

**HIGH COURT OF TRIPURA
AGARTALA**

Mat.App 13 of 2022

Sri Sumanta Das

S/o Sri Sunil Das
Of SDO Chowmuhani
GB Nandannagar Road,
PS: Bankumari, Via Kunjaban,
PS: New Capital Complex
Agartala Tripura West 799006

---Appellant(s)

Versus

Smt. Shipra Das

W/o Sri Sumanta Das
D/o- Late Gouranga Das,
Officer-in-Charge
Dharmanagar Women PS
Dharmanagar, North Tripura

---Respondent(s)

For Appellant(s)	: Ms. V. Poddar, Advocate.
For Respondent(s)	: Mr. S. Lodh, Advocate.
Date of hearing:	: 18.03.2024.
Date of pronouncement	: 20.03.2024.
Whether fit for reporting	: No.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order

(T.Amarnath Goud, J)

This is an appeal under Section 19 of Family Courts Act 1984, against the judgment and decree dated 27.02.2020 passed by the learned Judge, Family Court, West Tripura, Agartala in Case No.T.S.(Divorce) 07 of 2015 dismissing the divorce petition filed by the appellant.

[2] The fact leading to this case in brief is that the marriage in between the appellant Sri Sumanta Das and the respondent Smt Shipra Das was solemnized on 03-05-2012 as per Hindu rites and customs in a Guest House namely 'Mitali' at Sankar Chowmohani, Agartala. Their marriage was settled through negotiation in presence of their relatives and well-wishers. Both the appellant and the respondent being Govt. employees, after marriage they started to live together in the Govt. quarter of the

respondent at her place of posting firstly at Sonamura and thereafter at Bishramganj. It is stated that after few days of their marriage, the appellant-husband was unable to make effective and complete sexual intercourse with the wife-respondent as a result of which, they took advice from a consultant physician, Agartala. According to the opinion of consultant physician, there is inability on the part of the husband-appellant may be due to his nervousness or fear psychosis and nothing more than that. It is stated that within 4 months of their marriage, i.e, in the month of September, 2012 the wife-respondent conceived for the first time but due to misfortune she had to undergo DNC. Thereafter, another 2 times i.e, in the month of February, 2014 and in June, 2014 she also conceived but held same result.

[3] During this pregnancy period, the husband-appellant has also rendered due attention to her and arranged for her medical care but from the very beginning of their cohabitation and marital life the appellant observed and felt humiliated by the act on the part of the respondent which amounts to cruelty caused towards the appellant. At that time the wife-respondent used to quarrel with the appellant and also abused him even over most trivial matters in their day to day life inspite of discharging his normal responsibilities. It is also stated that the wife-respondent did not tolerate even mere mixing of her husband with others, even with male colleagues of her police station. She became furious and also abused him and even beat up the appellant on several occasions. She also made an acquisition against the appellant that he has an illicit relation with his sister-in-law. Even in one occasion the wife-respondent also threw the meal of the appellant on the floor of their room and asked him to eat like a dog. It is further stated that in one occasion the respondent also thrown the appellant from their room by holding his neck and in another occasion she also threatened to commit suicide taking poison and also closed the door keeping him outside. In that way on several occasions the wife-respondent threatened him to cut into pieces of his body

with chopper. She also tried to damage the reputation of the appellant making false allegation against him over telephone to his controlling officer. It is further stated that to improve the relationship in between the appellant and the respondent he sought intervention and counseling of his relatives, friends and well-wishers and accordingly a meeting was held at the residence of the uncle of the respondent at Ramnagar Rd. No.3, Agartala and at that time, her uncle Niranjan Das and aunt Papai Das after hearing both of them expressed that to improve their relationship the wife-respondent shall have to behave properly and to respect the husband-appellant. They also warned the wife-respondent that if she does not improve herself, she will not be allowed to visit their residence. But inspite of their advice, there was no improvement in the behaviour of the respondent towards the appellant. Therefore, the appellant arranged another meeting at the residence of the appellant wherein the O/C. of Bishramganj PS, Sri Soraj Bhattachrjee and other family members i.e, Sri Gouranga Das (father of the respondent), Sri Samaresh Das (maternal uncle of the respondent), Sri Nikhil Das (paternal uncle of the respondent), Sri Nantu Das (brother-in-law of the respondent), Sri Sunil Das (father of the appellant), Smt Puspa Das (mother of the appellant), Sri Nikhil Das S/O. Lt Jaga Bandhan Das, Sri Kumar Baidya, S/O. Lt. Mahim Baidya, Smt Ratna Baidya, W/O. Sri Kumar Baidya, Sri Santi Rn. Das of Joynagar, Smt Jogamaya Das, W/O. Sri Santi Rn. Das were remained present. After deliberation of both the parties they came to the conclusion that the healthy married life cannot be possible. Therefore, the father of the wife-respondent took decision to take his daughter along with him at least for 3 months to his permanent residence at Dharmanagar. Since thereafter, the appellant and the respondent are living separately from 26-08-2014.

