



HIGH COURT OF TRIPURA
AGARTALA

MAT App. No.24 of 2025

Smt. Bijaya Sinha (aged about 26 years), wife of Sri Arun Kanti Sinha,
daughter of Sri Ranjit Sinha, resident of Kherengjuri, P.O.: Kherengjuri, P.S.:
Churaibari, District: North Tripura.

..... Appellant (s).

V E R S U S

Sri Arun Kanti Sinha, son of Sri Ramgopal Sinha, resident of Nadiapur, P.O.:
Kalacherra, P.S.: Churaibari, District: North Tripura.

..... Respondent(s).

For Appellant(s)	:	Mr. Sankar Lodh, Advocate
For Respondent(s)	:	Ms. Sudipta Chowdhury, Advocate Mr. Arjun Acharjee, Advocate

HON’BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON’BLE MR. JUSTICE BISWAJIT PALIT

CAV reserved on : 08.09.2026.
Judgment delivered on : 24.09.2026
Whether fit for reporting : YES

JUDGMENT & ORDER

(Biswajit Palit, J)

This appeal under Section 28 of Hindu Marriage Act, 1955 read with Section 19 of the Family Courts Act is preferred challenging the judgment dt. 29.08.2025 and consequential decree dt. 01.09.2025 delivered by Learned Judge, Family Court, Dharmanagar, North Tripura in connection with Case No. T.S. (Divorce) 44 of 2020.

2. Heard Learned Counsel, Mr. Sankar Lodh appearing on behalf of the appellant-wife. Also heard Learned Counsel, Ms. Sudipta Chowdhury along with Learned Counsel, Mr. Arjun Acharjee appearing on behalf of the respondent-husband.

3. Taking part in the hearing, Learned Counsel for the appellant-wife submitted that the respondent-husband, as petitioner, had filed one divorce petition against the present appellant-wife before the Learned Judge, Family Court, Dharmanagar, North Tripura under Section 13(1)(ia) of the Hindu Marriage Act seeking divorce on the ground of cruelty. Learned Counsel submitted that in absence of material evidence on record establishing cruelty, Learned Judge, Family Court granted decree of divorce in favour of the respondent-husband on the basis of certain imaginary facts and events, which cannot be sustained in the eye of law. Learned Counsel, therefore, submitted that the judgment and decree passed by Learned Court below needs to be interfered with and set aside.

4. At the very outset, Learned Counsel for the appellant-wife referred to the pleadings of the parties i.e. the divorce petition filed by the respondent-husband before the Learned Trial Court as well as the written statement filed by the present appellant-wife. Referring the same, Learned Counsel submitted that the Learned Trial Court misinterpreted the evidence on record and came to the observation that the act of the present appellant-wife amounted to cruelty and thus, granted decree of divorce in favour of the respondent-husband.

5. It was submitted by Learned Counsel for the appellant-wife that in the impugned judgment, the Learned Trial Court analyzed the evidence of the respondent-husband and recorded some instances which, according to the Learned Trial Court, amounted to cruelty upon the respondent-husband. The relevant portion of the judgment is reproduced hereunder:

“(a) The first instance of cruelty committed by the respondent was on 22-06-2017, when the petitioner's mother told the respondent that she should not remain unhappy, the respondent became furious and left the house of petitioner abusing the petitioner in front of his family members.

(b) The second instance of cruelty done by the respondent was when parents of the respondent took respondent to their house after discharged from the hospital without consent of the petitioner.

(c) The third instance of cruelty done by the respondent was frequent desertions of respondent to petitioner and her in-laws and showing disaffection towards him and his family members.

(d) The fourth instance of cruelty committed by respondent was that matter of not informing petitioner about the birth of his son.

(e) The fifth instance of cruelty was the act of respondent writing a letter to petitioner's unit giving false and unfounded allegation.

(f) The sixth instance of cruelty was dated 15-09-2018 when the respondent suddenly started misbehaving with petitioner and engaged herself in unnecessary quarrel and told the petitioner to cut off all ties with his parents and relatives. Also when the petitioner tried to talk his parents over phone, she started quarreling with him and abused her in front of public.

