

IN THE HIGH COURT OF TRIPURA
AGARTALA

MAT APP. No.15 of 2025

Sri Arindam Chakraborty

son of late Haradhan Chakraborty, resident of
Santa Kutir, Krishnanagar, Near UBI Bank,
Ramnagar Branch, P.O. Agartala, P.S. West
Agartala, District-West Tripura

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

- V e r s u s -

Smt. Sushmita Adhikari,

wife of Sri Arindam Chakraborty, daughter of
Sri Subhas Chandra Adhikari, resident of
Hospital Extension Road, Gandhighat,
Agartala, West Tripura-799001

Presently residing at :

Santa Kutir, Krishnanagar, near UBI Bank,
Ramnagar Branch, P.O. Agartala, P.S. West
Agartala, District- West Tripura

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

For the Appellant(s)

:

Mr. S. Das, Adv.
Mr. S. Saha, Adv.

For the Respondent(s)

:

Mr. P. Roy Barman, Sr. Adv.
Mr. K. Nath, Adv.

Date of hearing

:

26.08.2025

Date of delivery of
Judgment & order

:

09.09.2025

Whether fit for reporting

:

YES	NO
	√

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

(*S. Datta Purkayastha, J.*)

The judgment dated 29.03.2025 passed by the learned
Addl. Judge, Family Court, Agartala, West Tripura in Title Suit
(Judicial Separation) No.02 of 2022 and the related decree

thereof, dismissing the petition of the appellant [hereinafter referred as *the petitioner*] for judicial separation, are under challenge in this appeal.

[2] The marriage between the petitioner and the respondent was solemnized on 25.04.2012. According to the petitioner, after marriage, they led their happy conjugal life only for 1 month 28 days.

[3] Just after the said period, the father of the petitioner suffered a cerebrovascular accident on 23.06.2012 and ultimately, died on 29.06.2012. When the petitioner was under observance of the post-death rituals of his father, he noticed certain abnormal behaviours of the respondent. When they were preparing to go for cremation of the dead-body, in such a mournful moment, the respondent expressed that she was hungry and became anxious about her food on that night. The respondent before marriage stated that she was pursuing the MCA first year course, but it was detected by the petitioner that she had only completed BCA course and did not get any admission in MCA Course.

[4] It is also alleged by the petitioner that even violating the family practice, during the period of such post-death observance, the respondent got the food cooked by their maid and on this issue, she wildly quarrelled with her mother-in-law. On that day, the petitioner requested his in-laws to take the

respondent back to their house temporarily for some days, as her such behaviour was hurting their emotions. On the next date, his father-in-law and mother-in-law both came to his house, but the respondent also started quarrelling with her parents. It has been also the allegation of the petitioner that during Shradha Ceremony of his father, none from his in-laws' family attended the same during day hours, rather they came only in the night.

[5] It is also alleged by the petitioner that against his will, all the gold ornaments of the respondent were kept in the locker of her father. Even the respondent started pressurizing him to go for a baby, being guided by her parents, though earlier they decided to have the same only after 2½ years. In the year 2013, the respondent after quarrelling with the petitioner on some trivial issues, became unruly, and asked her parents to take her back to home and on that occasion, her elder brother also slapped her to control her. In the same year, the couple went to visit Puri on a pleasant trip, but there also the respondent showed non-cooperation and even went out from the hotel in the night at about 10 pm without informing anything to the petitioner and returned back only after he had informed the matter to her parents over phone. Concerning that matter, the hotel manager also rebuked them.

[6] In the year 2014, the respondent gave birth of a female child on 17th April and on release from the hospital, the

respondent attempted to go to her parents' house straightway from hospital at the instance of his in-laws, though ultimately, at the request of the petitioner, she did not do so.

[7] The petitioner in his petition also mentioned of many such incidents of non-cooperation and quarrel by the respondent with him to justify his claim of judicial separation. It is also asserted by him that whenever his sister would come to his house from Kolkata, she would be maltreated by the respondent. She also did not provide proper food to his octogenarian aunt and did not show any sympathy towards her during her illness. She also would not follow the medical advices in respect of her minor daughter. Once they went to Kolkata for treatment of their daughter, and there also, the respondent exhibited her non-cooperation and abnormal behaviour both on the way to Airport and also inside the airport.

