

HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. 43 of 2024

Sri Marthan Debbarma

---Petitioner(s)

Versus

Smt. Sampili Debbarma and Anr.

---Respondent(s)

For Petitioner(s)	:	Mr. Pujan Biswas, Advocate. Ms. S. Debbarma, Advocate.
For Respondent(s)	:	Mr. Raju Datta, PP.
Date of hearing and date of judgment and order	:	26.07.2024
Whether fit for reporting	:	No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment and Order (Oral)

Heard Mr. Pujan Biswas, learned counsel for the petitioner also heard Mr. Raju Datta, learned PP for the state-respondent.

[2] This is a criminal revision petition under Section 401 of the Code of Criminal Procedure, read with Section 397 of the Code of Criminal Procedure for setting aside the impugned Judgment dated 20.05.2024 passed in Criminal Appeal 11 of 2023 by learned Additional Sessions Judge, Khowai Judicial District, Khowai, Tripura, whereby the learned Additional Sessions Judge, Khowai Judicial District Khowai, Tripura had affirmed the judgment dated 06.04.2023 passed in Criminal Misc(Dom) 11 of 2022 by the learned Chief Judicial Magistrate, Khowai Judicial District, Khowai, Tripura.

[3] It is the case of the petitioner that Smt. Sampili Debbarma, W/O - Sri Marthan Debbarma (respondent herein) has filed an application under Section 12 of the DV Act, 2005 before the Ld. Chief Judicial Magistrate, Khowai District, Khowai stating that the respondent came into close relation of petitioner and thereby love

and interaction grows among them which was ended in marriage solemnized on 28.07.2021 as per Christian rites in the presence of relatives.. Then one affidavit was executed before the Notary Public for registration of their marriage. After that the petitioner and respondent started their conjugal life peacefully for about 6 months though the parents of respondent does not agree to such marriage. After six months dispute cropped up among them and the petitioner started torturing upon the respondent both in mentally and physically on demand of dowry and cash amount from her paternal house. The petitioner had several times threatened the respondent over telephone as he is no more interested to lead the conjugal life with respondent. As such lastly on 10.01.2022 the petitioner severely tortured upon the respondent with fist and blows on the approach road at Garia Dafadar Para and since then petitioner cut off communication with the respondent and provided no maintenance to the respondent. The respondent then compelled to took the shelter of law. Several village meeting were convened to resolve the dispute between the petitioner and respondent but in vain. The respondent further stated that the petitioner is a Fire man serving under the Fire Service Department, Government of Tripura posted at Dharmanagar, North Tripura and earning monthly salary of Rs. 45,000/- whereas the respondent has no income on her own and as such she claimed an amount of Rs. 10,000/- per month as monetary relief from the petitioner.

[4] On receiving the notice, petitioner appeared before Ld. Trial Court and submitted his written objection wherein he stated that the case of respondent is not maintainable in its present form and nature, as such it is liable to be dismissed. The petitioner also stated that the respondent failed to make out any domestic violence incident and the application was filed suppressing the material facts. The petitioner denied that on 28.07.2021 their marriage was solemnized. The petitioner however admitted that he acquainted with the respondent through Social media' prior to one

year of the institution of this Case as the respondent has intended to start a traveling agency business and as such on good faith the petitioner handed over some documents, photographs and put some signatures in a stamp paper/blank papers as he is in government service. The petitioner also denied that on 10.01.2022 he severely tortured upon the respondent with fist and blows on the approach road at Garia Dafadar Para and since then he has no communication with the respondent. It is the facts of petitioner that no domestic violence has been committed by the petitioner as well as no marriage ceremony was solemnized and as such he led no conjugal life with the respondent.

[5] During trial the respondent has adduced three witnesses including herself as PW.1, Sri. Tinku Debbarma (Villager) as PW.2 and Sri. Rabindra Debbarma (father of PW1) as PW.3. The respondent also exhibited one affidavit with Notary certificate and joint photographs as Exhibit-P/1 and her signatures as Exhibit-P-1(a) series.

