



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF SEPTEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

MISCELLANEOUS FIRST APPEAL NO. 2097 OF 2019 (FC)

BETWEEN:

ADITYA KODURU,
AGE:34 YEARS,
SON OF:
SRI.K. VENKATA RANGANATHA MURTHY,
RESIDING AT: 704, 'B' BLOCK,
ROSA ROYALE APARTMENTS,
OPPOSITE CROWN BUILDING,
HIRANANDANI E STATE,
G.B.ROAD, PATLIPADA,
THANE (W) MUMBAI-400 006.

...APPELLANT

(BY SRI. R.R. DESAI, ADVOCATE)

AND:

SMT. DEEPA DESHMUKH,
AGE:MAJOR,
WIFE OF: SRI. ADITYA KODURU,
RESIDING AT: NO.929,
17TH CROSS, KUMARASWAMY LAYOUT,
1ST STAGE, BENGALURU-560 078.

...RESPONDENT

(BY SRI. K.G. KAMATH, ADVOCATE)

THIS MFA IS FILED U/S 19(1) 19(1) OF THE FAMILY COURTS ACT, AGAINST THE JUDGMENT AND DECREE DATED 07.12.2018, PASSED IN MC. NO.4458/2016, ON THE FILE OF THE PRINCIPAL JUDGE, FAMILY COURT, BENGALURU, ALLOWING THE PETITION FILED UNDER SECTION 13(1)(ia) OF THE HINDU MARRIAGE ACT, 1955.



THIS APPEAL, HAVING BEEN RESERVED FOR JUDGEMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, **UMESH M. ADIGA, J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE UMESH M ADIGA

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE UMESH M ADIGA)

This is respondent's appeal against the judgment and decree passed by the Principal Judge, Family Court, Bengaluru (for short 'trial court') in M.C.No.4458/2016 dated 07.12.2018.

2. We refer to the parties as per their ranks before the trial court.

3. It is the case of the petitioner that she was married to respondent on 26.12.2012 at Woodlands Hotel, Richmond town, Bengaluru, as per Hindu rites and customs. Their marriage was registered on 10.06.2013 before the Registrar of Marriage, Banashankari, Bengaluru vide marriage registration certificate No.BSK-HMI149-2013-14. Both petitioner and respondent were working in



the same team for TCS company, Bengaluru. Both of them fell in love and persuaded their parents to consent for their marriage and thereafter married.

4. It is further case of the petitioner that respondent forced her and blackmailed her to marry him by saying that "he would commit suicide if she refused to marry him". In view of the same, she agreed to marry him. She was the only daughter to her parents. Her parents performed her marriage by spending huge amount of more than 15 lakhs. Gold jewelleries, silver articles and also household articles were given to them during the marriage, as per the demand of the respondent and his parents. The respondent had borrowed Rs.30,000/- from the petitioner before the wedding to take her to honeymoon by saying that he had no money to spend for honeymoon. After marriage, petitioner and respondent resided together.

5. It is further the case of the petitioner that respondent was insisting her to do household chores. He



refused to engage a maid servant and thereby forcing her to do all household work. The respondent promised her to bear the fees for her MBA course, but failed to pay the same. Initially, both the petitioner and respondent resided at Electronic city, Bengaluru. Thereafter, they shifted to Jayanagar. It is further case of petitioner that the respondent, his parents and sister-in-law were regularly visiting their house. The respondent and his relatives started demanding dowry of Rs.10,00,000/- and when she refused to pay the same, respondent and his family members were harassing the petitioner. The respondent used to abuse the petitioner in filthy language and beat her. He used to go out of house in the evening and return home late night drinking heavily. In that state he used to have forcible sex with her in a disgraceful and unnatural way, causing her severe mental agony and trauma. The respondent is a man of suspicious nature. He always used to check her mobile phone. On 29.10.2014, the petitioner went to attend a wedding of her first cousin. She fell sick and hence she sought permission of the respondent to



stay in her mother's house for three days, to take rest and get back home on 03.11.2014. For this, the respondent did not agree and started quarrelling with the petitioner and abused her in filthy language over phone. On 02.11.2014, the respondent came near the house of the petitioner's mother and started shouting loudly with deliberate intention to insult them in the locality.

