

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
Mat. App. No.35 of 2024

1. Smti. Susmita Pal (Sen).

.....Appellant

-V E R S U S-

1. Sri Sankhasubhra Sen

..... Respondent.

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

For Appellant(s)	:	Mr. V. Poddar, Advocate.
For Respondent(s)	:	Mr. B. N. Majumder, Sr. Advocate.
		Mr. D. K. Deb, Advocate.
Date of hearing and delivery of judgment and order	:	09.04.2025
Whether fit for reporting	:	YES/NO

JUDGMENT & ORDER [ORAL]

[T. Amarnath Goud, J]

Heard Ms. V. Poddar, learned counsel appearing for the appellant also heard Mr. B. N. Majumder, learned senior counsel assisted by Mr. D. K. Deb, learned counsel appearing for the respondent.

[2] The present appeal has been filed under Section-19(1) of the Family Courts Act, 1984 read with Section-28 of the Hindu Marriage Act, against the impugned judgment dated 16.11.2024 passed by the learned Addl. Judge, Family Court, Agartala, West Tripura in T.S. (Div) 488 of 2022 whereby and whereunder, the prayer of the petitioner-respondent for decree of divorce under Section-13(1) (i-a) of the Hindu Marriage Act has been allowed and the decree of divorce was granted by the learned Addl. Family Court.

[3] The facts of the case are that The marriage between the Respondent herein and the Appellant was solemnized on 27.01.2019 as per Hindu rites and Customs in the presence of the parental house of the appellant and the marriage was negotiated in response to the advertisement given by the parents of the petitioner in local newspaper. On 20.11.2020

the petitioner Respondent Husband joined at Ambassa ICDS Project on being transferred from Kumarghat and since then both the parties have been staying separate from each other. After taking the evidences and also hearing both the parties the learned Addl. Family Court, Agartala, West Tripura below decided the matter against the appellant illegally and arbitrarily and allowed the decree of divorce Therefore, appellant has filed this instant appeal challenging the impugned order dated 16.11.2024 passed by the learned Addl. Family Judge, Agartala, West Tripura.

[4] Having heard the learned counsel appearing for the parties and gone through the material evidence on record, the learned Court below has observed as under:

“73. In the result, the petition dated 22.09.2022 lodged by the husband-petitioner for dissolution of marriage between himself and respondent is allowed as per Section-13(1) (i-a) of the Hindu Marriage Act, 1955. The suit is hereby decreed with declaration that the marriage and marital tie between the petitioner Sri Sankhasubhra Sen and respondent Smt. Susmita Pal (Sen) stands dissolved henceforth. The parties will no longer be husband and wife.

74. Prepare decree accordingly and place it for signing immediately.

75. Supply a copy of decree to both parties at free of cost. Thus, the suit is disposed of on contest....”

[5] Being aggrieved by and dissatisfied with the same, the respondent-appellant has preferred the present appeal before this Court for redress.

[6] Learned counsel appearing for the appellant has submitted that the wife appellant was always ready to reside with the respondent but the respondent was not agreed to lead conjugal life and started cruelty upon the appellant. There is no evidence on record which shows that the respondent herein put his effort to bring back the appellant herein or to stay with her after his transfer from Kumarghat to Ambassa in November, 2020. It is relevant to mention that all the belongings of the couple are still lying in the rented house, but the learned Court below failed to appreciate the same.

[7] PW-4 is not acceptable as she cited beyond pleadings story and so the evidence of putting cut marks by nail and injury is no believable.

It has been further contended that on so many occasions' efforts of reconciliation was made during the divorce proceeding but the husband respondent always denied for leading conjugal life. It is the husband who left appellant herein at Kumarghat and never tried to contact her.

