



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 23.11.2021****Order delivered on 25/02/2022****FAM No.24 of 2018**

- Navodit Mishra, S/o Late Dr. N.K. Mishra, aged about 40 years, R/o Vikash Nagar, 27 Kholi, P.S. Civil Line, Tahsil & Distt. Bilaspur (CG)

---- **Applicant****Versus**

- Smt. Richa Mishra, W/o Navodit Mishra, aged 38 years, R/o Vikash Nagar, 27 Kholi, P.S. Civil Line, Tahsil & Distt. Bilaspur (CG).
Current address - Father Shri Nemdhar Diwan, R/o Village Bharbod, Post Office Odiya, Police Station & District Bemetara (CG)

....**Respondent**

For Applicant	:	Mr. B.P. Sharma, Advocate with Miss Trisha Das, Advocates
For Respondent	:	Mr. Shubhank Tiwari, Advocate.

Hon'ble Mr. P. Sam Koshy**&****Hon'ble Mr. Parth Prateem Sahu, JJ****CAV Order****Per Parth Prateem Sahu, J;**

1. Plaintiff/appellant preferred this appeal under Section 19 (1) of the Family Courts Act, 1984 challenging judgment and decree dated 13.12.2017 passed in Civil Suit No.1-A/2016 whereby plaintiff of plaintiff/ appellant for grant of decree of divorce on the grounds enumerated in Section 13 (1) (i-a), (i-b) and (iii) of the Hindu Marriage Act, 1955 (for short 'the Act of 1955') was dismissed by learned Judge, Family Court, Bemetara.
2. Facts relevant for disposal of this appeal are that appellant got married with respondent on 25.11.2007 according to Hindu rites and rituals. Marriage between two was solemnized at Triveni Hall, Bilaspur. After marriage, respondent wife came to her



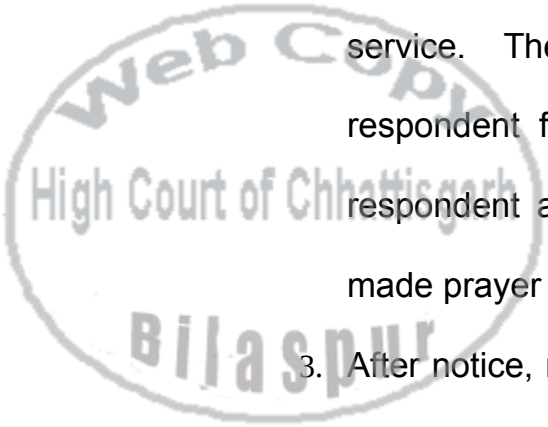
matrimonial home and started residing there. After few months of marriage, in the month of July, 2008 respondent went to her parental home to celebrate 'Rakhshabandhan' and 'Teeja' festivals and returned to her matrimonial home after about 8-9 months. On 11.7.2009 father of appellant died due to heart attack. Respondent in August 2009 went to her parents house along with her brother for celebrating her birthday and Teeja festival. In the year 2010 again she went to her parents house, continuously resided there for about four years. She came back to her matrimonial home on 26.7.2014 along with her brother and bhabhi. In August, 2014 respondent again went back to her parents' house to celebrate Teeja festival. She came back to Bilaspur in month of November, 2014. She again left her matrimonial home on 13.3.2015 and went to her parents' house. Thereafter, plaintiff/appellant filed an application under Section 13 (1) (i-a), (i-b) and (iii) of the Act of 1955 before Family Court, Bilaspur seeking dissolution of marriage dated 25.11.2007 by way of decree of divorce. Grounds raised in plaint are that within few days of marriage conduct of respondent was of treating appellant with cruelty; she was continuously harassing him mentally saying that he is having bulky physique and he is not good looking; after death of appellant's father she went back to her parents' house, resided there continuously for about four years, during this period whenever appellant contacted her on mobile phone and asked her to come back, she used to ask appellant to come and settle in Bemetara, place of residence of respondent's parents.





