



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 4TH DAY OF DECEMBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

AND

THE HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY

MISCL. FIRST APPEAL NO. 201131 OF 2018 (FC)

BETWEEN:

NARASAPPA S/O CHANNAPPA JAVALAGERA,
AGE: 37 YEARS, OCC: HA.KAM.LABOUR,
R/O. ABDULLA COLONY, HUTTI VILLAGE,
TQ. LINGASUGUR, DIST. RAICHUR.

...APPELLANT

(BY SRI. B.K. HIEMATH, ADVOCATE)

AND:

KRISHNAVENI @ CHITRA W/O NARASAPPA,
AGE: 33 YEARS, OCC: HOUSEHOLD,
R/O. KALMALA VILLAGE,
TQ. & DIST. RAICHUR – 584 136.

...RESPONDENT

(BY SRI. SHIVANAND PATIL, ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER
SECTION 19(4) OF THE FAMILY COURTS ACT, PRAYING TO,
CALL FOR THE RECORDS AND ALLOW THE APPEAL FILED BY



THE APPELLANT BY SETTING ASIDE THE JUDGMENT AND DECREE PASSED BY PRL. JUDGE, FAMILY COURT AT RAICHUR IN M.C. NO.108/2017 ON DATED 23.04.2018 AND DISSOLVE THE MARRIAGE OF THE PETITIONER WITH RESPONDENT DATED 19.12.2010 AND PASS A DECREE OF DIVORCE.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 04.11.2025 AND COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT' THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD
AND
HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY)

Being aggrieved by the judgment and decree dated 23.04.2018 (for short 'the impugned judgment') of the Principal Judge Family Court, Raichur (for short 'the Family Court') in MC No.108/2017, the appellant has approached this Court by filing the present appeal under Section 19(1) of the Family Courts Act, praying for an order to call for the Trial Court records and allow the appeal and by setting



aside the impugned judgment and decree, dissolve his marriage solemnized with the respondent on 19.12.2010.

2. The appellant being petitioner has filed the petition before the Family Court under Section 13(1) (i-b) of the Hindu Marriage Act, 1956 (for short 'HM Act'), praying for an order to grant divorce dissolving his marriage with the respondent performed on 19.12.2010.

3. The case of the appellant in brief is that:

The respondent is his legally wedded wife having married him on 19.12.2010 at Hutti Camp, Lingasugur and thereafter, the respondent was residing with him. However, they led a happy married life only for the period of one and half years. Thereafter, without any reason, the respondent left the matrimonial home and hence, the respondent deserted the appellant for more than three and half years as on date of filing of the petition. Therefore, the appellant has sought for divorce under the ground of desertion.



4. The respondent has not disputed her marriage with the appellant. However, she has denied the allegations of the petition that she deserted the appellant. She has further contended that actually the appellant along with his mother and sisters, subjected her to physical and mental cruelty and hence, she was driven out of the matrimonial home. Thereafter, she went to her parents' house and gave a complaint against the appellant and also his mother and sisters. She also filed a petition for restitution conjugal rights before the Family Court. In the said petition the matter was settled and as the appellant agreed to look after her properly, she joined the appellant and they started residing in a rented house at Yelagatti village. But even thereafter, the appellant subjected her to physical and mental cruelty at the instance of his mother and sisters and hence, she was forced to leave the appellant and reside in her parents' home. Therefore, the respondent prayed for dismissal of the petition.



5. The appellant got himself examined as PW.1 and produced documents at Exs.P.1 to P.27 in support of his case before the Family Court. On the other hand, the respondent got himself examined as RW.1, but she did not produce any documentary evidence.

6. After hearing the arguments of both the parties and considering the oral and document evidence, the Family Court coming to the conclusion that the appellant has failed to make out any ground for granting decree of divorce on the ground of desertion, has dismissed the petition under the impugned order. Now the appellant being the petitioner before the Family Court has come up with appeal seeking for setting aside the impugned judgment. Trial Court records have been called for.

7. Heard the arguments of the learned counsel for the appellant and also learned counsel for the respondent. Perused the oral and documentary evidence. Now the point that arises for our consideration is that:



"Whether the appellant/petitioner has made out sufficient grounds for granting divorce on the ground of desertion as sought for and thereby made out any ground to interfere with the impugned judgment and decree of the Trial Court?"

