

First Appeal (DB) No. 344 of 2018

(Against the judgment and decree dated 16.06.2018 (decree signed on 28.08.2018) passed by Sri Brajesh Kumar Gautam, learned Principal Judge, Family Court, Ranchi in Original Suit No. 204/2013.)

Dr. Alok Kumar, S/o Late Domi Saha, R/o D.A.V. Alok Study Center, Argora Talab Road, Purana Chawk, Ranchi, P.O. & P.S.- Argora, Dist.- Ranchi.

... **Appellant**

Versus

Smt. Gargi Kumari, D/o Late Prabhu Narayan Singh, W/o Dr. Alok Kumar, R/o C/o Smt. Indira Singh, Mohalla Najarganj, At & P.O. Purnia City, Dist.- Purnia, Bihar-854301, and At Present R/o DAV Alok Study Centre, Argora Talab Road, P.O.- Ashok Nagar, P.S.- Argora, Dist.- Ranchi.

... **Respondent**

With

First Appeal (DB) No. 416 of 2018

Mrs. Gargi Kumari, D/o Late Prabhu Narayan Singh, W/o Dr. Alok Kumar, R/o C/o Smt. Indira Singh, Mohalla Najarganj, At & P.O. Purnia City, Dist.- Purnia, Bihar-854301, and At Present R/o DAV Alok Study Centre, Argora Talab Road, P.O.- Ashok Nagar, P.S.- Argora, Dist.- Ranchi.

... **Appellant**

Versus

Dr. Alok Kumar, S/o Late Domi Saha, R/o D.A.V. Alok Study Centry, Argora Talab Road, Purana Chawk, Ranchi, P.O. & P.S.- Argora, Dist.- Ranchi.

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Appellant : Mr. A.K. Sahani, Adv.

For the Respondent : Mr. Jai Shankar Tiwary, Adv.

CAV on: 25/08/2023

Pronounced on: 03/11/2025

JUDGMENT

Per Rongon Mukhopadhyay, J. :

1. Heard Mr. A. K. Sahani, learned counsel for the appellant in F.A. No. 344/2018 and respondent in F.A. No. 416/2018 and Mr. Jai Shankar Tiwary, learned counsel appearing for the respondent in F.A. No. 344/2018 and for the appellant in F.A. No. 416/2018.
2. Since both these appeals are against a common judgement, they are being disposed of by this common law.
3. In F.A. No. 344/2018, the appellant has challenged that part of the judgement and decree dated 16-06-2018 (decree signed on 29-08-2018) passed by Sri Brajesh Kumar Gautam, learned Principal Judge, Family Court, Ranchi in Original Suit No. 204/2013 whereby and whereunder, a decree of judicial separation has been passed instead of a decree of divorce.
4. The same judgement in its entirety has been challenged by the appellant/wife in F.A. No. 416/2018.
5. For the sake of convenience, both the parties are referred to in this judgement as per their status before the learned trial court.
6. The petitioner/husband in F.A. No. 344/2018 had filed a suit for dissolution of his marriage with the respondent/wife (respondent in F.A. No. 344/2018) under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 wherein it has been stated that the marriage of the petitioner was solemnized with the respondent on 18-11-2011 as per Hindu rites and customs in Hotel Renu Vihar at Purnea, Bihar. The petitioner had earlier filed a suit under Section 12(1)(a), 12(2)(b)(iii) of the Hindu Marriage Act, 1955 against the respondent being M.T.S No. 324/11 which

however was dismissed as withdrawn on 16-02-2012 on the basis of compromise between them. On the next day of the marriage, the petitioner had taken the bidai of the respondent and she was brought to the residence of the petitioner at Ranchi where she stayed for one and half months but the respondent never allowed the petitioner to have physical relationship with her. The respondent had further disclosed that only to please her relatives, she had solemnized the marriage. The petitioner on many an occasion had wanted to know the reason behind such apathy of the respondent towards him but she did not divulge any reasons. The respondent had thereafter gone to her parents' house at Purnea and when the petitioner had contacted her and asked her to come to Ranchi, she had refused stating that she does not want to return in the company of the petitioner. Seeing the conduct of the respondent, the petitioner was constrained to prefer a suit being Matrimonial Title Suit No. 324/2011 for annulment of marriage by a decree of nullity. A written statement was filed by the respondent and a Memorandum of Compromise was also prepared in presence of several witnesses on 22-01-2012. The respondent on 22-01-2012 had given an apology letter to the petitioner after accepting her fault and showed her desire to reside with the petitioner. Ultimately, the said suit was withdrawn by the petitioner on 16-02-2012 after which, the petitioner brought back the respondent to Ranchi. The petitioner is suffering from kidney ailment and his kidney has been transplanted and is also suffering from Hepatitis-B for which his treatment is going on. It has been stated that at Ranchi, the behaviour of the respondent towards the petitioner became worse and the petitioner was humiliated in the presence of his students. The respondent has not permitted the petitioner to have physical relationship citing her hatred towards sex. The petitioner had once managed to have sexual relationship with the

