

# THE HIGH COURT OF TRIPURA AGARTALA

## MAT Appeal 02 of 2012

**Smt. Jayanti Deb (Das)**

W/O Sri Manas Kumar Das  
D/O Sri Durgakumar Deb  
Resident of Arundhutinagar  
Road No. 1, P.O. A.D. Nagar,  
P.S. West Agartala, District-Tripura West  
PIN-799003.

..... Wife-Respondent-Appellant

Versus

**Sri Manas Kumar Das**

S/O Lt. Abanibhushan Das  
Resident of Village Sekerkote,  
P.S. Amtali, P.O. Sekerkote,  
District-Tripura West.

**At present:**

C/O Office of the CDPO,  
ICDS, Bishalgarh Block,  
PO & PS Bishalgarh  
District-Tripura West  
PIN- 799 102

... Husband-Petitioner-Respondent

**BEFORE**  
**HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**  
**THE HON'BLE MR. JUSTICE UB SAHA**

|                                         |                                                             |
|-----------------------------------------|-------------------------------------------------------------|
| For the appellant                       | : Mr. DR Choudhury, Advocate<br>Mr. D Deb, Advocate         |
| For the respondent                      | : Mr. D Chakraborty, Sr. Advocate<br>Mr. H Laskar, Advocate |
| Date of hearing                         | : 05.02.2015.                                               |
| Date of delivery of<br>judgment & Order | : <b>19.02.2015</b>                                         |
| Whether fit for reporting               | : <b>Yes.</b>                                               |

## **JUDGMENT AND ORDER**

( Saha J )

This appeal is directed against the judgment dated 27.01.2012 passed by the learned Judge, Family Court, Agartala, West Tripura in TS(Div)191/2008 whereby and whereunder the learned Family Judge

allowed the suit granting decree of divorce on the ground of cruelty between the parties.

**2.** The appellant and the respondent are wife and husband, respectively. The respondent filed a petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 for divorce. The learned Family court after comprehensively dealing with the matter ordered dissolution of the marriage between the parties under Section 13 of the Hindu Marriage Act. The marriage was solemnized on 10<sup>th</sup> May, 2005 according to vedic rites and customs in the house of the father of the appellant at Arundhutinagar, Road No. 1, Agartala, West Tripura. The appellant, aggrieved by the aforesaid judgment of the Family Court preferred the instant appeal on the ground that the wife-appellant has sufficiently proved the mental and physical torture caused upon her by the respondent-husband due to her unwillingness to stay in the house of the elder brother of the husband-respondent. The appellant has also stated that the learned Family Court wrongly concluded about her cruelty upon her husband though, there is no evidence adduced by the husband-respondent on that ground.

**3.** Brief facts which are necessary to dispose of this appeal are as under:

The respondent-husband Sri Manas Kumar Das in his petition under Section 13(1)(ia) of the Hindu Marriage Act stated, inter alia, that in the year 2004 when both the respondent-husband, petitioner in the suit and the appellant-wife, respondent in the suit, used to visit a coaching class for appearing TCS examination, they used to meet each other in the coaching class and were introduced and in course of time

their acquaintance developed to love affairs and ultimately in spite of advice and caution given by his well-wishers not to be associated with the appellant, he decided to marry the appellant and ultimately their marriage was solemnized on 10.05.2005 according to the Hindu rites and customs, as stated supra. At the time of marriage, the respondent was residing in the house of his elder brother namely, Sri Ratan Das at Joynagar Road No. 1, Agartala. Just after completion of marriage both the appellant and the respondent shifted to the house of said Sri Ratan Das. But immediately after moving in the house of the elder brother of the respondent, the appellant clearly told that she would not live in the house of his elder brother and on the same night the appellant proposed the respondent to shift to the house of her father since there was sufficient place in her father's house. As the respondent disagreed to the proposal given by the appellant, the appellant started non-cooperation with him as well as other family members and also started abusing the respondent in filthy language. In such a situation, the respondent had to shift along with the appellant to a rented house owned by Shri Debasish Datta at Jaynagar, Agartala and from 23.06.2005 to the middle of April, 2007 both the respondent and the appellant resided in the said rented house but during that period also the appellant did not live for more than 10 days on average in a month and for the remaining 20 days of the month she used to reside in the house of her father.

