

**IN THE COURT OF THE DISTRICT JUDGE, ::::::::::::::::::::UDALGURI.**

Present : Sri P. Saikia.  
District Judge,  
Udalguri.

**T.S.(D) No.27/2015.**

Sri Akash Mazumdar,  
S/o- Sri Ajit Mazumdar,  
Vill- Bhairabkunda Angrajuli,  
P.S.- Udalguri,  
Dist-Udalguri, Assam..... Petitioner.

-Vs-

Smti. Silpi Mazumdar,  
W/o- Sri Akash Mazumdar,  
D/o- Late Ranjan Rai Chowdhury,  
Vill- Bhairapur,  
P.S.- Udalguri,  
Dist-Udalguri, Assam ..... Respondent.

Appearance :

For the petitioner : Mr. T.C. Boro, Advocate.

For the respondent : Mr. N. Narzary, Advocate.

Date of argument : 28.8.2019.

Date of Judgment : 31.8.2109.

**JUDGMENT**

1. This is a suit filed by the petitioner, Sri Akash Mazumdar U/S-13 (1)(i-a) of the Hindu Marriage Act,1955, praying for dissolution of marriage with respondent, Smti. Silpi Mazumdar.

2. Brief facts, leading to the dispute, are that in the year of 2001, in Aghun month according to Assamese calendar a valid marriage between the petitioner

and respondent was solemnized according to Hindu rites and customs. The petitioner and the respondent peacefully led the conjugal life till 2013. Out of their conjugal life they are blessed with one male child namely, Jaydeep Mazumdar aged 12 years and one female child namely, Mallika Mazumdar, aged 10 years were born. They are studying in Class VI and Class V respectively. The two minor children are residing with the petitioner and looking after for the welfare of the minor children. In the year 2012 the respondent suffered from severe headache and she was immediately taken to Coch Bihar, West Bengal by the petitioner for medical treatment and admitted at Subham Hospital & Diagnostic centre Pvt. Ltd. The treatment of the respondent was continued till 10.4.2013. Eventually the respondent got relieve from her disease, but she started to pick up quarrel with the petitioner even on trivial matter day in and day out. The respondent begun to show disliking towards the petitioner for anything that he may say or do for the reason best known to her. Such disliking began to manifest in words and conduct of the respondent when the respondent started showing complete disrespect and disobedient towards the petitioner in her day to day dealing with the petitioner become rude and abusive which is never expected from a wife. In spite of such rude and abusive behaviour on the part of the respondent, the petitioner continued the conjugal life by tolerating all sorts of rude and abusive behaviour of the respondent, but she never tried to lead the conjugal life peacefully. On 25.2.2014 the respondent by making some spurious allegation filed a complaint petition before the Court of Chief Judicial Magistrate, Udalguri and the same was forwarded to the O/C Udalguri to investigate into it. After the completion of trial the Ld. trial court acquitted the petitioner from GR Case No, 1.72/14, U/S 498(A) IPC. In the same year the respondent also filed another petition by claiming maintenance from the petitioner which was registered as M/R No. 23/14 and pleaded to grant maintenance allowance of Rs. 3000/- which is pending before the court of S.D.J.M(S) at Udalguri. The respondent left the matrimonial home without any valid reason and filed petition one after another to harass the petitioner. The petitioner alongwith his relatives tried several times to bring the respondent to matrimonial home to lead conjugal life, but the respondent refused to resume the conjugal life. The family members of the respondent also tried to resolve the dispute but the respondent never respond

the direction of the family members. Thus, the marriage life between the parties has been broken irretrievably and there is no chance of re-union and reconciliation between the parties. Since the respondent has committed matrimonial offence of cruelty towards the husband and, as such, the petitioner has been compelled to seek divorce U/S - 13(1) (i-a) of Hindu Marriage Act, 1955 without there being any collusion between the parties in presenting the application for divorce. The petitioner has also not in any manner being accessory to or connived at or concocted the aforesaid act of cruelty of the respondent and her willful conduct towards the married life. Hence the petitioner has praying for divorce on the ground of cruelty by dissolving the marriage solemnised between the petitioner and the respondent.

