

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

FCA No.14 of 2006

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JUDGMENT: (Per Dr.Justice B.Siva Sankara Rao)

The present appeal is filed under Section 19(1) of the Family Courts Act aggrieved by the dismissal order in O.P. No.437 of 2000 on the file of the Judge, Family Court, Visakhapatnam. The learned Judge, Family Court, Visakhapatnam dismissed the said O.P. after full dressed trial along with M.C. No.105 of 2002 and passed a common order dated 06.07.2005.

2) Brief facts are that the appellant herein filed O.P. No.437 of 2000 under Section 12(1)(c) of the Hindu Marriage Act, against the respondent-wife, for annulment of the marriage dated 30.09.1999 on the ground that the marriage was performed with his consent obtained by force. To prove his case, R.Ws 1 and 2 were examined and Exs.B-1 to B-6 were marked. The respondent contested the said O.P and to prove her case P.Ws 1 to 4 were examined and Exs.A-1 to A-9 were marked. After considering the entire evidence on record and after perusal of the documentary evidence, the trial Court disbelieved the plea of the petitioner and dismissed the O.P.

3) Now, in the present appeal the appellant contended that the trial Court ought to have seen that the Police forcibly performed the marriage on 30.09.1999 by beating the appellant black and blue for three days and after cause executed Ex.B-2, dated 27.09.1999; that even after the marriage the respondent never showed any interest to live with the appellant by deserted him, that the marriage was performed under coercion and threat, that the appellant did not give his free consent for the marriage, that the trial Court ought to have

send the parties for DNA test to know whether the pregnancy of the respondent is through the appellant or not, that the Police have settled the matter at the police Station without referring it to the Court and hence prayed to allow the appeal by setting aside the order of the trial Court and by annulling the marriage.

4) The respondent did not appear either personally or through her counsel and hence, taken as heard on her behalf for disposal of the appeal on merits.

5) Now, the points that arises for consideration are that

- i. Whether the marriage was performed under threat and coercion without the free consent of the appellant to annul and if so the impugned order of the trial Court is unsustainable and requires interference by this Court while sitting in appeal and if so with what observations?
- ii. To what result?

POINT No.i:-

6) The first and foremost contention of the appellant is that his marriage with the respondent was not performed with his free consent. In this regard it is stated by the appellant that suddenly in the last week of September, 1999 he was forcibly taken to the Police Station and beaten black and blue for about three days from 26.09.1999, that signatures of himself and his family members were obtained on some papers under coercion and threat on 27.09.1999 and on 30.09.1999 his marriage was cause performed with the respondent by the police at the Office of the Registrar of Marriages, Visakhapatnam under Special Marriage Act. The contest of the respondent is that it is a voluntary marriage with consent and so called beating by police or obtaining signatures under threat are all false and part of a weaved story to get over and wriggle out from the marital tie.

7) The crucial aspect in this regard, to be considered, is that the appellant never complained either to the higher officials of the Police

Department or to the Court by filing a private complaint against the police or anybody who took him to the police station; by complaining the alleged beating or obtaining signatures or performing of marriage under threat and without his consent etc., More so, as per the appellant's version in his evidence as R.W-1, he was called on 20.09.1999 for panchayat before elders, on 26.09.1999 the police arrested him, the marriage was performed on 30.09.1999. As per his contention also, he has sufficient time i.e., from 20.09.1999 till the date of marriage on 30.09.1999 to complain about the threat or coercion before any appropriate authority. It is needless to say even after marriage dated 30.09.1999 there is no reason or cause for his keeping mum with all silence if there is any truth for no prudent person will keep quiet, which is suffice to draw inference against his said versions. Apart from it, the photographs shown under Exs.A-6 and A-7 falsify the contention of the appellant. Further, the marriage was registered on 30.09.1999 itself before the Registrar of Marriages, Visakhapatnam. Registration of marriage within the short period as per the contentions raised by the appellant is impossible without giving a public notice for a stipulated period. Apart from it, there is an opportunity to oppose to sign in the register for marriage registration, if he is not consented party to the marriage. Further more the respondent gave birth to a male child on 17.10.1999 and the appellant having accepted the child of him for responsible to the premarital sexual relationship with the respondent, did not even chose to respond after birth of child if not his off-spring. He cause issued notice to the respondent on 09.08.2000 i.e., almost a year after the marriage. During which period, the appellant did not complain about the threat or coercion for performing of marriage or the child is if not his off-spring. What prevented the appellant to complain the same and accept paternity of the child and if not voluntary and not his offspring for no prudent person keep quite. In view of the same, his notice almost after a year to the marriage and birth of the child, only on 09.08.2000 cannot be given credence, equally for after almost one year, he came with the present petition for annulment.

8) The second ground raised by the appellant is that the respondent was forced to lodge a complaint against the appellant by the pressure of appellant's antagonists and she acted to their tunes. No girl or her parents will spoil the life of an unmarried merely because of petty disputes or any rivalry by performing marriage with the rival person. Hence, this plea also not at all correct in view of the circumstances stated in the petition contents.

9) The next ground raised by the appellant is that the trial Court failed to send the parties for DNA test to know whether the pregnancy of the respondent is through the appellant or not. Since the petition filed by the petitioner to declare the marriage as null and void, the burden is on the appellant to prove that the marriage was performed without his free consent. Apart from it, he is taking another ground of respondent's illegal relationship with one Abdullah and Ganesh. On one hand the petitioner seeks to declare the marriage as null and void and on the other hand he alleging illegal relationship of the respondent with others, which is a ground for divorce only. If the appellant intends that the child was not born to him and to prove the illegal relationship of the Respondent, the burden again also is on the appellant, which he could not discharge. Further, the appellant demanded for DNA test at the time of panchayat before the elders which is quite irregular according to law and the same has to be asked before the Court which is the appropriate forum only to consider on merits.

10) The appellant contends that after the marriage the respondent never showed any interest to live with the appellant and deserted the appellant without any sufficient reasons. He sought for annulment of marriage saying there is no valid marriage in the eye of law. The question of seeking divorce arises from accepting the validity of the marriage on the ground of so called desertion; when he cannot take inconsistent stands and blow hot and cold, and not even elected to the relief of divorce by giving up dispute on marriage by filing memo, his contentions on desertion or adultery for divorce cannot be accepted. More so, the respondent-wife filed maintenance case

stating under what circumstances the appellant deserted the respondent and how she is leading a miserable life because of negligence of the appellant, that was also allowed and reached finality, also serves as one of the circumstances to negate his contention and claim.

11) Therefore, after hearing the appellant and after perusal of the entire record, the trial Court when rightly came to the conclusion in dismissing the petition, for this Court even by re-appreciation of the evidence, there is nothing to take any different conclusion muchless by interference with the findings in any respect. Accordingly, the point No.i is answered.

POINT No.ii:-

12) In the result, the appeal is dismissed. There shall be no order as to costs. As a sequel, miscellaneous petitions if any pending shall stand closed.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA RAO

April 01, 2015

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