

IN THE HIGH COURT OF TRIPURA
AGARTALA

F.A. No.13 of 2012

Shri Manilal Debnath,
son of late Debendra Kumar
Debnath of Sukanta Nagar,
Belonia, P.S. Belonia, P.O. S.B.
Srinagar, District – South
Tripura

..... Appellant

- V e r s u s -

Smt. Soma Debnath,
wife of Shri Manilal Debnath,
daughter of late Sadhan
Debnath of Madhya Bharat
Chandra Nagar, Chittamara,
P.O. Chittamara, P.S. Belonia,
District – South Tripura

..... Respondent

BEFORE
THE HON'BLE MR. JUSTICE U.B SAHA
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant	:	Mr. S. Ghosh, Advocate				
For the respondent	:	Mr. P.K. Roy, Advocate				
Date of hearing	:	14.07.2015				
Date of delivery of Judgment & Order	:	16.10.2015				
Whether fit for reporting	:	<table border="1"><tr><td>YES</td><td>NO</td></tr><tr><td>✓</td><td></td></tr></table>	YES	NO	✓	
YES	NO					
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JUDGMENT & ORDER

(S. Talapatra, J)

By this appeal under Section 28 of the Hindu Marriage Act, 1955 the appellant has challenged the judgment and order dated 10.10.2012 delivered in T.S. (Divorce) 45 of

2011 by the Additional District Judge, South Tripura, Belonia rejecting the petition filed under Section 13 (1) (ia) & (ib) of the said Act for granting divorce on the ground of cruelty and adultery.

[2] For purpose of laying the perspective of the challenge, pleadings may briefly be laid.

The marriage between the appellant and the respondent was solemnized admittedly on 11.05.1995 as per Hindu rites and customs. In the wedlock, they have three sons. At the time of filing the petition, Siddharth Debnath, the eldest son was aged about 15 years when Partha Debnath and Aditya Debnath, the younger sons were respectively aged about 13 years and 11 years. The discord in the marital life according to the appellant surfaced on the very first day when the respondent as the bride met the appellant on the first night of communion. On that night, the respondent clearly stated that she was in love with another person and as such, it would not be possible for her to love the appellant. The appellant apprised such attitude of the respondent to his brother-in-laws. Thereafter, the appellant tried to cajole the respondent and admittedly, the respondent had shown some change in her attitude. When the respondent registered that she was pregnant, she tried to terminate that pregnancy but at the intervention of the appellant and his mother, she could not succeed. That apart, the appellant has alleged that the

respondent did not do any household work. She was reluctant even to take care of their sons. She never showed any respect to the appellant as husband. One day in the year 2009, the respondent broke her conch bangles declaring that she had no husband and her husband was dead. The respondent used to insult even the guests who ventured to meet the appellant for business purpose. The relatives of the appellant were easy prey for the respondent for pounding humiliation. The appellant had also registered that the respondent was regularly having conversation with some unknown persons at the dead hours of night. Whenever the appellant confronted the respondent, her usual response was that he had committed a great mistake by marrying her. Even the respondent rode the rough-shod by telling that so many persons die why didnt he die. Being disparaged by cruelty, the appellant invited the intervention of the local Panchayet and the elders of the family. For such intervention, for few days their relation was calm and cordial but again the respondent started ill-behaving with the appellant. From the month of May, 2007 the respondent started leaving the matrimonial home for staying in unknown places even without informing the appellant. In Para-34 of the petition, a serious allegation has been made by the appellant by disclosing that in the month of November, 2006 the respondent in a bid to eliminate him mixed insecticide in his food. As the appellant could recognize the insecticide by smell, he did not take the food and informed the Panchayet. When

they came to the appellant's house, the respondent admitted that she did mix insecticides. Even one day in the year 2008, in presence of two neighbours, the respondent attempted to assault him by chappal but for their intervention she could not succeed. The appellant has also alleged that his one friend saw the respondent entering in a park with an unknown person. On 14.05.2011 at about 9 pm the respondent left the matrimonial home and went to house of one Babul Das. When she entered their house, wife and mother of Babul Das assaulted her and tied her. Some neighbouring people rescued her but when she was asked why she had entered in that house in that hour of night, she kept silent. Finally, on 15.05.2011, the respondent left the matrimonial home and took shelter in the house of her uncle, namely, Bhajan Debnath. The appellant informed that episode to the Belonia P.S. and the said information had entered in GDE No.373 dated 09.06.2011. Despite such odious conduct, the appellant tried to bring peace in their matrimonial life but on 16.07.2011, the respondent communicated the appellant that she was not interested to live with him. However, on 17.07.2011 on serious persuasions she was brought back. Again on 06.10.2011 in the name of attending in orchestra she went out, leaving the appellant at home. She did not come back within reasonable hour. The appellant started enquiring about her whereabouts. But she was not found in any relative's house. At about 3.25 am she entered in his house and slept. When the appellant was asked she got furious and

threatened the appellant to implicate in a false case. On 08.10.2011 having apprised of that conduct, the Upa-pradhan of Sukanta Nagar Gram Panchayet came to the appellant's house and advised the respondent to live peacefully. Again on 09.10.2011, the respondent left the matrimonial home. When she was noticed by the said Upa-pradhan, she clearly stated that she was not interested to live with the respondent. After 6-7 days when one of his brother-in-laws went to bring back the respondent from the house of her uncle, Bhajan Debnath he was humiliated by them. The entire matter was reported to the Chairperson, Tripura State Commission for Women.

