

**HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA
FAMILY COURT APPEAL No.193 of 2013**

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JUDGMENT: (Per Justice R. Subhash Reddy)

This appeal, under Section 19 of the Family Courts Act, 1984 is filed by the petitioner in H.M.O.P.No.57 of 2010 on the file of the Judge, Family Court, Khammam, aggrieved by the order and decree dated 10.01.2013, whereby the petition filed by him under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 to dissolve the marriage of the petitioner with the respondent therein, by a decree of divorce on the ground of cruelty, is dismissed.

2. For the sake of convenience, the parties are referred to as arrayed before the Family Court.

3. The case of the petitioner as stated in the affidavit filed in support of the H.M.O.P., is as under:

The respondent is the legally-wedded wife of the petitioner and their marriage took place on 24.07.2009 at Sri Venkateswara Temple, Vijayawada of Krishna District. The marriage is a second marriage to the respondent and, earlier, the respondent was married to another person, earlier and the same was dissolved by a decree of divorce. She has a male child through first husband. The respondent is no other than the daughter of the paternal aunt of the petitioner. The respondent is five years elder

to the petitioner and both of them were brought up at Khammam. The respondent was divorced by her first husband because of the ill-treatment meted out to him by the respondent. In view of the relationship of the petitioner with the respondent, the parents of the respondent provided an occasion to the petitioner to have privacy with the respondent at their house only to see that the respondent is married to the petitioner as she is a divorcee. Except the friends of the petitioner and parents of the respondent, no other relatives attended the marriage. After the marriage, they lived together for sometime; thereafter, the respondent started ill-treating the petitioner for petty reasons. The respondent was harassing the petitioner everyday just before his departure to office in the morning for petty reasons. She was not even preparing food and virtually harassing the petitioner all through the night. Respondent and her father were insisting the petitioner to undergo vasectomy operation so that petitioner should not procreate any children through the respondent as the respondent already had a son through her first husband. Respondent and her parents harassed the petitioner and insisted him to demand his share in the property of his father as the petitioner and his brother are the only sons to his father. The petitioner thought of committing suicide many times as a result of ill-treatment meted out to him by the respondent. The respondent never treated the petitioner as her husband

and always used to treat him as a slave and all the efforts made by him to lead normal life with the respondent did not fructify. In furtherance of her nefarious intention, the respondent left the company of the petitioner at Warangal without informing him on 20.10.2010 by taking away her belongings; thus the respondent acted cruelly towards the petitioner.

4. On the aforesaid grounds, the petitioner sought dissolution of marriage with the respondent.

5. During pendency of this appeal, petitioner filed F.C.A.M.P.Nos.206 and 207 of 2015 which are allowed by a separate order. In FCA M.P.No.206 of 2015, petitioner raised additional grounds alleging that the respondent, with a view to harass him as well as his family members, lodged false complaint, which is registered under Section 498 A IPC and is tried in C.C.No.1017 of 2010 on the file of the I Additional Judicial Magistrate of I class, Khammam, wherein the petitioner and other accused were acquitted. It is alleged that, making false allegations of demand of dowry by way of complaint, subsequent to filing of H.M.O.P., and further, filing of complaint under Protection of Women from Domestic Violence Act, 2005, would constitute mental cruelty.

6. F.C.A.M.P.No.207 of 2015 is filed under Order 47 Rule 27 to receive additional evidence, i.e., certified copy of the judgment in C.C.No.1017 of 2010 and the judgment in Criminal Appeal No.109 of 2013 on the file of the

Principal District and Sessions Judge, Khammam and certified copy of the docket order in D.V.C.No.22 of 2012. The said petition is also allowed vide separate order. Thus, it is the case of the petitioner that, not only on the grounds raised before the Family Court, but also the subsequent filing of false criminal case against the petitioner and his family members constitutes cruelty.

