

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL.REV.P. NO.31 OF 2012

Shri Madan Paul,
son of late Jogesh Chandra Paul,
resident of Village : Laogong
(Mahamani Para), P.S. Santirbazar, District :
South Tripura

..... Petitioner

– Vs –

Smt. Seuli Paul (Shil),
daughter of late Chitta Ranjan Shil,
Rajar Bag (near Panchayet Office),
P.S. R.K. Pur, District : South Tripura

.....Respondent

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. A. Das Gupta, Advocate

For the respondent : Mr. N. Majumder, Advocate

Date of hearing,
judgment & order : 18.09.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. A. Das Gupta, learned counsel appearing for
the petitioner as well as Mr. N. Majumder, learned counsel appearing
for the respondent.

2. The fact not in dispute is that the respondent herein filed a petition, being Cr.Misc./FC/UDP/03/11 under Section 125 of the Cr.P.C. seeking maintenance allowance @₹5,000 per month from the petitioner herein.

In the said petition, the respondent herein alleged that on 11.02.2008 the marriage between the petitioner and the respondent was solemnised as per Hindu rites and customs and thereafter the respondent started living with the petitioner at his home. Their marital relation suffered a serious jolt when the petitioner unlawfully demanded a sum of ₹50,000 from the respondent. That apart, the respondent alleged to have discovered an illicit relation of the petitioner with his elder brother's wife. When she protested such relation, she was subjected to brutal torture. Finally, on 23.04.2010 the petitioner having being seriously assaulted, was driven out from the matrimonial home and from that day she started living as destitute as she has no means of livelihood. According to her, the petitioner has an income of ₹10,000 per month.

3. The petitioner, as the opposite party in the said proceeding, by filing the written statement, denied the marriage between him and the respondent. He has categorically stated that he did never marry the respondent. But he has stated in the written

objection that he lived with the respondent as husband and wife at Kailarmath under R.K. Pur police station, Udaipur, South Tripura or Lawgang under Santirbazar on different points in time. There had been serious attempts to reconcile the matter by the Family Court, but their attempts failed.

4. In the trial, the respondent herein adduced three witnesses and it appears from the impugned judgment and order that she produced some photographs, but those photographs are not available in the records as sent to this court by the Family Court, Udaipur, South Tripura. However, Mr. Das Gupta, learned counsel appearing for the petitioner, has submitted that those photographs were without negatives and as such the genuineness of those photographs were challenged by the petitioner and the petitioner raised serious objection as to admissibility of those photographs.

5. Mr. Das Gupta, learned counsel appearing for the petitioner has further contended that though in paragraph 12 of the written objection, the petitioner has stated that he and the respondent lived together as husband and wife at Kailarmath, but if the entire written objection is read together it appears that paragraph 12 is intended to mean that he did never lived with the respondent as husband and wife. The statement as apparent to be admission may be an unintentional slip.

6. Mr. N. Majumder, learned counsel appearing for the respondent has submitted that the statements made in paragraph 12 of the written objection filed by the petitioner herein is nothing sort of admission for all purposes. Now, if the petitioner makes some incongruous statements here and there, he cannot be allowed to hold that there had been no valid marriage. Moreover, Mr. Majumder, learned counsel has taken this court to the testimony of PW.3, Sri Dhirendra Paul, who has stated that he saw the petitioner and the respondent living as the husband and wife in their neighbourhood. Even his son, namely Amar Krishna Paul was invited in the 'boubhat' ceremony of the petitioner. PW.3 has further stated that the respondent had met him several times to complain against the ill behaviour of her husband.

7. In the rejoinder, Mr. Das Gupta, learned counsel appearing for the respondent has submitted that PW.3 cannot be relied as he was the resident of Santirbazar and not of the village Lawgang and thus it appears that he is tutored and as such no probative value can be attached to his testimony.

