

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.M.A.M.P.No. 989 OF 2014

IN/AND

C.M.A.No. 127 OF 2005

COMMON JUDGMENT: *(per Hon'ble Sri Justice M.Satyanarayana Murthy)*

The unsuccessful petitioner in O.P.No. 273 of 1999 on the file of the Court of II Additional Senior Civil Judge, R.R. District at L.B. Nagar, Hyderabad (for short, 'the trial Court'), preferred this appeal challenging the dismissal order dated 22-09-2004.

2. For convenience of reference, the parties to the appeal are ranked as in O.P.No. 273 of 1999 before the trial Court throughout the judgment.

3. The petitioner filed petition under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 (for brevity, 'the Act of 1955'), to dissolve the marriage between the petitioner and the respondent granting decree of divorce alleging that the petitioner belongs to Naidu community and the respondent belongs to scheduled caste. While the petitioner was studying intermediate in a tutorial college, he met the respondent who represented that she also belongs to Naidu community. Therefore, they fell in love. Thereafter, the petitioner came to know that the respondent belongs to scheduled caste. On coming to know about the same, the petitioner requested the respondent to discontinue the love affair but, due to force of the respondent, their marriage was performed at Arya Samaj, Sulthan Bazar, Hyderabad, on 15-04-1994 without informing their parents.

On coming to know about the marriage of the petitioner and the respondent, the father of the petitioner necked him out on 12-11-1995. On 16-11-1995, the parents of the respondent arranged reception. Later, the petitioner and the respondent set up separate family at Bowenpally in a

rented house belonging to one Srinivas Reddy, Police Constable. From 16-11-1995, the respondent started suspecting the petitioner on petty issues and used to abuse him in filthy language. In the first week of December, 1995, the parents of the respondent came to the house of the petitioner; in spite of his protest, they consumed liquor in the house and, when questioned, the parents of the respondent beat the petitioner. They also abused the petitioner in filthy language and insulted him in the presence of his friends while demanding the petitioner to shift his residence to the house of the parents of the respondent and to pay entire salary of the petitioner to the respondent. The petitioner was working as accounts assistant in Bambino Agro Limited and used to attend outdoor work too but the respondent used to pickup quarrel with the petitioner suspecting that the petitioner was meeting his girlfriends. In the second week of January, 1996, the petitioner came to know that the respondent also habituated to drinking and demanded the petitioner to provide drink but the petitioner requested the respondent to change her behaviour. Thereupon, the respondent insulted him that he is an impotent and have no guts.

In the month of February, 1996, the petitioner shifted his residence from Bowenpally to Mirjalguda. In the second week of February, henchmen of the respondent came to the office of the petitioner and threatened him that they would kill him if he failed to accede to the demands of the respondent and her parents. The respondent gave birth to a male child Nikhil on 28-03-1997. Since then, the respondent started demanding the petitioner to insist for half share in the property. The respondent also used to note down mileage of motorcycle of the petitioner suspecting the petitioner and also threatened the petitioner to commit suicide if the petitioner attended any function. As there was no change in the attitude of the respondent, the petitioner approached Women Counselling Center at Lakdikapool, Hyderabad, on 29-07-1994 but the counseling efforts were proved futile. Thus, the respondent caused physical and mental pain by her acts and

omissions and her parents also caused physical injury by beating which created a reasonable apprehension that it is harmful for him to live with the respondent. The respondent invented several ways and means *i.e.* lodging complaints against the petitioner without any reasonable cause and, such baseless prosecution of the petitioner, created reasonable apprehension in the mind of the petitioner that it is harmful for him to live with the respondent.

As the petitioner is subjected to cruelty in different ways, the petitioner approached Woman Police Station at Begumpet on 18-12-1999, submitted a complaint and they also held counseling but there was no change in the attitude of the respondent. Hence, the petitioner filed the petition for grant of divorce on the ground of cruelty seeking divorce under Section 13 (1) (ia) of the Act of 1955.

4. The respondent filed counter affidavit admitting her caste, their love affair, which led to their marriage on 15-12-1994 in Arya Samaj as per Hindu rites and customs, arranging reception by the parents of the respondent and receipt of Rs.10,000/- reward for inter-caste marriage by the petitioner.

It is specifically contended that at the time of reception, the parents of the respondent paid Rs.20,000/- and presented 8 tulas of gold Jewellery besides household articles to the petitioner and his parents in the presence of all the relatives and friends who attended the marriage reception. They lived happily at Bowenpally for a few months and shifted thereafter to Mirjalguda, Malkajgiri, on the demand of the petitioner's parents. Thereafter, the petitioner started harassing the respondent on the ground that the amount paid by the parents of the respondent is insufficient dowry. The respondent extended utmost respect to the petitioner as husband and taking care of the needs of the petitioner but the petitioner used to go to the house of one Sarojini and started neglecting and disliking the respondent by spending more time at the house of Sarojini. The petitioner used to come to the house with the company of his friends by consuming alcohol and used to beat the respondent in the presence of his friends demanding additional dowry. In the

month of February, 1996, the petitioner and his father beat the respondent, forced to write a letter by copying a written letter. The respondent never demanded the petitioner to get half share of her to her son and, on the other hand, the parents of the petitioner never allowed the respondent to their house and insulted the respondent that she hails from scheduled caste community. The petitioner himself demanded the respondent to sell her parents' residential house at Chilkalguda to purchase a house at Malkajgiri and the same was refused.

