

**HIGH COURT OF TRIPURA
AGARTALA
F.A.13 of 2022**

Smt. Remuna Sinha

.....Appellant(s)

Versus

Badal Sinha

.....Respondent(s)

For Appellant(s)	:	Mr. P. Roy Barman, Sr. Adv. Mr. S. Bhattacharjee, Adv.
For Respondent(s)	:	Mr. T.D. Majumder, Sr. Adv.
Date of Hearing and Judgment & Order	:	28.02.2023

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH**

Judgment & Order(Oral)

Chief Justice, Acting

Heard Mr. P. Roy Barman, learned senior counsel appearing for the appellant as well as Mr. T.D. Majumder, learned senior counsel appearing for the respondents.

2. This is an appeal under Section 19(1) of the Family Court's Act against the order dated 21.11.2022 passed by the learned Family Court, Kailashahar, Unakoti, Tripura in Case No.T.S.(Divorce)85 of 2019.

3. The marriage between the appellant the respondent took place on 25.04.2018 as per Hindu Rites and Customs. The respondent filed an application under Section 13(1)(i)(a) of the Hindu Marriage Act before the Family Judge, Kailashahar, Unakoti seeking decree of divorce dissolving the marriage between the appellant and the respondent and the said application

was registered as T.S.(Divorce)85 of 2019 in the file of learned Judge, Family Court, Kailashahar, Unakoti. To take advantage of these matrimonial wrongs, the respondent by causing suppression and misrepresentation of facts, made wide and sweeping allegation against the appellant herein to obtain decree of divorce from the learned Court. The sum and substance of the allegation made by the respondent against the appellant herein is that the respondent stayed only for eleven days in the house of the appellant and the appellant misbehaved with the respondent.

4. Mr. P. Roy Barman, learned senior counsel appearing for the appellant has submitted that the appellant filed an application on 09.11.2021 and the said application is supported by affidavit. In the said application, the appellant has stated that potency test of the respondent before passing any order or judgment in the proceeding is called for. The appellant in her application on oath stated that the respondent is an impotent person. On 29.06.2022 the said application was allowed and the said court directed the respondent to undergo potency test.

5. The respondent submitted before the learned Family Court that Medical Officer, Unakoti District, Kailashahar may be directed to conduct the medical test upon him as has been ordered by the learned Court. The learned counsel of the respondent submitted before the learned Court that medical officers of 2/3 institutions have been approached for conducting the test but none of the Medical Officer is ready to conduct the test. In view of that, the learned Judge, Family Court vide order dated 29.09.2022 directed the Medical Superintendent, Unakoti District Hospital to arrange the potency test of the

respondent. It appears that after the potency test of the respondent was conducted by the Medical Officer, Unakoti District Hospital, Bhagabannagar, Tripura the test opinion has been given to the effect that there is nothing to suggest that the male subject, Mr. Badal Sinha as examined is not capable for performing sexual intercourse.

6. The petitioner submitted the written objection against the medical report given by the Medical Officer, Unakoti District Hospital. In the said objection submitted before the learned Judge, Family Court, the petitioner stated that the respondent has committed cruelty on her because since the day of marriage, he shared bed with his mother. The petitioner has also stated that there was detailed discussion about the problem of the respondent with Dr. Pranoy Gandhi, MBBS, MD, Sexologist, Maharashtra over telephone and he gave medical advice. The petitioner has further stated the Forensic Medical Expert is not only available at AGMC & GBP Hospital, Agartala and the petitioner has also known from the Medical Superintendent, Unakoti Hospital on 07.11.2022 that potency test is conducted by the Forensic Medical Expert. Stating so, the petitioner submitted that potency test of the respondent should be conducted by the State Medical Board, Agartala. Stating so, the petitioner submitted an objection against the medical opinion given by the Medical Officer, Unakoti District Hospital, Bhagabannagar and the petitioner submitted that the respondent may be directed to undergo potency test to be conducted by the State Medical Board of AGMC & GBP Hospital.

7. The learned Family Court vide order dated 21.11.2022 declined to accept the objection raised by the petitioner. In the impugned order, the

learned trial Court held that the petitioner in her application dated 16.03.2022 did not mention that potency test ought to be conducted by the State Medical Board and the learned Court further held in the order to unearth the dispute in between the parties for conducting potency test was allowed and it was ordered that potency test may be done in any Government Hospital of Tripura. In the impugned order, the learned Court further held that it is not mandatory that potency test shall be conducted by the Forensic Expert only and it is not that the registered Medical Officer of a District Hospital is not capable or authorized to conduct such potency test. The petitioner made request for information to the Medical Superintendent, Unakoti District Hospital, Kailashahar seeking following information :

"Name of Doctor or M.O. having degree of M.D. in Forensic Medicine and Toxicology in Unakoti District Hospital, Kailashahar with other particulars."

8. In response to that the Medical Superintendent, Unakoti District Hospital, Kailashahar vide letter dated 08.12.2022 informed the petitioner that there is no Doctor or Medical Officer at Unakoti District Hospital having MD Degree in Forensic and Toxicology.

9. The petitioner made further request in respect to the following information by submitted up RTI application on 25.11.2022. In response to such request of the petitioner the Medical Superintendent, Unakoti District Hospital, Kailashahar, vide letter dated 02.12.2022 furnished the information to the petitioner. In the reply, the Medical Superintendent, Unakoti District Hospital, Kailashahar stated that facilities are available at Unakoti District Hospital for potency test and Medical Superintendent further stated that MD

Forensic and Toxicology are competent to conduct potency test and methodology comprises of proper history taking and thorough medical examination.

10. Mr. T.D. Majumder, learned senior counsel appearing for the respondent has submitted that the present appeal is not maintainable under Section 19(1) of the Family Court's Act. He has further submitted that the respondent has filed the divorce application and if the respondent husband is impotent why the appellant wife wants to live with the respondent husband. The court below has directed potency test to be conducted in the Hospital and the Hospital has done the test and report goes in favour of the respondent husband. Now the appellant has approached that the test has to be done again by the Medical Board which is totally unsustainable in law.

11. Having heard both sides, we are of the considered opinion that already the potency test has been conducted and the report has been submitted. In view of the same, this court feels that again going for the test is nothing else but harassment upon the respondent-husband.

In view of the same, the present appeal is dismissed.

Pending application/s, if any, also stands dismissed.

JUDGE

CHIEF JUSTICE (ACTING)