

**HIGH COURT OF TRIPURA
AGARTALA**

FA NO.02 OF 2022

Sri Subhash Ch. Sutradhar,
S/O Late Atul Ch. Sutradhar,
Resident of Srinathpur,
P.O. Babar Bazar, P.S. Irani,
Kailashahar, Unakoti Tripura.

---Appellant

Versus

Smt. Pinku Sutradhar,
W/O Sri Subhash Ch. Sutradhar,
D/O Late Matilal Sutradhar,
Resident of Village-Gandhigram,
Near Satshangha Ashram,
P.S. Airport, West Tripura

---Respondent

BEFORE

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

For Appellant(s)	:	Mr. Pradip Chakraborty, Advocate
For Respondent(s)	:	Ms. Aradhita Debbarma, Advocate Mr. S. Lodh, Advocate
Date of hearing	:	16.05.2023
Date of delivery of Judgment	:	30.05.2023
Whether fit for reporting	:	YES/NO

JUDGMENT & ORDER

(Arindam Lodh, J)

This appeal, under Section 19 of the Family Courts Act, 1984,
is directed against the judgment and decree dated 16.02.2022, passed by the
learned Addl. Judge, Family Court, Agartala, West Tripura, in TS(Divorce)

No.322 of 2015, whereunder the learned Judge rejected the prayer of divorce filed by the appellant-husband.

2. We have heard Mr. Pradip Chakraborty, learned counsel appearing for the appellant as well as Ms. Aradhita Debbarma, learned Legal Aid counsel and Mr. S. Lodh, learned counsel appearing for the respondent.

3. This is yet another unfortunate matrimonial dispute which has shuttered 18(eighteen) years old matrimonial bond between the appellant-husband and the respondent-wife.

The appellant-husband is serving as Constable/Washerman under 74 Bn. BSF and the respondent-wife is a house wife. Their marriage was solemnized as per Hindu rites and customs on 25.11.1997 in the house of the husband's cousin-sister at Ratacherra, Kumarghat. After marriage, both the parties started their conjugal life together at the same house and two/three days thereafter, they went to Kashmir where the appellant-husband was posted at that time and started living happily there in a rented house as husband and wife. On 23.07.1998, a female child was born out of their wedlock. In the year 1999, both the husband and wife came to their house at Kailashahar for 'Annaprassan' ceremony of their new born daughter and after 'Annaprassan' ceremony the appellant-husband decided to keep the respondent-wife and their daughter at Kailashahar with his parents for a period of six months, but the respondent-wife did not agree and tried to set herself on fire. However, she got no serious burn injury. So, the appellant had to take them with him at Kashmir again. Subsequently, on being transferred,

they had to shift to Assam where their second female child was born on 05.03.2001 out of their wedlock.

4. It is alleged by the appellant that relation between them was well till 2001, but, thereafter, bitterness in their matrimonial relation has gradually started to come initially on an issue of alleged illicit relationship of the appellant-husband with his sister-in-law, when the respondent-wife started misbehaving with him unexpectedly and also started abusing him. However, the dispute ended as the respondent-wife realized her fault. Thereafter, on being transferred, they had to shift to Shalbagan, Agartala in the year 2005, and started staying there in a quarter. While he was posted at Shalbagan, as alleged by the appellant, he observed that the wife-respondent was not happy at all and again started behaving with him indifferently and disobeying him in all aspects of their conjugal life. In the year 2006, the appellant purchased a land at Gandhigram, Agartala for construction of dwelling hut and in the year 2007 he was again transferred to Kashmir, but at that time he did not take his family with him and kept them in a rented house at Gandhigram and on completion of construction of their house over the purchased land his wife and daughters shifted to their own house and started staying there. The appellant used to come to their home at Gandhigram twice in a year and used to stay there for about 7-10 days, during which he observed that the respondent developed an illicit relationship with her sister's son, and on being asked she used to become furious telling him not to interfere in her personal life. It is the claim of the appellant-husband that as

the respondent-wife has become very cruel and rude and started to humiliate him, and as such, he comes to the conclusion that the marital tie between them has fallen down and there exists no further scope for their re-union.

