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MATA/73/2024
ODHC010140302024

2024:OHC:1-DB



IN THE HIGH COURT OF ORISSA AT CUTTACK

MATA No.73 of 2024

CNR No. ODHC010140302024

.... ***Appellant***

Represented by Adv.
Mr. S.K. Dwivedy, Advocate

-Versus-

.... ***Respondent***

Represented by Adv.
Mr. T. K. Mishra, Advocate

**CORAM:
HON'BLE THE CHIEF JUSTICE
AND
HON'BLE MR. JUSTICE CHITTARANJAN DASH**

**Date of Hearing: 27.08.2026
Date of Judgment: 01.10.2026**

CHITTARANJAN DASH, J.

1. This appeal is directed against the judgment dated 27.01.2024 passed by the learned Judge, Family Court, Rayagada in C.P. No.61 of 2023, whereby the learned Court below, while partly allowing the proceeding, dissolved the marriage between the Appellant-Husband and the Respondent-Wife, solemnized on 20.10.2021, on the ground that the Respondent-Wife had established cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act, 1955.

2. The marriage between the Appellant-Husband and the Respondent-Wife was solemnized on 20.10.2021 according to Hindu rites and customs. After their marriage, the parties initially



resided at Visakhapatnam and thereafter shifted to Hyderabad, where both were employed in the Information Technology sector. The parties, both being B.Tech. graduates, lived together as husband and wife. The parties, however, subsequently developed differences and the Respondent-Wife left the matrimonial home in June, 2023 and went to Rayagada along with her parents. Thereafter, the Respondent-Wife instituted C.P. No.61 of 2023 before the learned Family Court, Rayagada seeking dissolution of the marriage on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955. The Appellant-Husband contested the proceeding. Upon consideration of the pleadings and evidence adduced by the parties, the learned Family Court, by judgment dated 27.01.2024, allowed the proceeding in part and dissolved the marriage on the ground of cruelty. Aggrieved thereby, the Appellant-Husband has preferred the present appeal under Section 28 of the Hindu Marriage Act, 1955 read with Section 19 of the Family Courts Act, 1984.

3. Learned counsel appearing for the Appellant-Husband submits that the learned Family Court has erred in dissolving the marriage on the ground of cruelty, as the allegations levelled by the Respondent-Wife were neither established by cogent evidence nor sufficient to constitute cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act, 1955. It is contended that the Appellant had not subjected the Respondent to any physical or mental cruelty and that the allegations made against him were denied in the counter as well as in the evidence. Learned counsel further submits that the parties had, in fact, lived together as husband and wife at Visakhapatnam and Hyderabad and had



enjoyed their matrimonial life. It is submitted that the Appellant, after the parties started living separately, instituted proceedings under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights, which according to the Appellant reflected his intention to continue the matrimonial relationship. The learned counsel, therefore, submits that the finding of cruelty recorded by the learned Family Court is not sustainable on the evidence available on record.

4. Per contra, learned counsel appearing for the Respondent-Wife supports the impugned judgment and submits that the Respondent had specifically pleaded the acts of physical and mental cruelty meted out to her during the matrimonial relationship and had adduced evidence in support thereof. It is contended that the conduct of the Appellant, viewed cumulatively, caused the Respondent sustained mental agony and rendered continuation of the matrimonial relationship impossible. Learned counsel submits that the learned Family Court, upon appreciation of the evidence led by the Respondent, rightly concluded that the Respondent had established cruelty and was consequently entitled to dissolution of the marriage. It is, therefore, submitted that no interference with the impugned judgment is warranted.

5. The learned Trial Court, upon consideration of the divergent pleadings of the parties, formulated the following four issues for determination:

(i) Whether there is any cause of action?



(ii) Whether the petitioner is entitled to a decree of divorce by dissolving her marriage dated 20.10.2021 with the respondent?

(iii) Whether the petitioner is entitled to return of "Streedhan" gold ornaments and dowry cash of ₹6,00,000/-?

(iv) To what other relief(s) the petitioner is entitled to?