(g) The seventh instance of cruelty done by the respondent was when she took up the matter relating to her to the Commanding Officer of petitioner. After hearing the Commanding Officer granted 10 days leave to petitioner to drop respondent at her home.

(h) The eight instance of cruelty done by the respondent was when on 16-01-2019 petitioner took respondent to her father's house he tried to give Rs.5,000/- to the respondent, but she refused to take the same. The petitioner was insulted and abused by his mother-in-law.

(i) The ninth instance of cruelty done by the respondent was when the respondent registered a DOM Case No.80/2019 before the Ld. Chief Judicial Magistrate, North Tripura, Dharmanagar giving false, unfounded and wild allegations against him and his family members. Respondent also filed two more DOM cases against him and his parents with false allegation.”

Referring the aforesaid points, Learned Counsel further submitted that none of the aforesaid acts amounted to cruelty and based upon that, there was no scope on the part of the Learned Trial Court to grant decree of divorce in favour of the respondent-husband.

6. It was also submitted that in the judgment, Learned Trial Court further came to the observation that the evidence adduced by the appellant-wife in para Nos. 7 to 10 of her examination-in-chief was beyond pleading and that was not mentioned in the written statement, which the appellant-wife in course of her cross examination admitted before the Learned Trial Court. But the fact remains that a domestic violence case was filed by the present appellant-wife against the respondent-husband, which has also been admitted by the respondent-husband before the Learned Trial Court. Learned Counsel submitted that the fact of filing of domestic violence case by the present appellant-wife cannot be a ground of cruelty in a divorce petition. However, the Learned Trial Court misinterpreted the said fact and granted decree of divorce in favour of the respondent-husband.

7. Learned Counsel further submitted that no petition for restitution of conjugal rights was filed by the respondent-husband, showing that he was eager to resume conjugal life with the appellant-wife. Rather, he manufactured some vague allegation against the appellant-wife and tried to establish that the present appellant-wife was responsible for causing cruelty upon him.

8. It was further submitted that although the respondent-husband alleged that the appellant-wife was staying separately, but the fact remains that the respondent-husband was serving in the Indian Army and owing to the nature of his service, he was required to stay outside the State. Being a member of the Indian Armed Force, it was not possible for him to always stay with his wife at his place of posting. Though, for a limited period, he was allowed to stay with the appellant-wife. However, according to Learned

Counsel the misconduct of the respondent-husband compelled the appellant-wife to stay separately at her residential address.

9. Furthermore, Learned Counsel for the appellant-wife submitted that the independent witnesses examined on behalf of the respondent-husband did not support his case. Although, the evidence of the parents of the respondent-husband partly supported his case, but a careful analysis of their evidence on record does not construed that the present appellant-wife caused cruelty upon the respondent-husband. So, in summing up, Learned Counsel again submitted that the judgment of the Learned Trial Court suffers from infirmity and perversity and the same needs to be interfered with and set aside.

10. On the other hand, Learned Counsel for the respondent-husband submitted that soon after their marriage, the appellant-wife stayed maximum time at her parental home. According to Learned Counsel, being the wife, it was her responsibility to perform her marital obligations in accordance with the customs, which she failed to discharge.

11. It was further submitted that although the appellant-wife stated that she was subjected to cruelty for dowry, however, in this regard, she could not adduce any evidence before the Learned Trial Court. Furthermore, according to Learned Counsel, even during her cross-examination, the appellant-wife could not discard the evidence adduced by the respondent-husband and his witnesses regarding cruelty caused by her. So, Learned Counsel for the respondent-husband submitted that the Learned Trial Court, after considering the material evidence on record, has rightly allowed the

divorce petition in favour of the respondent-husband and the same does not suffer from any perversity or infirmity.

12. It was further submitted that the reluctance and negligence of the appellant-wife in discharging her obligations towards her husband itself shows her conduct of cruelty to the respondent-husband. So, Learned Counsel again submitted that the Learned Trial Court has rightly delivered the judgment in favour of the respondent-husband and there is no scope to interfere with the same and urged for dismissal of this appeal filed by the appellant-wife with costs.