[8] In the year 2020, the petitioner alleged, during Covid period, his mother and his sister came from Kolkata and were in isolation in the home. Therefore, the petitioner told the respondent-wife to stay 14 days with her baby in her parents' house. But after the said period of isolation was over, she did not show any interest to join the petitioner again and returned to his home some days later. In the month of September, 2021, when the respondent tried to get physically intimate with him, he told her to give him some space in life and to wait for some days, but

she strongly asserted her marital right without agreeing to said request, and thereafter, she even threatened him by saying that if he did not go for physical relationship with her, she would commit suicide and leave a suicide note against him and his family members. In the year 2021, his father-in-law also lodged a baseless complaint to the club members of Dashamighat Club, alleging an extramarital relation of the petitioner with his friend, namely Mohuya Ghosh and that the petitioner was providing all his earnings to said Smt. Ghosh on monthly basis and one of his relatives, namely Pranab Bhowmik also threatened the husband of said Smt. Ghosh asking Smti Ghosh to stop any sort of communication with the petitioner.

[9] It is also the grievance of the petitioner that before marriage when he met the respondent, he found that she was properly maintaining her personal hygiene but after marriage, he noticed completely the converse. The respondent was alleged to have passed her 10th Board Examination in three attempts. It is also stated by the petitioner that both he and his wife are residing under the same roof but in separate rooms from August, 2020. On these grounds, the petitioner has sought for a decree of judicial separation.

[10] The respondent in her defence stated that the petitioner was maintaining extramarital relationship with said Smti Mohuya Ghosh, who was his facebook friend, and she would

frequently visit the house of the petitioner, and even the petitioner would talk with Smt. Ghosh in the late night also. From 20.06.2020, the petitioner stopped communicating with her and his daughter. It is further alleged that on 10.10.2020, the respondent found said Smt. Ghosh sitting in the vehicle of the petitioner beside him at Post Office Chowmuhani area, and seeing the respondent, immediately the petitioner left the place with the car. He also threatened her that if she would ask anything about said Smt. Ghosh, she would face dire consequences, and he would also marry Smt. Ghosh after giving divorce the respondent.

[11] The respondent further grieved that the petitioner was also not looking after their baby, rather her father was paying some amount for the maintenance of both the mother and daughter. She also alleged that from the month of June, 2020, she had been tolerating mental and physical torture upon her by the petitioner, her mother-in-law and other family members, and they were planning to shift at Kolkata by selling their house only to oust her from her matrimonial home. She further stated that after institution of the instant case, the petitioner had gone to Kolkata with said Mohuya Ghosh and stayed there about one month with her. Since the year 2022, the petitioner was staying at Kolkata trying to settle there without her and her daughter, and on his return to Agartala on 27.03.2023, till date he did not even see or

talk with her and her daughter, though she is ever ready to live with him.

[12] During hearing, the petitioner examined himself and his mother to prove his case and the respondent examined total 4 witnesses including herself and proved 2[two] joint photographs and one certified copy of the counselling report of Women Commission to prove her case.

[13] On consideration of the total evidence, the learned trial court held that the petitioner was maintaining extramarital relationship with his paramour, said Smt. Ghosh and therefore, he himself had treated his wife with mental cruelty. On that ground, the trial court rejected the petition for judicial separation. Learned trial court also observed that the petitioner had neglected the respondent in taking her care and in cohabiting with her due to his illicit relationship with said Mohuya Ghosh.

[14] We have heard Mr. S. Das, learned counsel appearing for the appellant and Mr. P. Roy Barman, learned senior counsel appearing for the respondent.

[15] Mr. Das, learned counsel argues that regarding continuous cruelty done by the respondent upon the petitioner since her marriage, sufficient evidence were led in this regard, but learned court below failed to appreciate the same and without any basis or evidence, most illegally, held that the petitioner was

maintaining an extramarital relationship with said Smti Mohuya Ghosh. Mr. Das, Ld. Counsel argued that Ld. Trial court has attached some undue and extra importance to some joint photographs of the petitioner with said Smti Ghosh, which were not even proved properly in the evidence. According to learned counsel, the mother of the petitioner also supported the case of the petitioner in her evidence to establish that the life of the petitioner was completely devastated due to unruly and turbulent behaviour of the respondent and the cruelty done upon him by her.

[16] Mr. P. Roy Barman, learned senior counsel appearing for the respondent submits that the respondent is still living in the house of the petitioner with a hope that the petitioner would once realize his mistake and would join her but the petitioner is not taking any care of her or her minor daughter, rather he is indulging in extramarital relationship with another lady.

[17] We have given due consideration to the submissions of both sides. From the impugned judgment, it appears that the learned trial court has taken note of the admission of both the petitioner and his mother during their cross-examination that the respondent is still willing to live with the petitioner. PW-2 also admitted that from October, 2022 her son has been staying at Kolkata and occasionally, he would visit his residence at Agartala. The petitioner himself also admitted in his evidence that he did not

take the respondent and his daughter to Kolkata for a single occasion since 2020. Thus, it appears that he is more interested to live separately from the respondent. Interestingly, PW-2 i.e. the mother of the petitioner in her evidence also stated that she could not say anything about the issues and differences between the petitioner and the respondent. The above said evidences of PW.2 show that she did not corroborate with the evidence of the petitioner on the material points.

