

**A.F.R.**

**HIGH COURT OF ORISSA: CUTTACK**

**S.A. No.338 of 1999**

From the judgment and decree dated 28.8.1999 and 9.9.1999 respectively passed by Shri M.C. Ray, learned Additional District Judge, Angul in T.A. No.4 of 1997/27 of 1998 confirming the judgment and decree dated 15.1.1997 and 27.1.1997 respectively passed by Sri A.K. Dey, learned Civil Judge (Sr. Divn.), Talcher in O.S. No.31/1993.

Sri Prasanta Kumar Mishra

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Appellant

---versus---

Smt. Suryamani Mishra

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Respondent

For Appellant

: Mr. Gautam Mukherji, Advocate

For Respondent

: Mr. D.K. Mohapatra, Advocate

**J U D G M E N T**

**P R E S E N T:**

**THE HON'BLE DR. JUSTICE A.K. RATH**

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Date of Hearing : 28.7.2017

Date of Judgment: 11.08.2017

**Dr. A.K. Rath, J.** Plaintiff is the appellant against confirming judgment in a suit for dissolution of marriage.

**2.** The case of the plaintiff is that both the parties are Hindus. The marriage between the plaintiff and respondent was solemnized in accordance with the Hindu Rites and Customs on 10.2.1991. After marriage, the respondent came to her matrimonial house. On 17.10.1991, she gave birth to a male child. Five months after marriage, the respondent picked up quarrel with the plaintiff and insisted to leave her matrimonial house. She threatened to commit suicide in the event the plaintiff will not leave the quarter where his father resides. Her behaviour towards the father of the plaintiff was indecent. On 28.2.1992, the respondent and her father abused the plaintiff. The respondent disclosed that she had been conceived before marriage. Thereafter she went to her father's house. The

conduct of the respondent inflicted unbearable mental pain. The plaintiff lost his mental balance and as a result of which he met with an accident. On 17.3.1992, the respondent came to her matrimonial house. She showed indecent behaviour. Due to negligence of the respondent, the child fell down and became unconscious. She again picked up quarrel with the plaintiff and threatened to commit suicide. She left to her father's quarter. Thereafter her father came to the house of the plaintiff, picked up quarrel, assaulted the plaintiff and inflicted injury on his mother. The plaintiff lodged an F.I.R. in the Police Station. The respondent and her father lodged F.I.R. against the plaintiff alleging demand of dowry. While the matter stood thus, on 27.4.1992, the respondent deserted the plaintiff without any reasonable cause and deprived the plaintiff from the conjugal relationship. All the persuasions made by the plaintiff ended in a fiasco. It was further pleaded that the respondent instituted a case under Sec.125 Cr.P.C. against the petitioner in the court of the learned S.D.J.M., Talcher. According to the plaintiff, the respondent persistently and repeatedly threatened him with cruelty, which caused reasonable apprehension in the mind of the plaintiff that will be harmful and injurious for him. The reprehensible conduct of the respondent towards plaintiff was grave and weighty which constitute mental cruelty. With this factual scenario, the plaintiff instituted the suit seeking the reliefs mentioned supra.

**3.** Pursuant to issuance of summons, the respondent entered appearance and filed written statement denying the allegations made in the plaint. The specific case of the respondent is that the plaintiff had made frivolous allegations besmirching her character. The plaintiff demanded dowry and tortured her. He assaulted the respondent on several occasions and drove her out from her matrimonial house. She was willing to join with the plaintiff. Their marriage had not been broken down without any rhyme and reason.

**4.** Stemming on the pleadings of the parties, learned trial court struck seven issues. Both parties led evidence, oral and documentary, to prove their respective cases. On an anatomy pleadings and evidence on

record, learned trial court came to hold that respondent had not made any attempt to commit suicide. The marriage between the plaintiff and respondent was solemnized on 10.2.1991. Thus it was not improbable to deliver a baby child within the aforesaid time span. No independent witness was examined to prove the allegation that the respondent had uttered harsh words to the plaintiff. The plaintiff had not made any sincere attempt to bring back the respondent. The plaintiff had failed to establish his plea of cruelty and as such he is not entitled to a decree of divorce. Held so, it dismissed the suit. The unsuccessful plaintiff challenged the judgment and decree of the learned trial court before the learned Additional District Judge, Angul in T.A. No.4 of 1997/27 of 1998, which was eventually dismissed.

**5.** The second appeal was admitted on 17.2.2000 on the following substantial questions of law enumerated in paragraph nos.13(a), (b), (c), (d), (f) and (k) of the appeal memo. The same are quoted hereunder.

“13(a) Whether the lower appellate court has committed an illegality by not scanning and scrutinizing the evidence on record ? Whether the lower appellate court was justified in arbitrarily accepting the findings of facts, rendered by the trial court, without assigning any reason, and by so doing has failed to discharge his obligation as a final court of fact?

(b) Whether the trial court is justified in ignoring vital pieces of material evidence on record and whether the lower appellate court is justified in accepting the findings of the trial court without making any effort to re-appreciate the evidence adduced by the parties ?

(c) Whether the respondent’s plea to reside separately with her husband discarding her parents-in-law amounts to cruelty ?

(d) Whether the attempt of the respondent to commit suicide amounts to cruelty ?

(f) Whether the respondent’s admission that she had conceived the child prior to her marriage to the appellant amounts to mental cruelty ?