3. The respondent contested the suit by filing her written statement denying the allegations levelled against her alleging, inter-alia, by projecting the real facts in the premises that the petitioner suppressing the material facts has filed the petition on some false, baseless and imaginary story with an object to subject harassment financially, mentally and physically upon the respondent. The entire story contemplated in the petition is false, as such, he could not mention the date of occurrence of the offence. The petitioner got married the respondent socially around 13 years back according to Hindu religious rites, customs and ceremonies as prevailing in their society. After solemnization of marriage the respondent went to her matrimonial home located at Bhairabkunda and lived there together with the petitioner as husband and wife and out of that wedlock two Children have born to them. The conjugal life of the respondent and the petitioner was passing peacefully for one year only. Thereafter, the petitioner started trouble and started making her life miserable by demanding a motor-cycle and cash money of Rs.50,000/- from her. As she could not meet up the illegal demand of the petitioner, he used to subject unbearable physical and mental torture upon the respondent. Even then the respondent was continuing to live with the petitioner by hoping that after some days the petitioner will realize his mistakes and takes care of her. But all hopes of the respondent faded away soon as because the petitioner instead of changing in his conduct, the degree of his cruelty towards

the respondent increases day by day. On last 15.7.2013 at about 9 p.m. the petitioner under the influence of alcohol and without any reason mercilessly assaulted the respondent causing injuries on her person. Again on 1.2.2014 at around 7 p. m. the petitioner under the influence of alcohol assaulted the respondent in a most inhuman manner and driven her out of his house along with the minor female child retaining the male child. Since 2.2.2014 the respondent has been living in a rented house alongwith her minor daughter at Bhairabkunda Tiniali. But on 30.11.2015 the petitioner forcefully took away the female child from the custody of the respondent. As the petitioner had driven her out from his house after subjecting unbearable cruelty upon her and as the petitioner did not enquire about the respondent after driving her out from his house and, as such, she filed a C/R Case before the C.J.M. Udalguri on 25..22014 which was registered U/S 498(4) I.P.C. and the said case was forwarded to the O/C of Udalguri Police Station for enquiry into the matter after registering a case. She also filed a case U/S 12 of Domestic Violence Act, 2005 against the petitioner. Therefore, respondent has prayed to dismiss the petition.

4. It is apposite to mention that effort of reconciliations was made during the trial of the case but the same went in vain.

5. On the pleadings of the parties, in order to adjudicate the subject matter in dispute following issues are framed:-

(1) Whether the respondent treated the petitioner with cruelty?

(2) Whether the petitioner is entitled to get a decree of divorce as prayed for?

(3) To what relief(s) the parties are entitled to?

6. The petitioner submitted the evidence on affidavit of himself and two other witnesses. They were cross-examined by the respondent side. The respondent also adduced her evidence by way of evidence on affidavit and two other defence witnesses. They are cross-examined by the petitioner's side.

7. I have heard argument advanced by the learned counsels appearing for both the sides and assiduously appraised of the evidence on record in its entirety.

**Decision thereon with reasons for decision therefor:**

(1) Whether the respondent treated the petitioner with cruelty?

(2) Whether the petitioner is entitled to get a decree of divorce as prayed for?

8. Both these issues framed in the suit are more or less interlinked and, hence, for the sake of convenience and to avoid repetition of the evidence on record, I propose to discuss the issues together for decisions.

9. In conformity to the petition of the divorce, the petitioner Akash Mazumdar in his evidence as PW1 has averred that he married the respondent in the month of Aghun according to Assamese calendar in the year 2011 as per Hindu rites and customs and the marriage was duly consummated. Out of their wedlock one male child namely, Jaydeep Mazumdar aged 12 years and one female child namely, Mallika Mazumdar, aged 10 years were born. In the year 2012 the respondent suffered from severe headache and she was immediately taken to Coch Bihar, West Bengal for medical treatment by him and admitted at Hospital. The treatment of the respondent was continued till 10.4.2013. When she recovered from her illness she was brought to the conjugal home but she started to pick up quarrel with him even on trivial matter regularly. She also begun to show disliking towards him for anything that he may say or do for the reason without any just ground. Gradually such disliking began to manifest in words and conduct of the respondent and eventually she started showing complete disrespect and disobedient towards him as her day to day dealing with him become rude and abusive. In spite of such rude and abusive behaviour the petitioner determined to maintain the conjugal life, but the respondent never tried to lead the conjugal life cordially and peacefully. On