respondent after which the respondent had threatened to commit suicide if such act is repeated by the petitioner in future. The respondent used to go out from the house without informing the petitioner and return late at night and when the petitioner objected, he was humiliated by the respondent. After the compromise, the respondent had stayed with the petitioner for 4 months and during this period, the petitioner was subjected to cruelty by the respondent.

7. The respondent, on being noticed, had filed a written statement in which the allegations made by the petitioner in his application seeking dissolution of marriage has been denied. The petitioner has filed the present suit with a mala fide intention as earlier he had filed a suit under Section 12(1)(a), 12(2)(b)(iii) of the Hindu Marriage Act vide M.T.S. No. 324/11 which was withdrawn by the petitioner as he had no option but to agree for a compromise. It has been stated that the respondent is a kind-hearted woman who had never used any harsh words against the petitioner. The petitioner has an illicit relationship with another woman but despite the said fact, the respondent still resides in the house of the petitioner. The respondent is physically fit and is ready to live with the petitioner. It has been stated that the petitioner had never come to take the respondent from Purnea and the respondent had no option but to come to Ranchi but she was not permitted to enter the house for which she had given a written application to the concerned Police Station vide letter No. 3096 dated 08-05-2013. The medical fitness of the respondent is apparent from the medical certificate issued by the concerned doctor. Since the respondent was subjected to cruelty, she had no option but to file a criminal case against the petitioner being G.R. No. 3496/13 which is pending at present.

8. Based on the pleadings of the parties, the following issues have been framed for adjudication:

- I. Whether the suit is maintainable under the facts?
 - II. Whether the petitioner has valid cause of action for the suit?
 - III. Whether the petitioner is entitled to get divorce on the grounds of cruelty and desertion under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955?
 - IV. Whether the petitioner is entitled for decree of divorce, dissolving his marriage with the respondent?
- 9.** The petitioner has examined as many as **nine** witnesses in support of his case, including himself:

P.W.1 Ashok Kumar is the own brother of the petitioner who has stated that the petitioner is a Ph.D. in Calculus and is a teacher of mathematics by profession. In the year 1999, both the kidneys of the petitioner stopped functioning and he was saved after getting his kidney transplanted at Chennai and the kidney was donated by his elder sister Kiran Gupta. After such transplant, the petitioner was asked to follow several precautions as a result of which, the life cycle of the petitioner changed. Prior to the marriage, the mother of the respondent was apprised about the health condition of the petitioner and her daughter would have to take utmost care of the petitioner and the respondent and her family members agreed to the marriage which was finally solemnized on 17-02-2011. The respondent after marriage started torturing the petitioner through various means as a result of which the health of the petitioner started deteriorating. The respondent had left for her parental home despite the deteriorating health condition of the petitioner. The respondent did not make any efforts to know the health condition of the petitioner who was constrained to file a suit for nullity of the marriage and after receiving notice, he and his brother were abused by the brothers of the respondent. A meeting was held between both the sides and he was also present in the said

meeting and the respondent had apologized in writing for her conduct of torturing the petitioner, humiliating the petitioner in front of relatives, manhandling the petitioner, excessive conversations over mobile, not taking care of the petitioner who is a kidney transplant patient, committing physical and mental cruelty upon the petitioner, threatening to commit suicide and not allowing the petitioner to consummate the marriage. Due to such apology tendered by the respondent, the petitioner had withdrawn M.T.S. No. 324/11 after which the parties stayed together at Argoda. When he had gone to the house of the petitioner on 18-02-2012 to offer his good wishes on their marriage anniversary, he had seen the petitioner in a melancholic state and on being asked the reason, the petitioner had disclosed that there has been no change in the behaviour of the respondent; rather her behaviour has become more rude and she does not allow the petitioner to establish physical relationship with her. On the same day at 7:30PM, he had gone to the house of the petitioner with Dr. Baidhnath Mishra and at that time the petitioner was imparting tuition to his students. Apart from some office staffs, some guardians of the students were also present. When the petitioner left his class and came to meet him, the respondent at that point of time had just returned from somewhere and when the petitioner asked the respondent about the reason for the delay, the respondent became furious and threw a slipper upon the petitioner in presence of everyone. When he tried to advise the respondent not to do such things, she retaliated by saying that she had married a patient like the petitioner only to please her family members. She had thrown her Mangalsutra and threatened to leave. After a few days, he came to know that the respondent had left for her parental house along with her brother. Since despite the petitioner asking the respondent to come back, she did not return and the petitioner