6. It is further case of the petitioner that on 03.11.2014, she went to her flat to collect her testimonials passport, laptop etc. But respondent started avoiding her and locked the said flat with new lock so that the petitioner could not enter the said house; And even told the security person not to allow the petitioner to enter the flat. When the petitioner made a call to him, he did not receive the same. The petitioner along with her parents tried to meet the respondent and sort out the dispute amicably. On 07.02.2015, the respondent through his sister-in-law by name Smt.Niharika conveyed message to the petitioner that she could come on 08.02.2015 around



2.00 p.m., to matrimonial home to collect her documents. Accordingly, on 08.02.2015, she went to matrimonial house. The respondent along with family members and advocate were present in the house. They had discussion with her but dispute was not sorted out.

7. The respondent issued legal notice to her making false allegations. She replied to the said notice. The respondent failed to return the testimonies and other important documents of the petitioner. Respondent shifted to Mumbai. The petitioner requested respondent and his parents to take her to Mumbai to lead marital life with the respondent. The respondent refused to take her to his house. Petitioner has lodged complaint to the police stating harassment as well as cruel treatment of respondent and members of his family for illegal demand of dowry and forcing her to consent for dissolution of marriage so that respondent can marry for second time. On the basis of said complaint, Tilaknagar police registered



FIR for the offence punishable under Section 498A read with Section 34 of IPC.

8. The respondent is MBA graduate and working in M/s General Mills, Mumbai and earning salary of Rs.1,25,000/- per month. In spite of that he neglected to maintain the petitioner. With these reasons, she prayed to dissolve her marriage with respondent solemnized on 26.12.2012 at Woodlands Hotel, Bengaluru.

9. The respondent has contended that the averments stated in the petition are false. The respondent and his parents have not at all harassed or ill-treated her. Just to force respondent and his family members to give consent for divorce, she made all sort of allegations against him and his family members. The respondent tolerated the harassment and continued the marital relationship. However, petitioner for one or the other reason with an intention to harass respondent, filed false complaint as well as issued false notices. There are no valid grounds for granting decree of divorce. All the



grounds made out in the petition are false. With these reasons, respondent prayed to dismiss the petition.

10. Both the parties went to trial. The petitioner examined herself as PW-1 and got marked Exs.P1 to P13 and respondent examined himself as DW1 and got marked Exs.R1 to R5.

11. The learned trial judge after hearing both the parties and appreciating the evidence available on record, by impugned judgment allowed the petition and granted decree of divorce of marriage solemnized between the petitioner and respondent dated 26.12.2012. The same is challenged by the respondent in the present appeal on the grounds mentioned in the appeal memo.

12. We have heard the arguments.

13. The relationship between the parties and that they are residing separately since October, 2014, is not in dispute.



14. PW-1 in her examination-in-chief reiterated the contents of the petition. In her cross-examination, she has stated that respondent emotionally told her that he would commit suicide, if she refused to give consent for the marriage. She has also stated that her husband restricted her entry into the flat. Her husband was suspecting her whenever she speaks to her mother or others. Even he slapped her. Because of these harassment, she left matrimonial house on 26.10.2014. In her cross-examination, she elaborated the facts and she denied suggestions of respondent. Most of the facts stated by the petitioner in her examination-in-chief were not disputed in the cross-examination by the respondent.

15. The learned advocate for appellant would submit that appellant had filed an application to recall PW1 to cross-examination and said application was rejected and sufficient opportunity was not given to respondent to put forth his case. The learned advocate for respondent would submit that said application was filed at the



conclusion of trial with an intention to protract litigation without valid reasons. Hence, the learned trial judge rightly rejected the said application assigning valid reasons. The learned judge had given sufficient opportunity to respondent to prosecute his case.

16. The contentions of the learned advocate for respondent is tenable.

17. The trial court records reveal that PW-1 was present on three dates for cross-examination. Her cross-examination was completed. Thereafter, evidence of respondents was recorded. When the case was posted for arguments, I.A.Nos.8 and 9 were filed. Considering the same, the trial court passed detailed order dated 26.07.2018 and rejected the application. Even if she had gone to Dubai or Canada on job, how does it affect the merits of the case. Hence, rejection of said application was proper.

18. In the appeal memo, appellant mentioned several messages said to be sent by the respondent.



Cleverly, he has not mentioned as to what were the messages sent by him to respondent for which she replied in above fashion. From the dates mentioned in the appeal memo, it appears that after they started living separately, the said messages were exchanged. For the sake of discussion, even if it is accepted that the said message were sent by petitioner-wife, by reading the said messages, one can infer that they were written out of frustration, anguish or distress, might be due to the behaviour of the appellant. They corroborate the contentions of respondent herein and the degree of cruelty with which he treated her. After she started residing separately from appellant, he was sending irritating messages and continued harassment. Therefore, she must have sent such messages.