[6] On the other hand the petitioner also adduced three witnesses including himself as DW-1, Sri Sudhangshu Das (neighbour) as DW2 and Sri Abhiram Debbarma (neighbour) as DW-3.

[7] The court of the Chief Judicial Magistrate, Khowai District Khowai on 06.04.2023 in CrI.Misc(DOM) 11 of 2022 after examining the PWs and records has finally observed as follows:

29. In view of findings arrived herein-before, the petition is allowed with the following:

30. The respondent Sri Marthan Debbarma is directed to pay Rs. 7000/- (Rupees Seven Thousand) only per month to the petitioner Smt. Sampili Debbarma as maintenance which shall be payable from the date of filing of this petition i.e. from 21.06.2022. The respondent is given liberty to pay the arrear amount by 6 (six) equal installments together with the monthly maintenance that will accrue, till liquidation of the arrears. The total arrears shall be paid within 6th October, 2023. The monthly payments are to be made within the 7th day of every following English calendar month.

[8] Being aggrieved by the impugned order dated 06.04.2023, the petitioner-appellant has approached to the court of the Additional Sessions Judge, Khowai District, Khowai for challenging the order of the trial court and the appellate court after dealing with the facts and circumstances of the case has observed in the following manner:

“14. In view of the aforesaid discussion, this Court finds no sufficient ground for interfering with the impugned Judgment and Order dated 06.04.2023 passed by the learned Trial Court in Crl. Misc. (Dom.) 11 of 2022 whereby the application of the aggrieved-petitioner has been allowed.

15. Thus the appeal is hereby dismissed being devoid of merits and disposed of on contest.”

[9] Being aggrieved by the order of the appellate court dated 20.05.2024 the petitioner has approached this court by way of filing this revision petition for seeking the following relief(s):

- (i) *Admit the Criminal revision petition;*
- (ii) *Issue notice upon the respondents;*
- (iii) *Call for the records appertaining to this petition;*
- (iv) *After hearing both the parties be pleased to pass an order setting-aside the impugned Judgment dated 20.05.2024, passed in Criminal Appeal 11 of 2023, by the learned Additional Sessions Judge, Khowai Judicial District, Khowai, Tripura, (Sri R. Bhattacharjee), whereby the learned Additional Sessions Judge, Khowai Judicial District, Khowai, Tripura, had affirmed the Judgment dated 06.04.2023, passed in Criminal Misc. (Dom) 11 of 2022, by the learned Chief Judicial Magistrate, Khowai Judicial District, Khowai, Tripura, and dismissed the Criminal Appeal No. 11 of 2023;*
- (v) *In the interim, stay operation of the impugned judgment dated 06.04.2023 passed in Criminal Misc. (Dom) 11 of 2022, by the learned Chief Judicial Magistrate, Khowai Judicial District, Khowai, Tripura.*

[10] On the other hand, Mr. Raju Datta, learned PP appearing for the respondents has contended before this court that the impugned Judgment dated 20.05.2024 passed in Criminal Appeal 11 of 2023 by learned Additional Sessions Judge, Khowai Judicial District, Khowai, Tripura is just and proper and needs no interference from this Court and hence the petition be dismissed.

[11] Admittedly, the impugned order came to be passed on the strength of a notorised affidavit of marriage between the parties. The petitioner herein contended that the said affidavit has been obtained by the respondent on the pretext that both

the parties (the petitioner and the respondent) would conduct a business. The respondent herein after obtaining the signature on a stamp paper of the petitioner has misused the same and converted it into a marriage deed. He further stated that he has been wrongly implicated in this matter so as to harass him and extract money by using legal system for unlawful gains and prayed that the impugned order be set aside by allowing the revision petition.