Appellant was continuously deserted by respondent wife for about four years i.e. from 11.8.2010 to July, 2014. Respondent joined service on the post of Shiksha Karmi Grade-1 in Bemetara District without informing appellant. She got entered name of her parents and brother in her service record as her nominees and not of appellant. Whereas, at the time of marriage, it was informed to parents of respondent that as appellant is only child of his parents, respondent will not do any job or service. However, respondent without informing appellant or his parents, applied for government job and joined service. There was no cohabitation between appellant and respondent for continuous long period; acts and conduct of respondent amount to treating appellant with cruelty. Hence made prayer for grant of decree of divorce.

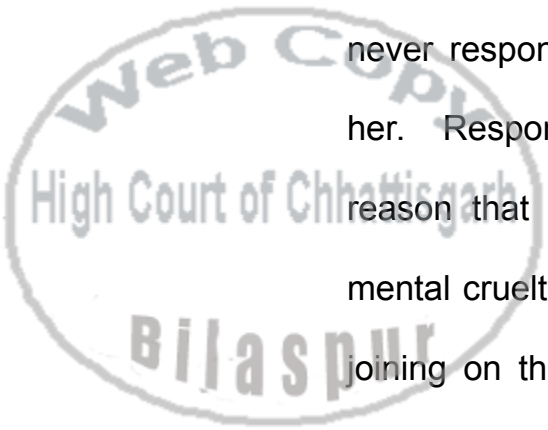
3. After notice, respondent-wife filed an application under Section 24 of the CPC for transfer of suit from Family Court, Bilaspur to Family Court, Bemetara, which was allowed and suit filed by appellant at Family Court, Bilaspur was transferred to Family Court, Bemetara.
4. Respondent wife submitted her reply to application filed under Section 13 (1) (i-a), (i-b) and (iii) of the Act of 1955 denying facts pleaded therein. It was pleaded that within fifteen days of marriage, plaintiff/appellant started annoying her on trivial issues and treating her with mental and physical cruelty. Unnatural behaviour of her was denied. Even after mental and physical harassment, she resided in her matrimonial home till 11.8.2008 with a hope that one day there will be change in





attitude of her husband, but it does not happen. When respondent went to her parents' house for celebrating her first Teeja festival after marriage, appellant did not come to take her back, she herself came back to her matrimonial home in Bilaspur. It was pleaded that during her stay after 2009 till August, 2010, appellant treated her with cruelty as he did not behave and maintain relationship as husband and wife. Thereafter she returned back to her parental home on 11.8.2010. During stay in her parental home from 11.8.2010 to July, 2014, she made several mobile calls to appellant, but he never responded the same nor made any attempt to contact her. Respondent joined as Shiksha Karmi Grade-1 for the reason that she was continuously treated with physical and mental cruelty by appellant. Appellant objected to respondent's joining on the post of Shiksha Karmi and pressurized her to resign from service. Objection with regard to maintainability of application under Section 13 (1) (i-a), (i-b) and (iii) of the Act of 1955 was also raised in the reply by respondent stating that no ground of desertion as enumerated under Section 13 (1) (i-b) of the Act of 1955 is made out by appellant for seeking divorce. Respondent was subjected to ill-treatment and harassment by appellant since beginning saying that it could have been better if he would have married with some other girl. It was further pleaded that respondent is still ready to continue her matrimonial relationship with appellant.

5. Based on pleadings of parties, Family Court framed issues, after conclusion of trial, on appreciation of pleadings,





documentary and oral evidence brought on record by respective parties, dismissed plaint of plaintiff/ appellant by impugned judgment.