19. It is not in dispute that they were exchanging notices between them through advocate, which were placed at Exs.P-4 to Ex.P-7. The very same allegations were made in the said letters also. It is also not in dispute



that petitioner had filed complaint against him in Tilaknagar police station, it was registered in Cr.No.390/2015 dated 07.10.2015. These materials also corroborate the contention of the petitioner that respondent was treating her cruelly. Both the side had lost faith on each other.

20. The respondent in his evidence has stated about defense taken by him. He has extracted SMS messages sent by both of them on various dates. These messages indicate that relationship between them was strained. He has stated that on the basis of the complaint given by the petitioner, criminal case was registered against him and his mother in C.C.No.19890/2016, pending in the court of II ACMM Court, Bengaluru.

21. In the cross-examination of DW1, he has stated that both petitioner and respondent were working in a team in TCS Company. He denied the suggestions that he and his parents demanded for divorce from the petitioner and when she did not agree for the same, they were



unhappy with her. He also admits that he did not file petition for restitution of conjugal right after petitioner left him. He was questioned by the petitioner as to "whether he was ready to take back the petitioner if she intend to join him"? He gave an evasive answer stating that "he had apprehension because of false case was filed by the petitioner and if the petitioner openly express her mind, then he would consider." The answer given by respondent indicates his intention. The appellant's opposes for grant of divorce to petitioner and he is also not whole heartedly ready to continue marital life with her. It is nothing but his intention to continue harassment to petitioner through process of the court. From the evidence on record, any prudent man can infer that she was unable to continue matrimonial relation due to harassment for dowry, suspecting her character and other reasons assigned in her evidence. It is not in dispute that both of them fell in love before the marriage and both of them were working in the same organisation. They knew each other and after understanding each other they agreed to marry. It is also



not in dispute that both of them convinced their parents for their marriage. In the cross-examination of PW-1, respondent has not brought out any ground as to why she was indifferent after their marriage. Absolutely, there are no materials on record to show that without any reasons, she was fighting with respondent or with false contentions he is seeking divorce from him. Therefore, the contention of the appellant that there was no justifiable reason to grant divorce as contemplated under Section 13(1)(ia) of the Hindu Marriage Act is not tenable.

22. The learned trial judge considered the pleadings and evidence on record properly and rightly granted relief under Section 13(1)(ia) of Hindu Marriage Act. From the evidence of both the parties, the matrimonial relationship is admittedly irretrievably broken down. Even the mediation meetings were failed. Under such circumstances, learned trial Judge has rightly decreed the petition. We do not find any reasons to interfere with the said findings.



23. Admittedly, both the parties are earning their own source of income. It is not in dispute that at present, the petitioner is working abroad in a multinational company. Considering the same, learned trial judge rejected the permanent alimony. The respondent has not filed any appeal against the same or it was not brought out in the arguments of learned counsel for respondent that she is entitled for permanent alimony.

24. The learned advocate for appellant relied on the judgment laid down by the Hon'ble Apex court in the case of **HITESH BHATNAGAR Vs. DEEPA BHATNAGAR**¹, which reads as under:

D. Constitution of India – article.142 – Nature and scope of Supreme Court's power – Dissolution of marriage – Circumstances envisaged held, power under Art.142 is plenipotentary-It is an extraordinary jurisdiction vested by the Constitution with implicit trust and faith and, therefore, extraordinary care and caution has to be observed while exercising this jurisdiction-Such extraordinary power can be used to dissolve marriage as having irretrievably broken down

¹ (2011) 5 SCC 234



only when it is impossible to save the marriage and all efforts made in that regard would, to the mind of the Court, be counterproductive- Even if chances are infinitesimal for marriage to survive, it is not for Supreme Court to use its power under Art.142 to dissolve the marriage as having broken down irretrievably.

25. The law laid down in above case is not applicable to present case. In this case, divorce was not granted by trial court on the ground of breakdown of marriage irretrievably, but on the ground of cruelty.

26. For the above reasons, it is not a fit case to interfere with the well reasoned order of the trial court. Accordingly, we proceed to pass the following:

ORDER

The appeal is ***dismissed***.

The judgment and decree dated 07.12.2018 in M.C.No.4458/2016 passed by the Principal Judge, Family Court, Bengaluru is confirmed.



Registry is directed to send back the trial court records along with the copy of the judgment.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(UMESH M ADIGA)
JUDGE

AG
List No.: 1 SI No.: 3