

**(2002) 08 GAU CK 0029**

**Gauhati High Court (Itanagar Bench)**

**Case No:** CRP No. 4 (AP) of 2002

Anom Apang

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

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**Date of Decision:** Aug. 13, 2002

**Acts Referred:**

- Assam Frontier (Administration of Justice) Act, 1945 - Section 45, 48, 49

**Citation:** AIR 2003 Guw 1 : (2002) 3 GLR 576 : (2003) 1 GLT 98

**Hon'ble Judges:** I.A. Ansari, J

**Bench:** Single Bench

**Advocate:** T. Son, for the Appellant; T. Michi, for the Respondent

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### **Judgement**

I.A. Ansari, J.

This revision application made under Regulation 50 of the Assam Frontier (Administration of Justice) Regulation, 1945, (hereinafter referred to as "the said Regulation") read with Section 151 of the CPC has arisen out of the order, dated 2.5.2002, passed by the learned Deputy Commissioner, Papum Pare District, Yupia, in Misc.(Divorce) No. 02/2001, whereby the learned Court below held to the effect that the application made by the O.P. No. 3 of this revision petition under Sections 12 and 13 of the Hindu Marriage Act, 1955, seeking a decree of nullity or a decree of dissolution of her marriage with the revision petitioner is maintainable and the divorce proceedings would continue.

2. Briefly stated, facts giving rise to this revision are as follows : -

(i) The O.P. No. 3, in this revision, namely, Smt. Anom Apang (who is hereinafter referred to as "the applicant-O.P.") filed an application under Sections 12 read with Section 13 of Hindu Marriage Act, 1955 (hereinafter referred to as "the said Act") seeking a decree of nullity or a decree of dissolution of her marriage with the revision petitioner (who is hereinafter referred to as "the respondent-petitioner"), her case being, in brief, that she is Hindu by religion belonging to Manipuri tribe,

she was forced to marry the respondent - petitioner in the year 1991 and out of their wed-lock, 3 (three) issues are born, she is subjected to both physical as well as mental cruelty by the revision-petitioner, who is a habitual drunkard.

(ii) The revision -petitioner filed his written statement and contested the proceeding, his case being, in short, that the applicant- OP, having married him in accordance with his tribal customs and rites and having adopted Donyi-Polo religion, has legally become a member of the tribal community of Arunachal Pradesh and hence, the said Act, which governs marriages solemnized between Hindus, is not applicable to the case of the parties and the application seeking divorce/nullity or marriage is not maintainable, the revision-petitioner is not a habitual drunkard and he never subjected the applicant-O.P. to mental or physical cruelty.

(iii) in course of time and on insistence of the revision-petitioner, learned Court below heard the learned counsel for the parties on the question of maintainability of the proceedings and concluded, vide its order, dated 2.5.2002, aforementioned that the applicant-O.P. was a Hindu at the time of her marriage with the revision-petitioner and that the proceedings would progress as per as the provisions of the said Act.

3. I have carefully perused the material's on record. I have heard Mr. T. Son, learned counsel for the applicant, and Mr. T. Michi, learned counsel, appearing on behalf of applicant-O.P.

4. It is submitted, on behalf of the revision -Petitioner, that there was overwhelming materials on record to show that the applicant-O.P. had undergone marriage with the revision-petitioner in accordance with tribal customs and rites of the revision-petitioner, she had adopted her husband's religion, namely, Donyi-Polo religion, she had obtained appointment as a teacher on the ground that she was a member of the local tribal community. In the face of all such materials, contends Mr. T. Son, it was incorrect on the part of the learned Court below to hold that the applicant-O.P. remained Hindu by faith and her marriage with the revision-petitioner would be governed by the provisions of the said Act. In support of this contention, Mr. T. Son has referred to the case of [N.E. Horo Vs. Smt. Jahanara Jaipal Singh](#), wherein the Apex Court has, notice, laid down to the effect that even if a female is not a member of a tribe by virtue of birth, she, having been married to a tribal after due observance of all formalities and after obtaining the approval of the elders of the tribe, would belong to the tribal community to which her husband belongs on the analogy of the wife taking husband's domicile. Mr. T. Son has, therefore, submitted that the impugned order be set aside and the proceeding, in question, be quashed.