after a year had filed a suit for divorce and on getting such information, the respondent had come to DAV Alok Study Centre and in his presence as well as in the presence of other relatives, threatened to implicate him in a case and subsequently she lodged a case under Section 498A/34 IPC. From the inception of the marriage, the respondent was not inclined to stay with the petitioner. In the 498A IPC case, he and his elder brother Arun Kumar have been exonerated. He is the Principal of DAV Alok Public School and the respondent by making false accusations which got publicity through newspaper and TV had defamed them in the society. Due to the conduct of the respondent, the source of income of the petitioner has dried up.

In cross-examination, he has deposed that the petitioner had taken the respondent for his honeymoon to Chennai and he had also included his treatment in the said schedule. The respondent wants to finish off the petitioner and usurp all his property. He had perused the FIR in which an allegation has been made against the petitioner of having an extramarital affair which is totally baseless. It is true that Shanta who was an employee of the petitioner resides in the premises of the petitioner with her husband and children.

P.W.2 Baidhnath Mishra has reiterated what has been stated by P.W.1 in his sworn statement.

In cross-examination, he has deposed that he is employed as a teacher in DAV Alok. It is true that Shanta Kumari works in DAV Alok. It is also true that Shanta stays in the same premises as that of the respondent along with her family members. He is aware about the fact that in the case instituted by the respondent under Section 498A IPC, allegation was made upon the petitioner of having an illicit affair with Shanta Kumari which is totally false and baseless. On the honeymoon trip of the petitioner and the respondent, Shanta Kumari and Sachidanand Kumar had

accompanied them for treatment. At the present moment, the respondent is staying at DAV Study Centre which belongs to the petitioner.

P.W.3 Shanta Kumari is working in DAV Alok Public School since the year 2006 and since October 2010, she is staying in a rented house along with her family members behind Alok Study Centre. In the adjacent room, the mother and sister of the petitioner reside. After the working hours, she used to work as a receptionist in the Study Centre of the petitioner. She has reiterated what has been stated by the other witnesses regarding the conduct of the respondent in committing torture upon the petitioner. The respondent had resorted to her character assassination which has defamed her in the society. The respondent had closed DAV Alok Study Centre and started selling the costly articles surreptitiously as a result of which, she had instituted Doranda (Argoda) P.S. Case No. 28/15 and the Trust has also instituted a case being Doranda (Argoda) PS Case No. 29/15.

In cross-examination, she has deposed that when the petitioner and the respondent had gone for their honeymoon at Chennai, she had also accompanied them along with her husband and children. She had gone to Chennai for the treatment of her husband. Both the parties stayed in the same hotel. She had not tried to shift to another house despite knowing the fact that the cracks in the marital life of the petitioner and the respondent had developed because of her.

P.W.4 Sachhidanand Ram is the husband of P.W.3 who has reiterated what has been stated by P.W.3 in his sworn statement.

In cross-examination, he has deposed that he had heard about the illicit relationship of his wife with the petitioner which is false and baseless.

P.W.5 Deep Narayan is the brother-in-law of the petitioner who has reiterated what has been stated by P.W.1 in his sworn statement.

In cross-examination, he has deposed that the respondent does not listen to anyone and forcefully puts forward her own views.

P.W.6 Arun Kumar is another brother of the petitioner who has stated similar to P.W.1.

In cross-examination, he has deposed that he is a retired teacher who now looks after his ancestral property at Begusarai.

P.W.7 Dilip Kumar Gupta has stated that his daughter Minakshi Shivam used to take tuition in maths in Alok Classes. He has supported the allegations made by the rest of the witnesses.

Nothing of substance has been elicited in his cross-examination.