[8] The plea of the petitioner-respondent herein about the Obsessive Compulsion Disorder of respondent appellant is baseless and has no corroboration by any medical evidence. But the learned Court below has failed to appreciate the same and passed the impugned judgment which needs to be set aside. In case of desertion there must be permanent abandonment or withdrawn of the conjugal society of petitioner respondent by respondent appellant without any justification. It also requires the cessation of martial obligations for considerable period and as per statute, for a period of not less than two years preceding the date of presentation of petition for divorce. It has been mentioned that pre-condition of statutory requirement to constitute the desertion is not proved. Therefore, the finding of the learned Court below is totally illegal and arbitrary.

[9] Learned senior counsel appearing for the respondent-husband in support of his case has submitted that he sought for the decree of divorce on the ground of suffering cruelty and desertion. He argued that the trauma with mental cruelty and humiliation upon petitioner, the respondent herein, had started since their honeymoon trip. The respondent, the appellant herein, has the habit of putting her periodic napkins under bed and on the rack of bathroom without disposing them that generates nauseating stench and discomfort to the petitioner to stay.

[10] The respondent has no sense of honour and respect towards petitioner and her in-laws as often she was found to appear naked after bathing from washroom which caused immense awkward situation and mental cruelty to the petitioner. During the occasion of puja suddenly the respondent opened her Sankha-pola with erasing of vermilion from her forehead and that being unjustified conduct cannot be tolerated by an educated husband of Hindu family. This incident also put him to suffer

mental trauma and agony. The respondent also refused to cohabit with petitioner on several occasions and even refused to take the medicine prescribed by Dr. Bhubaneshwar Roy, a Psychiatrist.

[11] It is further pointed out that the respondent has no respect and care towards her parents in law as they were also humiliated during their visit to the rented house. The misbehaviour and humiliating conduct of the respondent and the mental cruelty caused had reached to such an extent and degree that the petitioner cannot be expected to bear with or further stay with his wife. From the chronological incident occurred in the short span of conjugal life since the honeymoon trip, it is the petitioner who has suffered a lot and it would be harmful for him to cohabit with such delinquent and insensible wife and so prayed for passing decree in his favour.

[12] In view of above and after observing the findings arrived at by the learned Court below, for a definite conclusion, let us revisit the evidences once again. It is admitted fact that soon after marriage both the petitioner and the respondent went to Andaman via Kolkata on 04.02.2019 for honeymoon trip for five days and returned to Agartala on 10.02.2019. At the time of marriage respondent being posted at Khowai used to stay in the rented house there while petitioner was posted at Kumarghat, Unakoti District. With the persuasion of both the parties respondent got transferred to Pabiacherra TGB Branch at Kumarghat from Khowai on 19.08.2019. The petitioner joined at Ambassa ICDS project on being transferred from Kumarghat and since then both the parties have been staying separate from each other. It is also admitted fact that on 25.10.2021 on meeting held in the house of one Bidhu Bushan Deb of Ramnagar-8 where parents of petitioner along with respondent, her father and uncles with other respectable well-wishers were present but no settlement could be arrived in that meeting.

[13] PW-1 Sri Sankha Subhra Sen (Petitioner, the respondent herein,) in order to establish his contention of cruelty deposed categorically that the respondent during the honeymoon trip at Andaman on each

occasion of fixed journey by tourist bus, made undue delay in the washroom that resulted to the delayed boarding of them in the tourist bus, that also put the petitioner to bear with annoyance of co-travelers. the respondent has the abnormal and objectionable habit of coming out from the wash room in full naked condition after birth followed by roaming around the hotel room in that condition that was not befitting for her personality.

[14] After return from the honeymoon trip, respondent continued her ugly practice of coming out from the wash room in fully naked condition and roaming in the room just like a lunatic person. According to PW-1 respondent is completely swallowed by Obsessive Compulsion Disorder with terribly grumpy personality. During the stay of petitioner with respondent in her rented house at Khowai for 14 days after the honeymoon trip, he was also humiliated and abused by the respondent without any reason.