13. Brief facts of the case as projected by the respondent-husband in the divorce petition as well as the reply of the appellant-wife are as follows:

13.1. The respondent-husband in his petition before the Learned Trial Court stated that his marriage was solemnized with the appellant, Smt. Bijaya Sinha on 03.02.2017 at the residence of the appellant's father at village Kherengjuri under Churaibari police station, North Tripura as per Hindu rites and customs. After the marriage, both of them started living together as husband and wife in the house of the respondent-husband at village Nadiapur under Churaibari police station.

13.2. The respondent-husband is serving in Army as Sep.(MT). So, after 15 days of marriage, he had to leave for his place of posting in Jammu and Kashmir, keeping the appellant-wife in his house at Nadiapur under the care of his parents. After four months, he was transferred to Kolkata. He obtained leave and before joining his new place of posting, he came to his house on 18.06.2017 to spend some days with his wife, i.e. the appellant

herein and his parents. After coming home, he found that all the family members were happy as his married sister was blessed with a baby girl and came to his residence. But the respondent-husband noticed that the appellant-wife was a bit uncomfortable. He repeatedly asked her about the reason of her sadness, but she did not reply anything. On 22.06.2017, he came to Dharmanagar town to purchase a baby cot for his niece, when his sister informed him to return home immediately, stating that the appellant-wife had left the house suddenly. The respondent-husband after returning home enquired the matter, when his mother told him that she had only told the appellant-wife not to remain unhappy as her husband had come home for the first time after marriage, and on hearing this, the appellant-wife became furious and left the house. The respondent-husband stated that his parents treated the appellant-wife as their daughter and used to take care of her in his absence. So, her behavior made them speechless. It was further stated that during the stay of the respondent-husband at home for those days, the appellant-wife always used ugly and derogatory words towards him even in front of her in-laws, and used to quarrel with him without any reason, for which the respondent-husband had to suffer mentally. However, he patiently endured all the cruel acts of the appellant-wife. The respondent-husband stated that he immediately informed the matter to his father-in-law and sought his help, but no response was given. His father-in-law neither came to his house nor told the respondent-husband to go to his house to discuss about the matter and the respondent-husband got mentally hurt and after some days, he had to return to his unit at his new place of posting.

13.3. The respondent-husband again came to his residence on 20.10.2017, taking leave from his authority. After returning home, he along with his father and other relatives decided to visit the appellant's house to bring her back. Accordingly, they went there and brought the appellant-wife back to his house. However, after two days, she complained of stomach ache and was immediately brought to a local doctor who prescribed her medicine. After coming home, the respondent-husband found that his father-in-law and mother-in-law were there in his house and they came to take the appellant-wife to their house. The respondent-husband stated that the appellant's mother publicly insulted him and told that if their daughter stayed at his house, she would not be taken care of. The father-in-law of the respondent-husband without believing the doctor consulted by the respondent-husband, insisted on taking her to the nearby hospital and asked the respondent-husband to accompany them since they were not satisfied with the doctor he privately consulted. Accordingly, she was taken to the hospital and was admitted therein. The respondent-husband further stated that the appellant-wife recovered soon and was fit to be discharged. But, on the request of the parents of the appellant-wife, she was there in the hospital for a day. On the following day, after she was discharged, the father of the appellant-wife took her to their house without the consent of the respondent-husband or his family members. Thus, he became very much mentally upset. The respondent-husband again had to leave for his place of posting. After joining his duty, he could know that the appellant-wife became pregnant. So, after some time, he again came back to his residence and went to the residence of his in-laws, and convinced

her to come back to his house. And accordingly, the appellant-wife came to her matrimonial home. However, her behavior and attitude was not at all conducive to maintain a harmonious matrimonial relationship.

13.4. After some time, the respondent-husband rejoined his duty, leaving the appellant-wife at his home under the care of his parents. The respondent-husband stated that the appellant-wife stayed there for a few days, but on 30.12.2017, she again went to her parental house, which shows that the appellant-wife was reluctant to stay at her matrimonial home and thus, her act amounted to cruelty for which he suffered mentally.

