

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.690 of 2014

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Rekha Kumari @ Rekha Devi Wife of Mahesh Kumar Resident of Taregana
Block Road, Masaurhi, P.S. - Masaurhi, District - Patna

...Respondent ... Appellant/s

Versus

Mahesh Kumar Son of Sri Bhushan Thakur Resident of Village - Jalalpur,
P.O. - Masaurhi, P.S. - Punpun, District - Patna

... Petitioner/Respondent/s

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Appearance :

For the Appellant/s : Mr. Dhananjay Kumar Tiwary, Adv
For the Respondent/s : Mr. Jitendra Pandey, Adv

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 16-01-2018

Heard learned counsel for the parties.

2. This miscellaneous appeal is directed against the judgment and order dated 14.10.2014, in Matrimonial Case No. 141 of 2001, passed by the Additional Principal Judge, Family Court, Patna, whereby and whereunder, he had allowed the petition filed under Section 13 of the Hindu Marriage Act granting decree of divorce in favour of respondent-husband.

3. Respondent-husband had filed a Divorce Petition under Section 13(i)(a) of Hindu Marriage Act against the



appellant-wife for dissolution of marriage by a decree of divorce on the ground of cruelty.

4. It has been stated in Divorce Petition that respondent-husband was married to Appellant/wife on 23.05.1994 as per hindu rites and customs and two sons and one daughter were born out of the said wedlock.

5. Relation between husband and wife was cordial in initial years but thereafter their relations started deteriorating and became strained. The reasons for said discord was bad and obstinate nature of wife and her least care of social reputation and dignity of family whereas husband is a school teacher and simple in nature.

6. That behaviour of wife towards her husband and his family members became so rigid, apathetic and provocative that quarrel in family became routine of the day. Wife daily used to abuse his parents and family members and insulted them on trivial matters. Appellant/wife levelled frivolous and bald allegation against his mother of having illicit relation with his Uncle. Mother of Respondent/husband felt very embarrassed, insulted and pained by such false and reckless allegation.

7. It was further stated in the divorce petition that on 15.06.1996, the Appellant/wife fled away from her matrimonial



house. After much search it was revealed that she had gone to her parental house. On 16.06.1996 Respondent/husband and his mother went to the house of his in-laws where the mother of the husband tried to make her understand not to leave matrimonial home and if there is any problem she must tell family members and hearing this the Appellant/wife became so much furious that she pushed her Mother-in-Law and she fell down causing head injury. On this ungraceful act people surrounded there and asked Appellant/wife about such erratic behaviour and she told that unless and untill Respondent/husband separates him from his family, she won't enter her matrimonial home otherwise she will set her ablaze.

8. Respondent/husband's family was so much pressurized by the Appellant/wife that there was disruption in the joint family of Respondent/husband and he was allotted a separate share in the joint family property and Respondent/husband had to reside in a single room away from his joint family. A happy joint family was ruined and separated by cruel conduct of Appellant/wife.

9. Even when Respondent/husband started living separately the Appellant/wife left his company and went to her parental home. When he went to bring her back he was abused



and assaulted by his inlaws and he was told that he will be forced to ride on donkey with shaven head and sent to jail. Since the Appellant/wife is daughter of policeman she is a spoiled child, idiot and obstinate and respondent/husband found himself helpless in house of his inlaws and had to tolerate all sorts of insult and humiliation.

10. Appellant/wife never lived continuously with Respondent/husband even for a month. She wanted that husband should live in her inlaws house but Appellant/husband felt very uncomfortable because of rude behaviour of inlaws and Appellant/wife insisted that he should live in her sasural.

11. Behaviour and conduct of Appellant/wife towards Respondent/husband was not dignified. She always gave him mental torture. Against wish of Respondent/husband she used to mix up with strangers and tried to humiliate Respondent/husband. She even accompanied them to market place.