[4] At the time of leaving for Dhamanagar, the wife-respondent also carried along with her all her valuable items keeping some papers and residue under lock and key of her quarter and as such the behavior, attitude and dealings of the respondent

towards the appellant amounts to mental and physical cruelty and as such the marriage tie in between the appellant and the respondent has been totally broken down and there is no chance of their reunion. Hence, the appellant filed the instant petition seeking divorce against the respondent.

[5] It is evident from the record that the Family Court, Agartala, West Tripura after hearing the parties and on perusal of the pleadings of both sides, formulated the following issues for proper and effective adjudication of the case:

- (i) *Whether the instant suit is maintainable in its present form and nature?*
- (ii) *Whether the appellant was subjected to cruelty by the respondent?*
- (iii) *Whether the appellant is entitled to a decree of divorce as prayed for?*
- (iv) *What other relief/reliefs are the parties entitled to?*

[6] Finally by the judgment dated 27.02.2020, the learned court below has observed in the following manner:

In the result, considering the entire facts and circumstances, this court is of the view that the appellant in this case has miserably failed to establish a case for obtaining a decree of divorce as prayed for.

[7] Being aggrieved by the judgment dated 27.02.2020, the appellant has approached this court for seeking the following reliefs:

- (i) *Admit the appeal*
- (ii) *Call for the lower case record;*
- (iii) *Issue notice upon the respondent;*
- (iv) *And*
- (v) *After hearing both the sides, set aside the impugned judgment dated 27.02.2020, passed by the Ld. Judge, Family Court, West Tripura, Agartala in case No.T.S.07 of 2015 as mentioned above and dissolve the marriage between the appellant and the respondent by a decree of divorce.*

[8] Ms. V. Poddar, learned counsel appearing for the appellant has contended before this court that the impugned order dated 27.02.2020 passed by the Ld. Family Court below is illegal, erroneous and not tenable in the eye of the law and as such the same is liable to be set-aside. Further, the findings of the Ld. Family Court is perverse, against the evidence on record and is a result of non-application of judicious mind and accordingly arrived at a wrong conclusion which is liable to be set aside.

[9] To support her case, Ms. V. Poddar, learned counsel for the appellant has relied on a judgment of the apex court in **Rajib Kumar Roy versus Sushmita Saha**, judgment passed on 21.08.2023 wherein the apex court has held in the following manner:

5. We have heard the learned counsel for the appellant as well as the learned counsel for the respondent (wife) at length. Today, the parties are also before us through virtual mode, and we had a chance to interact with both. Considering the entire gamut of facts which are there before us, we have absolutely no doubt in our mind that this is a case of irretrievable breakdown of marriage.

The husband and wife have been living separately, the wife is at Udaipur (district Gomati), Tripura and husband at Agartala, Tripura for the last 12 years. Nothing would give us more satisfaction if the two could work out their differences and decide to live together, if only for the sake of their child. But under the circumstances, with the rigid attitude of both the parties, who have failed to appreciate the beauty of compromise, we have been forced to convince ourselves, albeit regrettably, that the two cannot now live together. Twelve years of separation, is a sufficiently long period of time to have sapped all emotions which the two perhaps may have had once for each other. We therefore cannot take the same hopeful view as that of the High Court, which still believes that the matrimonial bond between the two has not ruptured beyond repair or that the two cannot still give a new lease of life to their relation. Frankly, no matter how much we would have liked this to happen but in reality, this is a possibility, which under the facts and circumstances of the case, can only be called wishful.

Continued bitterness, dead emotions and long separation, in the given facts and circumstances of a case, can be construed as a case of "irretrievable breakdown of marriage", which is also a facet of "cruelty". In Rakesh Raman v. Kavita reported in 2023 SCC OnLine SC 497, this is precisely what was held, that though in a given case cruelty as a fault, may not be attributable to one party alone and hence despite irretrievable breakdown of marriage keeping the parties together amounts to cruelty on both sides. Which is precisely the case at hand.

Whatever may be the justification for the two living separately, with so much of time gone by, any marital love or affection, which may have been between the parties, seems to have dried up. This is a classic case of irretrievable breakdown of marriage. In view of the Constitution Bench Judgment of this court in Shilpa Sailesh v. Varun Sreenivasan reported in 2023 SCC OnLine SC 544 which has held that in such cases where there is irretrievable breakdown of marriage then dissolution of marriage is the only solution and this Court can grant a decree of divorce in exercise of its power under Article 142 of the Constitution of India.

