

(2013) 03 GAU CK 0035

Gauhati High Court

Case No: MAT Appeal No. 4 of 2010

Joshodeb Arjun (Dr.)

APPELLANT

Vs

Chirontoni Nandi (Arjun) and
AnotherRESPONDENT

Date of Decision: March 25, 2013**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 13, 13(1)(ia)
- Penal Code, 1860 (IPC) - Section 498A

Citation: (2013) 3 GLT 366**Hon'ble Judges:** P.K. Musahary, J; Iqbal Ahmed Ansari, J**Bench:** Division Bench**Advocate:** N. Dutta, Mr. R.C. Saikia, Ms. M.J. Baruah, Ms. J. Bhattacharyya and Mr. M. Kalita, for the Appellant; P. Chakraborty, D. Dey and Mr. J. Deka, for the Respondent**Final Decision:** Allowed

Judgement

P.K. Musahary, J.

This appeal is directed against the judgment and order dated 26.08.2009 rendered by the learned Principal Judge, Family Court, Cachar, Silchar, passed in F.C. (civil) 28/2006 dismissing the petition of the appellant for dissolution of marriage by a decree of divorce under the provision of Section 13(1)(ia) of the Hindu Marriage Act, 1955. The facts relevant for the purpose of disposal of this appeal may be narrated as under:

The marriage between the appellant (hereinafter referred to as husband) and the respondent (wife) was solemnized on 17.12.1999. The husband is a P.hd. Degree holder and is serving as a Lecturer in Lumding College while the wife is serving as a teacher at Katlicherra M.E. School. Their marital life was not running smooth due to various reasons. The husband found it difficult to continue the marital life with the wife and he sought for dissolution of marriage by filing the aforesaid suit in the

Court of the District Judge, Cachar, Silchar, which was registered as F.C. (Civil) 28/2006. The wife contested the suit by filing written statement. Both sides adduced evidence; both oral and documentary, and upon hearing the parties, the learned trial Court passed the impugned judgment and order dated 26.08.2009 dismissing the petition of the husband for dissolution of marriage.

2. The pleadings of the husband are as follows:--

i) On the date of marriage it came to the knowledge of the husband that his wife's unmarried elder sister had been occasionally suffering from insanity, had gone mad and became violent and had to be kept tied in a room in seclusion, which facts were not known to him and his family members earlier.

ii) The respondent-wife from the very first day of the marriage was avoiding cohabitation with the husband and desired to get the marriage dissolved by divorce. On his enquiry, she disclosed that she was suffering from some organic physical ailments which require treatment.

iii) The appellant husband assured his wife all possible treatment and he availed leave for a month on the occasion of his marriage but she left the matrimonial home before expiry of the leave period.

iv) The respondent wife mostly used to stay in her sister's residence at Vivekananda road, Silchar, wherefrom she left for paternal house. Thereafter, a long period elapsed without informing him about her date of return for consultation with any competent doctor or to go to Guwahati for her treatment. After long time, sometime in August, 2001 she accompanied the appellant and visited Dr. Arun Paul Choudhury, MD Gynecologist, who after examination, opined that the respondent needs an operation to remove the organic defect. The respondent initially agreed for the operation and she was brought to Guwahati where her blood sample was taken and sent to Dr. Lal Path Lab Pvt. Ltd., New Delhi. The report was collected but the respondent did not come forward for treatment and thereby she had shown her unwillingness to have the surgical operation, and, the conduct of the respondent-wife, shocked the appellant, mentally inasmuch, as his life is going to be spoiled.

v) The conduct of the respondent-wife in refusing to take the medical treatment and undergo operation is an "utmost cruelty" on her part, on the ground of which the appellant instituted T.S. 12/2004 in the Court of District Judge, Cachar, Silchar, u/s 13 of the Hindu Marriage Act, 1955 (1955 Act in short) for dissolution of marriage and a decree for divorce. In the said plaint the fact of respondent's organic defect was not mentioned for the sake of maintaining decency and family privacy. The respondent contested the suit by filing written statement. During the pendency of the suit a process of conciliation was initiated which resulted into filing of a joint compromise petition signed by the parties before the learned District Judge, Cachar, Silchar on 01.12.2004 and on the strength of the said petition, the learned Court below vide

order dated 01.12.2004, dismissed the suit on compromise.

