

**HIGH COURT OF TRIPURA
AGARTALA**

MAT APP. 08 OF 2011

Smt. Kuheli Sinha,
Daughter of Late Niranjit Sinha
Wife of Sri Debasish Sinha of
Isabpur, P.S. Kailashahar,
District-North Tripura.

...Appellant.

- Versus -

1. Sri Debashish Sinha,
Son of Late Kamala Prasad Sinha of
Ishabpur, P.S. Kailashahar,
District-North Tripura.

2. Sri Subhashish Sinha
Son of Sri Arjun Sinha of
Ishabpur, P.S. Kailashahar,
District- North Tripura.

...Respondents.

**BEFORE
HON'BLE THE CHIEF JUSTICE MR.DEEPAK GUPTA
THE HON'BLE MR.JUSTICE S.C. DAS**

For the Appellant	: Mr. P. Roy Barman, Mr. S. Bhattacharji & Mr. K. Nath, Advocates.
For the Respondents	: Mr. D.K.Biswas & Mr. G.K.Nama, Advocates.
Date of hearing	: 29.07.2015
Date of delivery of judgment and Order	: 29.09.2015
Whether fit for reporting	: Yes

JUDGMENT & ORDER

(*S.C.Das, J.*)

This matrimonial appeal under Section 28 of the
Hindu Marriage Act, 1955 read with Section 19 of the Family

Courts Act,1984 is directed against the judgment and decree dated 27.08.2011 passed by learned Judge, Family Court, Kailashahar in case No. T.S.(Divorce) 70/2009.

2. We have heard learned counsel Mr. P. Roy Barman for the appellant and learned counsel Mr. D.K.Biswas for the respondent No.1. There was no representation on behalf of respondent No.2.

3. Respondent No.1, Sri Debasish Sinha (hereinafter mentioned as the petitioner) set the law in motion by presenting a petition under Section 13 of the Hindu Marriage Act,1955 before the learned Judge, Family Court, Kailashahar, North Tripura seeking dissolution of his marriage with the appellant herein on the ground of adultery and cruelty. He arrayed the appellant as respondent No.1 (hereinafter mentioned as respondent No.1) in the petition for divorce and also arrayed the respondent No.2 (hereinafter mentioned as respondent No.2) in the divorce petition alleging that the respondent No.1 i.e. Kuheli Sinha was engaged in adultery with the respondent No.2, Sri Subhashish Sinha.

4. It is an undisputed fact that the marriage of the petitioner Debasish Sinha was solemnized with the respondent No.1 Kuheli Sinha on 10.05.1996 as per Hindu rites and thereafter they lived and cohabited as husband

and wife in the matrimonial home at Ishabpur and thereafter at Kumarghat in a rented house where the petitioner was working as a Panchayat Secretary under the Govt. of Tripura and they have two sons namely Snehasish Sinha and Debayan Sinha.

5. It is *inter alia* alleged by the petitioner that after his transfer from Kumarghat to Gandacherra he was compelled to shift his wife and children to Kailashahar in his house at Ishabpur. In the year 2004 he was again transferred to Dasda Kanchanpur. In the first part of 2005 he took his wife, the respondent No.1 with children to Kanchanpur. His mother-in-law also was living with him since she had no other way after the death of his father-in-law. In the year 2005, on a certain day, respondent No.2, who was not at all a relative of the petitioner or the respondent No.1, came to the house of the petitioner at Kanchanpur along with two other friends and they expressed that they went there to see respondent No.1 because of their previous acquaintance. The petitioner arranged for their food and stay giving them all reception. Respondent No.2 proposed to form a co-operative society and intended to make respondent No.1 i.e. the wife of the petitioner as President of the same. Since then, the respondent No.1 was pressing the petitioner for shifting to Kailashahar to form a co-operative society with respondent No.2 and also intended

