

IN THE HIGH COURT OF TRIPURA
AGARTALA

F.A. No.08 of 2013
C.O.(F.A.) No.21 of 2013

IN
F.A. No.08 of 2013

Smt. Anita Sen (Bhadra),
daughter of late Basana Kumar Sen,
wife of Sri Sandip Bhadra,
resident of Sibnagar, Gedu Mia Masjid Road
(Chitta Ranjan Road Extension),
P.O. Agartala-799001, District West Tripura
..... Appellant

– Vs –

Sri Sandip Bhadra,
son of late Sumath Ranjan Bhadra,
care of Sri Tapan Rakshit,
Harish Thakur Road, Krishnanagar,
P.O. Agartala-799001, District West Tripura
..... Respondents

For the appellant : Mr. D.K. Daschoudhury, Advocate

For the respondent : Mr. B.N. Majumder, Advocate

IN
C.O.(F.A.) No.21 of 2013

Sri Sandip Bhadra,
son of late Sumath Ranjan Bhadra,
care of Sri Tapan Rakshit,
Harish Thakur Road, Krishnanagar,
P.O. Agartala-799001, District West Tripura
..... Cross objector

– Vs –

Smt. Anita Sen (Bhadra),
daughter of late Basana Kumar Sen,
resident of Sibnagar, Gedu Mia Masjid Road
(Chitta Ranjan Raod Extension),
P.O. Agartala-799001, District West Tripura

.....Respondent

For the cross-objector : Mr. B.N. Majumder, Advocate
For the respondent : Mr. D.K. Daschoudhury, Advocate

B E F O R E
THE HON’BLE MR. JUSTICE U.B. SAHA
THE HON’BLE MR. JUSTICE S. TALAPATRA

Date of hearing : 03.12.2014
Date of judgment & order : 18.02.2015
Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

(*Talapatra J.*)

Against the judgment and decree dated 28.05.2013 delivered in Title Suit (Divorce) No.211/2011 by the Judge, Family Court, Agartala, West Tripura, the appeal, being F.A. No.08/2013 and the cross-objection, being C.O.(F.A.) No.21/2013 have been preferred respectively by the wife, namely Smt. Anita Sen (Bhadra) and the husband, namely Sandip Bhadra.

2. The wife has questioned the validity of the finding, based on which the decree of divorce has been granted in favour

of the husband, namely Sandip Bhadra, hereinafter referred to as the 'cross-objector', whereas in the cross-objection, the grant of permanent alimony in favour of the appellant has been challenged, inasmuch as, the appellant did not file any formal application seeking permanent alimony for her sustenance.

Having regard to these aspects, both the appeal and the cross-objection are taken up by this Court together for disposal, by a common judgment.

3. For appreciating the challenge made both in the appeal and the cross-objection, the essential fact is required to be introduced at the outset.

The marriage between the appellant and the cross-objector was solemnised on 21.11.2003 as per the Hindu rites and customs and the said marriage was registered on 07.12.2007 by the Registrar, Hindu Marriage, West Tripura, Agartala. At the time of getting the marriage registered, the cross-objector, for the first time came to know that the appellant i.e. his wife was older by six years from him. The revelation shocked him and created serious turbulence. Despite that, the cross-objector tried to lead the conjugal life, but for the cruelty afflicted on him it became difficult to live with the appellant. The appellant was in the habit of making unnatural allegations including 'illicit relation with his own mother' and also with the other lady, including one of his

colleagues (names are withheld for obvious reasons). The cross-objector was living under severe humiliation and embarrassment, constituting cruelty, but the appellant did not mend her ways. Being unable to bear such cruelty, in the month of January, 2011, the mother of the cross-objector left her own house and started living in her cousin's place. The cross-objector has asserted that on 19.04.2011 he was assaulted by the brother of the appellant. Thereafter, he approached the Tripura Commission for Women on 01.03.2011. On 05.05.2011, the appellant forced open his rented house and took all her belongings including utensils etc. According to the cross-objector, at the instance of the appellant, he had to undergo the potency test by the Medical Board constituted by the AGMC & GBP Hospital, Agartala. Thereafter, though at the instance of the Tripura Commission for Women, the cross-objector and the appellant started living together, but on 08.06.2011 the appellant left the matrimonial home without any rhyme and reason.

