

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

CIVIL MISCELLANEOUS APPEAL No.3372 OF 2004

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JUDGMENT: (Per Hon'ble Sri Justice M. Satyanarayana Murthy)

Aggrieved by the divorce decree and order dated 14.06.2004, passed in Original Petition No.23 of 1999 on the file of the Court of Senior Civil Judge, Razole, East Godavari District (For short, 'the trial Court'), the respondent therein preferred this Appeal.

2. For convenience of reference, the ranks given to the parties in O.P. No.23 of 1999 will be adopted throughout this judgment.

3. The petitioner (husband) filed Petition against the respondent (wife) under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 (For short, 'the Act') for grant of divorce, dissolving the marriage between the petitioner and respondent, alleging that their marriage was performed on 04.02.1990, at the parents house of the respondent, as per the Hindu rites and customs; the marriage was consummated but the respondent was not blessed with any children. The petitioner is working as Airman in the Air Force at Gujarat State, at the time of marriage, obtained only one month leave. Subsequently, due to intervention of *Ashadamasam*, the petitioner took the respondent to his maternal grand father's house at Visveswarayapuram, instead of matrimonial home, within few days after the marriage. During his short stay, the petitioner observed the illegal activities of the respondent and when questioned her, she pleaded mercy. The petitioner with a hope that the respondent would mend her attitude agreed to take her to Gujarat and, accordingly, they started on 02.07.1990, while proceeding to Gujarat, got down at Hyderabad on 03.07.1990, spent some time at the house of his friend, Vijaykumar. Immediately thereafter, went to

Gujarat. The petitioner being an Airman in the Air Force has to attend his duties as per the schedule fixed by his superior authorities and sometimes has to attend the duties during odd hours. The respondent during her stay never cared to attend her household duties like preparation of food for the petitioner; on several occasions, she pressurized the petitioner to take her to various places, as desired by her, by applying leave, despite the information given by the petitioner that leave would not be granted for simple reasons in his employment; thereupon, started ill-treating and humiliating the petitioner, even not attended the petitioner when he was sick. The respondent used to leave the house without bothering about his health, developed dislike towards petitioner, thereby humiliated and treated him cruelly. The respondent unable to tolerate the nature of his employment, pressurized the petitioner to give up his employment. On several occasions, the petitioner tried to convince the respondent explaining his difficulties in his employment and nature of his duties, but she did not heed to his words.

4. While the matter stood thus, father of the respondent visited their house during October, 1990, took the respondent to his native place. The said fact was informed by the petitioner to his parents, they tried to get back the respondent but there is no change in her attitude, the petitioner came to know that the respondent left the village on the pretext of going to join petitioner at Gujarat, but stayed at Hyderabad for about two months, in one of his friends house and others with whom she had no acquaintance. The petitioner and his parents searched her for some time and came to know that the respondent was shifting from place to place in Hyderabad and moving as she likes. When one of the friends of the petitioner informed the petitioner about her and tried to negotiate with the petitioner, she left the place. Thus, the respondent is not at all interested to lead marital life with the petitioner and accustomed to lead life in her own way. The family

members of the respondent had no control over her; on several occasions the petitioner, his family members and well-wishers tried to settle the matter but no purpose was served. During August, 1998 the matter was referred to elders by name U. Ramarao, ZPTC Member, Mamidikuduru Mandal, K. Subbarayudu of Pasarlapudi Lanka, G. Chandra Rao of Pedapatnam Lanka and K. Pentayya of Mamidikuduru, but neither the respondent nor her parents responded properly. Thus, all the efforts made by the petitioner to restore the family ties became in vain.

5. The respondent while staying with the petitioner openly declared that she wanted to marry his maternal uncle's son and she would not live with him and she further proclaimed that the petitioner has no right to question her. Thus, she is living separately since October, 1990, without any reasonable cause, and against the consent of the petitioner treating him cruelly, caused mental agony to the petitioner during her stay. Thus, the respondent subjected the petitioner to cruelty and deserted him, living separately, which is a ground to grant decree of divorce under Section 13(1)(ia) and (ib) of the Act and prayed to dissolve the marriage between the petitioner and the respondent.