[15] She also uttered that she had spent Rs. 6.72 lakhs in her marriage and that her marriage being an unsuccessful and failed she can proceed for mutual divorce if the same money was repaid to her. She also expressed on numerous occasions that PW-1 has no match for her and she deserves much better groom.

[16] During the 2nd trip of the parents of PW-1 to the rented house of respondent at Khowai, she has humiliated and abused then with slang and filthy language and did not behave properly. Even in June, 2019 respondent also behaved in a discourteous and insulting way with one customer of her bank for which that customer also lodged a complaint against her and then she had to seek pardon to the bank ombudsmen. With the persuasion of PW-1 and respondent, she was transferred to the Pubiacherra, TGB, Kumarghat Branch on 19.08.2019 and started living together at Kumarghat where PW-1 was also posted.

[17] PW-1 has also made effort for proper treatment of respondent who was suffering from multiple diseases like polycystic ovarian

syndrome, acute Gastroenteritis with obsessive compulsion disorder but she never consumed the doses of medicine prescribed by doctors despite repeated request of PW-1. The respondent had also shifted her all golden ornaments in her bank locker and uttered that she had no problem in giving divorce to PW-1 as she successfully shifted her ornaments to the Bank locker. The respondent has also changed seven cooks three in Khowai and four in Kumarghat till January, 2020 over very minor issues and she used to quarrel with them and blame them for lack of cleanliness.

[18] Sustaining all such ill-treatment together PW-1 had fallen ill just after few months of marriage and had to take high powered medicine for hyper tension. Enduring all kinds of physical, psychological, mental and emotional tortures by respondent, he continued the conjugal life with a hope of her change in attitude and habit and under compelling circumstances, one year of marriage he divulged everything to her parents with request to inform her parents about the incidents and torture. The respondent was also neglectful in disposing her period blood stain napkins and used to accumulate this under bed and rack of bath room for months that would release nauseating stench in the house. Even during her periods she used to scold and scars PW-1 under the influence of superstitions.

[19] Almost every day she fought with PW-1 during the stay of his parents at Kumarghat and also shouted on him to give her divorce. Despite repeated request of PW-1, respondent did not consume single medicine prescribe by Dr. Bhubaneswar Roy (Psychiatrist) who diagnosed her with obsessive compulsion disorder. On 19.05.2020 during the stay at Kumarghat, respondent scratched and pinched PW-1 severely with nails on the pretext of asking her to have dinner with him. Similar incident also occurred on 22.05.2020 and thereafter on 25.05.2020; she also insulted PW-1 for receiving phone call of his Sr. colleague at round 8.30pm at night.

[20] On 28.06.2020, when the parents of PW-1 visited Kumarghat along with Prashad of Goddess Bipadnashini for both the spouses she

became furious seeing her parents in law and also thrown away their Prasad and also removed her Sakha and Pola from her hand followed by erasing her vermilion from her forehead. On 20.11.2020 PW-1 joined at Ambassa ICDS project on transfer from Kumarghat after that no communication made between him and the respondent though he tried to contact with her over mobile phone but she never received. Before his joining at Ambassa, respondent also abused, mentally tortured and humiliated PW-1.

[21] On 25.10.2021 one meeting held in the residence of one Bidhu Bushan Deb at Ramnagar Road No-8 in presence of the parents and other relatives of both the parties to resolve the matter but no solution came up. According to PW-1 respondent was always disrespectful towards her parents in law and always misbehaved with them. Even she also denied having physical relation with PW-1 for prolong time that also adversely affected his mental condition.

[22] The respondent treated PW-1 with physical and mental cruelty by her refusal to have sexual relation, cruel behaviour ill-treatment to her parents in-law, physical assault to PW-1 apart from her irritative, autocratic habits. That due to such adamant conduct, the respondent was reluctant to live and cohabit with PW-1 and thereby deliberately deserted PW1 from her company. PW-2 Smt. Ratna Datta Sen (73 years), PW-4 Shital Rn. Sen (74 years) who are parents of PW-1 as well as PW-4 Sri Sujit Das (Sr. colleague of PW1), PW-5 Smt. Gita Rani Debnath who is the maid servant in the house of PW-1 and PW-6, Sri Pradip Chakraborty also categorically narrated almost the above relevant facts in their affidavit in chief at the same tune with PW-1. So for the sake of brevity narration of their statements is not repeated here.