4. While controverting such allegations of the cross-objector, the appellant has alleged at para 3 of the written objection that the cross-objector has been maintaining illicit relation with one Group-D employee of his office (the name though has been revealed but is withheld here) and when on 28.08.2008 she protested against such conduct of the cross-objector, she was assaulted by him. She had also alleged that the

cross-objector used to demand ₹2 lacs, to be brought by her from her brothers for purchasing a homestead land.

5. It surfaces that the appellant has examined herself as DW.1, but she has not taken any initiative to prove the serious allegation of illicit relation with one colleague of the cross-objector rather she brought further allegation of illicit relation with another girl who happened to be the niece of the land-lord and discovering him in a compromising position. But that allegation has not found place in her written objection. For purpose of corroborating her allegations, she has examined her own sister, namely Smt. Gita Sen (DW.2), but she did not corroborate or refer on the aspects of the cross-objector's 'illicit relation'.

6. On appreciation of the evidence, the trial court has observed as under :

9. It is further deposed that his wife brought false allegation against him that he maintains an illicit relation with his colleague namely (name withheld). She also started the same thing before the Tripura Commission for Women and also in her written statement as argued by the petitioner. It is fact that the wife stated the said facts in her written statement at page-6. But while deposing before the court, she stated that her husband in one dead night was not found in her bed. Subsequently she found her husband in compromising position with one lady namely (name withheld), the niece of the landlord who used to stay in that house occasionally. She travelled beyond her written statement. She deposed nothing about alleged illicit relation of her husband with his colleague (name withheld). On the other hand, she deposed of illicit relation of her husband with one (name withheld) which she did not state

in written statement. Thus deposition of illicit relation with one (name withheld) is a subsequent development. She gives self-contradictory statement about her husband's illicit relation. Thus neither of the assertion inspires confidence. In this respect, the petitioner argued that his wife fails to establish the alleged illicit relation and that amounts to cruelty to him by her husband. The petitioner has submitted certified copy of judgment of division bench of our parent High Court in Mat Appeal.2/10 passed on 02.04.2013. It is observed by our parent High Court that –

“Once the allegation of unchastity of the wife has not been proved then she was entitled to get a decree of divorce only on the ground that the husband had levelled unsubstantiated allegation of unchastity against her which in our opinion amounts to an act of cruelty under section 13 of the Hindu Marriage Act.”

10. In view of the above observation of our parent High Court it can safely be said that here in this case the wife fails to substantiate the illicit relation of her husband and that wild allegation amounts to cruelty to the husband by the wife.”

[Emphasis supplied]

Accordingly, the decree of divorce was granted by dissolving the marriage between the appellant and the cross-objector.

7. Mr. D.K. Daschoudhury, learned counsel appearing for the appellant, has submitted that after the allegations purportedly made by the appellant, the appellant and the cross-objector lived together. Thus the conduct of the appellant deemed to have been condoned by the cross-objector.

This court finds this plea entirely unacceptable, inasmuch as, fresh allegation of having illicit relation has been made by the appellant in the written objection and also in her deposition during the trial.

8. The apex court in **Vijaykumar Ramchandra Bhate Vs. Neela Vijaykumar Bhate**, reported in **AIR 2003 SC 2462**, has held as under :

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)(ia) of the Act. The position of law in this regard has come to be well settled and declared that levelling 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.

8. The allegations made in this case do not appear to have been the result of any sudden outburst. On the other hand, such injurious reproaches, accusations and taunts as were found to have been made in this case lend credence to the fact that the husband was persisting in them for sufficiently a long time humiliating and wounding the feelings of the wife to such an extent as to make it insufferable for the wife and to live in matrimonial home any longer with the husband. The Division Bench of the High Court, in the course of its judgment in FCA No. 57 of 1994, particularly in paras 31 to 38 adverted to the nature and details of the allegations as culled out from the written statement extensively and meticulously and considered them in the light of the settled principles of law governing the same before affirming the judgment of the trial court which also recorded findings against the respondent after a detailed discussion of the relevant materials on record in paras 26 to 30 of the judgment in M.J. Petition No. 382 of 1983. On going through them we are convinced that the findings of the courts below are well merited and fully justified on the materials available on record and that they are neither shown to suffer any infirmity in law nor substantiated to be based on no evidence or vitiated on account of any perversity of approach to call for a different conclusion in our hands and interfere with the concurrent verdicts recorded by them.

