

**HIGH COURT OF CHHATTISGARH, BILASPUR****FA(MAT) No. 8 of 2020**

- Smt. Nalini Mishra W/o Surendra Patel Aged About 34 Years R/o House No. 50, Side Of Asina Green City Apartment, Near Durga Temple, Clay Castle Colony, Infront Of Kamal Vihar Gate, Old Dhamtari Road, Dunda, Raipur Chhattisgarh

---- Appellant**Versus**

- Surendra Kumar Patel S/o Shri B. P. Patel Aged About 32 Years R/o Janpad Panchayat Kurud, Sub Engineer, District Dhamtari Chhattisgarh

---- Respondent

For Appellant : Shri Shishir Shrivastava, Advocate

For Respondent : Shri C. Jayant K. Rao, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Hon'ble Shri Justice Radhakishan Agrawal

Judgment on Board

Per Goutam Bhaduri, J.

18/08/2022

Heard.

1. The instant appeal is against the judgment and decree dated 17.12.2019 passed in H.M.A. 677/2017 by the learned family Court, Raipur, whereby the application filed by the husband seeking divorce on the ground of cruelty was allowed. The present appeal is by the wife.
2. The brief facts of the case are that the husband leveled allegation that the marriage in between the parties solemnized on 31.10.2010 and out of the said





wedlock a child was born. Thereafter, with the passage of time, it is alleged that the wife used to spent money as per her own choice and the visit of the husband to his parents was objected & eventually stopped. It is stated whenever he wanted to visit his parents, the wife used to abuse him resulting into stoppage of meeting of the husband with his parents. It was further alleged that without the consent and permission of the husband she went to a place called Belpahad for her business at Mahanadi coalfield for the business of coal shifting and when the husband tried to intervene, he was abused and insulted. The respondent/husband further alleged that the wife used to take away the entire salary of the husband and used to spent in her business and if a query was made about the expenses, it was reciprocated with the abuses. It is alleged that the wife procured 5 vehicles on loan without the consent of the husband and she deliberately stopped to discharge her household responsibilities including taking care of the child. It is stated that even the husband was stopped to attend the marriage of his real brother and the maternal sister of the husband when wanted to visit their place to appear in an examination from outside, the wife alleged illicit relation of the girl with the husband. It was further alleged that the husband is having an illicit relation with an office colleague. In a result, the husband on different occasions made a police report explaining the facts.

3. It is further alleged that at one occasion the wife had surreptitiously stolen away the valuable papers which were kept in the car and the report having been made about such theft, after CCTV footage when it was discovered that the wife had done this, she was arrested in a criminal case. Referring to a particular





date, it is stated by the husband that the wife used to abuse and bald allegations were made against the husband and even at a point of time she assaulted the younger sister of the respondent, therefore, on various grounds, the husband sought decree of divorce.

4. The wife in turn in reply contended that she had never misbehaved with the husband and has not committed any cruelty but it was at the behest of the husband after an affair, they entered into a wedlock. She further stated that the husband knowing fully well that she is a widow, the marriage was performed. She further stated that because of the wish and will of the husband, she underwent a surgery to conceive the child and thereafter child was born. It is further stated that after birth of the child, the behaviour of the husband became strange and for the some reason or the other he wanted to separate. Therefore, on false allegations and grounds, the application for divorce was filed.

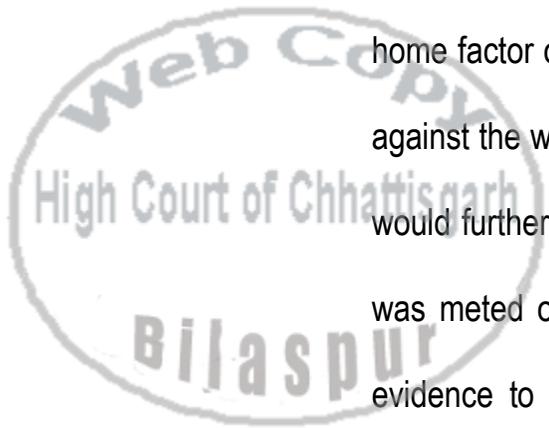
5. Learned family Court framed issue on the ground that whether the husband was treated with cruelty by wife or not. On behalf of the husband/respondent, two witnesses were examined namely Surendra Kumar Patel i.e. the husband himself as PW-1 and sister of the wife namely Rohini Mishra (PW-2). Whereas on behalf of the wife, she examined herself as DW-1 and one witness Ananda Pathak, another sister. The learned family Court after evaluating the facts & evidence, allowed the application of the husband, thereby decree of divorce was granted. Being aggrieved by such judgment and decree, the present appeal is by the wife.





