

**IN THE HIGH COURT OF ORISSA AT CUTTACK****MATA No.264 of 2023**

(From the judgment dated 10.07.2023 passed by learned Judge, Family Court, Puri in C.P. No.123 of 2019)

n

....

Appellant*-versus-*

....

Respondent

Advocate(s) appeared in this case:-

For Appellant : Mr. M.B. Das, Advocate

For Respondent : Mr. H. Mohapatra, Advocate

**CORAM: JUSTICE B.P. ROUTRAY
JUSTICE CHITTARANJAN DASH**

JUDGMENT
5th May 2025

B.P. Routray, J.

1. Heard Mr. M.B. Das, learned counsel for the Appellant-Wife and Mr. H. Mohapatra, learned counsel for the Respondent-Husband.

2. Present appeal is directed against the impugned judgment dated 10.07.2023 passed by learned Judge, Family Court, Puri in C.P. No.123 of 2019, wherein the decree of divorce has been granted at the behest of the Husband dissolving the marriage between the parties without any grant of permanent alimony.



3. The Wife-Appellant has come up in challenging the said judgment dated 10.07.2023 and according to her submissions, the ground of cruelty, based on which, the learned Family Court has granted decree of divorce is not established on record. It is further submitted on behalf of the Wife-Appellant that, it was the Husband, who compelled the Wife to leave the matrimonial companion and till date the Wife is staying separately in her parent's house since 25.03.2018.

4. The admitted facts of the case are that, marriage between the parties solemnized on 1.6.2016 according to Hindu rites and customs. It is alleged on the part of the Husband that, the Wife was always passing comments towards physical infirmity of the Husband, for which unpleasant situations arose between the parties. In the meantime on 15.9.2016, the Wife left the house of the Husband and again came back on 5.1.2017 after negotiation, and then also continued to aspersing the Husband for his physical infirmity which resulted serious dispute between the parties and finally on 25.3.2018 she voluntarily left the matrimonial house. Thereafter she also lodged a criminal case alleging the offences under Section 498-A, I.P.C. and other offences against the Husband and in-law members.



5. Present proceeding was filed by the Husband on 03.04.2019 against the Wife praying to dissolve the marriage. In the said proceeding though two witnesses were examined on behalf of the Husband-Plaintiff, the Wife did not chose to examine any witness and not to adduce any evidence from her side though she cross-examined the Husband and his witnesses. Therefore, what is to be seen is that, in absence of any evidence led from the side of the Wife, whether the evidences brought on record by the Husband would satisfy his grounds of cruelty to grant the decree of divorce ?

6. Learned Judge, Family Court, Puri has framed five issues, amongst which Issue No.(ii) speaks about subjecting the Plaintiff to ill-treatment and mental cruelty by the Wife. All such issues including Issue No.(ii) has been answered in favour of the Husband.

7. It is not disputed that the Husband is a physically handicapped person. As borne out from the evidence of the Husband (P.W.1) that, the Wife is passing comments to her Husband saying “Kempa, Nikhatu, etc.” Though the Wife has cross-examined the Husband, but did not suggest anything to rebut such statements made on the part of



the Husband and it is also admitted by the Wife that, she has initiated a criminal proceeding against the Husband and other in-law members. P.W.2 in his evidence has corroborated the statements of P.W.1 regarding the aspersions made by the Wife towards his physical infirmity and here also the Wife did not able to rebut such contentions of P.W.2 made during his evidence.

8. Cruelty includes mental cruelty. Time and again, it has been clarified regarding the scope of mental cruelty. The Supreme Court in the case of *V. Bhagat v. D. Bhagat (Mrs)*, (1994) 1 SCC 337 have held as follows:-

“15. If so, the question arises what kind of cruel treatment does clause (i-a) contemplate? In particular, what is the kind of mental cruelty that is required to be established? While answering these questions, it must be kept in mind that the cruelty mentioned in clause (i-a) is a ground now for divorce as well as for judicial separation under Section 10. Another circumstance to be kept in mind is that even where the marriage has been irretrievably broken down, the Act, even after the 1976 (Amendment) Act, does not permit dissolution of marriage on that ground. This circumstance may have to be kept in mind while ascertaining the type of cruelty contemplated by Section 13(1)(i-a).

16. 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 were 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.”

9. In *Samar Ghosh vs. Jaya Ghosh*, (2007) 4 SCC 511, it is clarified as follows:-

“98. On proper analysis and scrutiny of the judgments of this Court and other courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of “mental cruelty” within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. Human mind is extremely complex and human behavior is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behavior in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to



adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

101. 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 cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On considerations 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 broad 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, discommodate 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 the 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.



(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behavior of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”



10. As stated by the witness in the case at hand that the Wife passed comments to the physical infirmity of the Husband saying him as “Kempa, Nikhatu” remains un-rebutted. The Wife making such statements against the Husband towards his physical infirmity definitely is causing mental pain. Such behaviour by the Wife towards the Husband discloses her thought and respect to the Husband. A person is expected to give respect to another person in general and where it comes to relationship of Husband and Wife, it is expected that the Wife should support the Husband despite his physical infirmity, if any. Here it is a case where the Wife made aspersions to Husband towards his physical infirmity and passed comments regarding the same. This definitely in our opinion amounts to mental cruelty leading to draw an inference against the Wife that she treated her Husband with cruelty owing to his physical deformity. Thus we are inclined with the finding of the learned Judge, Family Court, Puri that the Wife has treated her Husband with mental cruelty. On such ground, we are satisfied that the requirement in terms of Section 13(1)(i-a) of the Hindu Marriage Act is attracted to grant the decree of divorce. We thus confirm the impugned judgment granting the decree of divorce between the parties dissolving their marriage.



11. At this stage, with regard to grant of permanent alimony and return of Streedhan properties, as claimed by the Appellant-Wife, are left open to her to be agitated before the learned Judge, Family Court, Puri in terms of Sections 25 & 27 of the Hindu Marriage Act. We say so for the reason that, there is no material produced on record with regard to income of the Husband or the Wife and in absence of any material, we are unable to decide the question of permanent alimony here.

12. With the aforesaid observation and direction, the appeal is disposed of.

(B.P. Routray)
Judge

(Chittaranjan Dash)
Judge

B.K. Barik/Secretary