We therefore declare the marriage to have broken down irretrievably and therefore in exercise of our jurisdiction under Article 142 of the Constitution of India we are of the considered opinion that this being a case of irretrievable breakdown of marriage must now be dissolved by grant of decree of divorce.

[10] Another judgment of the apex court has been relied on by the counsel for the appellant in **Rakesh Raman Vs. Kavita** reported in **2023 SCC Online SC 497**, where the apex court has observed in the following manner:

19. Cruelty can be even unintentional:-

...The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment."

20. This Court though did ultimately give certain illustrations of mental cruelty. Some of these are as follows:

(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.*

(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.*

[11] On the other hand, to support this contention, Mr. S. Lodh, learned counsel appearing for the respondent-wife contended that the husband failed to make out a case on cruelty and the wife is intended to lead conjugal life. She is not interested for divorce and prayed to dismiss the appeal and further he has relied upon a judgment of the apex court in ***Dr. Nirmal Singh Panesar vs. Mrs. Paramjit Kaur Panesar @ Ajinder Kaur Panesar*** reported in ***Livelaw(SC)873***, where the apex court had the occasion to observe as follows:

16. *Recently, the Constitution Bench of this Court in the case of Shilpa Shailesh vs. Varun Sreenivasan (supra) while adumbrating the issue with regard to irretrievable break down of marriage and passing of decree of divorce under Article 142 of the Constitution, observed as under: -*

"41. Having said so, we wish to clearly state that grant of divorce on the ground of irretrievable breakdown of marriage by this Court is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that 'complete justice' is done to both parties. It is obvious that this Court should be fully convinced and satisfied that the marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way forward. That the marriage has irretrievably broken down is to be factually determined and firmly established. For this, several factors are to be considered such as the period of time the parties had cohabited after marriage; when the parties had last cohabited; the nature of allegations made by the parties against each other and their family members; the orders passed in the legal proceedings from time to time, cumulative impact on the personal relationship; whether, and how many attempts were made to settle the disputes by intervention of the court or through mediation, and when the last attempt

was made, etc. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor. But these facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, educational qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children. Question of custody and welfare of minor children, provision for fair and adequate alimony for the wife, and economic rights of the children and other pending matters, if any, are relevant considerations. We would not like to codify the factors so as to curtail exercise of jurisdiction under Article 142(1) of the Constitution of India, which is situation specific. Some of the factors mentioned can be taken as illustrative, and worthy of consideration.

42-49.....

50. In view of the aforesaid discussion, we decide this reference by answering the questions framed in the following manner.

(1) The scope and ambit of power and jurisdiction of this Court under Article 142(1) of the Constitution of India.

This question as to the power and jurisdiction of this Court under Article 142(1) of the Constitution of India is answered in terms of paragraphs 8 to 13, inter alia, holding that this Court can depart from the procedure as well as the substantive laws, as long as the decision is exercised based on considerations of fundamental general and specific public policy. While deciding whether to exercise discretion, this Court must consider the substantive provisions as enacted and not ignore the same, albeit this Court acts as a problem solver by balancing out equities between the conflicting claims. This power is to be exercised in a 'cause or matter'.

(11) In view of, and depending upon the findings of this bench on the first question, whether this Court, while hearing a transfer petition, or in any other proceedings, can exercise power under Article 142(1) of the Constitution, in view of the settlement between the parties, and grant a decree of divorce by mutual consent dispensing with the period and the procedure prescribed under Section 13-B of the Hindu Marriage Act, and also quash and dispose of other/connected proceedings under the Domestic Violence Act, Section 125 of the Cr. P.C., or criminal prosecution primarily under Section 498-A and other provisions of the I.P.C. If the answer to this question is in the affirmative, in which cases and under what circumstances should this Court exercise jurisdiction under Article 142 of the Constitution of India is an ancillary issue to be decided.

In view of our findings on the first question, this question has to be answered in the affirmative, inter alia, holding that this Court, in view of settlement between the parties, has the discretion to dissolve the marriage by passing a decree of divorce by mutual consent, without being bound by the procedural requirement to move the second motion. This power should be exercised with care and caution, keeping in mind the factors stated in *Amardeep Singh* (supra) and *Amit Kumar* (supra). This Court can also, in exercise of power under Article 142(1) of the Constitution of India, quash and set aside other proceedings and orders, including criminal proceedings.

iii) Whether this Court can grant divorce in exercise of power under Article 142(1) of the Constitution of India when there is complete and irretrievable breakdown of marriage in spite of the other spouses opposing the prayer?