P.W.8 Ravishankar Prasad was a student of DAV Alok Study Centre and in 2013 he had taken his friend to Alok Study Centre for enrolment when a female present had stated that the study centre is closed and while returning, one Shanta ma'am had disclosed that the female is Gargi Kumari who had closed down the study centre.

P.W.9 Dr. Alok Kumar is the petitioner who has supported the allegations made in his application seeking divorce and has also reiterated what has been stated by the other witnesses specially P.W.1.

In cross-examination, he has deposed that he used to advise the respondent not to restart the rude behaviour and humiliation and take care of him and follow the instructions of the doctor for his wellbeing. He had his kidney transplanted about 11 years prior to his marriage. He and the respondent had gone to M.I.O.T. Hospital, Chennai on 15-03-2011 for medical

examination of both but the respondent had refused to undergo any medical tests. He had never behaved in any manner which would suggest that he had inflicted cruelty upon the respondent. There had never been any physical relationship between him and the respondent though once he had made an attempt to establish such relationship. The respondent without any evidence had publicised his illicit relationship with Shanta Kumari whereas in her application before Women's Commission, Mahila P.S., Ranchi or Argoda P.S., she had not made any mention about such affair. He has deposed that the conduct of the respondent seems to indicate that she is not capable to establish physical relationship.

10. The respondent has examined herself as a witness:

D.W.1 Gargi Kumari is the respondent who has stated about the solemnization of her marriage with the petitioner on 18-02-2011 at Purnea and after the marriage, she came to the ancestral place of the petitioner at village Chitragupta Nagar, Pokhariya, Begusarai and after attending the death anniversary of her father-in-law, she was taken to the house of the petitioner at Ranchi. They remained as husband and wife for one and half months after which she was sent to her parental house at Purnea. When she was at Purnea, she was regularly in touch with the petitioner over phone and in November 2011, she had come back to the house of the petitioner. After marriage, she could find that Shanta Kumari used to frequent her house and on being asked, the petitioner had disclosed that she is his staff. She had objected to the conduct of Shanta Kumari. When she and the petitioner had gone to Chennai for their honeymoon, the petitioner had also taken Shanta Kumari and in the hotel, she had seen Shanta Kumari in a compromising position with the petitioner which was objected by her at which, she was subjected to assault. She had come to know about the kidney

ailment of the petitioner after her marriage. When she had come back to Ranchi, she had come to know about the institution of a false matrimonial case by the petitioner and her brother had convinced the petitioner after which the said case was withdrawn and she was taken to his house by the petitioner. In order to save her marriage, she had signed on whatever documents she was asked to sign. At the time of the marriage anniversary, the petitioner had sent her along with her brother to her parental house on 19-02-2012 with an assurance that he will come with five persons and will take her bidai. However, the petitioner did not come and when her brother approached the petitioner, they were threatened that the petitioner would give her divorce. When the petitioner did not take her bidai, she with the help of the administration, came to Ranchi. She is a competent housewife and always gives priority to the health and welfare of the petitioner. She has always been with the petitioner through thick and thin. The petitioner was instigated by Shanta Kumari to commit assault upon her and for one reason or the other she was sent back to Purnea. On account of the torture committed upon her, she was constrained to lodge a criminal case being Argora P.S. Case No. 312/13.

In cross-examination, she has deposed that she is a post-graduate. The strained relationship between them had started after one and a half-two months of the marriage. She was not aware before her marriage that the petitioner was a patient of kidney transplant. She had admitted that she had sold some articles for her maintenance.

11. It has been submitted by Mr. A.K. Sahani, learned counsel appearing for the petitioner/appellant in First Appeal No. 344 of 2018 that the issue of cruelty has been proved by the petitioner and which has been accepted by the learned trial court, but without any plausible reason, a decree of judicial separation has

been passed. The petitioner, through oral and documentary evidence, has enumerated various instances from which it would appear that the petitioner has been subjected to cruelty. The petitioner admittedly had his kidney transplanted and as is common knowledge, such patients have to be given utmost care and attention and several restrictions are advised by the doctor, but the respondent had never cared to fulfil the duties and obligations of a wife and instead by her various acts has wrecked the mental and physical health of the petitioner. Humiliation in public occurred when the respondent had thrown a slipper upon the petitioner without any reason in the presence of the students and their guardians in the coaching centre which was run by the petitioner. Due to the various acts of misdemeanor of the respondent, the coaching institute was ultimately closed down. It has been submitted that the utterances of the respondent that she had married a sick person only to please her family members does go to show that the respondent had agreed to solemnise marriage in order to usurp the property of the petitioner. It has therefore been submitted that there being no chance of any reconciliation, the decree of judicial separation passed by the learned trial court is erroneous as the petitioner has also been able to prove that he is entitled to a decree of divorce. Mr. Sahani, learned counsel for the petitioner has referred to the supplementary affidavit filed by him wherein certain developments have been brought on record.

