

**HIGH COURT OF TRIPURA
AGARTALA**

FA No. 06 of 2023

Sahina Akter,
W/o. Md. Amadatul Haque,
D/o. Md. Shah Alam,
Resident of Vill. Dhalai,
P.O. & P.S.- Sonamura,
Dist-Sepahijala, Tripura,
Pin-799131.

..... Appellant(s)

Vs.

Md. Amadatul Haque,
S/o. Moulana Abdul Bari,
Resident of Vill. Sonapur,
P.O.- Rabindranagar,
P.S.-Sonamura,
District-Sepahijala, Tripura,
Pin-799131.

.....Respondent(s)

For Appellant(s) : Mr. H Laskar, Advocate
Mr. A Barik, Advocate

For Respondent(s) : Mr. S Bhattacharjee, Advocate

Date of hearing & delivery
of judgment & order : 11.07.2024

Whether fit for reporting : **YES**

BEFORE
HON'BLE MR. JUSTICE ARINDAM LODH
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

Judgment & Order (Oral)

(Arindam Lodh. J.)

This is an appeal under Section 19(1) of the Family Courts Act, 1984 against the judgment and decree dated 31.08.2023 passed by the learned Judge, Family Court, Sonamura, Sepahijala District, in Title Suit (Divorce) No. 39 of 2022 dismissing the suit filed by the petitioner-appellant.

[2] The petitioner-appellant, Smt. Sahina Akter instituted the present suit praying for dissolution of marriage by a decree of divorce. In the petition, the appellant stated that out of love affairs they got tied with marital knot and led conjugal life for a considerable period of time. However, she has been compelled to institute the divorce suit on the ground that the respondent-husband used to torture her and he had an extra-marital relation with another girl. More so, the husband respondent is a habitual drunker. Besides it is pleaded that at the time of her marriage she was attaining the age of 15 years and thus, was minor.

[3] The husband-respondent contested the suit by filing written statement denying all the allegations leveled against him in the divorce petition. The learned Judge, Family Court had recorded the evidence let in by both the parties. On completion of recording evidence and having heard the learned counsel for the parties, learned Judge dismissed the suit.

[4] Being aggrieved by and dis-satisfied with the said judgment and order of dismissal of the suit, the petitioner-appellant has preferred the instant appeal before this court.

[5] We have also perused the findings and the conclusions arrived at by learned Judge, Family Court, Sonamura, Sepahijala District whereby and whereunder it was held that the petitioner-appellant had miserably failed to substantiate the allegations leveled against the respondent in the divorce petition.

[6] Learned Judge, Family Court having taken note of the judgments rendered in the cases of **Samar Ghosh vs. Jaya Ghosh** reported in **(2007) 4 SCC 511** and **N.G. Dastane (Dr) vs. S. Dastane, (1975) 2 SCC 326** and the ratio settled by the Supreme Court therein.

[7] In the case of ***Lily Thomas & Ors. vs. Union of India & Ors, (2000) 6 SCC 224, AIR 2000 SC 1650***, Justice R.P. Sethi in paragraph 61 of the judgment observed that Muslim Law is based upon a well recognized system of jurisprudence providing many rational and irrational process which could not be conceived by the other systems of law in force at the time of its inspection. It is further observed that the concept of Muslim Law is based upon the edifice of Shariat.

[8] Facts:

[8.1] In the instant case, the petitioner-appellant herself has stated in her petition for divorce that out of love affairs they married each other without observance of any religious rites. At the time of marriage she had attained the age of 15 years and respondent was 22 years old. The marriage was not registered under any law. It is also stated that the guardians of the appellant-petitioner could not accept the marriage between the appellant-petitioner and the respondent.

