GAHC010240362015

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/209/2015

MRS. NEIKHOL CHANGSAN @ NEIKHOL HALOLAI
DR. R.P. ROAD, BEHIND MLA - HOSTEL, P.O. and P.S.- DISPUR, GHY- 6, KAMRUP M, ASSAM.

VERSUS

MR. THONGKOMANG ARMSTRONG CHANGSAN
INDIAN FOREIGN SERVICE,
C/O DIPLOMATIC BAG, SOUTH BLOCK, MINISTRY OF EXTERNAL AFFAIRS, NEW DELHI.
ALSO AT-
MR. THONGKOMANG ARMSTRONG CHANGSAN, S/O- LT. V. CHANGSAN, MOLNOM VENG, SONGPIJANG, HAFLONG, DIMA HASAO, PIN- 788819, ASSAM. ALSO AT

Advocate for the Appellant	:	Mr. H. S. Kalsi, Advocate
Advocate for the Respondent	:	Mr. A. K. Das, Senior Advocate Mr. R. J. Barua, Advocate
Amicus Curiae	:	Mr. T. J. Mahanta, Senior Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 14.06.2022

Date of Judgment : 30.06.2022

JUDGMENT AND ORDER (CAV)

Heard Mr. H. S. Kalsi, the learned counsel appearing for the petitioner and Mr. A. K. Das, the learned senior counsel assisted by Mr. R. J. Barua, the learned counsel appearing on behalf of the respondent. I have also heard Mr. T. J. Mahanta, the learned Amicus Curiae appointed by this Court.

2. This is an application under Article 227 of the Constitution of India challenging the order dated 23.02.2011 passed in Title Suit No.12/2011 by the learned Judge, Subordinate Autonomous Council Court, Dima Hasao, Haflong, Assam whereby the marriage between the petitioner and the respondent solemnized on 25.05.1994, at the Presbyterian Church, Songpijang (Ngalsong) in presence of the minister, Shri Rev. Letjalam Lienthang was dissolved with immediate effect.

3. The facts of the instant case is that the petitioner got married to the respondent on 25.05.1994 at Ngalsong Presbyterian Church, Songpijang, Haflong in the district of Dima Hasao in Assam as per the Christian rituals and the marriage has been recorded in records being maintained by the Church. The said aspect of the matter would be apparent from the certificate issued by the Executive Secretary, Ngalsong Presbytery annexed at *Annenxure-1* to the application. Out of their wedlock, a female child was born on 22.01.1996. After the marriage, the respondent cleared the UPSC examination and succeeded in getting a Government job in the Indian Foreign Service. In the year 1997, he went for training at Mussoorie, Uttarakhand. After the training, the respondent was posted at Delhi and the petitioner along with her minor daughter shifted to Delhi and was staying together in the accommodation provided by the Government to the respondent. The respondent was posted in the Indian Embassy at Tokyo, Japan in 1997 and the petitioner and her minor daughter

shifted to Tokyo, Japan along with the respondent. It has been further stated in the application that the petitioner accompanied the respondent whenever he was transferred.

4. In the year 2007, the respondent got transferred as Regional Passport Officer at Guwahati and he along with the petitioner resided at Guwahati. Certain disputes arose between the petitioner and the respondent and the petitioner claims that she has been physically and mentally tortured by the respondent. On 4th September, 2010, the respondent informed the petitioner that on account of some urgent official work at Delhi he had to go to Delhi and since then the respondent did not return. The petitioner in the month of October, 2010 received a call from the Gaonbura of Songpijang Village, Haflong requesting her to visit the village but no reason was disclosed for calling her to village Songpijang. The petitioner accordingly reached her village at 1:00 PM in the month of October and that very evening, the petitioner went to meet the Gaonbura and the petitioner was informed that a meeting was taking place wherein the petitioner has to attend. It is further mentioned in the application that less than a dozen people of the village having a population of 2000 plus met in the evening and they started discussing regarding the petitioner's matrimonial life. On enquiry, to the surprise of the petitioner, she came to learn that the respondent wanted to dissolve the marriage for which the said meeting was called for. The petitioner opposed the same and she along with her relatives, without giving any consent left the meeting and thereafter the petitioner returned back to Guwahati. It is the further case of the petitioner that from the month of November, 2010, the respondent stopped paying the rent of the house at Guwahati for which the petitioner started facing financial hurdles due to the sudden liabilities piling up. On account of non-payment of the rent to

the landlord, the petitioner was served notice on 06.03.2011 by the landlord for vacating the house. The petitioner sent an e-mail to the respondent on 12.03.2011 requesting him to clear the rent dues which have piled up for non-payment. But the respondent paid no heed to the request as a result of which in the month of April/May, 2011, the petitioner was compelled to change her rented house.