5. The appellant-husband set the law in motion presenting an application under Section 13(1) of the Hindu Marriage Act seeking decree of divorce against his wife, the respondent herein, on the ground of cruelty. It is, *inter alia*, alleged by the appellant-husband that they lived and cohabited peacefully for about five years and two children were born out of their wedlock. But, for the last few years of filing the divorce petition, the behaviour of the respondent-wife towards him was very painful and the behavior of the respondent-wife was so cruel that it was not possible on the part of the appellant-husband to live together as husband and wife as she became so aggravated that sometimes she physically tortured the husband-appellant during his stay at Gandhigram. It is further alleged that the relation between the appellant and the respondent was as such that any mishap might have happened at any time. Due to non-cooperation of the respondent-wife with the appellant their marital life as well as conjugal life became meaningless and miserable and conduct of the respondent was very painful to the appellant and he had to lead a life of humiliation in the society and in this way the respondent used to treat the appellant with mental cruelty. Finally, it has been alleged by the appellant that their married life had been emotionally and practically broken down and there was no scope to reunite them with the

marital tie and in such a position the appellant had no alternative but to pray for dissolution of their marriage by a decree of divorce.

6. On the other hand, the respondent-wife denying all the allegations made by the appellant contended that the appellant-husband used to visit the house at Gandhigram every after two to six months and in the month of October, 2015 the appellant coming to their house at Gandhigram tortured her physically and mentally, thereafter on return to the place of posting, he had stopped to provide maintenance to her and her daughters and also closed their joint account. The respondent-wife further stated that subsequently the appellant started depositing money directly into the bank account of their daughters. However, she denied all the contentions made by the appellant and prayed for dismissal of the application filed by the appellant-husband for dissolution of marriage.

7. The learned trial Judge considering the pleadings of the parties, framed three issues, as follows:

- “(i) Whether the petition is maintainable?*
- (ii) whether the husband-petitioner, Sri Subhash Ch. Sutradhar was subjected to cruelty by the wife-respondent, Smt. Pinki Sutradhar?*
- (iii) Whether the petitioner is entitled to the decree as prayed for and to what other relief/reliefs?”*

8. In course of trial, the appellant examined himself as PW1 and also examined two witnesses, PW2, Smt. Dipali Sutradhar and PW3, Sri Babul Ch. Sutradhar. On the other hand, the respondent-wife also examined herself as DW1 and also examined four more witnesses, namely DW2, Smt. Jaya

Gope, DW3 Sri Prasanta Sutradhar, DW4 Sri Dipak Das and DW5 Sri Lalit Mohan Gope.

9. Learned Addl. Judge, Family Court considering the pleadings and evidence on records decided the material issues against the appellant-husband and consequently refused to grant decree of divorce. While rejecting the petition for divorce filed by the appellant-husband, the learned Addl. Judge, Family Court came to following findings:

“I have considered the arguments of both sides and also perused the evidences recorded so far. It is pertinent to mention here that the petitioner adduced himself as PW1 and have adduced evidences of other witnesses who are his close relatives and residents of Kailashahar. I have taken note of the facts revealed in examination-in-chief and cross-examination of PW2 and PW3, which indicates that those witnesses are nowhere in the proximity of the facts alleged in this Case. Moreover, from the very pleadings of the petitioner, I find that no such incident took place at Kailashahar, serious enough to hold that he was subjected to torture and cruelty. It is only found that both the parties celebrated ‘Annaprasana’ of their elder daughter at Kailashahar and the alleged incident of the respondent trying to put fire upon her has no basis. Further, after moving away from Kailashahar, the parties of this Case were found to have lived at various places and for a long period of time together without any dispute. Hence, any question of cruelty serious enough to attract the ingredients for seeking divorce does not arise. Apart from the above, it is also on record that the petitioner could not bring anybody from the places of his posting or Gandhigram to corroborate the facts pleaded by him meaning thereby that his statements are on record without any corroboration. So far his allegations against the respondent about her illicit relationship with her nephew is concerned, I find there no corroboration is there in

support of this contention. The petitioner did not make the nephew of the respondent as a party to this Case and even, the witnesses belonging to Gandhigram area, who appeared in Case stated otherwise and did not support this issue. Thus, I find that only to prepare his Case, the petitioner has forwarded a false allegation against the respondent.

