

Tripura High Court

Smt. Saheli Dey (Kar Bhowmik) vs Sri Shibaji Kar Bhowmik on 4 January, 2022

Page 1 of 8

HIGH COURT OF TRIPURA
AGARTALA

CRP NO.92 OF 2021

1. Smt. Saheli Dey (Kar Bhowmik),
W/o- Sri Shibaji Kar Bhowmik, R/o - Dhaleshwar Road No.4,
P.S. East Agartala, District- West Tripura, Pin-
799007(Temporarily Residing in the rented House of C/o- Smt.
Supti Sen Chowdhury, W/o- Sri Chinmoy Biswas, R/o Banerjee
Para, Krishnanagar, P.S.- West Agartala, P.O.- Agartala, District-
West Tripura, Pin-799001)

2. Sri Ayush Kar Bhowmik,
S/o Sri Shibaji Kar Bhowmik, R/o-Dhaleshwar Road No.4, P.S.
East Agartala, District- West Tripura, Pin-799007 (Temporarily
Residing in the rented house of C/o- Smt. Supti Sen
Chowdhury, W/o Sri Chinmoy Biswas, R/o- Banerjee Para,
Krishnanagar, P.S. West Agartala, P.O. Agartala, District-West
Tripura, Pin-799001). [D.O.B- 02.02.2006, Aged 15 Year being
minor represented by aggrieved petitioner No.1, Natural
Guardian Mother.

3. Miss Ahana Kar Bhowmik,
D/o Sri Shibaji Kar Bhowmik, R/o Dhaleshwar Road No.4, P.S.
East Agartala, District-West Tripura, Pin-799007(Temporarily
Residing in the rented house of C/o Smt. Supti Sen Chowdhury,
W/o Sti Chinmoy Biswas, R/o Banerjee Para, Krishnanagar,
P.S. - West Agartala , P.O. Agartala, District-West Tripura, Pin-
799001). [D.O.B. -25.12.2012, Aged -9 years being minor
represented by aggrieved Petitioner NO.1, Natural Guardian
Mother]

----Petitioners

Versus

1. Sri Shibaji Kar Bhowmik,
S/o, Sri Manish Kar Bhowmik, R/o- Dhaleshwar Road No.4,
P.O. Dhaleshwar, P.S. East Agartala, District-West Tripura,
Pin-799007.

2. Smt. Puspa Kar Bhowmik,
W/o- Sri Manish Kar Bhowmik, R/o Dhaleshwar Road No.4,

Page 2 of 8

P.O. Dhaleshwar, P.S. East Agartala, District-West Tripura, Pin-
799007.

---- Respondents.

For the Petitioner(s) : Mr. A. Bhowmik, Advocate. For the Respondent(s) : Mr. Somik Deb, Sr. Advocate.

Mr. K. Roy, Advocate.

Date of hearing and delivery of
Judgment & Order : 04/01/2022.

Whether fit for reporting : YES.

HON'BLE MR. JUSTICE T. AMARNATH GOUD
J U D G M E N T & O R D E R (ORAL)

The facts, briefly stated, are that, the petitioners approached this Hon'ble Court under Article 227 of the Constitution of India for invoking the power of superintendence on this Hon'ble High Court to set aside the order dated 16.03.2021 passed by the learned Judicial Magistrate 1st Class (Court No.7) Agartala, West Tripura in Misc Case No.2058/2020 arising out of C.R. 128/2020. The petitioners also challenged the order dated 15.09.2021 passed in Criminal Appeal No.11 of 2021 by the learned Addl. Sessions Judge, West Tripura Agartala(Court No.5), whereby the appeal filed by the petitioners was also rejected. The petitioners further seeks a direction upon the respondents to grant the petitioners residential accommodation in the residence of respondent No.1. Under compelling circumstances, petitioner No.1 took a house on rent and she is living there with petitioners No.2 & 3(minor son and daughter). As such, the petitioner No.1 is burdened with the payment of rent from the rented house. The petitioners were living in the rented house without proper furniture, utensils, etc. Situated thus, the petitioners filed a case under Domestic Violence Act, 2005 which was registered as C.R. 128/2020 seeking various reliefs. Respondent No.1 also filed an objection in Misc 2058 of 2020 praying for dismissal of the interim prayer made by the petitioners. Hence, this instant revision petition.