12. Respondent/husband had great affection for his children and when he used to play with them Appellant/wife showed annoyance. On 11.10.2000 when he was playing with his younger child he started crying and when he asked Appellant/wife to breast feed him upon which she replied that



she will not breast feed to this bastard and thereafter made him drink excessive water as a result of which he became unconscious and he had to be taken to Doctor for treatment. Neighbours are witness of this incident and Respondent/husband also filed a complaint in local police station.

13. Respondent/husband tried to convince Appellant/wife upon which she became very furious and tried to immolate herself by sprinkling Kerosene oil over her body and Respondent/husband somehow snatched match-stick from her hand and saved her. Next day she left her for parental home by leaving her children.

14. On 01.12.2000 plaintiff along with children went to the house of his inlaws and also took clothes for children and his wife and upon seeing plaintiff the Defendant/wife attempted to hit him by broom and on resistance both Defendant/wife and her mother assaulted and abused plaintiff/husband and he returned to his house and since then residing separately.

15. After sometime Defendant/wife refused to cohabit with plaintiff and never permitted physical relation with her and failed to perform her marital obligation as wife and has withdrawn from society of her husband. She even physically



assaulted him if such desire was expressed by plaintiff.

16. Defendant/wife started continuously threatening him that she will set herself on fire with children and implicate him and his family members in case for demand of dowry and torture and send them to jail.

17. In April 2001, the cruelty of Defendant/wife reached extreme when she started taking help of extremists of Jehanabad and Masaurhi from whom plaintiff and other members of family started receiving threat calls.

18. On 14.06.2001 extremists summoned plaintiff in thier court where head of extremist organization Ramashish Thakur as wellas Defendant/wife was also present. All of them levelled several false allegation and ordered plaintiff to pay Rupees Ten Thousand or he will be eliminated. Plaintiff somehow fled away from there but again on 16.06.2001 extremist at behest of Defendant/wife surrounded plaintiff in market and plaintiff had lodged FIR in the Police Station.

19. All efforts made for reconciliation failed and Defendant/wife was not ready to improve herself and as such it became impossible for the Respondent/husband to live with Defendant/wife and her only aim was to somehow ruin Respondent/husband and other family members.



20. Defendant/wife is daughter of a policeman and is obstinate and arrogant and it is not safe to live with her and on such pleadings present divorce petition was filed by Respondent/husband for grant of decree of divorce under section 13 of Hindu Marriage Act.

21. Defendant/wife appeared and filed her written statement. There are vague denial of allegations in her written statement with respect to allegations made in plaint. She had stated that Respondent/husband treated her with cruelty and refused to maintain her and her children. Respondent/husband is a school teacher and he along with other family members income is Rs. 2 Lacs annually. Respondent/husband earns Rs. 3000/- per month. She has further stated that Respondent/husband and his mother are cruel. Appellant/wife had further stated that she had never voluntarily left her matrimonial house, she was compelled by Respondent/husband and her mother by demanding Rs. 20,000/- for colour T.V. She has further stated that she always wants to live with her husband but there behaviour is cruel.

22. On the pleading of parties, the Family Court had framed six issues.

23. On behalf of respondent-husband 8 witnesses



have been examined whereas on behalf of Appellant-wife two witnesses have been examined. The respondent husband has also filed some documentary evidence which includes certified copy of Complaint Case No. 94(C) of 2001 marked as Exhibit-1, certified copy of FIR of Masaurhi P.S. Case No. 75 of 2001 and medical reports issued by the Doctor marked as Exhibit-3, 3/1 and 3/2. The appellant-wife had also filed documents which has been marked as Exhibit-A and A/1 which are the letters written by respondent-husband to the appellant-wife.

