

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No.228 of 2019**

- Gaurav Tiwari S/o Shri Pradeep Kumar Tiwari Aged About 33 Years R/o Bangali Para, Gali No.3, Near Shri Vihar Mini Teliphones Exchange Office, Sarkanda, Bilaspur Chhattisgarh.....At Present Aditya Aluminium Hindalco Colony, No. D-3/105, Village Lapanga (Jharsugra) District Sambalpur Odisha., District : Sambalpur, Orissa

---- Appellant/Applicant**Versus**

- Richa Sharma alias Varsha Tiwari W/o Gaurav Tiwari Aged About 32 Years R/o Gataura, Tahsil Masturi, District Bilaspur Chhattisgarh, At Present C/o Principal, Kirodimal Government Polytechnic College Raigarh District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh

---- Respondent/non-applicant

For Appellant : Shri Y. C. Sharma, Advocate
 For Respondent : Shri Ravindra Agrawal, Advocate

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor
CAV Judgment

Per Manindra Mohan Shrivastava, J.**03/03/2021**

1. This appeal is directed against the impugned judgment and decree dated 12/07/2019 passed by the Additional Principal Judge, Family Court, Bilaspur in Civil Suit No.348-A/2017, whereby appellant's application for grant of decree of divorce has been rejected.
2. Appellant-husband moved an application before the Family Court, seeking decree of divorce from respondent-wife, on pleadings inter alia that at the time of marriage, the appellant and the respondent were in job working at different places. The parties had agreed at the time of marriage that the appellant will get himself transferred to a place near Bilaspur or Raigarh. It was also pleaded that the parties had also agreed that the appellant will quit his job from Singrouli and try for a job near Korba, so that the wife could also get

herself transferred at Korba and they may live happy married life. After marriage, however, behaviour of the wife was not normal and the husband was prevented from establishing any relation after marriage. The respondent-wife stated that she does not want any issue for two or three years after marriage. It was also alleged that the respondent-wife was not interested in discharging household obligations, her behaviour towards the father was also very indifferent and she was not taking proper care of in-laws and was keeping herself busy in her job without giving proper attention to her matrimonial house, due to which, the appellant became sick. The respondent-wife was not inclined to reside with her in-laws and insisting on taking rented house. Despite all attempts made, the respondent-wife did not continue to reside with the parents of the appellant and started living separately at another house. In course of time, after return from pilgrimage in the year 2016, the respondent-wife was not inclined to reside in the matrimonial house. She stayed for a very short period in the matrimonial house and thereafter, she was taken back to the parental house. After lot of persuasion, the respondent-wife was brought back to the matrimonial house. It was also alleged that after the appellant-husband got himself transferred to Jharsuguda, the respondent-wife spent some time with the appellant-husband and thereafter, came back to her parental house and was not prepared to reside with her in-laws and started quarreling and refused to accompany the husband in his family. Later on, the wife used to live in matrimonial house for short span and thereafter, go to her parental house without giving prior information to her in-laws and her brothers also misbehaved and threatened. It was also alleged that the respondent-wife did not share the fact of she having become pregnant, because of negligent attitude and non-cooperation and not taking proper care, suffered miscarriage more than once. The cumulative effect of such behaviour of the wife in not giving proper treatment to her in-laws, getting herself transferred to Raigarh without prior

information and knowledge of the husband and her in-laws, always attempting to reside in the parental house and not in the matrimonial house as also avoiding discharge of household duties, ultimately, led to a situation where the appellant-husband was subjected to extreme mental agony and left with no option but to seek decree of divorce.

3. In the written statement, while denying all the allegations, the respondent-wife stated that the wife got herself transferred only in the spirit of agreement between the parties that the appellant got himself transferred to Korba and if it is not possible, he will try for another employment. At Singrouli, the appellant and his mother were insulting her, even though, she was discharging all the household works and time and again, she was taunted. She always discharged her obligations towards her in-laws and the husband. It is stated by the respondent-wife that during her pregnancy period, she was not properly attended by her husband and compelled her to overwork. It was further pleaded that during pregnancy, the appellant-husband committed forceful sexual intercourse, which resulted in miscarriage and she was not properly attended by her husband. The respondent-wife was subjected to cruelty, because of ill-treatment and thereafter, she came back to her parental house. Later on, she again came back to matrimonial house, after settlement of dispute and also stayed with her husband, wherever he was posted. She always attended to her matrimonial obligation of providing company to the husband in attending marriages, pilgrimage etc. At Jharsugda, the respondent-wife was subjected to harassment so much so that her brothers had come to Jharsuguda to advise the husband to give proper treatment to respondent-wife. The appellant-husband insulted wife's parents and finally, due to cruel and indifferent behaviour, she has to come back to her parental house along with the appellant and brothers.

4. From the pleadings of the parties, it was revealed that the husband was seeking decree of divorce on the ground of cruelty and the learned trial Court

framed an issue as to whether the appellant-husband was subjected to cruelty by his wife after marriage.

5. The parties were allowed to lead oral as well as documentary evidence. The learned trial Court, after appreciation of evidence on record, in the light of the pleadings of the parties, came to the conclusion that none of the grounds as raised in the petition alleging cruelty were made out and suit was dismissed.

6. Assailing legality and validity of the impugned judgment and decree passed by the learned Family Court, learned counsel for the appellant would submit that though the appellant had made very specific pleading with regard to instances of cruelty, which were duly proved from the evidence led by the appellant-husband, the learned trial Court did not appreciate in proper perspective and even though, on preponderance of probabilities, the appellant succeeded in proving various instances of cruelty, to which, he was subjected to, but, the suit was dismissed. Taking further his argument, learned counsel for the appellant would submit that the wife had subjected the appellant-husband to cruelty in many ways. The respondent-wife had left her matrimonial house without informing her husband or in-laws. The respondent-wife shifted to another house leaving father-in-law and mother-in-law for no good reasons. She got herself transferred to Raigarh without informing her husband. She did not disclose her first pregnancy and because of her negligent attitude, miscarriage took place, due to which, the appellant-husband was highly shocked. During second pregnancy, medical advise was given to the respondent-wife to take bed rest, but ignoring medical advise, she went to Raigarh with her parents and thereafter, she was shifted to Bilaspur and stayed with her-laws and thus, she again acted negligently, resulted in second miscarriage. It is argued that attitude and behaviour of the respondent-wife towards her in-laws was extremely indifferent and disrespectful. Even though, the appellant-husband informed the respondent-wife that his father is going to be operated at Bilaspur, but she