6. Upon appreciation of the pleadings and evidence on record, the learned Family Court held that the Respondent-Wife had established the allegations of physical and mental cruelty as well as economic exploitation against the Appellant-Husband. The learned Court relied upon the evidence of P.W.1 and P.W.2, the circumstances emerging from the evidence of the defence witnesses, and the messages exchanged between the parties, and concluded that the matrimonial relationship had broken down beyond repair and that compelling the Respondent-Wife to continue the matrimonial relationship would itself amount to cruelty. It was accordingly held that the Respondent had proved cruelty to the extent required under Section 13(1)(ia) of the Hindu Marriage Act and was entitled to dissolution of the marriage. The prayer for return of "Streedhan" articles, however, was rejected on the ground that such exclusive property of the wife was not covered by Section 27 of the Hindu Marriage Act.

7. We have carefully examined the pleadings, the evidence adduced by the parties and the findings recorded by the learned Family Court. Since the principal ground on which the marriage has been dissolved is cruelty, the question which falls for consideration is whether the conduct attributed to the Appellant-



Husband, as established from the evidence on record, is of such nature and degree as would constitute cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act, 1955.

8. Before examining the individual allegations, it would be apposite to bear in mind that the question of mental cruelty cannot ordinarily be determined by isolating a particular incident from the matrimonial relationship. The Court is required to examine the conduct complained of in the context of the relationship as a whole and to assess its cumulative effect upon the spouse alleging cruelty. At the same time, ordinary wear and tear of married life, trivial irritations, occasional quarrels or differences arising in the course of matrimonial life cannot, by themselves, furnish a ground for dissolution of marriage. The conduct complained of must be of such a nature and degree as to cause a reasonable apprehension that it would not be possible for the parties to continue living together. In *Samar Ghosh vs. Jaya Ghosh*, reported in [2007] 4 S.C.R. 428, the Supreme Court has illustratively explained the manner in which mental cruelty is to be assessed. The relevant paragraphs are reproduced as 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 G 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”

9. Equally relevant is the principle that, in a matrimonial proceeding, the Court is not required to examine the allegation of cruelty with the same degree of proof as would be required in a criminal proceeding. The Court has to assess the evidence on the touchstone of the probabilities emerging from the entire matrimonial setting. Mental cruelty, by its very nature, may not always be capable of direct proof, and the effect of the conduct upon the mind of the spouse has to be assessed having regard to the circumstances, the status and background of the parties and the nature of the relationship. In *A. Jayachandra v. Aneel Kaur*, reported in (2005) 2 SCC 22, the Hon’ble Supreme Court has explained the aforesaid principle. The relevant paragraphs are reproduced as below:

“The expression “cruelty” has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to



cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse, same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes. To constitute cruelty, the conduct complained of should be “grave and weighty”

10. Bearing the aforesaid principles in mind, we may now examine the evidence on record. P.W.1 has spoken not merely of ordinary matrimonial differences, but of a recurring pattern of physical and mental ill-treatment. She has stated that she was assaulted even during night hours, at times locked inside a room despite her knocking for the door to be opened, and subjected to demands for money. She has further deposed about being slapped by the Appellant in public at Bangalore on the occasion of their



marriage anniversary and thereafter being asked to refund the entire amount allegedly spent on the trip. These allegations, if viewed separately, may invite scrutiny as to their independent corroboration; viewed together, however, they disclose the nature of the matrimonial environment of which the Respondent-Wife complains.

11. The Hon'ble Supreme Court in *V. Bhagat v. D. Bhagat*, reported in (1994) 1 SCC 337, has further explained that mental cruelty is a course of conduct which causes such mental pain and suffering that the parties cannot reasonably be expected to live together. The relevant paragraphs are reproduced as below:

“15. If so, the question arises what kind of cruel treatment does clause (i-a) contemplate? In particular, what is the kind of mental cruelty that is required to be established? While answering these questions, it must be kept in mind that the cruelty mentioned in clause (i-a) is a ground now for divorce as well as for judicial separation under Section 10. Another circumstance to be kept in mind is that even where the marriage has irretrievably broken down, the Act, even after the 1976 (Amendment) Act, does not permit dissolution of marriage on that ground. This circumstance may have to be kept in mind while ascertaining the type of cruelty contemplated by Section 13(1)(i-a).

16. Mental cruelty in Section 13(1)(i-a) can broadly be 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. 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 facts 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.”

12. The subsequent events narrated by P.W.1 are equally significant. She has stated that when she and her parents reached the Hyderabad residence, the Appellant contacted the house owner and security personnel and represented that unknown persons had entered the house and were taking away his property, resulting in her and her parents being confronted and humiliated. She has further stated that thereafter the Appellant and his mother assaulted her and that, when her father intervened, he too was assaulted. According to her, relatives were thereafter called, she and her father were humiliated and they were asked to leave the house on the allegation that the expectations of the Appellant’s family had not been fulfilled. She states that these circumstances left her feeling unsafe in the matrimonial home and ultimately compelled her to leave for Rayagada with her parents.