On the other hand, witnesses of the respondent are found to have revealed several incidents of torture by the petitioner sufficient enough to indicate that he himself is at fault. The DWs have clearly corroborated by stating that the respondent was tortured by the petitioner on various occasions for which they even intervened and advised him and significantly, they mentioned that there was an extra-marital relationship of the petitioner with another lady. At this stage, Ld. Counsel for the petitioner rightly argued that the fact of extra-marital relationship of the petitioner cannot form a basis for consideration, as the respondent did not take any plea about the same in her written statement and raised this point freshly in her deposition. In regard to this point, I find that Ld. Counsel for the petitioner was right, but from the record, it can clearly be inferred that this issue was first admitted by the petitioner himself in his cross-examination and later raised in the examination-in-chief by the respondent and her witnesses. Although at the later stage, but this Court also cannot refuse to consider such a significant point when the petitioner himself raised the same during recording of evidence. Even-if for argument's sake, the fact of extra-marital relationship of the petitioner is kept aside, it remains clear on record that the petitioner failed to support or corroborate his claims and allegations against the respondent with sufficient evidences.

It is the obligation of a party to prove the fact that he is claiming and in a Case of divorce, the petitioner has to be very specific in bring out the facts which has led to any form of cruelty upon him, sufficient enough to attract the ingredients of Sec-13(1)(i-a) of the Hindu Marriage Act. Thus, I find that no probability lies in

the Case of the petitioner as he has failed to adduce sufficient proof for the same. It is otherwise found that the petitioner himself is at fault and applied for a decree of divorce based on false and frivolous facts and contentions.

*The petitioner also relied upon the Judgment dt. 23.09.2020 passed by the Hon'ble High Court of Tripura, Agartala, in connection with **Case No.MAT App.06 of 2015** in support of his Case and contentions. I have taken note of the ratio of the Judgment and consider that present is not a Case where the petitioner could prove any fact of cruelty upon him by the respondent or that the parties have been living separately for a long period. It is not that in the present Case, the marriage has broken irretrievably or there is no communication between them as because, the daughters of the petitioner are being maintained by him and the respondent herself is willing to stay with him and resume their conjugal life.*

9. *I have gone through the entire discussions made above and the result of the same. It is very much clear now to hold that the petitioner did not suffer any cruelty from the side of the respondent, sufficient enough to seek divorce from her. I am satisfied that the petitioner has failed to prove his Case to the extent required and is not entitled to get any decree of divorce on the grounds as prayed for.*

All the point Nos.(i), (ii) & (iii) are hereby decided against the petitioner and the final Order runs as follows:

ORDER

10. *In the result, it is ordered that the application filed by the petitioner, **Sri. Subhash Chandra Sutradhar** against the respondent, **Smt. Pinku Sutradhar** for a decree of divorce U/Ss-13(1)(i-a) of the Hindu Marriage Act is hereby dismissed.*

The petitioner is not found entitled to get any relief as prayed for.

11. *Prepare decree accordingly in terms of the above findings."*

10. We have gone through the petition filed by the appellant-husband under Section 13 of the Hindu Marriage Act, 1955 seeking dissolution of marriage between the parties by a decree of divorce on the ground of cruelty. We have also gone through the evidence of the witnesses adduced by the respective parties as well as the finding of the learned trial court.