13.5. On 20.03.2018, the appellant-wife delivered one child while she was staying at her parents' house. However, neither the appellant-wife nor her parents informed the respondent-husband about the birth of the child and he came to know about it from another source. Meanwhile, the respondent-husband came to know from his office that the appellant-wife had sent a letter to his unit with some false and unfounded allegations. On receiving the letter, the Commanding Officer of the battalion advised him to bring his wife to his place of posting. Accordingly, the appellant-wife along with her parents came to the place of posting of the respondent-husband, and w.e.f. 06.09.2018, she started staying with the respondent-husband along with their child at Nagadah, Kanchrapara, West Bengal. However, on 15.09.2018, the appellant-wife suddenly started misbehaving with the respondent-husband. She started engaging herself in unnecessary quarrels with him and told him to cut off all ties with his parents and relatives. As the respondent-husband was the only son of his parents, so it was not possible on his part to avoid his parents. It was

further stated that the appellant-wife also obstructed him from talking to his parents over phone, which was not accepted by him. On this issue also, the appellant-wife continued to quarrel with him and in this way they spent about four months.

After four months, the respondent-husband wanted to see his aged parents staying along at village Sanicherra. He wanted the appellant-wife and his son to accompany him. But, the appellant-wife became furious and stated that she would not step into the house of the respondent-husband. She stated that she would go to her father's house and the respondent-husband shall also accompany her to the residence of his in-laws. Thereafter, the appellant-wife again informed the Commanding Officer, who heard both the parties, appreciated the plight of the respondent-husband and granted ten days' leave. On 16.01.2019, the respondent-husband was compelled to take her to the house of her parents. He also narrated everything to his father-in-law, but there was no reaction. At the time of leaving the house of his in-laws, he wanted to give some money to the appellant-wife but she refused to take it. He stated that his mother-in-law suddenly started shouting at him and insulted and abused him. The respondent-husband was shocked at the behavior of his mother-in-law. After returning to his house, he tried to talk to his wife, but she did not attend his call. She even changed her mobile number, thereby cutting off communication with the respondent-husband.

13.6. It was further submitted that the appellant-wife has always tried to lower the reputation of the respondent-husband before his family members, his in-laws, his official authority and other public by abusing him and bringing

unfounded and false allegations against him. The appellant-wife also filed a domestic violence case against him bearing case No.80/2019 before the Court of Learned Chief Judicial Magistrate, North Tripura, Dharmanagar narrating some false and unfounded allegations which affected his mind and health. The respondent-husband apprehended that his life will be completely ruined if he continued his relation with the appellant-wife any further. Hence, he filed the divorce petition before the Learned Trial Court.

13.7. Upon receipt of the notice, the appellant-wife appeared and contested the case by filing written statement. The appellant-wife admitted that she is the legally married wife of the respondent-husband and that their marriage was solemnized on 03.02.2017. She further stated that after six months of marriage, the respondent-husband and his family members subjected her to mental and physical abuse relating to dowry demands, which forced her to return to her parental home. In this regard, she filed a complaint before Churaibari police station on 06.11.2019, upon which an enquiry was held by the CDPO (Protection Officer) and a case was registered. The respondent-husband appeared and contested the case before the Court of Learned CJM by filing written objection.

13.8. The appellant-wife also approached to the Commandant, Eastern Command Authority seeking maintenance for herself and for her minor child, and after hearing both the parties, the Army authority ordered for maintenance under Section 91(i) of the Army Act, read with Rule 193 as amended and sanctioned a deduction of 27.5% from the salary of the respondent-husband

(22% for his wife and 5.5% for the son) w.e.f. 16.08.2018 for a period of three years, which could be extended up to five years.

13.9. It was further stated that in the domestic violence case, the Learned Court below directed the respondent-husband to pay Rs.11,000/- per month as maintenance under Section 20 of the PWDV Act, 2005, starting from 01.10.2021. The said amount was directed is to be deducted from his salary and deposited into the bank account of the appellant-wife. However, in spite of the order of the Court, the respondent-husband did not comply with the same.

13.10. Thereafter, on 09.11.2021, the appellant-wife attempted to return back to her matrimonial home with her minor son but she was assaulted and turned away by the respondent-husband and his family members. The appellant-wife alleged that the respondent-husband was accusing her in retaliation and was trying to harass her. She further stated that she had never left her matrimonial home voluntarily and she is still willing to resume her conjugal life. The appellant-wife further alleged that the respondent-husband is in an extramarital affair with a woman, namely Diparna Sinha of South Hurua, Dharmanagar, and has been pressuring her to give divorce.