vi) Even after, the compromise, the respondent did not return to matrimonial house for more than a year inspite of several letters sent by the appellant through registered post on 19.12.2004, 18.01.2005, 18.02.2005 and 10.03.2005 requesting her to inform the convenient date of her return and for undergoing the operation either at Silchar or at Guwahati, but she did not respond to the said letters. The appellant then issued a pleader's notice on 15.06.2005 through a registered post asking her to come and get her medical treatment for the sake of saving the conjugal life. She received the said notice but she did not accede to the request, so made by the appellant.

vii) The respondent, in order to humiliate the appellant, filed a false case u/s 498A IPC against him and his old mother aged about 85 years, making some false allegations and concocted story with an attempt to get them arrested by police. He could come to know about institution of said criminal case only when the police visited his residence at Malugram and he had to obtain an order of pre-arrest bail from the High Court. Because of respondent's avoidance, cohabitation and sexual connection between the appellant and the respondent as husband and wife, became an impossibility. By instituting the false criminal case for having him arrested by police, the respondent has treated the petitioner with cruelty and it is a good ground for seeking dissolution of marriage by a decree of divorce. The appellant, under the above facts and circumstances, filed the Title Suit No. 28/2006 in the Court of learned District Judge, Cachar, Silchar, u/s 13(1)(ia) of the 1955 Act which was subsequently, on establishment of Family Court, transferred to the Family Court at Silchar, for disposal, and, the same was registered as F.C. (Civil) No. 28/2006.

3. The respondent-wife contested the suit by filing a written statement stating inter alia that there is no cause of action and the suit is not maintainable in the present form, besides being barred by principles of waiver, limitation, estoppel, etc. She has denied the allegations brought against her in the plaint. She has also stated that the appellant never brought those facts, which have been narrated in the present petition and in his earlier petition for divorce, i.e., T.S. No. 12/2004. In her written statement she stated as follows:--

i) During her stay with the appellant in his house at Malugram, Silchar, except on the night of "kalratri" he had, on every night, repeatedly cohabited and performed sexual intercourse with her with full satisfaction. But, after only two days of the marriage the appellant and his mother started abusing the respondent on ground of insufficient dowry given by her father. The appellant also started finding faults of the respondent for nothing and started torturing her both mentally and physically and started pressurizing her to get a mutual divorce. As she was opposed to divorce, the appellant brought false allegations of organic defect, denial of sex, refusal to take medical treatment, etc against her.

ii) The appellant and his family members never showed any mercy and sympathy to take the trouble of any sort for treatment of the respondent except cruelty throughout her married life for which she, very often, thought of committing suicide but desisted from doing so only to establish that there was no fault on her part and it was the appellant who most willfully and negligently spoiled her most happy and peaceful life for his personal interest.

iii) The appellant, only on repeated demands and pressure of the respondent, brought her to Guwahati and got her blood examined but thereafter, she was again sent back without any organic examination and treatment. By the act of the appellant, the respondent has been subjected to both mental and physical cruelty.

iv) There is no defect in her genital organ yet she was highly interested for medical examination/treatment with the hope of revival of a happy conjugal life and fortius reason she, after the disposal of the earlier T.S. No. 12/2004, repeatedly reminded the appellant to take her to some competent doctor. The petitioner never responded to her request. The respondent wrote several letters to the appellant at his work place at Lumding but he refused to receive most of the said letters. Even when the respondent tried to talk to him over phone, he refused to talk and put off the phone.

vi) The appellant's family used to celebrate Basanti puja at their Malugram residence and the respondent after the marriage used to attend the said puja but when she went to attend the said puja on 15.4.2005, the appellant and his mother did not allow her to enter the house and drove her out from their house in a very rude manner for which, she was compelled to file a case, being Silchar PS Case No. 574/2005 u/s 498A IPC.

4. The learned trial Court on the basis of aforesaid pleadings of the parties framed the following issues--

i) Whether there is any cause of action for the suit?

ii) Whether the suit/case is maintainable in the present form?

iii) Whether the Court has jurisdiction to try the suit/case?

iv) Whether the petitioner is subjected to cruelty by the respondent?

v) Whether the petitioner is entitled for the decree as prayed for?

vi) To what relief reliefs the parties are entitled to?