5. Thereafter, the petitioner came to learn that the respondent filed a divorce case being T.S. Case No.12/2011 before the Court of the Judge Subordinate autonomous Council Court, Dima Hasao at Haflong, Assam praying for dissolution of the marriage between the petitioner and the respondent. The petitioner immediately applied for certified copies of the divorce proceedings. From the certified copies, it revealed that the respondent had filed the said divorce proceedings registered as T.S. No.12/2011 on 07.02.2011 and the next date was fixed on 16.02.2011 for appearance and service report. At this stage, it may be relevant to take note of the application seeking divorce which has been enclosed as Annexure-6 to the instant petition. The contents of the said application for the sake of convenience, is quoted herein below:-

Dated 19 January 2011

To

The Hon'ble Judge
Dima Hasao Autonomous Council Subordinate Court
Haflong

Sub: Divorce between Mr. TA Changsan & Mrs Neikhol.

Your honour,

Most humbly I, Mr. Thongkhomang Armstrong Changsan, son of Mr. V. Changsan of Songpijang, Haflong, NC Hills would like to submit that the Songpijang Village Committee & Village Court, after due consideration has acknowledged the Kuki traditional and customary divorce from my wife Mrs

Neikhol Changsan nee Haolai. A copy of the ruling by the GB and Executive Committee of Songpijang village, based on their deliberations on 13 January 2011 is enclosed for your kind perusal. A brief summary of the processes leading up to the divorce is also enclosed, along with petitions and communications in this regard.

2. I therefore, most humbly and respectfully, request the Hon'ble Court to kindly formalise the divorce with my wife Mrs Neikhol Changsan nee Haolai.

Yours faithfully

Thongkhomang Armstrongg Changsan,
S/o Late V. Changsan
Molnom Veng, Songpijang, Haflong.

6. The record further shows that on 23.02.2011, the impugned order was passed whereby the marriage between the petitioner and the respondent solemnized on 25.05.1994 was dissolved with immediate effect.

7. A perusal of the said impugned order would show that vide P.R. No.85 dated 10.02.2011, the parties were directed to appear in person before the court on 16.02.2011 and the respondent appeared along with his witnesses and documents recognizing the case of divorce with the petitioner. However, the petitioner did not appear for which she was given another notice with a warning that warrant of arrest may be issued against her or ex-parte decision may be taken in regard to the case, if she does not appear before the court on 22.02.2011 vide P.R. No. 89 dated 19.02.2011. It further transpires that the Court below on 16.02.2011 in absence of the petitioner recorded evidence and on 23.02.2011 on the ground that the petitioner herein did not appear; dissolved the marriage with immediate effect with a further observation that there shall be no entertainment of cost or claim to either side.

8. The petitioner thereupon filed a matrimonial appeal under Section 55 of the Divorce Act, 1969 read with Section 19 (1) of the Family Courts Act, 1984

challenging the order dated 23.02.2011 passed by the learned Judge, Subordinate Autonomous Council Court, Dima Hasao, Haflong, Assam in T.S. No.12/2011. As there was a delay of one year, an application under Section 5 of the Limitation Act, 1963 was filed for condoning the delay. The said matrimonial appeal filed before the court was not registered but allotted a filing number being 175531 and the application for condoning the delay was registered and numbered as Misc. Case No.1073/2012. In the written objection so filed to the application seeking condonation of delay, the respondent denied that his wedlock with the petitioner was as per the Christian Law because the same was as per the customs and/or customary laws of the Kuki tribe. Thereafter, it has been alleged that the learned counsel for the petitioner for reason best known to the said counsel withdrew the said application for condonation of delay with a liberty to file afresh.

9. The Division Bench of this Court, vide an order dated 22.06.2012, closed the application for condonation of delay on withdrawal, however, granted the liberty to the petitioner to approach this Court or any other appropriate forum if the cause of action in law so permits.

