IN THE HIGH COURT OF JUDICATURE AT PATNA

Nisha Gupta

v

Uday Chand Gupta

Miscellaneous Appeal No. 5 of 2018

25.08.2023

(Hon'ble Mr. Justice P. B. Bajanthri and Hon'ble Mr. Justice Jitendra Kumar)

Issue for Consideration

Whether the Appellant-Defendant-Wife treated the Respondent-Plaintiff-Husband with cruelty?

Headnotes

If the alleged cruelty, committed on behalf of the wife, was true, it is not explained why the husband waited for nine years to file the divorce petition on the ground of cruelty. It is the husband, who does not have any concern for his wife rather than wife is not having concern for the husband. (Para 66, 68)

As far as allegation that wife used to threat her husband to lodge criminal case, there is no cogent evidence and even otherwise if any offence is committed against anybody, the victim has every right to initiate criminal proceeding - Husband used to beat his wife when she opposed his illicit relationship with other lady. Even the son of the parties has deposed that his father used to beat his mother and even he applied electric current to her. Threat to exercise legal right cannot be held to be cruelty. It is not a case of the husband that the Wife used to extend threat to lodge false criminal case or she has lodged any false criminal case. (Para 69)

As far as allegation of selling wheat, rice and other grains, utensils and ornaments by the wife is concerned, there is no such cogent evidence. Even otherwise, selling grains and her ornaments cannot amount to cruelty. (Para 70)

As far as allegation that wife threatened her husband to kill with the help of anti-social elements is concerned, there is no cogent evidence . Wife is a Pardanaseen lady and obviously she cannot have any contact with any anti-social elements or criminals. Even otherwise, no specific instance with reference to date and place of such threatening has been given in his evidence. (Para 71)

As far as allegation of husband that on several occasions he fell ill and admitted in clinic , but the wife never came to see him, there is no evidence. The husband has not pleaded dates and nature of his illness and when he was admitted in hospital. He has also not proved that his wife was aware of his illness and she failed to visit him. (Para 71)

Husband is not entitled to decree of divorce against the Appellant-Defendant-wife, because he has failed to prove the ground of cruelty.Appeal is allowed. (Para 73, 74)

Case Law Cited

Dr. Narayan Ganesh Dastane v. Sucheta Narayan Dastane, **(1975) 2 SCC 326**; Shobha Rani v. Madhukar Reddi, **AIR 1988 SC 121**; A. Jayachandra v. Aneel Kaur, **(2005) 2 SCC 22**; Samar Ghosh v. Jaya Ghosh, **(2007) 4 SCC 511**; Vinita Saxena v. Pankaj Pandit, **(2006) 3 SCC 778**; Ravi Kumar v. Julmi Devi, **2010 SCCR 265**; Ramchander v. Ananta, **(2015) 11 SCC 539**; Gananath Pattnaik v. State of Orissa, **(2002) 2 SCC 619**; Mrs. Rita Nijhawan v. Mr. Bal Krishna Nijhawan, **ILR (1973) I Delhi 944**; Mohandas Panicker v. Dakshayani, **2013 SCC Online Ker 24493**; Harbhajan Singh Monga Vs. Amarjeet Kaur, **1985 SCC OnLine MP 8**; Smt. Uma Wanti v. Arjan Dev, **1995 SCC OnLine P & H 56**

List of Acts

Hindu Marriage Act, 1955

Family Courts Act, 1984

Indian Evidence Act, 1872

List of Keywords

Divorce

Cruelty

Mental cruelty

Hindu Marriage Act

Family Court

Matrimonial discord

Standard of proof

Pardanashin woman

Intimacy and infidelity

Cross-examination

Abuse and desertion

Case Arising From

Divorce Case No. 72 of 2008 before the Principal Judge, Family Court, Nalanda at Biharsharif

Appearances for Parties

For the Appellant: Mr. Sudish Kumar, Advocate

For the Respondent: Mr. Shashank Chandra, Advocate

Headnotes Prepared by Reporter:

Amit Kumar Mallick, Adv.

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.5 of 2018

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Nisha Gupta Daughter of Late Mathura Prasad, wife of Sri Uday Chand Gupta resident of Mohalla Jhing Nagar PS Bihar District Nalanda.

... ... Appellant/Defendant

Versus

Uday Chand Gupta Son of Guru Prasad Sao resident of Mohalla Jhing Nagar PS Bihar District Nalanda.

... ... Respondent/Plaintiff

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Appearance :

For the Appellant/s : Mr. Sudish Kumar, Advocate

For the Respondent/s : Mr. Shashank Chandra, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 25-08-2023

The present appeal has been filed under Section 19(1) of the Family Courts Act, 1984 impugning the judgment dated 07.10.2017, passed by Ld. Principal Judge, Family

Court, Nalanda at Biharsharif in Divorce Case No. 72 of 2008, whereby the petition filed under Section 13 of the Hindu Marriage Act on 29.07.2008, praying for decree of divorce dissolving the marriage between the parties, has been allowed dissolving the marriage between the parties by decree of divorce.

