

HIGH COURT OF TRIPURA
AGARTALA
Crl. Rev.P. 01 of 2024

1. Miss Soumya Pandey,
Daughter of Dr. Girija Nand Pandey, Resident of Radhanagar, Behind
Radhanagar Motor Stand, P.O –Agartala, P.S- West Agartala, Agartala,
District West Tripura

-----Petitioner.

Versus

1. Dr. Girija Nand Pandey,
S/o – Sri Nitya Nand Pandey, resident of Mohalla –Gandhinagar near Khalsa
Inter College, P.O- & PS- Noorpur, Bijnor, Uttar Pradesh, Pin-245734

----- Respondent.

For the Petitioner(s)	:	Mr. Somik Deb, Senior Advocate. Mr. P. Chakraborty, Advocate Ms. R. Chakraborty, Advocate.
For the Respondent(s)	:	Mr. Y. Anand, Advocate. Mr. S. Paul, Advocate.
Date of hearing	:	09.09.2024.
Date of delivery of Judgment & Order	:	11 / 09 /2024
Whether fit for reporting	:	YES

BEFORE
HON’BLE MR. JUSTICE T. AMARNATH GOUD
J U D G M E N T & O R D E R

Heard Mr. Somik Deb, learned senior counsel assisted by Mr. P. Chakraborty, learned counsel appearing for the petitioner. Also heard Mr. Y. Anand, learned counsel along with Mr. S. Paul, learned counsel appearing for the respondent.

[2] This present Criminal Revision petition has been filed under Section 19(4) of the Family Court’s Act, 1984 read with Section 397 & 401

of the Code of Criminal Procedure, 1973 for exercising the revisional/ supervisory jurisdiction of this Hon'ble High Court and for quashing/ setting aside the impugned order 08.04.2021, passed by the learned Addl. Judge, Family Court, Agartala, West Tripura, whereby prayer of the petitioner for grant of maintenance has been rejected without considering the issues in the correct perspective.

[3] The brief facts of the petitioner's case is that, the marriage between her father and mother was solemnized on 02.05.1995 as per Hindu Rites and Customs and she took birth on 19.11.2001. Thereafter, due to the matrimonial disputes the mother of the petitioner along with her who was minor at that time had instituted a petition marked as Misc. 57 of 2016, seeking maintenance of Rs. 50,000/- (Rs. 25,000/- for the mother of the petitioner and (Rs. 25,000/- for herself) per month.

[4] Thereafter, the learned Family Court, passed an order on 03.09.2016, thereby directing the respondent herein to make payment of Rs.20,000/- (Rs. 10,000/- in favour of the mother of the petitioner and Rs. 10,000/- to the petitioner herself) per month. After passing of the order the respondent herein did not pay the maintenance allowance as per order of the learned Judge, Family Court. Then the mother of the petitioner had filed a petition, seeking execution of the said order. On the other hand, the respondent herein filed an application for setting aside of the ex-parte order dated 03.09.2016. In the meanwhile, respondent also filed a petition for a declaration of nullity of the marriage between them before the learned Judge, Family Court, Bijnor, Uttar Pradesh. After receiving notice, the mother of the petitioner had filed a petition, registered as Transfer Petition (C) No. 995 of 2019, before the Hon'ble Supreme Court of India seeking transfer of the said petition to any court within the state of Tripura. After presentation of the said Transfer Petition,

the Hon'ble Supreme Court of India passed an order thereby staying the further proceedings, presented before the learned Judge, Family Court, Bijnor, Uttar Pradesh.

[5] After that, by an order dated 10.05.2019, the Hon'ble Supreme Court had referred the disputes between them to the Supreme Court Mediation Centre. In the said Mediation Proceedings, parties had arrived at a consensus decision:-

That following cases are pending between the parties:-

- i) Maintenance case being M.C. No. 57/2016 under Section 125 Cr.PC filed by the Petitioner-wife pending before the Family Court, Agartala, West Tripura.
- ii) Misc. Case No. 393 of 2017 under Section 128 Cr.PC pending before the Family Court Judge, Agartala, West Tripura.
- iii) Complaint Case No. 354 of 2016 under Sections 494, 498- A and 34 IPC, P.S. West Agartala pending before the Court of C.J.M West Tripura Agartala, Tripura.."

6. That both the parties herein agree that they shall jointly pray for decree of divorce before this Hon'ble Court invoking the inherent Power under Article 142 of the Constitution of India, on the next date of hearing of present transfer petition before the Hon'ble Supreme Court.