10. The record further shows that on 27.02.2014, the learned counsel appearing on behalf of the petitioner had given his no objection. Thereupon the petitioner approached a legal firm 'Consortium of Lawyers' and through the legal firm the petitioner wrote a letter dated 03.03.2014 to the President of KUKI INPI ASSAM, the highest Governing Body of the Kuki tribe seeking information relating to customary laws relating to divorce and marriage. Various queries were made including the procedure for getting divorce under the Kuki Customary Law and as to whether the Christian marriage performed in a church can be dissolved by the Kuki Forum/Village Committee/Gaonbura under the

Customary Laws of Kukis and if yes, then under what circumstances. To the said communication dated 03.03.2014, the KUKI INPI ASSAM vide a communication dated 17.03.2014 answered to the queries. In doing so, it had categorically mentioned that the Kuki Customary Law can neither dissolve the Christian marriage performed in church nor can it force any couple to re-unite against the will of the couple.

11. The petitioner thereafter applied for certified copies of the divorce proceedings registered as T.S. Case No.12/2011 which the petitioner received on 11.12.2014. In paragraph No. 45 of the said petition, the following chart has been prepared which is quoted herein below:-

Sl. No.	Date	Order passed and date fixed for	Next date fixed	Remarks
1	07-02-11	Divorce petition filed		
2	10-02-11	Summons Vide PR No.85 dt. 10/02/11 issued for appearance on 16-02-11	16-02-11	
3	16-02-11	Petitioner/Plaintiff appears along with the witnesses and documents. Held hearing and recorded individual statements. The Court also examined all the dispositions made by the Petitioner and the records regarding the conclusion of the Songpijang Village Committee….		Documents submitted by the Respondent before the Ld. Trial Court are in KUKI-SCRIPT. No translated copy provided. The presiding Judge is not versed with the said

		That the only daughter Ms. Lhingdeikim Changsan is living with the father Sri Thongkhomang Armstrong Changsan as per Kuki customary law since her birth.		script.
4	19-02-11	Summons issued vide P.R. No.89 dated 19-02-11 for appearance with warning that **warrant of arrest may be issued against her** or ex-parte order will be passed against her if she fails to appear on 22-01-11	22-02-11	
5	22-02-11			
6	23-02-11	Judgment and Order passed ex-parte.		

12. Being highly aggrieved and dissatisfied with the order dated 23.02.2011 and in the manner in which the proceeding was conducted, the petitioner has approached this Court by way of the instant proceedings under Articles 226/227 of the Constitution.

13. The instant application was filed on 2nd of June, 2015 and this Court vide an order dated 08.06.2015, after taking into consideration the facts stated in the petition observed that the issue involved is whether the instant application was maintainable 3 years after the unnumbered matrimonial appeal was withdrawn on 22.06.2012 and since these aspects require consideration at the preliminary stage and the name of the learned counsel was not reflected, the

Registry was directed to list the matter after 4 weeks in the Motion Column by reflecting the name of the concerned lawyer in the cause list. Thereafter it further appears that on 03.08.2015, the counsel for the petitioner had submitted that he was going to file an additional affidavit and the matter was adjourned till 24.08.2015. It further appears from the record that on 25.08.2015, an application was filed under Section 5 of the Limitation Act for condoning the delay of 2 ½ years in preferring the revision application against the order dated 23.02.2011. This Court, however, fails to understand why the said application was filed taking into consideration that the petition so filed challenging the order dated 23.02.2011 was predominantly a petition under Article 227 of the Constitution wherein the question of limitation does not arise.

14. Be that as it may, the said application was registered as I.A. No.1375/2015. It further appears from record that on 31.08.2015, this Court had issued notice on the said application seeking condonation of delay. It appears on record that the respondent entered appearance on 08.04.2016 by filing his *vakalatnama.* Thereafter, the record of the case further shows the case did not progress. However, on 14.03.2019, this Court found that on 21.03.2018, 07.12.2018, 04.09.2019, none appeared on behalf of the petitioner. Thereafter, again on 01.03.2019, Mr. R. Dhar, the learned counsel representing the petitioner, failed to appear. Considering the above, this Court vide the order dated 14.03.2019 dismissed the said revision petition for non-prosecution. Along with the said dismissal of the petition for non-prosecution, the application for condonation of delay was also disposed of in view of the order dated 14.03.2019 passed in CRP No. 209/2015.

15. It further appears that on 18.09.2019, an application was filed for restoration of the instant proceedings which was registered and numbered as

I.A.(C) No.3204/2019. Along with the said application another application, i.e., I.A.(C) No.3205/2019 was filed under Section 5 of the Limitation Act for condoning the delay of 126 days in preferring the application for restoring the instant proceedings. Vide separate order dated 12.06.2020, both the applications, i.e., I.A.(C) No.3204/2019 and I.A.(C) No.3205/2019 were allowed. The record further shows that it was only on 07.06.2022 that an affidavit-in-opposition was filed in the instant proceedings.