As the petitioner approached Women Counseling Center, Lakdikapool, without any dispute between them, the counseling authorities, after hearing both the petitioner and the respondent, warned the petitioner that he gave false report. Further, the petitioner used to move closely with Sarojini and her two daughters Kalyani and Bharathi and started demanding the respondent to give divorce.

The petitioner went to Woman Police Station, Begumpet, on 18-12-1999. After enquiry, the Inspector warned the petitioner not to give any false report. Thereafter, the respondent filed maintenance case in M.C.No. 1 of 2000 for grant of maintenance and the Court granted Rs.800/- p.m. both the respondent and her son.

The respondent filed a private complaint on the file of the Court of I Additional District Judge, R.R. District, for the offence punishable under Section 498-A of the Indian Penal Code (for brevity, 'I.P.C.') and under Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act of 1989'), and also filed another criminal case in crime No. 14 of 2000 for the offence punishable under Section 498-A of I.P.C. which is pending on the file of the Court of XXII Metropolitan Magistrate, Hyderabad. While so, the petitioner started pressurizing the respondent for mutual divorce. Thus, the petitioner himself subjected the respondent to cruelty in different ways, the parents of the petitioner did not allow her to enter into their house on the ground that she

belongs to scheduled caste community and that the respondent never subjected the petitioner to cruelty either physical or mental and prayed to dismiss the petition.

5. Basing on the above pleadings, the trial Court framed the following sole point for consideration:

"Whether the petitioner is entitled to decree of divorce as prayed for?"

6. During the course of enquiry, on behalf of the petitioner, P.Ws.1 to 3 were examined and got marked Exs.A1 to A25. On behalf of the respondent, R.Ws.1 to 4 were examined and got marked Exs.B1 to B17.

7. Upon hearing argument of both counsel and considering oral and documentary evidence, the trial Court, disbelieving the allegation that the respondent subjected the petitioner to cruelty, dismissed the petition.

8. Aggrieved by the dismissal order in O.P.No. 273 of 1999, the unsuccessful petitioner before the trial Court preferred the present appeal on various grounds mainly contending that the trial Court did not consider the oral evidence with regard to acts of cruelty attributed to the respondent and proved by the petitioner so as to obtain decree under Section 13 (1) (ia) of the Act of 1955 and that irretrievable breakdown of the marital relationship is a sufficient cause. It is further contended that filing of complaint against the petitioner for the offence punishable under Section 498-A of I.P.C. and under the provisions of the Act of 1989, which ended in dismissal, is sufficient to grant decree of divorce. Added to that, lodging complaint for the offence punishable under Section 498-A of I.P.C. against the petitioner, his mother, brother and sister-in-law and, after investigation, the case was closed against his mother, brother and sister-in-law while filing charge sheet against the petitioner for the offence punishable under Section 498-A of I.P.C. which caused mental agony to him and, therefore, filing of cases with *mala fide* intention is sufficient to grant decree of divorce. The trial Court did not appreciate pleadings and evidence in proper perspective to arrive at a

conclusion that the petitioner was subjected to cruelty by the respondent much less by filing false complaint and prosecuting the same in Court of law, which ended in acquittal, that itself is sufficient to grant decree of divorce. Subsequent events after filing complaint, more particularly the incident of assaulting the petitioner on road beating with slipper causing bodily injury, which led the petitioner to give complaint to police is another strong reason to believe the alleged cruelty but the trial Court did not take into consideration the said aspect. Making a serious allegation against the petitioner that the petitioner developed illicit contact with Sarojini and closely moving with Kalyani and Bharati without any basis directly amounts to cruelty but the trial Court did not consider those contentions, dismissed the petition without any justifiable cause and finally prayed to allow the appeal, setting aside the decree and decretal order passed by the trial Court in O.P.No. 273 of 1999 dated 22-09-2004, granting decree of divorce dissolving the marriage between the petitioner and the respondent.

9. During the course of argument, learned counsel for the petitioner, after advancing oral argument, filed written submissions which run into 26 pages besides relying on several judgments. The main contention of learned counsel for the petitioner is that serious allegations made by the respondent *i.e.* linking up his character with Sarojini, who is aged more than 60 years, certainly causes mental agony to the petitioner and denounces the prestige of the petitioner in public. It is further contended that the subsequent event of ending criminal prosecution in acquittal for the offence punishable under Section 498-A of I.P.C., as the respondent failed to prove guilt of the petitioner beyond reasonable doubt before the Judicial Magistrate of I Class, itself indicates that the complaint was made falsely, made him to roam around Courts for years together and caused mental agony and, if the petitioner lives with the respondent, there is every possibility of implicating him in some other criminal cases. Therefore, it is harmful or dangerous for the petitioner to live with the respondent. On this ground alone, the petitioner

is entitled to decree of divorce. Making several allegations in different proceedings is suffice to believe that the petitioner was subjected to cruelty by the respondent prior to filing the petition and subsequent to filing of the petition for divorce before the trial Court.