[23] In cross-examination of PW-3 replied that the respondent is a government employee and posted at Champak Nagar Branch of TGB as Assistant Manager. He admitted that a patient of psychopathic disorder cannot perform job in Bank. He replied that he did not see any scope of reunion between his son and his wife owing to their past incident and that

maid servant Smt. Gita Rani Debnath used to do part time work in their house since Durga Puja 2017. He replied that presently his son is not willing to lead conjugal life with the respondent and it would be impossible for him to stay together with her.

[24] From the oral evidence of PWs.1, 2, 3, 4 and 5 it is revealed that the grievance of odd behavior of respondent started since the honeymoon trip of PW-1 & DW-1 to Andaman and Nikobor Island via Kolkata in February, 2019 soon after marriage. It is consistently revealed in the evidence that their honeymoon trip was not happy due to dilatory habit of the respondent in the wash room that resulted to their delayed boarding to the tourist bus leading to annoyance to the co-travellers. Apart from this PW-1 is also corroborated by PWs.2, 3 and 5 that respondent has odd habit of coming out from the wash room in fully naked condition and roaming in the room just like a lunatic person.

[25] It is un-rebutted that PW-5 used to work as maid servant in the house of PW-1 since October, 2017 till date. As such, she has the opportunity to see and observe the conduct and behaviour of the respondent inside the matrimonial house. PW-5 straightway deposed that respondent used to come out from wash room in fully naked condition and was found roaming in the room just like a lunatic. The testimony of PW-1 that he also found the respondent in coming out from the wash in fully naked condition during his honeymoon trip at Andaman Hotel, is also not disproved by the respondent. PW-1 also tried to convince respondent to give up such habit for the reason that it was not decent or suiting to her personality. Despite such effort of PW-1 respondent continued her such act of exposing her naked physique in the matrimonial house without caring its consequence and impact upon her in-laws.

[26] It is also convincingly revealed in the evidence of PWs that respondent has another ugly habit of putting and accumulating her period blood stain sanitary napkins under bed and on the rack of bathroom without disposing them properly. Respondent being an adult woman was fully

aware of the consequence of such un-disposed rotten period napkins. Obviously, it would release nauseating stench and also affect the cleanliness of the house. This could be a serious issue in the woman sphere. This unusual practice of respondent regarding disposal of her period sanitary napkins also reflect her ill mental state. Such irrational and reckless nature of respondent could be rectified through counseling and other suitable treatment by a psychiatrist.

[27] So, in our considered view, the prescribing of some medicine by a psychiatrist for the respondent in course of her other treatment of gynecological problem cannot be treated to be unjust or with ulterior motive of her in-laws. Having viewed this, we find no force on the contention of learned counsel of appellant that the evidence of PWs are not credible in absence of medical evidence. Here the question of fact is whether the respondent wife refused to take the medicine prescribed by the psychiatrist despite request of PW-1 or not. PW-1 in the evidence categorically deposed that respondent refused to take such medicine and thereby made non-cooperation with him. Such conduct of respondent could be painful for the husband who had thought of her better treatment but it was not accepted. This conduct of refusal of respondent to consume the medicine can be treated as mental cruelty to the husband.

[28] Moreover, it is also revealed in the evidence of PWs that during the 2nd visit of the parents of PW-1 in the rented house of respondent they were misbehaved and humiliated by her. PW-2 and PW-3 are now aged 73 years and 74 years respectively and both are pension holder. Thus they are senior citizens and being retired they have the desire and aspiration to give company to their newly married daughter in law in her rented house at Khowai. Certainly, PWs-2 and 3 were not the enemy of respondent and they being the in-laws deserve the minimum respect, dignity, regard and care from their daughter-in-law.

