

**HIGH COURT OF TRIPURA
AGARTALA
MAT APP NO.07 OF 2022**

Sri Abhijit Sarkar,

S/o Sri Sadhan Sarkar,
Resident of Mohanpur, P.O.- Majalishpur,
P.S.- Ranirbazar, District- West Tripura.

.....**Appellant(s)**

Versus

Smt. Priyanka Ghosh(Sarkar),

W/o- Abhijit Sarkar,
Resident of Village Natun Pally,
Volcan Club, P.S.- East Agartala,
District- West Tripura.

.....**Respondent(s)**

For the Petitioner(s) : Mr. D. Bhattacharjee, Sr Advocate.
Mr. Samar Das, Advocate.
Mr. Soumyadeep Saha, Advocate.

For the Respondent(s) : Mr. H.K. Bhowmik, Advocate.

Date of hearing and delivery of
Judgment & Order : 13.03.2024

Whether fit for reporting : NO.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT
J U D G M E N T & O R D E R(ORAL)**

T. AMARNATH GOUD(J)

This appeal has been filed under Section 28 of the Hindu Marriage Act, against the Judgment and decree dated 30.03.2022 passed in T.S.(Divorce)240 of 2019 by the learned Addl. Judge Family Court, West Tripura, Agartala.

2. On the last date of hearing i.e. on 12.03.2024, when this case came up for consideration before this Court, the Advocates appearing were heard and the same was fixed on today for the personal appearance of both the parties.

3. Both parties are present today and initially the appellant-husband indicated before this Court that on the ground of '*cruelty*', he approached the Court below with a divorce suit but the same was dismissed. Thereafter, he has preferred the present appeal on the ground that the Court below has failed to appreciate the serious '*allegation*' made by the respondent-wife against the appellant and his father. In connection to this, an FIR has also been filed and the complainant respondent also prayed to send the appellant-husband to imprisonment along with his family members. As such, the appellant-husband prayed for an order of divorce by filing this present appeal on the ground of cruelty.

4. Per contra the respondent-wife denied the said '*allegation*' and made counter '*allegation*' before this Court against the husband and also prayed to dismiss the appeal. Further, when this Court made an effort to settle the matter amicably, the appellant-husband declined to take his wife back to lead a conjugal life. However, the respondent-wife expressed her willingness to join him. Respondent-wife also submitted that she has a 5(five) years

old child and herself is around 25 years of age and they need the care, love and affection of the appellant-husband.

5. This Court after making several deliberations came to the conclusion that both the appellant-husband and the respondent-wife cannot lead a conjugal life and this Court is also conscious that by force, this Court cannot make both of them lead a conjugal life.

6. In view of the above, the matter has been heard on merit.

7. Mr. D. Bhattacharjee, learned Sr. counsel assisted by Mr. S. Das, learned counsel, and Mr. Soumyadeep Saha, learned counsel appearing for the appellant-husband argued his case for grant of divorce on the ground of '*cruelty*'. Learned Sr. counsel submits that respondent-wife is not willing to reside in her matrimonial home and she used to threaten her husband that she would commit suicide and lock herself in the room regularly, creating panic situation in the house. Further, the mother and father of the respondent-wife used to interfere in the day-to-day affairs of their matrimonial life. There was also an altercation between the appellant-husband and respondent-wife including their respective in-laws due to which a criminal case has also been filed

by the respondent-wife and the proceeding of the same is alive till date.

To support his case of divorce on the point of 'cruelty', learned Sr. counsel appearing for the appellant-husband referred to **Para-101** of the Hon'ble Supreme Court Judgment reported in **(2007) 4 SCC 6 511** titled as **Samar Ghosh and Jaya Ghosh**, the same is produced here-in-under:-

"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) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(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) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(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) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(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."

8. On the other hand, Mr. H.K. Bhomwik, learned counsel appearing for the respondent-wife argued that a divorce petition can be granted only on the ground of 'desertion' and 'cruelty'. But both of the characteristics are missing in this present case. Marriage was solemnized between both parties on 11.05.2018 and the child was born on 21.02.2019. The divorce case was filed on 16.05.2019. The minimum criteria of divorce by 'desertion' is 2(two) years and the same is not fulfilled in this case. On the point of 'cruelty', learned counsel submits that the prosecution failed to

establish the fact of 'cruelty', only some omnibus and trivial statements have been made on the behavior and lifestyle of the respondent-wife.