10. Sri V.Hari Haran, learned counsel for the respondent, would submit that allegations made against the petitioner linking up his character with Sarojini and that moving closely with Sarojini and her two daughters naturally creates a suspicion in the mind of the respondent but, merely because she failed to substantiate those allegations, that does not amount to either physical or mental cruelty. Therefore, on this ground, decree of divorce cannot be granted.

11. Admittedly, the respondent filed complaint before the I Additional District and Sessions Judge, Ranga Reddy, for the offence under the provisions of the Act of 1989 which was closed after enquiry. Therefore, dismissal of the complaint by the I Additional District Judge, Ranga Reddy, under the provisions of the Act of 1989 is not sufficient since the petitioner was neither arrested nor tried for the said offence. Hence, on the ground of filing complaint under the provisions of the Act of 1989, decree of divorce cannot be granted.

12. Filing complaint for the offence punishable under Section 498-A of I.P.C., which ended in acquittal, by itself is not sufficient to grant decree of divorce since proof of guilt before the trial Court is beyond reasonable doubt but proof of demand for additional dowry in civil cases depends upon probabilities of the case. Hence, acquittal of the petitioner for the offence punishable under Section 498-A of I.P.C. is not a ground to grant decree of divorce on the ground of cruelty under Section 13 (1) (ia) of the Act of 1955. Apart from that, the petition is silent with regard to acquittal of the petitioner for the offence punishable under Section 498-A of I.P.C. and, in the absence of any pleading, this Court cannot grant decree of divorce and prayed to dismiss the appeal confirming the decree and decretal order passed by the

trial Court.

13. The petitioner filed C.M.A.M.P.No. 989 of 2014 to receive the documents annexed to the petition as additional evidence as C.C.No. 451 of 2005 on the file of the Court of XI Additional Chief Metropolitan Magistrate, Secunderabad, filed under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'the Act of 1881'), by the respondent against T.Srinivas is a subsequent event and, apart from that, criminal complaint which was registered as C.C.No. 282 of 2001 on the file of the Court of XIII Additional Chief Metropolitan Magistrate, Nampally, for the offence punishable under Section 498-A of I.P.C. and its acquittal took place on 02-03-2006 *i.e.* long after filing of the present petition in question. Therefore, the subsequent events should be taken into consideration to decide the real controversy between the parties. The petitioner further contended that he lodged complaint with the Commissioner of Police on 12-12-2012 seeking protection as the respondent attacked the petitioner in the corridor of Ranga Reddy Courts and the same is registered as case in crime No. 81 of 2013 of L.B.Nagar Police Station; after investigating into the case, filed charge sheet and the same was registered as C.C.No. 72 of 2014 on the file of the Court of II Metropolitan Magistrate, L.B.Nagar, Ranga Reddy. The respondent also filed maintenance case and suit making serious allegations and the documents set out in the list are necessary for proper adjudication and requested this Court to receive the documents set out as additional evidence under Order 41 Rule 27 of the Code of Civil Procedure (for short, 'C.P.C.').

14. The respondent did not file any counter to oppose the petition.

15. Considering rival contentions and perusing the material available on record including the grounds of appeal under challenge, the points that arise for consideration are as follows:

1. *Whether the documents set out in the list annexed to C.M.A.M.P.No. 989 of 2014 be received as additional evidence and marked as exhibits on behalf of the petitioner?*

2. *Whether acts and omissions attributed to the respondent amount to subjecting the petitioner to cruelty, if so, whether the marriage between the petitioner and the respondent be dissolved granting decree of divorce under Section 13 (1) (ia) of the Act of 1955?*

16. **In Re. Point No. 1:**

The petitioner filed petition under Order 41 Rule 27 of C.P.C. to receive the documents set out in the list as additional evidence on the ground that the subsequent events shall also be taken into consideration to decide the real controversy; that apart, acquittal of the petitioner in C.C.No. 282 of 2001 on the file of the Court of XIII Additional Chief Metropolitan Magistrate, Hyderabad, took place subsequent to termination of the proceedings before the trial Court and after filing of the present appeal *i.e.* on 02-03-2006 and the petitioner filed copy of calendar and judgment to receive the same as additional evidence. However, receipt of the same is opposed on the ground that there was no plea in the petition that the petitioner was acquitted in C.C.No. 282 of 2001. No doubt there is no plea about acquittal of the petitioner for the offence punishable under Section 498-A of I.P.C. in C.C.No. 282 of 2001 for the reason that the trial was not completed and that too the petitioner was acquitted on 02-03-2006 *i.e.* after dismissal of the divorce petition by the trial Court and after filing the present appeal. Therefore, it is a subsequent event. In fact, in the petition, the petitioner alleged that the respondent gave a false complaint for the offence punishable under Section 498-A of I.P.C. against the petitioner and his family members. However, proceedings were dropped against family members while filed charge sheet against the appellant. In the counter, the respondent also admitted that she filed complaint for the offence punishable under Section 498-A of I.P.C. against the petitioner and others. Therefore, the undisputed fact is that the respondent filed complaint against the petitioner for the offence punishable under Section 498-A of I.P.C. If the prosecution is ended in acquittal, certainly it can be inferred that it is a groundless or false prosecution which