16. In the said affidavit-in-opposition, it was admitted that though the marriage between the petitioner and the respondent was performed in the church, the same was preceded by a marriage of the petitioner and the respondent wholly in adherence to and in full compliance of every rite, ritual and ceremony under the Kuki customary law. It was further stated that as both the petitioner and the respondent belonged to the Kuki tribe, they were governed by the Kuki customs in matters amongst others the marriage and divorce. In paragraph No.7, the respondent stated that the marriage between the petitioner and the respondent was performed and solemnized in compliance and adherence to the customs and usage of Kuki tribe in May, 1994 and thereafter on 25.05.1994, the marriage was performed in Ngalsong Presbyterian Church at Songpijang, North Cachar Hills (Dima Hasao district) in adherence to the Christian rites and rituals. It was further stated that the marital relationship between the petitioner and the respondent broke down irretrievably and as the reconciliation attempt failed, the respondent formally divorced the petitioner as per the prevailing Kuki customary process and as required under the Kuki customs and usage. It was further mentioned that the fact of the respondent having divorced the petitioner was formally communicated to the Songpijang Village Court whereupon the court, after appearance of both the parties, passed

the order dated 29.10.2010 thereby directing both the families to urgently sort out the matter. Thereafter, the resolution dated 13.01.2011 was adopted in the Songpijang Village Committee and the divorce given by the respondent was recognized as per the Kuki customs and directed performance of some customary duties by the respondent as indicated in the said resolution.

17. It was further mentioned that on 19.01.2011, a petition was filed by the respondent before the competent court, namely, the Court of the Judge, Dima Hasao Autonomous Council praying for divorce with the petitioner which was registered and numbered as T.S. No.12/2011 and the notice/summons was issued to the petitioner for her appearance as the petitioner had failed and/or neglected to appear pursuant to the said summons issued by the Court, another notice was issued requiring her presence in the Court on 22.02.2011. As the petitioner continued to ignore the notice/summons of the said Court, the learned Subordinate Autonomous Court, Dima Hasao, Haflong passed the order dated 23.02.2011 in T.S. No.12/2011 declaring the marriage between the petitioner and the respondent solemnized on 25.05.1994 to have been dissolved with immediate effect.

18. It was further mentioned that after the passing of the order dated 23.02.2011, the petitioner preferred a matrimonial appeal before this Court along a petition under Section 5 of the Limitation Act praying for condoning the delay in filing the appeal which was registered and numbered as Misc. Case No.1073/2012 and the appeal was provisionally numbered as Sl. No.175531. The petitioner thereafter withdrew the Misc. Case No.1073/2012 vide an order dated 22.06.2012. It was further mentioned that the petitioner filed a civil revision petition before this Court against the decree of divorce which was again withdrawn by the petitioner. Therefore, the divorce of the marriage between the

petitioner and the respondent as pronounced by the Subordinate Autonomous Council Court, Dima Hasao, Haflong, Assam by the order dated 23.02.2011 passed in Title Suit No.12/2011 declaring the marriage between the parties solemnized on 25.05.1994 to have been dissolved had attained finality. It was further mentioned in the affidavit that the respondent formally divorced the petitioner as per the prevailing Kuki customary process and as required under the Kuki customs and usage and the fact of the respondent having divorced the petitioner was formally communicated to the Songpijang Village Court whereupon the said Court after appearing of both the parties passed order dated 29.10.2010 directing that both the families should urgently sort out the matter. Thereafter, a resolution was taken on 13.01.2011 which was adopted in the Songpijang Village Committee wherein the divorce given by the respondent was recognized as per Kuki customs and directed performance of some customary duties by the respondent as indicated in the said resolution.

19. In the backdrop of the above fact, the learned counsels for the parties including the learned Amicus Curiae submitted as herein under:-

a) Mr. H. S. Kalsi, the learned counsel on behalf of the petitioner submitted that the manner in which the impugned order dated 23.02.2011 was passed thereby dissolving the marriage between the petitioner and the respondent is not conceived of in law. He submitted that a bare perusal of the impugned order itself would show that summons were issued on 10.02.2011 directing the petitioner to appear on 16.02.2011. Without taking into account as to whether the said summons had been received by the petitioner, the court below had issued another notice with the warning that warrant of arrest would be issued against the petitioner or ex-parte decision might be taken in that regard if she did not respond