24. PW-1 is Chandradeo Mahto, who had deposed that he knows both the parties and marriage was solemnized between the respondent-husband and appellant-wife on 22.05.1994. He had further stated that for three to four years they remained as husband and wife and thereafter they are living separately. He had also stated that three children were born of the said wedlock among which two are boy and one is girl. He had also stated that the respondent-husband tried to bring the appellant-wife to matrimonial home but the appellant-wife and her father did not allow the appellant-wife to go to her matrimonial-home. The father of the appellant-wife wanted that his Son-in-Law should live in the house of his in-laws for which the respondent-husband did not agree. He had also stated that he



had seen the appellant-wife accompanying the extremist leader Ramashish Thakur of Masaurhi, who is of criminal nature. In his cross-examination, he had stated that he knows the parties from last 15 to 16 years and he is not related with the respondent-husband and there is no family relation between them. He meets the respondent-husband in the market. He had further stated that he never accompanied respondent-husband to bring his appellant-wife but he learned from the respondent-husband that the father of the appellant-wife is not permitting his daughter to reside in his matrimonial home. He had also stated that he met the father of the appellant-wife in Masaurhi for the first time when he had gone to Masaurhi in relation to filing of case by his daughter Rekha Kumari.

25. PW-2 is Bishwanath Prasad, who in his deposition had stated that he knows both the parties from last 9 to 10 years. The Father-in-Law of the respondent-husband has only one daughter and he had no son. The Father-in-Law of the respondent-husband wants that his Son-in-Law should reside in his house for which the respondent-husband was not agreeable. He wants to keep his daughter with him. The father of the appellant-wife does not want that his daughter should live in her matrimonial home and whenever the respondent-husband had



gone to bring the appellant-wife from her parental home, he was abused and assaulted. The Father-in-Law of respondent-husband had kept his daughter in his house for the last five years and is not permitting her to go to her husband's house. The respondent-husband is separate from his brother and he earns his livelihood by giving tuitions. He had further stated that he knows the respondent-husband since he lived in Masaurhi as tenant in the house of Bhushan Thakur (father of respondent-husband). The respondent-husband are three brothers and one sister. He had also stated that there have been frequent quarrel between the appellant-wife and the mother and father of the respondent-husband. The Father-in-Law of respondent-husband had once came to Masaurhi and on that occasion he had met him. The appellant-wife had also instituted a dowry case against the respondent-husband in the year 2001 and till 2001, the appellant-wife used to live with the respondent-husband. The relation between the husband and wife was never cordial.

26. PW-3 is Narain Sao, who in his deposition had stated that he knows both the respondent-husband and appellant-wife very well and had been tenant in the house of the father of respondent-husband from 1993 to December-2001. He has kirana shop and he had good relations with the family of the



respondent-husband and is on visiting terms. He had further stated that the marriage of Mahesh Kumar (respondent-husband) was solemnized with Rekha Devi (appellant-wife) in the year 1994. The father of Rekha Devi used to pressurize Mahesh Kumar to bring money from his father, as a result the relation between the respondent-husband and appellant-wife and his in-laws started deteriorating and the behaviour of appellant-wife Rekha Devi became cruel with the respondent-husband and Rekha Devi used to roam with naxalite leader Ramashish Thakur and there is allegation of having illicit relation with him. On the basis of her relations with naxalite leader, she used to ill treat the respondent-husband and her in-laws. Appellant-wife Rekha Devi, was of obstinate nature and in spite of being forbidden by her in-laws she used to roam with naxalite leader Ramashish Thakur against their wishes and many times also did not return in the night. The appellant-wife Rekha Devi misbehaved and was of low virtue. Rekha Devi use to live with her husband and also many times physically assaulted respondent-husband Mahesh Thakur for which the respondent-husband had to approach the Doctor for treatment. The appellant-wife also misbehaved with her Father-in-Law and Mother-in-Law and after much quarrel when Rekha Devi went



