

**THE HIGH COURT OF TRIPURA
AGARTALA**

MAT APP. 17 of 2013

Sri Bhaskar Dey

S/o Late Sunil Dey
of Vill-Amtali (Sabroom)
P.O. Sabroom,
P.S. Sabroom,
District-South Tripura.

.....Petitioner-Appellant.

VERSUS

1. Smt. Jharna Das (Dey)

W/O Sri Bhaskar Dey
D/O Late Haran Chandra Dey
Of Vill-Amtali (Sabroom),
P.O. Sabroom,
P.S. Sabroom,
District-South Tripura.

2. Sri. Kanu Laskar

S/O Late Prakash Laskar,
of Anandapara (Near Sabroom Hospital)
PO & PS-Sabroom
District- South Tripura

.....O.P.-Respondents.

BEFORE

**HON'BLE MR. JUSTICE U.B. SAHA
HON'BLE MR. JUSTICE S. TALAPATRA**

For the appellant : Mr. A Sengupta, Advocate

For the respondents : Ms R Guha, Advocate.

Date of hearing : 14.07.2015

Date of delivery
of judgment and Order : _____

Whether fit for reporting : Yes/No.

JUDGMENT AND ORDER

(Saha,J.)

This appeal, under Section 19 of the Family Courts Act, is directed against the judgment dated 21.06.2013 passed by the learned District Judge, South Tripura, Udaipur in TS(Div)05/2012

wherein the learned District Judge, rejected the prayer for divorce filed by the appellant-husband against the respondent-wife.

2. Heard Mr. A Sengupta, learned counsel for the appellant as well as Ms R Guha, learned counsel for the respondents.

3. The appellant and the respondent No. 1 are husband and wife, respectively. The appellant filed a petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 for divorce. The learned trial court after dealing with the evidence on record rejected the prayer for divorce. The marriage between the appellant and the respondent No. 1 was solemnized on 06.06.2007 as per Hindu rites. After 2 ½ days of the marriage, on 09.06.2007, in the evening the respondent No.2, wife left for her parents' house with the respondent No.2, Sri Kanu Laskar, brother in law of the respondent No. 1. She stayed with the respondent No. 2 at Bijoy Nagar for 17 nights and also cohabited with him. When she was taken back from the house of respondent No. 2- Kanu Laskar, the respondent-wife confessed that she had love affairs and sexual relation with Kanu Laskar and it would not be possible on her part to live without Kanu.

4. The appellant stated in his petition that when he remained busy in his shop at night, his two friends saw the respondent-wife and Kanu in compromising condition. On two occasions, they were found in compromising condition in the house of the appellant at Amtali. The respondent No.1, his wife never allowed the appellant to have sexual relation with him. It is also stated that respondent No. 1, Jharna Das filed a maintenance case

against the appellant and the court granted maintenance allowance of Rs.1,000/- per month. Under the above circumstances, the appellant prayed for a decree of divorce.

5. The respondents appeared and filed a joint written objection denying the claim of the appellant-petitioner-husband and the respondent No. 1 stated that she was driven out from her matrimonial home and under compelling circumstances she had to file the maintenance case.

6. The learned District Judge, considering the contentions made in the petition as well as in the written statement framed two issues which are as under:-

“1) Whether the petition is maintainable?

2) Whether the petitioner is entitled to get decree of divorce on the ground of desertion, cruelty and extra marital relation?”

7. For proving the case, the appellant-petitioner-husband has examined himself as PW1 along with three other witnesses, namely, Satyajit Banik, Smt. Sukhi Dey and Sri Ashish Chakraborty, as PW2, PW3 and PW4, respectively.

8. The appellant-petitioner in his deposition stated that his wife Smt. Jharna Das (Dey) went to her parent's house after 2 ½ days of her marriage and in the evening of 09.06.2007 she left her parents house with respondent No. 2, Kanu Laskar and spent 17 nights in his house at Bijoy Nagar. It is also stated that he tried to lead a conjugal life with his wife but the respondent-wife refused. The appellant-

petitioner also stated that on 01.09.2010 he went to Agartala and returned to his house at about 11 p.m. and after returning when he called his wife she did not respond. Then he forcibly opened the door by breaking the support of the door and found the respondent-wife with Kanu Laskar almost in naked condition inside the room. He caught hold of Kanu Laskar and beat him with a lathi.

9. PW 2, Satyajit Banik, a friend of the appellant-petitioner, stated that on 5th March, 2010 at about 9.00 p.m. when he was going to his home from his shop at Sabroom he went to the residence of the appellant-petitioner Bhaskar and saw Kanu Laskar, respondent No. 2 in a compromising condition with Jharna. He also saw Kanu Laskar committing sexual intercourse with Jharna by torch light. Then he informed the fact to the appellant-petitioner.