13.11. On the basis of the pleadings of the parties, Learned Trial Court framed three points for determination. Before the Learned Trial Court, the respondent-husband adduced five numbers of witnesses, including himself, and the present appellant-wife adduced three witnesses, including herself. Upon completion of the trial, the Learned Trial Court delivered the judgment granting decree of divorce in favour of the respondent-husband.

14. We have perused the pleadings of the parties and also the evidences on record. We have also perused the judgment delivered by the Learned Court below.

15. Now, let us examine the material evidence on record of the respective parties before the Learned Trial Court.

16. As already stated, the respondent-husband had adduced five numbers of witnesses, including himself. The respondent-husband, in his examination-in-chief in affidavit as PW-1, tried to support his version made in the divorce petition. In his cross-examination, the respondent-husband stated that his marriage with the appellant was solemnized on 03.02.2017 and a child named Amrit Sinha was born out of their wedlock. He admitted that one case under Domestic Violence Act had been filed against him by his wife and the Court directed him to keep his wife in the matrimonial home. He further stated that he tried to bring back the appellant-wife to his house, but she declined and then he was not interested to live with her. He further stated that the appellant-wife also filed another case seeking residential order, to which he submitted a written objection. He denied having any relationship with any woman named Diparna Sinha or that he caused any torture upon the appellant-wife.

16.1. PW-2, Shri Ramgopal Sinha is the father of the respondent-husband. In his examination-in-chief, he tried to support the case of his son, i.e. the respondent herein. During cross-examination, he stated that his son is still in service and posted at Pathankot, Jammu & Kashmir. He stated that he could not say as to whether any case has been filed by the appellant-wife against his son, his wife Smt. Lilabati Sinha, or himself on the ground of

torture, with prayer for residential right or maintenance. PW-2 admitted that the appellant-wife filed execution petition to enter the matrimonial house and a domestic violence case in which the respondent-husband was directed to provide maintenance of Rs.11,000/- per month to the appellant-wife. He further admitted that on the prayer of the appellant-wife, the department of the respondent-husband also arranged for maintenance to the appellant, advising to get the said order fixed from the Court. He admitted the fact of having a grandson but could not say the age or his schooling details. He denied the fact of visiting of police from Churaibari police station to his residence and admitted that the appellant-wife is unemployed.

16.2. PW-3, Smt. Lilabati Sinha, i.e. the mother of the respondent-wife also tried to support the version of her son in her examination-in-chief. During cross-examination, she stated that a case was filed by the appellant-wife against her son. She admitted that she herself and her husband faced allegations of torture and demands for residential rights and maintenance from the appellant-wife. She also admitted that an execution case for allowing the appellant-wife to enter matrimonial home was filed by the appellant-wife. She further admitted that in domestic violence case, her son was directed to provide maintenance of Rs.11,000/- per month to the appellant-wife. PW-3 also admitted that on the prayer of the appellant-wife, the department arranged maintenance of Rs.10,000/- from her son, advising to get the said order fixed from the Court. She further admitted the fact of having a grandson but could not say his name, age, or school where he is studying. She also admitted that police from Churaibari police station visited their house on allegation of the

appellant-wife. She denied the allegation of appellant-wife against them and also admitted that the appellant-wife is unemployed.

16.3. PW-4, Shri Purna Kumar Singha, the neighbour of the respondent-husband in his examination-in-chief tried to support the version of the respondent-husband. During cross-examination, he stated that he is unable to say the exact date, month of marriage of the parties. He could not recall the dates when the respondent-husband used to visit his house. He further stated that he did not know the exact cause of matrimonial dispute between the respondent-husband and the appellant-wife. He further stated that he was aware that a case was filed against the respondent-husband and the Court directed maintenance of Rs.11,000/- per month to the appellant-wife.

16.4. PW-5, Shri Gopal Mishra in his examination-in-chief in affidavit also tried to support his version. During cross-examination, he stated that he is unaware of the actual reason of dispute between the respondent and the appellant, though he knew that a maintenance case was filed by the appellant-wife against the respondent-husband. PW-5 stated that he did not know the Court's order or the amount of maintenance.