13. The evidence regarding the subsequent course of the The evidence of P.W.2, though that of the father of the Respondent-Wife, cannot be discarded merely on that account, particularly when he claims to have been personally present during the incident in which he himself was assaulted while intervening on behalf of his daughter. More importantly, material circumstances surrounding the final episode are borne out from the defence evidence itself. R.W.2 has admitted that on 04.06.2023 the parties



and the Respondent-Wife's parents and brother were present in the Hyderabad house; that an issue arose there; that she called her brother and other relatives; and that discussions took place thereafter. She further admits that the Respondent-Wife left the matrimonial home with her parents on the following day. Thus, irrespective of the manner in which each party seeks to characterise that incident, the defence evidence itself establishes that the Respondent-Wife's departure was preceded by a serious confrontation in the matrimonial home.

14. There is yet another circumstance emerging from the cross-examination of R.W.1. He admitted that, when the Respondent-Wife did not answer his telephone call on an earlier occasion, he contacted the watchman of the Hyderabad residence and asked him to ascertain who the persons inside the house were, notwithstanding his admission that the Respondent-Wife's parents had previously visited and stayed in the said residence. The circumstance lends some support to the Respondent-Wife's version regarding the atmosphere of distrust and humiliation surrounding her and her parents at the matrimonial residence.

15. The aforesaid evidence also has to be appreciated in the manner indicated by the Hon'ble Supreme Court in *Shri Rakesh Raman v. Smt. Kavita*, reported at (2023) 17 SCC 433. The Apex Court has recognised that, in matrimonial proceedings, it may not always be possible to pinpoint a particular act of cruelty and that the Court must examine the entire matrimonial relationship, the general behaviour of the parties and the effect of their conduct



upon the spouse alleging cruelty. The relevant paragraphs are reproduced as below:

“16. Matrimonial cases before the Courts pose a different challenge, quite unlike any other, as we are dealing with human relationships with its bundle of emotions, with all its faults and frailties. It is not possible in every case to pin point to an act of “cruelty” or blameworthy conduct of the spouse. The nature of relationship, the general behaviour of the parties towards each other, or long separation between the two are relevant factors which a Court must take into consideration. In *Samar Ghosh v. Jaya Ghosh*¹ a three judge Bench of this Court had dealt in detail as to what would constitute cruelty under Section 13 (1) (ia) of the Act. An important guideline in the above decision is on the approach of a Court in determining cruelty. What has to be examined here is the entire matrimonial relationship, as cruelty may not be in a violent act or acts but in a given case has to be gathered from injurious reproaches, complaints, accusations, taunts, etc. The Court relied on the definition of cruelty in matrimonial relationships in Halsbury’s Laws of England (Vol 13, 4th Edn, Para 1269, Pg 602) which must be reproduced here:

“The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or conduct as having or lacking the nature or quality which renders them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other,

¹ (2007) 4 SCC 511



weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse. Malevolent intention is not essential to cruelty but it is an important element where it exists."

The view taken by the Delhi High Court in the present case that mere filing of criminal cases by the wife does not constitute cruelty as what has also to be seen are the circumstances under which cases were filed, is a finding we do not wish to disregard totally, in fact as a pure proposition of law it may be correct, but then we must also closely examine the entire facts of the case which are now before us. When we take into consideration the facts as they exist today, we are convinced that continuation of this marriage would mean continuation of cruelty, which each now inflicts on the other.

Irretrievable breakdown of a marriage may not be a ground for dissolution of marriage, under the Hindu Marriage Act, but cruelty is. A marriage can be dissolved by a decree of divorce, inter alia, on the ground when the other party "has, after the solemnization of the marriage treated the petitioner with cruelty"². In our considered opinion, a marital relationship which has only become more bitter and acrimonious over the years, does nothing but inflicts cruelty on both the sides. To keep the façade of this broken marriage alive would be doing injustice to both the parties. A marriage which has broken down irretrievably, in our opinion spells cruelty to both the parties, as in such a relationship each party is treating the other with cruelty. It is therefore a ground for dissolution of marriage under Section 13 (1) (ia) of the Act."