5. Both the appellant and the respondent filed affidavit of their evidence-in-chief as witnesses. In the course of hearing, they have been cross-examined.

6. It is found that the learned trial Court on consideration of the materials and evidence on record decided the issue No. 1 and 2 in favour of the appellant/petitioner holding that there is a cause of action for the suit and the same

is maintainable in the present form. Issue No. 3 was also decided in favour of the petitioner holding that the Family Court has jurisdiction to try the suit. The learned trial Court decided issue No. 4 against the petitioner holding that the petitioner totally failed to show any kind of cruelty on the part of the respondent against him; rather on the contrary, the petitioner had caused mental torture and sufferings to the respondent by way of branding her as a psychiatric patient with physical and organic defects. Consequently, issues No. 5 and 6 were also decided against the petitioner holding that he is not entitled to a decree of divorce and other reliefs.

7. The learned trial Court on examination of both the husband and the wife as witnesses and on consideration of their evidence and upon hearing them, arrived at the following findings--

i) the fact of examination of the respondent by a Dr. Arun Paul Choudhury, Gynecologist on 16.08.2001 (Ext. 3) was not disclosed in the earlier suit i.e. T.S. No. 12/2004.

ii) the fact of obtaining blood report dated 21.02.2002 as given by Dr. Lal Path Lab (Ext. 9) was not disclosed in the earlier suit i.e. TS 12/2004.

iii) the fact pleaded in the earlier suit i.e. 12/2004 that the respondent was suffering from physiological problem and the certificate given by Dr. Ashish Nandi was not mentioned in the present suit.

iv) The same petitioner has taken two different stands in two cases filed against the same respondent for divorce.

v) The petitioner had stated that he had no occasion to cohabit with the respondent but in cross examination he admitted that he lived with the respondent for a few days as husband and wife.

vi) The petitioner pleaded that he came to know about the organic defect of the respondent just after solemnization of their marriage on 13.12.1999 and the respondent was taken to Dr. Arun Paul Choudhury on 16.08.2001 for examination i.e. after a period of 1 year 8 months, which shows the insincerity and indifference to the problem of his respondent-wife.

vii) The petitioner failed to show any kind of cruelty on the part of the respondent-wife rather, on the contrary, the conduct of the petitioner has demonstrated that he caused sufferings, distress and mental torture on the respondent branding her as a psychiatric patient with physical organic defect.

8. There are few undisputed facts in this case. They are as follows:--

i) the marriage between the parties was solemnized on 13.12.1999 according to Hindu Rights and rituals at Katlicherra. It was an arranged marriage.

ii) The appellant is a Lecturer of Lumding college and the respondent-wife is a school teacher posted at Katlicerra.

iii) After the marriage the respondent-wife came to the house of the appellant at Malugram in Silchar town. The problem between the parties started ever since the respondent was living in the matrimonial home.

iv) The medical treatment of the respondent started but it was discontinued at the subsequent stage.

v) The appellant filed the TS No. 12/2004 in the Court of a District Judge, Cachar, Silchar for dissolution of marriage and a decree of divorce on ground of cruelty on the part of the respondent and the same was dismissed on a compromise arrived at followed by filing of a joint petition by the parties before the Court.

vi) Even after the compromise and disposal of the title suit, the difference between the parties continued. The allegations and counter allegations against each other continued.

vii) The respondent filed the criminal case being Silchar PS Case No. 574/2005 u/s 498A IPC against the appellant

viii) The appellant obtained anticipatory bail in connection with the aforesaid criminal case and thereafter, filed the present suit before the Family Court, Cachar, Silchar, u/s 13(1)(ia) of the 1955 Act for dissolution of marriage and a decree of divorce.

9. We have heard Mr. N. Dutta, learned Senior counsel, assisted by Mr. R.C. Saikia, learned counsel for the appellant and also Mr. D. Dey, learned counsel, appearing for the respondent No. 1.