that the children should be admitted in the Central School at Kailashahar. Because of the pressure of the respondent No.1, the petitioner ultimately agreed and in April,2006 respondent No.1 with the children were shifted at Kailashahar and started living in the house of the petitioner at Ishabpur. Thereafter a co-operative society was constituted by the respondent No.2 as a Secretary and the respondent No.1 was made the President of the said co-operative society. The fact was intimated to the petitioner by the respondent No.1. Thereafter the petitioner was observing that something wrong was going on. Whenever the petitioner came to Kailashahar he found that both the respondents were in a very intimate position gossiping with each other and almost every day evening the respondent No.2 would arrange sitting for playing cards with the respondent No.1 and his other friends in the house of the petitioner. The villagers were also complaining of such intimate mixing of the respondent Nos. 1 and 2. The petitioner also observed that respondent No.1 became non-attentive to the children in respect of their studies and when the petitioner protested such free mixing of the respondent No.1 with respondent No.2, respondent No.1 became very much furious and started misbehaving with the petitioner. She became very much cruel to the petitioner. She used to scold the petitioner with filthy

language telling that he was not a fit man for her and that he could not make her satisfied in all respect rather respondent No.2 was far better from him. When the petitioner used to come to Kailashahar, she even did not cook food for him properly and there was continuous illicit relationship between the respondent No.1 and the respondent No.2 for about 4/5 years though earlier the petitioner could not detect it. She had been living in adultery with the respondent No.2 and she had undergone voluntary sexual intercourse with respondent No.2. One day after evening when the petitioner came to his house he found the outer door was locked from inside and he took entry through the back door and found both the respondents in a compromising position. The petitioner also came to know from the Mason of his house and others that respondent No.2 used to come to his house in his absence and they found them in a compromising position. Neighbourers also informed the petitioner that when he stayed at his place of work the respondent No.2 used to take entry in his house at night and used to come out of the house at dawn in a clandestine manner. The respondent No.1 used to go outside the house with respondent No.2 in a Maruti vehicle and by motorcycle for long period without informing anything to the petitioner. Even she did not attend religious festival like Durga puja etc. with the

petitioner rather she used to choose the companion of respondent No.2 as her partner. The villagers observed all the activities of the respondents and they became very annoyed upon the respondents for their free mixing in their locality. The respondent No.1 was very much reluctant to serve any food to the petitioner and as such the petitioner started taking food in his brother's house. The respondent No.1 also threatened the petitioner that she would file false criminal case against him or she would kill him by poisoning in his food. On 09.08.2009 respondent No.1 tried to attack the petitioner with 'dao' in his house and under such grave threat she drove him out of the house. The petitioner also alleged that the respondent No.1 purchased certain goods through VPP in the name of respondent No.2 and he also found some papers in the drawer of his almirah with e-mail address using the phone no. of respondent No.2 and first letter of the name of respondent No.1. A village 'baithak' was also held on 11.08.2009 and a resolution was adopted advising the petitioner to stay in his brother's house for his safety. The petitioner, therefore, started living in his brother's house avoiding the companion of respondent No.1. The petitioner also reported the incident to the police but no fruitful purpose was served. The petitioner alleged that his life was ruined by the respondent No.1 and that it was not possible to live with the

respondent-wife. The marital tie between him and the respondent No.1 was broken and there was no chance of reunion. He also prayed for custody of the children. He stated that there was no collusion or connivance in filing the petition for divorce. He never condoned the adulterous activities of respondent No.1 and also the cruelty exercised on him. He, therefore, prayed for divorce.

6. Respondent No.1 contested the suit by filing written statement *inter alia* contending that the petitioner filed the suit making false allegation to harass her. She alleged that the petitioner used to remain always intoxicated taking alcohol, ganja etc. Petitioner used to pick up quarrels, since after marriage, after consuming alcohol without any reason and created mental pressure upon her for which family peace was disturbing. She also alleged that the petitioner off and on used to make comments touching the dignity and status of her family. When unbearable situation was going on in the family of the petitioner and respondent No.1, the petitioner constituted a co-operative society with the intention to earn profit from the society though he was a Govt. employee. Therefore, he made his wife i.e. the respondent No.1 as the member of the society for his own benefit. For the purpose of the co-operative society the petitioner also pressurized her to collect Rs.3.00 lakh from the parental home on the pretext that with that