9. The learned senior counsel for the appellant husband, as indicated supra, also was mainly trying to contend that once those allegations were unconditionally withdrawn by filing an application for amendment on 17.8.1988 which came to be also allowed by the trial court on 16.9.1988 and the amendments actually carried out on 5.10.1988, they could not have provided any basis for consideration in the case any longer to record any findings against the appellant. The plea on behalf of the appellant now made, as had been before the courts below, is that those allegations must be considered to have never been on record and not available for being referred or relied upon for any purpose. This aspect also, in our view, is found to have been considered at length and in its proper

perspective by both the courts below before rejecting the claim projected on behalf of the appellant husband. Apart from observing, from the nature of the allegations and details disclosed that those statements were made by the appellant himself and only at his instance and on instructions, the courts below were of the view that the reply filed on 17.1.90 in court to an application filed by the wife seeking permission to engage her lawyer (mistakenly referred to as appellant's application) and their contents substantially reaffirming what has been stated earlier in the written statement but got withdrawn by subsequent amendment rendered even the so called withdrawal to be of no significance or consequence and that it does not appear to have been genuine, too. Cogent and convincing reasons have been assigned by the courts below, in this regard and we are unable to come to a different conclusion on the indisputable factual developments noticed and relied upon by the High Court in paras 40 to 48 of its judgment for rejecting the claim of the appellant in this regard. The slender claim of alleged condonation was also rejected by the High Court, rightly by placing reliance on the repetition of many such allegations in the reply dated 17.1.90. In this connection, it would be of interest also to notice the observations of the learned trial judge in the order passed on 16.9.88 on the application for amendment filed by the appellant for withdrawal of certain allegations from the written statement. The respondent-wife who sent her response to the appeal filed by the appellant, in the form of an affidavit also enclosed to the same, the affidavit in reply dated 17.1.90 filed by the appellant in the trial court and a copy of the order dated 16.9.88 noticed above passed on the applications for amendment of the written statement. At paragraph 17 of the order dated 16.9.88, it is found observed as follows:

"17. It must be made clear that the amendment of the written statement cannot have any reference to anything that had happened prior to the filing of the petition on which the petitioner can place reliance, although such matters may have been covered by the statements now deleted. It may be remembered that the petitioner is not withdrawing her allegations. It has also to be remembered that the petitioner has not acted

upon unilateral withdrawal of the allegations by the respondent by his letter dated 14.8.86."

10. In the light of all these, it is futile to claim on behalf of the appellant that the withdrawal of allegations unilaterally by the appellant, by filing an application for amendment of the written statement wiped out completely all those allegations for all purposes.

11. That apart, in our view, even the fact that the application for amendment seeking for deletion of the accusations made in the written statement was ordered and amendments carried out subsequently does not absolve the husband in this case, from being held liable for having treated the wife with cruelty by making earlier such injurious reproaches and statements, due to their impact when made and continued to remain on record. To satisfy the requirement of Clause (i-a) of Sub-section (1) of Section 13 of the Act, it is not as though the cruel treatment for any particular duration or period has been statutorily stipulated to be necessary. As to what constitute the required mental cruelty for purposes of the said provision, in our view, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct, but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home. If the taunts, complaints and reproaches are of ordinary nature only, the Courts perhaps need consider the further question as to whether their continuance or persistence over a period time render, what normally would, otherwise, not be a so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonable conclude that the maintenance of matrimonial home is not possible any longer. A conscious and deliberate statement levelled with pungency and that to placed on record, through the written statement, cannot so lightly be ignored or brushed aside, to be of no consequence merely because it came to be removed from the record only. The allegations levelled and the incidents enumerated in the case on hand, apart from they being per se cruel in nature, on their own also constitute an admission of the fact that for quite some time past the husband had been persistently

indulging in them, unrelated and unmindful of its impact. That the husband in this case has treated the wife with intense cruelty is a fact, which became a fait accompli the day they were made in the written statement. The continued on record at any rate till 5.10.1988 and the indelible impact and scar it initially should have created, cannot be said to have got ipso facto dissolved, with the amendments ordered. Therefore, no exception could be taken to the courts below placing reliance on the said conduct of the appellant, in this regard, to record a finding against him. [Emphasis added]

9. Having regard to the law as enunciated by the apex court in **Vijaykumar Ramchandra Bhate Vs. Neela Vijaykumar Bhate**, this court does not find any infirmity in the finding so returned by the Judge, Family Court, Agartala, West Tripura and, as such, the appeal filed by the wife, namely Smt. Anita Sen (Bhadra) fails and, accordingly, it is dismissed.