never attended her mother-in-law and father-in-law and not taking any care of them. Learned counsel for the appellant also argued that while replying the allegations of the plaint, in the written statement, the respondent-wife has levelled allegation on the character of the husband, which she failed to prove, which amounts to cruelty. He would further argue that indifferent and cruel behaviour of the wife crossed all limits when the respondent-wife, without informing her in-laws and without permission of the husband, secretly got herself transferred to Raigarh. Therefore, the appellant-husband was left with no other option, but to apply for decree of divorce. In support of his submission, learned counsel for the appellant placed reliance upon the judgment in the case of **Sanjay Bihari Agrawal versus Smt. Sandhya Agrawal**¹, **Samar Ghosh vs. Jaya Ghosh**² and **Suman Kapur vs. Sudhir Kapur**³. Learned counsel for the appellant also placed reliance upon the decision of the Supreme Court in the case of **Pravin Mehta vs. Inderjit Mehta**⁴.

7. On the other hand, learned counsel for the respondent would argue that out of many grounds raised, most of the grounds are trivial in nature and could not be made a basis to seek decree of divorce and trivial dispute between the husband and wife could not be made a basis to allege cruelty. It is argued that the act of the appellant-husband in not allowing the wife to reside with her parents and various instances of cruelty as alleged, would amount to cruelty. It is next submitted that the wife has led credible evidence and also reflected from the evidence of the parties that the incident of unfortunate miscarriage was not negligence on the part of the wife, but it is clear that the appellant-husband did not take any care whatsoever. Allegation of not taking proper care or giving proper treatment to in-laws is not made out. Learned counsel for the respondent submits that though the appellant-husband has raised allegation regarding behaviour of his wife towards her father-in-law, which has been emphatically

1 FAM No.28/2006, decided by this Court on 16/02/2010

2 (2007) 4 SCC 511

3 (2009) 1 SCC 422

4 (2002) 5 SCC 706

denied, but father-in-law was not examined to controvert such allegations. The evidence on record led by the wife and as admitted in the evidence of appellant-husband itself shows that after marriage, the wife resided with the husband time and again at different places i.e. Singrouli, Jharsuguda and Bilaspur with her in-laws. She has clearly stated in her pleadings as also led evidence as to circumstances, which compelled her to live separately from her in-laws. It has also been argued that transfer to Raigarh was only as per the earlier understanding between them, before marriage. The husband got himself transferred to Jharsuguda and Raigarh being nearer place to Jharsuguda, the wife got herself transferred to Raigarh. Only because Raigarh happens to be the place of parental house, no exception could be taken to her transfer because Raigarh is much nearer to Jharsuguda as compared to Bilaspur and thus posting at Raigarh brought the wife to a nearer place, where the appellant-husband is posted and therefore, this cannot be treated as an act of cruelty. The allegation that the wife did not come to attend ailing father-in-law, who was to undergo eye operation, is not supported by any documentary evidence in the form of any certificate or papers of any hospital admission and eye operation. On the other hand, specific evidence has been led by the respondent-wife, which has been relied upon by the trial Court that the respondent-wife was subjected to cruelty time and again ignoring the period of pregnancy and unfortunate miscarriage due to circumstances beyond their control. Specific pleadings and evidence has been led by the respondent-wife that the main operative reason for her first miscarriage was forcible sexual intercourse. As the appellant-husband was having knowledge about the pregnancy, it is the appellant-husband and her in-laws who subject the respondent to cruelty. As both the husband and wife are in job, merely because the husband and wife were posted at different places, no blame could be laid on the respondent-wife that this amounts to cruelty. In support of his submission, learned counsel for

the respondent-wife has placed reliance upon the decision in the case of **Ravi Kumar Vs. Julmi Devi**⁵.

8. We have given our anxious consideration to the detailed arguments made by both the parties and also perused the pleadings and the evidence.

9. Learned trial Court has considered as well as examined in elaborate details, the pleadings made by the husband with regard to cruelty and after minute scrutiny of the evidence, has recorded a finding dealing with the various instances of alleged cruelty, but none of the grounds are made out.

10. However, this Court vide judgment dated 29-11-2019 (FA(M) No.138/2012 & FA No.116/2003) in the case of **Vijay Kumar Gupta vs. Smt. Kiran Bala**, held as under:-

21. “We shall now examine the finding of learned trial Court in the light of pleadings and evidence on record to find out whether the Court below has committed illegality in holding that appellant-husband failed to prove cruelty. We have noted herein-above, number of small incidents have been pleaded by appellant-husband in the plaint which included respondent's insistence to reside with the husband at Bombay, her reluctance to reside with mother-in-law and brother-in-law, quarrelsome behaviour and tendency to frequently go to parental house and at times going to parental house after returning from place of posting of the husband, without attending mother-in-law and brother-in-law in the matrimonial house. In addition to the above, the appellant has strenuously put forth evidence that during the pendency of appeal against decree of restitution of conjugal rights, respondent- wife attempted to forcibly enter into the matrimonial house which led to disturbance of peace and the police arrived and then an unpleasant situation was created when husband was taken to police station, proceedings under Sections 107, 110 Cr.P.C. were drawn so much so that he had to remain in jail also. This particular incident and the conduct of the wife has been made the main basis by appellant-husband to make out a case of cruelty by submitting that by this conduct, respondent- wife harassed the appellant and all members of family, and thus committed cruelty.

5 (2010) 4 SCC 476

However, before adverting to the pleadings and evidence on record on the aspect of cruelty, we consider it apposite to refer to one of the celebrated decisions of the Supreme Court on what constitutes cruelty, in the case of Naveen Kohli (supra), wherein, a three-Judge Bench of the Supreme Court examined the concept of cruelty both in English and Indian law, in order to evaluate whether in the case in hand, a case of cruelty is made out or not. Cruelty as understood in the text and judicial pronouncement can be summarized as below:

⁶“38....”Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such a 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.”