16. Tested on the aforesaid principles, the evidence before us cannot be reduced to a case of a stray quarrel or an isolated matrimonial disagreement. The allegations of physical assault, the incidents said to have occurred during the night, the public incident at Bangalore, the episode involving the house owner and security personnel at Hyderabad and the confrontation in which

² Section 13 (1) (ia) of the Hindu Marriage Act, 1955.



the Respondent-Wife's father is stated to have been assaulted, taken together, present a continuing course of discord. Significantly, portions of this account find support from circumstances emerging from the evidence led by the Appellant himself. The final separation on 04.06/05.06.2023 was not, therefore, an event occurring in isolation but the culmination of an already deteriorated matrimonial relationship.

17. The Appellant has sought to meet this evidence by denying the allegations and by contending that the parties had enjoyed a normal matrimonial life. However, the evidence of R.W.2 does not entirely support such a picture. Her evidence places the parties, along with the Respondent-Wife's parents and brother, in the Hyderabad residence immediately before the Respondent-Wife left for Rayagada and acknowledges the dispute which arose there, the summoning of relatives and the ensuing discussions. The fact that the defence witness characterises the conduct of the Respondent-Wife differently does not efface the underlying circumstance that the matrimonial discord had, by then, reached a stage requiring intervention of family members.

18. The cross-examination of R.W.1 also assumes significance. His admission regarding contacting the watchman of the Hyderabad residence when the Respondent-Wife did not answer his telephone call, and asking that the persons inside the house be identified, is difficult to reconcile with the suggestion that the presence of her parents there was wholly unexpected or that there was no atmosphere of distrust between the parties. This circumstance, though not by itself determinative, lends



corroboration to the Respondent-Wife's account of the humiliation and insecurity experienced by her in the matrimonial home.

19. We also cannot lose sight of the communications exchanged between the parties. The Appellant has specifically challenged the reliance placed by the learned Family Court upon the messages in which he expressed regret and assured the Respondent-Wife that the conduct complained of would not be repeated. We agree that such messages cannot, standing alone, be elevated into an admission of every allegation of cruelty. They are, however, not wholly irrelevant. When read in the backdrop of the evidence otherwise available on record, they constitute a circumstance bearing upon the nature of the matrimonial discord and the manner in which the parties themselves responded to it.

20. The cumulative assessment assumes further importance because the Respondent-Wife did not merely leave the matrimonial home following an ordinary disagreement. Her evidence is that she left in circumstances in which she felt unsafe and humiliated, after the events at Hyderabad, and that subsequent efforts made by her family for reconciliation did not restore the relationship. The evidence of the parties, therefore, reveals not merely a difference in perception between two spouses, but a relationship in which the essential element of mutual confidence had substantially eroded.

21. It is in this context that the observations of the Hon'ble Supreme Court in *Shri Rakesh Raman* (supra) become particularly apposite. The Supreme Court has cautioned that matrimonial cases involve human relationships and that it may not



always be possible to pinpoint a single act of cruelty. What requires consideration is the matrimonial relationship as a whole, the general behaviour of the parties and the effect of the conduct complained of upon the spouse.

22. The present case illustrates why the evidence cannot be compartmentalised. The Respondent-Wife's case does not rest upon one isolated incident. The incidents spoken to by her, the corroborative circumstances emerging from the evidence of R.W.1 and R.W.2, the circumstances attending her departure from the matrimonial home and the subsequent failure of the relationship, when considered together, disclose a course of matrimonial conduct which caused her sustained mental distress. In our considered view, the cumulative effect of these circumstances is sufficient to bring the case within the meaning of cruelty under Section 13(1)(ia) of the Hindu Marriage Act.

23. There is, thereafter, a significant development before this Court which cannot be ignored. By order dated 20.03.2026, the parties appeared in person before this Court and, upon interaction in camera, were afforded an opportunity to explore the possibility of bringing an end to the litigation through settlement. No amicable settlement could, however, be arrived at. What is significant is that, during such interaction, both parties expressed their willingness to put an end to the matrimonial relationship and proposed to place a joint affidavit to that effect before the Court. Admittedly, this subsequent conduct does not constitute a substitute for the statutory requirement of establishing cruelty, nor is it being treated as a decree by mutual consent, however, it is,



nevertheless, a relevant circumstance in appreciating the present state of the matrimonial relationship.