or appear before the Court on 22.02.2011. He submitted that a further perusal of the impugned order would show that on 16.02.2011, ex-parte evidence was recorded behind the back of the petitioner as admittedly on 16.02.2011, the petitioner did not appear. He further submitted that there is no mention in the impugned order as to whether service of summons was effected on the petitioner in respect to the summons dated 10.02.2011 and 19.02.2011. As per the summons dated 19.02.2011, the petitioner was directed to appear on 22.02.2011 but the court below on 23.02.2011 dissolved the marriage between the petitioner and the respondent. He further submitted that the marriage so dissolved as would be apparent from a perusal of the impugned order is a Christian marriage which was solemnized on 25.05.1994 at Presbyterian Church, Songpijang (Ngalsong) in presence of the minister, Shri Rev. Letjalam Lienthang. The said Judge of the Subordinate Autonomous Council Court, Dima Hasao, Haflong, Assam did not have the jurisdiction to dissolve a Christian marriage inasmuch as the Christian marriage has to be dissolved as per the provisions of the Divorce Act, 1869. Mr. Kalsi, the learned counsel further submitted that on specific query being made to KUKI INPI ASSAM, the highest body of the Kukies, the said queries were duly answered. Specifically referring to the query as to whether a Christian marriage performed in a church can be dissolved by the Kuki Forum/Village Committee/ Gaonbura under the Customary Laws of Kukis and if yes, under what circumstances, it was specifically mentioned that the Kuki Customary Law can neither dissolve the Christian marriage performed in church nor can it force any couple to re-unite against the will of the couple. It was further mentioned that the Kuki Forum under their

customary laws only pursue the settlement of the matter according to the situations that arise between the couple. He, therefore, submitted that admittedly as the marriage in question was a Christian marriage performed in a church, the question of the dissolution of the marriage under Kuki customary law did not arise and the court below could not have, on the basis of the said decision taken by the Village Committee, dissolved the Christian marriage.

b) Mr. A. K. Das, the learned counsel appearing on behalf of the respondent submitted that though the marriage between the petitioner and the respondent was preferred in the church but the same was preceded by a marriage between the petitioner and the respondent wholly in adherence to and in full compliance of every rite, ritual and ceremony under the Kuki customary law. He further submitted that since September, 2010, the petitioner and the respondent have been living separately and all efforts made by the respondent and also the respective families of the petitioner to bring about the reconciliation between them have failed to yield any result, the respondent formally divorced the petitioner as per the prevailing Kuki customary process and as required under the Kuki customs and usage, the facts of the respondent having divorced was formally communicated to the Songpijang Village Court whereupon the said Court after appearing of both the parties passed the order dated 29.10.2010 directing both the families that they should urgently sort out the matter. Thereafter vide the resolution dated 13.01.2011 adopted in the Songpijang Village Committee, the divorce given by the respondent was recognized as per the Kuki customs and directed performance of some customary duties by the respondent as indicated in the said resolution. He

further submitted that the respondent on 19.01.2011 submitted a petition before the competent court, namely, the Court of the Judge, Dima Hasao Autonomous Council praying for divorce with the petitioner which was registered and numbered as T.S. No.12/2011 and notice/summons was issued to the petitioner for her appearance. But the petitioner ignored notices/summons of the said Court, and consequently, the learned Judge, Subordinate Autonomous Council Court, Dima Hasao, Haflong, Assam passed the order dated 23.02.2011 in T.S. No.12/2011 declaring the marriage between the petitioner and the respondent solemnized on 25.05.1994 to have been dissolved with immediate effect. He further submitted that against the said order, the petitioner initially filed the matrimonial appeal before this Court with the petition under Section 5 of the Limitation Act for condonation of delay in filing the appeal. The said application seeking condonation was registered and numbered as Misc Case No.1073/2012. Subsequently, on 22.06.2012, the counsel appearing on behalf of the petitioner withdrew the said application for condonation of delay. Thereafter as there was no proceeding, the order dated 23.02.2011 passed in T.S. No.12./011 declaring the marriage between the parties solemnized on 25.05.1994 to have been dissolved had attained finality. The learned counsel, therefore, submitted that as the respondent has formally divorced the petitioner as per the prevailing Kuki customary process and as required under the Kuki customs and usage and the facts have been duly recognized in the resolution dated 13.01.2011 which was adopted by the Songpijang Village Committee, the question for interference with the impugned order dated 23.02.2011 does not arise in the facts of the case. He further submitted that irrespective of the order

dated 23.02.2011, the divorce between the petitioner and the respondent has been duly given effect to on the basis of the resolution dated 13.01.2011 for which the instant proceeding ought to have been dismissed on that count.