[18] The petitioner has also not examined said Smti Mohuya Ghosh or her husband to prove his allegation that the parents and family members of the respondent had tried to humiliate said Smt. Ghosh and her husband through the said club members and threatened them.

[19] The allegations of the petitioner that after the marriage, he came to know that the respondent had only obtained the degree of BCA and was not pursuing MCA, does not amount to cruelty to entitle him to get the decree. Even urging for physical intimacy by the respondent as alleged also cannot be turned as mental cruelty. Non-attending in the Shradha Ceremony of the deceased father of the petitioner by the family members of the respondent during day hours, does not project any case of cruelty, rather, such allegation of the petitioner demonstrate his own bigotry in accepting the situation.

[20] According to the petitioner, just after 1 month and 28 days of their marriage, the respondent started behaving cruelly with him and to support such contention, he has brought the allegations of demand of food on the day of death of his father, getting the food prepared by the maid during the period of post-death observance, quarrelling with his mother ignoring her emotion, and keeping all gold ornaments in the locker of her father etc., which do not constitute cruelty to that extent to justify the claim of the petitioner for granting a decree of judicial separation. He also brought the story of cruel behaviour of the respondent with him in the year 2013 by asking her parents as to why she was given marriage with the petitioner and that she would not stay with him, but said allegations get defeated due to the expression of the respondent that she is still willing to live with petitioner and even she has not left her matrimonial home till date despite the petitioner abandoned her there, by shifting to Kolkata. Even it is the admission of the respondent and her mother both in their evidence that the respondent is still willing to live with the petitioner. The alleged non-cooperation and unusual behaviour of the respondent during their visit at Puri in the year 2013 and non-adherence to the medical advice by the respondent for the well being of her daughter and non-cooperation during Kolkata trip etc. appear to have been already condoned by the petitioner due to his continuing co-habitation with her. After so many years are passed, he cannot grieve against the same.

[21] In **A. Jayachandra v. Aneel Kaur, (2005) 2 SCC 22**, the Apex Court observed that cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. Said decision was also referred in **Mayadevi vs. Jagdish Prasad, AIR 2007 SC 1426**.

[22] Insignificant quibbling and minor trifling between the couple in matrimonial life are natural. Undue magnifying of the same does not *ipso facto* entitle a party to get the decree of judicial separation or divorce. In the instant case, nothing could be established by the petitioner that the behaviour of the respondent was so persistent and regular in treating him with such extent of cruelty so as to cause reasonable apprehension in his mind that it would be harmful for him to live with her. Even, what have been asserted by him, also could not be proved by him due

to lack of corroboration by his mother. Therefore, we do not find any reason to interfere with the judgment passed by the learned court below.

[23] In the instant case, learned trial court resorting to provision of Section 14 of the Family Courts Act and a decision of Delhi High Court in case of **Deepti Kapoor vs. Kunal Julka, 2020 SCC OnLine Del 672**, has given over emphasis on few photographs of the petitioner with said Smt. Ghosh which were proved by the respondent in her evidence. The same were stated to have captured by some unknown person and were transmitted to the cell phone of the respondent via Whatsapp. According to the learned trial court, the said joint photographs were of the petitioner and said Smt. Ghosh in sitting, standing and roaming position in the puja pandals. Based on said photographs, learned trial court came to the conclusion that said Smt. Ghosh was the paramour of the petitioner, and was maintaining extramarital relationship with him. The learned trial court missed the aspect that admissibility of evidence and reliability of same are quite different. One piece of evidence duly proved may not be reliable for several reasons. Nowhere, the learned court below observed that the said photographs reflected unusual intimacy of both the petitioner and said Smt. Ghosh but despite the same, such decision on alleged extramarital relationship was rendered. Learned trial court also missed to examine the authenticity of the

same despite the fact that those photographs in a very strange manner came from an unknown source to the respondent. Said Smti Ghosh was not a party to that proceeding and had no opportunity to be heard before she was castigated as a paramour of another person. She did not even have any scope to defend the allegations brought against her or also to explain the photographs.

[24] In view of the above, though we do not find any reason to interfere with the judgment of the learned trial court but the observations made by the learned trial court in several places of the impugned judgment that said Smt. Ghosh was the paramour of the petitioner and was maintaining extramarital relationship with him, are expunged.

[25] In terms of the above discussions, the appeal is dismissed.

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

Registry is to prepare decree accordingly.

Send a copy of this judgment to the learned trial court.

Furnish a copy of this judgment and decree to the parties free of cost.

(S. DATTA PURKAYASTHA, J)

(M.S. RAMACHANDRA RAO, CJ)

SUJAY GHOSH

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