money he will purchase a maruti car for his personal use. Since her parents could not afford the money the petitioner along with his family members started mental and physical torture on her and the petitioner did not take any care of her. It is also alleged that the co-operative society was not in operation after two years of its initiation though the respondent No.2 was the Manager of the said co-operative society. The petitioner used to abuse her in ugly language but even thereafter she tried to live with the petitioner peacefully as husband and wife. The petitioner became aggressive when she failed to bring money from her parents' house and thereafter false story of illicit relation with respondent No.2 was cooked up. She also stated that there was no resolution adopted in the 'baithak' on 11.08.2009 and the allegation has been made mala fide. She further alleged that the petitioner kept her and her children in an uncared condition and she had been living with her mother and her mother had no source of income. On 21.09.2009 at about 9-00 a.m. the petitioner and his other family members picked up a quarrel with the respondent No.1 and assaulted her and drove out her with her children from his house after taking away the golden ornaments and personal belongings given by her father at the time of marriage. Since then she had been living with her children in her parental

house. The allegation made by the petitioner was false and, therefore, she prayed for dismissal of the suit.

7. Respondent No.2 also filed a written statement denying all the allegations including that of the allegation of forming a co-operative society and further stated that he had no illicit relation with respondent No.1 and that the allegations made against him were all false. He has also stated that he was not at all acquainted with the respondent No.1 and that he has been falsely implicated in the suit.

8. The trial Court based on the pleadings of the parties, framed two issues namely—

- I. Whether the petition is maintainable?
- II. Whether petitioner is entitled to get decree of divorce?

9. In course of hearing, the petitioner examined himself as P.W.1 and also examined 5(five) more witnesses namely P.W.2 Sri Subal Paul; P.W.3 Sri Sashanka Sinha; P.W.4 Sri Kalasena Sinha; P.W.5 Mst. Joyrun Bibi and P.W.6 Md. Abdul Khalique.

10. Respondent No.1 i.e. the appellant herein also examined herself as D.W.1 and also examined two more witnesses namely D.W.2 Smti. Anamika Sinha and D.W.3 Smti. Anupama Sinha.

11. The trial Court considering the evidence on record decided both the issues in favour of the petitioner and directed dissolution of marriage on the ground of adultery.

12. Aggrieved, the wife-respondent filed the present appeal.

13. The petitioner sought dissolution of marriage on the ground of adultery of the respondent No.1 with respondent No.2. Adultery in matrimonial law is one of the principal grounds for divorce, and, has been defined as consensual sexual intercourse between a married person and another person of opposite sex during the subsistence of the marriage.

Section 13(1) of the Hindu Marriage Act prescribes,--any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

(i) has, after the solemnisation of the marriage had voluntary sexual intercourse with any person other than his or her spouse;

14. Direct proof of adultery may not be always available. But in the present case there is direct evidence of adultery. Even in absence of direct proof of adultery, it is

the accepted rule that circumstantial evidence all that can normally be expected may prove the charge. The only general rule is that the circumstances must be such as would lead the guarded judgment of a reasonable and just man to the conclusion.

15. Learned counsel Mr. Roy Barman has submitted that the petitioner and P.Ws 5 and 6 though have stated that they had seen the respondent No.1 and 2 in compromising position but there is no specific pleading to that effect and no date, time etc. also stated by those witnesses. So, the evidence of those witnesses cannot be attached with lot of importance and the trial Court has failed to appreciate it. He has also submitted that no evidence adduced about the alleged meeting held on 11.08.2009 and therefore, the allegation that the petitioner was advised not to live with the respondent-wife and that the petitioner's life is in trouble and threat are all cooked story and not supported by evidence. The witnesses examined by the petitioner are all his own pocket witnesses and they made tutored statements.

16. On the other hand, learned counsel Mr. Biswas argued that the witnesses examined by the petitioner are all independent witnesses having no animosity with the respondents and even D.W.3, the mother of the respondent-wife in her cross examination admitted that she knows all

the witnesses of the petitioner and they have no enmity with those witnesses. Under such circumstances, there is no reason at all to disbelieve the evidence of P.Ws in respect of adulterous life of the respondent No.1 with respondent No.2.