17. Now, let us discuss the evidence on record of the appellant-wife. The appellant-wife as DW-1 in her examination-in-chief tried to support her version made in the written statement. During cross-examination, she stated that after marriage she started to reside in her husband's house while her husband used to stay in his place of posting. She stayed with the respondent-husband at his workplace for four months. She gave birth to her child at Silchar South City hospital. She further stated that she filed two cases against

her husband and his parents and after the death of her father-in-law, she again started living in her husband's house. She also stated that a criminal case against her and her brother was filed by her mother-in-law alleging assault which is pending before the Court of J.M. 1st Class, Court No.4, Dharmanagar, North Tripura. She stated that presently they are living separately within the same house with a partition. She further stated that her mother-in-law is aged and ill.

17.1. The appellant-wife further stated that she and her husband were living separately since 2019. She also stated that she did not file any criminal case before filing domestic violence case. Further, she admitted in her cross-examination that she had not mentioned the facts stated in para Nos.7, 8, 9 and 10 of her examination-in-chief in the written statement filed by her as because those are subsequent developed story. Nothing more came out relevant from her cross-examination.

17.2. DW-2, Shri Ranjit Sinha is the father of the appellant-wife. He in his examination-in-chief tried to support the version of his daughter. During cross-examination, he stated that his daughter stayed at her matrimonial home for a period of seven to eight months after marriage. He further stated that the mother-in-law of the appellant-wife filed a case against his daughter and son alleging assault. He further admitted that a domestic violence case was filed by his daughter in which Rs.11,000/- was granted as maintenance. He further admitted that when his daughter gave birth to a son, at that time she was staying at his residence and for four years her daughter and her husband are staying separately. Again, he admitted that his daughter filed a case in the

department of her husband and maintenance was granted initially by the department in her favour. DW-2 further deposed that the relation between his daughter and her husband has been broken since four to five years.

17.3. DW-3, Shri Bir Kumar Singha in his examination-in-chief also tried to support the case of the appellant-wife. During cross-examination, he stated that he knew Arun Kanti Sinha and live about 2KM from his house. He further deposed that the mother of Arun Kanti Sinha filed a case against the appellant-wife and her brother on the allegation that they assaulted her. He could not say as to whether any settlement took place or not. He further stated that he heard about the fact of torture and cruelty from Bijaya Sinha but he could not say as to whether any criminal case was earlier filed by Bijaya Sinha or not. He further stated that since the birth of her child, the appellant-wife and her husband were staying separately. These are the synopsis of the evidence on record of the contesting parties.

18. From the evidence on record it appears that the independent witnesses examined on behalf of the respondent-husband did not, in any manner, support his case regarding causing of cruelty upon him. The respondent-husband and his parents although tried to establish that the appellant-wife caused cruelty upon the respondent-husband, but on careful analysis of the evidence on record, it appears that the act of the appellant-wife could not be treated as cruelty.

19. Admittedly, the respondent-husband did not dispute his marriage with the appellant-wife, nor did he dispute the fact that a son was born out of their wedlock. It is the admitted position that the respondent-husband is

serving in the Indian Army and being a member of a disciplined force, in the course of his service, he is required to remain posted outside the State and away from his hometown for considerable periods. So, obviously in his absence, the appellant-wife had to stay by herself, either at her matrimonial home or at her parental home, which are situated within the jurisdiction of the same police station. Both before the birth of their son and after the birth of their son, the appellant-wife had to manage the matrimonial and domestic responsibilities in the absence of the respondent-husband.

20. The respondent-husband, in support of his contention, nowhere stated that he sought any redress before the local Panchayat for resolving his matrimonial discord. He also did not file any case seeking restitution of conjugal rights (RCR) against the appellant-wife before any Court. However, it is evident from the materials on record that some maladjustment or matrimonial discord had arisen between the parties, which may be aggravated by the prolonged absence of the respondent-husband from his home due to the nature of his service.

It is often observed that in the absence of the husband, it may become difficult for a woman to properly take care of her children while residing at her matrimonial home. Furthermore, the allegation of the respondent-husband that after the marriage the appellant-wife frequently stayed at her parents' house cannot be accepted as a true contention as because for staying at her matrimonial home, the appellant-wife herself approached to the Court seeking an appropriate residential order, and accordingly, Learned CJM, Dharmanagar, North Tripura, passed domestic order in her favor. The

said order has also not been challenged by the respondent-husband to the higher forum. Furthermore, no independent witnesses or neighbour of the respondent-husband came forward to support his case.

