

HIGH COURT OF TRIPURA
AGARTALA

FA No. 06 of 2015

Sri Nirmal Paul,

Son of Sri Bhubaneswar Paul, resident of Village – Madhya Pratapgarh, P.O-East
Pratapghar, P.S-West Agartala, Agartala District- West Tripura.

-----Appellant(s)

Versus

Smt. Namita Paul

Wife of Sri Nirmal Paul, resident of Sonamura, Udaipur, PS.-R.K. Pur, District-
South Tripura

-----Respondent(s)

For Appellant(s) : Mr. P. Roy Barman, Senior Advocate.
Mr. Samarjit Bhattacharjee, Advocate.

For Respondent(s) : Mr. Kohinoor N Bhattacharya, Advocate.

Date of Hearing : *1st February, 2021.*

Date of Pronouncement : *22nd March, 2021.*

Whether fit for reporting :

Yes	No
✓	

B_E_F_O_R_E

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

JUDGMENT & ORDER

(Per S.G. Chattopadhyay, J)

The present appeal is filed by the appellant husband being aggrieved
and dissatisfied with judgment dated 30.04.2015 passed by the Family Court,
Agartala in case No. TS (Divorce) 332 of 2009 rejecting his petition for divorce.

[2] The facts in a nutshell are that appellant Nirmal Paul and respondent Smt. Namita Paul entered into matrimonial alliance as per Hindu rites and rituals at Agartala on 30th Baisakha, 1408 B.S corresponding to 14th May, 2001. It is the case of the appellant that a month after marriage, his wife started misbehaving with him. At that time the appellant lived in a common mess with his old parents, three brothers and their families which was not liked by his respondent wife. She demanded a separate mess and told her appellant husband that it was not possible on her part to prepare food for every member of the extended family. Her conduct and behavior to the appellant and his family members was very indignant and rude. She also used to visit her parents frequently and stay at her parental home for months together. However, within few months of marriage, she conceived and a daughter was born to them. 6 (six) months after the birth of her daughter, the respondent got a government job as teacher in an anganwadi centre at Udaipur. After getting her job she left the company of her appellant husband on 04.08.2005 and started living with her parents. The appellant visited his wife and daughter at her parental home several times to bring them back. But, she wanted her appellant husband to stay with her at her parental home at Udaipur. He then filed a suit in the Family Court, Agartala seeking restitution of conjugal rights which was registered as TS (RCR) 55 of 2009 in the Family Court and after hearing the parties, the Family Court decided the suit by directing the spouses to meet each other once in a week. Though the appellant met his wife and daughter at her parental home at Udaipur several times in terms of the said order of the Family Court but his respondent wife never came to Agartala to meet him. Rather, she

implicated the appellant, his mother, younger brother and the husband of his sister in a case under section 498A IPC. Thereafter, the appellant filed the said petition under section 13(1)(ib) of the Hindu Marriage Act, 1955 in the Family Court at Agartala for divorce on the ground of desertion.

[3] In reply to the allegations of her husband, respondent wife filed written objection. She denied every allegation of her husband and claimed that all those allegations were frivolous, vexatious and false. According to her, after marriage she was treated with extreme cruelty by her husband and in-laws. It was alleged by her that on 3rd August, 2005 her appellant husband and in-laws physically assaulted her and on the following day they ousted her from her matrimonial home. She was then sheltered by her brother from where she lodged a case under section 498A IPC against her husband and in-laws. Her case was registered in court as CR 493 of 2006 and after trial her appellant husband was found guilty. He was convicted and sentenced for imprisonment for 3 (three) years by the trial court. Her appellant husband challenged the judgment in appeal. She also stated in her reply that right from the beginning of her marriage she received humiliating treatment from her husband and in-laws. Though her parents gave valuables like jewellery, furniture, utensils and cash during her marriage, her appellant husband demanded more cash after marriage. Since her parents were unable to fulfil his demand, she was subjected to harassment at her matrimonial home. The neighbours noticed the incidents of cruelty meted out to her by her husband and in-laws. According to her, she never deserted her husband. Rather

her appellant husband drove her out of her matrimonial home after committing physical assault on her on 04.08.2005. She, therefore, wanted dismissal of the petition of her husband.