to her parental house, her husband Mahesh Thakur and her Mother-in-Law went to take her back to her matrimonial house, Rekha Devi abused and assaulted her Mother-in-Law and Mother-in-Law fell down and received head injury. This incident is of June-1996. Behaviour of Rekha Devi with her children was also very rude and cruel and she used to beat her children on trivial issues and used to throw utensils and break utensils and she totally loss control over her and has given instances of cruelty towards her children and husband. she was also of unpredictable behaviour and due to torture one of the children lost consciousness and he also reached the house of Mahesh Thakur after hearing much hue and cry and he took the children to the Doctor, this incident is of October-2000. Rekha Devi used to threaten on trivial issues that she will sprinkle kerosene oil and set her on fire and will implicate the whole family. On many occasions police had to intervene in their family matters. Rekha Devi used to take help of naxalites to torture her husband and also naxalites demand ransom at the instance of Rekha Devi and on one occasion the leader of naxalite Ramashish Thakur got arrested by the police when he was demanding ransom from Mahesh Thakur. Rekha Devi had deserted Mahesh Thakur and started living with said Ramashish



Thakur and had been frequently seen in the market with said naxalite leader Ramashish Thakur. There is threat of life of Mahesh Thakur from Rekha Devi. Rekha Devi instituted false case against Mahesh Thakur and his family members for demand of dowry. From the behaviour and conduct of Rekha Devi, it became impossible for Mahesh Thakur to live with her and thereafter the respondent-husband filed the case for dissolution of marriage.

27. PW-4 is Manohar Prasad, who in his deposition had stated that he is neighbour of Mahesh Thakur from 1991 and being neighbour he has good relations with Mahesh Thakur and his family members. The marriage between Mahesh thakur and Rekha Devi was solemnized in the year 1994. Rekha Devi and his family always used to demand money from Mahesh Thakur and on one or two occasions Mahesh fulfilled the demand of his wife and in-laws and when Mahesh refused to fulfill the demand of his in-laws the relation between the respondent-husband and appellant-wife and his family deteriorated. He had seen the cruel and ill behaviour of Rekha Devi with Mahesh Thakur and her children. Rekha Devi had developed illicit relation with naxalite leader Ramashish Thakur. The naxalites used to abuse and assault Mahesh Thakur at the



instance of Rekha Devi. Rekha Devi was of obstinate nature and in spite of being forbidden, she openly used to roam with naxalite leader Ramashish Thakur and also attend the meetings and sometimes also did not return to her house. Rekha Devi was ill mannered and was of low virtue. Rekha Devi lived in her matrimonial home for a short period. Many times Rekha Devi injured Mahesh Thakur by her teeth and nail, and for this Mahesh had to consult the Doctor for treatment. This incident is of November-2000. Rekha Devi's relation with her Mother-in-Law and Father-in-Law and other family members was very cruel. Once, Rekha Devi after much quarrel left her matrimonial home and when her Mother-in-Law and husband Mahesh Thakur went to bring her back, she abused and assaulted her Mother-in-Law and she suffered head injury and blood started oozing out from her head and bandage was tied on her head. She had told that Rekha Devi had caused the injury to her. This incident is of June-1996. Behaviour of Rekha Devi towards her children was also very torturous. On trivial issues, she started beating her children and thereafter started throwing away utensils and her behaviour was out of control. Many times, she start throwing utensils on road and he had seen all these incidents. He had further repeated the incidents of cruelty of



Rekha Devi when on account of her obstinate behaviour her son had become unconscious and he had to be taken to the Doctor. Rekha Devi always used to threaten her in-laws that she will sprinkle kerosene oil on her body and set her on fire and will implicate all her in-laws in a false case. The family members of Mahesh Thakur had partitioned the property on account of Rekha Devi quarrel and Mahesh Thakur was allotted share in Jalalpur and thereafter they started living in Jalalpur. Rekha Devi used to take help of naxalite leader to demand ransom from Mahesh Thakur and once when such demand was being made police came and arrested naxalite leader Ramashish Thakur and he was sent to jail. This incident is of 2001. Ramashish Thakur is a dreaded naxalite of the area and Rekha Devi is being seen in company of naxalite leader Ramashish Thakur in market. Mahesh Thakur has threat of life due to Rekha Devi and it is dangerous for him to live with Rekha Devi.