7. The respondent filed counter-affidavit before the Family Court. In the counter-affidavit, while admitting her relationship with the respondent, their marriage was performed at Vijayawada and the same is a second marriage, the respondent denied other allegations. It is the case of the respondent that all the allegations are made only for the purpose of filing the petition seeking divorce. It is pleaded that the petitioner is no other than the son of her maternal uncle and the petitioner was well aware of her family background and it is also within the knowledge of the petitioner that there were strained relations between her and her first husband and after long conciliation, the matter was settled before the Legal Services Authority, Khammam. It is stated that, thereafter, petitioner used to come to their house and revealed his intention to marry her, on which she admonished him and asked him not to have any such intentions as he is a close relative; however, as the petitioner threatened that he will commit suicide if she does not marry him, she had to accept for the marriage with the petitioner in the

presence of his friends. It is further stated that she joined the company of the petitioner at Warangal but not Hyderabad as alleged and they lived together till 18.02.2010 at Warangal. It is further stated that petitioner used to go to office at around 7 AM and returned home at around 11.00 PM in the night and sometimes he used to have dinner outside. Though things went on smoothly till March, 2010, petitioner, having gone into the fold of his parents, used to comment that his parents lost respect in the society due to his marriage with the respondent. It is further stated that petitioner used to comment that he had done a mistake in marrying her; later he demanded money from her parents to start a new business and all of a sudden the petitioner asked her to go to Khammam as he is going to Hyderabad, on his job for one month; however enquires revealed that petitioner was living at Hanamkonda with his parents and when the respondent rushed to Hanamkonda with her parents, they demanded a sum of Rs.30 lakhs for business and Rs.10 lakhs for minimum needs, in the absence of which they made it clear that they will perform another marriage to the petitioner.

8. Before the Family Court, petitioner was examined as P.W.1.

A friend of the petitioner was examined as P.W.2. A co-tenant was examined as P.W.3. The respondent was examined as R.W.1 and her mother was examined as

R.W.2. No documentary evidence was filed on either side.

9. The Family Court, by the impugned order and decree, dismissed the H.M.O.P., by recording a finding that the petitioner has failed to prove the ground of cruelty as alleged by him against the respondent.

10. Heard Sri K.G. Krishna Murthy, learned senior counsel assisted by Sri K. Ram Mohan Mahadeva learned counsel on record for the petitioner and Sri Kowturu Vinaya Kumar, learned counsel for the respondent and perused the material on record.

11. In this appeal, it is contended by Sri K.G. Krishna Murthy, learned senior counsel, as follows:

The respondent is five years elder to the petitioner and the petitioner was virtually trapped by the parents of the respondent only to see that the respondent is married, as she was divorced earlier. The marriage was performed without the knowledge of the parents of the petitioner, at a temple in Krishna District; after the marriage, for a short time, petitioner and the respondent lived together and thereafter true colours of the respondent have come out and she started ill-treating the petitioner for silly reasons; the respondent was insisting the petitioner not to attend job and also quarrelling with him when he leaves to the office in the morning; the respondent along with her father was insisting the petitioner to undergo vasectomy

operation only to see that the petitioner should not procreate any children through the respondent as the respondent has already got a child with her first husband; such conduct of the respondent is nothing but cruelty within the meaning of Section 13 (1) (ia) of the Act only because of filing of petition for grant of divorce, false complaints were made and the petitioner and his family members were made to run pillar to post in view of the false complaint registered against the petitioner and his family members and other relatives, and, ultimately, after full-dressed trial, the trial court has acquitted them honourably, and the same is also confirmed in appeal. It is further submitted that, not only the grounds alleged by the petitioner before the Family Court, but also the false complaints lodged as a counterblast to the proceedings initiated by the petitioner for grant of divorce, constitute cruelty for grant of decree of divorce; it has virtually become impossible for the petitioner to live with the respondent and the petitioner categorically stated in the affidavit that he thought of committing suicide at one point of time in view of the harassment meted out to him by the respondent; as such it is a fit case for grant of decree of divorce. Learned counsel for the petitioner, in support of his submissions, has relied upon the following decisions of the Hon'ble Supreme Court:

- *K. Srinivas v. K. Sunita*^[1]
- *Malathi Ravi, M.D. v. B.V. Ravi, M.D.*^[2]

· *K. Srinivas Rao v. D.A. Deepa*^[3]