would normally cause mental agony to the accused in such case. Therefore, the result of the criminal case is necessary for deciding the real controversy. Hence, certified copy of calendar and judgment in C.C.No. 282 of 2001 passed by the XIII Additional Chief Metropolitan Magistrate's Court, Hyderabad, be received as additional evidence. The other documents relevant for deciding the real controversy are F.I.R. in crime No. 81 of 2013 and charge sheet in C.C.No. 72 of 2014 as the petitioner was assaulted by the respondent in the corridor of Ranga Reddy Courts when he attended the Court in connection with legal proceedings. It is a subsequent event which can be taken note of by the Court for deciding the real controversy. Hence, copies of F.I.R. and charge sheet in C.C.No. 72 of 2014 on the file of the Court of II Metropolitan Magistrate, L.B.Nagar, be received as additional evidence.

17. The respondent also filed O.S.No. 1 of 2012 and M.C.No. 1 of 2000. Copies of those proceedings are required for deciding the real controversy. Hence, they are received as additional evidence. For receiving additional evidence, the petitioner has to establish any of the grounds contained under Order 41 Rule 27 of C.P.C., more particularly clause (a) (aa) but the present facts are not covered by clause (a) (aa) of Order 41 Rule 27 of C.P.C. However, we find that those documents are necessary to decide the real controversy between the parties since termination of criminal proceedings, which admittedly filed by the respondent, as per judicial admission in the counter is relevant. Order 41 Rule 27 (1) (b) provides that if the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the appellate Court may allow such evidence or document to be produced, or witness to be examined. Therefore, we find that the documents set out in the list are received as additional evidence by exercising power under Order 41 Rule 27 (1) (b) of C.P.C. and marked as Exs.A26 to A37. Accordingly, the point is answered in favour of the petitioner and against the respondent.

18. **In Re. Point No. 2:**

The petition is filed for grant of divorce alleging that the respondent subjected the petitioner to cruelty by her acts and omissions, more particularly attributing illicit contact with one Sarojini, who was aged 60 years by then, and also with her two daughters by name Kalyani and Bharati; attributing illicit affair with Mubbashera; father of the petitioner inviting the respondent for sexual intercourse and attributing illicit contact to the petitioner with Padma who was working as receptionist in the office where the petitioner was working. The petitioner also highlighted certain instances relating to filing complaint in crime No. 14 of 2000 under Sections 498-A, 405 and 506 of I.P.C. and under Sections 4 and 6 of Dowry Prohibition Act; filing complaint under Section 3 of the Act of 1989 in crime No. 87 of 2000 and filing maintenance case in M.C.No. 1 of 2000 under Section 125 of the Code of Criminal Procedure (for short, 'Cr.P.C.') making false allegations.

19. To substantiate his contentions, the petitioner himself was examined as P.W.1 reiterating the allegations made in the petition and produced documentary proof in support of contentions, more particularly with regard to criminal litigation and civil litigation. However, the initial acts and omissions attributed to the respondent by the petitioner are based on oral and documentary evidence. Therefore, the evidence on record is adverted to decide the real controversy. The respondent gave an undertaking marked as Ex.A2 duly signed by her but this undertaking is no way helpful to prove the acts of cruelty. One of the specific contentions of the petitioner is that he lodged Ex.A3 complaint with Woman Counseling Centre, Lakdikapool, Hyderabad, on 29-07-1999, due to unbearable cruel treatment of the petitioner by the respondent, seeking justice but no action was taken on the strength of Ex.A3. Therefore, the acts complained in Ex.A3 are not established by any amount of evidence.

20. The next contention of the petitioner is that, on 10-08-1999, the in-laws of the petitioner along with 8 persons attacked him with lotties at his

residence and the same was brought to the notice of S.H.O., Malkajgiri P.S. Ex.A4 is report but no action was taken even on this complaint also by police after due investigation. Learned counsel for the petitioner drawn attention of this Court to certain admissions about the complaint given by P.W.1 against father of the respondent. In the 1st page of cross-examination, R.W.1 admitted that complaint dated 10-08-1999 was given to police about the incident that occurred at the residence of the petitioner and, similarly, R.W.4 also admitted about the said complaint. However, the police visited the scene of offence and investigated into the crime but no action was taken. It is also contended that on 11-12-1999, the respondent picked up quarrel with the petitioner at 3 *p.m.*, thrown away all his belongings from the house and threatened the petitioner that she will implicate the petitioner in false case. The said incident was also reported to Malkajgiri Police under the original of Ex.A4. Taking advantage of the allegations made in those complaints, it has been contended that the respondent subjected the petitioner to cruelty. In fact, the allegations made in those complaints though constituted offence but the police, after due investigation, did not take any action. Therefore, basing on those complaints Exs.A3 and A4, it is difficult to hold that the respondent subjected the petitioner to cruelty believing the acts and omissions attributed to the respondent. Hence, Exs.A3 and A4 are not sufficient to grant decree of divorce on the ground of cruelty.