6. Mr. B.P. Sharma, learned counsel for appellant would submit that within few months of marriage, respondent called her parents stating that she is finding it difficult to adjust herself in her matrimonial home. She gave phone call on 9.5.2008. Brother and father of respondent came to Bilaspur on 10.5.2008. When father and brother of respondent asked her, she replied that she is having no difficulty, which shows her immature act, conduct and mental status of respondent. This incident took place within six months of marriage. After marriage, respondent went to her parental home for the first time on Rakhi & Teeja festivals, but she did not come back to her matrimonial home for about 8-9 months. When appellant tried to bring back respondent from her parents' house, he was informed that she is continuing her studies. Respondent came to her matrimonial home only in the year 2009, resided there for few months, again went back to her parental home. In July, 2009 father of appellant died but in August, 2009 she went back to Bemetara for celebrating birthday when her company was required to family. On 11.8.2010 she again went to her parents' home to celebrate Teeja festival and thereafter did not return back to her matrimonial home for four years. Respondent deserted appellant for a continuous period of four years and thereby deprived him from enjoyment of marital life. Hence, there exists ground of desertion as also cruelty. Apart





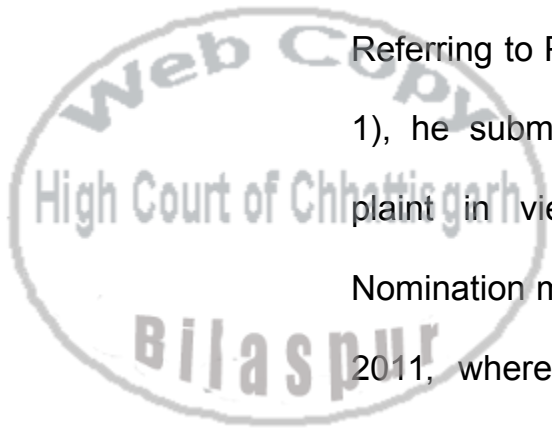
from this, respondent ill treated and harassed appellant stating that he is fatty and not a good looking person. She did not establish relationship of husband and wife since beginning of marriage, when this fact was intimated by appellant to his father, he suffered heart attack and died in July, 2019. This act of respondent amounts to mental cruelty upon appellant. Mental status of respondent since beginning was not to reside in the company of appellant and not to discharge her marital obligations and duties, therefore, without bringing to knowledge of appellant or his family members, respondent filled application Form for employment in Bemetara and joined service as Shiksha Karmi Grade-I in District Bemetara. Mentioned name of her parents and brothers as her nominees in service record. Copy of service record of respondent is placed on record as Ex.P-2. When appellant asked respondent to come back to Bilaspur, it was stated that she will not leave her job, he along with his parents after disposing of property may settle in Bemetara i.e. place of residence of parent of respondent, where she was residing. Condition imposed by respondent for continuing matrimonial relationship itself shows that respondent does not want to continue marital relationship with appellant. Hence, the Family Court erred in dismissing plaint of appellant for grant of decree of divorce. In support of his submissions, he places reliance upon decision in cases of **Rita Nijhawan vs. Balkishan Nijhawan** reported in **AIR 1973 Delhi 200**; **Siraj Mohmed Khan Jan Mohamad Khan vs. Harizunnisa Yasikkhan** reported in **(1981) 4 SCC 250**; **Vinita**





Saxena vs. Pankaj Pandit reported in **(2006) 3 SCC 778**; **U. Shree vs. U. Srinivas** reported in **(2013) 2 SCC 114**; **Indra Sharma vs. V.K. Sharma** reported in **2013 (15) SCC 755**; **Vidya Viswanathan vs. Kartik Balakrishnan** reported in **(2014) 15 SCC 21**.