7. Both the parties to pray to grant Decree of Divorce by mutual consent, quashing and withdrawal of all Criminal and civil cases pending between the parties and their relatives, and the Respondent/husband will pay a full and final amount of Rs. 23, 00,000/- (Rupees Twenty Three Laks Only) through a demand draft in the name of the Petitioner (Soma Das) on the next date of hearing before this Hon'ble Court. For this purpose both the parties will file appropriate application before this Hon'ble Court.

8. That in case the Hon'ble Supreme Court is not inclined to pass the decree of divorce by mutual consent under Article 142 of the Constitution of India, than both the Parties agree and undertake to file for the Mutual Divorce Petition before the Ld. Family Court, Tripura, Agartala. Both the parties undertake to be present before the appropriate Court for the filing

and for the recording of the statements in the mutual consent divorce petition.

9. It has been agreed between both the parties that Respondent- husband Mr. Girija Nanda Pandey shall pay a sum of Rs. 23, 00,000/- (Rupees Twenty Three Lakhs Only) as a full and final settlement to Ms. Soma Das (Pandey) towards her Stridhan if any, maintenance past, present, future and permanent Alimony etc Mrs. Soma Das (Pandey), the Petitioner herein would have no claim whatsoever in future with regard to the movable and/or immovable assests of the respondent Mr. Girija Nandan Pandey and/or his family members hence forth. Similarly, Mr. Girija Nandan Pandey shall have no claim whatsoever in future with regard to movable and/or immovable property of the petitioner Mrs. Soma Das (Pandey) and/or her family members related to this matrimonial alliance.

10. The First instalment of Rs. 12,00,000/- (Rupees Twelve Lakhs Only) shall be paid by the Respondent-husband to Petitioner-wife Ms. Soma Das by way of demand draft at the time of recording of the statement in the First Motion.

11. The Second and final instalment of Rs. 11,00,000/- (Rupees Eleven Lakhs Only) shall be paid by the Respondent-husband to Petitioner-wife Ms. Soma Das by way of demand draft at the time of recording of the statement in the Second Motion filed in accordance with Law.

12. In view of the terms of this settlement-agreement, both the parties herein undertake to withdraw all the above pending cases besides all other pending petitions filed by them against each other before any court of law or any other forum and would take all necessary steps for the same.

13. Both the parties undertake that henceforth they would not filed any civil/criminal complaint or any case against each other or their family members with regard to the present matrimonial alliance. Both the parties also undertake to withdraw/quashing any other pending cases, which have been filed against each other and/or their respective families.

14. That it is agreed between the parties that their daughter 'Soumya Pandey' who is staying with the petitioner-wife shall continue to stay with

her and the respondent-husband shall not claim any guardian ship and visitation right, whatsoever.

15. By signing this Agreement the parties hereto solemnly state and affirm that they have no further claims or demands against each other and all the disputes and differences have been amicably settled by the parties hereto through the process of Mediation.

16. The parties undertake before this Hon'ble Court to abide by the terms and conditions set out in the above mentioned Agreement, which have been arrived without any coercion, duress or collusion and undertake not to raise any dispute whatsoever henceforth."

Therefore, viewed from this settled legal perspective, when the settlement agreement and the orders passed by the Hon'ble Supreme Court of India are read, it would emerge there from that no order of restraint was ever issued, on to the petitioner seeking maintenance from father. Since, the father of the petitioner continuously neglecting to maintain the petitioner, the petitioner had filed a petition, under Section 20 of the Hindu Adoptions and Maintenance Act, 1956, thereby praying for grant of maintenance at the rate of Rs. 30,000/- per month. After presentation of the said petition the learned Judge, Family Court, West Tripura, Agartala has passed an order on 08.04.2021 rejecting the same. The relevant portion of the Order is extracted hereunder :-

" During hearing of this case Ld. counsel for the O.P side stated that as the matter is already settled by the Hon'ble Supreme Court the petition filed by the petitioner is not maintainable. Moreover as the petitioner is more than 18 years of age hence the petition is not maintainable.

After hearing both sides I am of the considered opinion that as order of maintenance is already allowed in favour of the petitioner in Misc 57 of 2016 and also as per order dated 18-11-2019 and order dated 22-11-19 of the Hon'ble Supreme Court of India the Misc case 57 of 2016 was withdrawn as agreed by the parties and also as per settlement agreement dated 05-08-2019

both sides decided to withdraw any other pending cases, which has been filed against each other of their respective families I am not inclined to allow the petition filed by the petitioner of this case.