21. One of the contentions urged in the petition is that the respondent used to attribute illicit contact to the petitioner with several women and, in para No. 8 of the petition, the petitioner specifically pleaded that, in view of his employment, he has to attend outdoor work and used to return to his house in late hours but, taking advantage of it, the respondent used to pick up quarrel alleging that the petitioner used to meet other girlfriends having affair with them. Surprisingly, the respondent in her counter, in 5th line at page No. 4, made a serious allegation attributing illicit contact with one Sarojini, his friend's mother. The specific allegation is extracted hereunder

for better appreciation:

"Actually the petitioner used to go to the residence of one Smt. Sarojini and used to spend most of the time at her residence and neglected the respondent by showing dislike towards the respondent and that actually the petitioner used to go to one Smt. Sarojini's family and used to move closely with her and her daughters Kalyani and Bharathi."

In cross-examination, R.W.1 stated that one Kishore is friend of the petitioner; Sarojini Devi is mother of Kishore and she was aged more than 60 years. The respondent was informed by her husband that he had relationship with Sarojini Devi and her two daughters and he used to spend in the house of his friend Arjun. The respondent further admitted that she gave report to police that she saw the petitioner and one Kalyani in her house while they were in bedroom. These specific admissions made in the cross-examination attributing illicit contact with Sarojini Devi, mother of friend of the petitioner, and sisters of her husband's friend were not substantiated by the respondent by producing any amount of evidence. When such serious allegation is made linking up the character of the petitioner with another woman, who is aged 60 years and no other than mother of his friend, and Kalyani and Bharati, who are sisters of his friend, certainly causes mental pain to the petitioner. In ***Garikapati Suresh Babu Vs. Garikapati Prasanna Kumari***^[1], a Division Bench of this Court observed that

"It is settled law that in all matrimonial cases, burden of proof is on the petitioner and, particularly in cases of cruelty, it is for the petitioner to prove the element of legal cruelty."

It was further observed that

"The allegations made in the counter, though they are subsequent to filing of the petition, if false and baseless, then only the petitioner can claim that such false and baseless allegations have caused mental cruelty to him. Merely because they are not proved, it cannot be said that they amount to cause mental cruelty."

However, in the present case, the respondent attributed illicit contact to the petitioner with so many persons and one such person is Sarojini, who was aged 60 years, and her two daughters Kalyani and Bharati but learned

counsel for the respondent would contend that unless those allegations are pleaded as grounds for granting divorce, those allegations cannot be relied upon.

22. Learned counsel for the petitioner contended that the acts committed by the respondent i.e. filing of criminal cases one after the other, which ended in closure and acquittal, making serious allegation against the petitioner attributing illicit contact with several other women certainly amounts to cruelty and placed reliance on various judgments of Apex Court. The word cruelty is not defined anywhere under the Act of 1955. However, in **Savitri Pandey Vs. Prem Chandra Pandey**^[2], the Apex Court defined the word cruelty as follows:

"Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other. The averments made in the petition and the evidence led in support thereof clearly show that the allegations, even if held to have been proved, would only show the sensitivity of the appellant with respect to the conduct of the respondent which cannot be termed more than ordinary wear and tear of the family life."

In **Naveen Kohli Vs. Neelu Kohli**^[3], the Apex Court, defining the word 'cruelty', held as follows:

"To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse can not be reasonably expected to live with the other spouse. It must be something

more serious than "ordinary wear and tear of married life". The conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions."

In ***Dr. (Mrs.) Malathi Ravi, M.D. Vs. Dr. B.V.Ravi, M.D.***^[4], the Apex Court, after reviewing entire law on cruelty, held in para No. 37 as follows:

"For the present, we shall restrict our delineation to the issue whether the aforesaid acts would constitute mental cruelty. We have already referred to few authorities to indicate what the concept of mental cruelty means. Mental cruelty and its effect cannot be stated with arithmetical exactitude. It varies from individual to individual, from society to society and also depends on the status of the persons. What would be a mental cruelty in the life of two individuals belonging to particular strata of the society may not amount to mental cruelty in respect of another couple belonging to a different stratum of society. The agonized feeling or for that matter a sense of disappointment can take place by certain acts causing a grievous dent at the mental level. The inference has to be drawn from the attending circumstances."

23. Learned counsel for the petitioner-husband, while contending that defamatory allegations made by wife against husband would certainly amount to cruelty, placed reliance on ***K.Srinivasa Rao Vs. D.A.Deepa***^[5], wherein the Apex Court held that

"Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the Court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.."