⁷39.... "Very slight fresh evidence is needed to show a resumption of the cruelty, for cruelty of character is bound to show itself in conduct and behaviour. Day in and day out, night in and night out."

⁸40.... "It is true that the more serious the original offence, the less grave need be the subsequent acts to constitute a revival."

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

XXXXX

XXXXX

¹⁰44..... "It is impossible to give a comprehensive definition of cruelty, but when reprehensible conduct or departure from the normal standards of conjugal kindness causes injury to health or an apprehension of it, it is, I think, cruelty if a reasonable person, after taking due account of the temperament and all the other particular circumstances would consider that the conduct complained of is such that this spouse should not be called on to endure it.

¹¹45...."No one has ever attempted to give a comprehensive definition of cruelty and I do not intend to try to do so. Much must depend on the knowledge and intention of the respondent, on the nature of his (or her) conduct, and on the character and physical or mental weaknesses of the spouses, and probably no general statement is equally applicable in all cases except the requirement

⁶D. Tolstoy in his celebrated book "The Law and Practice of Divorce and Matrimonial Causes" (Sixth Edition, p. 61)

⁷Bertram v. Bertram [(1944) P 59] per Scott, L.J. observed:

⁸Cooper vs. Cooper [(1950) WN 200 (HL)]

⁹ Lord Denning, L.J. in Kaslefsky v. Kaslefsky [(1950) 2 All ER 398, 403]

¹⁰ Lord Pearce observed:

¹¹Lord Reid in Gollins v. Gollins [1964 AC 644 : (1963) 2 All ER 966]:

that the party seeking relief must show actual or probable injury to life, limb or health.

“22. The Supreme Court also considered the principles of law crystallized by series of judgments of the Supreme Court rendered since 1964 onwards in para-46 to 65 (Naveen Kohli's case) upon survey of large number of decisions. The observations made in various judgments, referred to in the aforesaid decision may be summarized as below:-

“A. The concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. With the advancement of our social conceptions, this feature has obtained legislative recognition. To establish legal cruelty, it is not necessary that physical violence should be used.

B. The word “cruelty” has not been defined in the Hindu Marriage Act. It has been used in Section 13 (1) (i-a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the others. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the 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. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or willful ill-treatment.

C. Cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions and their culture and human values to which they attach importance. Each case has to be decided on its own merits.

D. They are of varying degrees from house to house or person to person. When a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatized as cruelty in one case may not be so in another case. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners and less depend upon precedents as they have to deal with conduct of human beings who are not generally similar. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of.

E. Mental cruelty in Section 13 (1) (i-a) of the Hindu Marriage Act can be

broadly defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party and it is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the fact and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

F. The word “cruelty” has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case. There may be instances of cruelty by unintentional but inexcusable conduct of any party. The cruel treatment may also result from the cultural conflict between the parties. Mental cruelty can be caused by a party when the other spouse levels an allegation that the petitioner is a mental patient, or that he requires expert psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations, and to crown it all, to allege that he and all the members of his family are a bunch of lunatics. The allegations that members of the petitioner's family are lunatics and that a streak of insanity runs through his entire family is also an act of mental cruelty.

G. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. “Cruelty” therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in the mind of other spouse that it would be harmful or injurious for him or her to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the aggrieved spouse and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other.

H. The concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. 'Cruelty' for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case

I. 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. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of "irretrievably broken marriage" as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case.

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 willful 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 his 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.

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 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.

J. 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.

K. The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

L. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counterproductive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court.

23. In a subsequent authoritative pronouncement of the law with regard to cruelty in the case of **Samar Ghosh** (supra) in concluding para-101, reiterating that no uniform standard can ever be laid down for guidance, yet the Supreme Court thought it proper to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". Those instances, not meant to be exhaustive but only illustrative, as observed in the aforesaid decision, are as below:

"101.x x x x x

(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, discommodore 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.

“24. In another subsequent decision in the case of **Vishwanath Agrawal** (supra), Their Lordships in the Supreme Court dealt with the case where decree of divorce was sought on the ground of cruelty. While relying upon earlier decision including the decision in the case of Samar Ghosh(supra), it was observed thus:

“22. The expression “cruelty” has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life,relationship, temperaments and emotions that have been conditioned by their social status.

X x x

x x x

27.To put it differently, the mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It was further observed,while arriving at such conclusion, that regard must be had to the social status, educational level of the parties, the society they move in,the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances. What is cruelty in one case may not amount to cruelty in another case and it has to be determined in each case keeping in view the facts and circumstances of that case. That apart, the accusations and allegations have to be scrutinized in the context in which they are made. Be it noted, in the said case, this Court quoted extensively from the allegations made in the written statement and the evidence brought on record and came to hold that the said allegations and counter allegations were not in the realm of ordinary plea of defence and did amount to mental cruelty.”

25. In yet another decision in the case of **K. Srinivas Rao** (supra), the Supreme Court relying upon earlier decision rendered in the case of Naveen Kohli (supra) as also Samar Ghosh (supra), added some more illustrative instances to what was observed in the case of Samar Ghosh (supra) as below:-

“16. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings,filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.”

10. In one of the celebrated decision of the Supreme Court dealing with the

aspect of divorce in the case of *N. G. Dastane(Dr.) vs. S. Dastane*¹², the normal rule governing civil proceedings in the matter of proof of fact by application of the principle of preponderance of probabilities was re-stated, as below:-

24. "The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, Section 3, a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact-situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note : "the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue" Per Dixon, J. in *Wright v. Wright* (1948) 77 C.L.R. 191 or as said by Lord Denning, "the degree of probability depends on the subject-matter. In proportion as the offence is grave, so ought the proof to be clear" *Blyth v. Blyth* [1966] 1 A.E.R. 534. But whether the issue is one of cruelty or of a loan on a promissory note, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged.

25. Proof beyond reasonable doubt is proof by a higher standard which generally governs criminal trials or trials involving inquiry into issues of a quasi-criminal nature. A criminal trial involves the liberty of the subject which may not be taken away on a mere preponderance of probabilities. If the probabilities are so nicely balanced that a reasonable, not a vacillating, mind cannot find where the preponderance lies, a doubt arises regarding the existence of the fact to be proved and the benefit of such reasonable doubt goes to the accused. It is wrong to import such considerations in trials of a purely civil nature.