28. PW-5 is Bhushan Thakur, who is the father of respondent-husband. He had stated that the marriage was solemnized in the year 1994 and on account of pressure of his wife his son borrowed money from him many times, but when he came to know the reason for borrowing money, he stopped giving his son Mahesh Thakur money and thereafter his



relations with his appellant-wife and in-laws deteriorated. The conduct and behaviour of Rekha Devi towards her husband as well as her in-laws was very cruel and she used filthy and abusive language against all on trivial issue. She did not care for respect and dignity of family members and used to roam in market with unknown persons and often did not return to the house in night, and she used to attend the meeting of extremist organization. The nature of Rekha Devi was of uncompromising lady and in spite of preventing her to go with extremist leader Ramashish Thakur, she used to go in his meeting and also used to roam with him. Rekha Devi was arrogant and of low virtue. Rekha Devi lived with her husband for very few years and she also did not take proper care of her children. She used to physically assault Mahesh Thakur by biting and scratching by nail for which Mahesh Thakur had to take treatment of the Doctor. These incidents are of the year 2000. In 1996 she quarreled with the family members and left her matrimonial home. Her husband Mahesh Thakur and Mother-in-Law went to bring her back, she physically assaulted her Mother-in-Law and she received head injury. She used to start throwing and breaking utensils which became her routine of the day. He also narrated the incident of feeding his child forcefully and



becoming unconscious, on account of which the child was taken to the Doctor. She used to threaten that she will set her on fire after sprinkling kerosene oil. Rekha Devi used to indulge in petty matters and on account of her quarrel and conduct many times police had to intervene and settle the dispute. On account of continuance of cruel behaviour of Rekha Devi there was partition in the family and Mahesh Thakur was allotted share at Jalalpur and thereafter both started living at Jalalpur. Even thereafter she did not amend herself and used to torture Mahesh with the help of extremist leader and once when at the instance of Rekha Devi extremists were demanding money from him, Mahesh had informed the police and the leader of extremist Ramashish Thakur was caught red handed and sent to jail. Thereafter at the instance of said naxalite leader Ramashish Thakur, Rekha Devi filed a false case for demand of dowry and atrocities. Ramashish Thakur is a dreaded extremist against whom many criminal cases are pending and Rekha Devi started living with him and was seen often in his company in the market. There is threat on the life of Mahesh Thakur by Rekha Devi. Mahesh always remained in tension because of her behaviour. It became impossible for Mahesh to live with Rekha Devi and as such the present divorce petition was filed by him.



29. PW-6 is the respondent-husband. He had stated that on 23.05.1994, his marriage was solemnized with Rekha Devi as per Hindu Rites and Customs. She demanded Rs. 10,000/- and his father gave him Rs. 10,000/- which she gave to Rekha Devi. Again she demanded Rs. 10,000/- and the petitioner took the money from his father and gave to Rekha Devi but such demand of money did not stop from Rekha Devi and thereafter his father refused to give money to him. On 14.06.2001, he was called by the extremist, whose chief Ramashish Thakur and Rekha Devi was also present there and they demanded Rs. 10,000/- from him and said that if he fails to give Rs. 10,000/- he will be eliminated. On 16.06.2001 at about 8:30 am in the morning Ramashish Thakur in market demanded Rs. 10,000/- and thereafter he made a complaint to police and he was arrested and sent to jail. On continuance of torture and cruelty, the respondent-husband sold his house and land on 22.04.2004 and thereafter started living in a rented accommodation. He is being continuously tortured by Rekha Devi. She became more offensive in the company of Ramashish Thakur. At the instigation of Ramashish Thakur, she filed a false case against him under Section 498A of the IPC in 2001. He used to receive threatening from extremists that his house will be



blown and on account of continued nuisance being created by Rekha Devi there was partition in the family on 05.12.2000, and he was allotted share in Jalalpur. Thereafter he started residing at Jalalpur with Rekha Devi. There also she used to torture him with the help of extremist and also physically assaulted him. Her conduct was inhumane and torturous and daily there was quarrel between them and she used to bite and injure him by nail.