Thus, the consistent view of the Apex Court in various judgments is that if the acts of one spouse create reasonable apprehension in the mind of other spouse that it is harmful or dangerous for him/her to live with other spouse, it is a ground to grant divorce under Section 13 (1) (ia) of the Act of 1955.

24. Learned counsel for the petitioner placed reliance on ***K.Srinivas Vs.***

K.Sunita ^[6] to contend that no pleadings are necessary when both the parties are aware about filing of criminal cases and their disposal. In the facts of the above judgment, both the parties are aware about filing of criminal cases *i.e.* the wife filed a criminal case against the husband for the offences punishable under Sections 498-A and 307 of I.P.C. and, after full-fledged trial, the husband was acquitted by the trial Court. Filing of such baseless prosecution and prosecuting the case for years together making the husband to roam around the Courts besides waste of time and money certainly amount to mental cruelty. The Apex Court, relying on **K.Srinivasa Rao Vs. D.A.Deepa** (5th *supra*), held as follows:

"It is now beyond cavil that if a false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce."

Yet, learned counsel for the petitioner drawn attention of this Court to para No. 6 of the same judgment, where the Supreme Court, discussing about necessity of pleadings, held as follows:

"Another argument which has been articulated on behalf of the learned counsel for the Respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events could have been looked into by the Court. In any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was lead, as also when arguments were addressed, objection had not been raised on behalf of the Respondent-Wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf."

In the facts of the above judgment, the wife filed a criminal complaint for the serious offences punishable under Sections 498-A and 307 of I.P.C., the husband was arrested by police during investigation and, after full-fledged trial, he was acquitted. However, no specific plea was raised in the petition before the trial Court and throughout the proceedings. Even in such case also, the Supreme Court made an observation *ut supra* and granted divorce.

25. Learned counsel for the petitioner also placed reliance on **Parihar (Priti) Vs. Parihar (Kailash Singh)**^[7], wherein it was held that

"Cruelty is willful and unjustifiable conduct of such a character as to cause danger to life, limb or health bodily or mental as to give rise to reasonable apprehension of such a danger. It includes action or omission which injures the susceptibilities of the affected spouse and causes him or her mental agony which the sufferer alone can state."

In **Smt. Santana Banerjee Vs. Sachindra Nath Benerjee**^[8], the High Court of Calcutta held that

"Wife persistently making disparaging, derogatory and ugly remarks against husband and his close relations about their character. Wife reiterating such disparaging remarks in her written statement and also in her deposition. False allegations by wife against husband that he was having illicit sexual relation with office colleague and same was with knowledge and consent of husband's sister. False allegation by wife against husband of sexual perversity and bestiality. Such acts of wife amounted to mental cruelty justifying a decree for divorce."

In **Gajjala Shankar Vs. Anuradha**^[9], it was held that

"Using un-parliamentary language by the respondent-wife against the appellant-husband amounts to mental cruelty and it is a ground to grant divorce."

26. In view of the principles laid down by Apex Court, this Court and other Courts, making serious allegation of illicit contact by the respondent against the petitioner would certainly cause mental pain if such allegation is not proved. In the present case, the respondent made a serious allegation of linking up the character of the petitioner with the character of Sarojini, who was aged 60 years, so also attributing illicit contact with the daughters of Sarojini but those allegations were not substantiated by any iota of evidence. Therefore, such conduct would certainly amount to mental cruelty even if social status of the parties, their educational background, physical and mental condition and customs and traditions are taken into consideration. Therefore, the acts attributed to the petitioner by the respondent, more particularly attributing illicit contact with Sarojini, Kalyani and Bharati, which are not substantiated by any material, certainly amounts

to cruelty and it is a ground for granting divorce.

27. Yet, learned counsel for the petitioner contended that attributing illicit contact with colleague working in the office amounts to cruelty. In fact, no such plea was specifically raised in the petition by the petitioner. However, P.W.3 in his evidence testified that the respondent telephoned to the office of the petitioner and used to enquire about whereabouts of the petitioner and also used to telephone to enquire that the petitioner is having illegal relationship with one Padma, receptionist in the office of Bambino Industries. This piece of evidence is not dispelled in the entire cross-examination. Therefore, making such serious allegation that the petitioner developed illicit intimacy with Padma, receptionist working in the same office, if not substantiated, would cause mental agony to the petitioner. In the present case, the serious allegations made by the respondent-wife are not substantiated by any evidence. Hence, it is a ground for granting decree of divorce.

