocate for the respondent put forth his submission that the appellant-husband does not challenge the decree of divorce but only questions the validity of granting of permanent alimony to the tune of Rs.5 Lakhs when the husband has no source of income for having suffered from mental

disorder. In support of his contention, the learned Counsel for appellant has filed the original health card of respondent issued by doctor of "The Brain" commencing from 9.6.2006 till 19.12.2014. He has also filed one certificate by doctor Prof. Shri G.C. Kar dated 19.12.2014 and certificate and prescription dated 9.9.2015. Learned advocate for the appellant has filed a memo to consider the above documents for the petition filed under Order 41 Rule 27 C.P.C. on 8.10.2013. The photocopy of documents having been considered by the learned lower court, it is not permissible to accept the original as additional evidence under Order 41 Rule 27 C.P.C., more particularly when this court does not require any such document to pronounce the judgment. The law in this regard is well enunciated in the decision reported in **2016 (1) C.L.R (sc) 201, A.Andisomy Chettier vs. A. Subburaj Chttier** .

The learned counsel for the appellant has also relied upon a decision reported in the case of **Radhey Shyam and Others Vrs. Meera Devi and another of Rajasthan High Court judgment dtd. 11.12.1996.**

Wife-respondent personally advanced her argument disputing the plea of insanity taken by the appellant-husband and submitted that not a single pie has been paid towards the maintenance of herself and her daughter despite order of the Court.

**7.** Keeping the contention of rival parties in this appeal, the point for consideration is:

Whether the impugned order to the extent of allowing permanent alimony in favour of wife is legal and proper in the fact and circumstances of the case

that husband-appellant was suffering from mental illness?

**8.** There is no dispute that marriage between the appellant and the respondent was consummated and from their wedlock a female child was born on 13.2.2000. The evidence of wife-petitioner as P.W.1 was not challenged save and except that husband was mad and insane in one line cross-examination. The wife-P.W.1 has stated that husband was serving at Goa and had given proposal for mutual divorce. She has also testified that she was leading a miserable life in her parents house with child. The order of granting permanent alimony was passed under Sec.25 of the Hindu Marriage Act and it was within the jurisdiction of the court passing decree of divorce under Hindu Marriage Act, 1955. The contention of learned counsel for appellant is that a person suffering from mental insanity cannot be subjected to pay permanent alimony for want of income source particularly when he himself is a dependent upon others. The fact that husband-appellant is under treatment for chronic schizophrenia is not an indication of fact that he has neither any income nor any other property. A person without service can have income from non-service source. In absence of evidence, it would be a body of inference. Such being the scenario here, it is not desirable to interfere with judicial discretion of the learned lower court that respondent-husband was capable of making payment of the permanent alimony to his wife and minor daughter. The father guardian has represented his son for his mental disability as permissible under Order 32 C.P.C., but the order passed under 25 of the Hindu Marriage Act is not an order against the father of the respondent.

The **Radhey Shyam** decision cited by learned counsel for the appellant is not applicable to the facts and circumstances of this case because in the case at hand there is no evidence that the husband-appellant has no property to comply with the order under Sec.25 of Hindu Marriage Act.

In the perspective of facts presented, there was no occasion on the part of the lower court to refuse the grant of permanent alimony. Exercise of such discretion under Sec.25 of the Hindu Marriage Act was within the jurisdiction of learned lower court which on the fresh assessment of materials on record, warrants no interference by this appeal forum.

Added to above, Sec.25 (2) of the Hindu Marriage Act, 1995 keeps caveat to vary, modify or rescind any such order like permanent alimony.

In the decision reported in **1993 (3) SCC 406 Smt. Chand Dhawan Vrs. Jawaharlal Dhawan**, of the Hon'ble Apex Court, Their Lordships have stated that:

“We have thus, in this light, no hesitation in coming to the view that when by court intervention under the Hindu Marriage Act, affection or disruption to the marital status has come by, at that juncture, while passing the decree, it undoubtedly has the power to grant permanent alimony or maintenance, if that power is invoked at that time. It also retains the power subsequently to be invoked on application by a party entitled to relief. And such order, in all events, remains within the jurisdiction of that court, to be altered or modified as future situations may warrant”.

Resultant upon above analysis, the plea of learned counsel for appellant that granting of permanent alimony against husband-appellant is illegal is not acceptable.

**9.** Sequel to the reasoning stated above, no interference is warranted in the discretion exercised by the learned lower court under Sec.25 of the Hindu Marriage Act in the impugned judgment. Hence, it is ordered.

**ORDER**

The appeal stands dismissed on contest. In the nature of dispute subjected to delay, the appellant is directed to make payment of cost of this appeal Rs.5000/- (Rupees Five Thousands) to the respondent.

Additional District Judge -cum-  
Special Judge, C.B.I.-II, Bhubaneswar.

Typed to my dictation and corrected by me.  
Order is pronounced in the open court today  
this the 17<sup>th</sup> March, 2016.

Additional District Judge -cum-  
Special Judge, C.B.I.-II, Bhubaneswar.