2. The case of the Respondent-Plaintiff, as per the pleadings, is that the Respondent-Plaintiff was married with the Appellant-Defendant on 10th July, 1987 as per Hindu rites and customs. Since the marriage, they lived together as husband and wife and out of wedlock two sons were born. The elder son, namely, Narendra Bharti was born on 16th May, 1991 and the younger son, namely Aditya Kumar was born on 15th of August, 1998. It is further averred that after birth of second son, the nature of the Appellant-Defendant-wife got completely changed and she always used to quarrel with the old mother of the Respondent-Plaintiff-husband. It is further averred that she used to leave her husband's house without any information and when the husband or his mother asked, she used to use filthy language against husband and his mother and she was not ready even to talk with them. She was also not ready to prepare meal and she had left everything with his old

mother as a result, the life of the husband became hell. It is further averred that there was no cohabitation since 1999 till date, hence the wife had deserted the husband continuously for ten years. It is further averred that since 1999, the wife treated the husband with cruelty, which is apparent from the following facts - (i) the wife was making food after taking all material separately and was not ready to prepare food for husband and she always used to quarrel with him, which forced the petitioner to live separately at upper floor of the house and the wife is living at the ground floor having no concern with each other. So the husband started taking food in the hotel. When she left the house for 4 and 5 months continuously, in that situation, the Respondent-Plaintiff was making food for himself and for his minor sons, but when the wife came, she forced her sons not to talk with his father and due to fear from wife, the sons could not dare to talk with the Respondent-Plaintiff. (ii) Although the Appellant-Plaintiff was maintaining his two sons giving all expenditure, the wife always used to threaten the husband to lodge criminal case against him and always went to local police station for lodging of false case. (iii) The Appellant-Defendant-wife sold rice, wheat and other grains from the fields of the husband behind his back and also

sold all the costly utensils of silver and brass worth ₹60,000/- and also sold the entire gold and silver ornaments which was given by the husband on the occasion of the marriage and when Respondent-Plaintiff said anything, the wife used to abuse him. (iv) The wife threatened the husband to kill him with the help of anti-social elements. Hence it is impossible for the husband to live with his wife. (v) On several occasions, the husband fell seriously ill and admitted in Prashant clinic at Bharaoper, but the wife never came to see him.

3. It is further averred that the husband tried his best, but ten years have passed and the wife never cared or was ready to live with the husband. It is also averred that the husband has not filed any matrimonial case prior to the present one.

4. On notice, the Appellant-Defendant had appeared before the learned Family Court and filed her written statement. In her written statement, she has admitted her marriage and birth of two children out of wedlock. But she has denied all other allegations made against her. It is claimed by the Appellant-Defendant-wife that the Respondent-Plaintiff is an agent of an Insurance business and he is also an active member of RSS and BJP and high office holder. Consequently,

he has developed intimacy with some beautiful ladies, one of them is from Rajgir and she was frequently taken by the husband to his house and on objection raised by her, her husband used to beat her and on account of that relationship, he used to come home late in night and he was indifferent towards her and stopped taking interest in her. However, whenever, he came to her, she welcomed him and it is wrong to say that there is no cohabitation for last ten years. She further averred that she does not know the name of the lady with whom, her husband has intimacy, but she knows her face and this divorce petition has been filed with intent to marry her. It is also averred that the husband has deserted not only her but even his two sons also. He does not cooperate with them, nor meet their expenses for education and that is why elder son was forced to drop his studies after passing Intermediate examination. It is also claimed that whenever his younger son asked for clothes and other essential items and books, he used to beat him. It is also claimed that on account of his political life as an active member of RSS and BJP, local police station has gone in connivance with him and does not lodge a case against him. She has also claimed that she is a Pardanaseen lady and she does not go outside, hence there is

no question of having any contact with any antisocial elements and there is no question of making any attempt to kill her husband with the help of criminals.

5. It is also averred that she is always ready to live with him and the fact is that the husband himself has ill design to get rid of her on account of illicit relationship with other lady. It is also averred that her husband used to harass her in different ways like beating and depriving her of food and house hold items and not allowing neighbouring lady to talk to her so that she feels lonely. It is also averred that the husband himself shifted to other floor of the house and does not allow the wife and sons to come to that floor where he used to live and he frequently resides away from house and whenever he comes, he comes late in night and till then the wife waits for opening the door and whenever she gets late in opening the door on account of her falling asleep, her husband used to beat her. It is also averred that whenever she goes outside the house for offering Puja in temple, the husband immediately closes the door and on her return, he does not open the door without making undue delay. It is further claimed that the husband used to earn ₹12,000/- per month as commission from Insurance business and ₹5,000/- per month

from business of lending money. He has also ancestral landed property having income of ₹2 lacs per annum from cultivation and despite such income, he does not maintain the wife and his sons.

6. On the basis of pleadings of the parties, the following issues were framed:

" (i) Whether the suit is maintainable.
(ii) Whether the Plaintiff has cause of action to the file plaint.
(iii) Whether the Defendant is legally wedded wife of the Plaintiff.
(iv) Whether the Defendant treats the Plaintiff with cruelty.
(v) Whether the Plaintiff is entitled to decree of divorce.
(vi) Whether the Plaintiff is entitled to any other relief."