c) Mr. T. J. Mahanta, the learned senior counsel appointed as Amicus Curiae by this Court vide the order dated 05.01.2022 submitted that admittedly the marriage of the petitioner and the respondent was solemnized in terms with the Indian Christian Marriage Act, 1872 as would be seen from Annexure-1 to the petition. He further submitted that the respondent had also admitted about the marriage between the petitioner and the respondent to have been performed in the church. The impugned order also shows that the marriage between the petitioner and the respondent was solemnized on 25.05.1994 at the Presbyterian Church, Songpijang (Ngalsong) in presence of the minister, Shri Rev. Letjalam Lienthang. Therefore, as the marriage was solemnized in terms with the Indian Christian Marriage Act, 1872, the dissolution of such marriage has to be in terms with the Divorce Act, 1869. For the purpose of a dissolution of marriage, as per the Divorce Act, 1869 (for short, Act of 1869), the grounds of such dissolution have been mentioned in Section 10 of the said Act of 1869. Referring to Section 14, the learned Amicus Curiae submitted that the power given to the court to pronounce decree for dissolving a marriage is upon the High Court or the District Court as the case may be. Referring to Section 3 (3) of the Act of 1869, the learned Amicus Curiae submitted that the term "District Court" has been defined as in the case of any petition under this Act of 1869, the Court of the District Judge within the local limits of whose ordinary jurisdiction, or of whose jurisdiction

under this Act the marriage was solemnized or, the husband and wife reside or last resided together. He submitted that the power under Section 14 of the Act of 1869 to dissolve a marriage is either upon the District Judge or the High Court and not on a Judge of a Subordinate Autonomous Council Court. Referring to the judgment of the Supreme Court in the case of ***Clarence Pais vs. Union of India and Others***, reported in ***(2018) 17 SCC 734***, the learned Amicus Curiae submitted that when legislature enacts a law even in respect of personal law of a group of persons following a particular religion, then such statutory provision shall prevail and override any personal law, usage or customs prevailing before coming into force of such Act. The learned Amicus Curiae, therefore, submitted that the Kuki customary law would take up back seat in view of the provisions of the Act of 1869 and dissolution of such marriage can only happen in terms with the provision of the Act of 1869.

20. I have heard the learned counsel for the parties and also perused the materials on record. Before proceeding with the matter, it would be relevant to set the records right as there is a technical flaw in proceeding with the matter on merits without correcting the said technical error. The instant petition was filed under Articles 226/227 of the Constitution of India challenging the impugned order dated 23.02.2011 whereby the marriage between the petitioner and the respondent was dissolved.

21. Taking into consideration the scope of the instant proceeding, this Court converts the instant petition to a proceeding under Article 227 of the Constitution. It is no longer *res integra* that in a proceeding under Article 227 of the Constitution, the question of limitation is not applicable. The only question which needs to be looked into is a question as to whether the application under

Article 227 of the Constitution suffers from delay and/or laches. (See ***Bithika Mazumdar and Another vs. Sagar Pal and Others***, reported in ***(2017) 2 SCC 748}.*** Under such circumstances, the filing of the application under Section 5 of the Limitation Act, 1963 which was registered and numbered as I.A. No.1375/2015 was not at all necessary. Consequently, the dismissal of the said application vide the order dated 14.03.2019 on account of dismissal of the instant proceedings for default had no relevance to the adjudication of the instant proceedings inasmuch as the Limitation Act, 1963 cannot put fetters upon this Court while exercising the jurisdiction under Article 227 of the Constitution.

22. The next question which arises therefore is whether the instant petition suffers from delay and/or laches. The facts adumbrated herein above would show that on and from the date, the petitioner had come to learn about the impugned order, the petitioner had diligently taken various steps to challenge the impugned order. Initially, an appeal was preferred under Section 55 of the Act of 1869 along with an application for condonation of delay. The said application for condonation of delay was withdrawn by the then counsel of the petitioner without the knowledge and consent of the petitioner, as the petitioner claims; thereafter the petitioner after receipt of the file approached another set of lawyers who took up the matter with the KUKI INPI ASSAM seeking answer to various queries raised and after receiving the answers, the petitioner filed the instant proceedings. The constant attempts made by the petitioner to get judicial redress to the impugned order which would be clear from the facts already mentioned in the foregoing paragraphs of the instant judgment would show that the instant petition not suffer from any delay or laches.