12. Mr. Jai Shankar Tiwary, learned counsel appearing for the respondent in First Appeal No. 344 of 2018 has submitted that there is nothing substantial to prove that there was cruelty except the usual banter in a marital relationship. The petitioner was himself having an adulterous relationship with Shanta Kumari prior to the marriage and the evidence of the respondent (D.W.9) is a pointer to the said fact. The said Shanta Kumari had

accompanied the petitioner and the respondent on their honeymoon and shifted in the same hotel and stayed in the same hotel which is highly unusual and is a clear indication of such affair. The intention of the respondent to lead a harmonious marital life with the petitioner can be fathomed from the fact that it was the respondent who had filed a case for restitution of conjugal rights. All the witnesses examined by the respondent are tutored witnesses. The entire episode of so-called “cruelty” as depicted by the petitioner is nothing but a normal wear and tear a marital life undergoes, but the learned trial court has overtly relied on the evidence led by the respondent in coming to a conclusion that cruelty has been committed by the petitioner.

13. We have heard the learned counsel for the respective parties and have also perused the trial court records.

14. The learned trial court in its judgement dated 16-08-2018 has on consideration of the issue of cruelty has come to the following conclusion:

“I am of the considered view that petitioner Dr. Alok Kumar has been able to prove the cruel behaviour of serious nature and in the facts and circumstances the petitioner cannot be reasonably expected to lead conjugal life with respondent-wife. On the record it is also clear that since mid 2012 couples are residing separately and for all practical purposes it appears that marriage has become dead and emotionless.”

15. This finding has been followed up with an order of judicial

separation and the relevant reads thus:

“15. In the present case as I have pointed out herein above while discussing the evidence of the parties it is proved and established that the respondent/wife had treated the petitioner with cruelty after solemnization of the marriage. Now the question arises whether on the basis of above proved cruelty, the petitioner may be granted relief of a decree of divorce by dissolution of marriage?”

16. It may be mentioned here that after filing of the present matrimonial divorce petition by petitioner Dr. Alok Kumar another case for restitution of conjugal right by respondent- wife Gargi Kumari has been filed. Dissolving the marriage by passing a decree of divorce may close the door of reunion forever and therefore I am of the view that alternative relief of Judicial Separation may be granted in the present case, so as to give an opportunity for reunion if possible in future between the parties.”

16. The petitioner is aggrieved by the order of judicial separation as his prayer was for a decree of divorce and the respondent as well is aggrieved with the said order since according to her the petitioner has failed to prove cruelty and this is the reason why two separate appeals have been preferred by the parties.

17. In order to prove as to whether “cruelty” has been committed or not it is necessary to consider the scope and ambit of the said term and since “cruelty” has not been defined in the Hindu Marriage Act, we have taken recourse to some of the judicial pronouncements of the Hon’ble Supreme Court on the said subject.

18. In the case of **Samar Ghosh vs Jaya Ghosh** reported in **(2007) 4 SCC 511**, it has been held as follows:

“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 ⁵⁴⁷ 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 sterilisation 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.

102. *When we take into consideration aforementioned factors along with an important circumstance that the parties are admittedly living separately for more than sixteen-and-a-half years (since 27-8-1990) the irresistible conclusion would be that matrimonial*


bond has been ruptured beyond repair because of the mental cruelty caused by the respondent.”

19. In the case of “**A. Jayachandra v. Aneel Kaur**” reported in **(2005) 2 SCC 22**, it has been held as under:

“10. 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 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, 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.

11. *The expression “cruelty” 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. Cruelty is a course or 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 in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of 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  ³⁰ *complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or 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. (See Shobha Rani v. Madhukar Reddi.)*

12. *To constitute cruelty, the conduct complained of should be “grave and weighty” so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than “ordinary wear and tear of married life”. The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a*

precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.”