[4] On the pleadings of the parties, trial court framed 3 (three) issues pertaining to maintainability of the suit and petitioner's entitlement to divorce which were as under:

“1. Whether the petition is maintainable in its present form and nature?”

2. Whether the respondent is an ill-tempered lady and deserted her matrimonial home without any reasonable cause or whether she was tortured by the husband and other family members on many occasions in demand of money and finally on 04-08-05 compelling her to take shelter in the house of her brother at Udaipur?”

3. Whether the petitioner is entitled to get a decree of divorce as prayed for?”

[5] During trial, both the parties led oral evidence. The appellant husband adduced oral evidence of 4 (four) witnesses including himself. The other witnesses were his neighbours Sri Biswajit Roy [PW-2], Smt. Shanti Paul [PW-3] and his younger brother Sri Ajit Paul [PW-4]. His respondent wife on the other hand examined herself as DW-1, her elder brother Sri Mantu Ch. Rudrapaul as DW-2 and neighbour Sri Khokan Ch. Das as DW-3.

[6] The trial court examined the matter in detail in the background of evidence available on record and dismissed the petition filed by the appellant husband for divorce. It was held by the trial court that the appellant husband

could not establish the ground of desertion. Rather, the respondent wife was found always willing to live with her husband. The Family Court having found possibility of their reunion, dismissed the petition for divorce by judgment and order dated 26.03.2011 passed in TS (Divorce) 332 of 2009.

[7] Aggrieved appellant challenged the said judgment of the Family Court in FA No. 10 of 2011 in this High Court. The matter was decided by this Court by the judgment and order dated 18.12.2014. It was then observed by this Court that opportunity was not given to the other side to cross examine the witnesses of the petitioner. Therefore, the matter was remanded back to the trial court with the following directions:

“8. Admittedly, the procedure as laid down by the High Court in the aforesaid judgment has not been followed. Therefore, without going into the merits of the case we set aside the judgment and decree of the Family Court and remand the matter to the Family Court to rehear the matter from the stage of framing of issues.

9. The parties shall be permitted to lead evidence and the opposite party shall be permitted to cross examine the witnesses in accordance with the aforesaid judgment. In view of the fact that the divorce petition was filed in the year 2009, we direct the learned Judge, Family Court , Agartala, West Tripura, to dispose of the case as early as possible and in any event not later than 31st July, 2015. The parties through their counsel are directed to appear before the learned Judge, Family Court, Agartala, West Tripura on 14.01.2015.”

[8] In the course of fresh trial, new issues were framed by the Family Court which were as under:

“1. Has the respondent petitioner been deserted by wife respondent and if so from what point of time?

2. Is the petitioner entitled to a decree as prayed for?”

[9] During fresh trial after remand, appellant husband examined himself as PW-1 and his neighbours Sri Biswajit Roy as PW-2 and Smt. Shanti Paul as PW-3. Similarly, the respondent wife examined herself as DW-1, her elder brother Sri Mantu Ch. Rudrapaul as DW-2 and neighbour Khokan Ch. Das as DW-3. All witnesses were cross examined by the other side. On appreciation of evidence the trial court arrived at the following conclusion:

“10. In view of the discussion made above, I find that the petitioner failed to establish any fact to show that he has been deserted by his wife, rather it appears that the respondent is still willing to live with her petitioner along with her daughter. No wrong or cruel activities on the part of the respondent could also be established. The allegations made by the PW-1 against his wife also appears to be general in nature and mere wear and tear of every marital life and cannot be treated as exceptional to constitute matrimonial offence to satisfy the requirement of the term ‘cruelty’.

11. In case of desertion also, their lordship observed in Savitry Pandey Vs. Prem Chandra Pandey, (2002) 2 SCC 73 that:

“Desertion”, for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations, i.e., not permitting or allowing and facilitating the cohabitation between the parties.”