23. In the backdrop of the above, let this Court take into consideration the question of maintainability of the application under Article 227 of the

Constitution, more so taking into consideration that the submission made by the learned counsel for the respondent to the effect that a matrimonial appeal was filed along with an application for condonation of delay against the order dated 23.02.2011 impugned in the instant proceedings and the said application for condonation of delay was withdrawn which resulted in the order dated 23.02.2011 attaining finality. For the purpose of deciding the maintainability of the instant application under Article 227 of the Constitution it would be relevant to take note of the impugned order and the jurisdiction which the learned court below exercised.

24. A perusal of the impugned order would show that on 10.02.2022 summons was issued to the petitioner directing her to appear on 16.02.2011. The question, whether the said summons was received by the petitioner or not has not been taken into consideration by the court below. On the very date, i.e., 16.02.2011, ex-parte evidence was recorded behind the back of the petitioner inspite the fact that the court below was of the opinion that another chance was required to be given to the petitioner to appear as would be apparent from the impugned order itself for which the second summons was issued. The question of recording evidence behind the back of the petitioner is contrary to the well established principles of law. Thereafter, on 19.02.2011 another summons was issued directing the petitioner to appear on 22.02.2011. It is not known as to whether such summons were at all received by the petitioner as the same is not reflected in the order. The petitioner in her petition denied the receipt of the summons dated 10.02.2011 as well as 19.02.2011. Thereafter on 23.02.2011, an ex-parte order was passed on the ground that the petitioner did not appear. The impugned order further goes to the extent of dissolving a Christian marriage solemnized at a church with immediate effect. The procedure so

followed by the Judge Subordinate Autonomous Council Court, Dima Hasao, Haflong, Assam shocks the judicial conscience of this Court as the procedure so adopted is unheard of in judicial parlance.

25. Another aspect which needs to be taken into consideration is that admittedly the marriage in question is a Christian marriage performed in a church. The Act of 1869 is an Act enacted to amend the law relating to divorce of persons professing the Christian religion, and to confer upon certain Courts jurisdiction in matrimonial matters. Perusal of Section 14 of the Act of 1869 would show that the power has been granted to a Court to pronounce decree for dissolving a marriage. The word 'Court' has been defined in Section 3 (4) of the said Act of 1869 to mean the High Court or the District Court, as the case may be. The term 'District Court' means in the case of any petition under the Act, the Court of the District Judge within the local limits of whose ordinary jurisdiction or of whose jurisdiction under Act of 1869 the marriage was solemnized or the husband and wife reside or last resided together. Section 3 (2) defines the term 'District Judge' to mean a Judge of a principal Civil Court of original jurisdiction however designated. Therefore, the power to grant a decree for dissolving a Christian marriage can only be done either by the High Court or the Court of the District Judge.

26. At this stage, this Court would like to take into consideration the submission made by the learned counsel for the respondent to the effect that apart from Christian marriage which was solemnized before the Presbyterian Church, Songpijang (Ngalsong), the petitioner and the respondent have also married as per the Kuki customs and rituals and the divorce between the petitioner and the respondent was duly recognized by the Songpijang Village Committee in its resolution dated 13.01.2011. The said submission is completely

misconceived in view of the judgment of the Supreme Court rendered in the case of ***Molly Joseph Alias Nish vs. George Sebastian Alias Joy***, reported in ***(1996) 6 SCC 337*** wherein the Supreme Court in paragraph No. 4 observed as follows:-

> "**4.** From a bare *reference to the different provisions of the Act including preamble thereof it is apparent that Divorce Act purports to amend the law relating to divorce of persons professing the Christian religion and to confer upon courts which shall include District Court and the High Court jurisdiction in matrimonial matters. In this background, unless the Divorce Act recognises the jurisdiction, authority or power of Ecclesiastical Tribunal (sometimes known as Church Court) any order or decree passed by such Ecclesiastical Tribunal cannot be binding on the courts which have been recognised under the provisions of the Divorce Act to exercise power in respect of granting divorce and adjudicating in respect of matrimonial matters. It is well settled that when legislature enacts a law even in respect of the personal law of a group of persons following a particular religion, then such statutory provisions shall prevail and override any personal law, usage or custom prevailing before coming into force of such Act. From the provisions of the Divorce Act it is clear and apparent that they purport to prescribe not only the grounds on which a marriage can be dissolved or declared to be nullity, but also provided the forum which can dissolve or declare the marriage to be nullity. As already mentioned above, such power has been vested either in the District Court or the High Court. In this background, there is no scope for any other authority including Ecclesiastical Tribunal (Church Court) to exercise power in connection with matrimonial matters which are covered by the provisions of the Divorce Act. The High Court has rightly pointed out that even in cases where Ecclesiastical Court purports to grant annulment or divorce the Church authorities would still continue to be under disability to perform or solemnize a second marriage for any of the parties until the marriage is dissolved or annulled in accordance with the statutory law in force."*