[29] So the testimony of PW2,3,&5 cannot be discarded from consideration, rather, they are the vital witnesses of the events taken place

in front of their eyes. So, the contention of respondent that oral evidence of PWs depicted false story due to non-lodging of any complaint before any forum cannot be sustainable. The persistent odd, incidents behavior and misdeeds of respondent as experienced during the stay in the matrimonial house, in the rented houses at Khowai and Kumarghat can be treated to be the compelling circumstances for PW-1 to refuse to stay with the respondent, the appellant herein.

[30] Mere omnibus statement of torture by in-laws without any supporting material is not credible and cannot be acted upon. Even no medical document of any injury and treatment is exhibited by respondent to support her plea of torture and strangulation. Therefore, the evidence of DWs No. 1 to 6 about the atrocity and torture caused by petitioner, the respondent herein, and his parents upon DW-1 is not trustworthy and not believable. Rather, it is convincingly established in the evidence that it was the respondent wife who has treated the petitioner with mental cruelty constantly in every places of their stay in between the period of their honeymoon trip till 20.11.2020.

[31] Moreover, PW-1 categorically deposed in his oral evidence that there was no relation between himself and respondent like husband and wife except for 15 to 20 days as she denied to have physical relation with him for prolong time. PW-1 also mentioned that due to her prolong refusal to have sexual intercourse, his mental and physical condition got adversely affected. From this evidence of PW-1 together with his assertion that respondent has delinquent nature, disrespect towards her husband and in-laws and irritative attitude it is highly probable to believe that the physical relation between the parties was not smooth and cordial. The continuous refusal to have sexual relation by one spouse would certainly lead to mental and physical dissatisfaction, discomfort and disturbance to the conjugal relation. The veracity of PWs particularly PW-1 could not be impeached in his cross-examination. Thus, the refusal of respondent to cohabit and have sexual relation with PW-1 for a prolong period prior to their separation will amount to mental cruelty towards him.

[32] Moreover to establish legal cruelty it is not necessary that physical violence should be used. Concept of cruelty defers from person to person depending upon his upbringing, level of sensitivity, educational family and cultural background, financial position, social status, customs, traditions, religious belief, human values, etc. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. What may be mental cruelty now may not remain mental cruelty after a passage of time or vice versa. There can never be any straight jacket formula or fixed parameters for determining mental cruelty in matrimonial matters.

[33] Therefore, in the light of the forgoing analysis of evidence, proposition of laws, and reasoning cited, it can be concluded without hesitation that petitioner has discharged his onus of prove by preponderance of probability that after marriage and prior to 20.11.2020 respondent wife has treated the petitioner with cruelty by her irrational and unjustified conducts. The respondent is found to be guilty of committing conducts. The respondent is found to be guilty of committing mental cruelty upon her husband that attracts Section-13(1) (i-a) of the Hindu Marriage Act, 1955.

[34] Accordingly, all the allegations made against the wife on the point of cruelty and other issues are set aside and however, the divorce granted is confirmed. It is seen from the record that after marriage almost they are staying separately and several allegations and counter allegations have made against each other. At point of time it becomes impossible for them to lead the conjugal life and there is no emotional bondage. This Court feels that the marriage has become dead and there is no chance or benefit of reunion and therefore, it is a fit case for dissolution of marriage.

[35] In that view of the matter, the findings as arrived at by the learned Court below need no interference and consequently, the order of dissolution of marriage between the appellant and the respondent stands

confirmed. However, it is made clear that since all the allegations against the wife appellant are expunged by this Court; she is at liberty to start her new life.

[36] With above observations and directions, the appeal stands disposed of. As a sequel, miscellaneous application, pending if any, shall stand closed.

B. PALIT, J

T. AMARNATH GOUD, J

A.Ghosh

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