10. PW3, Smti. Sukhi Dey, a neighbor of the appellant-petitioner in her deposition stated that on 09.06.2007 at about 11 p.m. the appellant-petitioner Bhaskar came from Agartala and saw Kanu Laskar with his wife Jharna in naked condition inside his hut. Bhaskar caught hold of Kanu and beat him with a lathi. Kanu Laskar sustained bleeding injuries on his person and took shelter in her house and she advised him to go and not to come back again. It is also stated that the appellant-petitioner Bhaskar told her that he found Jharna and Kanu almost in naked condition inside his dwelling hut.

11. PW4, Ashish Chakraborty, stated that the residence of Bhaskar is situated at a short distance from his house and on various occasions he had seen Jharna, respondent No.1, maintaining love

affairs with respondent No.2, Kanu Laskar. He also stated that on 16th May, 2010 at about 7 p.m. when he was returning home he went to the residence of Bhaskar and found both Kanu and Jharna in compromising position in the bed of Bhaskar. The door of the house was closed but not locked from inside and electric bulb was lighting inside the room. When he pressed the door, the door opened.

12. While examining the defence witnesses, the trial court wrongly mentioned them as PWs, instead of DWs. Thus, we considered the statements of those witnesses as DWs.

13. The respondent No.1, being DW 1 denied the story of sexual relationship with Kanu and also denied that her husband caught Kanu with her and thereafter he assaulted Kanu. In her statement on affidavit she stated that after marriage their marital life was peaceful and normal and she resided in the matrimonial home for a year. Thereafter, her husband and his elder brother tortured her physically and mentally to bring Rs.20,000/- as dowry from her mother. On 05.09.2010 she was driven out from her matrimonial home after mercilessly beating her and under compelling circumstances she prayed for maintenance allowance which was granted. The petitioner, appellant herein, being annoyed filed this case for divorce on false allegations.

14. DW2, Smt. Maya Rani Das, wife of Kanu Laskar, respondent No.2, and sister of respondent No.1, in her statement denied the allegation of adulterous life of the respondent No. 1 with her husband respondent No. 2.

15. DW3, Sri Shyamal Das, the brother of respondent No.1, denied the allegation that his sister Jharna left her husband's house and fled away with Kanu Laskar, respondent No. 2.

16. Learned District Judge, considering the evidence adduced by the parties rejected the prayer for divorce on the ground that the allegations made in the petition itself is not sufficient to make out a case of adultery and the evidence adduced by the petitioner is not reliable and trustworthy.

17. Mr. Sengupta, learned counsel appearing for the appellant-husband submits that the petitioner by way of adducing evidence proved his case that after solemnization of marriage, the respondent No.1 voluntarily had sexual intercourse with respondent No.2, her brother in law, i.e. other than her spouse. Not only that, the respondent No.1 took a plea while cross-examining PW1, the appellant-husband, that the appellant was maintaining illicit relation with the wife of his elder brother, which the appellant-petitioner has denied. To prove such an allegation, the respondent did not adduce any evidence in support of her plea of character assassination of the appellant. The same itself is mental cruelty. He further submits that the learned trial court failed to consider the cruel attitude of the OP-respondent No. 1 towards the appellant, i.e. the respondent No. 1 did not allow the appellant to have sexual intercourse with her.

18. He further submits that the learned trial court failed to consider the evidence of PW3, Smt. Sukhi Dey, particularly her statement that respondent No. 2, Kanu Laskar after being assaulted

by the appellant with a lathi, took shelter in her house with bleeding injuries. He again contended that the appellant proved his case regarding adulterous life of the respondent No. 1 as well as mental cruelty upon the appellant. Thus, this is a fit case where the divorce should be granted.

19. In support his aforesaid contention, he has placed reliance on a decision of the Delhi High Court in **Sangeeta v. Hitesh Kumar, AIR 2013 Del 83**, particularly, paragraph 52 of the said decision which reads as follows:

“52. Further perusal of the written statement filed by the appellant before the trial court shows that she has levelled allegations of character assassination against the respondent in the written statement by stating that appellant was having an eye on the maid servant and used to tease her. She has alleged in the written statement that respondent is a womanizer and having illicit relations with other women and whenever she had refused to cohabit, respondent used to say that if she cannot satisfy himself, he would satisfy himself from outside which he was doing before marriage. She has alleged that he is a habitual drinker. No evidence is led by her on these allegations of character assassination. In cross-examination, no suggestion was given about these serious allegations. These allegations amount to grave assault on the character and reputation of respondent who is an Administrative Officer (Judicial) in this court. The appellant is also a teacher. Before making allegations she ought to have realised its impact on the mind of other person as well as his reputation in the society. These allegations are also sufficient to constitute mental cruelty. Such allegations of character assassination amount to cruelty. The Supreme Court in Vijay Kumar Ramchandra Bhate vs Neela Vijaykumar Bhate: AIR 2003 SC 2462 has held that:-

"7. The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(i-a) of the Act. The position of law in this regard has come to be well settled and declared that leveling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and

judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible.””

20. He has also placed reliance on a decision of this Court in ***Jayanta Nandi v. Shipra Karmakar (Nandi)*, (2015) 1 TLR 197**, particularly paragraphs 19 and 20 of the said report, and contended that in the instant case cruelty has resulted into a situation where the spouses can no longer live together. Moreso, respondent No 2, with whom the respondent No. 1 lives a adulterous life, though made party but was not examined as a witness even after filing of the joint written statement. This itself also proves that the allegation made against the respondent No. 2 remains intact.