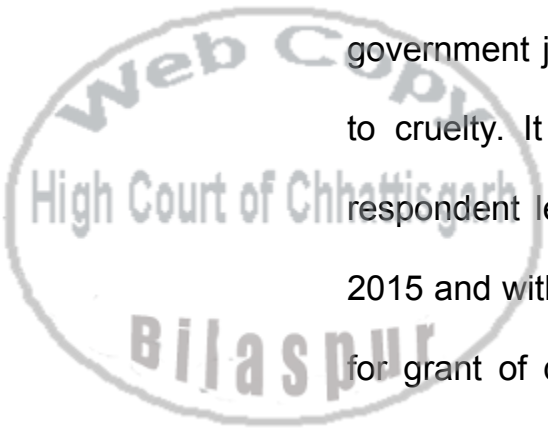
7. Controverting submissions of learned counsel for appellant, Mr. Shubhank Tiwari, learned counsel for respondent would submit that it is appellant who was not taking care of respondent wife in matrimonial home. Within few days of marriage she was ill-treated, harassed physically and mentally by appellant. Referring to Paragraphs 33 & 45 of evidence of appellant (PW-1), he submits that allegations levelled upon respondent in plaint in view of evidence of plaintiff, are not correct. Nomination made in service record by respondent is of the year 2011, whereas marriage of respondent and appellant was solemnized in November 2007. During these four years (prior to joining service), appellant has not treated respondent properly; there was continuous dispute between appellant and respondent, therefore, respondent made her parents and brother nominee in service record. Allegation that there was no relationship of husband and wife between appellant and respondent is also not correct in view of Paragraphs 33 & 46 of evidence of appellant. Pleadings made in plaint with regard to agreement between parties prior to marriage that respondent will not do job is not correct because prior to date of marriage, respondent passed B.Ed. certificate examination. From an educated girl/lady no such expectation can be made. In fact, it





was stated by parents of respondent that they are happy because they are getting an educated girl as daughter-in-law. It is submitted that family of appellant is an orthodox Brahmin family. Source of income stated by appellant and his family members at the time of marriage was false, therefore, respondent was forced to join service. At one point of time, appellant stated that she can reside with him if she leaves her job. In evidence before the Court appellant stated that he is not ready to continue relationship with respondent even if she resigns from her service. It is submitted that doing a government job even against will of husband does not amount to cruelty. It is also argued that as per pleadings in plaint, respondent left her matrimonial home in the month of March, 2015 and within three months thereof appellant filed application for grant of decree of divorce, hence the ground for seeking decree of divorce on account of desertion is not made out against respondent. For filing application for grant of divorce on the ground of desertion, as per Section 13 (1) (i-b) of the Act of 1955, period of desertion shall not be less than two years immediately preceding the presentation of petition. It is case of appellant himself that respondent lastly left matrimonial home in the month of March, 2015 and application under Section 13 of the Act of 1955 was filed on 30.6.2016.

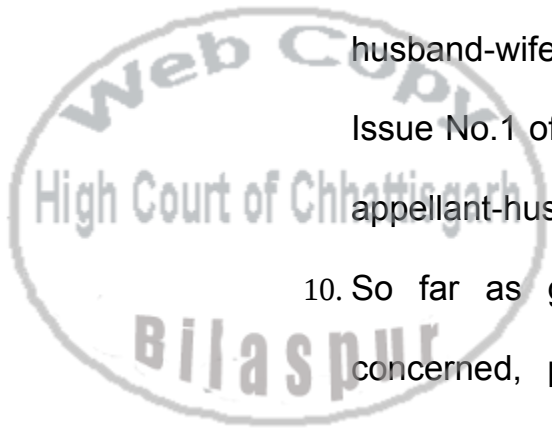
As appellant failed to make out ground for decree of divorce as envisaged under Section 13 of the Act of 1955, the Family Court upon appreciation of pleadings and evidence has rightly dismissed suit seeking decree of divorce. Hence,





impugned judgment does not call for any interference.