8. On the basis of the pleadings of the appellant as petitioner before the Family Court the submission of the learned counsel for the appellant is that the appellant married the respondent on 19.12.2010 at Swarna Bhavana Kalyana Mantapa in Hutti Gold Mines, Hutti Camp of Lingasuguru Taluk Raichur, in the presence of elders as per the Hindu Customs. The marriage expenses were borne by the appellant. Out of his wedlock with the respondent, the respondent gave birth to a child by name Nandish and the said child is in the custody of the respondent. The respondent lived happily with the appellant only for the period of one year after the marriage and thereafter the respondent filed petition against the appellant in Crl.Misc.No.109/2017 before the Family Court seeking for maintenance and thereafter, she



left the appellant making false allegations against him and she started to reside in Kalmala village of Raichur Taluk. The respondent filed petition under Section 9 of HM Act in MC No.48/2013 for the relief of restitution of conjugal rights. After enquiry and conciliation the Trial Court directed the appellant to give maintenance to the respondent and send the respondent with the appellant with a direction to take separate house. After the order of the Court in the said petition, the appellant took rented house at Yelagatti village of Lingasugur Taluk and when the appellant and respondent were residing there, the respondent became pregnant. But one day when the appellant was not in the house, the respondent suddenly left the house and went to Hutti Police Station and filed criminal case against the appellant and his family members and she went to her parents' house at Kalmala village. In spite of advice by the elders, she did not correct herself. After about one month from the date the respondent left the appellant, the respondent filed petition



in Crl.Misc.No.109/2017 before the Family Court for maintenance. The Family Court awarded monthly maintenance of Rs.5,000/- to the respondent and Rs.2,000/- to her son. The respondent left the house of the appellant on 27.05.2015 i.e., about more than three years ago as on the date of filing of the petition. There is no chance of reunion. The appellant is employee in Hutti Gold Mines and he is getting good salary. The respondent is interested in getting maintenance from the appellant and hence, the appellant was put to mental pressure. The respondent is not interested to join the appellant. Hence, the appellant filed petition before the Family Court for divorce.

9. Per contra, the submission of the learned counsel for the respondent that the respondent in her objections before the Trial Court has contended that the petition is not maintainable. The respondent denied the allegations made by the appellant in the petition. She further contended that an amount of Rs.65,000/- cash, 2



tolas of gold and Splendor motorcycle were given to the appellant as dowry at the time of marriage. After the marriage also, household articles such as almirah, cot and utensils and etc., were given to the appellant. The respondent lived with the appellant only for one and half years, tolerating the ill-treatment of the appellant during her stay with him. The appellant never cared for her welfare and he did not provide food in time and finally he drove the respondent out of the house in the month of June 2012 and hence, she came to her parents' house at Kalmala village. Thereafter, the respondent filed petition in Crl.Misc.No.109/2017 before the Trial Court and same was allowed awarding monthly maintenance of Rs.5,000/- to her and Rs.2,000/- to her son. The appellant failed to comply with the said order and hence, the respondent filed petition in Crl.Misc.No.20/2018 for enforcement of the said order. The said petition was challenged by the appellant before this Court and hence, subject to payment of 50% of the maintenance amount within eight weeks, the



concerned order was stayed by this Court. The appellant had to pay Rs.5,000/- to the respondent as maintenance.

10. The contention of the respondent is also that she filed under Section 9 of HM Act for restitution of conjugal rights before the Family Court in MC No.48/2013 and after several conciliations, the appellant agreed to take the respondent along with him on 31.07.2014 for leading happy marital life. Thereafter, both the appellant and respondent stayed together till 27.05.2015 at Yelagatti village. But even thereafter the appellant ill-treated the respondent at the instance of his mother and sisters and they physically assaulted her and she was driven out of house when she was pregnant. Hence, the respondent registered the case against the appellant and others in Crime No.71/2015 for the offences punishable under Section 323, 504, 498-A, 506 of IPC and the same is pending before the JMFC Court, Lingasugur and hence, the appellant is not entitled to seek divorce, as relief of divorce cannot be granted for his own fault.



11. The fact that the appellant and the respondent are husband and wife and their marriage was solemnized on 19.12.2010 at Hutti Camp, Lingasugur Taluk, Raichur District as per Hindu Custom. It is also not in dispute that in the wedlock of appellant and respondent, one male child by name Nandish was born to them. The contention of the appellant is that he is government employee in Hutti Gold Mines and getting good salary and hence the respondent is interested in getting maintenance and she is not willing to reside with him. The respondent resided with him only for one and half years after the marriage and thereafter she left the matrimonial house and now she is residing in Kalmala village in her parents' house. Therefore, the contention of the learned counsel for the appellant is that the respondent deserted him for a period of more than three years as on the date of petition and hence, he has sought divorce on the ground of desertion.