6. Learned counsel for the appellant/wife would submit that the learned family Court failed to appreciate the fact that the wife was treated with cruelty by the husband and the evidence as adduced by the husband would not prove that the husband was treated with cruelty by the wife. It is further submitted that the wife wanted to live with the husband along with child but on the some reason or the other, the husband do not want to stay with the wife. He further submits that the wife is financially independent and the allegation of the husband that the wife was interested on the money of the husband is completely falsehood. Referring to the statement of the wife and the cross-examination of the husband, he would submit that the reading of the two statements do not bring home factor of cruelty and only for the reason that one real sister has deposed against the wife, the family Court fell into error to hold the factum of cruelty. He would further submit that the statement of the wife would show that the cruelty was meted out by the husband to her and the husband tried to create false evidence to get the divorce. Consequently, the finding of the Court below requires interference.

7. Per contra, learned counsel for the respondent would submit that the different reports made over a different point of time in the year 2017 before the police would show the state of affairs in between the parties. He would further submit that not only the character assassination of the husband was made with allegation of extra marital affair but the wife went to the extent of going to the office of the husband to create a scene and also sent letters to the Chief Minister for his transfer. He would further submit that even the allegation of illicit relation with the cousin sister was also made when she came to their





house to appear in an examination, which would show the mental status of the wife. Besides the husband was being treated with cruelty both physically and mentally as physical assault was also made at many point of time, therefore, the cumulative reading of the evidence produced would show that the finding arrived at by the learned family Court is well merited which do not call for any interference.

8. We have heard learned counsel for the parties at length and perused the respective statements and documents exhibited.
9. In order to find out the cruelty apart from a physical cruelty, mental cruelty has

been defined by the Supreme Court in the case of **Samar Ghosh Vs. Jaya Ghosh** {(2007) 4 SCC 511} which are reproduced herein below:-

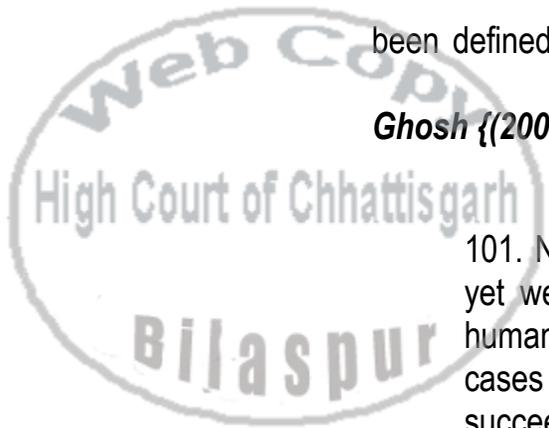
101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused





by the conduct of other for a long time may lead to mental cruelty.

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

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

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

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

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

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

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





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

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

10. In the backdrop of facts, we would like to deliberate upon evidence to find out whether sufficient evidence exist over the cruelty as against the husband. The husband Surendra Kumar Patel was examined as PW-1. As per the statement, both of them met in the year 2009 thereafter fell in love and got married on 31.10.2010 is not in dispute. It is further stated that after marriage, the entire salary of the husband was being taken away by the wife and she used to spend money according to her own choice and will. He further stated that whenever he wanted to visit his parents, it was objected by the wife and even hurled severe abuses. He stated that as a result of it, there was a complete stoppage of meeting of the husband with his parents. He further stated that even giving the entire salary part to the wife, she demanded more money for her business as she was engaged in a coal handling business and on her pressure, the husband took a loan of Rs.5 Lakhs from his friends to procure the vehicle for the business of wife. Narrating an incident of 09.12.2016 it is deposed that the marriage of the brother of the respondent was fixed and he went to attend the marriage, but over the phone he was abused severely, he had to leave the procession of marriage in the mid way and had to come back. He further stated that when he came back at that time she also started abusing to the extent that





the neighbors had to intervene to console.

11. Further narrating an incident it is stated that the cousin sister of the respondent namely Shweta had to come to Raipur to appear in a P.S.C. exam and the respondent being brother asked her to stay in their house. However, when she came, the wife made allegation of illicit relation in between them and abused. Subsequently, she made a complaint to the office that the husband has an illicit relation with a lady colleague of the office and when he wanted to console, threat was extended that he would be inculpated in a criminal case. It is further deposed that because of the torture meted out, the earlier husband of the appellant got separated and eventually he died. Narrating the further incident of 03.05.2018, it is stated that when the respondent after parking his car in the office went along with higher officials for some official work and when came back he found the door of the car opened and it was observed that the important papers from the car were stolen which includes ATM Card, Adhar Card etc. along with official important documents, for which on the basis of CCTV footage a report was made and it was found that it was the wife who had stolen the said documents, for which she was arrested for the offence under Section 379 IPC and subsequently was released. It is stated that in order to damage the reputation and causing harm to the husband, the wife had done such act.