21. Paragraph 19 and 20 of ***Jayanta Nandi*** (supra) is as under:

“19. Matrimonial relation depends on mutual love and affection, utmost faith and believe and mutual performance of matrimonial obligations. It is said that a house is built with bricks and cement, but a home is built with love and affection. Where love and affection goes and hatred and distrust blossoms between the husband and wife, matrimonial home become a hell. If the relationship and mutual obligation to each other goes, there remains nothing to keep the matrimonial tie alive.

20. Cruelty exercised by one of the partner to the marriage is a good ground for the other partner to seek divorce. Cruelty depends upon particular facts and circumstances of the case. The passing of decree on this ground requires the matrimonial offence to be established so as to conclude that cruelty has resulted into a situation where the spouses can no longer live together. The behavioural indiscretion by way of cruelty must be on the part of the respondent.”

22. Ms Guha, learned counsel appearing for the respondents while supporting the impugned judgment and countering the submission of Mr. Sengupta would contend that the appellant while contesting the proceedings under Section 125 CrPC, i.e. Misc. 17/2010 did not mention anything regarding the alleged sexual relation between respondent No. 1 and respondent No. 2. The appellant, in his reply in Misc. 17/2010 specifically stated that he is ready to take back the respondent No. 1, i.e. the petitioner therein. She also contended that the respondent No.1 lodged a complaint against the appellant under Section 498A IPC for which he was detained in custody for a certain period during investigation.

23. She further submits that non-examination of respondent No.2 as witness itself would not prove the allegation of adulterous life of respondent No.1 unless the same is proved by way of evidence. In the instant case, PW3, Smt. Sukhi Dey did not see Jharna with Kanu but only heard the fact from the appellant. Thus, the trial court rightly dis-believed the said witness. She also submits that mere suggestion to the appellant in his cross that he maintained illicit relation with the wife of his elder brother itself cannot be called cruelty.

24. Before examining the submission of the learned counsel for the parties and discussing the evidence, 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 on our part to consider the dictionary meaning of 'cruelty'. Shorter Oxford Dictionary defines "cruelty" as ***"the quality of being cruel; dis-position of inflicting suffering; delight in or indifference to another's pain; mercilessness; hard-heartedness"***.

25. The term "cruelty" has been defined in Black's Law Dictionary (8th 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."

26. In ***V. Bhagat v. D Bhagat, AIR 1994 SC 710***, the Apex Court in para 16 discussed about mental cruelty and in para 20 discussed as to whether question put to the petitioner in his cross examination regarding illicit relation would come within mental cruelty or not. Para 16 and 20 of the said report are reproduced hereinunder:-

"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.

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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."

27. 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."

28. 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.”

29. In the case of **Chetan Dass vrs. Kamla Devi, reported in (2001) 4 SCC 250**, the Supreme Court observed as follows:

“Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by Statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well knit, healthy and not a disturbed and porous society. Institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of “irretrievably broken marriage” as a straight jacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case.”

30. In the case of **Gananath Pattanaik Vrs. State of Orissa**, reported in **(2002) 2 SCC 619**, the Supreme Court has observed that the concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. “Cruelty” for the purposes of constituting the offence under the said section need not be physical. Even mental torture or abnormal behavior may amount to cruelty and harassment in a given case.

31. In the instant case, the learned trial court failed to consider the evidence of PW1 as well as PWs 2 and 3. PW3, in her evidence has specifically stated that the respondent No. 2 being injured went to her house and she told him not to come again in the house of the appellant-petitioner. A conjoint reading of the evidence of the PWs 1 to 4 establishes a case of adulterous life of the respondent No. 1 with the respondent No. 2. More so, respondent No. 2 though filed a joint written objection but did not appear before the court for cross-examining him by the appellant-petitioner. Such a conduct of the respondent No. 2 creates a doubt regarding the plea of the respondents.

32. DWs 2 and 3, in their affidavit in chief, stated that the respondent No. 2 is an unnecessary party. It is a settled law by this time that if an allegation is made against a person for adultery then he has to be made party so as that the Court cannot come to a conclusion regarding his activities in absence of him. In the instant case, as the appellant-petitioner made an allegation of adultery against his wife, respondent No. 1 with respondent to No. 2, according to us, respondent No. 2 is a necessary party.

33. In view of the above discussion, we are of the considered opinion that the learned trial court has failed to consider the facts and circumstances and the evidence on record in its proper perspective and consequently arrived at a perverse finding. The impugned judgment is, therefore, liable to be interfered with and accordingly we set aside the same.

34. The petition filed by the appellant-petitioner seeking divorce is allowed and the marriage solemnized between the appellant-petitioner and the OP-respondent No. 1 is hereby dissolved. Parties to bear their own costs.

35. Send back the lower court records along with a copy of this judgment.

JUDGE

JUDGE

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