Having held so, Family Court again rejected the petition for divorce by the impugned judgment and order dated 30.04.2015 which has been challenged by the appellant husband in the present appeal.

[10] The appellant husband in his deposition at the trial has replicated his plaint case. According to him, his wife always misbehaved with him and his family members right from the beginning of the marriage. She was unwilling to share mess with his parents and brothers. Ultimately on 04.08.2005 she left her matrimonial home along with her daughter and started living at her parental home at Udaipur. According to the PW, he met his wife in his in-laws house several times to bring her back but she wanted him to stay with her at Udaipur. With a view to restore the conjugal relationship he filed a suit for restitution of conjugal rights in which both of them were directed to meet each other at their respective places once in a week. Though he met his wife at her place in terms of the said order, his wife never came to his house which proves that she had withdrawn herself permanently from his company. Then he filed a petition for divorce in the Family Court.

In cross examination, the appellant husband admitted that he was convicted and sentenced in a case lodged by his wife under section 498A IPC. He denied to have committed any torture on his wife. In his cross examination he also denied the fact that after their separation in the year 2005, his wife returned back to him along with their daughter and thereafter again she had to leave her matrimonial home since she was threatened by the PW with dire consequence.

[11] Sri Biswajit Roy [PW-2], who is a neighbour of the appellant husband stated that the respondent wife of the appellant was living with her parents at Udaipur. When the PW met her at Udaipur she told him that she was not willing to continue her conjugal relationship with her appellant husband.

But in his cross examination, he said that he was not aware about the address of the parental house of the respondent wife of the appellant.

[12] Smt. Shanti Paul [PW-3] is also a neighbour of the appellant husband. She stated at the trial that 15 days after their marriage the respondent wife demanded a separate mess. Pursuant to her demand her appellant husband started living in a separate mess with her but she was not happy. She wanted her husband to leave with her for Udaipur for living in her parental home. The appellant did not agree to her proposal. The PW further stated that at the time of delivery of their daughter, the PW was all along with the respondent wife so long she was admitted in IGM hospital at Agartala. Her husband was very caring who used to visit his respondent wife every day in hospital and provide food to her in the hospital. But, after the child was born, the wife left for Udaipur and started living at her parental home. According to the PW, the husband met his respondent wife several times at Udaipur to bring her back but she refused to come back.

In her cross examination, she denied that the respondent wife was willing to come back to her matrimonial home to live with her husband.

[13] The wife on the other hand deposed as DW-1. According to her, her husband was an alcoholic who always used to quarrel with her. After the birth of their daughter he demanded cash from her parents and started torturing her for fulfilling his demand. On 03.08.2005, he physically assaulted her and on the following day he ousted her from his home. For about 10(ten) months thereafter, her husband did not meet her. In such a situation she filed a complaint against her husband and in-laws. Thereafter, her husband also filed a case in the Family Court for restitution of conjugal rights. It was stated by her that in terms of the order of the Family Court she used to visit her husband along with her daughter every Saturday and after staying 2(two) days with her husband she used to leave on Monday morning for Udaipur. She was always willing to live with her husband but her husband avoided her company and he did not discharge any of his obligations to her.

She stated in her cross examination that she did not lodge complaint against her husband immediately after their separation. She stated that she lodged the case 10(ten) months after their separation. In her cross examination she also denied the allegation of her husband that she was rude and indignant to her husband and in-laws and she never discharged her matrimonial obligations.

[14] Her elder brother Sri Mantu Ch. Rudrapaul [DW-2] stated that his respondent sister was always ill treated at her matrimonial home. He also stated that the appellant husband of his sister ousted her from her matrimonial home after committing physical assault on her. He further stated that the appellant

husband of his sister brought false allegations against his sister only to obtain a divorce. It was also stated by the DW that before marrying his sister, the appellant also divorced his first wife.