12. As submitted by the learned counsel for the respondent, the contention of the respondent is that the



appellant along with his mother and sister-in-law, subjected the respondent to physical and mental cruelty and the appellant himself had driven the respondent out of matrimonial house. There is no willful desertion on the part of the respondent.

13. Now, as submitted by the learned counsel for the respondent, it is relevant to refer to the provision of Section 13(1)(i-b) of the HM Act, which reads thus:

"13. Divorce. (1) *Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-*
1[(i)xxx xxx
1[(ia) xxx
1[(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]"

14. However, as per explanation to Section 13 (1)(i-b) of HM Act, the expression 'desertion' means desertion of the one party by the other party to the marriage without reasonable cause and without the



consent or against the wish of such party, which includes the willful neglect of the appellant by the other party to the marriage. The explanation to Section 13(1) reads thus:

“Explanation-In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.”

15. Hence, as submitted by the learned counsel for the respondent, mere separation or desertion of the respondent from the appellant and the fact that she has been residing separately from the appellant for a period of not less than two years, Immediately preceding the presentation of the petition, does not by itself make out any ground to grant divorce in favour of the appellant on the ground of desertion. The appellant should prove that the respondent deserted him without reasonable cause



and that there is willful neglect of the appellant by the respondent.

16. In this background, it is relevant to appreciate the evidence of both the parties forthcoming on record. The appellant being the petitioner before the Family Court got himself examined as PW.1. He filed his affidavit as evidence in chief-examination reiterating the fact averred in the petition. It is admitted by the petitioner that the respondent filed petition before the Family Court under Section 9 of HM Act, and during the conciliation before the Family Court in the said petition, both of them started to reside together at Yelagatti village in a rented house.

17. It is also the evidence of the appellant that at that time the respondent become pregnant, but one day when he was not in the house, the respondent left the home and went to her parents' house at Kalmala and she gave complaint to Hutti Police Station against him and also against his mother, sisters and brother. Thereafter, the



respondent gave birth to a male child. She filed petition for maintenance before the Family Court and in the said petition, the appellant was directed to pay monthly maintenance of Rs.5,000/- to the respondent and Rs.2,000/- to the child. The petition is as per Crl.Misc.No.109/2017. The contention of the appellant is that the respondent left the house on 27.05.2015 and filed criminal case and hence, she deserted him for the period of more than three years as on the date of filing of the petition before the Family Court.

18. Per contra, as argued by the learned counsel for the respondent, mere desertion cannot be a ground to grant divorce in favour of party who approached the Court under Section 13(1)(i-b) of H.M. Act. As mentioned earlier, the Explanation to Section 13(1) of H.M. Act, would show that desertion means "desertion of one party by the other party to the marriage without reasonable cause and without the consent and against the wish of such party and includes willful neglect of one party by the other party



to the marriage". Hence, the appellant should show that the respondent willfully deserted him. But in the case on hand it would be clear that after the respondent went to her parents' house she filed petition under Section 9 of H.M. Act for the relief of restitution of conjugal rights and in the said petition as per the conciliation before the Family Court, the respondent joined the appellant and they resided together at Yelagatti village in a rented house and at the time the respondent became pregnant. This would clearly go to show that the respondent had not willfully deserted the appellant.

19. Further, as rightly observed by the Trial Court, from the relevant evidence forthcoming on record, it would be clear that the appellant did not take any steps to bring the respondent back to matrimonial house. If at all the appellant was willing to lead marital life with the respondent properly, he could have made necessary arrangements by conveying panchayath involving the elders to settle the matter.



20. Moreover, even though it is admitted by the appellant in his evidence during cross-examination as PW.1 that the Kalmala village is between his house and his working place at Hutti, he did not visit the parents' house to bring the respondent back to the matrimonial home, he further deposed in his evidence that as he was afraid that the respondent and her relatives would assault him, if he went to their home, he did not visit the parents' house of respondent. But the said evidence of appellant is not supported by the independent evidence. If at all the appellant had fear that the respondent and her relatives would assault him, he should have given complaint against the respondent and her relatives.

21. Further, as argued by the learned counsel for the respondent, the relevant portion in the evidence of the appellant as PW.1 in cross-examination would read thus:

“ಎದುರುದಾರರು 2013 ಇಸ್ವಿಯಲ್ಲಿ ಕೋರ್ಟಿನಲ್ಲಿ ಅರ್ಜಿ ಹಾಕಿ
ಅವರನ್ನು ಕರೆದುಕೊಂಡು ಹೋಗು ಎಂದು ಕೇಳಿದ್ದರು ಎಂದರೇ ಸರಿ.



ಅ ಕೇಸನಲ್ಲಿ ನಾನು ನನ್ನ ಹೆಂಡತಿಯನ್ನು ಕರೆದುಕೊಂಡು ಹೋದೆ
ಎಂದರೆ ಸರಿ.”