12. On the other hand, it is contended by the learned counsel for the respondent, that the petitioner is no other than the son of the maternal uncle of the respondent and being fully aware of the divorce proceedings of the respondent with her first husband, the petitioner started coming to the house of the respondent and her parents frequently and revealed his intention to marry the respondent. All the allegations made against the respondent are only fabricated for the purpose of seeking dissolution of marriage and there is no truth in any of the allegations. It is further contended that merely because the petitioner is acquitted from the criminal case, that, by itself, is not a ground to dissolve the marriage between the parties. The learned counsel for the respondent, in support of his submissions, placed reliance on the decisions of this Court in *Katada Baby @ Kollati Baby v. Katada Sri Venkata Satya Raja Sekhar*^[4], *V. Venkateshwarlu v. V. Mamatha*^[5] and an unreported judgment dated 19.02.2015 passed by this Court in passed in C.M.A.No.4575 of 2004.

13. Having regard to the rival contentions advanced by the learned counsel for the parties, the only question which falls for consideration in this appeal is whether the petitioner has made out any case which would constitute

“cruelty” within the meaning of Section 13(1) (ia) of the Hindu Marriage Act, 1955 to dissolve his marriage with the respondent. From the pleadings on record, it is clear that the respondent was married earlier and the earlier marriage was dissolved by obtaining decree of divorce before the legal services authority. It is the allegation of the petitioner that, only due to the harassment meted out by the respondent to her first husband, the earlier marriage was dissolved, whereas the same is denied by the respondent. For the purpose of deciding the issue which falls for consideration in this case, it is not necessary to delve into the grounds which resulted in dissolution of marriage of the respondent with her first husband.

14. Insofar as the H.M.O.P., filed by the petitioner is concerned, it is the case of the petitioner that he married the respondent at Vijayawada on 24.07.2009. It is first marriage to the petitioner and second marriage to the respondent. It is also the case of the petitioner that the respondent is five years elder to him and he was trapped by the respondent and her family members only to get her married to him, but the same is denied by the respondent in the counter-affidavit. It is further the case of the petitioner that the marriage was not attended by his parents except parents of the respondents and some of his friends. It is the allegation of the petitioner that the respondent never treated him as her husband and always

treated him as her slave and she was also not preparing food; she left the company of the petitioner on 26.10.2010 with her belongings. It is also the specific allegation of the petitioner that the respondent was always insisting him not to go to job and wanted him to stay indoors and used to harass him while he was leaving to office in the morning. Further, it is the specific allegation of the petitioner that respondent and her parents were insisting him to undergo vasectomy operation so as to ensure that he does not procreate any children through the respondent as she is already having a son through her first husband. The petitioner, who is examined as P.W.1, has stated in his deposition that only because the respondent ill-treated her first husband, their marriage was dissolved, but at the same time, in the cross-examination he has stated that he has no acquaintance with the first husband of the respondent or his relatives. In view of such statement made by the petitioner in the cross-examination, it is difficult to hold that divorce of the respondent with her first husband is only due to the harassment meted out by the respondent to her first husband. At the same time, petitioner has categorically stated that respondent and her parents were insisting that he should undergo vasectomy operation, but there is no cross-examination on the said aspect. P.W.2 is the friend of the petitioner but not an eyewitness to any of the instances of alleged harassment made by the respondent. P.W.3 is said to be the person

who resides in the same building as co-tenant of the petitioner and the respondent in Hanamkonda. In her deposition, she categorically stated that she used to visit the house of the petitioner now and then and the respondent was always insisting the petitioner to remain indoors without going to job and the respondent used to quarrel with the petitioner on some petty issues at the time of his going to the office in the morning. Such deposition of P.W.3 is disbelieved only on the ground that petitioner has not referred to the same in his pleadings. When it is the specific allegation of the petitioner that respondent was insisting him to remain indoors without going to work/job, it is always open for him to produce cogent evidence if any to substantiate such allegation.

As such, we are of the view that there is no reason to discard the evidence of P.W.3. When the petitioner is earning member from the job, there is no justification on the part of the respondent to insist the petitioner to remain indoors without going to job and the respondent is also not justified in quarrelling with the respondent while he was going to work/job.