[8.2] However, the marriage was accepted by the in-laws of the respondent-husband. Solemnization of marriage took place on 17th October, 2009 after observance of Muslim Shariat Law. The petitioner-appellant has alleged that in the month of January, 2010 it came to her notice that the respondent-husband was a habitual drunker and under the influence of liquor he used to inflict physical torture upon the petitioner-appellant. It is further stated that after three years of marriage the petitioner-appellant discovered that the respondent-husband had an extra-marital relationship with another girl and when the respondent was caught red-handed, in a compromising position with the said girl, the respondent was man-handled by the local people. It is averred in the petition for

dissolution of marriage that on 31.12.2014 the petitioner left the house of her in-laws, breaking all the marital ties between her and the respondent-husband and started living with her parents.

[8.3] On the other hand, the respondent-husband in his written statement denied all the allegations leveled against in the petition for divorce. He has stated that at the time of their marriage the petitioner-appellant was studying at class-X and she was 16 years old. The respondent-husband has categorically stated that he helped and assisted his wife, i.e., the petitioner-appellant to complete her higher studies. He denied the allegations that he was a habitual drunker and had an extra-marital relation with the girl as alleged by the petitioner-appellant.

[8.4] The respondent-husband has categorically stated that the marriage was solemnized out of love affairs. After few days of marriage the parents of the petitioner-appellant also accepted the marriage, and thereafter, a normal conjugal life was going on.

[8.5] After marriage, the petitioner requested the respondent-husband that she wanted to continue her studies. The respondent-husband accepted the petitioner's request and in the year 2010 his wife i.e. the appellant herein appeared in Madhyamik examination and she secured 1st division. Thereafter, the respondent-husband requested the petitioner-appellant to continue her study and assured that he would bear all expenses till her study is completed.

[8.6] The respondent-husband always appreciated and encouraged the wife, that is, the petitioner-appellant to continue her studies. The petitioner-appellant accordingly, got admitted in a school at Sonamura to study class XI and XII in Science stream.

[8.7] The petitioner-appellant in the year 2012 secured 1st Division in the HS(+2) stage examination. It is further asserted by the respondent-husband that having noticed her talents he and the other in-laws acceded to the request of the petitioner-appellant to study the B.Sc. (Fishery) course. After realizing that for admission in this course she had to face Joint Entrance Examination successfully, she dropped for one year and started to study for the Joint Entrance Examination. In the year 2013, the petitioner took admission at Fishery College, Lembuchara, Agartala to pursue the degree in B. Sc. (Fishery). It is specifically stated in the written statement that the respondent-husband had borne all the expenditure of her studies.

[8.8] Since the Fishery College is situated at a long distance, the petitioner-appellant started to stay in the hostel of the college, and it was the first time the respondent-husband and the petitioner-appellant were residing separately. In the year 2014, the respondent-husband noticed his wife's behavioural changes towards him. But, till 2015, the normal relationship between the petitioner-appellant and the respondent-husband was continuing. However, gradually the respondent-husband felt that the petitioner-appellant was trying to avoid him, as she always used to tell that she was busy with her studies. It is further stated that till the year 2015 the petitioner-appellant used to visit her matrimonial house but after the year 2015 she had not visited the house of the respondent-husband and totally cut off the relationship with the respondent-husband and his family members.

[8.9] It is further stated that the respondent-husband along with his parents and relatives visited the parental house of the petitioner-appellant on 12.01.2016. They tried to bring the appellant into the matrimonial home, but, the parents of the petitioner-

appellant told the respondent-husband that she was not interested to continue her marital life with the respondent-husband and wanted separation.

[8.10] The respondent-husband tried many times to find out the reasons for denying him. However, from the friends of the petitioner-appellant he came to know that she developed a love affair with another boy who studied in the same Fishery College.

[8.11] It is stated in the written statement that the petitioner-appellant went to Mumbai for obtaining Master's Degree in the year 2017 without giving any information to the respondent-husband. During their marital relationship the respondent-husband had given many gifts including cash money and gold ornaments to the petitioner-appellant. After completing M.Sc Course in Fishery the petitioner-appellant returned to the house of her parents in the year 2019, and on 10.02.2020 the respondent-husband went to the parental house of the petitioner-appellant and wanted to bring her back to his house to continue their conjugal life. But the petitioner-appellant and her parents severely insulted the respondent-husband and ousted them from their house.

