

**HIGH COURT OF TRIPURA
AGARTALA**

MAT.APP. No.02/2022

Sri Pranab Das, age-37 years, S/O. Sri Bhyagadhar Das, R/O. Village-Netaji Palli, P.O. & P.S.-Belonia, District-South Tripura.

----Appellant(s)

Versus

Smt. Tamalika Basu (Das), Wife of Sri Pranab Das, D/O. Laxman Basu, R/O. Village-Arya Colony, P.O. & P.S.-Belonia, District-South Tripura.

-----Respondent(s)

For Appellant(s) : Ms. A. Debbarma, Advocate.

For Respondent(s) : Ms. R. Purkayastha, Advocate.

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH**

Date of hearing and judgment : **19th January, 2023.**

JUDGMENT & ORDER (ORAL)

Heard Ms. A. Debbarma, learned counsel appearing for the appellant-husband. Also heard Ms. R. Purkayastha, learned counsel appearing for the respondent-Wife.

2. This matrimonial appeal under Section 19(1) of the Family Courts Act read with Section 28 of the Hindu Marriage Act, 1955 is directed against the judgment dated 30.11.2021 passed by the learned Judge, Family Court, Belonia, South Tripura District in case No. T.S.(Divorce) 46 of 2021

whereby the learned Judge allowed the petition filed by the wife-petitioner with a decree of divorce after dissolution of marriage.

3. In the present appeal, appellant-husband has prayed for the following reliefs:

"i) Admit the instant appeal filed U/S 19(1) of the Family Court's Act, read with Sec 28 of the Hindu Marriage Act, 1955 against the Judgment and Order, dated, 30.11.2021, passed by Family Court, Belonia, South Tripura, in Case No. T.S(Divorce) 46/2021.

ii) Issue notice upon the Respondent.

iii) Hear the both sides.

iv) Allow the instant Appeal by setting aside/quashing the Judgment and Order, dated, 30.11.2021, by restoring the marriage of the Appellant and the Respondent.

v) Allow the Appellant to visit Trishan Das, i.e., the son of the Appellant once a week.

vi) Call for records.

vii) Pass any further order/orders as the Hon'ble High Court considered fit and proper."

4. Background facts of the case are as follows:

The marriage between the appellant-husband Sri Pranab Das and the respondent-wife Smt. Tamalika Basu was solemnized on 16.10.2011 according to Hindu rites and customs. After marriage both of them led their conjugal life by cohabitation peacefully and out of their wedlock, a male

child (son) named Trishan Das who is now 8 years of age was born. It was alleged that after the birth of their son, the appellant-husband started torture upon the respondent-wife physically and mentally. Wife tried to adjust with the appellant-husband but he suspected his wife while talking with any person including her parents and relatives. Gradually the degree of torture was increased upon the wife and she informed the matter to her father who tried to mitigate but to no good. It was also alleged that the appellant-husband being intoxicated tortured the respondent-wife physically when she failed to fulfill his sexual desire. On several occasions, appellant assaulted his wife by fist and blows and on 20.08.2018 she was compelled to take shelter in her parental house with her minor child. It was further alleged that the appellant-husband constantly gave threats to the respondent-wife to kill her and also to snatch her minor son unless she would return to her matrimonial home. Finding no other alternative, respondent-wife filed a suit being T.S.(Divorce) 47 of 2018 before the learned District Judge, South Tripura, Belonia under Sections 13(1)(ia) of the Hindu Marriage Act for dissolution of marriage on the ground of cruelty. Thereafter, issues were framed by the learned District Judge and the Family Court while started its functioning the learned Judge, Family Court, Belonia, South Tripura after appreciating evidence available on record allowed the petition filed by the wife-petitioner with a decree of divorce after dissolution of marriage.

Aggrieved thereby, the respondent-husband filed the instant appeal. Hence, this case.

5. Ms. A. Debbarma, learned counsel appearing for the appellant-husband, contends that the learned Trial Judge without appreciating the yardstick of preponderance of probability required to be applied in a matrimonial proceeding and also the evidence on record committed an error in allowing the petition filed by the wife-petitioner and on the basis of presumptions and conjectures justified the desertion of the appellant-husband by the respondent-wife and passed a decree of divorce in favour of the wife after dissolution of marriage. She also contends that the appellant-husband wants to stay with his wife and prays for setting aside the impugned judgment along with decree dated 30.11.2021 passed by the learned Judge, Family Court, Belonia, South Tripura District in case No. T.S.(Divorce) 46 of 2021 by restoring the marriage of the appellant and the respondent.

6. On the other hand, Ms. R. Purkayastha, learned counsel appearing for the respondent-Wife vehemently opposing the submissions advanced by the learned counsel for the appellant-husband contends that in terms of the order of this Court both the parties appeared in person through counsel before the Court and mutually agreed to the terms and conditions contained in the Annexure on record and the appellant-husband assured the

Court that he will not assault the wife in future but considering the previous history of severe assault, it is not possible for the wife to return to her matrimonial home. Accordingly, she prays for dismissal of the instant appeal.

7. In view of submissions of learned counsel for the respective parties, we are of the considered view that if the wife is not interested, she cannot be forced to live together with the appellant-husband since from the factual aspects of the matter it transpires that the appellant-husband was all along torturing his wife physically and mentally and as such, the learned Judge has rightly allowed the decree of divorce in favour of the wife on dissolution of their marriage. Accordingly, the appeal stands dismissed. The impugned judgment dated 30.11.2021 passed by the learned Judge, Family Court, Belonia, South Tripura District in case No. T.S.(Divorce) 46 of 2021 is confirmed.

8. Send down the lower court records forthwith.

Pending application(s), if any, also stands disposed of.

(ARINDAM LODH), J

CHIEF JUSTICE (ACTING)

Pulak