22. It is also pertinent to note that now the appellant is not ready to lead marital life with the respondent. The relevant portion in the evidence in cross-examination of the appellant as PW.1 is that:

“ನಾನು ಈಗ ಅವರ ಜೊತೆ ಸಂಸಾರ ಮಾಡಲು ತಯಾರುಲ್ಲ.”

23. The appellant produced marriage invitation, certified copy of the order sheet in MC No.48/2013, the certified copies of the petition and order sheet in Crl.Misc.No.109/2017 and copy of the FIR as per Exs.P1 to P5 respectively. The petitioner also produced 21 RTC extracts at Exs.P.6 to P.26 and certified copy of deposition of respondent as PW.1, she being the petitioner in Crl.Misc.No.109/2017 at Ex.P.27. But there is absolutely no material in the deposition at Ex.P.27 of the respondent as petitioner in MC No.108/2017 to show that she willfully deserted the appellant.



24. The RTC extracts at Exs.P.6 to P.26 were produced by the appellant to show that the parents of the respondent are having sufficient means to maintain the respondent. But the said documents at Ex.P.6 to P.26 are in no way helpful to the appellant to show that the respondent willfully deserted him.

25. However, it is very pertinent to note that in his chief-examination, the contention of the appellant is that he is working in Hutti Gold Mines and having good salary and the respondent only with the intention of getting maintenance from him has deserted him and filed the petition. But, as pointed out by the learned counsel for the respondent, on the basis of the documents at Ex.P.6 to P.26 the contention of the appellant is that the respondent's mother-Suramma got the property from her mother and the respondent has sufficient means in her parents' house for her maintenance.



26. However, as per the evidence of the appellant as PW.1 in cross-examination, it would be clear that his mother, younger brother, younger sister and elder sister are residing with him. This would probabilise the contention of the respondent that the appellant at the instance of his mother and sisters, ill-treated the respondent and made her to leave the matrimonial home. Therefore, as observed by the Family Court in the impugned judgment, there is absolutely no evidence forthcoming from the appellant to prove that there was any willful desertion by the respondent of the appellant.

27. Further, it is very pertinent to note that the respondent filed petition before the Family Court under Section 9 of HM Act as per in MC No.48/2013 and in view of the conciliation before the Family Court in the said petition, the respondent was residing with the appellant at Yelagatti village in a rented house. The certified copy of the order sheet of the said petition is produced by the appellant as per Ex.P.2 and it would show that the



respondent had intention of joining the appellant in matrimonial home. Mere fact that the respondent filed petition under Section 125 of Cr.P.C before the Family Court in CrI.Misc.No.109/2017 seeking maintenance from the appellant, cannot be a ground to come to the conclusion that the respondent is having no intention to reside with the appellant.

28. It is undisputed fact that the respondent is having male minor child and it is in her custody and the appellant has not paid proper maintenance in spite of the order of the Trial Court in the maintenance petition. Therefore, any of the submissions of the learned counsel for the appellant does not make out any ground to show that there is sufficient evidence forthcoming on record to come to the conclusion that there is willful desertion of the appellant by the respondent and that she is not willing to join the appellant in matrimonial home.



29. The meticulous consideration of the reasoning of the Family Court in the impugned judgment would clearly show that the Family Court has considered each and every aspect of the oral and document evidence forthcoming on record in proper prospective and thereby come to the correct conclusion that the appellant has failed to prove that the respondent deserted him without any reasonable cause or without any consent and that there was any willful neglect on the part of the respondent to join the appellant in matrimonial home. Hence, the Trial Court has rightly held that the appellant has failed to make out any ground to grant divorce as prayed for in his petition under Section 13(1)(i-b) of HM Act. Hence, the appellant has failed to make any ground to interfere with the impugned judgment and decree of the Family Court at the hands of this Court in the appeal. Therefore, we are of the considered view that this appeal fails and same is liable to be dismissed.



30. In the result, answering the above said point is in the negative, we proceed to pass the following:

ORDER

- (i) This appeal filed by the appellant/petitioner is hereby ***dismissed***.
- (ii) Consequently, the judgment and decree dated 23.04.2018 of the Prl. Judge, Family Court, Raichur in MC No.108/2017 shall stand confirmed.
- (iii) Send back the Trial Court records along with copy of this judgment to the trial Court forthwith.
- (iv) No order as to cost.

**Sd/-
(H.T.NARENDRA PRASAD)
JUDGE**

**Sd/-
(TYAGARAJA N. INAVALLY)
JUDGE**