17. We have meticulously gone through the evidence on record. P.W.1 i.e. the petitioner has elaborately narrated the facts what he has pleaded in his petition. He clearly stated that on one day he found both the respondents in a close physical relationship. His such statement has not been shaken in cross examination. He has also stated that his Mason and other informed him that the respondent No.2 used to come to his house in his absence and had free mixing with his wife and was having with physical relationship. Except denial, there is nothing in the cross examination of P.W.1.

18. P.W.2 in his deposition stated that his house is situated just near the house of Subhasish Sinha. For last 3/4 years he had been seeing both Subhasish Sinha and Smti. Kuheli Sinha in free mixing. He found them often near the bush/jungle, embankment of cherra in gossiping condition, one keeping hand in the hand of another, sometimes in hugging condition etc. P.W.2 further stated that they had illicit relation and they do not bother the

elderly people of the locality. Often Kuheli would go in the house of Subhasish Sinha at morning time after sending her children at School and would come back at noon. He saw themselves at the embankment of cherra at night time too.

Except denial, there is nothing in the cross examination to discard the above evidence of P.W.2.

19. P.W.3 in his deposition stated that for last 3/4 years he had been seeing Subhashish Sinha to mix with Kuheli Sinha in a very intimate manner continuously. Debasish Sinha had to reside outside Kailashahar for his service purpose and his wife used to reside alone in the house with her children. Often he saw said Subhasish Sinha to come to the house of Debasish Sinha in his absence to meet his wife. At 11/12 O'clock at night, when he came out from his room for nature's call, on many occasions he found said Subhasish Sinha to take entry into the house of Debasish Sinha in a clandestine way and also found him to come out therefrom on the following dawn after passing whole night there in absence of Debasish. Sometimes, he found that when in the night Subhasish would take entry into that house, said Kuheli Sinha would open the gate and both of them would go inside the room by holding hands of each other or sometimes by hugging each other. They had their continuous illicit relationship as the

witnesses could realize. Not only inside the house, but also outside the house and in the whole area both of them used to loiter and mix with each other in a very intimate and wanton manner without even caring the local elderly people.

Except denial, there is nothing material in the cross examination to discard the above statement of the witness.

20. P.W.4 in his deposition stated that he had one SHG organization wherein said Subhasish Sinha was Secretary and for that purpose he had to go to the house of Subhasish Sinha. But on many occasions he found the wife of Debasish Sinha namely Smti Kuheli Sinha in the house of Subhasish Sinha gossiping alone with him in his room. Sometimes he found both of them inside the room and door was closed from inside. He heard their voice from outside the room. Even one day he found both of them coming out from nearby bush/jungle and at that time said Subhasish Sinha was wearing only a napkin (locally called 'gamchha'). From their appearance, it seemed to him that both of them were coming therefrom after some illegal act. P.W. 4 further stated that they (respondents) always mixed with each other in their locality in so intimate manner which is unbecoming for a house wife. From their mixing and activities it appear that they had illicit relation with each other.

In his cross examination also except denial and suggestion there is nothing else.

21. P.W.5 stated that she worked in the house of Debasish Sinha about 2/2½ years ago as maid servant and she stayed in his house for about 6/7 months. At that time Debasish Sinha would reside outside Kailashahar for his service purpose and his wife Kuheli Sinha alone would reside with her two children in the house. At that time she found Shri Subhasish Sinha to come in the house of Debasish Sinha and to pass his night there with Kuheli Sinha often in absence of Debasish Sinha. They had physical relation. They sometimes would keep the door locked from inside for that purpose. She requested Kuheli Sinha to leave such illicit relationship with Subhasish Sinha but she refused. Then on hatred about such nasty things, she left the job and left their house.

The above evidence of this witness has also not been shaken in cross examination.

