

**IN THE COURT OF CIVIL JUDGE
AIZAWL JUDICIAL DISTRICT: AIZAWL, MIZORAM**

Divorce Suit No. 1227 of 2016

NK David Lalmuanpuia
13th Guard Regiment
R/o Zemabawk, Aizawl
(represented by her sister Miss Lalmangaihzuali)

..... Plaintiff

-Versus-

Smt. Catherine Rampanhlui
Ex-wife of Nk David Lalmuanpuia
R/o College Veng, Aizawl

..... Defendant

BEFORE

H LALDUHSANGA
Civil Judge – II, Aizawl

Counsel for Plaintiff	: Shri R Lalhmingmawia, Advocate
Counsel for Defendant	: Shri C Lalhruaitluanga, Advocate
Judgment pronounced on	: 16.08.2018
Judgment & Order delivered on	: 16.08.2018

No of Total Pages of Judgment & Order: 7 (seven)

APPENDIX

Plaintiff's Witnesses

- (1) Shri. Nk David Lalmuanpuia
- (2) Smt. Nuchhungi
- (3) Smt. Lalhmangaihzuali

Defendant's Witnesses

- (1) Smt. Catherine Rampanhlui
- (2) Shri. R Zapliana
- (3) Smt. Zoramsangi

JUDGMENT & ORDER

16.08.2018

1. This is a Divorce Suit No 1227 of 2016 filed by NK David Lalmuanpuia , 13th Guard Regiment R/o Zemabawk, Aizawl against Smt. Catherine Rampanhlui R/o College Veng, Aizawl on 19.08.2016. The Plaintiff prayed for declaring that the marriage between the parties had stood dissolved by way of mutual consent.
2. The Plaintiff in his petition submitted *inter alia* the Plaintiff is 13th Guard Regiment C/o 56 APO and has been posted in Rajasthan since 2015. The Plaintiff and the Defendant were married on 19th June, 2009 as per Mizo custom and tradition of marriage. From their wedlock, they had two children namely Lalrammuanpuia (6yrs) and Malsawmkimi (5yrs). The parties after years of marriage started to have several problems. It was started when the Defendant started to use blatant and vulgar languages against the Plaintiff. The Defendant sometimes said that if the Plaintiff died, it would be more fruitful and beneficial. The Plaintiff was suffering from serious illness and he could not perform his duties against the Defendant. As a result of such things, the Parties divorced each other by way of "Mutual consent". After divorce, The Plaintiff had made regular payment of monthly maintenance through his mother to the Defendant @ Rs 6,000 till 09.06.2016. However, to the utter surprise, the Defendant in her petition Dated 2.7.2016 to the Commanding Officer, 13 Guards C/o 56 APO, Rajasthan stated that she never received maintenance alimony from the Plaintiff. Due to such wrongful accusation, the Plaintiff had not paid it since July, 2016. It could be seen that the dissolution of marriage was by way of "mutual Consent" as per the Mizo Marriage, Divorce & Inheritance of Property Act, 2014.

3. The Defendant in her written objection submitted *inter alia* problems between the Parties arose when the Plaintiff started to have an affair with another girl. While posting in other states, the Plaintiff on several occasion make telephonic calls to his wife (Defendant) and his mother (Pi Nuchhungi) and he asked the Defendant to leave the matrimonial home. However, the Defendant with her children with no other source of income could not leave her matrimonial home and decided to stay even after frequent telephone calls from her husband. When her husband returned home to Mizoram on leave on 23rd December, 2015, it was revealed that he was having an affair with another girl and he did not return home till Christmas eve. The Plaintiff continuously forced the Defendant by telephonic communication to leave their matrimonial home from Jammu & Kashmir also. He told that if she refused to leave the matrimonial home, the Plaintiff might take his own life and he would stop all communication with his children. The Plaintiff also threatened the Defendant that he would hurt the Defendant after returning home from his duty post if she had not left their matrimonial home. Due to all this circumstances, no other options left with the Defendant other than leaving their matrimonial home. Hence, the Defendant left on 15th day of March, 2016 by way of 'MAK'. At the same time, the Defendant till last moment did her best not to get divorced. The Plaintiff's mother along with the members of Local Council and other reliable witnesses were also present when a document stating that the divorce was by way of "MAK" was signed. No objection was also made from the Plaintiff's side. Hence, both the parties were not divorced by way of 'MUTUAL CONSENT' (Inthathen) rather by way of 'MAK'. The Plaintiff no doubt despite knowing that it was not a divorce by way of mutual consent decided to approach this Court to get a divorce certificate in his favour so as to escape from all liabilities that could be faced by him in future. The Defendant was always ready to return to the matrimonial home with the consent of the Plaintiff even for the welfare of their children.
4. The following issues were framed on 11.04.2017
- 1) *Whether the suit is maintainable in its present form and style.*
 - 2) *Whether the marriage had stood dissolved by way of Mutual consent or Mak*
 - 3) *Whether the Plaintiff is entitled to the relief claimed. If so, to what extent.*