26. Neither Section 10 of the Act which enumerates the grounds on which a petition for judicial separation may be presented nor Section 23 which governs the jurisdiction of the court to pass a decree in any proceeding under the Act requires that the petitioner must prove his case beyond a reasonable doubt. Section 23 confers on the court the power to pass a decree if it is "satisfied" on matters mentioned in

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Clauses (a) to (e) of the section. Considering that proceedings under the Act are essentially of a civil nature, the word "satisfied" must mean "satisfied on a preponderance of probabilities" and not "satisfied beyond a reasonable doubt". Section 23 does not alter the standard of proof in civil cases."

11. In the present case, the suit for grant of decree of divorce is based on the pleadings of cruelty. The main instances of cruelty as pleaded in the plaint and which was sought to be proved by leading evidence by the appellant-plaintiff, are briefly stated, as below:-

(A) That, the wife left the residence of husband at Bilaspur where husband's parents were residing, without informing the husband or her in-laws and shifted to another house located in the city of Bilaspur.

(B) The respondent-wife suppressed and did not disclose to the husband her first pregnancy which resulted in miscarriage due to her negligence.

(C) During second pregnancy also, the respondent-wife did not pay any heed to the advise of staying back in the matrimonial house and went to her parental house at Raigarh and due to uncalled for movement and exertion, second miscarriage eventually resulted.

(D) While visiting Bilaspur to attend the marriage in her parental family, wife did not pay visit to meet father-in-law and mother-in-law, though she fully knew that her father-in-law was going to be operated for eye treatment.

(E) Without disclosing to the husband and without taking him into confidence, the respondent-wife applied for and got herself transferred to Raigarh.

(F) In the written statement, the respondent-wife has cast aspersion on the character of the husband, in respect of which, she failed to lead any cogent evidence

On aforesaid instances of cruelty, in respect of which, pleadings have been made in the plaint, it has been pleaded that the above instances of mental cruelty to the husband and also reflected that the wife is not interested in continuing her marital relations as she is not listening to the advise of the husband, frequently visiting parental house, not paying respect to father-in-law and mother-in-law and therefore, the husband has prayed for grant of decree of divorce.

12. The appellant, in order to prove its pleading, examined himself as AW-1,

mother-Smt. Rekha Tiwari, AW-2, Aunt Smt. Sita Tiwari, AW-3 and Sister-in-law Smt. Santoshi Sharma, AW-4.

13. On the other hand, the respondent-wife has examined herself as NAW-1 and her mother Smt. Kusum Sharma, NAW-2.

14. It is an admitted position on record that on the date of marriage i.e. 20-04-2016, the applicant-husband was working as Deputy Manager at Singroli (MP) and the respondent-wife was working as Lab Technician in the Government Women's Polytechnic, Bilaspur (CG), Pleadings made in para 3 of the plaint is that at the time of marriage, it was agreed between the parties that the husband will get himself transferred to Bilaspur or near Raigarh and attempt would be made so that, both husband and wife can lead happy married life with their jobs. In the same breath, it has also been pleaded that before marriage, it was agreed to between the appellant-husband and the respondent-wife that he would leave his job at Singroli to work at Korba and wife would also get herself transferred to Korba, so that, both may lead happy married life. This pleading has been denied by the respondent-wife and according to her pleadings, the respondent-wife has clearly stated that she would not leave her job, which was agreed to by the husband and their parents and then only, the marriage was settled.

It would thus be seen that in the present case, the husband and wife, at the time of marriage, were working and posted at two different places and as to what was agreed to between them with regard to respective job at the same or different places, they have different version.

From the pleadings of the husband, there is nothing to show that the wife had, however, agreed to leave her job and reside with the husband, but if the pleadings of both the parties are looked into, what is reflected is that in future, attempt would be made to get husband and wife transferred either at the same place or nearby places. The appellant-husband in his evidence has admitted in

his cross-examination that it was within his knowledge even before his marriage, that his wife is posted at Bilaspur and she cannot get herself transferred to Singroli. His evidence also reflects that according to him, his wife could have left her job and joined her husband at Singroli. With this background and what has been stated by the husband in his evidence, it is highly improbable that though, the husband was fully knowing about her job and further that, she could not get herself transferred to Singroli and in the absence of there being any proof of the fact that the wife had agreed to leave her job after marriage, only one probability remains that both the parties, the appellant-husband and the respondent-wife were willing to either get themselves transferred at the same or nearby places, so that, their married life is not disturbed, because of they working at two distant stations. At the same time, the evidence of the husband also shows that he was expecting his wife to leave the job, if it is not possible to get posted at one place and live along with her husband.

15. The first instance pleaded to establish cruelty is that the wife left the matrimonial house at Bilaspur and shifted to another house and that too without informing the husband and her in-laws. In para-9 of the plaint, it is appellant's own pleading that on 12-02-2016, when his wife returned from Raigarh, she expressed before appellant's father that she gets tired in moving from in-laws house to the place of job and therefore, she was willing to take house on rent near her office at Koni, Bilaspur, but in-laws were not agreeable and at that time, the respondent-wife did not proceed to and continue to reside with her in-laws. It is to be noted that at that time, the husband was not posted at Bilaspur, but he was posted at Singroli. In para-10 of the plaint, it has been pleaded that information was gathered by the parents of the appellant that the relationship between the appellant and the respondent was not cordial as the appellant was working and posted at another station. The appellant's father was willing to shift