20. The petitioner as per his own admission in his evidence as P.W.9 had a kidney transplant about 11 years prior to his marriage with the respondent. It is common knowledge that a person who undergoes kidney transplant has to take a lot of precautions including the food habits, sufficient rest and sleep, regular intake of medicines and regular medical check-up amongst a host of other advisories. Duration of such transplant could not in any way affect the rigorous and disciplined lifestyle such ailment demands. It is the consistent case of the petitioner that the respondent and her family members were made aware about the kidney transplant of the petitioner and despite knowing such fact, the family members of the respondent had

readily agreed to solemnise the marriage of the respondent with the petitioner. The only dissenting note seems to have emanated from the respondent herself in her evidence as D.W.1 as it has been stated that after marriage, the petitioner had disclosed about the ailment he is suffering from. No supportive evidence has been led by the respondent by way of examining her family members and it is indeed surprising that save and except the respondent, no other person has been examined on her behalf. Even if we assume that what has been stated by D.W.1 is correct, even then her conduct was not what was expected from her and this fact can be gathered from the evidence of the petitioner and his other witnesses who are consistent and convincing and the respondent has failed to elicit any contradiction in their cross-examination.

21. The respondent has alleged that the petitioner was having an illicit affair with Shanta Kumari from prior to her marriage and she had seen the petitioner and Shanta Kumari in a compromising position in the hotel they were staying. There does not seem to be any basis for such allegation. The petitioner in his evidence as P.W.9 has accepted the fact that Shanta Kumari and her family members had accompanied the petitioner and the respondent to Chennai, the primary purpose being the medical examination of the husband of Shanta Kumari. This version has also been stated by Shanta Kumari and her husband who have been examined as P.W.3 and P.W.4 respectively. The said Shanta Kumari was working in the school and was also doing the job of a receptionist in the study centre of the petitioner and her staying in the said premises with her family does not gain any abnormality. Such unsubstantiated and reckless allegations touching upon the character of the petitioner would amount to an act of cruelty.

22. The petitioner and his witnesses have claimed that the

respondent had humiliated the petitioner in the study centre in front of his relatives, students and their guardians and had also vilified the petitioner in the society by her statements in the print and electronic media. The respondent in her evidence has accepted the fact that she had given an interview to the media which points to a semblance of truth in the allegations made by the petitioner.

23. The marriage, as per the petitioner, could not be consummated on account of the reluctance on the part of the respondent to establish sexual relationship with the petitioner and the evidence of the petitioner witnesses are replete with such assertion, but there has been only vague denial on the part of the respondent. In fact, all the allegations made by the petitioner gather strength with respect to their credibility by virtue of the undertaking given by the respondent in M.T.S. No. 324/11 which has been marked as Exhibit-6/a and 6/b. Based on such undertaking, the said suit was withdrawn by the petitioner.

24. The instances of cruelty depicted by the petitioner stands proved and the learned trial court has rightly decided the said issue in favour of the petitioner.

25. The learned trial court has ordered the alternative relief of judicial separation in the hope that there may be a possibility of reunion in future. This conclusion runs contrary to the finding recorded by the learned trial court that the marriage has become dead and emotionless for all practical purposes. Though, there is no provision in the Hindu Marriage Act, 1955 of irretrievable breakdown of marriage being one of the grounds of divorce and any such conclusion would be beyond the domain of this Court, but even if we restrict ourselves to the issue of cruelty which has been concluded to be proved, the nature and gravity of cruelty inflicted by the respondent upon the petitioner is such that it would be an impossibility on the part of the petitioner to stay

with the respondent. The circumstances constituting cruelty does not deserve the benevolence of an order of judicial separation.

26. We, therefore, based on the reasonings demonstrated by us, set aside that part of the judgment and decree dated 16-06-2018 (decree signed on 29-08-2018) passed by Sri Brajesh Kumar Gautam, Principal Judge, Family Court, Ranchi in Original Suit No. 204/2013 by which an order of judicial separation has been passed and we, consequently dissolve the marriage between the petitioner and the respondent.

27. Thus, the appeal preferred by the appellant/husband being First Appeal No. 344 of 2018 is **allowed** and the appeal preferred by the respondent/wife being First Appeal No. 416 of 2018 is **dismissed**.

28. Pending I.A.s, if any, stands closed.

(RONGON MUKHOPADHYAY, J.)

(DEEPAK ROSHAN, J.)

Jharkhand High Court, Ranchi
Dated the 3rd Day of November, 2025

Preet/N.A.F.R.

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