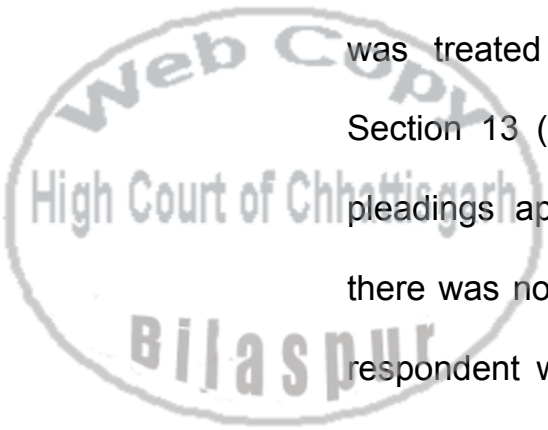
8. We have heard learned counsel for parties and perused the record.
9. From perusal of plaint it is evident that appellant filed suit for grant of decree of divorce on the grounds of 'cruelty' and 'desertion', as envisaged under Section 13 (1) (i-a), (i-b) and also under Section 13 (1) (iii) of the Act of 1955. Appellant in his plaint in different paragraphs in so many words pleaded that there was no husband and wife relationship from beginning of marriage as respondent does not want to make relationship as husband-wife and also in his evidence. Family Court formulated Issue No.1 of physical and mental harassment and cruelty with appellant-husband and Issue No.2.
10. So far as ground of 'desertion' as pleaded in plaint, is concerned, pleadings and evidence of parties reflect that appellant pleaded that respondent lastly resided in his house till 13.3.2015 and thereafter she left her matrimonial home. Application for grant of decree of divorce is filed on 30.6.2015 i.e. within four months from the date when parties last resided under one roof. Section 13 (1) (i-b) of the Act of 1955 envisages that a decree of divorce can be granted on the ground that other party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. Language used under Section 13 of the Act of 1955 is clear and unambiguous that before filing an application for divorce on the ground of desertion, period of desertion by either spouse should not be





less than two years. From the pleadings made in plaint by appellant himself, it is evident that application for grant of divorce is filed within four months of desertion by respondent. As per provisions contained in Section 13 (1) (i-b) of the Act of 1955, application filed by appellant for grant of divorce on the ground of desertion is not maintainable. Hence, the Family Court while dismissing application seeking decree of divorce has rightly held that appellant failed to make out ground of desertion.

11. So far as second ground raised in application that appellant was treated with cruelty by respondent, as envisaged in Section 13 (1) (i-a) of the Act of 1955 is concerned, in the pleadings appellant pleaded that from beginning of marriage there was no relationship as husband and wife between them; respondent wife used to mentally harass appellant by calling him to be fatty and not a good looking person. Pleading with regard to residing separately continuously for about four years by respondent in her parental home i.e. from August 2010 to July 2014, is not disputed. There is admission by respondent in her evidence to this effect. Respondent further admitted in her evidence that during the period of four years, she did not make any attempt to talk to appellant. From this admission of respondent-wife that she continuously resided for four years in her parents' house without communication is sufficient to show that there was no cohabitation between respondent and appellant during aforementioned period. This admission of respondent is in Paragraph-31 of her evidence. It is also

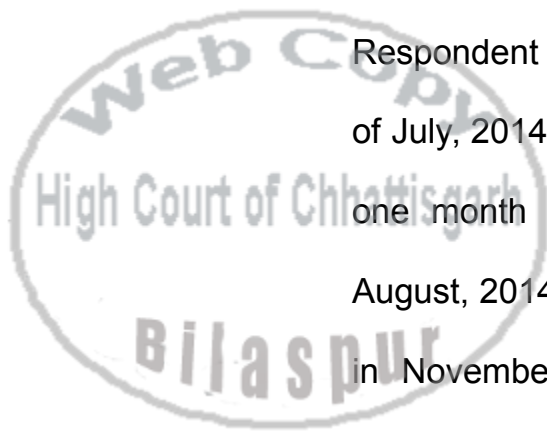




admitted by respondent that on the date of her examination before Family Court, about ten years of their marriage was completed; out of which, she resided only for about 4½ years in her matrimonial home and for remaining period she resided in her parental home. In Paragraph 42 of her evidence, respondent though denied suggestion that there was no physical relationship between them for about four years, but the same is contradictory to her statement made in Paragraph 31 of her evidence, which clearly shows that there was no relationship between the parties for about four years.