Hence the present petition being devoid of merit is accordingly rejected.

Petition is thus disposed of on contest.....”

[6] Being aggrieved and dissatisfied with the order dated 08.04.2021 passed in CM 18 of 2020 by the Learned Addl. Judge, Family Court, Agartala, West Tripura the petitioner herein approached this court seeking the following reliefs:

- i. Admit this.
- ii. Call for the relevant records.
- iii. After hearing the parties, in terms of the grounds set forth above, be pleased to quash/set aside the impugned Order dated 08.04.2021.”

[7] Mr. Somik Deb, learned senior counsel appearing for the petitioner submits before this Court that the mother of the petitioner while seeking maintenance in case No. 57 of 2016 presented that the said presentation of the petition must be understood in the context that at the relevant time the petitioner was minor. Since, the petitioner could not have independently maintained the petition, therefore, the petitioner was joined as a party therein.

[8] Mr. Deb, learned senior counsel also submits that on a careful reading of the Settlement Agreement between the mother of the petitioner and her father would unmistakably show that the mother of the petitioner had abandoned her personal right to get maintenance and such abandonment of right of the mother of the petitioner, cannot be stretched to include the right of the petitioner to seek maintenance. He further submits that in the various orders passed by the Hon’ble Supreme Court of

India would not, in any manner show that the Hon'ble Supreme Court of India had passed any order, thereby restraining the petitioner from seeking maintenance. To support his contention Mr. Deb, learned senior counsel placed reliance on the Judgments of Hon'ble Supreme Court titled as **Smt. Rohini Kumari Vs. Narendra Singh** reported in **1972(1) SCC 1** and **Nagendrappa Natikar Vs. Neelamma** reported in **(2014) 14 SCC 452**. He therefore, urges before this court to set aside the impugned order dated 08.04.2021 passed by the learned Family Court, West Tripura, Agartala.

[9] On the other hand, Mr. Y. Anand, learned counsel submits before this Court that the Order passed by the learned Family Court took into account the order passed by the Hon'ble Supreme Court of India exercising the power under Article 142 of the Constitution of India while disposing of the maintenance petition bearing no. 57 of 2016 pending in the Family Court Agartala where the petitioner was one of the party and receiving the interim maintenance since 2016 and in 2019 on onetime payment the same was disposed of including of mother without liberty to revive the same. Mr. Anand, learned counsel also submits that in the light of the Settlement Agreement dated 05.08.2019 held between the parties in the Hon'ble Supreme Court Mediation Centre all the pending cases were disposed of.

[10] Mr. Anand, learned counsel further submits that in M.C No.57 of 2016 the petitioner was minor and the petition was filed by the guardian mother and the petitioner herein was arrayed as petitioner No.2 and at the time of settlement on both accounts the one time money was decided and paid, post payment the Hon'ble Supreme Court of India disposed of the petition as withdrawn exercising extra ordinary power. He, further submits that once guardianship have been denied including

visitation rights how any proceedings will be maintainable under Section 20 of the Hindu Adoptions and Maintenance Act, 1956, for granting maintenance per month from 25.02.2020 which was rightly dismissed by the Learned Family Judge, Agartala, West Tripura vide order dated 08.04.2021. Hence, he prays before this Court that the present revision petition is not maintainable and the same is liable to be dismissed.

[11] Heard both sides.

[12] As seen from the record the marriage between the father and mother of the petitioner was solemnized on 02.05.1995 and the petitioner born on 19.11.2001. In pursuance of the matrimonial dispute the mother filed Miscellaneous Petition 57 of 2016 seeking maintenance along with her daughter (petitioner herein) and sought for maintenance of Rs. 25,000/- each (Total Rupees twenty five thousand) per month. The family court passed order on 03.09.2016 granting Rs.10,000/- each (Total rupees ten thousand) per month towards maintenance.

[13] The father also filed divorce petition in Family Court Bijnor, Uttar Pradesh and the same was transferred to Hon'ble Supreme Court vide Transfer Petition (C) No.995 of 2019. The entire list amongst the mother and father was referred to the Mediation Centre of Hon'ble Supreme Court and the same matter has been resolved on 05.08.2019 amongst the father and mother in the Mediation Centre, in terms of their compromise agreement the father paid Rs. 23 lakhs towards full and final settlement.