21. In a case of this nature, burden lies upon the petitioner seeking divorce to establish the grounds to get decree of divorce. From the evidence on record, in our considered view, the respondent-husband has failed to establish the grounds of cruelty.

22. Learned Trial Court, at the time of delivery of the judgment, took into consideration certain circumstances as discussed above. However, in the opinion of this Court, those circumstances cannot be considered as a valid ground for granting decree of divorce in favour of the respondent-husband. More so, the appellant-wife admittedly was unemployed. So, when the respondent-husband did not come forward to provide maintenance for her and for the care of her son, she had rightly approached to the authority of the respondent-husband for maintenance.

23. Furthermore, the evidence of parents of the respondent-husband is also not convincing and does not materially substantiate the allegations of cruelty.

24. Although, Learned counsel for the respondent-husband, in course of hearing, tried to draw the attention of this Court to the fact that no concrete evidence regarding the alleged demand of dowry could be produced by the appellant-wife and that the appellant-wife had not instituted any criminal case alleging dowry harassment. However, the absence of any criminal case

alleging dowry harassment, cannot by itself lead to the conclusion that the allegation made by the appellant-wife is wholly unfounded.

25. The respondent-husband, by his evidence on record, has also failed to satisfy the Court that the appellant-wife was reluctant to stay with him. Rather, from the evidence it appears that the appellant-wife herself approached to the Court seeking residential order, meaning thereby, she was very much interested to stay at her matrimonial home.

26. The respondent-husband, before the Learned Trial Court, could not place any convincing materials to establish that after the birth of their son, the appellant-wife caused cruelty upon him. Furthermore, the submission of Learned Counsel for the respondent-husband that the appellant-wife was staying separately cannot, by itself, be treated as a valid ground for cruelty. In the normal course of matrimonial life also, a woman having a minor son may naturally prefer to visit and stay at her parents' house, particularly in the absence of her husband, for emotional and mental support. So, this cannot be considered to be an unnatural or unreasonable behavior on the part of the appellant-wife.

27. As already stated, the order of domestic violence proceeding has attained finality as the same has not been challenged by the respondent-husband before any higher forum. More importantly, in course of his cross examination, the respondent-husband specifically stated that he is not willing to stay with his wife, i.e., the appellant herein.

28. Learned Trial Court, on the basis of certain assumptions and conjectures, came to the conclusion that the act of the appellant-wife

amounted to cruelty. Even the filing of the domestic violence proceeding by the appellant-wife was treated by the Learned Trial Court as an act of cruelty. In our considered view, such an approach is not sustainable on the evidence and circumstances available on record.

29. At the time of hearing, Learned Counsel for the appellant-wife relied upon a judgment of the Hon'ble Supreme Court in **Satish Chander Ahuja v. Sneha Ahuja**¹ wherein in para No.163, Hon'ble the Apex Court has observed as under:

“163. By a written statement, the defendant is sure to resist the suit on the ground that she had already filed an application under Section 12 where plaintiff Dr Prem Kant Ahuja (mother-in-law of the defendant) is one of the respondents and she may also place reliance on the interim order dated 26-11-2016 restraining the respondents which included Dr Prem Kant Ahuja from dispossessing the applicant except without obtaining an order of the competent court. The order dated 26-11-2016 which was passed by the Magistrate under the DV Act, 2005, shall be relevant evidence and fully admissible in the civil suit, but the above order shall only be one of the evidence in the suit but shall neither preclude the civil court to determine the issues raised in the suit or to grant the relief claimed by the plaintiff Dr Prem Kant Ahuja. The civil court in such suit can consider the issues and may grant relief if the plaintiff is able to prove her case. The order passed under the DV Act whether interim or final shall be relevant and has to be given weight as one of evidence in the civil suit but the evidentiary value of such evidence is limited. The findings arrived therein by the Magistrate are although not binding on the civil court but the order having passed under the 2005 Act, which is a special Act has to be given its due weight.”

