

**HIGH COURT OF TRIPURA
AGARTALA**

MAT App. No.13 of 2023

Sri Ajoy Modak,

S/O Lt. Naresh Chandra Modak, of Dhaleswar Azad Hind Road, P.O. Dhaleswar, P.S. East Agartala, Dist. West Tripura

..... Appellant(s)

V E R S U S

Smt. Shanta Roy Barman,

D/O Sri Manigopal Roy Barman, W/O Sri Ajoy Modak, of Jogendra Nagar, Vidyasagar Chowmohani, P.O. Agartala College, P.S. East Agartala, Dist. West Tripura.

..... Respondent(s)

For Appellant(s)	:	Mr. R. Sinha, Advocate.
For Respondent(s)	:	Mr. P. Roy Barman, Senior Advocate. Mr. Kawsik Nath, Advocate. Mr. D. Paul, Advocate.
Date of hearing & delivery of Judgment	:	<i>21st May, 2024.</i>
Whether fit for reporting	:	NO

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

JUDGMENT & ORDER (ORAL)

Heard Mr. R. Sinha, learned counsel for the appellant. Also heard Mr. P. Roy Barman, learned senior counsel for the respondent.

[2] The judgment passed by learned Addl. Judge, Family Court, West Tripura, Agartala on 31.07.2023 in T.S (Divorce) No. 324 of 2019 and related decree thereof are under challenge in this appeal whereby the petition of the appellant to dissolve his marriage tie with the respondent by a decree of divorce on the ground of cruelty and desertion was rejected. By said judgment, the claim of the respondent for maintenance @ Rs.15,000/- per month was also turned down by the learned trial court.

[3] Admittedly, marriage of the parties was solemnized on 11.02.2004 following Hindu rituals and on 15.11.2005, one son namely, Abhoy Modak was born out of their wedlock. It is alleged by the appellant that during the period of pregnancy, the respondent grew extra marital relationship with another person and after birth of the son, she became violent and would physically assault the appellant often. According to the appellant, the respondent also once expressed that she did not like the appellant as he was maintaining the family by a tea stall. She used to leave the matrimonial home off and on, as per her whims and caprices without involving herself in any household work. Ultimately, on 19.05.2014, she left her matrimonial home with all her stridhans and gold ornaments without informing anything to the appellant and his near relatives and despite endeavors taken by him, the respondent did not join him further. Rather, she got her name struck off from the ration card of the appellant stating that she would not return to her matrimonial home again. It is further alleged that on 11.05.2018 and 07.07.2018, the respondent requested the appellant to meet her at the M.B.B. college ground to settle up their matrimonial dispute but there she got him physically assaulted by her hired persons.

[4] Respondent in her written statement asserted that after the child birth, one day she was driven out by the appellant from her matrimonial home preceded by both mental and physical torture upon her and having no alternative, she started living at Jogendranagar near Vidyasagar bridge along with her son. Thereafter, with the intervention of well wishers of both the parties, the appellant executed one declaration admitting the facts of causing both mental and physical torture by him upon her with further assurance that he would not cause such torture in future. Thereafter, the respondent joined him in

her matrimonial home but again similar torture was repeated and finally, she was driven out with her son from that house. In this regard, she also lodged one complaint on 21.05.2019 at East Agartala Women Police Station but the police authority did not take any action and therefore, she submitted another application to the Superintendent of Police, West Tripura, Agartala on 24.07.2019. It is also further alleged that the appellant meanwhile illegally married another lady namely, Smt. Shyamali Sarkar on 19.05.2019 at Kashba Kalibari. Therefore, she prayed for dismissal of the petition of the appellant.

[5] Before the trial Court, the appellant examined himself and also examined other two witnesses namely, Sri Ratan Kar and Anu Miah. Affidavits of other two witnesses namely, Sri Prantosh Sarkar and Sri Rupak Malakar in respect of their evidence were submitted on behalf of the appellant but they did not appear to face cross-examination. The respondent also examined herself and another witness namely, Smt. Manika Ghosh (Modak).

[6] Mr. R. Sinha, learned counsel for the appellant strenuously argues that the witnesses of the appellant proved that since 2014, the respondent had deserted the appellant and though the respondent proved one declaration dated 20.07.2008 allegedly signed by the appellant under Exbt.C wherein certain admissions of the appellant were there that he had physically assaulted the respondent for which she was compelled to leave the matrimonial home, but said Exbt.C was not properly proved and even when the alleged signature of the appellant therein was confronted to him during his examination, he flatly denied the same. Referring to cross-examination of the respondent, Mr. Sinha, learned counsel further argues that the respondent herself admitted that her name was deleted from the ration card of the appellant in the year 2018 and said

fact itself indicates that she had deliberately separated herself from the appellant. Learned counsel further contends that though the plea of second marriage of appellant with one Smt. Shyamali Sarkar was taken by the respondent but she could not prove the same which also, otherwise, tantamounts to cruelty. According to Mr. Sinha, learned counsel, the learned trial court has misappreciated the evidences on the record leading to a perverse decision against the appellant.

[7] Mr. P. Roy Barman, learned senior counsel for the respondent however, argues that the allegation of second marriage of the appellant was not denied by him in his evidence. According to Mr. Roy Barman, learned senior counsel, the appellant could not establish that since 2014 the respondent has willfully deserted the appellant without any justifiable cause.

[8] We have duly considered rival contentions of the parties and also perused the evidences as surfaced in the record.

[9] The appellant has asserted that on 19.05.2014, the respondent deserted him but in the cross-examination of respondent [DW-1], it was confirmed that she was ousted from the matrimonial home in the year 2018 only and thereafter, she filed the complaint in the police station in the month of May, 2019. The wife of younger brother of the appellant namely, Smt. Manika Ghosh (Modak) [DW-2] also deposed against the appellant stating that the appellant had married one Smt. Shyamali Sarkar at Kashba Kalibari in the month of May, 2019 and that he would torture the respondent both mentally and physically. In her cross-examination, she also confirmed that the respondent had left the matrimonial home in the year 2018. The appellant alleged both in his petition as well as in his evidence that during pregnancy

period, the respondent was maintaining extra marital affairs with somebody else but he did not disclose the name of that person and also did not prove the same. The allegation of physical torture committed by the respondent upon the appellant could also not been proved by the appellant. The allegation on the character or chastity of a married woman without any basis or proof itself amounts to mental torture upon her. From Exbt.A i.e. a copy of letter dated 24.07.2019 addressed to the Superintendent of Police, West Tripura, Agartala as submitted by the respondent shows that she lodged that complaint with the allegation of mental and physical torture upon her by the appellant followed by driving her out from the matrimonial home. This is the subsequent conduct of the respondent in support of her allegation of mental and physical torture committed upon her by the appellant though such letter may not be the proof of such torture. For the above said reasons, we find no error in the findings of learned trial court.

[10] In view of above, there is no ground to interfere with the decision of the learned trial court. Consequently, the appeal is dismissed being devoid of any merit.

Registry is to prepare the decree accordingly.

Pending application(s), if any, stand disposed of.

(S.D. PURKAYASTHA, J)

(APARESH KUMAR SINGH, CJ)