**4.** It is also alleged that during that period, the appellant's unmarried sister, namely, Smt. Jayasree Deb used to visit the rented house on regular basis, at least twice in a day and at the same time the appellant also used to leave the rented house every now and then with

her elder sister without any notice to the respondent and in the event of protest made by the respondent, both the appellant and her sister used to rebuke the respondent in filthy language. One day when the respondent returned to his rented house from office at 6 p.m. he found that the appellant was not available in the house. Meanwhile at 8 p.m. the appellant returned along with her elder sister and when the respondent asked her as to where she had been during the period, instantly both the appellant and her sister started rebuking the respondent with filthy language and at about 12 a.m. (mid night) the father of the appellant also came to the rented house and they started rebuking the respondent. Not only that, the respondent was arrested by the police at the instance of the appellant though subsequently he was released and as a result the respondent was totally upset and mentally broken.

**5.** It is the further case of the respondent that during this period the appellant with the help of her sister used to move here and there giving no respect to the respondent and she used to use the mobile phone registered in the name of her elder sister and through such mobile phone, the appellant used to talk to someone and on many occasions when the mobile phone used to ring up, the respondent used to attempt to receive the call, but he did not get any reply from the other end and under such a mental helpless position he left Agartala in October 2006 and started residing at Teliamura in his place of work to save himself from the tyranny of the appellant, her sister and her father.

**6.** Ultimately, at the instance of the appellant, the respondent returned to his rented house at Agartala but in the middle part of April,

2007 the appellant left the rented house and started residing in the house of her father permanently. In the meantime, they were blessed with a female child on 30.07.2007. The respondent also stated in his petition that one day when he went to his father's house at Sekerkote under Amtali PS and on the way back to the rented house he visited the father's house of the appellant but on seeing him the father and elder sister of the appellant attacked him with filthy language which cannot be uttered by any reputable person and ultimately, the respondent seeing no other alternative fled away from that house to save his prestige.

**7.** It is further stated that he was under constant threat by the appellant to use the law of Section 498A IPC for sending him to jail, since she is an advocate and as such she has cordial relationship with the police officers and she also told him that one single call would be enough to put him behind the bars. In such constant mental torture, the respondent came to the conclusion that it would not be possible on his part to live with the appellant as husband and wife and under such a situation he filed the petition for getting a decree of divorce on the ground of cruelty.

**8.** The appellant-wife in her first statement denied all the allegations leveled against her but it is alleged in her written statement that after the marriage she was subjected to physical and mental torture and because of severe torture she lost her senses and admitted herself in the IGM hospital as an outdoor patient for her treatment. It also alleged that the wife of the elder brother of the respondent-husband is a pivot and she was continuously controlling the affairs of the matrimonial home

resulting in violence created by the respondent upon her. Not only that, the respondent-husband had special relationship with the wife of his elder brother and in spite of that also she tried to adjust with her husband. It is further alleged that during the advanced stage of her pregnancy and also at the time of delivery of their child the respondent did not visit to see her even for a single day and when she visited her matrimonial home after the maternity period she was humiliated and was not allowed to stay in her matrimonial home and as a result, she had to stay in the house of her parents for her survival. In spite of being an advocate by profession she could not earn anything as she kept herself busy with her newly born child. The respondent-husband being the Supervisor of ICDS was drawing a salary of Rs. 18,000/- per month and did not provide any maintenance either to her or to her minor daughter.

**9.** The learned Family Court considering the contentions made in the petition as well as in the written statement framed three issues which are as follows:

- (I) Whether the petition is maintainable in its present form and nature?
- (II) Whether after the marriage, the petitioner was tortured mentally in many ways and abused in filthiest language by the respondent, her sister and father for which he was compelled to live at his place of posting at Teliamura for some days to save himself from the tyranny of the respondent and whether thereafter, the respondent deserted her matrimonial home, i.e. the rented house without any reasonable cause in the month of April, 2007 permanently or whether after marriage, the

respondent was tortured by the husband both mentally and physically being influenced by the wife of the elder brother of the petitioner, compelling her to take shelter in the house of her parents in the middle part of April, 2007?

(III) Whether the petitioner is entitled to get a decree of divorce as prayed for?

**10.** For proving the case, respondent-husband has examined himself as PW 1 and one Sri Malay Chakraborty as PW 2. On the other hand, the appellant-wife has examined seven witnesses including herself. Learned Family court decided the issue No. (ii), after discussing the evidence, in favour of the respondent-husband and ultimately decreed the suit. Hence, the appeal.