10. In the Memo of Appeal the appellant has taken as many as 15 grounds, out of which, during oral submissions, stressed on the following--

i) No issue was framed on the earlier TS No. 12/2004 and the learned Family Court has committed grave error of law by reopening the earlier suit which was compromised by the parties on 01.12.2004.

ii) The learned trial Court failed to take into account the evidence on record that the appellant made efforts to get the respondent's ailments, namely, organic defect, cured by taking her to specialist doctors and getting the medical tests conducted and respondent's refusal and non-co-operation with the appellant in the matter of her own medical treatment. The learned trial Court, as argued by the learned counsel for the appellant, erroneously held that the appellant did not make any statement as regards the organic defect of the respondent in earlier T.S. 12/2004 and as such there is no merit in the present suit.

11. The learned counsel for the appellant, apart from the ground of cruelty, persuaded this Court that in the impugned judgment, the learned trial Court completely avoided the fact established in the evidence that the respondent did not come back to matrimonial home for a period of more than 10 years and thereby she has deserted him and such a long desertion itself has proved that the marriage between the parties has broken irretrievably necessitating dissolution of same on a ground of desertion, which is one of the grounds u/s 13 of the 1955 Act.

12. It has been submitted by the learned counsel for the appellant that the respondent, as a legally married wife, by refusing sex and cohabitation with the appellant, has not only deprived him of peaceful marital life but also caused mental torture on him. The mental torture has been multiplied due to institution of criminal case against him on false allegations of demand for dowry u/s 498A IPC. It has been persuaded that institution of false criminal case itself constitutes a strong ground for seeking dissolution of marriage and a decree of divorce under the provision of Section 13(1)(ia) of the 1955 Act. In this regard, reliance has been put on a decision of the Apex Court in [Praveen Mehta Vs. Inderjit Mehta](#), ; Delhi High Court's decision in [Kiran Kapoor Vs. Surinder Kumar Kapoor](#), and also judgment of Bombay High Court in Nitin Ramesh Dhiwar Vs. Roopali Nitin Dhiwar decided on 16.8.2012.

13. In Parveen Mehta's case (supra) the marriage was never consummated due to lack of co-operation by the wife as she was suffering from asthmatic problem. Both the husband and wife went to meet the Vaid and later on they went to the Civil hospital where she was advised to go in for complete checkup and diagnosis but the wife did not show her inclination for such checkup. The wife became increasingly irritable and on several occasions threatened to leave the matrimonial house on minor incidents. On some occasions the wife even refused to make tea and misbehaved with her husband in front of his friends. In the said case right from the beginning the matrimonial relation between the parties was not normal and the spouses stayed together at the matrimonial house for a short period of six months only. The petition for dissolution of marriage on ground of cruelty was dismissed but the High Court allowed the appeal and granted divorce on ground of cruelty holding amongst others, that no child was born to the parties and it would be in the interest of justice to grant the divorce. The wife filed LPA and the same was also dismissed by a Division Bench of the High Court and then the wife further appealed before the Supreme Court which was also dismissed. In the said judgment the Hon"ble Supreme Court held that the cumulative effect of the facts proved by the respondent-husband such as frailty and apparent ill-health of appellant-wife, her refusal to undergo medical test and treatment or to disclose the nature of illness for which she was being treated since before marriage, her inability or lack of co-operation in establishing normal cohabitation and repeatedly causing social embarrassment to respondent-husband, taking false plea that she had suffered miscarriage and making false complaint to the police, would be to cause such mental depression, anguish, disappointment and frustration which amount to

mental cruelty. It has also been held that person enjoying normal health being deprived of normal cohabitation by spouse and thus undergoing anguish and frustration could be said to have been subjected to mental cruelty. In the instant case the respondent-wife never got conceived and in fact she has never claimed so, rather she claimed that the appellant enjoyed sex with her for a couple of days to his full satisfaction and the allegation of non-cooperation with him in the sexual relationship is a falsity but the fact remains that she got herself examined by doctors and was advised for treatment and operation. She also came out with an allegation that the appellant-husband was not sincere enough in continuing her treatment due to which further treatment of her ailment was not possible. On the other hand, the appellant also made allegation against the wife that she did not respond to several letters asking her to come and take the treatment and thereby extended no co-operation with him in the matter of continuing the medical treatment.