7. The Respondent/Plaintiff has examined the following five witnesses in support of his plaint during the trial :

i) **P. W-1-** Dilip Kumar Singh on 14.07.2009

ii) **P.W. -2 –** Parasnath on 15.02.2010

iii) **P.W.-3-** Parashuram Kumar on 24.02.2010

(iv) **P.W.-4 -** Vinod Kumar on 15.03.2010

(v) **P.W.-5-** Uday Chand Gupta on 26.03.2010

8. Dilip Kumar Singh, who has been examined as PW-1, is acquainted with both the parties and in his examination-in-chief filed by way of affidavit, he has deposed that the wife of the Respondent-Plaintiff is of angry nature and she behaves with her husband with cruelty and neglect and she used to go *mayake* and other places without any information or permission of her husband. Sometimes, she used to go for months, leaving the little sons resulting in hardship and mental tensions of her husband. When asked by the husband, she used to abuse him. In his cross examination, he has deposed that the Defendant-Wife is of angry nature. He has also deposed that he had gone to the house of the Plaintiff/Respondent 8 years back and he had visited his house several times. He has further deposed that the husband is a rich man having 10-12 bigha of land and he is also working as an insurance agent. He has denied the suggestion that he has deposed falsely regarding the nature of the wife of the Respondent Plaintiff.

9. Parasnath, who has been examined as P.W-2 is acquainted with both the parties and in his examination-in-chief

filed by way of affidavit, has reiterated the statement as made by the Plaintiff/Respondent in his petition. In his cross examination, he has admitted that he does not know the name of the landlord of the house where the parties live. He is also not in a position to tell the name of the people living in the adjoining houses. He has denied the suggestion that the parties live in their own house and not in a rented house. He is also not in a position to say anything about the education of the children. He is also not in a position to say whether the parties are separate in mess. He has also denied the suggestion that he has deposed falsely.

10. Parashuram Kumar- who has been examined as PW-3, is acquainted with both the parties and he is a friend of the Respondent-Husband and in his examination-in-chief filed by way of affidavit, has reiterated the statement as made by the husband in his petition for divorce. In his cross examination, he has deposed that the husband is living separately from his mother for about 10-12 years and his mother is living with her other son, Shivratan Prasad Gupta. He has further deposed that

the elder son of the parties was studying in Ranchi after passing Matric examination, but he does not know where he is studying at present. Both the sons are living with their mother. He has further deposed that the Respondent/Plaintiff is presently living away from his home. He has also deposed that he does not know whether education of the elder son is hampered on account of non-payment of the expense by the Plaintiff-Father. He has also deposed that he has not seen the Defendant- Nisha Gupta selling wheat, rice etc., but he has heard it from the Plaintiff, Uday Chand Gupta. He has further deposed that for 5 years, Uday Chand Gupta is not going home and there is no relationship of husband wife between the parties.

11. Vinod Kumar, who has been examined as P.W.-4, is also acquainted with both the parties and he is a friend of the Plaintiff/Respondent and in examination-in-chief filed by way of affidavit, he has reiterated the Statement as made in the petition for divorce. In his cross examination, he has admitted that the Plaintiff/Respondent is his friend, though he is not a relative. He has further deposed that presently the

Respondent/Plaintiff is living in the office of RSS and he along with the Plaintiff/Respondent is a member of RSS. He has further deposed that elder son, Narendra is doing a job in Delhi as he has heard, but he has denied the suggestion that he is not doing any job and he has been ousted by the Plaintiff/Respondent. He has further deposed that the younger son, Aditya is studying in Career Public School at Ranchi. But he is not aware who maintains his expenditure but he has also denied the suggestion that it is maintained by parental family members of the Defendant-Wife. He has further deposed that the Plaintiff/Respondent is an LIC agent and has monthly income of Rs. 8-10 thousand and the Plaintiff/Respondent also has landed property of 5-7 bighas. There is no other significant Statement made by the witnesses in his cross examination.

12. Uday Chand Gupta, who is the Plaintiff/Respondent himself has been examined as P.W.-5 and in his examination-in-chief, filed by way of affidavit, he has reiterated the Statement as made in the divorce petition. In his cross examination, he has deposed that the wife is still living

in his house and her elder son, Narendra is doing a job in Delhi but he does not know in which department he is doing job. He has also deposed that his second son, Aditya is studying in Career Public School at Ranchi. He has also deposed that presently, he is residing in RSS office. He has further deposed that the wife and children do not live with him. He has further deposed that he is an LIC agent but such business is over. However, he has income from the old policy by way of commission. He is on talking terms with his brothers and mother. He has also further deposed that for about 10 years, he is not on talking terms with his wife. He has denied the suggestion that prior to filing the divorce petition he was on talking terms with his wife and he had a conjugal relationship with her and only after going to the rented house his conjugal life has ended. He has also denied the suggestion that he is linked with a political party.

13. The Appellant/Defendant has examined the following four witnesses in support of her defence during the trial :

i) **D.W.-1 -** Nisha Gupta on 12.05.2010

ii)**D.W.-2-** Suresh Prasad Gupta on 28.07.2011

iii) **D.W.-3 -** Ashok Kumar on 19.05.2012

iv) **D.W.-4-** Aditya Kumar on 24.05.2012

14. Nisha Gupta who has been examined as DW-1, is the Defendant/Appellant herself and in her examination-in-chief, filed by way of affidavit, she has reiterated the Statement as made in her written statement. In her cross examination, she has deposed that after marriage, the relationship with her husband was good till 2006 and thereafter, the relationship deteriorated as the husband used to beat her. She has however deposed that she has been living separately from her husband since 2008. She lodged a case in the police station but under the pressure of her husband it was not acted upon. She has not filed any harassment case in the Court. She has been living in her *sasural* house. Her husband used to come to home but where he lives is not known to her. One son has left his studies, the second son is studying and the expenditure of his studies is being met by the family members

of her parental house. She doesn't know the name of the lady with whom her husband has an intimate relationship but she can identify her by face. She also does not know the name of the lady of Rajgir who used to come to his house. She is living in her Respondent-Husband's house with her children and husband is not living with her. Whenever the Respondent-Husband used to beat her, he got her treated and she can show the documentary proof to prove that her hands were broken. He has lodged the case before the police but not in the Court. No other significant statement has been made by her during deposition.