(k) Whether the lower appellate court has committed an illegality by not taking into consideration the appellant’s application U/o 41, Rule 27 C.P.C. at the time of final disposal of the appeal ?”

**6.** Heard Mr. Gautam Mukherji, learned counsel for the appellant and Mr. D.K. Mohapatra, learned counsel for the respondent.

**7.** Mr. Mukherji, learned counsel for the appellant submitted that the marriage between the appellant-plaintiff and respondent was solemnized on 10.2.1991. She delivered a child on 17.10.1991. She disclosed that she conceived before marriage. In her cross-examination, the respondent had also admitted the said fact. He further submitted that the respondent had given repeated threats to commit suicide. The behaviour of the respondent was unruly. She left the matrimonial house on March, 1992 and lived separately. The aforesaid act constituted mental cruelty. To buttress his submission, he relied on the decision of the apex Court in the cases of *V. Bhagat vs. Mrs. D. Bhagat*, AIR 1994 SC 710, *Praveen Mehta vs. Inderjit Mehta*, AIR 2002 SC 2582, *Samar Ghosh vs. Jaya Ghosh*, (2004) 4 SCC 511, *Pankaj Mahajan vs. Dimple @ Kajal*, (2011) 12 SCC 1.

**8.** Per contra, Mr. Mohapatra, learned counsel for the respondent submitted that the plaintiff had made scandalous remarks besmirching the character of the respondent. The allegations made in the plaint are vague and without any basis. There is no foundational fact with regard to attempt to commit suicide. There was hot exchange of words between the couple during quarrel. It is not unusual on the part of the couple to exchange hot words during quarrel. The same cannot constitute mental cruelty. The respondent is still ready and willing to join companion to the plaintiff. Both the courts on a threadbare analysis of the evidence on record dismissed the suit. There was no perversity or illegality in the findings of the court below.

**9.** Cruelty simpliciter is a ground for divorce under Sec.13 of the Hindu Marriage Act (Act 25 of 1955). Section 13 provides, so far it is material:

“13.Divorce.-(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

(i) xxx xxx xxx  
 (i-a) has, after the solemnization of the marriage,  
 treated the petitioner with cruelty; or  
 xxx xxx xxx"

**10.** In *Shobha Rani vs. Madhukar Reddi*, AIR 1988 SC 121, the apex Court held thus:

"4. Section 13(1)(i-a) uses the words "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment in the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it 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.

5. It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the Judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There

may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in *Sheldon v. Sheldon*, (1966) 2 All ER 257 (259) "the categories of cruelty are not closed." Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful/realm of cruelty."

**11.** In *V. Bhagat* (supra), the apex Court held thus:

"17. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that 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. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is 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."

**12.** The apex Court enumerated instances of human behaviour which may be relevant in dealing with the cases of mental cruelty in *Samar Ghosh* (supra). The instances are only illustrative and not exhaustive. The apex Court held thus:

"101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of



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 the 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 facts and 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 behaviour is sufficient by itself to cause mental cruelty. The approach should be to 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."

**15.** On a cursory perusal of the plaint, it is evident that the plaintiff pleaded that the respondent had threatened to commit suicide and the respondent had disclosed that she had conceived before marriage. The plaintiff in his evidence had stated that five months after, the respondent insisted him for staying separate. When he refused, she threatened to commit suicide. She had even attempt to commit suicide. In cross-examination, the respondent admitted that there was a quarrel between her and her husband. On 28.02.1992, she disclosed that she was conceived through other. What more is required to prove the mental cruelty ? The plaintiff will suffer the ignominy throughout his life. He cannot live in peace. It is highly undesirable on the part of the husband to live with the company of an insensible wife. There is a sanskrit sloka; "Aja yuddha, rishi shradha, prabhate meghadambaru, dampatya kalahesachiba bahwadambare laghu kriya" (fight of goats, shhradha of rishis, quarrel between spouses and morning clouds start with a bang but end with a whimper). But then the quarrel between the spouses reached to the extent of attempting to commit suicide by wife. Confession of the respondent

before the plaintiff that she had conceived before marriage and repeated threats to commit suicide constitute mental cruelty. Both the courts did not delve into the same in its proper perspective. The findings of the courts below are perverse.

**16.** The next question crops up as to the amount the respondent is entitled to towards permanent alimony. In course of hearing, an affidavit has been filed by the appellant-plaintiff stating therein that he has paid an amount of Rs.93,100/- towards maintenance to the respondent. During conciliation, he offered an amount of rupees three lakhs towards permanent alimony. But the conciliation failed. He filed the salary slip of April, 2017 issued by the Manager (Personnel) Ananta OCP, Mahanadi Coalfields Limited. The same indicates that he is getting Rs.41,203/- towards salary. When the suit was filed in the year 1993, the respondent was 23 years of age. She is at present 47 years. Considering her age and status of her husband, this Court feels that ends of justice shall be better served, if an amount of Rs.12,36,000/- (rupees twelve lakhs thirty-six thousand), i.e., 25% of the salary x 12 x 10 years is granted to the respondent towards permanent alimony. The said amount is calculated keeping in view the interest that would fetch in the event the amount is invested in any nationalized Bank in fixed deposit keeping in view the present rate of interest. The amount so granted shall be paid by the appellant to the respondent within three months, failing which, the respondent may recover the amount by executing decree.

**17.** In the result, the judgments and decrees of the courts below are set aside. The plaintiff's suit is decreed. The appeal is allowed to the extent indicated above. No costs.

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**Dr. A.K. Rath,J.**