**11.** Issue nos. (ii) and (iii) relate to cruelty and the false allegation leveled by the appellant against the respondent. The petition for divorce was filed primarily on the ground of mental cruelty. Evidence was led by the parties, the respondent husband as PW 1 stated in his evidence that he was ill-behaved by the appellant and also since she did not like to live in the house of the elder brother of the respondent and when he could not accept such a proposal, she started non-cooperation in all affairs for which he was ultimately compelled to shift to a rented house and even in the rented house she did not stay more than 10 days in a month. He denied the allegations made by the appellant-wife regarding torture upon her as well as allegation regarding maintaining a special relationship with the wife of his elder brother (Boudi /Bhabhi) whom he considers like his own mother. He also stated that the allegation of not allowing the appellant to enter into the rented house after delivery of

their daughter is totally false and in fact she herself did not come back to the said rented house and is now leading her own life as per her own whims. He also stated that due to constant mental torture he prayed for a decree of divorce on the ground of cruelty.

**12.** PW 2, Sri Malay Chakraborty, stated in his evidence that the elder brother of the respondent Sri Ratan Das is well known to him and his house is located at a short distance from his house. This witness further stated that in the month of September, 2006 he was informed by one Sri Chandan Majumdar that the respondent was arrested by the police at the instance of the appellant and accordingly he along with Chandan Majumdar went to the West Agartala PS where he found that the respondent was sitting in the police station and the appellant, her elder sister and her father with some unknown persons were rebuking the respondent in filthy language in chorus and all of them tried to put him in lock up but the Officer-in-Charge of the PS tried to pacify the appellant and her group. This witness also stated that on their request the respondent was ultimately released from the PS at about 2.30 a.m.(night).

**13.** The appellant, being DW 1, in her evidence though denied the allegation of the respondent but stated regarding the illicit relationship of the respondent with the wife of his elder brother for which they could not lead a peaceful conjugal life. She further stated that in spite of the extreme torture made upon her by the respondent-husband, she wanted to live together with her husband.

**14.** DW 2, Sri Durga Kumar Deb, father of the appellant, though in his evidence stated regarding the habit of the respondent of leading

special life with his sister in law, during cross-examination, he specifically stated that he did not see the respondent-petitioner maintaining any kind of relationship with the wife of his elder brother but he was told so by his daughter.

**15.** DW 4, Smt. Manju Chakraborty, DW 5, Smt. Namita Acharji, DW 6, Smt. Mani Bala Das stated that as told by the appellant, they knew that the appellant was tortured by the husband-respondent.

**16.** DW 7, Smt. Hemanta Bala Biswas, who was working in the house of the father of the appellant as maid servant, in her affidavit in chief stated that one day when she went to the rented house of the respondent at Jaynagar with a Tiffin box she found the respondent-petitioner and a lady in the same bed and during her cross-examination, she specifically stated she cannot say what she has written in that affidavit in chief. Not only that, it appears from the record that this witness is an illiterate one and she put her thumb impression in the affidavit which is written in English and there is also no such statement that the contents of the affidavit were read over or explained to her. In such a situation, it is very difficult to rely upon the evidence of this witness so far the allegation of adultery is concerned.

**17.** Mr. Choudhury, learned counsel for the appellant while urging for setting aside the decree of divorce would contend that the owner of the rented house Sri Debasish Datta was not brought as witness and not only that, the allegation made by the respondent regarding cruelty is also not proved. He further submits that the allegation of the respondent that he was pressurized by the appellant to shift in rented house cannot be considered as cruelty and in support of his aforesaid contention he

has placed reliance on a decision of the Delhi High Court in **Harish Chander Drall v Suresh Wati, AIR 2007 (NOC) 2272 (Delhi)** wherein it is stated that the allegation by the husband that the respondent wife had pressurized him to set up a separate residence and had behaved badly in presence of the neighbours and also filing of a criminal case by the wife against the husband would not constitute cruelty. He further submits that mere allegation of cruelty itself would not be a ground for granting divorce unless the same is proved. In the instant case, the respondent husband though in his petition has made some allegation regarding cruelty but he failed to prove those allegations and for proving cruelty under Section 10(i)(b) it has to be proved by the person who alleges cruelty that harm or injury to his health, reputation, working career is affected by the appellant wife but the same is also absent. In support of his aforesaid contention he has placed reliance on **Dr. NG Dastane V. Mrs. S Dastane, AIR 1975 SC 1534**, particularly para 30 & 31 which are as under:

**“30. An awareness of foreign decisions could be a useful asset in interpreting our own laws. But it has to be remembered that we have to interpret in this case a specific provision of a specific enactment, namely, section 10(1) (b) of the Act. What constitutes cruelty must depend upon the terms of this statute which provides :**

**"10(1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition to the district court praying for a decree for judicial separation on the ground that the other party-**

**(b) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party;"**

**The inquiry therefore has to be whether the conduct charged a,- cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent. It is not necessary, as under the English law, that the cruelty must be of such a character as to cause "danger" to life, limb or health or as to give rise to a reasonable apprehension of such a danger.**

Clearly, danger to life, limb or health or a reasonable apprehension of it is a higher requirement than a reasonable apprehension that it is harmful or injurious for one spouse to live with the other.

31. The risk of relying on English decisions in this field may be shown by the learned Judge's reference to a passage from Tolstoy (p. 63) in which the learned author, citing *Horton v. Horton* 1940 P. 187, says : "Spouses take each other for better or worse, and it is not enough to show that they find life together impossible, even if there results injury to health."

If the danger to health arises merely from the fact that the spouses find it impossible to live together as where one of the parties shows an attitude of indifference to the other, the charge of cruelty may perhaps fail. But under section 10(1) (b), harm or injury to health, reputation, the working-career or the like, would be an important consideration in determining whether the conduct of the respondent amounts to cruelty. Plainly, what we must determine is not whether the petitioner has proved the charge of cruelty having regard to the principles of English law, but whether the petitioner proves that the respondent has treated him with such cruelty as to cause a reasonable apprehension in his mind that it will be harmful or injurious for him to live with the respondent."

18. Mr. Chakraborty, learned senior counsel for the respondent-husband while supporting the decree of divorce passed by the learned Family Court would contend that if for argument sake it is admitted that the respondent failed to prove his allegation then also the allegation of the appellant-wife to the effect that the respondent was maintaining adulterous life with the wife of his elder brother itself is a cruelty and a ground for divorce. He further submits that the learned trial court taking note of the decision of the Apex Court in **V Bhagat vs. D Bhagat (1994) 1 SCC 337** held that "because of series of mental torture made upon the petitioner, he is entitled to seek a decree of divorce on the ground of mental cruelty shown to him, particularly when the respondent though raised allegation of having illicit relationship of the petitioner with the wife of his elder brother could not convincingly prove before this court and hence, issue No. (II) is decided in favour of the petitioner but against the respondent."

19. Before we examine the submission of the learned counsel for the parties, it would be proper on our part to consider the word "cruelty". "Cruelty" is not defined in the Hindu Marriage Act. Thus, it would be proper to consider the dictionary meaning of cruelty. Shorter Oxford Dictionary defines "cruelty" as **"the quality of being cruel; disposition of inflicting suffering; delight in or indifference to another's pain; mercilessness; hard-heartedness"**.

20. The term "cruelty" has been defined in Black's Law Dictionary (8<sup>th</sup> Edn., 2004) as under:

**"Mental Cruelty.- As a ground for divorce, one spouse's course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse."**

21. As the learned trial court considered **V Bhagat** (supra) it would be proper on our part to reproduce para 16 and 20 of the said report.

**"16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."**

**20. In the light of the principles enunciated hereinabove, we may now examine whether the allegations made by the wife in her written statement and the questions put by her counsel to the petitioner in cross-examination amount to mental cruelty within the meaning of the said sub-clause? The relevant portions of the written statement have already been set out by us hereinbefore. We have also set out in the said paragraph the explanatory statement made by the respondent's counsel in court in Justification of the questions put by him to the petitioner in his cross- examination. It is true that the said averments must be**