15. Suresh Prasad Gupta, who has been examined as DW-2, is also acquainted with both the parties and is the blood brother of the Defendant-Wife and brother-in-law of the Plaintiff and in his examination-in-chief, filed by way of affidavit he has reiterated the Statement as made in the written statement. Despite the opportunity given to the Plaintiff/Respondent, he has not been cross examined.

16. Ashok Kumar, who has been examined as

D.W.-3, is also acquainted with both the parties and in his examination-in-chief, filed by way of affidavit he has reiterated the Statement as made in the written statement. In his cross examination, nothing significant has been deposed by him.

17. Aditya Kumar, aged about 15 years has been examined as D.W.-4, who is the son of the Appellant and Respondent and in his examination-in-chief, filed by way of affidavit, he has reiterated the Statement as made by her mother in her written statement. In his cross-examination, he has deposed that prior to 2006, the relationship between his mother and father was good and his father lives in his own house and not in a rented house. He has also deposed that his father does not want to live with his mother and he used to beat her and even applied electric current to her. It is also deposed that the expenditure of her mother is met by her brother. This witness has not deposed any other significant thing worth notice.

18. After hearing the rival submissions of both the

parties and consideration of evidence on record, Ld. Family Court allowed the petition of the Respondent/Plaintiff finding that the Appellant/Defendant-Wife had treated the Respondent/Plaintiff-Husband with cruelty.

19. Ld. Counsel for the Defendant/Appellant vehemently submits that Ld. Family Court has failed to properly appreciate the evidence on record and erroneously found that the Appellant-Defendant-Wife had treated the Respondent/Plaintiff-Husband with cruelty, granting decree of divorce in favour of the Respondent/Plaintiff-Husband. He refers to evidence on record and submits that as per the evidence , in fact, it is the Respondent/Plaintiff-Husband, who has treated the Appellant-Defendant-Wife with cruelty and the Respondent/Plaintiff-Husband is not entitled to decree of divorce against the Appellant-Defendant-Wife. A grave injustice has been done to the Appellant-Defendant-Wife by the Impugned Judgment. Ld. Counsel for the Respondent, however, supports the impugned judgment as passed by Ld. Family Court.

20. In view of the aforesaid facts and circumstances and submissions on behalf of both the parties, the following two points arise for consideration of this Court :

i) Whether the Appellant-Defendant-Wife has treated the Respondent/Plaintiff-Husband with cruelty ?

ii) Whether the Respondent/Plaintiff-Husband is entitled to decree of divorce against the Appellant-Defendant-Wife ?

21. Before we proceed to discuss the points arising for consideration, it is imperative to see case laws or authoritative Judicial Pronouncements regarding Burden of Proof and Standard of Proof in matrimonial cases.

22. Hon'ble Supreme Court has elaborately discussed the nature of **burden of proof** in matrimonial cases in **Dr. Narayan Ganesh Dastane Vs. Sucheta Narayan Dastane** as reported in **1975 (2) SCC 326** and law laid down herein is still holding the field. In para 23 of the case, **the Hon'ble Apex Court** has observed that, doubtless, the burden must lie on the petitioner to establish his or her case for, ordinarily, the burden lies on the party which affirms a fact, not on the party which denies it. This principle accords with commonsense as it is so much easier to prove a positive than a

negative. The petitioner must therefore prove that the respondent has treated him with cruelty.

23. Coming to the **Standard of Proof**, we find that some misconception had arisen on account of the use of the words “Matrimonial Offences” to describe the misconducts of Defendants under the Hindu Marriage Act. That is why before authoritative decision of **Hon'ble Full Bench of the Supreme Court** in **Dr. Narayan Ganesh Dastane Vs. Sucheta Narayan Dastane** as reported in **1975 (2) SCC 326,** there were conflicting views. As per one view, matrimonial cases are of civil nature and hence standard of proof in such cases would be preponderance of probabilities whereas, as per the another view, proof beyond reasonable doubt should be standard of proof in matrimonial cases in view of the use of word “matrimonial offences” in Hindu Marriage Act. However, in **Dr. Narayan Ganesh Dastane case** (supra), **Hon'ble Full Bench of the Supreme Court** clearly held that matrimonial cases are civil in nature and preponderance of probabilities will be standard of proof in trial of Matrimonial cases under the Hindu Marriage Act, and not proof beyond reasonable doubt which is applicable in criminal trials. **Hon’ble Supreme Court**, in para 24 of **Dr. Narayan Ganesh**

Dastane case (supra) observed that 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. But whether the issue is

one of cruelty or of a loan on a pronote, 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.