This question is also answered in the affirmative, inter alia, holding that this Court, in exercise of power under Article 142(1) of the Constitution of India, has the discretion to dissolve the marriage on the ground of its irretrievable breakdown. This discretionary power is to be exercised to do 'complete justice' to the parties, wherein this Court is satisfied that the facts established show that the marriage has completely failed and there is no possibility that the

parties will cohabit together, and continuation of the formal legal relationship is unjustified. The Court, as a court of equity, is required to also balance the circumstances and the background in which the party opposing the dissolution is placed."

17. In view of the afore-stated decision of the Constitution Bench, there remains no shadow of doubt that this Court can depart from the procedure as well as the substantive laws, and exercise its discretion under Article 142 for dissolving the marriage between the parties by balancing out the equities between the conflicting claims of the parties, however, such discretion should be exercised with great care and caution. It has also laid down that this discretionary power could be exercised for dissolving the marriage on the ground of its irretrievable break down to do "complete justice," though one of the spouses opposes the prayer for dissolution of marriage.

18. However, in our opinion, one should not be oblivious to the fact that the institution of marriage occupies an important place and plays an important role in the society. Despite the increasing trend of filing the Divorce proceedings in the courts of law, the institution of marriage is still considered to be a pious, spiritual, and invaluable emotional life-net between the husband and the wife in the Indian society. It is governed not only by the letters of law but by the social norms as well. So many other relationships stem from and thrive on the matrimonial relationships in the society. Therefore, it would not be desirable to accept the formula of "irretrievable break down of marriage" as a strait-jacket formula for the grant of relief of divorce under Article 142 of the Constitution of India.

19. So far as the facts of the present case are concerned, as stated earlier, the appellant-husband is aged about 89 years and respondent-wife is aged about 82 years. The respondent all throughout her life has maintained the sacred relationship since 1963 and has taken care of her three children all these years, despite the fact that the appellant- husband had exhibited total hostility towards them. The respondent is still ready and willing to take care of her husband and does not wish to leave him alone at this stage of life. She has also expressed her sentiments that she does not want to die with the stigma of being a "divorcee" woman. In contemporary society, it may not constitute to be stigma but here we are concerned with the respondent's own sentiment. Under the circumstances, considering and respecting the sentiments of the respondent wife, the Court is of the opinion that exercising the, discretion in favour of the appellant under Article 142 by dissolving the marriage between parties on the ground that the marriage has irretrievably broken down, would not be doing "complete justice" to the parties, would rather be doing injustice to the respondent. In that view of the matter, we are not inclined to accept the submission of the appellant to dissolve the marriage on the ground of irretrievable break down of marriage.

[12] We have a married couple before us who have barely stayed together as a couple for two years and who have been living separately for the last ten years. It is apparent from the record that there is no child out of the wedlock.

[13] This Court examined both husband-appellant & wife-respondent. The wife is a Sub Inspector of Police working in one of the Police Stations of State of Tripura and husband is working as a clerical Cadre in Rubber Board Tripura and earning around Rs.30,000/- per month and wife is earning much higher than him. There are many incidents according to the husband, where wife beat him and abused him with

derogatory words and he has to face embarrassment situation in residential police quarters, the place where they stayed. However, these issues are not proved. But the fact remains before this Court is that the husband is scared to join his wife. This court made an attempt to convince but was of no avail. He firmly says that he wants divorce.

[14] The matrimonial bond seems to be completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing hardship on both the sides. There is nothing on record to show that the wife took legal recourse to protect her Conjugal Rights. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably then continuation of such relation would lead to further uncertainty in their lives. Though it is a case of cruelty which is not proved. This court has examined both husband and wife in court as stated supra and made its efforts but the said effort has failed. Moreover, the judgment relied by the counsel for the respondent-wife is not applicable to the case in hand.

[15] Under these circumstances, we set aside the impugned judgment and decree dated 27.02.2020 passed by the learned Judge, Family Court, West Tripura in Case No.T.S.(Divorce) 07 of 2015 and grant a decree of divorce by dissolving the marriage between both the parties herein.

[16] It is not a disputed fact that the appellant-husband is earning around 30,000/- per month as a Farm Assistant in the Rubber Board of India. The salary of the appellant-husband is less than the salary of the respondent-wife who is a Sub-Inspector of Police. However, considering the appellant-husband's monthly income, we deem it fit and proper that he gives an amount of Rs.10,00,000/- (Rupees Ten lakhs) to the respondent-wife as permanent alimony. This amount shall be deposited in the bank account of the respondent-wife within a period of two months from today. The decree of divorce shall be made effective only from the date of such a deposit.

[17] With the above directions, the appeal stands allowed. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

(Biswajit Palit, J)

(T. Amarnath Goud, J)

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