[8.12] Thereafter, all on a sudden, the appellant on 13.02.2020 by swearing an affidavit sent Talaqnama/divorce against the respondent-husband. Having received the Talaqnama, the respondent-husband filed an application for Restitution of Conjugal Rights before the learned Civil Judge, Junior Division which was registered vide case No. TS(RCR) No.02/2020.

[8.13] It is categorically stated that the respondent-husband always wanted to respect the marital bondage with the petitioner-appellant but she willingly denied the respondent-husband as at present she became a highly educated woman.

[9] Evidence:

[9.1] During the proceeding, the evidences were recorded by both the parties. The examination-in-chiefs are the recapitulation of the pleadings made by the parties and their in-laws. During cross-examination, the petitioner-appellant has specifically stated that at the time of marriage she was aged **15 years 9 months** and a student of class X. She also admitted in her cross-examination that when she was prosecuting her studies in class VIII, she was about 13 years of age and at that time, her menstruation was started.

[9.2] The appellant-petitioner in his cross-examinations further admitted that their marriage was culminated out of love affairs and they eloped with each other to get married and the marriage was performed with the help of a Maulana and also as per Muslim Shariat Law. She admitted that her parental family used to visit her matrimonial home. She had passed Madhyamik examination residing at the house of the respondent-husband only. She also admitted in her cross-examination that she completed her class XI and XII examination, staying at her husband's house, in the year 2011 and 2012. During cross-examination she stated that she took admission in MBB College, Agartala without taking consent of the respondent-husband.

[9.3] Being confronted with questions put forth by the court, she replied that when she was pursuing her studies in College, she was residing in her parental house and thereafter, she went to Bombay for her Master's in Fishery and she also pursued her Ph.D course to which the respondent-husband had no consent. In cross-examination she stated that she could not mention any specific date and time when the respondent-husband assaulted her under the influence of liquor. She further stated that she did not cite any

witness relating to the incident that the husband-respondent was caught red-handed and there was a meeting in that regard.

[9.4] She further stated that she received the notice issued upon her in the RCR case and she is contesting the said suit. She stated that she did not want to lead further conjugal life with the respondent-husband.

[9.5] The father of the petitioner-appellant appearing as PW-2 stated in his cross-examination that the relationship with his daughter got revived after about one and half to two years of marriage.

[9.6] On the background of the aforesaid facts and the evidence brought on record, we have heard Mr. H Laskar, learned counsel appearing on behalf of the appellant-petitioner and Mr. S Bhattacharjee, learned counsel appearing on behalf of the respondent.

[10] SUBMISSIONS:

[10.1] Mr. Laskar, learned counsel appearing for the appellant-petitioner mainly questions the legality of the marriage with the appellant-petitioner with the respondent. According to learned counsel, the marriage was not a valid marriage since the appellant-petitioner was minor at that time. Furthermore, the learned Judge, Family court erroneously held that the appellant-petitioner failed to substantiate the facts of torture inflicted upon her as well as her evidence in support of extra-marital affairs of the respondent with another girl. He has urged this court to set aside the judgment and decree passed by learned Judge, Family Court dismissing the suit of the appellant-petitioner to allow the petition and to pass a decree of divorce, submissions on behalf of the respondent.

[10.2] On the other hand Mr. Bhattacharjee, learned counsel appearing for the respondent submits that the marriage between him and the appellant was solemnized and established the Muslim rites and customs in presence of a Maulana, which is also evinced from the admission of the appellant in her cross-examination. Moreover, their marriage was governed by the Muslim Personal Law.

[10.3] Mr. Bhattacharjee, learned counsel further submits that the appellant-petitioner has miserably failed to establish the facts of adultery and cruelty towards the appellant by the respondent. Learned counsel has strongly defended the findings and the order passed by learned Judge, Family Court, Khowai dismissing the suit of the appellant-petitioner.