5. Controverting the above submissions made on behalf of the revision-petitioner, Mr. Michi has submitted that this revision is not maintainable inasmuch as Regulation 18 of the said Regulations provides for appeal to the High Court against

every decision of the Deputy Commissioner, it is contended by Mr. Michi that the materials on record clearly reveal that the applicant has remained a Hindu by faith and the revision-petitioner's assertions made contrary thereto is completely false inasmuch as the applicant-O.P. never declared, at any stage, that she had ceased to be a Hindu by faith and/or that she had adopted her husband's faith. Notwithstanding, therefore, her marriage with the revision-petitioner, the matrimonial proceeding, In question, was submits Mr. Michi, valid and the learned Court below acted within the ambits of law in passing the impugned order holding to the effect that the proceedings were maintainable.

6. Before coming to the merit of the impugned order, it is apposite to mention that Regulation 48 lays down that an appeal shall lie to the High Court from an "original decision" or the Deputy Commissioner if the value of the suit is not less than Rs. 500 or if the suit involves question of trial of rites or customs or of the right to, or possession of, immovable property. Regulation 50, which contains the revionsal powers of the High Court, provides, I notice, that the High Court may, on application or otherwise, call for the proceedings of any original Case or appeal decided by the Deputy Commissioner and not appealable under these Regulations and may pass such orders as it may deem fit.

8. A combined reading of Regulations 48 and 49 shows that revision will lie only when no appeal is provided for. However, an appeal will lie only against an original decision. The use of the expression "original decision" does not mean that every interlocutory or interim or intermediate order passed during the course of a suit or trial will fall within the purview of the expression "original decision" occurring in Regulation 48 ; it, rather, means the ultimate decision, which is reached in any suit or proceeding covered by the said Regulations, and concludes/terminates the suit/proceedings as far as the Court of the Deputy Commissioner is concerned.

9. In the case at hand, the impugned order was, admittedly passed at an interlocutory stage, i.e., during the course of the matrimonial proceeding. This order cannot be equated with the expression "original decision" of the Court envisaged by Regulation 48. In short, the impugned order is not an original decision within the meaning of Regulation 48.

10. It may be pointed out that in the course of a proceeding or trial, the Court may keep passing several orders and every such order will call for taking a decision including the decision, which a Court may have to take, on the question whether adjournment is to be granted or not, but all those orders, though call for decisions, are not really the original decision and it is only that order, which is passed, at the conclusion of the trial or proceeding, disposing of the suit or proceeding, that can be treated as original decision of the suit or proceeding. Viewed from this angle, it is clear that the impugned order is not an original decision within the meaning of the expression "original decision" contemplated under Regulation 48.

11. It logically follows from the above discussion that against the impugned order, no appeal is provided for and, hence, a revision will lie.

12. However, turning to the merit of the impugned order, what attracts my eyes, most prominently, is that the impugned order decides the question of maintainability of the proceeding. This shows that the impugned order has decided the issue of maintainability of the proceeding as a preliminary issue. It is trite that a preliminary issue can be framed and decided only if the issue is an issue of law and not of facts and that if the issue is an issue of fact or if the issue is an issue involving mixed question of facts and law, no preliminary issue can be framed and no such issue can be decided during the course of the trial or proceeding.

13. There is no dispute before me that the question, which the impugned order aimed at deciding, involved determination of the question whether the applicant-O.P. had remained a Hindu even after her marriage with the respondent-petitioner and this question, concedes learned counsel for the parties appearing before me, required a decision on mixed question of facts and law. It is, thus, clear that in the case at hand, the question of maintainability, in the facts and circumstances of the case, could not have been decided as a preliminary issue during the course of the proceeding. Looked at from this angle, the impugned order is not sustainable inasmuch as it has the effect of deciding whether the applicant-O.P. had remained a Hindu after her marriage with the respondent-petitioner.

14. Situated thus, this Court is constrained to hold, and I do hold, that the learned Court below acted contrary to law and exercised its jurisdiction with material irregularity in passing the impugned order. Hence, the impugned order cannot be allowed to stand good on record.

15. In the result and for the reasons discussed above, while partly allowing the revision and setting aside the impugned order, the learned Court below is hereby directed to proceed with Misc. (Divorce) Case No. 02/2001 aforementioned and dispose of the same, in accordance with law, after recording evidence.

16. For the purpose of expeditious disposal of the proceedings, the parties to the proceeding are directed to appear in the learned Court below on 2.9.2002.

17. Send back forthwith the case record with a copy of this judgment and order to the learned Court below.