Respondent came back to her matrimonial home in the month of July, 2014, after long time of four years. She resided only for one month and again went back to her parental home in August, 2014. Respondent came back to her matrimonial home in November, 2014 and resided till 13.3.2015. During this period also there was no cohabitation between the parties, as admitted by respondent herself in Paragraph 46 of her evidence. It is case of appellant that he was treated with cruelty by respondent as she did not permit him to establish relationship with her as husband and wife.

12. In evidence of respondent wife, she admitted that from August, 2010 to 2014, she continuously resided at her parents' house in Bemetara. In these years', she did not give any call to appellant husband. As per evidence available, she applied for and joined her job without intimation to her husband or in-laws. She also admitted in Paragraph 40 of her deposition that she did not make any attempt to get herself transferred to Bilaspur or within





District Bilaspur i.e. her matrimonial district. In Paragraph 41 of her evidence, she also admitted that appellant also suggested her to do job in Bilaspur instead of Bemetara. Paragraph-50 of her deposition is also having significance on the issue which reads as under:-

“50. यह कहना सही है कि मैं नौकरी नहीं छोड़ना चाहती और वादी घर, जमीन बेचकर बेमेतरा नहीं आ सकता, यह मतभेद का एक कारण है।”

13. With regard to ground of mental cruelty that too on the ground of not establishing relationship as husband and wife; exchange of words between them, it is their evidence only which is important for consideration. Cohabitation between husband and wife is one of essential part of a marriage and not submitting by either spouse for relationship may be one of grounds of treating other spouse with cruelty.

14. In case at hand, appellant husband filed an application seeking divorce on the ground of cruelty also. From the pleadings and evidence brought on record, ground of cruelty, which has been pleaded and stated, is of mental cruelty. Mental cruelty is not specifically defined under the Act of 1955, but it has to be ascertained from nature of act, behaviour and conduct of one spouse against another. Hon'ble Supreme Court in case of **Chetan Dass vs. Kamla Devi** reported in **(2001) 4 SCC 250** while considering issue with respect to mental cruelty by one spouse against another has observed as under:-

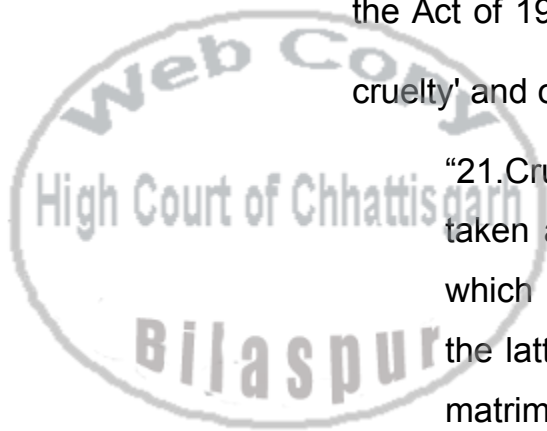
“14. Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust,



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 as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society....."

15. In case of **Parveen vs. Inderjit Mehta** reported in **(2002) 5 SCC 706** while dealing with provisions of Section 13 (1) (i-a) of the Act of 1995 Hon'ble Supreme Court has examined 'mental cruelty' and observed as under:-

"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."

16. In case of **Jayachandra v. Aneel Kaur** reported in **(2005) 2 SCC 22** Hon'ble Supreme has held that mental cruelty is a state of mind and feeling with one of spouses due to behaviour or behaviour pattern by 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 case. The inference has to be drawn from attending facts and circumstances taken cumulatively.

17. In case of **Samar Ghosh vs. Jaya Ghosh** reported in **(2007) 4 SCC 511** Hon'ble Supreme Court has set some illustrations of cruelty. In those illustrations, one of the illustration is with regard to unilateral decision of refusal to have intercourse for considerable period. Relevant portion of judgment is extracted below for ready reference:-

"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 'mental cruelty'. The instances indicated 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 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.