24. Marriage undoubtedly carries a sanctity which the Court must ordinarily endeavour to preserve. But the sanctity of marriage is not served by preserving only the legal form of the relationship when the substantive foundation of that relationship has been substantially eroded. Mutual respect, trust, companionship and a willingness to make reasonable adjustments are not peripheral attributes of matrimonial life; they constitute its very foundation. Where those attributes have been progressively lost and the relationship has become a source of sustained mental pain and anguish, the Court cannot shut its eyes to the reality of the relationship merely because its deterioration cannot be fitted into one isolated or neatly defined category of conduct.

25. In the present case, the parties had initially lived together at Visakhapatnam and thereafter at Hyderabad. Both are educated and professionally employed. Yet, the matrimonial relationship, within a relatively short period, came to be marked by allegations of physical and mental ill-treatment, serious confrontation between the parties and their families, loss of mutual confidence and eventual separation. Even when the parties were brought face to face before this Court on 20.03.2026, the relationship could not be restored; rather, both expressed their desire to bring the marital tie to an end. The significance of this circumstance lies not in the mere desire to separate, but in what it reveals about the extent to which the matrimonial relationship has ceased to function as a relationship of mutual trust and companionship.



26. We are conscious that irretrievable breakdown of marriage, by itself, is not a statutory ground for dissolution under the Hindu Marriage Act. The subsequent course of the relationship can, however, be taken into account while determining whether the conduct proved on record has resulted in mental cruelty and whether continuation of such a relationship has itself become a source of further anguish. In *K. Srinivas Rao v. D.A. Deepa*, reported in [2013] 2 S.C.R. 126, the Hon'ble Supreme Court recognised that while irretrievable breakdown is not, by itself, a ground under the Act, the fact that a marriage has become beyond repair on account of the bitterness created by the conduct of the parties may constitute a weighty circumstance in examining the question of cruelty. The relevant paragraphs are reproduced as below:

“26. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the Courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the Court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the Court's decree.

27. In *V. Bhagat* this Court noted that divorce petition was pending for eight years and a good part of the lives of both the parties had been consumed in litigation, yet the end was not in sight. The facts were such that there was no question of reunion, the marriage having irretrievably broken down. While dissolving the marriage on the ground of mental cruelty this Court observed that irretrievable breakdown of marriage is not a ground by itself, but, while



scrutinizing the evidence on record to determine whether the grounds alleged are made out and in determining the relief to be granted the said circumstance can certainly be borne in mind. In Naveen Kohli, where husband and wife had been living separately for more than 10 years and a large number of criminal proceedings had been initiated by the wife against the husband, this Court observed that the marriage had been wrecked beyond the hope of salvage and public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. It is important to note that in this case this Court made a recommendation to the Union of India that the Hindu Marriage Act, 1955 be amended to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce.”

27. We accordingly do not rest the decree of divorce merely upon the fact that the parties have ceased to live together or that, at the stage of this appeal, they have expressed a common desire to end the marital relationship. The foundation of the decree remains the cruelty established from the evidence. The subsequent course of the relationship, including the unsuccessful attempt at settlement before this Court and the statement made by both parties on 20.03.2026, only reinforces the conclusion that the matrimonial relationship has lost its essential character and that compelling the Respondent-Wife to resume such a relationship would be unrealistic.

28. The Appellant’s contention that his institution of proceedings under Section 9 of the Hindu Marriage Act demonstrates his willingness to continue the marriage also requires consideration. We do not regard that circumstance as insignificant. It indicates that, at that stage, the Appellant sought restoration of cohabitation. But such subsequent assertion of willingness cannot, by itself, efface the conduct which preceded



the separation or negate the effect which that conduct had upon the Respondent-Wife. The question remains whether, on the evidence as a whole, the Respondent-Wife had been subjected to cruelty. On that question, the cumulative circumstances already noticed furnish an affirmative answer.

29. For the aforesaid reasons, we find that the learned Family Court was justified in concluding that the Respondent-Wife had established cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act. The finding is founded not merely upon the fact of separation or upon the subsequent breakdown of the relationship, but upon the cumulative effect of the conduct established from the evidence and the circumstances in which the matrimonial relationship deteriorated. The decree dissolving the marriage, therefore, does not warrant interference.

30. In view of the foregoing discussion, we find no infirmity in the judgment dated 27.01.2024 passed by the learned Judge, Family Court, Rayagada in C.P. No.61 of 2023. The appeal is, accordingly, dismissed.

I Agree.

(Harish Tandon)
Chief Justice

(Chittaranjan Dash)
Judge

Bijay/Sarbani