the respondent-wife to Singroli and leave there and in fact, it was communicated to the father of the respondent-wife, thereafter, the appellant-husband, respondent-wife and her father went to Singroli on 04-08-2016. From this pleading, it is clear that the appellant's parents were not willing to keep the respondent-wife with them at Bilaspur and they were insisting her to go to Singroli, which obviously was not possible, unless the wife leaves her job. From this, it can be inferred that while the wife was residing with her in-laws, the husband and in-laws were insisting the wife to go and reside with her husband at Singroli without appreciating that the wife was employed and working at Bilaspur. The husband and wife managing to live together for some time while posted at two different places is one thing, but insisting the wife to reside with the husband at the other station at the cost of her job, cannot be said to be justified. In the application of the husband, it has been pleaded in para 18 that after return of wife from Singroli on 18-11-2016, upon enquiry from his father, he came to know that after return, the wife did not go to the house of husband or her in-laws house, but the respondent-wife had gone to another house taken on rent, for which, no permission was taken from the appellant-husband or from his father. On this pleading, the respondent's written statement is that the appellant had threatened his parents that his wife should not be allowed in the house of in-laws, otherwise, he would commit suicide and because of this threat, the wife had to reside in another rented accommodation. Even according to the husband, the wife was brought from Singroli to Bilaspur by her father and brother. On 18-11-2016, before that, during stay of the wife at Singroli along with husband from 04-08-2016 to 18-11-2016, the respondent wife was found pregnant and an unfortunate incident of miscarriage had also taken place on 23-08-2016 and in this background, the respondent-wife was brought to Bilaspur by her father and then, she was taken to Raigarh. Thereafter, again on 20-09-2016, the respondent-wife came back to Bilaspur and resided there till 14-10-

2016 with her in-laws. Thereafter, the respondent wife went to her parental village on 01-11-2016 and incident of quarrel took place on 02-11-2016, when appellant went to wife's parental house to take her back after Bhaidooj festival. At that time, mother of the wife had stated that the vehicle may be arranged for the wife, so that, she may go to her office at Koni. Finally, the respondent-wife was brought to Bilaspur on 03-11-2016. On 06-11-2016, the husband and wife went together to Singroli and thereafter, the respondent-wife was brought back from Singroli on 18-11-2016 and thereafter, she went to another house. Aforestated background has been pleaded by the husband himself in para 10 to 17 of his pleadings. In response to these pleadings, in the written statement, the wife has stated regarding unfortunate incident of miscarriage, misbehaviour by the husband and his negligent attitude to get her properly treated which eventually led to miscarriage and also various incidents of quarrel between them. In this background, the wife shifted to another house at Koni, Bilaspur. The pleadings of the parties have been supported by their respective evidence, which shows that during the period of stay of the wife at Singroli, unfortunate incident of miscarriage had taken place and there were certain disputes also emerging between them. The parents of the husband were insisting the wife to reside at Singroli only and wife was brought back by her father and brother from Singroli. The pleadings and the evidence of the wife in this regard and her own examination as NAW-1 is that because of the miscarriage, quarrel and harassment and threat given by the husband that if she comes back to her husband's house, he would commit suicide, wife had to go to Raigarh and after coming back from Raigarh to Bilaspur, she shifted to another rented house at Koni, Bilaspur. Though, the appellant-husband, AW-1 had denied suggestion in his cross-examination that he had asked the wife not to go to his parental house and warned his parents not to keep the respondent-wife with them and for that reason, the respondent-wife started residing at separate rented

accommodation, the respondent-wife has pleaded as also led evidence that even after the husband come to know that his wife had started residing in another rented accommodation, the husband did not ask her to go to matrimonial house. He also denied to meet parents of the wife, in response to message dated 21-01-2017 that parents of the wife and bother were willing to go to Singroli and talk to him, on which, the appellant-husband came to Bilaspur on 24-01-2017. Thereafter, a meeting of both the parties was arranged at Bilaspur on 26-01-2017. The fact regarding coming back of appellant-husband at Bilaspur on 24-01-2017 and holding of meeting of both the parties on 26-01-2017 has not been disputed by the appellant-husband in his evidence, nor this fact has been disputed by giving any suggestion in the cross-examination of evidence of respondent-wife, NAW-1. According to the husband also, a meeting was held on 26-01-2017 and thereafter, on 28-01-2017, the respondent-wife went back to her matrimonial house after leaving rented accommodation. Though the appellant's version is that the he had prepared note regarding all the discussion which had taken place in the Hotel, but, no satisfactory and reliable evidence has been led before the Court to prove his version of blame on the wife. In this background, particularly the conduct of the wife that after the meeting, the wife had come back to her in-laws family, the learned trial Court recorded categorical finding in para 113 of its judgment that the appellant-husband was not willing to keep his wife along with him or in his house at Bilaspur with his mother and father and thus, compelled the respondent-wife to live in the rented accommodation and soon after the meeting, issue was resolved and the respondent-wife came back to her matrimonial house. This clearly shows that the wife was willing to reside with the family of the appellant-husband in the matrimonial house, which is reflected from his conduct of shifting back to matrimonial house soon after the meeting in the Hotel. Therefore, the finding of the learned trial Court in this regard does not warrant any interference

and the first instance of cruelty as pleaded by the husband that the conduct of the wife in leaving the matrimonial house and taking another accommodation on rent and residing separately, does not prove any cruelty on the husband by the wife.

16. Another set of circumstances as pleaded in the plaint is that the respondent-wife suffered abortion on two occasions, because of her own negligence and this negligent act of the respondent-wife caused mental cruelty. It has also been pleaded that on both the occasions, the respondent-wife did not disclose regarding her pregnancy, either to the appellant-husband or to the appellant's mother.

17. The pleading with regard to first incident of pregnancy and abortion have been pleaded in para 12 to para 14 of the plaint that after respondent-wife reached Singroli on 19-08-2016, she disclosed that she is pregnant and suffering from excessive bleeding, whereupon the appellant reached home and informed his parents as well as parents of the wife, requesting them to come to Singroli. When the respondent-wife was taken to hospital, it was confirmed that she was pregnant. It has been further pleaded that on 22-08-2016, when he was in his work place, the respondent-wife informed that she is again suffering from bleeding and she was again taken to hospital and thereafter, she was shifted to Renukot Hospital at Singroli on 23-08-2016, because miscarriage had taken place and then, she was again taken to another hospital at Hindalco. It has further pleaded that after 23-08-2016, his wife was advised 30 days bed rest and then, on 25-08-2016, the appellant along with parents and wife came to Bilaspur and against doctor's advise, she went to her parental house at Raigarh on 28-08-2016.