read in the context in which they were made. At the same time, it must be remembered that the wife was merely defending herself against what are, according to her, totally unfounded allegations and aspersions on her character. It was not necessary for her to go beyond that and allege that the petitioner is a mental patient, that he is not a normal person, that he requires psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations-and to crown it all, to allege that he and all the members of his family are a bunch of lunatics. It is not as if these words were uttered in a fit of anger or under an emotional stress. They were made in a formal pleading filed in the Court and the questions to that effect were put by her counsel, at her instructions, in the cross-examination. Even in her additional written statement she has asserted her right "to make correct statement of facts to defend herself against the wanton, imaginary and irresponsible allegations". These are not the mere protestations of an injured wife; they are positive assertions of mental imbalance and streak of insanity in the mental build-up of the husband. The husband is an Advocate practicing in this Court as well as in Delhi High Court. The divorce petition is being tried in the Delhi High Court itself. Making such allegations in the pleadings and putting such questions to the husband while he is in the witness-box, is bound to cause him intense mental pain and anguish besides affecting his career and professional prospects. It is not as if the respondent is seeking any relief on the basis of these assertions. The allegations against her may not be true; it may also be true that the petitioner is a highly suspicious character and that he assumes things against his wife which are not well founded. But on that ground, to say that the petitioner has lost his normal mental health, that he is a mental patient requiring expert psychological treatment and above all to brand him and all the members of his family including his grandfather as lunatics, is going far beyond the reasonable limits of her defence. It is relevant to notice that the allegations of the wife in her written statement amount in effect to "psychopathic disorder or any other disorder" within the meaning of the Explanation to clause (iii) of sub-section (1) of Section 13, though, she has not chosen to say that on that account she cannot reasonably be expected to live with the petitioner-husband nor has she chosen to claim any relief on that ground. Even so, allegations of 'paranoid disorder', mental patient', 'needs psychological treatment to make him act a normal person' etc. are there coupled with the statement that the petitioner and all the members of his family are lunatics and that a streak of insanity runs through his entire family. These assertions cannot but constitute mental cruelty of such a nature that the petitioner, situated as he is and in the context of the several relevant circumstances, cannot reasonably be asked to live with the respondent thereafter. The husband in the position of the petitioner herein would be justified in saying that it is not possible for him to live with the wife in view of the said allegations. Even otherwise the peculiar facts of this case show that the respondent is deliberately feigning a posture which is wholly unnatural and beyond the comprehension of a reasonable person. She has been dubbed as an incorrigible adulteress. She is fully aware that the marriage is long dead and over. It is her case that the petitioner is genetically insane. Despite all that, she says that she wants to live with the petitioner. The obvious conclusion is that she has resolved to live in agony only to make life a miserable hell for the petitioner

as well. This type of callous attitude in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the petitioner with mental cruelty. It is abundantly clear that the marriage between the parties has broken down irretrievably and there is no chance of their coming together, or living together again. Having regard to the peculiar features of this case, we are of the opinion that the marriage between the parties should be dissolved under Section 13(1)(i-a) of Hindu Marriage Act and we do so accordingly. Having regard to the peculiar facts and circumstances of this case and its progress over the last eight years-detailed hereinbefore-we are of the opinion that it is a fit case for cutting across the procedural objections to give a quietus to the matter.”

22. In *Savitri Pandey v. Prem Chandra Pandey*, (2002) 2 SCC 73, the Apex Court considered what should be mental cruelty and noted as under:

"Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other."

23. In *Parveen Mehta V. Inderjit Mehta*, (2002) 5 SCC 706, the Apex Court again examined mental cruelty, particularly in paragraph 21 which is as follows:

“21. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether

**such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other."**

**24.** In view of the above decisions of the Apex Court, it can be said that cruel treatment by one of the spouse to the other not amounting to physical cruelty is actually mental cruelty. There is no doubt that asking for shifting to a rented house for any reason cannot be considered to be mental cruelty. In the instant case, admittedly the appellant-wife in her written statement made allegation regarding the extra marital relationship of the respondent with the wife of his elder brother but could not prove the same. Such an allegation is serious in nature particularly, when in our society wife of elder brother is called as Boudi/Bhabhi and treated like mother. The allegation of adultery made by the wife appellant and not proved is nothing but mental cruelty. It is very easy to make a wild allegation of adultery but is difficult to prove.

**25.** In view of the above, we are of the opinion that the learned Family Court did not commit any wrong granting the decree of divorce on the ground of mental cruelty as such mental cruelty has been established. It also appears from the judgment of the learned Family Court that while granting the decree of divorce, he also directed the respondent husband to give maintenance allowance of Rs. 4,000/- per month to the daughter of the respondent w.e.f. 01.02.2012 and this maintenance allowance of Rs. 4,000/- per month is to be sent to the appellant through her savings bank account within the first 10 days of every English calendar month. Therefore, it cannot be said that the learned Family Court did not consider regarding the maintenance of

their minor daughter. The respondent-husband shall comply with the order of maintenance passed by the learned Family Judge in letter and spirit and the same is maintained by us. Thus, it is not necessary on our part to interfere with the order of the learned Family Judge.

**26.** In the result, the appeal is dismissed. No order as to costs. Send down the LCR.

**JUDGE**

**CHIEF JUSTICE**

*lodh*