12. In order to prove the allegations, the documents which are exhibited are seen. Ex. P-1 is a document which is a report made by the husband on 03.08.2017 to the Mahila Thana, which is a complaint made by the respondent against the appellant wherein it is reported that the appellant extends threat to kill the

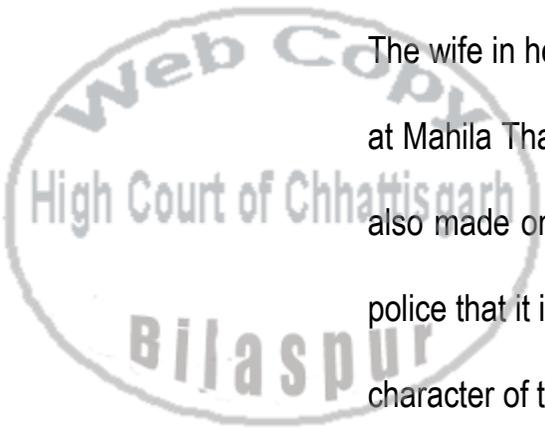




respondent, child and herself. Reading of it would show that the husband made a complaint that on a trivial issue the wife used to abuse & assault him. The documents further purport that he was advised not to talk to any lady colleague in the office and the report also shows that he was physically assaulted. The wife in her statement at para 22 admitted the fact that such report was made by the husband. The another document Ex. P-2 is a memo of the police under Section 155 of the Cr.P.C. Reading of it would show that the wife used to assassinate the character of the husband and further she used to go to the office and many complaints were made by the husband but the police found it a non-cognizable offence and advised the respondent to approach to the Court.

The wife in her statement volunteered that on 21.11.2017 counseling took place at Mahila Thana and she had been there. Likewise, another report Ex. P-3 was also made on 04.11.2017, reading of it would show that it was reported by the police that it is a non-cognizable offence, wherein the wife had assassinated the character of the husband.

13. The document Ex. P-4 is a report made to the Chief Minister. The husband alleged that it was written by the wife. The wife in turn when was confronted with such letter dated 03.07.2019 she denied to have signed it. In the deposition memo and the affidavit, the signature of the wife is appended. When the signature of Ex. P-4 is compared with the signature of the affidavit and the deposition sheet, it prima facie shows that it is one and same. Therefore, in exercise of power under Section 73 of the Evidence Act by comparison of the signature, we hold it that there is no ambiguity or any slightest deflection that Ex. P-4 was signed by the wife Nalini. The contents of Ex. P-4 would show that





it was alleged that the husband is keeping an illicit relation with a lady named Nagma Fatima, therefore, request was made to transfer the husband from his present place of posting. The contents of this averment are further lamented in the statement of the wife in para 41 of the cross-examination, wherein she stated that the husband was keeping an illicit relation with a third lady outside the marriage, as such she was left by husband. Except this oral allegation, which is denied by the husband, nothing is on record to substantiate the allegations.

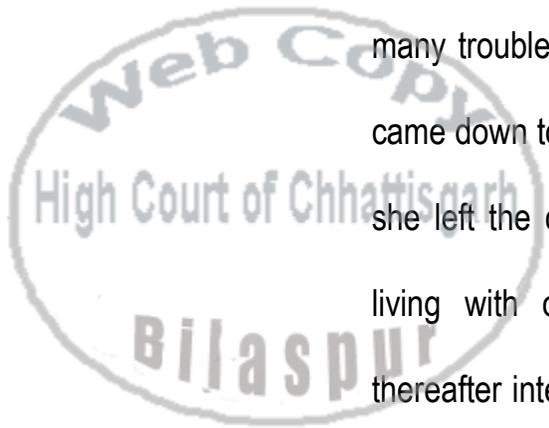
14. In a matter of extra marital affair allegation, the Hon'ble Supreme Court dealing with the said issue in the matter of **Narendra Vs. K. Meena**, reported in AIR 2016 SC 4599 redirected the view taken in the matter of **Vijay kumar Ramchandra Bhate V. Neela Vijay kumar Bhate**, reported in AIR 2003 SC 2462 and held that when the assassination of character is made by either of the parties it would constitute a mental cruelty for which a claim for divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 would be sustainable. The Hon'ble Supreme Court held thus at para 13 :

“13.....The position of law in this regard has come to be well-settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that



no exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible.”