28. The petitioner, while contending that subsequent event shall also be taken into consideration in deciding acts of cruelty, has drawn attention of this Court to the allegations made in M.C.No. 1 of 2000; crime No. 14 of 2000 under Sections 498-A, 405, 506 of I.P.C. and Sections 4 and 6 of Dowry Prohibition Act and crime No. 87 of 2000 under Section 3 of the Act of 1989. In the complaint lodged in crime No. 87 of 2000 under Section 3 of the Act of 1989, a serious allegation is made that the petitioner addicted to vices like drinking; illegal contacts with other women; father of the petitioner is having illicit contact with the eldest daughter-in-law and inviting the respondent to have intercourse with the father of the petitioner. Ex.A12 is complaint under Section 200 of Cr.P.C. and the respondent, in para No. 8, made the following allegations:

"It is further submitted that A1 had many bad habits like drinking, having illegal contacts etc., A1 always imposes conditions on complainant when she goes to her parents house, he could fixed the time for half an hour to

return, he used to give some provisions in limited quantity for cooking purpose. He supplied some provisions to Mrs. Saroji Family from the house earnings he always suspects that the complainant have any illegal contacts with the milk boy and paper boy, he used to get locked up main door by leaving the complainant inside during the whole night after locking he would go outside and he would come back at early hours and open the door. A1 always allowed his friend to enjoy in his house when the complainant opposed he insisted the complainant to had the alcohol when she refused he beaten and abused. A1 always used to comment on A5 and described about her personality before the complainant and also he said that she invited him in the absence of her husband at the night times."

By filing complaint in writing, the respondent attributed *mala fides* to the petitioner linking up his character with other women. The respondent in her examination in chief made several allegations against the petitioner attributing illicit contact with different persons. One of such serious allegation was referred in the earlier para. In cross-examination at page No. 4, R.W.1 made a serious allegation that as per the direction of her husband, she stated in Ex.A12 that her father-in-law developed intimacy with his daughter-in-law; in the absence of her husband, her father-in-law used to come to her house and misbehave with her to lye with him and that she knows that the petitioner had an affair with Mubbashera. Therefore, it is evident from the admissions made by R.W.1 that she made serious allegations connecting the character of her co-sister with the character of her father-in-law creating illicit contact and attributing illicit contact to the petitioner with Mubbashera and these allegations certainly would cause mental agony when they are not substantiated by any material. The respondent also got examined her father Yadagiri as R.W.2. R.W.2 also made certain attributions that the petitioner addicted to vices like drinking alcohol and affair with one lady but he had no personal knowledge of the same. The evidence of R.W.3 is of no use either to prove the attributions made against the petitioner or to disprove the contentions of the respondent. R.W.4 is D.R.Srinivas who spoke about the complaint etc.,. However, in cross-examination, R.W.4 repeated the allegation that Sarojini was aged 40 years, he does not know the son of Sarojini by name Kishore and that he does not know whether Sarojini treated

the petitioner as a son or not. R.W.4 only came to know that there is an affair between Sarojini and the petitioner without any personal knowledge. This allegation is unsubstantiated by any piece of evidence. Therefore, making unholy allegation against the petitioner and his father linking up their character with other women including co-sister of the respondent, which are not substantiated, would certainly amount to mental cruelty. Making such unfounded wild allegation directly amounts to mental cruelty.

29. One of the major contentions of the petitioner is that the respondent gave complaints against the petitioner for the offence under Section 3 of the Act of 1989 and various Sections of I.P.C. including Sections 4 and 6 of Dowry Prohibition Act without any basis but police, after due investigation, dropped further proceedings and filed final report marked as Ex.A23. Strangely, before completion of investigation, the accused was arrested by police and remanded to judicial custody. Ex.A22 is charge sheet in crime No. 14 of 2000, Women Police Station (North Zone), Begampet, dated 07-02-2000. The Judicial Magistrate of I Class remanded the petitioner to judicial custody till 22-02-2000. After investigation, charge sheet was filed. However, after full-fledged trial, the petitioner was acquitted by calendar and judgment dated 02-03-2006. Thus, the serious allegations made against the petitioner by the respondent and filing criminal cases against the petitioner are without any material which ended in acquittal. Arrest of the petitioner under the original of Ex.A12 and making the petitioner to roam around the Court to face trial in cases one after the other would certainly cause both physical and mental pain on account of such complaints, his arrest and release etc.,. Making serious allegations by one spouse against the other, filing criminal cases, arrest of the husband in connection with criminal cases, tried by Court for the said charges and, ultimately, finding not guilty directly cause much inconvenience besides mental agony. Therefore, certainly such conduct would amount to mental agony.

30. Learned counsel for the respondent made a feeble attempt to contend

that, in the absence of plea that the petitioner was acquitted in the criminal case, mere acquittal of the accused cannot be taken into consideration since the Court has to confine to pleadings and record its findings but the Apex Court in **K.Srinivas** (6th *supra*) totally relaxed the ordinary rule of pleadings. In the present case, both the petitioner and the respondent are aware about arrest of the petitioner in connection with criminal case and facing trial by the petitioner. In such a case, the Court cannot insist for pleadings when particular fact is within the knowledge of both the parties. Therefore, the contention of learned counsel for the respondent holds no substance and we are, therefore, unable to accept the same in view of the law laid down by Apex Court in **K.Srinivas** (6th *supra*).