15. Respondent was examined as R.W.1 and her mother was examined as R.W.2, who has supported the averments of the respondent as stated in the counter-affidavit. No other independent witness is examined.

16. It is the specific contention of the petitioner that subsequent to filing of the petition for grant of divorce,

false complaint is made by the respondent alleging that he and his relatives are demanding dowry. On such complaint, a case is registered in Cr.No.62 of 2010 under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act. It is stated that with regard to such allegation, the petitioner was tried along with his parents and relatives in C.C.No.1017 of 2010 on the file of the I Addl. JFCM, Khammam and after full-dressed trial, the trial court acquitted the petitioner and other accused on merits by judgment dated 21.12.2012. Aggrieved by the same, Criminal Appeal No.109 of 2013 was filed and the same was dismissed by the learned Principal District & Sessions Judge, Khammam by judgment dated 07.11.2014. Before dismissal of C.C., respondent herein also lodged complaint under the Protection of Women from Domestic Violence Act, 2005 which is numbered as D.V.C.No.22 of 2012 on the file of the I Addl. JFCM, Khammam and the same was dismissed for non-prosecution on 08.01.2014. It is alleged that such complaint was found to be false in view of the acquittal recorded on merits in C.C.No.1017 of 2010 as confirmed in Criminal Appeal No.109 of 2013 and filing of one case after the other without any reasonable cause amounts to cruelty. A copy of the judgment in C.C., and Criminal Appeal and the order passed in the D.V.C., are filed by way of additional evidence. The respondent herein has lodged complaint with the police on 01.10.2010 alleging

that petitioner and his mother harassed her physically and mentally and her in-laws and other relatives harassed her to bring Rs.30 lakhs additional dowry and she was driven out of the house. On behalf of the prosecution, the respondent herein was examined as P.W.1, apart from examining other witnesses, i.e., P.Ws.2 to 5 in the aforesaid C.C. In the aforesaid judgment, specific finding is recorded that the respondent herein did not prove the allegations made by her and the said allegations are vague and not supported by acceptable evidence. Further finding is recorded that, even relatives of the petitioner, i.e. A.4 and A.5 are roped in without there being any evidence on record. From a perusal of the said judgment, it is clear that petitioner was acquitted after full-dressed trial by recording a finding that the allegations made by her herein regarding demanding of dowry by the petitioner and his family members are not proved. The said judgment is also confirmed by the Principal District & Sessions Judge, Khammam vide Criminal Appeal No.109 of 2013. It is also to be seen that though the respondent filed D.V.C.No.22 of 2012 against all the five accused who are figured in C.C., however, she did not pursue the matter and the same was dismissed for non-prosecution on 08.01.2014. In view of the judgments in the C.C., Criminal Appeal and D.V.C., it is clear that the allegations of dowry and harassment made by the respondent are found to be false after full-dressed trial.

17. In support of the contention of the learned counsel for the petitioner that filing of false complaint, which lead to initiation of criminal cases against the petitioner constitutes cruelty, has placed reliance on the decisions referred 1 to 3 supra.

18. On the other hand, it is the contention of the learned counsel for the respondent that very filing of complaint, by itself, does not constitute cruelty and in support thereof, he relied on the decisions referred 4 & 5 supra and also an unreported judgment of this Court in C.M.A.No.4575 of 2004.

19. In this case, from the material on record, it is clear that, subsequent to filing of the H.M.O.P., by the petitioner seeking divorce, respondent has lodged complaint before the Police alleging that petitioner was demanding dowry of Rs.30 lakhs at the instance of his parents and relatives. The said complaint was tried in C.C.No.1017 of 2010 on the file of the I Additional Judicial Magistrate of I class, Khammam; after investigation, charge sheet was filed and after full-dressed trial, petitioner and other accused were acquitted and in the judgment specific finding is recorded that A.4 and A.5 who are relatives of the petitioner were roped in without any evidence on record. Whether the complaint filed on the allegation of demand of dowry will constitute cruelty, or not, is a matter which is required to be considered depending on the facts and circumstances

of each case. The same will depend on several aspects, viz., the time when the complaint is filed and in case of acquittal of accused whether such acquittal is honourable or on the benefit of doubt etc.