[14] Now, the case of the petitioner is that the petitioner being un married and dependant student her right to maintenance has not been addressed and she is entitled for maintenance from her father and thus filed the application under Section 20 of the Hindu Adoptions and

Maintenance Act, 1956 and the court below by order dated 8.04.2021 has rejected the same.

[15] Considering the facts it is seen that the respondent-father has paid to the mother a sum of Rs.23 lakhs to which the mother and child were parties as the maintenance application under Section 125 Cr.P.C was filed by both the mother and the child as petitioner 1 and 2 being Case No. M.C 57 of 2016.

[16] Subsequently, the same got concluded before the Hon'ble Supreme Court in the light of the Settlement Agreement which has been made between the mother and father. It is seen that there is no specific recitals made in the Agreement about the child nor she has been shown in the cause title by her name and there is no signature made by the daughter in the said Settlement Agreement nor on her behalf there is any signature by her natural mother and guardian.

[17] Hence, it cannot be said that the daughter is bound by the above Settlement of Agreement to which she is not a signatory. But a legitimate expectation when the matter has been settled amongst the father and mother and as per clause 13 and 14 of the Agreement which has already been quoted above, the mother is taking care of the child in terms of the Settlement Agreement, is reasonably presumed that she is in the custody of the mother and said amount is for both the mother and child.

[18] It is seen from the record that initially, a suit was filed by the mother of the petitioner along with her before the Family Court, Agartala, West Tripura being case No. Misc.57 of 2016 under Section 125(i)(a)(c) of Cr.P.C. for monthly maintenance of the petitioners. Thereafter, on attaining majority, the daughter filed an application under Section 20 of the Hindu

Adoptions and Maintenance Act, 1956 before the Court below claiming maintenance. For the purpose of reference, provisions under Section 20(3) of the said Act, is extracted as under:

"20. Maintenance of children and aged parents*****

(3) The obligation of a person to maintain his or her aged or infirm parent or daughter who is unmarried extends insofar as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property."

[19] For better appreciation of the facts of circumstances of the case in hand, it is necessary to reproduce the relevant contents from the judgments of the Hon'ble Apex Court in **Smt. Rohini Kumari Vs. Narendra Singh** reported in **1972(1) SCC 1** and in **Nagendrappa Natikar Vs. Neelamma** reported in **(2014) 14 SCC 452**, Accordingly, the same are quoted as under:

Smt. Rohini Kumari Vs. Narendra Singh reported in 1972(1) SCC 1:-

"10. In our judgment the view of the Allahabad High Court in the present case must be upheld. The preamble of the Act describes it as one to amend and codify the law relating to marriage among Hindus. It is well known that when a particular branch of law is codified it is intended and the object essentially is that on any matter specifically dealt with by that law it should be sought for in the codified enactment alone when any question arises relating to that matter. Ordinarily when it has been expressly stated that an enactment is meant for codifying the law the court is not at liberty to look to any other law. The Act not only amends but also codified the law of marriage and it has made fundamental and material changes in the prior law. Section 4 of the Act gives overriding effect to its provisions. Therefore unless in any other enactment there is a provision which abrogates any provision of the Act or repeals it expressly or by necessary implication the provisions of the Act alone will be applicable to matters dealt with or covered by the same. Sections 9 and 10 of the Act provide for restitution of conjugal rights and judicial separation. Section 10 deals with judicial separation and once a decree for judicial