30. PW-7 is Raju Kumar, who is the brother of the petitioner. He had stated that from the year 2000 they are living separately. There was partition in the family due to ill behaviour of Rekha Devi. Rekha Devi was often seen in the company of Ramashish Thakur who is an extremist leader. There is separation in his family only because of Rekha Devi.

31. PW-8 is Kunti Devi, who is the mother of respondent-husband. She had stated that the behaviour of Rekha Devi towards her was not good. She never prepared food for her. She used to quarrel daily with her. She always used to fled to her parental home. She had once gone to bring her back to her matrimonial home but there she abused and assaulted her on account of which she received head injury. On account of her ill behaviour there was partition in the family. Thereafter her son and



Rekha Devi started living separately in Jalalpur but there also she did not behave properly and filed a matrimonial case under Section 498A of the IPC against her and her family members. She used to roam with extremist leader Ramashish Thakur. She daily used to quarrel with her husband and in-laws and also used filthy and abusive language against all and never care for respect and dignity of her husband and his family members.

32. Two witnesses were examined on behalf of appellant-wife.

DW-1 is Rahul Kumar, who is the son of appellant-wife Rekha Devi. He had stated that Rekha Devi is his mother and Mahesh Thakur is his father. He is aged about 13 years. He had stated that his father used to torture her mother. On account of quarrel between his father and mother his maternal-grandfather use to come to pacify both.

DW-2 is the appellant-wife Rekha Devi herself. She had stated that Mahesh Thakur is her husband and marriage between them was solemnized on 24.04.1995 as per hindu rites and customs. From this wedlock three children were born and her husband did not give any maintenance to her and also used to abuse her parents. She had also alleged that her husband used to driven her out and she was forced to take shelter. She had



further stated that for about 5 to 6 years she lived in her matrimonial home but thereafter due to regular assault, she came to her parental house and started residing there. She has stated that she was not given any money for her personal expenses. The behaviour of her Mother-in-Law remained normal for five years but thereafter on account of demand of money her relation deteriorated. She had further stated that it is not true that illicit relation of her Mother-in-Law is not with his uncle. She had stated that she is living in her parental home since 2001. She filed case against her husband under Section 498A of the IPC on 23.06.2001. She had denied that when Ramashish Thakur was sent to jail, a protest march was organized in which she had participated and in local newspaper her photo was published.

33. Respondent-husband had filed divorce petition under Section 13(a)(1) of Hindu Marriage Act for grant of divorce on the ground of cruelty. Cruelty is of two kinds. One is mental cruelty and second is physical cruelty.

34. The Apex Court in paragraph-10 of its judgment in the case of *Ramchander v. Ananta* reported in (2015) 11 SCC 539, has defined cruelty, which is quoted below :-

“Para-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 of *Samar Ghosh* case this Court set out illustrative cases where inference of “mental cruelty” can be drawn and they are only illustrative and not exhaustive.”

35. In para 20 of the judgment in the case of *U. Sree vs U. Srinivas* reported in *(2013) 2 SCC 114*, the Apex Court has further defined cruelty, which reads as follows:-

"20. In *Samar Ghosh v. Jaya Ghosh*[14], a three-Judge Bench, after dealing with the concept of mental cruelty, has observed thus:-

“99. ... The human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in the 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....

21. In Ravi Kumar v. Julmidevi[15], this Court has expressed thus: -

“In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty.”

A bench of this Court in the case of **Smt. Ekta Devi vs Bijay Kumar Kyal** reported in **2017(2) PLJR 51**, has also defined cruelty, as follows:-

"We have heard the parties and examined the evidences.