24. Ruling out application of "proof beyond reasonable doubt" in matrimonial cases, **Hon'ble Supreme Court**, in para 25 of **Dr. Narayan Ganesh Dastane case** (supra) has observed that the 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 vascillating, 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. In para 26 of **Dr. Narayan Ganesh Dastane case** (supra)**, Hon'ble Apex Court** has further observed that under the Hindu Marriage Act, nowhere it is required that the petitioner must prove his case beyond reasonable doubt. Section 23 confers on the court the power to

pass a decree if it is "satisfied" on matters mentioned in clauses (*a*) to (*e*) of its sub-section of (1). 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.

25. Hon'ble Supreme Court, in para 27 of **Dr. Narayan Ganesh Dastane case** (supra) has further observed that the misconception regarding the standard of proof in matrimonial cases arises perhaps from a loose description of the respondent's conduct in such cases as constituting a "matrimonial offence". Acts of a spouse which are calculated to impair the integrity of a marital union have a social significance. To marry or not to marry and if so whom, may well be a private affair but the freedom to break a matrimonial tie is not. The society has a stake in the institution of marriage and therefore the erring spouse is treated not as a mere defaulter but as an offender. But this social philosophy, though it may have a bearing on the need to have the clearest proof of an allegation before it is accepted as a ground for the dissolution of a marriage, has no bearing on the standard of proof in matrimonial cases.

26. Hon'ble Apex Court in para 10 of **Shobha Rani Vs. Madhukar Reddi** as reported in **AIR 1988 SC 121** has also observed that considering that proceedings under the Hindu Marriage Act is 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 of the Act does not alter the standard of proof in civil cases.

27. Hon'ble Supreme Court in para 10 of **A. Jayachandra Vs. Aneel Kaur** as reported in **2005(2) SCC 22** has observed that in a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same

time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

28. Hon'ble Kerala High Court, after referring to **A. Jayachandra case** (supra)**,** in para 19 of **Mohandas Panicker Vs. Dakshayani** as reported in **2013 SCC Online Ker 24493** has observed that the principles laid down in the above decisions reiterate that in civil cases, preponderance of probabilities is the standard to be adopted to prove the case. No doubt, matrimonial cases are civil proceedings and the Court can act upon preponderance of probabilities, especially in adultery cases, since it is difficult to get direct evidence.

29. Now let us consider the points which are formulated for consideration.

Point No.1

30. Before considering whether the Respondent/Wife has committed cruelty against the Appellant or not, it would be imperative to see what is the statutory provisions and case laws on the subject.

31. Cruelty has been provided as one of the

grounds for divorce under Section 13(1)(i-a) of Hindu Marriage Act. As per the provisions, the marriage can be dissolved by decree of divorce on a petition presented by either of the parties, if the other party has treated the petitioner with cruelty.

32. However, the word ‘cruelty’ used in Section 13(1)(i-a) of Hindu Marriage Act has not been defined under the Hindu Marriage Act. But the word has been interpreted by **Hon’ble Supreme Court** on several occasions.

33. The **Hon’ble Supreme Court**, in para 4 of **Sobha Rani Vs. Madhukar Reddi** as reported in **AIR 1988 SC 121**, has observed that the word 'cruelty’ has not been defined. Indeed it could not have been defined. It 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. It is a course of 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 to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the 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. 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 enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

34. The **Hon'ble Apex Court** in para 5 of **Shobha Rani case** (supra) has further observed that it will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, 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 stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend

upon their culture and human values to which they attach importance. The Judges and lawyers, therefore, should not import their own notions of life. They may not go in parallel with them. There may be a generation gap between them and the parties. It would be better if they keep aside their customs and manners. It would be also better if they less depend upon precedents. Each case may be different. They deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful realm of cruelty.

35. The **Hon'ble Supreme Court**, in para 17 of the **Shobha Rani case** (supra) has also observed that the context and the set up in which the word 'cruelty' has been used in the section, it appears that intention is not a necessary element in cruelty. That word 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,

if by ordinary sense in human affairs, that act complained of could otherwise be regarded as cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.

36. The **Hon'ble Apex Court** in **Gananath Pattnaik Vs. State of Orissa** as reported in **2002(2) SCC 619** has observed that 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.

37. The **Hon'ble Supreme Court** in para 10 of **A. Jayachandra Vs. Aneel Kaur** as reported in **2005(2) SCC 22** has observed that cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social

values, status, environment in which they live. Cruelty, 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.

38. The **Supreme Court** in para 12 of **A. Jayachandra case** (supra) has further observed that 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.

39. The Supreme Court in para 13 of **A. Jayachandra case** (supra) has further observed that 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 a 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.

40. In **Harbhajan Singh Monga Vs. Amarjeet Kaur** as reported in **1985 SCC OnLine MP 83, Hon'ble Madhya Pradesh High Court** has held that even threat to commit suicide to falsely implicate the other spouse and his/her family members in criminal case also amounts to cruelty.

41. In **Smt. Uma Wanti v. Arjan Dev** as reported in **1995 SCC OnLine P & H 56, Hon'ble Punjab and Haryan High Court** has held that even peculiar behaviour of spouse on account of unsoundness of of mind or otherwise also amounts to cruelty. **Hon'ble Court** had held that day to day behaviour of the appellant was such as to disturb the mental peace and harmony of the respondent which definitely amounted to legal

cruelty. She may not be of the unsound mind, but her peculiar ways of behaviour proved by the respondent are sufficient to constitute that legal cruelty. The husband could not live with peace in the company of the appellant. Peace was always disturbed due to her peculiar ways of behaviour, and thus he cannot be disbelieved that her behaviour was cruel to him.

