

**HIGH COURT OF TRIPURA
AGARTALA
F.A.01 of 2022**

Smti. Pramila Ghosh (Guha),

..... Appellant(s)

Versus

Sri Anup Kumar Guha,

..... Respondent(s)

For Appellant(s)	:	Mr. P.K. Dhar, Sr. Adv. Ms. S. Nag, Adv.
For Respondent(s)	:	Mr. R. Datta
Date of Hearing	:	04.08.2022
Date of Judgment & Order	:	11.08.2022
Whether fit for reporting	:	NO

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY**

Judgment & Order

[T. Amarnath Goud, J]

The respondent as a petitioner instituted T.S.(Divorce)247 of 2017 in the learned Family Court, Agartala, West Tripura against the appellant for decree of divorce and for dissolution of their marriage mainly on the ground that the appellant by filing criminal proceeding treated cruelty with the respondent and also on some other grounds as mentioned in the petition for divorce. The appellant by filing written statement contested the

matrimonial proceeding challenging the maintainability and also denying allegations of the respondent and also by stating that the appellant always ready and willing to reside with the respondent and she was treated with cruelty and was harassed in regard with maintenance matter and also the respondent deserted her. After trial, the learned Family Court, Agartala, West Tripura passed the judgment and decree dated 07.10.2021 in T.S.(Divorce)247 of 2017 granting decree of divorce in favour of the respondent against which the appeal is preferred.

2. The respondent as the petitioner under Clause (ia) of sub-section (1) of Section 13 of the Hindu Marriage Act, 1955 against the appellant for decree of divorce and dissolution of marriage of the parties and the said petition was registered in the learned Family court below as T.S.(Divorce)247 of 2017.

3. The respondent as the petitioner filed the said petition for decree of divorce stating inter alia that the marriage of the parties were solemnized on 08.08.1999 following the Hindu Rites and Customs at Agartala, West Tripura and the parties lived together at Agartala along with two sons of the respondent left by his first wife and they lived together happily and thereafter, the appellant became indifferent towards domestic works and could not adjust with the family members and started to behave roughly and rudely with the respondent and his sons and the appellant formed a habit to leave the house giving intimations to any one and the appellant left the matrimonial home permanently in September, 2007 and

that the appellant filed application in 2008 under Section 125 of the Cr.P.C. for maintenance which was registered as Misc. Case No.27 of 2008 and the same was allowed by an order dated 17.06.2008 directing the respondent to pay Rs.2000/- per month w.e.f.01.06.2008 and that subsequently, the appellant filed Misc. Case No.286 of 2009 for enhancement of the amount of maintenance and the maintenance was enhanced by the order dated 03.11.2009 directing the respondent to pay maintenance @ Rs.4000/- per month w.e.f.01.11.2009 and that the present respondent preferred Revision petition in Criminal Revision No.94 of 2009 against the order dated 03.11.2009 passed by the learned Family Court, Agartala, West Tripura in Misc.Case No.286 of 2009 before the Hon'ble High Court and the case was disposed of by the judgment and order dated 31.07.2013 directing the present respondent to make payment to the appellant as per direction of the learned Family Court, Agartala and also stating inter alia that the present appellant lodged FIR against the respondent with Agartala Women P.S. and the Women P.S.Case No.01 of 2008 under Section 498A read with Section 34 of the I.P.C. was registered against the respondent and the respondent preferred Criminal Revision challenging the order dated 11.06.2009 passed by the learned Judicial Magistrate, 1st Class, Court No.5, Agartala in G.R. Case No.05 of 2008 wherein the learned Magistrate directed for framing of charge against the respondent under Section 498A/34 of the I.P.C. and the said High Court by the judgment and order dated 31.07.2013 set aside the order dated 11.06.2009 and the present respondent was discharged from the charge

framed against him also further stating inter alia that the present respondent filed T.S.(Divorce)/FC/73/2004 before the learned Family Court below seeking dissolution of marriage of the parties by a decree of divorce on the ground of cruelty and the learned Family Court dismissed the petition for divorce holding inter alia that the present respondent failed to produce any concrete evidence in respect to cruelty and the matrimonial proceeding was disposed of on 01.07.2005 and that after the said order, the present appellant became desperate and violent and permanently left the matrimonial home in September, 2007 and the present appellant treated the respondent with cruelty and also stating that since after marriage by way of neglecting and refusing to take care of the children left by first wife of the respondent and the appellant harassed the respondent by filing vagues criminal case and also stating that long desertion of the respondent by the appellant since 2007 for almost 10 years indicates that the respondent has not only been subjected to cruelty but matrimonial tie between the parties has broken down and there is no chance of reunion and therefore, the respondent prayed for dissolution of marriage of the parties by a decree of divorce.