Indisputably, the marriage between the appellant-husband and the respondent-wife was solemnized on 25.11.1997 as per Hindu rites and customs and they lived and cohabitated happily as husband and wife for a couple of years. Dispute and differences between them initially had taken place, as alleged by the appellant-husband in the year 1999, when the appellant-husband decided to keep his family members with his parents for a period of six months, while the respondent-wife tried to set herself on fire. Thereafter, in the year 2002, when the respondent-wife suspected an illicit relation of her husband with his sister-in-law, but that came to end when the respondent-wife realized her fault. Thereafter, for a couple of years, i.e. upto 2005, there was no specific family discord between them. Dispute and differences came between them, mainly from the year starting from 2005, when the appellant transferred to Salbagan. It is alleged by the appellant that the respondent-wife was not happy at all with the appellant and did not allow the appellant to talk with any of his female relatives or female colleagues. Even she did not show any respect for her husband and started disobeying

and humiliating him with all respects. Thus, the behaviour of the respondent-wife with the appellant-petitioner has become very painful and cruel for the husband which led to physical torture and mental cruelty by the respondent-wife on the appellant-husband. Marriage between the appellant and the respondent has been emotionally and practically broken down and there is no scope to unite themselves within the marital tie and in such a position the appellant has no other alternative but to pray for dissolution of their marriage by a decree of divorce.

On the other hand, it is the case of the respondent-wife that after their marriage in the year 1997 they were living together more or less peacefully initially for three/four years. Thereafter, it was revealed by her that the appellant was in the habit of making illicit relation with one lady and while she tried to raise objection the appellant used to torture on her in various ways. It is also alleged that abusing and quarrel had become a routine work of the appellant-husband. She denied all the allegations leveled against her by the appellant and prayed for dismissal of the suit filed by the appellant for dissolution of marriage.

11. It is evident in the facts and circumstances of this case, that matrimonial relation between the appellant-husband and the respondent-wife was already fractured after a few years of their marriage and it has completely ceased after 2015. Under such circumstances, while the marital bond between the parties is about to dead, resistance of the prayer for granting divorce by the husband may be termed to have been intended only to

inflict mental agony to the wife-respondent. Human life is for a short span of time. A man and a woman, who were completely unknown to each other, tie their knot of marriage with a high hope and aspiration looking forward for a life full of mirth and merriment. Nobody, perhaps start their marital life with an anxiety that it will collapse soon thereafter. Once it is collapsed because of the gap in the understanding of the spouses or because of other surrounding factors or for the cruel behavior by one of them, in our considered opinion, it will be totally useless in keeping the thread of marital bond alive while all mutual love and affection and earthly feeling between them vanished.

12. We may gainfully quote here a observation made by the Hon'ble Andhra Pradesh High Court in the case of **Smt. S. Vijaylakshmi V. S. Bheem Reddy** reported in **AIR 1988(AP) 296**, thus:-

“We are reminded of a well-found saying that “A House is Built with Bricks and Stones But a home is Built with Love and Affection.” A matrimonial home cannot be built by bricks and stones but only built by love and affection. If there is no love-lost between the partners, the home collapses and any attempt to bring reconciliation between the partners would be a futile exercise.

Indian tradition & culture may not permit granting of divorce on trivial grounds. Law may not agree that small disputes could be a ground for divorce. As we have observed that a matrimonial home is built with love and affection and when such love and affection are absent, instead hatred has marred the homely atmosphere, the matrimonial home becomes hell. We are rather distressed to observe that love & affection between the parties have vanished & in its place hatred have been blossomed. Therefore we are of the view that no useful purpose would be served if they are ‘ordered’ to stay together.”

13. Irretrievable breakdown of marriage is not a ground for divorce by itself. But while scrutinizing the evidence on record to determine whether the grounds on which the divorce is sought are made out, the circumstances can be taken to consideration. No divorce can be granted on the ground of irretrievable breakdown of marriage if the party seeking divorce on this ground is herself or himself at fault. Here, in the case at hand, the appellant husband alleged nothing attributable to the respondent for the breakdown of marriage. He has only alleged that his wife inflicted mental torture and humiliation when he visited his own house at Gandhigram. Such statement of the appellant can in no way be termed as a willful misconduct by the respondent towards her husband.