10. In the cross-objection, the husband, namely Sandip Bhadra has raised a question whether the court has competence to grant alimony without being asked by the appellant.

11. For purpose of appreciating that challenge, Section 25 of the Hindu Marriage Act, 1955 may gainfully be reproduced hereunder:

25. Permanent alimony and maintenance.-

(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or

periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immoveable property of the respondent.

(2) If the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the Court is satisfied that the party in whose favour an order has been made under this Section has re-married or, if such party is the wife, that she has not remained chaste or if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.

12. Sub-section (1) of Section 25 of the Hindu Marriage Act, 1955 unequivocally grants to any court, jurisdiction under this Act to pass, at the time of passing any decree or at any time subsequent thereto or on application made to it for that purpose either by the wife or the husband, as the case may be. The order that the respondent shall pay the other person maintenance and support at such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other properties if any, the income and other properties of the applicant, the conduct of the parties and other circumstances of the case, as it may seem to the Court to be just, and any such payment may be secured, if

necessary, by a charge on the immoveable property of the respondent.

13. Mr. B.N. Majumder, learned counsel appearing for the cross-objector, has submitted that the order of permanent alimony or maintenance may be passed by any court exercising jurisdiction under the Hindu Marriage Act, 1955 either at the time of passing of the decree or at any time subsequent thereto, but there must be an application for the party entitled to seek such relief. In absence of any application, the competent Court cannot pass such order, directing the respondent for payment of permanent alimony or maintenance whatsoever as would be deemed fit in the particular circumstances.

14. The scope and ambit of Section 25 of the Hindu Marriage Act, 1955 had fallen for consideration of the apex court in **Chand Dhawan Vs. Jawaharlal Dhawan**, reported in **(1993) 3 SCC 406**, where it has been categorically held that :

"..... On or at the time of the happening of that event, the court being seisin of the matter, invokes its ancillary or incidental power to grant permanent alimony. Not only that, the court retains the jurisdiction at subsequent stages to fulfill this incidental or ancillary obligation when moved by an application on that behalf by a party entitled to relief. The court further retains the power to change" or alter the order in view of the changed circumstances. Thus the whole exercise is within the gammit (sic gamut) of a diseased or a broken marriage. And in order to avoid conflict of perceptions the legislature while codifying the Hindu Marriage Act preserved the right of permanent maintenance in favour of the husband

or the wife, as the case may be, dependent on the court passing a decree of the kind as envisaged under Sections 9 to 14 of the Act. In other words without the marital status being affected or; disputed by the matrimonial court under the Hindu Marriage Act the claim of permanent alimony was not to be valid as ancillary or incidental to such affectation or disruption. The wife's claim to maintenance necessarily has then to be agitated under the Hindu Adoptions and Maintenance Act, 1956 which is a legislative measure later in point of time than the Hindu Marriage Act, 1955, though part of the same socio-legal scheme revolutionizing the law applicable to Hindus.” [Emphasis supplied]

15. There is no ambiguity as regards the power of the court exercising the jurisdiction under Section 25 of the Hindu Marriage Act, 1955, for granting permanent alimony even without being asked for. As such, the ground of objection as raised by the cross-objector, in the considered opinion of this court cannot be sustained. However, the surprising fact as surfaced from the synopsis of argument of the appellant as filed before this court, that the appellant has stated that “the appellant is not interested to any permanent alimony”. Moreover, the appellant herein has instituted a separate proceeding in the Family Court, Agartala, West Tripura, for maintenance under Section 125 of the Cr.P.C. long back, which is pending for disposal.

16. Since the appellant has abandoned the claim, this court is of the opinion that without prejudice to her claim to the permanent alimony or to the maintenance the order granting the permanent alimony to the extent of ₹2,50,000 (rupees two lakhs

fifty thousand) shall be kept in abeyance, till such time, when the appellant would not opt for any action. It is further made clear that this order would not take away the right of the appellant for approaching the court for granting the permanent alimony or maintenance under Section 25(1) of the Hindu Marriage Act or to claim her maintenance under Section 125 of the Cr.P.C.

17. Having held so, the cross-objection is also disposed of in terms of the observation made hereinabove.

Send down the LCRs forthwith.

JUDGE

JUDGE

ROY