In his cross examination, he denied the suggestions which were put to him by the counsel of the appellant. He denied that his sister left the company of her husband on her own volition and he also denied that his sister was never tortured by her appellant husband.

[15] Sri Khokan Ch. Das [DW-3], a neighbour of the respondent wife stated that after the birth of their daughter the appellant husband of the respondent did not take any care of her. Rather, he started torturing her at her matrimonial home and she was ousted from there along with their new born daughter.

In his cross examination, the DW denied that the statements he made before the court were untrue.

[16] In this factual background, learned counsel for the appellant has argued that the parties are living separately for more than 15 years. During this period the wife has never met her appellant husband at her place which indicates that their relationship has broken down irretrievably and there is no chance of restoration of such relationship. It is contended by learned counsel of the appellant that in similar situation divorce was granted in favour of the husband by this Court in the case of **Bidyut Kumar Saha Vs. Tapa Saha** reported in

MANU/TR/0138/2020. Learned counsel, therefore, urges the court to put the marriage to end by granting divorce in favour of the appellant.

[17] Learned counsel appearing for the respondent wife on the other hand submits that she is not agreeable to divorce because she is always prepared to live with her appellant husband. According to learned counsel, it is only the appellant who is always keeping himself away from her company. Further submission of learned counsel is that even after she was ousted from his house, she returned to her matrimonial home to live with her husband but she was not accepted by him. According to learned counsel, the appellant has failed to establish the ground of desertion against the respondent wife and therefore decree of divorce cannot be granted to him.

[18] Apparently, appellant's petition for divorce is founded solely on the ground of desertion. Clause (i-b) of sub-section (1) of Section 13 of the Hindu Marriage Act specifies desertion as one of the grounds of divorce which reads as under:

“13(1) 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-

[(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]”

[19] Section 13(1)(ib) of the Hindu Marriage Act thus, denotes that desertion by the offending spouse for a continuous period of not less than 2 (two) years should precede the presentation of the petition for divorce by the other spouse. In this case, the appellant husband has alleged that his wife deserted him on 04.08.2005 and 4 years thereafter he filed the petition for divorce at Family Court at Agartala on 23.12.2009. Therefore, technically such a petition was entertainable but it needs to be looked into as to whether in the context of matrimonial offence the appellant husband has been able to prove desertion against his respondent wife.

[20] Desertion for the purpose of divorce has not been defined anywhere in the Hindu Marriage Act. The expression “desertion” appearing in Section 13 of the Hindu Marriage Act has been interpreted in various judicial pronouncements. It is held that the essence of desertion is *animus deserendi* or the intention on the part of the offending spouse to bring cohabitation permanently to an end without reasonable cause against the consent or wish of the other spouse. About how to arrive at the conclusion as to whether one spouse has been deserted by the other within the meaning of Section 13(1)(ib) of the Act, the Apex Court in **Sanat Kumar Agarwal Vs. Nandini Agarwal** reported in (1990) 1 SCC 475 has viewed that the question of desertion is a matter of inference which has to be drawn from the facts and circumstances of each case and observed as under:

“5. It is well settled that the question of desertion is a matter of inference to be drawn from the facts and circumstances of each case and those facts have to be viewed as to the purpose

which is revealed by those facts or by conduct and expression of intention, both interior and subsequent to the actual act of separation.....”

[21] In the given context, ostensibly the respondent wife abandoned her husband on 04.08.2005 along with their daughter and according to the appellant husband she did not come back to her matrimonial home thereafter. Whether divorce can be granted for such conduct of the respondent wife has to be decided in the peculiar factual context of this case. Before we do so, it would be appropriate to refer to the decision of the Apex Court in **Savitri Pandey Vs. Prem Chandra Pandey** reported in (2002) 2 SCC 73 where the Apex Court dealt with the concept of desertion in the context of divorce and held as under:

"8. Desertion", for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations, i.e., not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. After referring to a host of authorities and the views of various authors, this Court in *Bipinchandra Jaisinghbai Shah v. Prabhavati* [AIR 1957 SC 176] held that if a spouse abandons the other in a state of temporary passion, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion.....”