14. For a better appreciation of breakdown of marriage, we may refer here a few excerpts from the **71st report of the Law Commission of India on the Hindu Marriage Act, 1955-- "irretrievable breakdown of marriage"-- dated April 7, 1978 which throw much light on the matter :-**

"Irretrievable breakdown of marriage is now considered, in the laws of a number of countries, good ground of dissolving the marriage by granting a decree of divorce

Proof of such a breakdown would be that the husband and wife have separated and have been living apart for, say, a period of five or ten years and it has become impossible to resurrect the marriage or to reunite the parties. It is stated that once it is known that there are no prospects of the success of the marriage, to drag the legal tie acts as a cruelty to the spouse and gives rise to crime and even abuse of religion to obtain annulment of marriage

The theoretical basis for introducing irretrievable breakdown as a ground of divorce is one with which, by now, lawyers and others have become familiar. Restricting the ground of divorce to a particular offence or matrimonial disability, it is urged, caused injustice in those cases where the situation is such that although none of the parties is at fault, or the fault is of such nature that the parties to the marriage do not want to divulge it, yet there has arisen a situation in which the marriage cannot be worked. The marriage has all the external appearances of marriage, but none of the reality. As is often put pithily, the marriage is merely a shell out of which the substance is gone. In such circumstances, it is stated, there is hardly any utility in maintaining the marriage as a facade, when the emotional and other bounds which are of the essence of marriage have disappeared.

After the marriage has ceased to exist in substance and in reality, there is no reason for denying divorce. The parties alone can decide whether their mutual relationship provides the fulfillment which they seek. Divorce should be seen as a solution and an escape route out of a difficult situation. Such divorce is unconcerned with the wrongs of the past, but is concerned with bringing the parties and the children to terms with the new situation and developments by working out the most satisfactory basis upon which may regulate their relationship in the changed circumstances.....

Moreover, the essence of marriage is a sharing of common life, a sharing of all the happiness that life has to offer and all the misery that has to be faced in life, an experience of the joy that comes from enjoying, in common, things of the matter and of the spirit and from showering love and affection on one's offspring. Living together is a symbol of such sharing in all its aspects. Living apart is a symbol indicating the negation of such sharing. It is indicative of a disruption of the essence of marriage "breakdown" and if it continues for a fairly long period, it would indicate destruction of the essence of marriage "irretrievable breakdown"

15. The Supreme court in the case of ***Dastane v. Dastane*** reported in ***AIR 1975 SC 1534***, has held that the court should consider the facts and totality of the circumstances, for the purpose of finding whether the alleged lapses are ordinary wear and tear of married life, spouses are undoubtedly supposed and expected to conduct their joint venture as best as they might, but it is no function of the court inquiring into a charge of cruelty to philosophies on the modalities of married life.

In the case of ***Manish Goel v. Rohini Goel*** reported in ***(2010) 4 SCC 393*** the Apex Court has held in no uncertain terms that where the marriage has broken down irretrievably, it causes insurmountable agony and misery. In view of this court, the state of suffering agony and misery cannot be excluded from the general sweep and connotation of the word “cruelty”.

16. In the case of ***V.Bhagat v. V.D.Bhagat*** reported in ***AIR (1994) 1 SCC 337***, the Supreme Court approving the ratio laid down in ***Sheldon V. Sheldon*** has held that the “*the categories of cruelty are not closed. Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending, capacity or incapability to tolerate the conduct complained of. Such is the wonderful realm of cruelty.*”

17. In the case at hand, we are of the considered opinion that the trial court appreciated the evidence on record and the facts and circumstances in its right perspective and has rightly held that the appellant did not suffer

any cruelty from the side of the respondent-wife, sufficient enough to seek divorce from her and we find nothing to disapprove the finding of the learned trial court.

18. In view of the discussions made above, we find no merit in the appeal. Accordingly, the appeal fails and is dismissed, but in the circumstances without cost.

19. Send back the L.C. records along with a copy of this judgment.
Pending application(s), if any also stands disposed.

(ARINDAM LODH, J)

(APARESH KUMAR SINGH, CJ)

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