25.2.2014 the respondent by making some spurious allegation filed a complaint petition before the Court of Chief Judicial Magistrate, Udalguri and the same was forwarded to the O/C Udalguri to investigate into it. Police registered GR Case No, 1.72/14, U/S 498(A) IPC against him and laid the charge-sheet for his trial. In connection with the case police arrested him and sent him to judicial custody. After completion of trial he was acquitted from the case. The respondent also filed another petition by claiming maintenance from him which was registered as M/R No. 23/14 and the court pleased to grant maintenance allowance of Rs. 3000/- which is pending before the court of S.D.J.M(S) at Udalguri. He has further stated that the respondent left the matrimonial home without any valid reason and filed petition one after another to harass him constantly. Though, he and his relatives tried several times to bring back the respondent to matrimonial home to lead conjugal life, but the respondent refused to resume the conjugal life. It was not only him but even the family members of the respondent tried to resolve the dispute but the respondent never responded to the advice of her own family members. As a consequence thereof the marriage between him and the respondent wife has been broken irretrievably due to such matrimonial offence of cruelty towards him and, therefore, there is no chance of reunion and reconciliation between the parties.

10. In cross-examination he has disclosed that both his son and his daughter are at present living with him and he is looking after their education and their well being. He made effort to take the respondent back to the matrimonial home but she was not willing to come back. He has a small garment shop. Initially he used to sell clothes in footpath but for last 6/7 years he sells clothes in shop. He has denied the suggestion that he started ill behaving with the respondent since 2013 while she was suffering from ailment. He has denied another suggestion that he used to pick up quarrel with the respondent on trifling matter and started neglecting her since he had no income of her own. He has further denied the suggestion that he used to torture the respondent under influence of alcohol and that he earns Rs.40,000/50,000/- per month from his business.

11. PW2, Smti. Alaka Rai is the sister-in-law of the respondent. She has supported the case of the petitioner as stated in the petition. She has stated that in the year 2012 the respondent was suffering from sever headach. She was taken to Coch Bihar, West Bengal for medical treatment by her brother-in-law (petitioner) and admitted at Subham Hospital & Diagnostic centre Pvt. Ltd. After prolong treatment her sister-in-law recovered from the diseases. After recovery respondent (her sister-in-law) started picking up quarrel without any rhyme and reason with the petitioner and left the matrimonial home and used to reside at their home. Though the petitioner tried several times to bring back the respondent to matrimonial home but she refused to go to the matrimonial home to lead their conjugal life, as because, the respondent is an arrogant lady. Whenever her family members asked the respondent to go to the matrimonial home to join hands to the petitioner but she never follows the advice of family members. Ultimately the respondent left their residence and presently resides at a rented house at Udalguri town. The petitioner had haver driven her out from the matrimonial house rather the respondent willingly left the matrimonial home on her own effort by deserting the petitioner.

12. In cross-examination, she has revealed that prior to her marriage petitioner got married with the respondent. Both the parties used to pickup quarrel with each other. She alongwith her mother-in-law persuaded the respondent to settle the matter amicably and resume conjugal life with the petitioner but she refused to do so. As a result, the petitioner went to their house to take the respondent but the respondent refused to go to the matrimonial home. She has denied the defence suggestion that under compelling circumstances respondent filed criminal case against her husband.

13. PW3, Smti. Manju Rai is the mother of the respondent. Her evidence inchief also in tune of the petitioner's case without any departure.

14. In cross-examination she has disclosed that respondent Silpi Mazumdaris her daughter. There was love affair between the parties. Both the parties picked up quarrel on this or that matter. She does not know the reason as to why quarrel took place between the husband and wife. Respondent

stayed for 1 ½ months in their house. For 20 to 23 days petitioner was in jail custody in connection with criminal case lodged by the respondent. After being released from the judicial custody petitioner came to their house and wanted to take back his wife but his wife refused to resume conjugal life. They made effort to settle the matter and persuaded the respondent to resume conjugal life and asked her to go to her matrimonial home but she made no response. She has denied the suggestion that the petitioner maintains them, providing money etc and for that reason she has deposed falsely in favour of the petitioner.