42. In **Mrs. Rita Nijhawan Vs. Mr. Bal Krishna Nijhawan** as reported in **ILR (1973) I Delhi 944** , **Hon'ble Delhi High Court** has held that denial of sexual intercourse either on account of impotence or otherwise amounts to cruelty to the aggrieved spouse. **Hon'ble Court** also observed that sex is the foundation of marriage and without a vigorous and harmonious sexual activity it would be impossible for any marriage to continue for long. It cannot be denied that the sexual activity in marriage has an extremely favourable influence on a woman's mind and body. The result being that if she does not get proper sexual satisfaction it will lead to depression and frustration. It has been said that the sexual relations when happy and harmonious vivifies woman's brain, develops her character and trebles her vitality. It must be recognised that nothing is more fatal to marriage than disappointments in sexual intercourse.

43. Hon'ble Court in **Mrs. Rita Nijhawan case** (supra) further observed that the law is well settled that if either of the party to a marriage being of healthy physical capacity refuse to have sexual intercourse, the same would amount to cruelty entitling the other party to a decree. In our opinion it would not make any difference in law whether denial of sexual intercourse is the result of sexual weakness of the respondent disabling him from having a sexual union with the appellant, or it is because of any wilful refusal by the respondent; this is because in either case the result is the same namely frustration and misery to the appellant due to denial of normal sexual life and hence cruelty.

44. The **Hon'ble Supreme Court**, in para 99 of the **Samar Ghosh Vs. Jaya Ghosh** as reported in **(2007) 4 SCC 511,** has observed, after referring to and discussing several judgments on the point of cruelty, that human mind is extremely complex and human behaviour is equally complicated. Similarly, human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing,

level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

45. The Hon'ble Supreme Court has further observed in **Samar Ghosh case** (supra) that there cannot be any comprehensive definition of the concept of mental cruelty within which all kinds of cases of mental cruelty can be covered. **The Hon'ble Court** in para 100 has further observed that the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

46. It has been further observed by **Hon'ble Supreme Court** in para 101 of the **Samar Ghosh case** (supra) that no uniform standard can ever be laid down for guidance. However, Hon'ble Court thought it appropriate to enumerate

some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty" with caution that such instances are only illustrative and not exhaustive. The instances enumerated by **Hon'ble Apex Court** are as follows :

> " (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 sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

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

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

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

the parties. In such like situations, it may lead to mental cruelty."

47. The **Hon'ble Supreme Court**, in para 18 of **Ravi Kumar Vs. Jumla Devi** as reported in **2010 SCCR 265**, observed that in matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty. Therefore, cruelty in matrimonial behaviour defies any definition and its category can never be closed. Whether husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any pre-determined rigid formula. Cruelty in matrimonial cases can be of infinite variety. It may be subtle or even brutal and may be by gestures and words.

48. In para 10 of **Ramchander Vs. Ananta** as reported in **2015(11)SCC 539, Hon'ble Supreme Court** has observed that cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which

causes a reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Cruelty can be physical or mental.

49. It has further been observed by **Hon'ble Apex Court** in **Ramchander case** (Supra) that instances of cruelty are not to be taken in isolation. It is the cumulative effect of the facts and circumstances emerging from the evidence on record which should be taken into consideration to draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the other spouse.

50. In **Vinita Saxena v. Pankaj Pandit**, as reported in **(2006) 3 SCC 778 Hon'ble Supreme Court** has observed in para 31 that it is settled by a catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the section. It is to be determined on the whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such wilful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances

of the case.

51. Hon'ble Supreme Court has further observed in Para-32 of **Vinita Saxena case** (supra) that the word "cruelty" has not been defined and it 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. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may 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 enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

52. Hon'ble Supreme Court has further observed in Para-36 of the **Vinita Saxena case** (supra) that the legal concept of cruelty which is not defined by the statute is generally described as conduct of such character as to have caused danger to life, limb or health (bodily and mental) or to give rise to reasonable apprehension of such danger. The general rule in all questions of cruelty is that the whole matrimonial relation must be considered, that rule is of a special value when

the cruelty consists not of violent act but of injurious reproaches, complaints. accusations or taunts. It may be mental such as indifference and frigidity towards the wife, denial of a company to her, hatred and abhorrence for the wife, or physical, like acts of violence and abstinence from sexual intercourse without reasonable cause. It must be proved that one partner in the marriage, however mindless of the consequences, has behaved in a way which the other spouse could not in the circumstances be called upon to endure, and that misconduct has caused injury to health or a reasonable apprehension of such injury. There are two sides to be considered in case of cruelty. From the appellant's side, ought this appellant to be called on to endure the conduct? From the respondent's side, was this conduct excusable? The court has then to decide whether the sum total of the reprehensible conduct was cruel. That depends on whether the cumulative conduct was sufficiently serious to say that from a reasonable person's point of view after a consideration of any excuse which the respondent might have in the circumstances, the conduct is such that the petitioner ought not be called upon to endure.

53. Hon’ble Supreme Court has further observed in Para-37 of the **Vinita Saxena case** (supra) what constitutes

the required mental cruelty for the purposes of the said provision, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home.

54. Hon'ble Supreme Court has further observed in Para-38 of the **Vinita Saxena case** (supra) that if the taunts, complaints and reproaches are of ordinary nature only, the court perhaps need consider the further question as to whether their continuance or persistence over a period of time render, what normally would, otherwise, not be so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonably conclude that the maintenance of matrimonial home is not possible any longer.