14. On the face of allegations and counter allegations of the appellant and the respondent, we have to decide the matter within the parameters of the present established law of divorce on ground of cruelty. The concept of cruelty as matrimonial offence has been changing from time to time. Earlier, physical cruelty was considered as the prime ingredient of matrimonial offences. In the modern view, mental cruelty has been recognized as a more serious matrimonial offence that can cause more grievous injury than what physical cruelty can do to a spouse. No further discussion is necessary in this regard. There is no denial of the fact that the incidents of mental cruelty are on the rise in an abnormal manner in the modern society and to cope with this type of crimes a new provision in the form of Clause 13(1)(ia) to Subsection (1) of Section 13 has been incorporated in the 1955 Act. In the Statute there is no definition of cruelty. Physical cruelty, in many cases, leaves tale-tell signs in the form of marks of injuries on the person of the spouse, which could be proved by medical evidence. Ocular or circumstantial evidence are also available to prove the case of physical cruelty. But such evidence are not available in cases of mental cruelty. That is why in [Shobha Rani Vs. Madhukar Reddi](#), it is observed that if it is physical cruelty, the Court will have no problem to determine it. It is a question of fact and degree. But if it is mental, the problem presents difficulty. So, first of all the enquiry must begin as to the nature of the cruel treatment and the impact of such treatment in the life of a spouse whether it causes 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 some cases, where the conduct complained of itself is bad enough and perse 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 would stand established if the conduct itself is proved or admitted.

15. In the case of mental cruelty, a spouse may be hurt mentally by the act of the other spouse. Mental injury or hurt, is not visible like the physical ones. It could never be felt or seen. The Court has hard and challenging task to determine whether a particular case involves mental cruelty causing harm to a spouse. The mandate of the Apex Court in *Parveen Mehta (supra)* is that the mental cruelty has to be established from the facts of a given case. The guiding principle has been laid down in paragraph 21 which is quoted hereunder:--

21. Cruelty for the purpose of Section 13(1)(ia) is to be taken as a behavior by one spouse towards the other, which causes reasonable apprehension in the mind of the latter and it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehavior in isolation and then pose the question whether such behavior is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.

16. In [Manisha Tyagi Vs. Deepak Kumar](#), it is held that to constitute cruelty it is enough if the conduct of one of the parties is so abnormal and below accepted norms that other spouse. could not reasonably be expected to put it up. The conduct is required to be so extraneously abominable which would cause a reasonable apprehension that it would be harmful or injurious to continue the cohabitation with the other spouse. Further, it is held that to establish cruelty it is not necessary that physical violence should be used. In the said case, marriage between the parties was celebrated on 17.11.1991 according to Hindu rites and mutual cohabitation came to an end on 30.12.92. A petition u/s 13 of the Hindu Marriage Act, 1955 was filed by the husband for dissolution of marriage on grounds of cruelty. The trial Court found that the allegation of cruelty against the wife were not proved. But counter allegations, made against the husband, stood proved. Hence, the petition was dismissed and the appeal was filed. The First Appellate Court found that both the parties were at fault and granted a decree of judicial separation adapting a middle path. Aggrieved thereby, the wife filed LPA. The Division Bench accepted the allegations of cruelty made by the husband and granted a decree of divorce to him. On appeal filed by the wife, the Apex Court allowed her appeal. In [Neelam Kumar Vs. Dayarani](#), the appellant-husband alleged that barely after 8/9 months of the marriage, his respondent-wife became quite