[11] Analysis & Conclusion:

[11.1] Before we embark upon the main issue we deem it appropriate to take note of the law enabling a Muslim woman to seek divorce.

[11.2] Dissolution of Muslim Marriages Act, 1939 (for short, Act of 1939) enables Muslim women of all sects to seek dissolution of marriage by a decree of the court under the various grounds as enumerated in Section 2. The Act of 1939 introduced a very solitary principle into Muslim Law, as it is administered in India. This is the principle of applying beneficial provisions of one school to adherents of other schools as well.

[11.3] Section 2 of the Act reads:-

"2. Grounds for decree for dissolution of marriage.- A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:

(i) that the whereabouts of the husband have not been known for a period of four years;

(ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;

(iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;

(iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;

(v) that the husband was impotent at the time of the marriage and continues to be so;

(vi) that the husband has been insane for a period of two years or is suffering from a virulent venereal disease;

(vii) that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years:

Provided that the marriage has not been consummated;

(viii) that the husband treats her with cruelty, that is to say,-

(a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill treatment, or

(b) associates with women of evil repute or leads an infamous life, or

(c) attempts to force her to lead an immoral life, or

(d) disposes of her property or prevents her exercising her legal rights over it, or

(e) obstructs her in the observance of her religious profession or practice, or

(f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Qoran;

(ix) on any other ground which is recognized as valid for the dissolution of marriages under Muslim law:

Provided that-

(a) no decree shall be passed on ground (iii) until the sentence has become final;

(b) a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorized agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and

(c) before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court

within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground."

[11.4] In a landmark judgment of ***Abdul Kadir vs Salima & Anr***, reported in **1886 (ILR) 8 All 149**, it was observed by Mahmood J that nature of Muslim marriage is purely a civil contract rather than a sacrament. Based on this observation, it can easily be said that the objective of Muslim marriage is to legalize sexual relationship of male and female and also procreation of child. Thus, a valid contract is necessary for Muslim marriage.

[11.5] For the purpose of Muslim marriage, the age when a person reaches puberty is considered as the age of marriage. According to Hedaya, the age of puberty for female is nine years and for male, it is twelve years.

[11.6] The Privy Council in the case of ***Mahammad Ibrahim Rashid vs Atkia Begum and Anr.***, reported in **16 IND CAS 597** held that under Muslim law, a girl is considered to have attained the age of puberty: if (a) she has attained the age of fifteen years or (b) attaining the age of puberty at an earlier age. The same rule is also applicable to a Muslim boy. Again after attaining the age of fifteen years, i.e. the formal age of puberty, parties can give their own consent and there is no need of consent of guardians.

[11.7] Sir Dinshaw Fardunji Mulla authoring the principles of Mahomedan Law (23rd Edition) in paragraph S-250 in Chapter XIV has highlighted the observation of justice S. A. Rahman of Pakistan Supreme Court in the case of ***Khurshid Bibi vs. Mohammad Amin (PLD 1967 Supreme Court 97)*** where it is said that "*among Muslims, marriage is not a sacrament, but is in the nature of civil contract. Such a contract undoubtedly, has spiritual and moral*

overtones and undertones but legally, in essence, it remains a contract between the parties....."

[11.8] Sir Mullah, thereafter, has observed that *"this judgment does not say that marriage is purely a civil contract, or for that matter, a civil contract. It merely regards to be in the nature of a civil contract. In the opinion of Sir Mulla the nature of a Muslim marriage should, apart from many similarities with a civil contract, also be seen in the light of various Sunnah of the Prophet and the right of obligation imposed by almighty in the Holy Quran. If seen in that light, the institution of marriage is comprised of both worship (Ibadat) and the worldly affairs (Muamalat)." In this perspective, it is a civil contract in which free consent of both the parties is essential; on the accomplishment of it, however, the relationship of both the contracting parties is not determined as a pure civil contract, but is determined in combination with the religious connotation* **(Mahmad Usaf Abasbhai Bidiwale vs Hurbanu Mansur Atar, (1978) Mah LJ 26: 1979 (81) BOM LR 102.**

[11.9] Section 251 of chapter XIV describes capacity for marriage of Muslims. It reads thus:

"Capacity for marriage"

(i) Every Mohammedan of sound mind, who has attained puberty, may enter into the contract of marriage.