6. The respondent filed counter admitting their marital relationship and denied the specific allegation of mental cruelty so also the desertion while contending that after marriage the respondent alone went to Bhuj, Gujarat, on 01.03.1990, with a promise that he would take the respondent to Gujarat after securing accommodation and returned from Gujarat in the month of June, 1990 before intervention of *Ashadamasam* took the respondent to Visveswarayapuram. On 02.07.1990, both went to Gujarat; she specifically denied the illegal acts attributed to the respondent pleaded mercy etc., and that they are invented for the purpose of this Petition. She denied the specific allegation that she never cared to prepare food *etc.*, the petitioner used

to attend duties during fixed timing *i.e.*, 06-00 a.m. to 02.00 p.m. or 07.00 p.m. and never attended to duty at 03.00 a.m. to 04.00 p.m. as contended by the petitioner, and she used to cook food and provide all facilities for discharging his duties with all comforts during her stay; she never pressurized the petitioner to take her to various places by applying leave.

7. The respondent further contended that she never ill-treated the petitioner causing mental agony; more particularly, neglected the petitioner while he was sick and never insisted the petitioner to give up his employment. The specific contention of the respondent is that at the time of her marriage, her parents presented Ac.0.81 cents of coconut garden and cash of Rs.60,000/- towards *stridhana* property besides gold jewellery of 5 sovereigns and other household articles worth thousands of rupees. The petitioner took the amount of Rs.60,000/- to improve the same for her benefit and also leased out Ac.0.81 cents of coconut garden to one Pithani Suryanarayana @ Abbulu, S/o. Ramanna of Pasarlapudi Lanka, realized rent of Rs.20,000/- p.a. and the interest accrued on Rs.60,000/- was not paid to the respondent at any time. The respondent is an innocent village girl, served the petitioner sincerely and faithfully with natural love and affection as a responsible house wife; never inconvenienced or harassed the petitioner, extended her utmost co-operation enabling the petitioner to discharge his official duties without any difficulty. Both the petitioner and respondent lived at Gujarat for five years but the petitioner treated the respondent with love and affection for three years only, subsequently started harassing her, at the instigation of his parents, as no children were born to them during their wedlock and she failed to meet the illegal demand for payment of additional dowry. The petitioner used to scold and beat her often and several times necked her out from the house after severe beating but the respondent tolerated the suffering with a fond hope that the petitioner would mend

his ways but found no change as expected by her. While the matter stood thus, during the month of January, 1994 the petitioner took the respondent to Patancheru, left her at the house of Rayudu Nageswara Rao, who is the nearest relative of respondent's father, directing her to stay there; since then, the respondent is residing at Patancheru, where her junior paternal uncle Sri Pithani Chidambara Rao is also staying. Thus, the petitioner did not come forward to take back the respondent and the petitioner himself neglected and deserted the respondent.

8. It is further contended that the petitioner after retirement joined as B.Ed., teacher in Vilasa Z.P. High School and working there totally neglecting the respondent. The respondent specifically denied the allegation that she stayed at the house of the friends of the petitioner at Hyderabad for two months is baseless, defamatory, invented for the purpose of covering up his laches and to obtain decree of divorce, while expressing her readiness and willingness to join the petitioner to lead marital life. She also denied the alleged mediation *etc.*, so also the alleged proclamation of the respondent that she would marry his uncle's son and not interested to live with the petitioner and, finally, prayed to dismiss the Petition.

9. During course of enquiry, on behalf of the petitioner, PWs.1 to 5 were examined and Exs.A-1 to A-11 were marked. On behalf of the respondent, RW.1 was examined and Ex.B-1 to B-14 were marked.

10. Upon hearing argument of both the counsel, considering oral and documentary evidence available on record, the trial Court allowed the Petition granting decree of divorce dissolving the marriage between the petitioner and respondent.