From the aforesaid observation, it appears that the order passed in a domestic violence proceeding, whether interim or final shall be relevant and has to be given weight as one of the evidence in the civil suit, but the evidentiary value of such evidence is limited. It was further stated that the

¹ (2021) 1 SCC 414: AIR 2020 SC 5397

findings arrived therein by the Magistrate are although not binding on the civil court but the order passed under the 2005 Act, which is a special Act has to be given its due weightage.

30. On perusal of the aforesaid judgment of the Hon'ble Supreme Court, it appears to us that the Learned Trial Court, without considering the said fact, took an adverse inference that the said order passed in the domestic violence case amounted to cruelty upon the respondent-husband by the appellant-wife. In our considered opinion, the observation of the Learned Trial Court is totally misconceived and perverse.

Furthermore, the other points taken into consideration by the Learned Trial Court appear to be based on some imaginary facts and have no material relevance for determination of the alleged cruelty in question.

31. In this regard, Hon'ble Supreme Court of India in **Dr. N.G. Dastane v. Mrs. S. Dastane**², in para No.23 observed that in a case of this nature the burden lies on the petitioner to establish his/her case for, ordinarily, the burden lies on the party which affirms a fact, not on the party which denies it. The petitioner must therefore prove that the respondent has treated him with cruelty within the meaning of Section 10(1)(b) of the Act.

In another judgment in **V. Bhagat v. D. Bhagat**³, Hon'ble the Supreme Court in para No.16 and 17 observed as under:

“16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a

² (1975) 2 SCC 326

³ (1994) 1 SCC 337

nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

17. At this stage, we may refer to a few decisions of this Court rendered under Section 13(1)(i-a). In *Shobha Rani v. Madhukar Reddi* [(1988) 1 SCC 105 : 1988 SCC (Cri) 60] , Justice K. Jagannatha Shetty, speaking for the Division Bench, held: (SCC pp. 108-09, paras 4 and 5)

“Section 13(1)(i-a) uses the words ‘treated the petitioner with cruelty’. The word ‘cruelty’ has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations,

the court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in Sheldon v. Sheldon [(1966) 2 All ER 257, 259 : (1966) 2 WLR 993] 'the categories of cruelty are not closed'. Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.'"

Further, in another judgment in **Gurbux Singh vs. Harminder Kaur**⁴, in para No.14 observed thus:

"14. Cruelty has not been defined under the Act. It is quite possible that a particular conduct may amount to cruelty in one case but the same conduct necessarily may not amount to cruelty due to change of various factors, in different set of circumstances. Therefore, it is essential for the appellant, who claims relief, to prove that a particular/part of conduct or behaviour resulted in cruelty to him. No prior assumptions can be made in such matters. Meaning thereby that it cannot be assumed that a particular conduct will, under all circumstances, amount to cruelty, vis-à-vis the other party. The aggrieved party has to make a specific case that the conduct of which exception is taken amounts to cruelty."

32. We have perused the aforesaid judgments. Cruelty has not been defined in the Act. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusation and allegation,

⁴ (2010) 14 SCC 301

regard must also be had to the context in which they were made and furthermore, the aggrieved party has to make a specific case that the conduct of which exception is taken amounts to cruelty.

Here, in this case at hand, it appears that the respondent-husband as petitioner has failed to fulfill all the criteria to get the decree of divorce but the Learned Trial Court without properly appreciating the evidence on record delivered the judgment in favour of the respondent-husband, which in our considered view, needs to be interfered with.

33. So, having regard to the facts and circumstances of this case and after hearing both the sides, we are of the considered opinion that the judgment delivered by the Learned Trial Court suffers from perversity and the same needs to be interfered with and set aside.

34. In the result, the appeal preferred by the appellant-wife is hereby allowed.

The judgment dt. 29.08.2025 and consequential decree dt. 01.09.2025 delivered by Learned Judge, Family Court, Dharmanagar, North Tripura stands set aside and quashed. Parties are to bear their own costs.

Send down the record to the Learned Trial Court along with a copy of this judgment and order.

All pending application(s) stands disposed of.

(BISWAJIT PALIT, J)

(M.S. RAMACHANDRA RAO, CJ)

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