Learned counsel for the appellant-wife submits that merely using abusive language towards the husband and elders and even occasionally assaulting the husband cannot be termed as cruelty. We respectfully disagree. If the husband abuses and assaults the wife he would be liable to criminal charges but if what we have understood from the submission that if the wife does the same, then not only it is not a criminal offence but it does not also constitute cruelty, cannot be understood. Our society has not degenerated to such a level where a lady of the house would have free mouth to abuse the elders with filthy abuses regularly and occasionally even assaulting her husband and to accept that would not constitute a cruelty cannot be accepted. Cruelty cannot be defined by any straight jacket definition. It depends upon various factors. Behaviour of one party to matrimonial alliance in a manner not compatible to the relationship and making it unworthy of peaceful conjugal life would constitute cruelty. Mere denial of allegation is not sufficient. We have no reason to take a different view of the matter on the evidence that was led before the trial court which we have perused. We may only add, as has been noticed by the Apex court in the case of **K. Srinivas vs. K. Sunita** (2014) 16 Supreme Court Cases 34 [2015 (1) PLJR(SC) 126], that the fact that the wife after matrimonial case is filed, files case punishable for the offence under Section 498-A, IPC against the husband and family members itself shows cruelty."

36. In order to substantiate his case the respondent-husband has pleaded instances of cruelty made by the appellant-



wife towards him and his family. There was frequent quarrel in the family and independent witness were examined to testify about such quarrel by appellant-wife and they were neighbours of family of Mahesh Thakur and they have witnessed throwing and breaking of utensils by the appellant-wife in her house and even she used to throw utensils on the road. She never cared and respected her husband and in-laws and never performed duty of either wife or Daughter-in-Law and never gave any respect to her husband or in laws. She never cared for the respect and dignity of her husband or his family and used to roam with unknown persons. She started demanding heavy amount of money which was initially paid to her and on subsequent refusal she started behaving in a cruel manner. All the PWs have stated that she used to take help of extremist organization to satisfy her personal score with her husband and his family. She was also found in company of extremist leader Ramashish Thakur and was frequently seen with him, who used to demand ransom from her husband. On account of demand of ransom by the said Ramashish Thakur the husband of the petitioner had informed the police and lodged FIR against him in which he was sent to jail. The appellant-wife got the family partitioned due to her rude behaviour and her husband was allotted share in Jalalpur



village but even there she did not live peacefully with her husband. She filed case under Section 498A of the IPC in 2001 and falsely implicated her husband and other family members in that case. She never performed the duty of his wife and never took care of her husband and always her conduct was against dignity, honour and prestige of family. On trivial issues she left her matrimonial home and when her Mother-in-Law went to bring her back, she was abused and assaulted in which she received head injury, which has been testified by many witnesses. She had alleged illicit relation of her Mother-in-Law with one uncle without any basis and there are instances of cruelty which has been suffered by the respondent-husband on the basis of evidences produced by the parties and considering those evidences and other materials available on record the Family Court had decreed the suit and dissolved the marriage between the parties by decree of divorce on ground of cruelty suffered by husband. The family court had observed that the parties are living separately from the year 2001 and there is no chance of re-union and as such decree of divorce has been granted by the Family Court. The Respondent/ wife has not also made any effort or filed any case for restitution of conjugal right or has taken any step for



reunion or enter her matrimonial home but has kept herself away from the company of husband and has withdrawn herself from society of her husband. It has also come on record that the daughter of both the parties is married, and two sons have also become independent and earning their livelihood separately.

37. In the facts and circumstances of the present case, we are not inclined to interfere in the order passed by the Family Court, as such this miscellaneous appeal stands dismissed.

(S. Kumar, J)

Dr. Ravi Ranjan, J. I Agree.

(Dr. Ravi Ranjan, J)

ranjan/-

AFR/NAFR	AFR
CAV DATE	16.01.2018
Uploading Date	18.01.2018
Transmission Date	N.A.