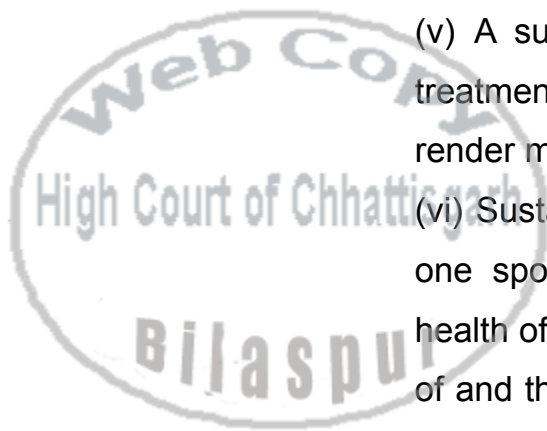
(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour 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 behaviour 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.”

18. In **Samar Ghosh' case (supra)** Hon'ble Supreme Court has further held that cruelty in one case may not amount to cruelty in another case and may depend upon social status, customs,



tradition, religious belief, human values and value system. In case of **Vidhya Viswanathan's case (supra)** Hon'ble Supreme Court held that not allowing a spouse to establish physical relationship for a long time amounts to mental cruelty to other spouse.

19. In case of **Vinita Saxena (supra)** Hon'ble Supreme Court has held that cruelty is not defined and is used in relation to human conduct or behaviour. It is conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting other. Cruelty may be mental or physical, intentional or unintentional. There may be cases where conduct complained of itself is bad enough or *per se* unlawful or illegal. Then the impact or injurious effect on other spouse need not be inquired into or considered. In such cases the cruelty will be established if the conduct itself is proved or admitted.

20. In case of **Ramchander vs. Ananta** reported in **(2015) 11 SCC 539** Hon'ble Supreme Court considering the ground of cruelty raised in an application filed by husband seeking divorce has held thus:-

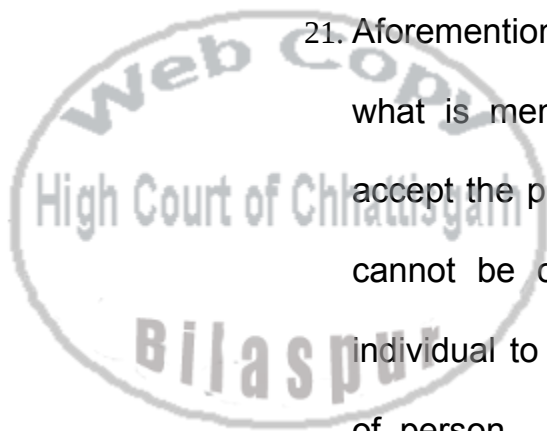
“10. The expression 'cruelty' has not been defined in the Hindu Marriage Act. Cruelty for the purpose of Section 13 (1) (i-a) is to be taken as a behaviour by one spouse towards the other, which causes a reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Cruelty can be physical or mental. In the present case there is no allegation of physical cruelty alleged by the plaintiff.



What is alleged is mental cruelty and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. It is settled law that the instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the other spouse. In the decision in Samar Ghosh case (supra), this Court set out illustrative cases where inference of 'mental cruelty' can be drawn and they are only illustrative and not exhaustive.”

21. Aforementioned rulings of Hon'ble Supreme Court indicate what is mental cruelty and what would be consideration to accept the plea of mental cruelty. Mental cruelty and its effect cannot be calculated in arithmetical manner, it varies from individual to individual; society to society and also from status of person. Agonised feeling or for that matter of sense of disappointment can take place by certain acts causing a grievous dent at mental level. Inference has to be drawn from the attending circumstances.