22. P.W.6 in his deposition stated that during January and February, 2008 he carried earth work in the house of Debasish Sinha as day labourer as at that time building work of his house was going on and he was engaged by Debasish Sinha for carrying and setting soil/earth etc. for that purpose. At that time Debasish

Sinha used to reside outside Kailashahar and would come to his house after every interval of 7/8 days. His wife used to reside alone with her two children in the house. At that time he saw said Subhasish Sinha to visit Debasish's house almost every day and to mix with the wife of Debasish in a very intimate way. Almost whole day they used to spend in the house. One day at about 1:00 p.m. at noon he went to the room of the house of Debasish Sinha to collect drinking water for them, but entering there he found both said Subhasish and wife of Debasish Sinha to commit sexual intercourse with each other. They were undressed. Seeing him inside the room they jumped up from the bed. At that time the younger son of Debasish was sleeping and elder son was in the School. He informed the matter to the brother of Debasish Sinha and then to Debasish Sinha. He further stated that this thing happened after 15/20 days of his joining at the work.

In his cross examination his evidence also has not been shaken.

23. The evidence of P.Ws 1 to 6 clearly reveals that the respondent No.1 was living in adultery with the respondent No.2. D.W.1 is the respondent No.1 herself and D.Ws 2 and 3 are her sister and mother. They simply stated that false allegation was made and that the petitioner used to take alcohol and ganja etc. No evidence adduced by the

respondents to discard the allegation of adultery made on behalf of the petitioner which has been proved by the evidence of independent witnesses.

24. There is specific pleading in the petition that the petitioner found the respondents in a compromising position and we also found in the pleading that the Mason of the house of the petitioner and others informed the petitioner that the respondent No.2 always used to come to his house in his absence and that they also found them in intimate physical relation. This pleading is enough to say about the adultery and the fact is to be proved by adducing evidence and the petitioner discharged his burden by examining the eye witnesses who had seen the respondents in physical relation.

25. Certain other material circumstances also should be considered. The petitioner alleged that the respondent No.2 visited his Kanchanpur house and proposed to form the co-operative society. Respondent No.1 in her written statement in Para 7 clearly admitted the formation of the co-operative society. In Para 7 the respondent No.1 stated thus—

“7. That when there was unbearable situation going on in their family, then the petitioner, who is a Govt. employee formed/constituted a Co-operative Society with the intention was that he would earn profit from that; though he is a Govt. employee, he could not be a member of such Co-operative Society; he made the

respondent No.1 as one of member in that Co-operative Society with others for fulfillment of his illegal requirements in life and he thought that the society would run on his instance. After that, for the continuance of that co-operative society the petitioner time to time pressurized upon the respondent no.1 to take money from her parental house; not only that, the petitioner created pressure upon the answering respondent no.1 to take/bring Rs.3,00,000/- (Rupees three lakhs) only from her parents on the pretext that said money would be required for purchase a Maruti car for his personal use and since the parent of the answering respondent no.1 could not afford it, the petitioner along with his family members began to torture her physically and mentally and even the petitioner reluctant to give medical care to the respondent no.1. It is to be mentioned here that the said Co-operative Society is not in operation since last 2(two) years though the respondent no.2 is/was the Manager of the Society.”

Whereas the respondent No.2 in his written statement completely denied the fact about his visiting of Kanchanpur to the house of the petitioner and proposal of forming a Co-operative society and thereafter formation of the Co-operative society itself and therefore, it is evident that respondent No.2 suppressed the material fact. Respondent No.2 also stated in his written statement that he had no acquaintance with the respondent No.1 whereas respondent No.1 admitted the fact that she was the President of the Co-operative society and respondent No.2 was the Secretary of the Co-operative society. This fact clearly supports the case of the petitioner that the respondents formed a Co-operative society and thereby came closer to each other and while in such closeness in the absence of the petitioner, respondent No.1 lived an adulterous life with respondent No.2. The allegation of

adultery, therefore, has been clearly established and the trial Court rightly held that the respondent No.1 was living in adultery and on that ground directed dissolution of the marriage.

26. We find no reason at all to interfere in the judgment and decree of divorce passed by the trial Court.

27. The appeal, therefore, stands dismissed.

28. Parties to bear their own costs.

29. Send back the L.C. records along with a copy of this judgment.

JUDGE

CHIEF JUSTICE