To strengthen his argument, learned counsel appearing for the respondent-wife referred to the relevant portion of the Hon'ble Apex Court Judgment titled as **R. Balasubramanian Vs. Smt. Vijayalakshmi Balasubramanian** passed on **11th August, 1999**. The same is produced here-in-under:-

"Mr. A.B. Rohatgi, learned counsel appearing for the husband submitted that as far as the allegation of adultery against respondent-wife is concerned he is not going to press. That may be good of him but the fact remains that the allegation that the wife had sexual intercourse with a person other than the husband is a serious allegation against the wife and shows the cruel conduct of the husband entitling the wife to seek relief against him under the Act or otherwise. It was submitted that on July 6, 1979 parties celebrated their tenth wedding anniversary. That would show that both were living together and it is apparent that the husband has condoned the cruelty, if any, alleged by him against the wife. Husband has not gone to see his third child Kamakshi since her birth. High Court has rejected his plea that he ever made attempt to bring his wife and the daughter, who was born to her at her parents house. High Court has considered pleadings and the evidence on record threadbare and came to the conclusion that the case of cruelty and desertion set up by the husband has not been proved. We agree with the High Court and rather we find that it is husband, who is in wrong.

[emphasis added]"

9. Heard both sides and perused the evidence on record.

10. In view of the above submission, this Court feels that serious allegations made by the respondent-wife against the appellant-husband and his family members that the father-in-law used to misbehave with her and abused her and touched her on the

chest and also pushed her and the unacceptable behaviour of the husband, in all, the contents of the compliant, constitute the ground of 'cruelty' for filing a divorce. Thus, in the light of the Hon'ble Supreme Court Judgment passed in **Samar Ghosh and Jaya Ghosh (supra)**, this Court for the submissions and reasons recorded above considers granting of divorce. Accordingly, this instant application filed for grant of divorce by the appellant-husband stands allowed. The Judgment as preferred by learned counsel appearing for the respondent-wife is not relevant to the fact of the case.

11. Now coming to the point of fixing the permanent alimony, the appellant himself indicated that he is doing trading business on a commission basis. His father is a retired Government Employee, they have their own property to stay and he earns around Rs.30,000/- per month. Further, the appellant-husband has been paying a monthly maintenance of Rs.6,500/- till date to the respondent. The said submission made by the appellant-husband is not disputed by the respondent-wife.

12. In view of the above submission made as well as after considering all aspects and after discussion with both sides, this Court comes to the conclusion that it would be appropriate if Rs.10,00,000/-(Rupees ten lakhs)only is fixed as permanent alimony for the respondent-wife and Rs.5,00,000/-(Rupees five

lakhs) only is fixed as permanent alimony for their baby-child Akshita Sarkar, in total Rs.15,00,000/-(Rupees fifteen lakhs)only. The appellant in consultation with his father Mr. Sadhan Sarkar who is present before this Court submits that they would pay the same amount in 3(three) equal monthly instalments. The respondent-wife agreed to receive the same.

13. Considering the same, this Court grants 3(three) months time to the appellant herein for paying the said permanent alimony of Rs.15,00,000/-(Rupees fifteen lakhs) only. The 1st instalment of the said permanent alimony is to be paid on or before the 1st of April, 2024, the 2nd instalment is to be paid on or before the 1st of May, 2024 and the 3rd instalment is to be paid on or before 1st of June, 2024. So far as the permanent alimony for the baby-child is concerned, the said Rs.5,00,000/-(Rupees five lakhs) is to be deposited in a nationalized Bank by way of fixed deposit till the child attains majority and the mother shall be guardian cum nominee. The petitioner-husband shall deposit the said amount to the Bank account of the respondent-wife wherein he has been paying the monthly maintenance.

14. This Court also directs the appellant-husband to return the articles/gifts which he had received at the time of the marriage with the respondent-wife within the stipulated time of

3(three) months mentioned here-in-above. The wife-respondent shall duly receive the same.

15. Both parties shall take steps to get the matter closed before the concerned Court(s)/police station or any other forum as expeditiously as possible before the entire amount of alimony is paid.

16. This decree of divorce will come into operation only after the final payment of permanent alimony is made. It is needless to observe that once this permanent alimony of Rs.15,00,000/-(Rupees fifteen lakhs) only is paid, the appellant need not pay any maintenance to the respondent-wife and the child.

17. Further it is also observed that in the event if the father i.e., the appellant herein wants to have visitation rights of child i.e. Baby Akshita Sarkar, the appellant-father can go and visit her and even take her and spend some time with the child.

18. This order is passed with the mutual consent of both the parties in the presence of their respective counsel.

19. With the above observation, the present appeal is allowed and disposed of and the impugned order passed by the

Court below is set aside. As a sequel, stay if any stands vacated.

Pending application(s), if any also stands closed.

B. PALIT, J

T. AMARNATH GOUD, J

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HIGH COURT OF TRIPURA



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