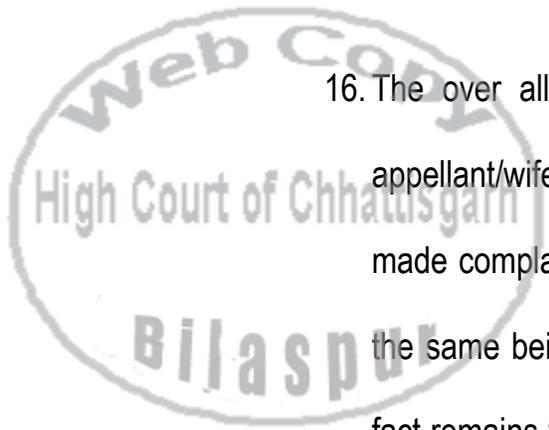
15. Apart from the aforesaid evidence Rohini Mishra, the real sister of the wife was examined as PW-2 and she deposed in favour of the husband. In her statement she deposed that Nalini, her sister, is an angry and quarrelsome lady. She started living separately with her earlier husband after living with him for two years at Odisha, whereby the first husband Paresh Vishwakarma landed in many troubles and suffered illness and eventually died. Thereafter, her sister came down to Raipur along with his son and was staying with them. Thereafter, she left the children in the custody of the sister and her mother and started living with one Umesh at place Changorabhatha. The family members thereafter intervened and she again came back and started work of contractor. Thereafter, she started living with one Manoj Dwivedi, who used to help her in her contractor business. Subsequently, they stayed for more time and thereafter got separated and thereafter when she got a job of drain construction work contract at Bilaigarh and Kasdol, she came in contact with Surendra. Subsequently, she was married in the year 2010. She further deposed that she used to abuse on trivial issues even to the cousin sister of Surendra Patel and the lady staff in the office and used to doubt the character of them. She further stated that the sister Nalini at many times used to go to the office of her husband and made all noise & create a scene and used to complain. She accompanied with her at some times, subsequently she stopped joining with





her. She further stated that when the cousin sister came to appear in an examination, she was thrown out on the ground that the husband has illicit relation with her. She further deposed that whenever she used to suffer loss in business, she used to ask money from the husband and if refused, she used to abuse and create all scene, therefore, the husband was forced to pay the amount. In the cross-examination of this witness, the averments made in the examination-in-chief has not been diluted. Instead narrating an incident of 03.08.2017, she has stated that when she was called by her sister when she went to her in-laws place, she saw that her sister was abusing her mother-in-law.

16. The over all assessment of the evidence, therefore, would show that the appellant/wife used to abuse the husband on trivial issues of which the husband made complaint many times, which is proved by Ex. P-1, P-2 & P-3, however, the same being non-cognizable, the police did not take cognizance of it. The fact remains that the husband made complaint to the police about the rash and abusive behaviour coupled with the fact that the complaint was made that he was physically abused with the scratches on his neck. The statement of Surendra Kumar Patel (PW-1) read with Ex. P-4 supported by statement of Rohini Mishra (PW-2) would show that the wife has made void allegation of illicit relationship of the husband with a lady outside the marriage and even a complaint was made by the wife to the Chief Minister to transfer the husband from a particular posting in the office with allegation of illicit relations. Apart from it, the statement of Surendra Kumar Patel (PW-1) & Rohini Mishra (PW-2) it is established that the wife used to visit the office of the husband and create





scene with abusive language. In such a situation when a wife goes to the office premises of the husband, abuses him and accuses him of certain relation, naturally it would result into diminishing the image of the husband before the colleagues and the office stature will certainly go down. Except such oral bald allegation by the wife, the allegation could not be established. Even it is stated that the wife used to abuse the in-laws and stopped the husband to meet his parents, which would also amount to cruelty. To pull back the husband to attend the marriage procession in the mid way, whereby the husband was forced to leave the marriage of his younger brother is also an unnatural cruel act. Such act would bring down the image and the prestige of a family in the public hke, which may also amount to cruelty.

17. Taking into over all evidence, we are of the opinion that the judgment and decree passed by the learned Family Court do not require any interference and we affirm the finding arrived at by the family Court.

18. In a result, the appeal fails and is dismissed.

Sd/-

(Goutam Bhaduri)

Judge

Sd/-

(Radhakishan Agrawal)

Judge



HEAD NOTE

(i) Complaint by wife against husband to Minister claiming a transfer of husband on the ground of illicit relation with a lady colleague without any substance would amount to cruelty.

(ii) Frequent visit by wife to the office of the husband and create a scene with abusive language would amount to cruelty.

(i) पत्नि द्वारा पति के विरुद्ध मंत्री से शिकायत, बिना किसी तथ्य के एक महिला सहकर्मी के साथ अनैतिक संबंध के आधार पर पति के स्थानांतरण का दावा करना कूरता की श्रेणी में आएगा।

(ii) पत्नि का पति के कार्यालय में बार-बार आना तथा अभद्र भाषा के साथ माहौल खराब करना कूरता की श्रेणी में आएगा।