31. Learned counsel for the respondent mainly contended that when the petitioner himself is guilty of cruelty, he is not entitled to take advantage of his own wrong to claim divorce in view of Section 23 (1) (a) of the Act of 1955. That apart, mere failure to prove the charge in criminal case would not entitle the petitioner to claim divorce since he is bound to prove the mental trauma underwent by him during the period of pendency of the criminal case. Therefore, the petitioner is not entitled to claim divorce on the ground of cruelty. This contention would not advance the case of the respondent for the reason that there are several evidentiary and judicial admissions in pleadings and evidence of the petitioner about filing of criminal case by the respondent for the offences punishable under Sections 498-A, 405 and 506 of I.P.C. and Sections 4 and 6 of Dowry Prohibition Act and filing of complaint making a grave allegation against the father of the petition attributing illicit contact between the father of the petitioner and his daughter-in-law would certainly cause mental agony to the petitioner. Admittedly, the criminal case was ended in acquittal and it is supported by Ex.A30 marked by this Court as additional evidence. Thus, the respondent filed the criminal complaint without any basis and evidence. Acquittal of the petitioner for the offence punishable under Section 498-A of I.P.C. on the basis of baseless complaint

certainly causes mental agony which cannot be explained by adducing any evidence. Therefore, the contention of learned counsel for the respondent is unsustainable and, on this ground, the divorce petition cannot be dismissed. We have already discussed about various admissions both evidentiary and judicial in the earlier paras and the cumulative effect of the evidence on record is that the respondent subjected the petitioner to untold mental agony which is a ground for grant of divorce under Section 13 (1) (ia) of the Act of 1955 in view of the law declared by Apex Court referred in the earlier paras. Therefore, the petitioner is entitled to decree of divorce.

32. On overall consideration of entire material available on record, there is voluminous material on record to substantiate the contention of the petitioner that he was subjected to cruelty by the respondent in different ways, mostly making unholy and unethical allegations against the petitioner linking up his character with friend's mother, sisters and other women but failed to substantiate the same. In addition to that, she filed series of complaints against the petitioner but failed to substantiate the charges leveled against him. However, the trial Court, without considering the fact of making such unfounded, unholy and unethical allegations against the petitioner, dismissed the petition on the ground that the petitioner failed to prove the alleged cruelty. As such, the finding of the trial Court is erroneous in view of the law laid down by Apex Court in the decisions referred *supra*. Hence, we find that the trial Court committed grave error in dismissing the petition and, thereby, the finding of the trial Court is liable to be set aside. Accordingly, we set aside the finding of the trial Court holding this point in favour of the petitioner and against the respondent.

33. In view of our findings on point Nos. 1 and 2, both the petition and the appeal are liable to allowed.

34. In the result, C.M.A.M.P.No. 989 of 2014 is allowed receiving the documents, set out in the list, as additional evidence by marking them as Exs.A26 to A37 while allowing the appeal setting aside the decree and

decretal order dated 22-09-2004 passed in O.P.No. 273 of 1999 on the file of the Court of II Additional Senior Civil Judge, R.R. District at L.B. Nagar, Hyderabad. Pending miscellaneous petitions in this appeal, if any, shall stand closed in consequence. No order as to costs.

RAMESH RANGANATHAN, J.

MURTHY, J.

M.SATYANARAYANA

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

"No oral evidence is adduced on either side"

EXHIBITS MARKED

FOR APPELLANT:

Ex.A26 C.C. of complaint lodged with P.S. Malkajgiri against the respondent

Ex.A27 C.C. of complaint lodged with Assistant Commissioner of Police, Secunderabad, against the respondent

- Ex.A28 Undertaking given by the respondent
- Ex.A29 C.C. of complaint in C.C.No. 451 of 2005 filed by the respondent against T.Srinivas for the offence punishable under Section 138 of the Negotiable Instruments Act
- Ex.A30 C.C. of judgment in C.C.No. 282 of 2001
- Ex.A31 C.C. of gift settlement deed executed in favour of the respondent by her father
- Ex.A32 Original memorandum of understanding executed between the appellant and the respondent
- Ex.A33 Complaint lodged with Commissioner of Police, Hyderabad, against the respondent
- Ex.A34 C.C. of F.I.R.No. 81 of 2013 and complaint filed against the respondent
- Ex.A35 C.C. of charge sheet in C.C.No. 72 of 2014 along with statements under Section 161 Cr.P.C.
- Ex.A36 C.C. of letter of Bar Council of the State of Andhra Pradesh
- Ex.A37 C.C. of decree and judgment in O.S.No. 1 of 2012

FOR RESPONDENT:

NIL

RAMESH RANGANATHAN, J.

M.SATYANARAYANA

MURTHY, J.

Date: 09th March, 2015.

JSK

[\[1\]](#) 2014 (6) ALT 594 (D.B.)

[\[2\]](#) AIR 2002 SC 591

[\[3\]](#) AIR 2006 SC 1675

- [\[4\]](#) AIR 2006 SC 1675
- [\[5\]](#) Laws (SC) – 2013 – 2 – 53
- [\[6\]](#) CIVIL APPEAL No. 1213 OF 2006
- [\[7\]](#) AIR 1978 RAJASTHAN 140
- [\[8\]](#) AIR 1990 CALCUTTA 367
- [\[9\]](#) CDJ 2006 APHC 241