

THE HIGH COURT OF TRIPURA
A G A R T A L A

Crl. Rev. P. No. 43 of 2009

Petitioner :

Sri Jibita Mohan Jamatia,
S/o. Late Bhuban Kumar Jamatia, resident of
Dewanbari, P.S, Killa, Udaipur, District-South
Tripura.

By Advocate :

Mr. M. Debbarma, Adv.

Respondents :

1. Smti Kamala Jamatia,
Previously wife of Sri Jibita Mohan Jamatia and
at present wife of Sri Tarani Sadhan Jamatia @
Aphurai.

2. Kumari Jhamuna Rani Jamatia (minor),
Daughter of Sri Jibita Mohan Jamatia,
Represented by her mother at S.L. No.1 both
residing in Raiyakami, P.S-Killa, District-South
Tripura.

By Advocate :

Mr. D. Bhattacharji, Adv.

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **20th February, 2015.**

Whether fit for reporting :

Yes	No
	√

J U D G M E N T & O R D E R(Oral)

This revision petition under Section 19(4) of the Family Courts Act, 1984 is directed against the order dated 15.05.2009 delivered by the learned Family Judge, Udaipur, South Tripura whereby he directed the

petitioner-husband to pay maintenance of Rs.1500/- per month to the respondent-wife for herself and the daughter.

[2] The undisputed facts are that the petitioner was married to the respondent. According to the wife the marriage was conducted according to Hindu rites whereas according to husband, the marriage was conducted as per tribal custom applicable to the Jamatia community. The husband also took up a plea in the written statement that the marriage between the parties had been dissolved by the Jamatia *hoda* as per custom. According to the petitioner-husband the custom which is applicable to the Jamatia community does not envisage payment of maintenance to the wife or child.

[3] In my view it is not necessary to answer the question whether the tribal custom will prevail or not in the present case because there is no evidence worth the name to show that the parties had dissolved their marriage according to tribal custom. The wife appeared in the witness box and clearly stated that their marriage was conducted according to Hindu rites. The husband though he cross-examined the wife and put certain suggestion to her indicating that she was living in adultery did not put any suggestion that the marriage was conducted not according to Hindu rites but according to tribal custom.

[4] The husband in the written statement has taken a specific plea that marriage was dissolved by a written document executed before the Jamatia *hoda*. This document was not produced before the trial Court nor attached with this revision petition and no effort was made to prove the said document. In the absence of said document the oral statement of the petitioner

husband and his witness that the marriage was dissolved according to custom cannot be accepted. It is settled law that if documentary evidence is available than no amount of oral evidence with regard to the document can be taken into consideration.

[5] It is made clear that this Court is not deciding the issue as to whether Section 125 Cr. P. C will prevail or customary law will prevail, because as far as this case is concerned the customary marriage and customary divorce itself have not been proved by the custom. Furthermore, custom must be pleaded and proved. It is well established law that to prove custom the person pleading custom must show that the custom has been existing from times immemorial and has been followed consistently by the community in question. To be fair to Mr. Debbarma, I must point out that he has relied upon a book titled "Customary Laws of The Jamatias of Tripura" published by the Law Research Institute, Eastern Region, Gauhati High Court in which there is some reference to customary divorce and there is also a reference that under Jamatia Customary Law there is no provision for maintenance allowance to the divorced woman. As far as this case is concerned as I already held above in the present proceeding the divorce according to customary law has not been proved. Therefore, I need not decide this question.

[6] Furthermore, whether Section 125 Cr.P.C will prevail or Customary Law will prevail is a matter which will lead greater research and may have to be decided in an appropriate case and that question is left open for decision.

In any event, I am clearly of the view that even if the wife may not be entitled to maintenance according to customary law which also is not

free from doubt, the right of a child to claim maintenance can never be denied even under customary law. The amount of Rs.1500/- granted as maintenance is not even enough to meet the needs of the child.

[7] In view of the fact that no evidence has been led to show that there is any customary divorce, I find no merit in the petition which is accordingly dismissed.

Send down the LCRs forthwith.

CHIEF JUSTICE