55. **Now, coming to the case at hand,** we find that admittedly both the parties are married on 10.07.1987 and out of the wedlock, two sons were born. The first son, Narendra Bharati was born on 16.05.1991 and the second son, Aditya Kumar was born on 15.08.1998. As per allegation, the nature of the Appellant/Defendant-Wife got completely changed after the

birth of the second son and hence, divorce petition was filed on 29.07.2008 pleading following facts claimed as cruelty committed by the Appellant/Defendant-Wife against the Husband/Plaintiff :

i) The Appellant/Wife was not ready to prepare food for him and she always used to quarrel with him and also used to force him to live at the upper floor of the house and the wife was living at the ground floor having no concern with each other.

ii) The wife always used to threaten him to lodge criminal case against him.

(iii) She sold wheat, rice and other grains from his field and also sold costly utensils and ornaments behind his back.

(iv) The wife threatened to kill him with the help of anti-social elements.

(v) On several occasions, the husband fell seriously ill and admitted to Prashant Clinic at Bharawpar, but the wife never came to see him.

56. The Defendant/Wife in her written statement has denied all the allegations made in the petition and vehemently pleaded that the husband is an agent in insurance business and an active member of RSS and BJP and he consequently developed intimacy with some beautiful ladies,

one of them is from Rajgir. She has further pleaded that the lady from Rajgir was frequently taken by the Husband to his house and on objection raised by the Appellant/Defendant-Wife, her husband used to beat her. It is also pleaded by her that the Husband became indifferent towards her and stopped taking interest in her. However, whenever he came to her, she welcomed him and it is wrong to say that there is no cohabitation for the last ten years. She has further pleaded that she does not know the name of the lady with whom her husband has intimacy but she knows her face. She has also claimed that the divorce petition has been filed with an intent to marry the lady from Rajgir. She has further averred that she is a *pardanashi* lady and she does not go outside except on occasions of offering puja in temple. She has also averred that she is always ready to live with him and the fact is that the husband wants to get rid of her on account of illicit relationship with other lady. It is also averred that the husband himself shifted to other floor of the house and did not allow the wife and sons to go to the floor where he used to live and he frequently resides away from home and whenever he comes he comes late at night.

57. Coming to the evidence adduced by the

Plaintiff/Husband, who is the Respondent herein, we find that five witnesses, including himself, have been examined in support of the divorce petition.

58. P.W.-1 - Dilip Kumar Singh was examined on 14.07.2009 and we find that in his cross examination, he has deposed that he had gone to the house of the Plaintiff/Respondent eight years back and he had visited his house several times. Here, it is relevant to point out that as per the divorce petition, marriage ran into rough weather since 1999, but as per the claim that he has visited the house of the Plaintiff eight years back, it means that he has visited in the year 2001. As such, he is not in a position to say what happened prior to 2001 between the parties. Even otherwise, this witness is outsider and the Appellant Defendant-wife is a Pardanaseen lady and there appears no occasion for this witness to interact with the Appellant-Defendant and he cannot be in a position to say about the nature of the Appellant-Defendant, hence his evidence regarding nature of Appellant-Defendant and her family affairs has hardly any value.

59. P.W.-2 - Parasnath was examined on 15.02.2010. He is also an outsider and he also appears to have

hardly any occasion to see the family affairs of the Appellant-Defendant-wife, who is a Pardanaseen lady. His evidence is liable to be discarded in view of his deposition during cross-examination, as per which, he does not even know whether the parties were living in their own house, nor he was knowing the names of people living in the adjacent houses of the parties to the marriage. He was also not aware whether the parties are separate in mess.

60. P.W.-3- Parashuram Kumar was examined on 24.02.2010. In his cross examination he has deposed that the mother of the Respondent/Plaintiff is living separately from him with her other son, Shivratan Prasad Gupta. He has also deposed in his cross examination that the Respondent/Plaintiff-Husband is presently living away from his home and he is not going to home for the last five years and there is no relationship of husband and wife between the parties.

61. P.W.-4 - Vinod Kumar was examined on 15.03.2010. He has deposed in his cross examination that the Respondent/Plaintiff is a member of RSS and presently he is living in the office of the RSS.

62. The Plaintiff/Respondent has examined himself as P.W.-5. He, in his cross examination, has deposed that the wife is still living in his house along with the children. However, he does not live with them and he is residing in the RSS office. He has also deposed that for about ten years, he is not on talking terms with the wife, which means that he is not on talking terms with the wife since the year 2000 because he was examined on 26.03.2010.

63. The Appellant/Defendant-Wife has been examined as D.W.-1 and in her cross examination she has deposed that the relationship with her husband was good till 2006. She has further deposed that she is living in her matrimonial house with her children and her husband is not living with her. She has also deposed that she does not know the name of the lady with whom her husband has illicit relationship, but she can identify her by face.

64. D.W.-2 – Suresh Prasad Gupta and D.W.-3 Ashok Kumar have not made any significant statement during their depositions.

65. D.W.-4 - Aditya Kumar is very important witness, because he is the younger son of the Appellant and

the Respondent. In his cross examination, he has deposed that prior to 2006, the relationship between his mother and father was good. He has further deposed that his father does not want to live with her mother and he also used to beat her and even applied electric current to her.