4. The appellant contested the said T.S.(Divorce)247 of 2017 by filing one written statement denying the averments of the respondent and challenging the maintainability of the proceeding and also stating inter alia that the marriage between the parties was solemnized on 07.07.1998 as per Hindu Rites and Customs and their marriage was registered with the marriage Registrar on 07.07.2006 and that the appellant was married by the

respondent after death of his first wife who died leaving behind two sons and therefore, the appellant had been looking after the said two sons of the respondent and subsequently, the respondent started mixing with another woman namely Smt. Gita Debnath which was objected by the appellant and therefore, she was tortured both mentally and physically by the respondent and also stating that the respondent was residing along with the appellant and the said two sons in a rented house and subsequently, in September, 2007 the respondent left the rented house and shifted to another rented house along with his two sons and thereby the respondent deserted the appellant with a view to maintain relation with the said Smt. Gita Debnath and under compelling circumstances, the appellant lodged complaint with the Agartala Women P.S. being P.S. Case No.01 of 2008 under Section 498A read with Section 34 of the I.P.C. against the respondent and the said Smti. Gita Debnath was also added as co-accused in the said case after filing charge sheet by the Investigating Officer, the said case was registered as G.R. Case No.05 of 2008 and the said co-accused was discharged by the learned Trial Court by the order dated 20.02.2009 with observation that the said co-accused was not a relative of the respondent and the present respondent also prayed for discharge him by the order dated 11.06.2009 holding that the said case attracted by Section 498A of the I.P.C. and therefore, the Criminal Revision Petition No.60 of 2009 was preferred by the respondent before the Hon'ble High Court and the said petition was disposed of by the judgment and order dated 31.07.2013 setting aside the order dated 11.06.2009 passed

by the learned Trial Court below in G.R. Case No.05 of 2008 and the present respondent was discharged accordingly and also stated that the present appellant was refused by the respondent, even to maintain her and therefore, she filed the case for maintenance and the present respondent by filing Criminal Revision Petition before the Hon'ble High Court made attempt to reduce the maintenance but the said court upheld the order of maintenance passed by the learned Family Court and also stating that the present respondent preferred T.S.(Divorce)/FC/73/2004 before the learned Family Court below seeking decree of divorce on the ground of cruelty against the appellant but the said matrimonial proceeding was dismissed by the learned Family Court holding that the respondent failed to produce any concrete evidence in respect of cruelty and thereby the said divorce proceeding was ended on 01.07.2005 and further stated that the present appellant filed Misc. Case No.384 of 2014 for alteration of mode of payment of maintenance which was disposed of on 08.07.2015 and the respondent filed Misc. Case No.12 of 2015 for alteration of quantum of maintenance which was rejected on 08.07.2015 and also stated that the present appellant was compelled to file Misc. Case No.332 of 2015 under Section 128 of Cr.P.C. and subsequently, also the appellant filed Misc. Case No.100 of 2016 and in terms of order of the learned Family Court below she could recover the arrear of maintenance from the respondent and also stating that the appellant was compelled to file Misc. Case No.417 of 2016 again for arrear of maintenance and subsequently, she filed Misc. Case No.256 of 2017 for

arrears of maintenance and ultimately, the learned Family Court below passed order dated 31.01.2008 and in terms of such order the appellant is getting her maintenance amount through bank directly from the pension Account of the respondent and thereby she was harassed by the respondent like anything and also stated that the appellant was always ready and willing to live with the respondent though the respondent has been residing with Smti. Gita Debnath and also stated that at the instigation of the respondent, his sons lodged a complaint against the appellant and a criminal case was initiated against her and ultimately, after trial, she was acquitted and she has further stated that the respondent has deserted the appellant and treated cruelty with the appellant while the appellant did never treat the respondent with cruelty nor deserted him and as such, the said matrimonial proceeding instituted by the respondent was not maintainable.

5. After elaborate arguments on behalf of both sides, both the parties present in court have mutually consented to be away from each other in view of their domestic issues and prays for judicial separation for some period. As the parties are senior citizens and considering their case on special reasons and having humanitarian grounds not to precipitate the litigation and with a hope in future they will have better days this court is of the view that for granting judicial separation which would be appropriate instead of divorce.

6. Accordingly, this court grants the order of judicial separation as prayed by both the parties. For any other relief, if they are so desired, they are at liberty to take up the appropriate steps in accordance with law.

With the above observation, the present appeal stands allowed. Order of the court below in Case No.T.S.(Divorce)247 of 2017 stands set aside.

JUDGE

JUDGE