(ii) Lunatics and minors who have not attained puberty may be validly contracted in marriage by their respective guardians (Sections 270 - 275) (page 386)

(iii) A marriage of a Mohammedan, who is of sound mind and has attained puberty, is void, if it is brought about without his consent.

The same rule applies in the case of Shafi girl who has attained puberty."

Explanation:-

Puberty is presumed, in the absence of evidence, on completion of the age of fifteen years.

[Hedaya, 529; Baillie, 4] Note that provisions of the Indian Majority Act, 1875, do not apply to the matters relating to marriage, dower and divorce.

[11.10] With reference to a girl, the Judicial Committee observed that the age of puberty in Mahomedan Law is 9 (nine) years (***Nawab Sadiq Ali Khan & Ors. vs Jai Kishori & Ors. AIR 1928 PC 152***). In this case, it is clearly observed that "Mahomedan age of puberty is nine,....."

[11.11] Referring to the passage in the Hedaya there cannot be any doubt that "*the earliest period of puberty with respect to a boy is twelve years and with respect to a girl is 9 (nine) years*"

[11.12] Again, Section 270 [Mulla's Principles of Mahomedan Law, 23rd Edition, page 403], which deals with marriage of minors clearly enumerates that a boy or girl who has attained puberty is at liberty to anyone he or she likes, and the guardian has no right to interfere if the match is equal; Macnaghten, P-58 Sections 14-16 [Mulla's Principles of Mahomedan Law, 23rd Edition, page 403].

[11.13] In the case of ***Md. Idrish vs. State of Bihar, 1980 Crl. LJ 764***, it was held that a Mahomedan girl of 15 years who has attained the age of puberty is competent to marry without the consent of her parents. Again Section 252 of Sir Mulla's Mahomedan Law (23rd edition) speaks about the essentials of a marriage. According to S.252, to validate a marriage there should be a proposal

made by or on behalf of one of the parties to the marriage, and an acceptance of the proposal by or on behalf of the other, in the presence and hearing of two male or one male and two female witnesses, who must be sane and adult Mahomedans. The proposal and acceptance must both be expressed at one meeting.

[11.14] It is categorically held in the case of ***Moung Kyi & Ors. vs. Mo Shwe Baw*** reported in **(1929) 7 Rang 777** that ***"neither writing nor any religious ceremony is essential."*** The said principle is reiterated in Mulla's Principles of Mahomedan Law, 23rd Edition, page 387. This principle was followed in the case of ***Muhammad Zaman vs. Mst. Naima Sultan, PLD 1952 PESH 47*** and in the case of ***A Abdul Rahim vs Julaiga Beevi, (2001) 2 Mad LJ 822.***

[11.15] That apart, Muslim Law does not require registration of a marriage as a requisite for a valid marriage. However, Muslim Law never prohibits registration of marriage. Furthermore, a Muslim marriage can be proved by direct evidence or in the absence of direct evidence by establishing prolonged, continuous cohabitation or acknowledgement by the man of the paternity of the child or an acknowledge that a particular woman is his wife.

[11.16] Section 273 under chapter XIV deals with the features relating to repudiation under the Dissolution of Muslim Marriages Act, 1939, which reads as under:-

"Section 273. Repudiation under the Dissolution of Muslim Marriages Act, 1939 By the Dissolution of Muslim Marriages Act, 1939 all restriction on the option of puberty in the case of a minor girl whose marriage has been arranged by a father or grandfather has been abolished, and under Section 2 (vii) of the Act, a Wife is entitled to the

dissolution of her marriage, if she proves the following facts, namely:

- (1) the marriage has not been consummated;
- (2) the marriage took place before she attained the age of fifteen years; and
- (3) she has repudiated the marriage before attaining the age of eighteen years."