[3] By filling the written statement, the respondent denied all the allegations and asserted that the allegation that she was having an affair with Babul Das is entirely fabricated. Babul Das is one of the cohorts of the appellant. On the contrary to what the appellant has pleaded, the respondent has stated that the appellant is addicted to sex and he does not have love and affection for the respondent. He is interested to marry again for quenching his lust. The allegations are made by the respondent stating that when she refused to give consent for divorce, she was mercilessly beaten up and threatened to leave the matrimonial home else she would be murdered and her body would be thrown into deep forest. She resisted the suit.

[4] The appellant adduced 10(ten) witnesses in addition to his opening statement. The respondent adduced 4(four) witnesses in support of her pleadings. Having appreciated the evidence on record, the trial court dismissed the petition on returning the finding that the appellant had failed to prove that he was tortured by the respondent to the extent that living together was no longer possible and the divorce was the only resolution. It has been further observed that the respondent had to bear pain and suffering in the process. The said judgment has been challenged here by the appellant on numerous grounds.

[5] Mr. S. Ghosh, learned counsel appearing for the appellant highlighting the conduct of the respondent has stated that who could mix poison in the food, a normal human being is not expected to live with that person in the marital relation. According to Mr. Ghosh, learned counsel PW-7, Smt. Arati Shil has corroborated the appellant in this respect.

[6] According to Mr. Ghosh, learned counsel the respondent was leading an adulterous life with one Babul Das. The evidence of adultery has surfaced profusely from the testimonies of PW-3, Smt. Gita Das and PW-6, Sri Raju Debnath. After leaving the matrimonial home, the respondent did never visit her children nor tried to inquire about their well being. The appellant was target of the respondent's cruel treatment. DW-1, the respondent has admitted that even in the

fractured relation she was taken by the appellant to Chennai for treatment. Mr. Ghosh, learned counsel has referred a decision of the apex court in **Samar Ghosh vs. Jaya Ghosh**, reported in **(2007) 4 SCC 511**. Even though the fact situation of that case was entirely different but for purpose of getting the concept of mental cruelty that report can be considered in this case, inasmuch as there is no allegation of physical assault as such, but of the mental cruelty. It has been observed in **Samar Ghosh vs. Jaya Ghosh** that there cannot be any uniform standard laid down for guidance in dealing with the cases of mental cruelty but, some illustrative, though not exhaustive, features can be enumerated:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discomode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a

fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage ; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

[7] From the other side, Mr. M.K. Roy, learned counsel appearing for the respondent has stated that the misconduct of the appellant has substantially shaken the marital relation. The respondent tolerated his whims and disrespect for her. She was all the times inclined to lead the matrimonial life peacefully. Mr. Roy, learned counsel has further argued emphatically that now with their life, the emotion of their children is entwined. The appellant cannot be self-centred that he would throw the duty of the parent in the wind. Mr. Roy, learned counsel while distinguishing **Samar Ghosh vs. Jaya Ghosh** has stated that even though the concept of cruelty has changed with the passage of time but its ingredient related to the effect has remained the same. He has succinctly stated that the divorce is unconcerned with the wrongs of the past but it concerns with the bringing the parties and the children to terms with a new situation and developments by working out the most satisfactory basis upon which they may regulate their relation in the changed circumstances. This statement has been made in the context that, according to the respondent the appellant, was never sincere to make a rapprochement.

[8] In rejoinder to such statement, Mr. S. Ghosh, learned counsel has submitted that from the evidence, it has

clearly surfaced that almost on all the occasions whenever the respondent did something wrong of grave nature it was the appellant who did everything that was possible for bringing back the respondent but now for severance, at the behest of the respondent, and animus as demonstrated by the respondent the marriage has broken irreparably. In **Samar Ghosh vs. Jaya Ghosh**, the apex court has observed on considering the various decisions including **Naveen Kohli vs. Neelu Kohli**, reported in **(2006) 4 SCC 558** that the parties have separated and the separation has continued for a sufficient length of time and one of them had presented a petition for divorce, it can be well be presumed that marriage has broken down. The court no doubt makes an endeavour to reconcile the parties, yet if it is found than the breakdown is irreparable that the divorce should not be withheld. The consequence of preservation in law one unworkable marriage which has long ceased to be effective is bound to be source of greater misery for the parties.

