

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 129 of 2016****Judgment reserved on 30-06-2016****Judgment delivered on 15-09-2016**

1. Anindi Mukharjee S/o B.S. Mukharjee, Aged About 42 Years R/o L-9 Shesh Colony, In Front Of Akshay Gurukul Vinoba Nagar Bilaspur, Tahsil & District Bilaspur (Chhattisgarh).....
(Non Applicant)

---- Petitioner**Versus**

1. Shraboni W/o Anindi Mukharjee, Aged About 33 Years D/o Moti Lal Maiti, R/o In Front Of Reliance Tower Surya Vihar Seepat Road Lingiyadih, Tahsil & District Bilaspur (Chhattisgarh).....
(Applicant)

---- Respondent

For Appellant

Ms. Gunjan Tiwari, Advocate

**Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Chandra Bhushan Bajpai**

C A V Judgment**Per PRASHANT KUMAR MISHRA, J.**

1. This appeal under Section 19 (1) of the Family Courts Act, 1984 has been preferred by the appellant (*for brevity 'the husband'*) to assail the legality and validity of the impugned judgment dated 28.04.2016 passed by the Family Court, Bilaspur, in Civil Suit No.208-A/2013, whereby his marriage with the respondent (*for brevity 'the wife'*) has been annulled by issuing a decree of divorce on the ground of cruelty.

2. Facts of the case, briefly stated, are that the parties were married at Bilaspur on 19.04.2004 and have one son born from the wedlock, who resides with the respondent herein. The divorce petition was preferred by the wife alleging, *inter alia*, that the husband is habitual drunker and used to assault the wife in a state of intoxication and for this habit of the husband he never stayed long in any service and was also not keeping good health and moreover his conduct was adversely affecting the son. It was further alleged that the husband used to visit her workplace in a state of intoxication and had also assaulted her parents. The husband was also treated for mental imbalance. When the wife started residing separately, the husband humiliated her parents and assaulted them publicly in presence of residents of the locality.

3. The husband denied the allegation of habitual in consuming liquor. He also stated that because of adverse market condition he could not get stable job in any company for which he was under mental pressure, which resulted in dispute between the parties, which led to the wife's leaving matrimonial home at the instance of others. It was also stated that since the wife is employed as teacher, she wants to live comfortable, therefore, on persuasion of others, the divorce petition has been preferred by the wife.



4. The Family Court found that the husband's conduct and behavior amounts to cruelty and has, therefore, granted decree of divorce in favour of the wife.

5. The short question for decision making is --

Whether consumption of liquor and assaulting the wife and her parents in such state would amount to cruelty ?

6. Section 13 (1) (ia) of the Hindu Marriage Act, 1955 provides that 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 has, after the solemnization of the marriage, treated the petitioner with cruelty.

7. Thus, a decree for divorce can be granted on the ground of cruelty, however, the word 'cruelty' has not been defined under the Act, 1955, therefore, the question as to what act or omission or conduct or behavior of a party to a marriage would constitute cruelty has to be understood in the facts and circumstances of each case.

8. The guiding principles have been laid down by the Supreme Court in plethora of judgments. In **Dr. N.G. Dastane v. Mrs. S.**

Dastane¹, the Supreme Court noted that the enquiry 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.

9. Lord Denning, L.J. in **Kaslefsky v. Kaslefsky**² observed thus :

“If the door of cruelty were opened too wide, we should soon find ourselves granting divorce for incompatibility of temperament. This is an easy path to tread, especially in undefended cases. The temptation must be resisted lest we slip into a state of affairs where the institution of marriage itself is imperilled.”

10. The Supreme Court in **V. Bhagat v. D. Bhagat (Mrs.)**³ held that 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

1 (1975) 2 SCC 326

2 (1950) 2 All ER 398

3 (1994) 1 SCC 337

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.

11. In **Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan and Another**⁴, the Supreme Court held that the concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. With the advancement of our social conceptions, this feature has obtained legislative recognition, that a second marriage is a sufficient ground for separate residence and maintenance. Moreover, to establish legal cruelty, it is not necessary that physical violence should be used. Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors which lead to mental or legal cruelty.

4 (1981) 4 SCC 250

12. In **Savitri Pandey v. Prem Chandra Pandey**⁵, the Supreme Court held that mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other.

13. Yet again in **Gananath Pattnaik v. State of Orissa**⁶, the Supreme Court held that the concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. 'Cruelty' for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case.

14. Similar observations have been made by the Supreme Court in **Parveen Mehta v. Inderjit Mehta**⁷, wherein the following has been held :

5 (2002) 2 SCC 73

6 (2002) 2 SCC 619

7 (2002) 5 SCC 706

“21. Cruelty for the purpose of Section 13(1) (i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter 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 behaviour or behavioural 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 facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour 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. In **Chetan Dass v. Kamla Devi**⁸, the Supreme Court observed that 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

8 (2001) 4 SCC 250

changed social order. It is sought to be controlled in the interest of the individuals as well as 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 'irretrievably 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.

16. In **A. Jayachandra v. Aneel Kaur**⁹, the Supreme Court held 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 wilful and unjustifiable conduct of such character as to 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 of 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

9 (2005) 2 SCC 22

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, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see 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 complainant spouse because of the acts or omissions 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 not at the same time be direct evidence. In cases where there is no direct evidence, the 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 disputes.