[11.17] In the cases of ***Bismillah Begam vs. Nurmuhammad, AIR 1922 All 155; Mt. Ayesha vs Muhammad Yunus, AIR 1938 Patna 604; Rahamat Ali vs. Mst. Allah Ditti, AIR 1979 Lahore 827*** it is held that "*the right of repudiating the marriage is lost, in the case of a female, if after attaining the age of puberty and after being informed of the marriage and of her right to repudiate it, she does not repudiate without reasonable delay.*" However, the Act, 1939, gives her the right to repudiate the marriage before attaining the age of 18 years, provided that the marriage has been consummated. (Ref:- Mullah's Mahomedan Law, 23rd Edition, paragraph 274 page 406, 407).

[12] The extent of applicability of The Majority Act, 1875:

[12.1] Now, to consider the merits of the argument advanced by learned counsel appearing for the appellant that the marriage between the appellant and the respondent was *void ab initio* in view of the Majority Act, 1875 (for short the Act of 1875), we may profitably make reference to Mullah's Mahomedan Law (23rd Edition, Section 348 Chapter XVIII, page 503) where it is categorically stipulated that the Act of 1875 applies to all matters of Mahomedans except (i) Marriage, (ii) Dower and (iii) Divorce. In all other matters, the age of majority remains 18 years.

[12.2] If we carefully read Section 2 of the Act of 1875, we find that the legislature under this provision intended to provide a

“**Saving**” clause. The material part of Section 2 may be reproduced hereunder:-

- “2. **Saving**- Nothing herein contained shall affect –
- (a) the capacity of any persons to act in the following matters (namely)- marriage, dower, divorce; adoption;
 - (b)
 - (c)”

[12.3] Curious enough the Act of 1875 has not used the expression “capacity to contract”. The question is whether the institution of a suit by a Muslim minor girl who has attained her puberty, for dissolution of marriage is covered by the expression “the capacity of any person to act in the matter of marriage, divorce etc,” mentioned under Section 2 of the Act of 1875.

[12.4] Calcutta High Court in ***Naksetan Bibi vs. Habibar Rahaman Mandal*** reported in ***AIR (35) 1948 Calcutta 66*** observed that Majority Act does not use the expression ‘capacity to contract’, but ‘capacity to act’ which is of much wider import.

[13] Here, we may also profitably take assistance of Section 11 of the Contract Act, 1872, which reads as under:-

11. Who are competent to contract- Every person is competent to contract who is of the age of majority, **according to law to which he is subject**, and who is of sound mind, and is **not disqualified from contracting by any law to which he is subject**.

[14] Now, if we read the “**Saving**” clause provided under Section 2 of the Act of 1875 cumulatively with Section 11 we find that Section 11 of Contract Act stipulates that every person is competent to contract, who is of the age of majority, according to law, to which he is subject, and who is not disqualified from contracting by any law to which he is subject. The terminology is “to which he is subject” is

very significant which means and connotes the personal law applicable to such person who intends to enter into a contract. In the instant case, we find it is the specific stand of both the appellant and the respondent that their marriage was governed/solemnized under their own personal law, i.e. the law to which they were/are subjected to.

[15] At the cost of repetition, under Muslim Personal Law, a minor who attains the age of puberty cannot be said to be minor from the date of attainment of such puberty and is not barred or disqualified from entering into a contract of marriage in view of the “**Saving**” clause under Section 2 of the Act of 1875. For more clarity, and as a matter of instance, it is observed that if a Muslim woman below the age of 18 years enters into a contract of sale of her property and executes sale deed, then, such sale deed may be declared as *void ab initio* since such act or transaction is not covered by the “**Saving**” clause under Section 2 of the Act of 1875.

[16] It is reiterated that Muslim Marriage is purely a civil contract. It is settled under the Muslim Law that a girl is considered to have attained the age of puberty when she attains the age of 15 years or attaining the age of puberty at an early age.

[17] On thoughtful consideration of the aforesaid provisions, it is apparent that these provisions are intended to regulate, control and supervise the sanctity of marriage and divorce. By way of enacting such laws, an effective system was brought about for protecting the society and women.