15. The respondent in her evidence on affidavit in-chief as DW1 has as usual supported her averments made in the written statement. She has stated in her cross-examination that she lodged a complaint against her husband under the provision of Domestic Violence Act. The case under Domestic Violence Act has been finally disposed of. Her two children reside with her husband. He maintains both the children. She is staying separately in a rented house at Udalguri while her husband resides in a rented house at Bhairabkunda. In the year 2012 she was suffering from severe headach for 5/6 months. Her husband took her to Coach Bihar in connection with her treatment. She visited 3/ 4 times to Coach Bihar in connection with her treatment. She has denied the suggestion that she has sufficient income to maintain herself. She has further denied the suggestion that her husband came to her house to take her back and when one day her husband came to her house to take her back then she chased away her husband. She has also denied the suggestion that she has left the matrimonial home without any sufficient reason and that her husband did not torture her.

16. In the like manner DW2, Smti. Damanti Rai and DW3, Smti. Renuka Devi have adduced their evidence by submitting their affidavit evidence in-chief supporting the contention of the respondent. However, DW2 in cross-examination has revealed that the petitioner alongwith some ladies and another male person came to the rented house of the respondent to take her back. The respondent refused to go with her husband since her husband came in a drunken condition. The respondent deals in clothes. However, she has

denied the suggestion that the respondent has sufficient means for maintain herself.

17. DW.3 in cross-examination has disclosed like DW2 that the petitioner Akash Mazumdar and other ladies came to the rented house of the respondent to take her back but the respondent did not accompany with her husband since the case has been pending.

18. On a close analysis of the foregoing discussion of evidence on record what has emerged that both the parties have swapped serious allegations against each other. The petitioner has sought for dissolution of marriage on the ground of cruelty and desertion.

19. Before proceeding further, it is pertinent to mention at this stage that Under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, a marriage can be dissolved by a decree of divorce on a petition presented either by the husband or the wife on the ground that the other party has, after solemnization of the marriage, treated the petitioner with cruelty. In a series of judgments the Hon'ble Apex Court has repeatedly stated the meaning and outlined the scope of the term 'cruelty'. Cruelty is evident where one spouse has so treated the other and manifested such feelings towards her or him as to cause in her or his mind reasonable apprehension that it will be harmful or injurious to live with the other spouse. Cruelty may be physical or mental.

20. In **Samar Ghosh Vs Jaya Ghosh**, reported in **(2007)4 SCC 511**, the Hon'ble Apex Court set out illustrative cases where inference of 'mental cruelty' can be drawn. This list is obviously not exhaustive because each case presents it's own peculiar factual matrix and existence or otherwise of mental cruelty will have to be judged after applying mind to it. We must quote the relevant paragraph of Samar Ghosh. We have reproduced only the instances which are relevant to the present case.

**"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) xxx xxx xxx

(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) xxx xxx xxx

(viii) xxx xxx xxx

(ix) xxx xxx xxx

(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) xxx xxx xxx

(xii) xxx xxx xxx

(xiii) xxx xxx xxx

(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."

It is pertinent to note that in this case the husband and wife had lived separately for more than sixteen and a half years. This fact was taken into consideration along with other facts as leading to the conclusion that matrimonial bond had been ruptured beyond repair because of the mental cruelty caused by the wife. Similar view was taken in Naveen Kohli.

21. Further, [Section 13](#) (1)(ib) of the Act provides Desertion for the ground of Divorce. It reads as follows;

"13. Divorce.- (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

- (i) x        x    x   x    x        x
- (ia) x                x   x    x        x

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(ii) to (vii) x x x x Explanation- In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly."

22. "Desertion", for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore,

means withdrawing from the matrimonial obligations, i.e., not permitting of allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and procreation of children. Desertion is not a single act complete in itself; it is a continuous course of conduct to be determined under the facts and circumstances of each case.

23. The Apex Court in **Bipinchandra Jaisinghbhai Shah v. Prabhavati, AIR 1957 SC 176** has observed as under;

**"For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively."**

24. In **Kattivera Venkata Padmawathi -versus- Katti Sriram**, reported in **(2003), D.M.C. 373 (A.P.)** it has been held that:

**"A criminal case under section 498-A, Indian Penal Code was filed by the wife against the petitioner-husband. Ultimately, the case ended in acquittal. From the fact that the wife filed a criminal case against the husband-petitioner after a divorce petition was instituted, it must be held that the wife filed an unfounded case as a counter-blast to the divorce petition filed by the petitioner. That itself amounted to cruelty by filing a criminal case. The absence of the wife in the matrimonial home in this case was about 10 years. It amounted to desertion and cruelty."**