[12] A bare reading of the deposition of PW-1 (the respondent herein), it surfaces that she is Hindu by faith and she stayed with her husband in her matrimonial home after the alleged marriage. She also deposed that she underwent a training and got a job in Bangalore but at the request of the petitioner she did not join her service. She also deposed that her husband used to beat her regularly and mediations were held in the presence of villagers & family elders. She further contended that she stayed in her in-laws home for six months but her in-laws never accepted her as wife of the petitioner. She has no proof of her marriage with the petitioner neither she has any documentary evidence to prove her contention that she is the legally married wife of the petitioner. The only thing she has been consistently relying on is the affidavit on which the petitioner appeared to have put his signature and the same has been disputed by the petitioner herein. There is no evidence of any Panchayet or mediation.

[13] Now it falls for consideration before this Court to what extent the context of the criminal petition being ***Crl.Misc. (Dom) 11 of 2022*** and the deposition made by the PW-1 can be believed. It is seen from the petition that the marriage was performed as per Christian rites whereas PW-1 (the respondent herein) deposed that she is having faith in Hindu religion. Even after living with her husband for six months, she was not in a position to tell the name of the family

members. She, being PW-1, indicated that she was not in a position to tell the route used to reach her matrimonial home from the nearest bus stop.

[14] PW-2, Sri Tinku Debbarma, being villager, has not deposed sufficiently to believe the version of PW-1.

[15] PW-3, Sri Rabindra Debbarma, being the father of the PW-1, was also not in a position to disclose the name of the son-in-law except stating that the petitioner married his daughter. The trial court has not examined the notary who is crucial evidence as the affidavit is said to be notarised. Similarly, the evidence of the defence witnesses (DWs 2 and 3) also did not prove sufficiently to say whether they are well acquainted with the family of the petitioner. All they deposed is that they never saw the respondent in the house of the petitioner.

[16] On perusal of the record, it is also seen that sufficient evidence is also not placed to believe the version that both the petitioner and the respondent were living together and having physical relationship apart from producing the notarised affidavit of marriage.

[17] In view of the above, this Court feels that in order to meet the ends of justice an opportunity needs to be given to both the parties once again for adducing oral and documentary evidence, if any, and if required to call for report from the concerned police station in order to ascertain whether they were live in relation or any marriage was performed between the petitioner and the respondent and also examine the notary & register. Statements of parties in dispute cannot be taken as whole truth. It needs to be tested

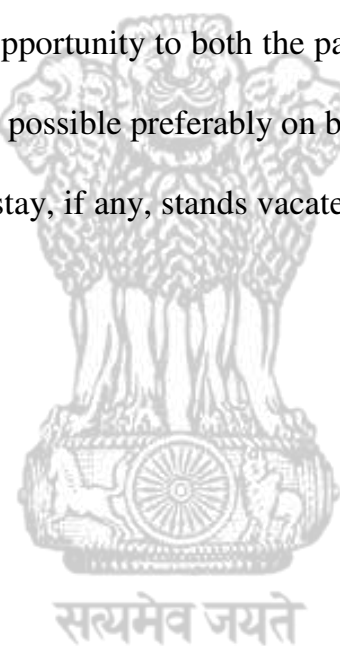
[18] It cannot also be neglected that in the recent past there were many incidences where under the garb of live in relationship or unrecognized marriage, complaints and cases are instituted to extract money from the husband by way of filing a case for maintenance. Stating thus, this Court feels that there is a need to

look into the matter afresh and accordingly necessary order be passed in accordance with law.

[19] With the above observation, the impugned Judgment dated 20.05.2024 passed in Criminal Appeal 11 of 2023 by learned Additional Sessions Judge, Khowai Judicial District, Khowai, Tripura, affirming the judgment dated 06.04.2023 passed in Criminal Misc(Dom) 11 of 2022 by the learned Chief Judicial Magistrate, Khowai Judicial District, Khowai, Tripura is set aside.

[20] Having observed thus, the present revision petition stands disposed of by way of remanding back the matter to the court of the learned Chief Judicial Magistrate, Khowai Judicial District, Khowai, Tripura for reappreciating the evidence and also to give opportunity to both the parties as observed. This matter be decided as expeditiously as possible preferably on before 31.12.2024.

[21] As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.



JUDGE

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