aggressive and started torturing him and his family members in a cruel manner. He tried to make adjustment with a hope that she would correct herself, but finally when it became impossible to carry along with her, he filed a petition for dissolution of marriage u/s 13(1)(ia) of the 1955 Act on ground of cruelty. The appellant-husband also made several other allegations. The respondent-wife denied all the allegations. The learned trial Court allowed the suit and passed the decree of divorce. In appeal, the decree of divorce obtained by the husband on ground of cruelty by the wife was set aside by the High Court on finding that no case of cruelty was made out against her. The High Court also came to a conclusion that marriage between the appellant and the respondent had completely broken down with no hope of revival and compelling them to live together would be hard and unjust.. It was, therefore, held that if a party to marriage, by his/her own conduct brings the relationship to a point of irretrievable break down, he/she can not be allowed to seek divorce on ground of break down of marriage inasmuch as it would amount to giving someone the benefits of his/her own mis-deeds. The Apex Court refused to interfere with the order of the High Court holding that there was nothing to indicate that the respondent-wife contributed to the alleged break down of marriage. The Apex Court in holding so, relied on its earlier decision rendered in [Vishnu Dutt Sharma Vs. Manju Sharma](#), wherein it has been held that irretrievable break down of marriage is not a ground of divorce as it is not contemplated u/s 13 of the Hindu Marriage Act and granting divorce on this ground would amount to adding a Clause therein by a judicial verdict which would amount to legislation by Court. In a recent case of [Pankaj Mahajan Vs. Dimple @ Kajal](#), , the respondent-wife was suffering from mental disorder i.e. Schizophrenia, she used to insult, even slap the husband and mis-behaved with colleagues and relatives causing humiliation and embarrassment to him. Besides, the wife used to give repeated threats to commit suicide and indeed once she even tried to commit suicide by jumping from the terrace. The appellant-husband could prove the same by adducing evidence and materials. The appellant-husband was also successful in showing that the acts and conduct of his wife caused grave mental cruelty to him and it was not possible for the parties to live with each other and in fact both husband and wife were living separately for last more than 9 years and there was no possibility to unite the chain of marital life between them. Following the earlier decision in several cases, the Apex Court held that onus to prove grounds of divorce lies on the spouse who complains cruelty.

17. At the moment, let us presume that the appellant husband brought false allegations against his wife and take it granted that the respondent-wife had stated the truth in her written statement, evidence-on-affidavit and oral deposition. Let us accept her pleadings that the husband repeatedly cohabitated and performed sexual intercourse with her with full satisfaction except on the night of "kal ratri" during her stay in the house of the appellant. In her evidence on affidavit she made the following statements--

...the petitioner has created a false story to make improper gains rather contrary to the story of the petitioner. During my stay at the marital house, myself and my husband (the petitioner) had cohabitation and sexual intercourse with satisfaction. I did not pass most of my life in my sister's house at Vivekananda road at Silchar during my stay in the period between December, 1999 to January 2000. The petitioner never took to the chamber of doctor Arun Paul Choudhury, MD Gynecologist to hear me and to opine that I needed any operation to take a chance of removal of some organic defect in the vaginal organ and that the operation should have been done at an earlier stage of my attending puberty about 9/10 months ago. I never told that for removal of my ailments I had consulted with doctors prior to marriage who opined the necessity of operation.

She further stated:--

I have always been eager to live with my husband, but within few days of marriage, the petitioner and my mother-in-law started abusing me for insufficient dowry materials given at the time of marriage by my father and subjected him to mental and physical torture to try and get me agreed for mutual divorce....

18. From her above evidence, it appears that she stayed in the matrimonial house only for few days from the date of marriage i.e. 13.12.1999 to January 2000 and she was subjected to mental and physical torture by the husband and in-laws.

19. In her cross examination, she denied that she was accompanied by the appellant to Dr. Arun Paul Choudhury, MD for her treatment. She also denied that the said doctor Paul Choudhury diagnosed her disease and found her suffering from organic problem and advised her for operation. However, she stated that on 18.2.2002 she was accompanied by the elder brother of her husband to Guwahati for treatment. Her husband also came to Guwahati from Lumding and at Guwahati her blood was collected at the collection centre of Dr. Lal Path Lab Pvt. Ltd. situated at Bhangagarh, Guwahati and the same was sent to the said Path Lab at New Delhi. She denied the suggestion that her husband tried to make the Fenton operation and has avoided it on this or that reason and in the meantime, her husband had already instituted the Title Suit being T.S. 12/2004 for dissolution of marriage and decree of divorce. She had admitted that on negotiation, a compromise was arrived at and a joint compromise petition was signed and filed. The relevant portion of the joint compromise petition is as follows:--

....

2. That the parties in the chamber of the District Judge and in presence of learned District Judge at his valuable advice decided to compromise the suit.

3. That both the parties withdrew the allegations and counter allegations levelled against each other.

4. Both the parties undertake to maintain usual relationship of husband and wife and share company of each other in the usual way of life.

5 That the petitioner is very much eager to provide the defendant with best medical treatment both inside and outside the State and the defendant shall also undertake to co-operate with the petitioner.

6 That the parties also agree that the strained relationship between the family members of the parties shall also be retrieved by mutual visits and the defendant will also make an endeavour to live with the petitioner without affecting her service more specially, during vacation.