25. In **V. Bhagat v. D. Bhagat**, reported in **(1994)1 SCC 337**, in the divorce petition filed by the husband the wife filed written statement stating that the husband was suffering from mental hallucination, that his was a

morbid mind for which he needs expert psychiatric treatment and that he was suffering from 'paranoid disorder'. In cross-examination her counsel put several questions to the husband suggesting that several members of his family including his grandfather were lunatics. This court held that these assertions cannot but constitute mental cruelty of such a nature that the husband cannot be asked to live with the wife thereafter. Such pleadings and questions it was held, are bound to cause immense mental pain and anguish to the husband. In **Vijaya kumar Bhate Vs Neela Vijaya kumar Bhate reported in (2003) 6 SCC 334** disgusting accusations of unchastity and indecent familiarity with a neighbour were made in the written statement. The Hon'ble Apex Court held that the allegations are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous to live with her husband. In Naveen Kohli the respondent-wife got an advertisement issued in a national newspaper that her husband was her employee. She got another news item issued cautioning his business associates to avoid dealing with him. This was treated as causing mental cruelty to the husband.

26. In **Naveen Kohli Vs Neelu Kohli, reported in (2006)4 SCC 558** the wife had filed several complaints and cases against the husband. The Hon'ble Apex Court viewed her conduct as a conduct causing mental cruelty and observed that the finding of the High Court that these proceedings could not be taken to be such which may warrant annulment of marriage is wholly unsustainable.

27. We shall apply the above principles to the present case. Admittedly, the petitioner and the respondent have been living separately for the last 6 years. It is also an admitted position that the respondent left the conjugal home on 10.4.2013 and she has been still living separately from the petitioner in a rented house. According to the evidence of the petitioner (PW1) supported by PW2, Alaka Rai, the sister-in-law of the respondent and PW3, Smti. Manju Rai, the mother of the respondent that the respondent that the respondent in the

year 2012 suffered from severe headache and she was immediately taken to Coch Bihar, West Bengal for her medical treatment by the petitioner and admitted her in the Hospital. The treatment of the respondent was continued till 10.4.2013. After recovery from illness respondent was brought to the conjugal home but she started to pick up quarrel with petitioner even on trivial matter regularly and begun to show disliking towards the petitioner for anything that he may say or do for the reason without any just ground. Gradually such disliking began to manifest in abusive and harsh words and the conduct of the respondent and eventually she started showing complete disrespect and disobedient towards the petitioner. Despite such rude and abusive behaviour the petitioner determined to maintain the conjugal life, but the respondent showed extreme reluctant to lead the conjugal life cordially and peacefully and eventually left the conjugal home without informing him. Subsequently thereto, the respondent by making some false and concocted allegation filed a complaint petition before the Court of Chief Judicial Magistrate, Udalguri and on the basis of which police registered a case being GR Case No, 1.72/14, U/S 498(A) IPC against him and laid the charge-sheet for his trial. After completion of trial he was acquitted from the case. The respondent also filed another petition by claiming maintenance from the petitioner being registered as M/R No. 23/14 and the court granted maintenance allowance of Rs. 3000/- in favour of the respondent. It is also stated by the petitioner that though he and his relatives tried several times to bring back the respondent to matrimonial home to lead conjugal life, but the respondent refused to resume the conjugal life. As a consequence thereof the marriage between the petitioner and the respondent has been broken irretrievably due to such matrimonial offence of cruelty meted out to him by the respondent, therefore, there is no chance of reunion and reconciliation between the parties.

28. As against this, it is the testimony of the respondent (D.W.1) that it is the petitioner who made her life miserable at the matrimonial home by demanding cash money to buy a motor-cycle and when she could not fulfill the illegal demand of the petitioner she was subjected to unbearable physical and mental torture and eventually she was expelled from the matrimonial