8. Having regard to the evidence as laid and on scrutinising the records, this court finds that there had been initiative by Tripura Commission for Women and one NGO, namely Tripura State Council for Child Welfare for reconciliation. Even those records are part of the proceeding, but are not admitted in the evidence. This court, after

going through the records finds that the proceeding was not carried out properly. It appears that the Judge, Family Court, Udaipur, South Tripura has observed as under :

“It is also pertinent to point out that the copies of the documents prepared by the Tripura Commission for Woman clearly establish that Shiuli Paul (Shil) and Madan Paul appeared before the Woman’s Commission as husband and wife and the same documents bear the signature of the concerned parties and officials of Tripura Commission for Woman. I have taken judicial note of those documents and after analyzing the evidence on record, including Exhibit.1 series, I find that the petitioner has successfully proved the factum of marriage. It appears that the marriage of the petitioner and O.P. was conducted at Udaipur Matarbari and since the marriage was conducted in the temple in presence of priest, it is socially recognized and accepted. It is also relevant to mention here that the O.P. Madan Paul cannot be allowed to deny his social marriage in face of all this evidence and in view of the sufficient facts and circumstances to support the claim of the petitioner, her status as the wife cannot be negated. This court cannot ignore the social purpose and the object behind the enactment of Section 125 Cr.P.C. and it has to be kept in mind that this provision is intended to curtail destitution and also to ameliorate destitution.”

9. It has surfaced that records as indicated of the Tripura Commission for Women and the NGO, namely Tripura State Council for Child Welfare were not introduced in the evidence by either of the parties.

10. Whether the Judge, Family Court was authorised by law to take judicial notice of those documents is a question of vital

importance. The court can only take the judicial notice of the documents as enumerated in Section 57 of the Evidence Act. The enumerated documents in Section 57 of the Evidence Act do not include the records of the Tripura Commission for Woman and the NGO, namely Tripura State Council for Child Welfare. However, the illustrations are laid in Section 57 of the Evidence Act that, if the court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so. Therefore, if the original proceeding minute as maintained by the Tripura Commission for Women and the NGO, namely Tripura Council for Child Welfare are produced before the court, the court is not expected to take any judicial notice of those documents. That apart, the photographs those were produced cannot be the proof of marriage unless it is proved by satisfactory evidence that the marriage had actually taken place in the temple as asserted by the respondent.

11. From the further scrutiny of the proceeding records, this court is of the view that the Judge, Family Court, Udaipur, South Tripura, though is empowered to devise the proceeding, but it has been time and again held by this court that devising a proceeding does not mean throwing all procedural propriety into the wind. There must be strict compliance of the procedure so that neither of the

parties is prejudiced. In this case, the petitioner, who was the opposite party in the proceeding before the Family Court, has taken categorical stand as to the marriage. That aspect of the matter cannot so lightly be dealt with as has been done by the Judge, Family Court, Udaipur, South Tripura.

12. Hence, the decision that has been arrived at on taking judicial notice of certain documents, which the Judge is not permitted to take judicial notice, this court is of the view that the impugned judgment and order dated 15.02.2012 delivered in Cr.Misc./Fc/UDP/93/011 cannot sustain the scrutiny of law. Accordingly, the same is set aside. However, this court is of the considered opinion that the matter should be remitted for adjudication by the court. Accordingly, it is remanded for fresh adjudication. Both the petitioner and the respondent shall be provided necessary opportunity to adduce their evidence following the prescriptions of law on the aspect whether there is subsisting marriage between the petitioner and the respondent. The petitioner and the respondent shall be allowed to adduce additional evidence and also to call the original records from the Tripura Commission for Women and the Tripura State Council for Child Welfare, who carried out certain conciliatory proceedings. The parties may be allowed to admit those evidence following the procedure of law. Till the final order is passed by the Judge, Family Court, Udaipur, South Tripura,

the petitioner herein, the opposite party in Cr.Misc./Fc/UDP/03/2011 shall continue to pay ₹1,000 (rupees one thousand) per month as maintenance allowance without any interruption and within 10th day of every English Calendar month. If the petitioner stops paying the maintenance allowance, his defence shall be struck off without further reference to this court. The Judge, Family Court, Udaipur, South Tripura shall make an endeavour to dispose of the matter within 6(six) months from the date of receipt of the record alongwith the order from this court. Both the parties shall appear before the Family Court, Udaipur, South Tripura on 23rd November, 2015. They shall be issued no further notice by the Judge, Family Court, Udaipur, South Tripura.

13. With this direction and observation, this revision petition stands disposed of.

A copy of this order be furnished to the counsel for the parties for doing their needful.

JUDGE

ROY