22. Now if the facts of case at hand are considered in light of aforementioned rulings of Hon'ble Supreme Court, it is apparent that there is admission on the part of respondent wife that within some time of marriage she gave phone call to her parents making allegation against appellant husband and his family members; when her father and brother came to house of appellant, she stated that there is nothing. Marriage between appellant and respondent was solemnized on 25.11.2007. In





the month of July, 2008 when she went to her parents house for celebrating festival of Rakshabandhan and Teeja. She resided there continuously for about nine months, as admitted by respondent in Paragraph-9 of her deposition. As per her evidence, she returned back to her matrimonial home in the month of July, 2009. Father-in-law of respondent died on 11.7.2009. In August, 2009 she again went to her parents home. On 11.8.2010 respondent again went to her parents house and resided there continuously for about four years. After marriage, respondent applied for the post of Shiksha Karmi without informing to appellant or in-laws. She joined as Shiksha Karmi Grade-I, without giving information to appellant or any of her in-laws. Respondent did not mention name of appellant as her husband and nominee in service record. Respondent further admitted in her evidence that during her stay in her parents house for about four years, she did not contact appellant, which shows conduct, attitude and behaviour of respondent towards appellant.

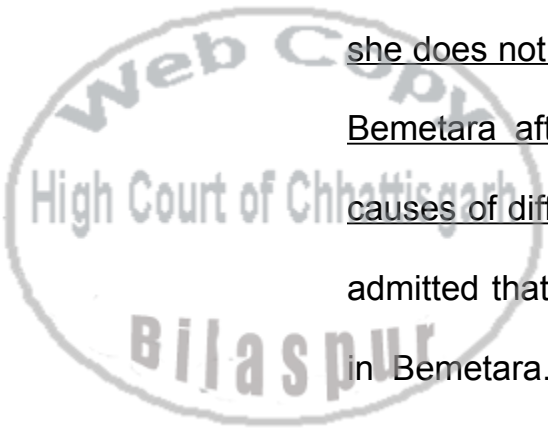
23. Marital relationship is a relationship of trust, respect and emotions. After marriage each spouse is having marital responsibilities and duties towards each other. From the facts, as appearing in record, as also evidence of respondent wife, it is apparent that from August, 2010 there was no relationship as husband and wife between two, which is sufficient to draw an inference that there was no physical relationship between them. Physical relationship between husband and wife is one of the important part for healthy married life. Denial of physical





relationship to a spouse by other amounts to cruelty. Hence, we are of the view that appellant was treated with cruelty by respondent wife.

24. Another aspect of the case, as is appearing from evidence of respondent wife, is that respondent joined service in the year 2011 without any information and knowledge of appellant. She admitted that though job and post on which she is working is inter-district transferable post, but she never applied for her transfer from District Bemetara to District Bilaspur. In concluding paragraph of her deposition, she has stated that she does not want to leave her job; appellant could not come to Bemetara after selling his house, land etc., which is one of causes of differences/dispute between them. Respondent also admitted that appellant asked her to do job in Bilaspur and not in Bemetara. In the evidence of respondent it has nowhere come that she wanted to come to Bilaspur and reside with appellant; she had also made all attempts and endeavour for the same. Evidence of respondent reflects that her intention is to live in Bemetara only. Parties are Brahmin by caste, as per social tradition, after marriage it is wife who has to come and reside at the place of her husband along with her in-laws. Respondent also after her marriage came to Bilaspur but now she does not want to leave her parents' place i.e. Bemetara. Making of one line statement that she wants to continue her marital relationship with appellant husband, will not be sufficient when from her conduct/behaviour it is not appearing that she actually intended for the same.





25. For the foregoing discussions and in light of above mentioned rulings of Hon'ble Supreme Court, we are of the view that appellant has made out a case for grant of decree of divorce on the ground of mental cruelty. Accordingly, impugned order is set aside. Application filed by appellant under Section 13 (1) of the Act of 1955 is allowed. The marriage dated 25.11.2007 between appellant and respondent stands dissolved. Decree be drawn-up accordingly. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge

Sd/-
(Parth Prateem Sahu)
Judge