In the instant CRP, the petitioner-wife has prayed for the following reliefs:-

" i. Admit this petition ii. Issue notice upon the respondents; iii. Call for the relevant records;

iv. After hearing the parties be pleased to set aside the Judgment and Order dated 16.03.2021 passed by the learned Judicial Magistrate 1st Class, Agartala, West Tripura (Court No.7) in Case No. Misc. 2058 of 2020 and the Order dated 15.09.2021 passed in Crl. Appeal No.11/2021 passed by the Additional Sessions Judge, Agartala, West Tripura (Court No.5) and further be pleased to direct the respondent No.1 to allow the petitioners to reside in the shared household of the respondent No.1 and

further not to obstruct the petitioners from excess to common passage, entrance and further not to deprive the petitioners of water supply, electricity, gas connection etc. After hearing the parties direct the respondent No.1 to pay additional maintenance of Rs.20,000/- per month a part from the maintenance of Rs.35,000/- per month for additional expenses incurred by the petitioner.

AND In the interim, be pleased to stay further proceedings of Case No.C.R. 128 of 2020 pending in the Court of Ld. Judicial Magistrate, 1st Class, Agartala, West Tripura (Court No.7) till disposal of the present petition. "

Heard Mr. A. Bhowmik, learned counsel appearing for the petitioners as well as Mr. S. Deb, learned Sr. counsel and Mr. K. Roy, learned counsel appearing for the respondents.

When the case is called, both the learned counsels are present along with their respective clients, namely, Smt. Saheli Dey (Kar Bhowmik), wife-petitioner No.1 and the Sri Shibaji Kar Bhowmik, husband-respondent No.1. The children are also present. In the open Court, this Court discussed with the petitioner-wife and the respondent- husband with regard to the custody of their children in the presence of their respective counsels. This Court suggested to share the custody of the children not on the visitation right of the parent but on the visitation right of the children with the parent in the larger interest of the children since the children cannot be deprived of the love and affection of both the parent. It is needless to say that parents cannot be a guest in the life of the children. Allowing a parent to visit the children occasionally and periodically for few minutes in Court, Police station, Malls, Temple, and the house of the parent in whose custody the children are may not be a just decision towards the children. The children must get absolute freedom with each parent, to know them and understand them better instead of being tutored by one parent against another. In view of the same, this Court feels that children should be given visitation rights to and stay with the parent but not the parent visiting the child.

The following conditions are laid down with the consent of both the parties which conditions are part and parcel of the detailed order. The parents are referred to their relations as father, mother and children:-

1) Mother of the children (minor son and daughter) shall have custody from Monday to Thursday of the week and the father will have custody of the children from Friday to Sunday with overnight stay wherever the child is with the respective parents.

2) As agreed earlier, the father shall continue to pay the maintenance amount of Rs.35,000/-. The father shall bear the expenditure of the education of the children and he shall also provide suitable accommodation of 2(two) bedroom hall, kitchen and will pay the rent in addition to the Rs.35,000/- maintenance which he is already paying.

3) During vacation, the children shall stay with the respective party equally, whether it is the first half of the vacation or the second half of the vacation. The option is given to the mother to choose the first half or the second half.

4) During vacation if the children are willing to travel either with the mother or with the father or both parents accompanying the children anywhere in India, the father shall take steps for the travel, food and accommodation and shall bear the expenses.

5) On the occasion of any festival/Birthday of the children, they shall stay for one half of the day with the mother and the second half of the day with the father. In the event, if both parents intend to jointly spend the whole day with the children, it is open for them to do so.

6) During Durga Puja to Lakshami Puja festive days, in the vacation period, the children shall stay equal days with the father and the mother. The choice is given to the mother for choosing the first half or the second half of the vacation.

7) (a) In the event if any of the parent are not willing or tutoring the children not to go with the other parent, this Court has given liberty to the deprived parent to approach the concerned SHO with this copy of the order and seek for custody of the children as per the condition indicated above.

(b) On receipt of such information from the parents, the concerned SHO shall immediately make arrangements of handing over the custody of the children to the other parents.

(c) The concerned SHO shall implement this order immediately as and when it is requested by the parent.

8) In the event of any unforeseen expenditure arise in respect of the children, the father shall look into the same and fulfill it.

9) Parents are free to talk to the child over phone/video calling as and when required.

10) Both the parties undertakes to withdraw and close all the cases pending before different Courts which has been filed against each other including ST(T-1) of 119 of 21 filed under Section 498A pending in Court No.ADJ-5

11) In view of the above visitation conditions and maintenance, both parties are at liberty to place this matter before the appropriate Court or forum in respect of any pending matter to get it closed.

With the mutual consent of both the petitioner-wife and the respondent-husband in presence of their respective counsels, an attested copy of the aforementioned conditions is enclosed herewith in the form of an annexure.

It is needless to observe that both parties shall abide by the terms agreed.

With the above observations and directions, the instant revision petition stands disposed of. Encl:- Annexure.

JUDGE suhanjit