18. In the written statement, the respondent-wife pleaded that the fact of pregnancy was disclosed by the respondent-wife to the appellant-husband on 01-07-2016 and she was also taken to the Nursing Home at Bilaspur for check

up, then pregnancy was disclosed. It has also been categorically pleaded that when the respondent-wife reached at Singroli at the stage of pregnancy, despite her resistance, the appellant-husband conducted forceful sexual intercourse and she also sustained injury, which was the main cause of bleeding on 19-08-2016. The respondent-wife has also pleaded that on 28-08-2016, when she suffered excessive bleeding, the appellant was informed in the office, but, he did not pick up his phone and the whole day, she was lying at home and she was taken to hospital only in the evening after his husband returned from the office, then miscarriage was confirmed. It has also been pleaded that because of doctor's advise of one month bed rest, she wanted to stay at Singroli, but the appellant-husband and his parents brought her to Bilaspur on 26-08-2016 and on the very next day, the appellant-husband went back to Singroli. Father of the appellant advised the respondent-wife that she may not take proper rest at Bilaspur, therefore, she may take rest at Raigarh and only on such advise of father-in-law, she went to parental house at Raigarh to take rest.

19. The pleadings made by the appellant-husband in this regard having been denied, burden lies on the husband to prove that the miscarriage/negligence occurred on part of the respondent-wife. At the first place, it is wholly improbable that the respondent-wife would be unwilling to carry pregnancy. Specific pleading in this regard appear to be more probable that despite she being pregnant, she was made to travel all the way from Singroli to Bilaspur in the state of pregnancy and at Singroli, against her wishes, the appellant-husband went for sexual intercourse which resulted in bleeding followed by miscarriage.

20. The learned trial Court examined this aspect and made minute scrutiny of the evidence led by both the parties and has taken into consideration the evidence of the respondent-wife that she was taken to hospital at Bilaspur for check up by the mother-in-law. Despite this fact known, the respondent-wife

was made to travel from Bilaspur to Singroli, 470 KM away. The evidence of the respondent-wife that before proceeding to Singroli, she was checked up at Bilaspur, has been rightly believed by the learned trial Court. The learned trial Court in para 92 of its judgment has taken into consideration the admission of the appellant,AW-1 in his cross-examination that after his wife had come to Singroli in the state of pregnancy, they entered into sexual intercourse, but denies that the wife was suffering from bleeding and he claims ignorance. Thus, evidence of the respondent-wife that the appellant-husband had subjected her to sexual intercourse against her wishes, despite she being pregnant is believed by the learned trial Court, as more probable than the husband's version that he had no knowledge of such pregnancy. The learned trial Court has taken into consideration the specific evidence that even though the respondent-wife had suffered bleeding from 22-08-2016, but, she was left and despite repeated phone calls, the appellant-husband did not come back from the office and sought to justify that he was in the meeting. According to him, he came to know about this fact from his sister, who was informed by his mother and then he came back home in the evening. Therefore, the pleading and the evidence of the respondent-wife that the husband was quite negligent and had not taken proper care, even though, the respondent-wife was suffering from bleeding from 19-08-2016 to 22-08-2016, has rightly been relied upon by the learned trial Court to record a finding that this conduct of the appellant-husband proves his negligence.

21. As far as second incident of pregnancy and miscarriage is concerned, pleading in this regard have been made in para 32 to 34.

It is relevant to note that again, the appellant-husband had taken a plea that the second pregnancy was not disclosed to him, but, it is his own pleading that the wife again reached Jharasguda on 08-06-2017 and then, on 09-06-2017, earlier incident of bleeding had started again. According to the

appellant-husband's own pleading, the respondent-wife had suffered miscarriage only few months before, in the August, 2016. Pleading that the respondent-wife was again found pregnant on 09-06-2017 shows that within a short period of the appellant-husband and the respondent-wife staying together, the respondent-wife had again become pregnant. Except that the respondent-wife came back to Jharsugda on 08-06-2017, nothing has been pleaded to even indicate as to how the respondent-wife was negligent. The pleadings made only reflected upon unfortunate incident of repetition of miscarriage. Admitted facts on record are that the appellant-husband was transferred from Singroli to Jharsugda, and the respondent-wife was posted at Bilaspur and only towards discharge of marital obligations, kept on moving from her place of posting at Bilaspur to the place of her husband's posting at Jharsugda, during second pregnancy. This coupled with the background of miscarriage only few months before makes it more probable that because of second early pregnancy, after first miscarriage and movement of the respondent-wife from one place to the husband's place of posting, probably may have resulted in second unfortunate incident of miscarriage, for which, the respondent-wife cannot be blamed. There is nothing in the pleading much less in the evidence led by the appellant-husband as to how it was negligent act on the part of the respondent-wife, which resulted in miscarriage. Leveling such allegations of miscarriage on the respondent-wife, who herself suffered the agony of second miscarriage, because of difficult marital situation, does not make out any case of cruelty, but only reflects upon an unfortunate situation.

22. The pleadings and the evidence of the appellant-husband in this regard that it was because of the wife's negligence, she suffered miscarriage twice has been rejected by the learned trial Court, taking into consideration the evidence regarding frequent movement of the respondent-wife from her place of posting to the place of posting of her husband. The first miscarriage resulted soon after

the wife's movement from Bilaspur to Singroli, i.e. the place, where her husband was posted and second miscarriage took place when the respondent-wife visited the husband's place of posting at Jharsugda, where he was later on transferred. These two incidents would show that the respondent-wife was moving from one place to other in discharge of her marital obligations in state of early pregnancy and that probably resulted in unfortunate incidents of miscarriages, for which, she cannot be blamed at all, much less making out a case of cruelty on the husband. Merely because, the successive miscarriages caused mental agony to the husband, does not amount to cruelty committed by the respondent-wife on her husband, because more than the husband, it is the respondent-wife, who suffered mental agony on account of two miscarriage within a very short period of one year.

23. The evidence on record also shows that at no point of time, the appellant-husband visited Raigarh i.e. the parental house of the wife, where the respondent-wife had to go to take rest after two miscarriages. This speaks volume of the conduct of the husband that he was quite indifferent and not compassionate to give company to his wife in the moment of distress on account of miscarriage.