[22] Relying on **Savitri Pandey (Supra)** the Apex Court reiterated in **Malathi Ravi, M.D. Vs. B.V. Ravi, M.D.** reported in (2014) 7 SCC 640 that desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause.

[23] In the instant case, looking into the conduct of the parties subsequent to the filing of the divorce petition no inference can be drawn that the respondent wife ever intended permanent abandonment of the company of her husband. In **A. Jayachandra Vs. Aneel Kaur** reported in (2005) 2 SCC 22, the Apex Court observed that *acts of the spouses subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct.*

[24] In the given case, the appellants husband in his testimony at the trial before the Family Court has categorically stated that his wife always wanted him to stay with her at Udaipur. Since, her proposal was not agreeable to him, he filed a suit for restitution of conjugal rights at the Family Court at Agartala. It is admitted by the husband that in terms of the direction of the Family Court he used to meet and stay with her at Udaipur. Admittedly, his respondent wife never objected his stay with her at Udaipur. In her evidence as DW-1, the respondent wife also stated that she used to visit her husband at Agartala along with her

daughter after the order was passed by the Family Court in the suit for restitution of conjugal rights. According to her, since she was doing a Govt. job at Udaipur she used to come on every Saturday to the place of her husband and leave on Monday morning to resume her duties at Udaipur. All those meetings between the spouses took place after the respondent wife allegedly abandoned her husband on 04.08.2005.

[25] Such evidence, viewed in the light of law enunciated by the Apex Court in the judgments cited to supra, does not support the case of the permanent abandonment of his company by his respondent wife.

[26] We may recall that learned senior counsel appearing for the appellant husband relying on the decision of this Court in the case of **Bidyut Kumar Saha (Supra)** contended that the parties were living apart from the year 2005 and according to learned counsel, in view of their long separation, the court may presume that the marriage between the parties has irretrievably broken down and a decree of divorce may be granted on such ground in favour of the appellant.

[27] The argument is not acceptable firstly because the decision in the case of **Bidyut Kumar Saha (Supra)** was rendered by this court in a completely different factual context and secondly because long separation between the couple is not a sure sign of irretrievable break down of marriage. It is seen in many cases that even after long separation, the spouses reunited, renewed their relationship

and lived together till the end of their life. Moreover, in the given context, the spouses admittedly lived together even after the alleged separation between them.

[28] With regard to the ground of irretrievable break down of marriage, the Apex Court in **Shyam Sunder Kohli Vs. Sushma Kohli Alias Satya Devi** reported in (2004) 7 SCC 747, held that *on the ground of irretrievable break down of marriage, the court must not lightly dissolve the marriage. It is only in extreme circumstances that the court may use this ground for dissolving the marriage.*

[29] In a later decision in **Naveen Kohli Vs. Neelu Kohli** reported in (2006) 4 SCC 558 though the Apex Court granted divorce because in view of the fact that the marriage between the parties had broken down irretrievably, in paragraph 85 of the judgment it was held by the Apex Court that it is the obligation of the court and all concerned that marriage status should, as far as possible, as long as possible and whenever possible be maintained. In the said case, following observation was made by the Apex Court:

“85.Undoubtedly, it is the obligation of the court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. In the instant case, there has been total disappearance of emotional substratum in the marriage. The course which has been adopted by the High Court would encourage continuous bickering, perpetual bitterness and may lead to immorality.”

[30] For what has been discussed by us, the marital bond between the parties cannot be said to have gone beyond repair and as such the ground of irretrievable break down of marriage as expounded by learned counsel of the appellant is not acceptable to us.

[31] Since, the appellant has failed to prove the ground of desertion against his respondent wife, the impugned judgment of the Family Court, Agartala does not call for any interference. Resultantly, the appeal stands dismissed.

Send down the LC record.

(S.G. CHATTOPADHYAY), J

(AKIL KURESHI), CJ