[9] While appreciating the rival contentions, this Court has taken note of the testimonies of the witnesses from both the sides. Having revisited the evidence on record, this Court finds that PW-7, Smt. Arati Shil is a hearsay witness even though she has categorically stated that the appellant informed her that the respondent mixed agricultural medicine in his food. She has made some statements which are apparently

exaggerated and exaggeration of that extent that it corroded their creditworthiness. However, she has stated that the respondent did never wear conch bangle on her wrist nor did she put vermilion on her forehead which are sacred signs of marriage for a Hindu wife. That apart, she has stated that the respondent never showed respect to the inmates and the family elders. The appellant replicated his statements made in the petition and as such, no elaborate discussion is called for. PW-2, Sri Kalimohan Debnath, brother in law of the appellant has stated that the respondent was very rude. He has corroborated the episode what happened in the first night of communion, intervention by the Panchayet and not taking care of her children. He has also corroborated that the respondent was accustomed to use the filthy language. PW-3, Smt. Gita Das is an adjacent neighbour. She narrated one suspicious incident occurred on 14.05.2011 when the respondent was assaulted in the house of one Babul Das. PW-4, Sri Badal Baidya, the former Pradhan of Sukantanagar Gaon Panchayet has stated that they had intervened in the marital life of the parties at the request of the appellant and they could mitigate their problem. He has categorically stated that dispute did not come to an end despite several meetings which were held in the Panchayet on the prayer of the appellant. PW-5, Prabin Das, Upa-pradhan followed the suit of PW-4 and also corroborated the role as attributed to him by PW-1. PW-6, Raju Debnath whose testimony has been relied by Mr. Ghosh,

learned counsel appearing for the appellant, has stated that the respondent deserted the matrimonial home without informing the appellant or his family members. He has stated further that the respondent had been maintaining a suspicious lifestyle. He had advised her not to take whimsical steps but she did not listen and left the matrimonial home for indulging in her unacceptable activities. PW-8, Smt. Purnima Das, an adjacent neighbour, has stated that how the Panchayet intervened in the marital life of the parties. She has also stated that even after Panchayet brought truce temporally in the life but thereafter the dispute burged to such an extent that the respondent had left the matrimonial home. PW-9, Sri Kanti Debnath has stated that he is a close friend of the appellant. He saw the respondent entering in the park with an unknown person. He has also stated that he saw her moving with various other persons in different places. PW-10, Sri Babul Das, not the person who has been alleged of having a relation with the respondent, has stated that he and one Arati Das saw the respondent trying to assault the appellant with chappal but they snatched the chappal from her hand. He has also stated that the respondent did never show respect to the appellant.

In the cross-examination, none of the witnesses deviated from their statement made in the examination-in-chief. Only they have made some explanations without having any serious consequence.

[10] DW-1 stated about the abnormal behaviour of the appellant. She has also stated that for her weak health sometimes, she refused to cohabit but the appellant was so inhuman, he used to torture her for having sex. The appellant threatened her of divorce. When she received the notice of the proceeding for granting divorce, she was at dismay. She raised hue and cry as she was opposed to divorce. DW-2, Sri Bikash Majumder, the Pradhan of Chittamara Gaon Panchayet has stated that there was a meeting in the house of the appellant over the dispute that the respondent was disobedient to her husband and other family members. He has also stated that the appellant did not properly take care of her and tortured her both mentally and physically. DW-3, Smt. Minati Debnath is an aunt of the respondent. She has stated that for 16-17 years the appellant and the respondent led their matrimonial life. She has also stated that the appellant was insisting for remarriage. Even the allegation has been made that the appellant was not being provided with the required treatment. DW-4, Smt. Dipali Debnath is another aunt of the respondent. She has just reiterated what DW-3 has stated. The respondent has also examined her as DW-1. She has also admitted in her cross-examination that she visited Chennai with her husband and sons as claimed by the appellant.

[11] On assessment of the evidence, what has surfaced is that the marital relation of the appellant and the respondent

was under turbulence and torment for long time and their relation was visited by serious disputes. Being entrapped in the allegations and the counter-allegations they are totally unable to live a peaceful married life. Despite various attempts by the court, no reconciliation was possible. As held in **Samar Ghosh vs. Jaya Ghosh** that mental cruelty is a state of mind that fell in deep anguish, disappointment, frustration in one spouse caused by the conduct of the other. If it continues for a long time that may lead to mental cruelty. A sustained course of abusive and humiliating treatment, culminates to torture, discommodos or renders miserable life of the spouse. Sustained unjustifiable conduct and behaviour of one spouse affect the mental health of the other spouse. If it is found to be grave, it may cause mental cruelty. It is not mere trivial irritation, quarrel, normal wear and tear of the married life. Conduct must be of such nature, which is reprehensible or studied neglect or indifferent or total departure from the normal standard of conjugal kindness.

[12] Having appreciated the evidence on record, this court does not have any hesitation to hold that such grave materials have been laid by the appellant. But considering a far away flashing point of hope in the relation of the appellant and the respondent, as probable in view of the parental obligation or other factors including the social dignity etc., this Court is not inclined to grant the decree of divorce. But in the exercise

of powers, conferred by Section 13A of the Hindu Marriage Act, 1955 this Court is inclined to grant the decree of judicial separation in favour of the appellant. It is needless to say that if the appellant and the respondent reunite, this decree will have no force whatsoever. But if the parties fail to do so they may take the appropriate recourse as available in law.

In the result, the appeal stands partly allowed.

Prepare the decree accordingly.

Send down the LCRs thereafter.

JUDGE

JUDGE

Sujay