24. Another circumstance, as pleaded by the appellant-husband, is that though, his wife had visited Bilaspur to attend the marriage of one of her relative, she did not visit her father-in-law, who had undergone eye operation. In para 33 of the plaint, pleadings in this regard have been made that on 30-06-2017, she had gone to Bilaspur in connection with marriage, but she did not visit father-in-law, though she knew that he was going to be operated on 01-07-2017. In the written statement, the respondent-wife has pleaded that on 30-06-2017, marriage of her niece was solemnized, in which, the appellant-husband and her relatives were invited, but nobody attended the marriage and no one informed her about eye operation of father-in-law. The appellant-

husband has not led any documentary evidence of eye operation of his father on 01-07-2017 nor any other evidence or any proof of such operation led before the Court.

In the absence of there being any proof of the fact that the father of the appellant had undergone eye operation on 01-07-2017, the allegation on the respondent-wife for not meeting her in-laws at the marriage of her niece, cannot be said to be an act of cruelty on the husband, it being a trivial matter.

25. In order to make out a case of cruelty, the appellant-husband has come out with another set of pleading that his wife, without his consent, applied for and got herself transferred from Bilaspur to Raigarh.

26. It is an admitted position between the parties that at the time of marriage, the appellant and the respondent both were in employment. Further, it is nobody's case that at the time of marriage, the fact that the other spouse was in employment was suppressed.

27. In the plaint, it has been pleaded by the appellant that at the time of marriage, it was agreed to between the parties that it will be seen whether the appellant could get himself transferred to any place near Bilaspur or Raigarh and whether it would be feasible for them to continue in marital relationship with their jobs. In para 20, it has been pleaded that in order to ensure his presence near Bilaspur or Raigarh, the appellant had applied for his transfer to Jharsugda (Orissa) and in order to get such posting, he accepted Company's proposal of appellant's posting on a lower post. He was, later on, transferred and joined at Jharsugda on 16-02-2017. In para 40 of the plaint, it has been pleaded that without knowledge of the appellant or his parents or without disclosure, the respondent-wife applied for transfer from Bilaspur to Raigarh on 21-07-2017 and she was transferred from Bilaspur to Raigarh. On 21-07-2017, the respondent-wife was transferred from Bilaspur to Raigarh and for the first time, this fact was disclosed on 16-08-2017 to the appellant over mobile call.

28. To such pleadings, the respondent-wife replied that at the time of marriage, it was made clear that the respondent-wife will not leave her job, which was accepted and then only, marriage was fixed. In para 18 of the written statement, the respondent-wife has further pleaded that in the meeting of the family members held on 26-01-2017, the parties were advised to restart their new innings in the marital relationship and the respondent-wife may get herself transferred near Raigarh. In reply to the averments made in para 40 of the plaint, it has been specifically denied and pleaded that only in order to save marital life, the respondent-wife applied for and got herself transferred to Raigarh which is nearer to Jharsugda and all these matters were settled between the two families. However, by way of amendment in the plaint, a new inconsistent plea was taken in para 5 (b) that before marriage, it was agreed to between the parties that the appellant will quit his job from Singroli and obtain job at Korba and the respondent-wife will also get herself transferred to Korba.

29. It would thus be seen that as to what was agreed to between the parties with regard to posting and transfer of both the parties, the appellant has come out with inconsistent plea.

30. In the affidavit under Order 18 Rule 4 CPC, the appellant has established the second version, which was pleaded by him, by way of amendment in the plaint whereas the respondent-wife in her evidence, has stated that it was made clear between the parties before marriage that she will not give up her job.

Therefore, the respondent-wife's stand with regard to what was agreed to at the time of marriage, is consistent in her pleading and evidence and more probable that inconsistent plea taken by the husband with regard to their respective job at the time of marriage.

It is, however, quite natural that after marriage, both the parties were trying to get their posting changed in such a manner that either they get posting at the same place or in any case, they get themselves transferred to a place of

posting which is nearer to each other. While the appellant got himself transferred from Singroli to Jharsugda, the respondent-wife also made efforts to get posting near Jharsugda and applied for and got herself transferred to Raigarh nearer to Jharsugda. Even if for the sake of arguments, it is assumed that the appellant-husband did not know about the application filed by the respondent-wife for getting herself transferred to Raigarh, it is amply clear that the respondent-wife applied for transfer to Raigarh only in the month of July 2017, i.e. after transfer of her husband to Jharsugda, which is quite nearer to Raigarh. The respondent-wife not only in her pleading, but also in her evidence, has repeatedly averred that she got herself transferred to Raigarh only to save her marital relationship, so that, both the husband and wife, if cannot get transferred at one place, may at least get posting at nearby station. No objection could be taken by the appellant-husband against the respondent-wife's place of posting, because it only intended to bring about nearby posting of both of them.

Therefore, the appellant's grievance that this caused mental cruelty to him, is not only unreasonable, but completely unfair. On the contrary, it only reflects upon the mentality of the appellant that he never wanted to live with his wife, who got posting at a place, which happened to be her native place, but he always insisted wife to get herself posted at Bilaspur only where his parents were residing, even if, this causes more inconvenience to their marital life for the reason that the Bilaspur was not nearer as Raigarh to the appellant's place of posting at Jharsugda. By no stretch of imagination, it can said to be an act of mental cruelty on the part of the appellant-husband.

31. The learned trial Court has correctly recorded in para-66 of the judgment that the respondent-wife made all efforts to save her matrimonial life by frequently visiting Singroli and Jharsugda and spent most of her time with her husband despite living at Bilaspur. In para 66 of the judgment, the learned trial Court has given details of the period, during which, the respondent-wife stayed

with her husband at Singroli and thereafter, at Jharsugda between the period from 16-05-2016 to 12-07-2017. It has also rightly noted the admission on the part of the appellant in his evidence that he fully knew that his wife is posted at Bilaspur and she could not be transferred to Singroli. It is not his case that he ever made any effort to get his wife transferred from Bilaspur to a new place of posting at Jharasguda, but his wife was never willing, where the respondent-wife could not get herself transferred to another state outside the State of Chhattisgarh, because, she was working as Technician at State Government Woman Polytechnic and she could not be transferred/posted outside the State, the respondent-wife rightly made all attempts to get the place of posting within the State of Chhattisgarh nearest to the place of posting of the husband in the State of Orissa. Therefore, no grievance in this regard could be raised by the appellant-husband.