home. But the evidence of the respondent (DW1) is found to be self serving statement without any corroboration even from her own witnesses DW2, Damanti Rai and DW3, Smti. Renuka Devi. These two DWs in cross-examination in no certain terms have revealed that when the petitioner came to take back the respondent to the conjugal home but she refused to go with her husband. Except this there is no consistent evidence in their testimony also that the petitioner used to harass the respondent physically and mentally on demand of dowry as a result of which she has to live separately in a rented house by her own. It also amply evident from the testimony of the respondent (DW1) herself that she has been living in rented house and their two children who are now 12 and 10 years are living with the petitioner and he is looking after their welfare and education. So far as the allegation of causing physical and mental torture by the petitioner on demand of dowry and when the dowry demand could not be made up she was subjected to torture has not been supported by the other two witnesses DW2 and DW3 respectively. Their evidence is found to be totally silent in this serious aspect. That apart, had the respondent been expelled by the petitioner from the conjugal home by torturing respondent for not fulfilling demand of dowry she could have kept her children alongwith her as since her leaving the conjugal home she has been staying in a rented house alone. It is also seen from the evidence on record that for a certain period the daughter of the respondent was living with her but ultimately she also left the company of the respondent which establishes a questionable conduct on the part of the respondent who is for the best reason known to her living in a rented house alone after forsaking her own parental home. In other words, there is no evidence worthy of credence to substantiate the claim of the respondent that petitioner made her life miserable at the matrimonial home which compelled her to leave the matrimonial home in the backdrop of the evidence of her own defence witnesses DW2 and DW3 who have not made a whisper in regard to her allegation in the written statement.

29. In addition to above, it is admitted by the respondent in her cross examination that she instituted a criminal case under section 498(A) I.P.C. against her petitioner-husband and after full trial of the case he was acquitted. It is also admitted position that respondent in cross examination has revealed

that she also filed a maintenance case against her petitioner-husband under section 125 Cr.P.C. claiming maintenance and the court also allowed maintenance accordingly which would amply show that all is not well between the conjugal life of the petitioner and the respondent and as a consequence of which both the parties have been living separately for the last 6 years. Though the respondent has claimed that she was subjected to incessant cruelty by the petitioner at the conjugal home which compelled her to live in a rented house since 2013 has not been supported by convincing and cogent evidence. Her admission as to the acquittal of the petitioner in a case lodged by her under section 498(A) I.P.C. after full trial is tantamount to mental cruelty to the petitioner coupled with the fact that she has been staying at a rented house for the last 6 years without resumption of any cohabitation with the petitioner in spite of several efforts made by the petitioner to bring her back to the conjugal home to pass a peaceful married life.

30. In our opinion the very filing of the criminal case U/S 498A IPC by the respondent against the petitioner to a large extent responsible for widening the rift between the parties. Since the abandoning the conjugal home by the respondent several cases have been filed against the petitioner and dragged the petitioner to the court as a result the relation between the petitioner and the respondent got strained though the petitioner was very much eager to continue the matrimonial life with the respondent excusing the act of the respondent for the betterment run of the conjugal life to which the respondent failed to pay any heed. Such attitude and conduct on the part of the respondent would invariably show that the respondent left the matrimonial home without just reason and causing mental cruelty to the petitioner.

31. Another interesting facet of the instant proceeding is that the own mother of the respondent and her sister-in-law examined as PW2 and PW3 have fully supported the case of the petitioner blaming the respondent for causing mental cruelty to the petitioner by leaving his company on her own sweet will and that too by filing a case U/S 498A IPC against the petitioner where the petitioner had to undergo jail detention though he was eventually acquitted after full trial of the case. Therefore, the mental cruelty due to filling

of the criminal case U/S 498 A IPC by the respondent on the petitioner is the deliberate conduct of the respondent as to cogent cause and reasonable apprehension in the mind of the petitioner that it would be harmful and injurious for him to live with the respondent.

32. It is also apposite to mention again that the spouses stayed together for a period of about 13 years and for the last 6 years they were living separately due to serious matrimonial dispute which could be resolved amicably between the parties. It is abundantly seen that escalated acrimony shown by the respondent led to arrest of the petitioner in a criminal case U/S 498A IPC filed against him. Thus, the petitioner has been deprived of normal cohabitation and suffered social embarrassment and humiliation due to behaviour of his wife/respondent in filing a criminal case U/S 498A IPC against him where he was acquitted. Thus, it can be safely inferred that mutual relation of the parties were not normal and this is not a normal wear and tear of married life between the parties. From the conduct of the respondent regarding filing of a serious case against her husband under section 498(A) I.P.C. and his ultimate acquittal in the said case on full trial and staying of the respondent separately in a rented house for the last 6 years is sufficient to hold cruelty and desertion by the respondent.