5. Issue No 1, *Whether the suit is maintainable in its present form and style.* Having heard both side and perused the documents, the present case is held maintainable.
6. Issue No 2, *Whether the marriage had stood dissolved by way of Mutual consent or Mak.* Firstly, with regard to the issue of divorce by mutual consent, the Plaintiff alleged the marriage to have stood dissolved by way of "Mutual consent" which was strongly denied by the Defendant. The Defendant alleged the Plaintiff to have divorced her by way of "Mak". Now to the evidence, from the pleadings and the evidences adduced by both side, it appeared that there was *factum deserendi*. The Defendant had left the matrimonial home on 15.03.2016. The same was admitted by the Defendant as well. There was a fact of separation. There was physical separation of the Parties. The Plaintiff (PW 1) and his mother (PW 2) and his sister (PW 3) adduced evidence for the Plaintiff. They all deposed that the marriage was dissolved by way of mutual consent. PW 2 and PW 3 deposed that the Defendant left the matrimonial home on 15.03.2016 when her husband was in his place of posting outside the state of Mizoram. PW 1 (Plaintiff) also deposed that on the said date the Defendant left the matrimonial home when he was in his place of posting.
7. In the meanwhile, it is considered that in order to amount "divorce by mutual consent", consent is to continue till the date of granting Decree of divorce. Both the Parties should have given consent freely. The consent of the parties should have been obtained not by force, fraud, undue influence. In the present case, from the beginning, the Defendant argued that it was not a divorce by mutual consent but by way of Mak. It appeared that no consent of the Defendant was obtained.

The Hon'ble Supreme Court in Smt Sureshta Devi Vs Om Prakash AIR 1992 SC 1304 has held that mere filling the petition for divorce by mutual consent does not authorize the Court to make a decree of divorce.... The Court must be satisfied about the bona fides and the consent of the parties for the reason that the Court gets jurisdiction to make a decree for divorce only on mutual consent at the time of enquiry. The consent must continue to decree nisi and must be valid subsisting consent when the case is heard. (cited in Inderjit Singh Grewal vs State of Punjab & Anr on 23 August, 2011 by the Hon'ble Supreme Court).

8. In fact, in case of *Sreshtha Devi vs. Om Prakash (4)*, the Apex Court ruled that mutual consent is *sine quo non* for passing a decree of divorce and the said consent must be valid and subsisting until the time final decree of divorce is passed. In the present case, the Plaintiff deposed that if the Defendant could change her way of living, he would be able to get her back as a wife. The Defendant also deposed that she was ready to go back to her matrimonial home. It thus obvious that the parties have been able to live together as husband and wife.
9. With regard to the issue of divorce by way of "Mak". The Defendant alleged the Plaintiff to have divorced her by way of 'MAK'. However, from the evidence it is apparent that the Defendant and her two witnesses could not say that the Plaintiff had told the Defendant that he had divorced her by way of Mak. The Defendant deposed that the Plaintiff had always told her to leave the matrimonial home from his place of posting through telephone. However, taking the same to mean divorce by Mak would be improper and unjust when the Plaintiff strongly argued that he had not divorced the Defendant by way of Mak. Further, in this regard, the Defendant had no witness. Also, in the alleged Divorce Letter where it was written that the marriage was dissolved by way of Mak, the signature of the Plaintiff's mother (PW 2) was obtained. Giving signature by PW 2 was not denied by PW 2 (Plaintiff's mother) and Plaintiff's sister (PW 3). However, PW 2 and PW 3 further deposed that the Defendant left her matrimonial home on 15.03.2016, and on 04.04.2016 the Defendant and her relatives came to their house with a Divorce Letter. PW 2 was told by them to put her signature on the letter. PW 2 signed on it as she was told that giving signature was to merely mean that she witnessed the dissolution of marriage. She did not know before putting her signature that the letter contained about divorce by way of "Mak". She did not know contents of the letter at all. The Plaintiff also strongly argued that he did not divorce the Defendant by way of "Mak". The Defendant left her matrimonial home and the said Divorce Letter was not signed by him as he was in his place of posting. The marriage tie was dissolved by way of mutual consent. As deposed, it was found that the Plaintiff did not give his signature on the said Divorce Letter. Hence, having weighed the evidences adduced by both side and heard the Ld. Counsels for the parties at length, no sufficient evidence is found to declare neither Mutual consent nor Mak as a ground of divorce in the present case.

10. Issue No 3, *Whether the Plaintiff is entitled to the relief claimed. If so, to what extent.* In the light of the above observation, this Court does not find favour with the Plaintiff in this issue.

11. It appears from the evidence that the Parties have been living separately since the year 2016 without formal and proper mode of dissolution of marriage. However, with regard to this mode of dissolution of marriage, the matter is best left to the Parties. In the meanwhile, this Court before parting out would not hesitate to express its desire of reunion of the couples and restoring the family. A reunion of family is more preferable to granting of divorce decree has always been the view taken by this Court. Further, on considering the basic needs, the physical needs, the comfort, the health, the moral, the spiritual life, the education, maintenance and welfare of their two loving minor children, this Court wishes the Parties to work together as a family and join their hands together always for their welfare, well-being and the best interest. No doubt, the Parties might have experienced a tear of married life in the past, let bygones be bygones. To conclude, this Court wishes the Parties to reunite and start living together as husband and wife instead of fighting long legal battles.

ORDER

12. In the light of the above observation, the present case is dismissed.

13. Parties shall bear their own costs.

14. This Judgment & Order is pronounced in an open Court.

15. With the above Order, the instant case stands disposed of.

**Given under my hand and seal of this Court on this day of the
16th August, 2018 Anno Domini.**

(H. LALDUHSANGA)

Civil Judge,
Aizawl, Mizoram.

Memo No.....:Dated Aizawl, the 16th August., 2018.

Copy to:

1. Shri NK David Lalmuanpuia, 13th Guard Regiment R/o Zemabawk, Aizawl through counsel Shri R Lalhmingmawia, Advocate.
2. Smt. Catherine Rampanhlui, Ex-wife of Nk David Lalmuanpuia R/o College Veng, Aizawl through Counsel Shri C Lalhrulaitluanga, Advocate
3. i/c Judicial Section.
4. Case record.
5. Guard file.