....

On the basis of the said joint petition, the learned trial Court passed the following orders:--

01.01.2004: On the aforesaid petition dated 01.01.2004 the petitioner Dr. Joshodev Arjun and the respondent Chirotoni Arjun @ Chirontoni Nandi, husband and wife are personally present and they have been heard along with their learned counsel. On the endeavour of the Court and the learned counsel for the parties, the parties have compromised their dispute and agreed to continue their mutual tie and vide petition No. 227/25, both have come to live together as husband and wife happily, the terms and conditions have been incorporated in the said petition, which I also find accommodative in between the parties.

In view of the aforesaid facts and circumstances, the suit is dismissed on compromise and petition No. 272/25 shall form the part of the decree. Draw up the decree accordingly.

Sd/-

District Judge

20. In compliance to the above order of the Court, the respondent-wife claims in her evidence-in-affidavit that "even after all cruelty and harassment" she came to the house of the appellant on 15.4.2005 to attend the Basanti Puja celebrated at the house of the appellant but the petitioner and his mother did not allow her to attend the said puja and to live in the matrimonial house. As the respondent was driven out of the matrimonial house, she was compelled to take shelter in her parental house. Under such circumstances, she lodged a complaint against her husband and mother-in-law u/s 498A IPC which was registered as Silchar PS Case No. 574/05. It may be worth mentioning that the respondent-wife, accepted the statement that she came to matrimonial house on 15.4.2005, without disclosing as to who accompanied her while she came to the matrimonial house or who were present at the time when she was driven out. She has examined herself only and she preferred not to examine any other witness to corroborate her evidence. In fact there is no corroboration of her evidence that she came to matrimonial house on 15.04.2005

and she was abused and driven out by her husband and mother-in-law.

21. As per the terms and conditions contained in the said joint compromise petition and the consequential order, the respondent wife did, no doubt, come to the matrimonial house on 15.4.2005 but as per her own statement/evidence, she having not been allowed to attend the Basanti puja or having not been allowed to live in the matrimonial house, came back and took shelter in her parental house. There is no allegation from her end that on her return to matrimonial house, she was physically assaulted or forcefully driven out. In her oral evidence, she stated that her mother-in-law was aged above 90 years. Such an aged lady, in our view, can not go to the extent of physically torturing a young lady like the respondent and forcing her to go out from the house or preventing her physically from entering the house. If she really wished to stay in the matrimonial house, she could do so on the strength of the Court's order and taking recourse to legal action. As per her pleadings and evidence on record, she never turned up or visited the matrimonial house again with intention to live therein. She never met any elderly person/persons complaining that she was not allowed to enter or stay in the in-laws house nor she ever apprised the Court concerned that the compromise order has been violated by the appellant. She straightway filed an FIR against the appellant complaining physical and mental cruelty on her and got a criminal case registered u/s 498A IPC corresponding to GR Case No. 1083/2005. A copy of the FIR in the said case is available on record, being marked as Ext. G.

22. We have perused the said FIR as found on record. The respondent apart from making the aforementioned allegations, averred in the said FIR that as she had no way out she had been consistently thinking about committing suicide but she desisted from doing so to fight for justice and then lodged the Ejahar demanding immediate arrest and lodging of the appellant in police lockup. On completion of investigation, the appellant and his mother were charge-sheeted and they were made to stand trial after the charge was framed u/s 498A IPC. After the trial, the learned SDJM, Cachar, Silchar, delivered a judgment on 23.11.2012, acquitting the accused (present appellant and his mother) of the said charge. The learned counsel for the appellant, during the course of hearing, produced a copy of the said judgment. We have perused the said judgment. The learned SDJM, in his judgment came to a conclusion that:

actually the crux of the allegation of P.W. 1, is that on the day of Basanti puja in 2004, she visited her matrimonial home but her mother-in-law got angry that her husband abused her by calling her liar, fraud etc

and observed that a mere anger without any criminal manifestation thereof, is no offence. The learned trial Court also observed that the alleged oral abuse by the husband on a single occasion" is unlikely to drive a reasonable woman to commit suicide or to cause grave injury or danger to her life, limb or health. The respondent has no dispute on the fact of acquitting the appellant. There is nothing on record

that the aforesaid judgment of the criminal Court has been challenged in higher forum or any order has been passed reversing the said order of acquittal. Thus the charge against the appellant could not be established and as such the allegations against him can not be accepted as true and correct.