[18] We have already observed that a Muslim woman is entitled to a decree of divorce if she successfully fulfills the grounds enumerated in Section 2 of the Act of 1939. The petitioner-appellant mainly indicated the ground No.(viii) of Section 2. On careful perusal

of the evidence let in by the petitioner-appellant, we find no foundation in the allegations leveled under sub-section (viii) of Section 2 of the Act, 1939. To say it otherwise, the petitioner-appellant has miserably failed to substantiate the grounds of ill-treatment or cruelty or the allegations of habitual assaults upon her or the allegation that the respondent-husband was ever associated with any other women. Other grounds under sub-section (viii) of Section 2 are not agitated by the petitioner-appellant.

[19] In view of this, it would be wrong to hold that the appellant-petitioner was disqualified from entering into a contract of marriage with the respondent under the Muslim Personal Law, and Section 3 of the Act of 1875 has no manner of application disqualifying or incapacitating a Muslim woman from entering into a contract of marriage, dower and divorce. [Emphasis supplied].

[20] In the instant case, the appellant-petitioner herself admitted that she attained the age of puberty at the age of 13 years, studying at class VIII when she experienced menstruation for the first time. The appellant further admits that when the marriage was solemnized with the respondent, she attained the age of **15 years 9 months.**

[21] Furthermore, she did not repudiate under sub-section (vii) of Section 2 of the marriage before attaining the age of 18 years as is mandated the Act of 1939. She has also admitted that she completed her class XII examination successfully from the house of the respondent-husband. So, it is automatically proved that she did not repudiate their marriage before attaining the age of 18 years.

[22] Added to it, from the evidence of PW-2, the father of the petitioner-appellant it is evident that initially they did not accept the marriage between the petitioner-appellant and the respondent. But

after 1½ or 2 years, they accepted the marriage and used to visit the matrimonial house of the petitioner-appellant which is quite indicative that the appellant was leading her conjugal life happily in the house of the respondent husband.

[23] That apart, in the present case, the appellant-petitioner has failed to substantiate her allegations that the husband is a habitual drunker and that he used to assault her physically and had an extramarital relationship.

[24] In light of the above discussions and re-appreciation of evidence, we may unhesitantly come to a finding that the petitioner-appellant has failed to substantiate any of the grounds necessary to pass a decree for dissolution of marriage as enumerated in Section 2 of the Act, 1939.

[25] According to us, it is a clear case where a wife, by her own act and conduct intended to disassociate herself from the company of the husband and denied to uphold the sanctity of the marital bondage and obligation.

[26] We do not find any substance to come to a finding that the conduct of the husband in any manner is pre-judicial to the interest of the petitioner-appellant. The respondent-husband has provided all supports and opportunities to the petitioner-appellant to prosecute her higher studies. In absence of any evidence that the husband-respondent has ever neglected or cruel to his wife and acted in a manner contrary to the mandates of Muslim Shariat Law *vis a vis* the Law laid down under Section 2 of the Act of 1939, it will not proper to pass a decree of divorce as prayed by the wife appellant.

[27] According to us, when the appellant-wife living in Mumbai and having possessed higher educational qualification willfully and

designedly has made an attempt to dissociate herself from the husband-respondent; tried to break the purity and sanctity of the marital tie most capriciously and whimsically, and refused to lead a peaceful married life, in this situation, it will not give a healthy message to the society at large, if the prayer for divorce is allowed. This court does not want to send a wrong message to the society. A marital bondage should not be allowed to split at the caprice and whims of the couples, be they are governed by Hindu Law and Mohammedan Law. According to us, marital tie is to be respected by the appellant.

[28] Having considered all the facts and evidence on record, we do not find any the merit in the instant appeal. Accordingly, the appeal stands dismissed. The judgment and decree passed by the learned Judge, Family Court stands confirmed.

Interlocutory application, if any, also stands disposed of.

JUDGE

JUDGE