separation has been granted a decree for dissolution of marriage can be passed under section 13(1-A) provided there has been no resumption of cohabitation between the parties to the marriage for a period of two years or upwards after the passing of the, decree for judicial separation. It may be mentioned that section 13 gives several grounds for dissolution of marriage by a decree of divorce and one of the grounds is the one contained in sub- section (1-A) of that section. The Hindu Adoptions and Maintenance Act 1956, hereinafter called the 'Maintenance Act' also amended and codified the law relating to adoptions and maintenance among Hindus. Section 18(2) provides, inter alia, that the Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish or of wilfully neglecting her or if he has any other wife living. Indeed the last clause (a) of section 18(2) is very general i.e. if there is any other cause justifying her living separately. Section 10 of the Act and section 18 of the Maintenance Act are quite distinct and one cannot be said to control the other. The former provision deals with the matrimonial offences by either spouse which would justify the grant of a decree for judicial separation. Section 18 provides for grant of maintenance to wife alone. Sub-section (1) says that a Hindu wife shall be entitled to, be maintained by her husband during her lifetime. Sub-section (2) gives her a right to live separately from her husband without forfeiting her claim to maintenance provided any of the conditions mentioned in clauses (a) to (g) exist or are specified. The, essential ingredient of desertion, animus deserendi i.e. intention on the part of the deserting spouse to remain separated permanently or to bring cohabitation to an end for ever need not exist in case of a wife who has been given the right to live separately in certain circumstances without forfeiting her claim to maintenance. The Act and the Maintenance Act provide different remedies to a wife whose husband has been guilty of desertion. Under the Act she can sue for judicial separation if the conditions laid down in section 10 (1) (a) of the Act read with the Explanation are satisfied. She can without resorting to that remedy choose to live separately from her husband who would be bound to maintain her if it is proved that he has been guilty of desertion and the other conditions laid down in section 10(2) (a) are satisfied. It is significant that under section 13(2) of the Act a wife may present a petition for dissolution of marriage by a decree of divorce on the ground that the husband had married again before the commencement of the Act or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner. But this can be done only if the marriage with the petitioner was also solemnized before the commencement of the Act. For instance in the present case the wife could have asked for dissolution of her marriage under the aforesaid provisions because the marriage of the husband with Countess Rita was performed before the Act came into force. If she, however, did not choose to resort to that remedy she could decide to live separately under section 18 (2) (d) of the Maintenance Act. This shows the sharp contrast in the provisions of the two enactments. When the wife chooses to live separately under section 18(2) (d) in the circumstances

mentioned before she would be entitled to maintenance from the husband. He could not compel her to return to him so long as his marriage with the other wife is not dissolved but if that marriage is dissolved the husband can call upon the wife to return to him and if she does not return it is very doubtful if she can still claim maintenance from him under section 18 of the Maintenance Act. However, this is a matter on which we need express no final opinion. All that we are concerned with, in the present case, is whether the provisions of section 18(2) of the Maintenance Act can affect the matters provided for by section 10 of the Act. It is quite obvious that section 18 of the Maintenance Act does not amend or abrogate the provisions of section 10 of the Act which alone must be looked at for the purpose of disposing of the appeal before us. We have no hesitation, therefore, in upholding the view of the High Court with the result that the appeal fails and it is dismissed. The parties are left to bear their own costs in this Court.”

Nagendrappa Natikar Vs. Neelamma reported in (2014)

14 SCC 452, :-

“5. We notice, while the application under Section 127 Cr.P.C. was pending, respondent wife filed O.S. No. 10 of 2005 before the Family Court, Gulbarga under Section 18 of the Act claiming maintenance at the rate of Rs.2,000/- per month. The claim was resisted by the petitioner husband contending that, in view of the compromise reached between the parties in Miscellaneous Case No. 234 of 1992 filed under Section 125 CrPC, the respondent could not claim any monthly maintenance and hence the suit filed under Section 18 of the Act was not maintainable. The question of maintainability was raised as a preliminary issue. The Family Court held by its order dated 15.9.2009 that the compromise entered into between the parties in a proceeding under Section 125 Cr.P.C. would not be bar in entertaining a suit under Section 18 of the Act.”

[20] In view of the above, this court is of the opinion that there are certain omissions which have been pointed out in the Settlement Agreement dated 05.08.2019 as the name of the daughter was not included and her signature was also not obtained in the said agreement. It is further observed in the Settlement Agreement that mention has not been made there to what extent both mother and daughter are entitled to their respective share in the awarded amount .

[21] In view of the above discussions, considering the case of the petitioner in the light of the judgment of Hon’ble Apex Court cited *supra* and the provisions of *Section 20(3)* of the Hindu Adoptions and Maintenance

Act,1956 this court considers the case of the petitioner and accordingly grants maintenance of Rs.5,000/- per month till the date of her marriage from the date of filing of the petition before the learned Court below. The arrear shall be paid within 6 months from today by equal installments.

Resultantly, the present petition stands allowed to the extent as indicated above and accordingly, the same is disposed of. As a sequel, pending application(s), if any, shall also stand closed.

JUDGE

HIGH COURT OF TRIPURA



सत्यमेव जयते

Paritosh

RAJKUMAR
SUHANJIT
SINGHA

Digitally signed by
RAJKUMAR
SUHANJIT SINGHA
Date: 2024.09.13
11:57:55 +05'30'