23. Situated thus, we subscribe to the view and decision taken by the Bombay High Court in Nitin Ramesh's case (supra) that a false criminal complaint itself amounts to cruelty within the meaning of Section 13(1)(ia) of the 1955 Act. Apart from this, it is found from the FIR that the respondent has been contemplating commission of suicide. As held in Pankaj Mehta's case (supra), such threat to commit suicide postulates a treatment of a spouse with such cruelty as to create reasonable apprehension in the mind that it would be harmful or injurious for him to live with the other party. We can not ignore this factor and hold that no cruelty has been done to the appellant by the respondent-wife, who had admitted to have given a threat of committing suicide, lodged false FIR just to put him in the lockup and dragged him to Court to face the long drawn trial unnecessarily. This, in our considered view, comes under the ambit of cruelty as contemplated u/s 13(1)(ia) of the 1955 Act and also judicial interpretation given in the above cited case.

24. There is a significant observation of the Apex Court in Neelam Kumar (supra) that if a party to a marriage, by his own conduct brings the relationship to a point of irretrievable break down, he/she can not be allowed to seek divorce on the ground of break down of marriage, for that would simply mean giving someone the benefits of his/her mis-deeds. The appellant herein is the divorce seeker. We have to discuss about his conduct. The evidence on record does not reveal that he ever subjected the respondent to extreme physical and mental cruelty. In fact the appellant has not subjected his wife to physical cruelty. He had been pursuing his wife to receive the complete medical treatment to remove the organic and physical defect. There appears to be some lapses in his persuasion but he is not to blame alone for that because the respondent-wife took the stand that she had no organic and physical problem. But the fact remains that she never got conceived and had shown no interest in attaining motherhood or becoming mother of a child, inasmuch, as she left the matrimonial home just after 1 year and 8 months. This is also an admitted position that there is a snap in the physical and sexual relationship between the parties for a pretty long period, in fact, the wife lived mostly in her paternal home and deprived the appellant of normal sexual intercourse. Let us accept that the respondent is absolutely free from organic or physical problem and she needs no medical treatment. If her stand is accepted, she should have carried a baby in her womb during the period of her association with the appellant for a period of 1 year and 8 months. It never happened and there is no chance of happening so. Sex, for a married couple, is an absolute necessity to meet, both biological and mental satisfaction of the couple through which only procreation and a complete and meaningful conjugal life is possible. The appellant, having been deprived of the usual sex and chance of procreation, found it meaningless to continue the

relationship of husband and wife and thought of ending the fruitless bond through dissolution of marriage and decree of divorce.

25. We have found the marriage between the appellant and the respondent has broken down irretrievably. We are aware with the present law, as held in [Vishnu Dutt Sharma Vs. Manju Sharma](#), that irretrievable break down of marriage is no longer a ground for divorce. In the present case, there is no doubt that marriage has broken down irretrievably for which the respondent-wife alone is not to blame. Both parties have contributed to bringing their marriage to a state of irretrievable break down. But the law, in the facts and circumstances of the case and on the face of the evidence on record, would not bend in favour of the respondent-wife, who, by her own conduct, distanced herself from mutual cohabitation with the appellant for a long period and instituted a false criminal case against him u/s 498A IPC in which she could not succeed in proving the charge and thereby proved the commission of cruelty by her upon the appellant, which constitutes a valid legal ground for seeking divorce u/s 13(1)(ia) of the Hindu Marriage Act, 1955.

26. Having considered the entire facts and circumstances of the case and evidence on record adduced by the parties, the present marriage between them can not be allowed to continue as it is found proved that the respondent- wife committed cruelty on the appellant-husband. We do not agree with the conclusion and findings arrived at by the learned trial Court and consequently we quash and set aside the impugned judgment and order dated 26.8.2009. The appeal stands allowed.

27. The existing marriage between the appellant and respondent stands dissolved u/s 13(1)(ia) of the Hindu Marriage Act, 1955. Let a decree be drawn. No order as to costs. Return the LCR.