33. In **Kattivera Venkata Padmawathi -versus- Katti Sriram**, reported in **(2003), D.M.C. 373 (A.P.)** it has been held that:

**"A criminal case under section 498-A, Indian Penal Code was filed by the wife against the petitioner-husband. Ultimately, the case ended in acquittal. From the fact that the wife filed a criminal case against the husband-petitioner after a divorce petition was instituted, it must be held that the wife filed an unfounded case as a counter-blast to the divorce petition filed by the petitioner. That itself amounted to cruelty by filing a criminal case. The absence of the wife in the matrimonial home in this case was about 10 years. It amounted to desertion and cruelty."**

34. In a reported case of Satish Sitole -versus- Ganga, A.I.R. 2008 S.C. 3093, out of 16 years of marriage, the appellant and respondent had been living separately for 14 years. Hon'ble Supreme Court has observed that since

the marriage between the parties is dead for all practical purposes and there is no chance of being retrieved the continuance such marriage would itself amount to cruelty and in exercise of power under Article 142 of the Constitution the marriage was dissolved by the Apex Court.

35. It is also to be reiterated that the petitioner-husband and the respondent-wife are staying apart since 2013. Thus, they are living separately for more than six years. This separation has created an unbridgeable distance between the two due to serious complaint and counter complaint. As held in ***Samar Ghosh (Supra)***, if we refuse to sever the tie, it may lead to mental cruelty.

36. 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. I am fortified in this conclusion by the observation of the Hon'ble Apex Court in the decision of **K. Srinivas Rao Vs. D.A. Deepa**, reported in **Civil Appeal No.1794 of (2013)5 SCC 226**.

37. In ***V. Bhagat (Supra)*** the Hon'ble Apex 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 (Supra)***, 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.

38. Considering the above facts and circumstances of the case in the backdrop of the evidence on record, I am also tempted to refer the decision reported in **Poonam versus- Ghanashyam Gupta, [1 (2003 ) D.M.C. 467 (Allahabad) (D. 8.)** wherein it was held that:

**"While dealing with matrimonial cases, the court has to strike a balance between strict compliance of law and situation emerging from the facts of the particular case. It is a totally different situation where the court has to judge the rights of the parties with regard to certain property. But when the court is to deal with human relationships, their future living, it is obligatory on the part of the court to consider whether the two persons whose matter is put before it, would in any way be benefited by the strict compliance of the legal principles. The court is duty bound to consider the welfare of the parties and come out, to a workable solution. Under the scheme of the Act, dissolution of a marriage is normally the last option which the court should exercise. But when a situation comes up, like the present one, where directing the parties to live together would be totally meaningless. The purpose of continuance of such marriage only for name's sake would be futile."**

39. In the ultimate analysis we hold that the respondent-wife has caused by her conduct not only mental cruelty to the petitioner-husband but also deserted the petitioner and resultantly the marriage has irretrievably broken. Dissolution of marriage will relieve both sides of pain and anguish.

40. In view of the facts that the allegation and counter allegation levelled by both the parties in the present case in hand is not ordinary wear and tear of the family but is a disorder in the family life of the parties of such a degree that it is impossible to led a normal marital life by both the parties together and in that view of the matter, I have no option but to answer the Issue No.1 and 2 in the affirmative and in favour of the petitioner.

ISSUE No.3:-

(3) To what relief(S) the parties are entitled to?

41. **Issue No.3** revolves round the question as to the relief or relieves the petitioner are entitled to as per provision of law.

42. In view of my findings on Issue No.1 and 2 in the affirmative and the Issue No.2 in the affirmative and in favour of the petitioner, who is entitled to relief as sought for. On th e other hand respondent is not entitled to any relief.

43. Hence, the Issue No.3 is answered accordingly.

44. In the result, the suit is decreed on contest declaring the marriage between the parties is dissolved on the ground of cruelty and desertion. No order as to costs.

45. Let a decree be prepared dissolving the marriage between the parties.

46. Given under my hand and seal of this court on this the 31<sup>st</sup> day of August,2019 in the open court.

(P.Saikia)  
District Judge,  
Udalguri.

Dictated and corrected by me

(P.Saikia)  
District Judge,  
Udalguri.