17. In **Naveen Kohli v. Neelu Kohli**¹⁰, the Supreme Court held that the word “cruelty” has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case.

¹⁰ (2006) 4 SCC 558

There may be instances of cruelty by unintentional but inexcusable conduct of any party. The cruel treatment may also result from the cultural conflict between the parties. Mental cruelty can be caused by a party when the other spouse levels an allegation that the petitioner is a mental patient, or that he requires expert psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations, and to crown it all, to allege that he and all the members of his family are a bunch of lunatics. The allegation that members of the petitioner's family are lunatics and that a streak of insanity runs through his entire family is also an act of mental cruelty.

18. In **Sujata Uday Patil v. Uday Madhukar Patil**¹¹, the Supreme Court held that the word "cruelty" and the kind or degree of "cruelty" necessary which may amount to a matrimonial offence has not been defined in the Act. What is cruel treatment is to a large extent a question of fact or a mixed question of law and fact and no dogmatic answer can be given to the variety of problems that arise before the court in these kind of cases. The law has no standard by which to measure the nature and degree of cruel treatment that may satisfy the test. It may consist of a display of temperament, emotion or pervasion whereby one gives vent to his or her feelings, without intending to injure the other. It need not consist of direct action against the other but may be

¹¹ 2007 AIR SCW 896

misconduct indirectly affecting the other spouse even though it is not aimed at that spouse. It is necessary to weigh all the incidents and quarrels between the parties keeping in view the impact of the personality and conduct of one spouse upon the mind of the other. Cruelty may be inferred from the facts and matrimonial relations of the parties and interaction in their daily life disclosed by the evidence and inference on the said point can only be drawn after all the facts have been taken into consideration. Where there is proof of a deliberate course of conduct on the part of one, intended to hurt and humiliate the other spouse, and such a conduct is persisted, cruelty can easily be inferred. Neither actual nor presumed intention to hurt the other spouse is a necessary element in cruelty.

19. In **Manisha Tyagi v. Deepak Kumar**¹², the Supreme Court held that this is no longer the required standard. Now it would be sufficient to show that the conduct of one of the spouses is so abnormal and below the accepted norm that the other spouse could not reasonably be expected to put up with it. The conduct is no longer required to be so atrociously abominable which would cause a reasonable apprehension that it would be harmful or injurious to continue the cohabitation with the other spouse. Therefore to establish cruelty it is not necessary that physical violence should be used. However continued ill-treatment cessation of marital intercourse, studied neglect, indifference of

12 AIR 2010 SC 1042

one spouse to the other may lead to an inference of cruelty. However in this case even with aforesaid standard both the Trial Court and the Appellate Court had accepted that the conduct of the wife did not amount to cruelty of such a nature to enable the husband to obtain a decree of divorce.

20. In **Ramchander v. Ananta**¹³, the Supreme Court has again held that instances of cruelty are not to be taken in isolation but cumulative effect of facts and circumstances emerging from evidence on record and then drawing a fair inference whether plaintiff has been subjected to mental cruelty due to conduct of other spouse has to be culled out.

21. The principle is, thus, settled that whether in the facts and circumstances of a given case, the plaintiff has been able to make out a case of grant of divorce on the ground of cruelty would depend upon the nature of pleadings and evidence in that case and there can be no straitjacket formula nor an exhaustive list of instances can be prepared, where cruelty is said to have been committed by one or other party to the marriage. Cruelty can also not be inferred by applying any formula because the said question is to be determined keeping in view the social status of the parties, their financial and other conditions, the atmosphere and the kind of employment or vocation which they carry out would all be important to interfere whether on the given set of allegations it has become difficult for the plaintiff to live with

¹³ (2015) 11 SCC 539

the other side and the behavior of such degree which amounts to cruelty.

22. When considered in the facts and circumstances of the present case, it would clearly manifest that the husband has admitted in his statement that he had undergone treatment at Nerlikar Hospital and Research Center, Nashik for leaving the ill habit of consumption of liquor. The husband examined himself as a witness, but did not examine any other person including his relatives to dispute the allegations made by the wife, whereas the wife has not only examined herself but her sister-in-law Smt. Aparna Maiti and her mother Smt. Ganga Maiti to prove that the husband had gone to DPS School where the wife was working and created nuisance in a state of intoxication. When the wife joined Brilliant Public School, the husband repeated the same behavior at this school also. The witnesses have also supported the case of the wife that she was subjected to physical assault by the husband.

23. The evidence is, thus, cogent and reliable to prove that the husband was ill treating the wife in a state of intoxication and was also going to her work place, which has resulted in immense social humiliation apart from husband assaulting the wife inside the house. The conduct of the husband has made the life of the wife miserable and she apprehends endanger to her life and the future of her male child.

24. In the considered opinion of this Court, assaulting the wife in a state of intoxication and creating nuisance at her work place would amount to cruelty for obtaining decree of divorce, therefore, the trial Court has not committed any illegality in granting decree of divorce in favour of the respondent-wife. The impugned judgment is just and proper, warranting no interference of this Court.

25. As a sequel, the first appeal, *sans substratum*, is liable to be and is hereby dismissed leaving the parties to bear their own costs.

Sd/-
Judge
Prashant Kumar Mishra

Gowri

Sd/-
Judge
Chandra Bhushan Bajpai