20. In the case of *K. Srinivas* (1 supra), it is held that filing false complaints against family members of the spouse constitutes cruelty as postulated in Section 13(1) (ia) of the Hindu Marriage Act. In the case of *Malathi Ravi* (2 supra), it is held that false and vexatious criminal proceedings under Sections 498-A/506/34 IPC against husband and his family after filing of petition seeking divorce would constitute mental cruelty. Furthermore, in the case of *K. Srinivas Rao* (3 supra) the Hon'ble Supreme Court has held that making unfounded indecent/defamatory allegations against spouse or his/her relatives in pleadings, filing repeated false complaints or cases in court, etc., are all illustrative cases of mental cruelty which would warrant grant of divorce.

21. In that view of the matter and having regard to the facts and circumstances of the case on hand, we are of the view that as the respondent filed complaint only after filing of petition by the husband seeking divorce not only against the petitioner but also against his family members and other relatives, such conduct on the part of the respondent constitutes cruelty within the meaning of Section 13(1) (ia) of the Hindu Marriage Act. Viewed in the backdrop of the case on hand, the decisions of the

Hon'ble Supreme Court relied on by the learned counsel for the petitioner support the case of the petitioner.

22. Coming to the decisions relied on by the learned counsel for the respondent referred 4 and 5 supra and also the unreported judgment of this Court, it is to be seen that in the judgment in *Katada Baby @ Kollati Baby* (4 supra), this Court has held that evidence, in relation to plea and proof of factum of lodging report under Section 498-A IPC and filing of maintenance case by wife, cannot be permitted to be let in without there being a plea therefor in the petition filed by husband and even if evidence is let in it cannot be looked into unless such plea is introduced by amending petition. Further, in the unreported judgment in C.M.A.No.4575 of 2004, this Court has held that, by filing of complaint or pursuing case under Section 498-A and Sections 4 and 6 of the Dowry Prohibition Act by the wife per se does not constitute cruelty in the absence of proof by the husband that complaint filed or report given is false. Further, in the case of *V. Venkateshwarlu* (5 supra), this Court has held that mere complaint by itself cannot constitute cruelty.

23. Having regard to the facts and circumstances of the case on hand, we are of the view that the aforesaid judgments would not render any assistance in support of the case of the respondent. The very fact that complaint filed by the respondent against the petitioner, his parents

and other relatives is subsequent to filing of petition seeking dissolution of marriage by the petitioner and, further, in view of the findings recorded in the judgment in C.C.No.1017 of 2010 on the file of the I Additional Judicial Magistrate of I class, Khammam, we are of the view that such complaint is filed only with a view to harass the petitioner by making false allegations. The very conduct of the respondent in filing complaint not only against the petitioner but also his parents and even against their relatives who are not residing in the same town, itself speaks that complaint is lodged only with a view to harass the petitioner and his family members. In the case of *Malathi Ravi M.D.* (2 supra), where complaint is filed under Section 498-A IPC subsequent to filing of petition seeking divorce, the Hon'ble Supreme Court has held that the same will constitute mental cruelty. By applying the aforesaid ratio laid down by the Hon'ble Supreme Court, to the case on hand, we are of the considered opinion that in the present case, in view of the additional grounds taken by the petitioner and material placed on record by way of additional evidence, it is clear that the allegation of cruelty pleaded by the petitioner under Section 13(1) (ia) of the Act is proved; as such the petitioner is entitled for relief of dissolution of marriage as prayed for.

24. Accordingly, this appeal is allowed by setting aside the order and decree dated 10.01.2013 passed in H.M.O.P.No.57 of 2010 on the file of the Judge, Family

Court, Khammam. Consequently, H.M.O.P.No.57 of 2010 is allowed, dissolving the marriage of the petitioner with the respondent by granting decree of divorce. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the appeal stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

29th September, 2015
MRR

[\[1\]](#) 2014 SCC ONLINE SC 915

[\[2\]](#) (2014) 7 SCC 640

[\[3\]](#) (2013) 5 SCC 226

[\[4\]](#) 2014 (4) ALD 531 (DB)

[\[5\]](#) 2014 (2) ALD 437 (DB)