32. The manner, in which, the appellant-husband has pleaded and led his own evidence and other evidence would only show that there were certain differences, which created some kind of bitterness. Ultimately, the appellant got himself transferred to Jharsugda and came to reside with his wife up to 12-07-2017. This would mean that all earlier alleged act of cruelty were completely condoned by the husband and for this reason also, the aforesaid alleged act of cruelty, though cannot be said to be made out, were in any case, condoned and no decree of divorce on the ground of cruelty could be sought on such grounds.

33. The evidence on record would show that the appellant-husband and the respondent-wife resided together till 12-07-2017 and what triggered the appellant-husband to file suit for decree of divorce, was transfer of respondent-wife from Bilaspur to Raigarh, which was otherwise very convenient because of its proximity with Jharsugda. But it annoyed the appellant-husband because in this process, the respondent-wife got herself transferred to a place where her

parents were residing. It is therefore, clear that the appellant-husband felt unhappy, though unreasonable, as to how the respondent wife could get herself transferred to Raigarh. The appellant-husband's plea and what is stated by him in his own evidence that he was never informed regarding wife's application for transfer from Bilaspur to Raigarh is liable to be disbelieved, because the applicant's witness Smt. Rekha Tiwari, his mother, has admitted in para 46 of her cross-examination that in the family meeting, it was agreed that the appellant and his wife will get transferred to the same place, so that, they may live happy married life. Moreover, other applicant's witness Smt. Sita Tiwari, aunt of the appellant has also stated in para 10 of her evidence that the mother of respondent-wife had disclosed that the attempts are being made to get the respondent-wife transferred to Raigarh. Third witness of the applicant Smt. Santoshi Sharma has also deposed in para 8 of her affidavit that the respondent expressed that she would get herself transferred to Raigarh and also requested her husband to work at Raigarh, so that, they may live happy married life. It is thus clear that every member of the family of the appellant were fully aware about the efforts made by the respondent-wife to get herself transferred to Raigarh and it is not acceptable that the respondent-wife never made any effort to get herself transferred to Raigarh. Therefore, the appellant-husband's stand that the wife got herself transferred to Raigarh without notice and knowledge of the appellant-husband or his parents and that it amounts to cruelty has rightly been disbelieved by the learned trial Court.

34. An additional ground of cruelty was pressed into service by the appellant in view of certain averments made in the written statement, which according to the appellant, cast aspersion on his character. It has been argued before us that in the written statement, the respondent wife has made disparaging remark, casting aspersion on the character of the husband. In para 17 of the written statement, the respondent-wife has pleaded that the husband was not attending

the call of the wife and had saved picture of woman in the “Whatsapp” showing himself as Single. It has been the contention of learned counsel for the appellant that this false plea of casting aspersion on the character of the appellant-husband, in the absence of any proof, causes serious mental agony and the respondent-wife has failed to prove averments, therefore, on this ground alone, the appellant is entitled to grant of decree in view of the decision of the Supreme Court in the case of **K. Srinivas Rao vs. D. A. Deepa**¹³ and other cited decisions.

35. There is no quarrel with the settled legal position adumbrated in the aforesaid decision and other cited decisions which has been relied upon by the learned counsel for the appellant that scandalous, vulgar and defamatory statement against one spouse by other may cause mental agony. However, in the present case, firstly, what was stated by the respondent wife does not constitute any serious allegation casting aspersion on the character of the husband of such a degree that it would constitute mental cruelty.

36. On the other hand, the respondent-wife, in her pleading, has clearly stated in para 13 of affidavit. In the cross-examination, this statement on affidavit remained uncontroverted there being no suggestion that no such posting was given by the husband. Therefore, on the basis of uncontroverted testimony, no case is made out to show that because of any serious allegation, scandalous in nature, casting aspersion on the character of the husband, that by itself, would constitute cruelty and therefore, ground for granting a decree of divorce.

The learned trial Court has recorded a finding that the wife stayed with the husband at both the places of posting at Singroli and Jharsugda, whereas there is no evidence led by the appellant that he ever visited Raigarh to see his wife during her stay at Raigarh, particularly when she was on bed rest after unfortunate incident of miscarriage.

¹³ (2013) 5 SCC 226

37. Having thus examined the pleadings and the evidence led by both the parties and the judgment passed by the learned trial Court, we do not find that the appellant has been able to prove any incident, which caused cruelty, judged by well settled standards referred to hereinabove by this Court, after survey of various decisions of the Supreme Court. We are unable to hold that the conduct of the respondent-wife would constitute cruelty so as to entitle the appellant-husband to seek decree of divorce. In the decisions which we have referred hereinabove, it is consistently held that the cruelty must be something more serious than "ordinary wear and tear of the married life". It cannot be decided on the basis of hyper sensitivity of the spouse, but it has to be judged on the basis of course of conduct, in general, dangerous for spouse to live with the other. Furthermore, to constitute cruelty, the conduct complained of should be grave and weighty so as to come to the conclusion that the appellant/spouse cannot be reasonably expected to live with the other spouse. Before conduct can be called cruelty, it must touch a certain pitch of severity. Mere trivial dispute/quarrel between the parties may not amount to cruelty.

Instead of feeling satisfied with transfer of wife to Raigarh, bringing her nearer to husband's new place of posting at Jharsguda, the husband has acted in unreasonable manner to set it up as an act of cruelty, merely because Raigarh is a native place of the wife and that she is no longer interested to reside at Bilaspur, where parents of the appellant-husband were residing. It also exposes the mind set of the appellant that while he remained posted at different places, he always wanted that the wife should continue to reside at Bilaspur where his parents are residing, even though, wife is getting posting at a place which is nearer to new place of posting at Singroli. Thus, decree of divorce on such grounds can never be granted.

38. In the result, we do not find any good ground to interfere with the judgment and decree of the Court below in dismissing the suit of the

appellant/plaintiff. The appeal is accordingly dismissed. Appellant shall bear and respondent shall be entitled to cost of litigation in suit as well as appeal. Let appellate decree be drawn accordingly.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Vimla Singh Kapoor)
Judge