66. From the aforesaid evidence, it clearly transpires that as per the evidence of the Respondent-Plaintiff-husband, marriage started running into rough weather since 1999, but the divorce petition was filed in the year 2008, after a long gap of nine years. If the alleged cruelty, committed on behalf of the wife, was true, it is not explained why the Respondent-Plaintiff-husband waited for nine years to file the divorce petition on the ground of cruelty. This circumstance goes against him making his claim of cruelty allegedly committed by the Appellant-Defendant-wife non-believable. Moreover, the evidence of DW-4, who is a son of the parties, that up to 2006, the relationship between his mother and father was good and his father did not want to live with his mother and he used to beat her and even applied electric current to her, renders the case of the Plaintiff/Respondent further disbelievable.

67. In view of the evidence that the relation between the Husband and Wife was good prior to the year 2006, the case of Husband that since 1999 the Wife/Appellant used to quarrel with him and was not ready to cook food for him falls on the ground.

68. We further find that as per evidence of both the parties that the Appellant-Defendant-wife is still living in her matrimonial house along with her children and it is the husband, who left his house and is living in the office of RSS. We also find that the wife has never refused cohabitation, it is the husband who had stopped taking interest in her and he is not making efforts for cohabitation, because he has been living separately from her. The Appellant-Defendant-wife has all along maintained that she wants to live with her husband and she always welcomed him whenever he comes home and she has never refused cohabitation. She has also deposed that it is wrong to say that before filing the divorce petition in 2008, there was no conjugal relationship between the husband and wife. It also appears that it is the husband, who does not have any concern for his wife rather than wife is not having concern for the husband. It has also come in evidence that the mother of the Respondent/Husband lives separately from him as she

lives with her second son. As such, there is no question of any misconduct by the Wife/Appellant to her.

69. In regard to the allegation that wife used to threat her husband to lodge criminal case, we find that there is no cogent evidence on record and even otherwise if any offence is committed against anybody, the victim has every right to initiate criminal proceeding and as per evidence, we find that the Respondent-Plaintiff-husband used to beat his wife when she opposed his illicit relationship with other lady. Even the son of the parties who has been examined as D.W.-4, has deposed that his father used to beat his mother and even he applied electric current to her. As such, threat to exercise legal right cannot be held to be cruelty. It is also pertinent to point out that it is not a case of the husband/Plaintiff that the Defendant/Wife used to extend threat to lodge false criminal case or she has lodged any false criminal case.

70. As far as, allegation of selling wheat, rice and other grains, utensils and ornaments by the Appellant-Defendant-wife is concerned, we find that there is no such cogent evidence in support of this allegation. Even otherwise, such activity cannot be held to be cruelty to the husband.

Selling grains and her ornaments cannot amount to cruelty.

71. As far as allegation that wife threatened her husband to kill with the help of anti-social elements is concerned, there is no cogent evidence on record to prove such allegation. The Appellant-Defendant-wife is a Pardanaseen lady and obviously she cannot have any contact with any anti-social elements or criminals. Even otherwise, no specific instance with reference to date and place of such threatening has been given in his evidence. As far as allegation of Respondent-Plaintiff-husband that on several occasions he fell ill and admitted in Prashant clinic at Bharaoper, but the wife never came to see him is concerned, again we find that no evidence is on record to prove such allegation. The Respondent-Plaintiff-husband has not pleaded or deposed the dates and nature of his illness and when he was admitted in hospital He has also not proved that his wife was aware of his illness and she failed to visit him.

72. As such, in totality of the evidence on record, we find that no instance has been proved by the Respondent-Plaintiff-husband, which may be construed as cruelty in the strict sense of the term as provided under Section 13 of the

Hindu Marriage Act, as we have already seen what the cruelty under the Act means. The Husband/Plaintiff, who is Respondent herein, has failed to prove any misconduct on the part of the Appellant-Wife which could be considered grave and weighty giving reasonable apprehension to him of such a danger which could make it unsafe for him to continue the matrimonial life with the Appellant Wife. There may have been ordinary wear and tear in the matrimonial life of the parties, but certainly no cruelty is found to have been committed by the Appellant-Wife towards the Husband/Respondent. In fact, cruelty appears to have been committed other way round. Hence, this point is decided against the Respondent-Plaintiff and in favour of the Appellant-Defendant.

Point No.2

73. In the light of the finding in regard to point no.1, needless to say that the Respondent-Plaintiff-husband is not entitled to decree of divorce against the Appellant-Defendant-wife, because he has failed to prove the ground of cruelty to get decree of divorce against the Appellant-Defendant-wife.

74. In view of the aforesaid findings, we are of considered opinion that the impugned judgment is not sustainable in the eye of law. Hence, the present Miscellaneous Appeal is allowed setting aside the impugned judgement dated 07.10.2017, passed by Ld. Principal Judge, Family Court, Nalanda at Biharsharif in Divorce Case No. 72 of 2008. However, both the parties shall bear their own costs. Let the decree be drawn accordingly.

75. The Registrar General is directed to circulate a copy of this judgment amongst all the Presiding Officers of the Family Courts and send a copy to the Director of Bihar Judicial Academy.

(Jitendra Kumar, J)

Amrendra/- **(P. B. Bajanthri, J)**

AFR/NAFR	AFR
CAV DATE	01.08.2023
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