27. From the reading of the above quoted paragraph of the judgment, it would be seen that the Act of 1869 is the law relating to divorce of persons professing the Christian religion and to confer upon courts which shall include District Court and the High Court jurisdiction in matrimonial matters. The provisions of the Act of 1869 is clear and apparent to the effect that they purport to prescribe not only the grounds on which a marriage can be dissolved or declared to be nullity, but also provided the forum which can dissolve or declare the marriage to be nullity. Such power has been vested either in the District Court or the High Court. Most pertinently the Supreme Court further observed that when the legislature enacts a law even in respect of personal law or personal law of a group of persons following a particular religion, then such statutory provision shall prevail and override any personal law, usage or customs prevailing before coming into force of such Act. This judgment of the Supreme Court has also been recently followed in the case of ***Clarence Pais*** (supra). In view of the above judgment it would be clear that the customary laws of the Kukis, in the instant case, shall take a back seat to the provisions of the Act of 1869 as the marriage in the instant case was solemnized was a Christian marriage in a church. Even otherwise, if this Court takes into consideration Annexure-15 to the petition which are the various queries answered by the highest body of the KUKI INPI ASSAM, it is inter-alia mentioned that a Kuki customary law can neither dissolve a Christian marriage performed in a church nor can it force a couple to reunite against the will of the couple.

28. Therefore, a Christian marriage solemnized can only be dissolved as per law. The Act of 1869 stipulates the various grounds under which the marriage can be dissolved as could be seen from Section 10 of the Act of 1869. A perusal of the impugned order would show that none of the grounds enumerated in

clauses (i) to (x) of Section 10 (1) of the Act of 1869 were taken into consideration while dissolving the marriage. A perusal of the impugned order shows that the court below, on the basis of the conclusion of Songpijang Village Committee and recognizing the divorce case between the petitioner and the respondent had passed the ex-parte decision which is completely inconceivable in law.

29. In the back drop of the above observations, this Court therefore concludes that the Judge, Subordinate Autonomous Council Court, Dima Hasao, Haflong, Assam did not have the jurisdiction to pass the impugned order to dissolve the Christian marriage between the petitioner and the respondent. It is no longer *res integra* that when a court passes an order/decree having no inherent jurisdiction to do so, the said order/decree is a nullity and void *ab initio*. As the impugned order is a nullity, the question of attaining finality as contended by the respondent does not arise.

30. This Court, on the basis of the above observation would like to take up the question of jurisdiction of this Court under Article 227 of the Constitution and the maintainability of the instant petition. The scope and ambit of exercising power and jurisdiction of this Court under Article 227 of the Constitution involves a duty on this Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. Though this Court is not vested with unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals, but when there is serious dereliction of duty and flagrant violation of fundamental principles of law or justice, this Court under Article 227 of the Constitution, being a superintending Court has to interfere, else a grave injustice would be caused.

31. Now coming back to the facts of the instant case, it would be seen, the manner in which the proceedings were conducted and procedure adopted, which stood culminated with the order dated 23.02.2011 amounts to serious dereliction of duty and flagrant violation of fundamental principles of law and justice by the court below. The usurpation of jurisdiction by the court below in the instant case under the Act of 1869 which primarily is a jurisdiction conferred upon the District Judge or the High Court have resulted in grave injustice to the petitioner. Under such circumstances, this Court exercising the superintending power under Article 227 of the Constitution, declares that the order dated 23.02.2011 passed in T.S. No.12/2011 by the Judge, Subordinate Autonomous Council Court, Dima Hasao, Haflong, Assam is a nullity and *non est* in law and consequently the impugned order is not binding on the petitioner and the respondent. The Christian marriage between the petitioner and the respondent solemnized on 25.05.1994 at the Presbyterian Church, Songpijang (Ngalsong) subsists as on date. The findings, observations and the decision herein however shall not preclude the parties herein to take appropriate measures for dissolution of the marriage in accordance with law, if they wish so.

32. In view of the above observations, the instant petition stands disposed of.

33. Before parting with the record, this Court expresses gratitude to the learned Amicus Curiae for taking the pains inspite of his busy schedule to place on record the position of law.

JUDGE

Comparing Assistant