11. Aggrieved by the divorce decree and order dated 14.06.2004, passed in O.P. No.23 of 1999, the respondent–appellant preferred this Appeal on various grounds mainly contending that:

a) The trial Court did not appreciate the infirmities in the evidence of witnesses, and without considering the conduct of the petitioner, who deserted the respondent and living separately from January, 1994 committed an error in granting decree of divorce. It is further contended that the trial Court has no territorial jurisdiction to try the Petition and grant decree of divorce and failed to consider the contents of the documents produced by the parties; thereby committed an error in granting decree of divorce and prayed to allow the Appeal setting-aside the decree and judgment of the trial Court by dismissing the Petition.

12. During course of argument, Sri Y.V. Ravi Prasad, learned counsel for the respondent-appellant, mainly contended that the petitioner is not entitled to claim decree of divorce as he himself deserted the respondent and he cannot take advantage of his own wrong in view of bar under Section 23(1) of the Act. Strangely, the trial Court without considering the oral and documentary evidence on record erroneously granted decree of divorce. The contents of the letters clearly show that they were cordial, exhibiting love and affection against one another but the petitioner cultivated the habit of drinking alcohol *etc.*, and treated the respondent cruelly for not giving birth to children during their wedlock and for her failure to meet the illegal demand for payment of additional dowry and necked her out several times. The respondent being an innocent village girl stayed in the house despite humiliation. However, in the month of January, 1994, the petitioner took her to Pasarlapudi Lanka, left at the house of Rayudu Nageswara Rao, who is also a relative to the respondent with a direction to stay there. If these facts are considered in proper perspective, the trial Court would not have granted the decree of divorce but without considering the specific plea set-up by the

respondent and supported by her evidence, the trial Court granted a decree of divorce and committed an error and finally prayed to allow this Appeal setting-aside the order under challenge.

13. *Per contra*, Sri K.L.N. Swami, learned counsel for the petitioner-respondent, would contend that the respondent did not take care of the petitioner and failed to provide food and moved as she wishes in Hyderabad and the hope of the petitioner that she would mend her ways dashed to ground when the respondent subjected him to cruelty in different ways and finally left his company, without any reasonable cause, and staying at different places shifting from one place to other for the reasons best known to her and the total conduct of the respondent would indicate that she had an intention to put an end to the matrimonial cohabitation and, against the consent of the petitioner, deserted him living separately for more than two years prior to filing of this Petition which is a ground to grant decree of divorce and that the trial Court after appreciation of entire evidence rightly granted decree and, finally, prayed to dismiss the Appeal confirming the order under challenge.

14. Considering rival contentions, perusing oral and documentary evidence including the order under challenge, the points that arise for consideration are:

- 1) Whether the respondent subjected the petitioner to cruelty, creating reasonable apprehension that it is harmful or dangerous for him to live with the respondent? If so, is the petitioner entitled to a decree of divorce under Section 13(1)(ia) of the Act?
- 2) Whether the respondent left the company of the petitioner, without his consent and living separately for a period of more than two years, immediately prior to filing of the Petition, with an intention to put an end to the

matrimonial cohabitation, permanently? If so, is the petitioner entitled to a decree of divorce under Section 13(1)(ib) of the Act?

15. **POINT No.1:** The main contention of the petitioner is that the respondent was not attending the household duties like cooking and providing food to him, when he has to attend the duties during odd hours, and insisting him to apply for leave and take her to different places and that she openly declared that she is interested to marry her maternal uncle's son and not interested to marry him, which conduct caused mental agony to the petitioner; whereas, the respondent contended that the petitioner himself subjected her to cruelty for her failure to meet the illegal demand for payment of additional dowry and that he is addicted to vices like drinking and drove out her from the house. The respondent was taken to Hyderabad in the month of January, 1994 left the respondent at the house of Rayudu Nageswara Rao at Patancheru directing her to stay there only. The petitioner also contended that subsequently the respondent also stayed in the friends houses of the petitioner at Hyderabad. The respondent denied her alleged stay at Hyderabad in the houses of the friends of the petitioner, who have no acquaintance with her and that when the petitioner made an attempt to know about her whereabouts, she left the place changing her residence from time to time and led the life as she likes. The trial Court believing the alleged acts attributed to the respondent held that the respondent subjected the petitioner to cruelty, which finding is challenged now before this Court.

16. This Court, being the Court of appeal, is under an obligation to reappraise the entire evidence on record to come to an independent conclusion notwithstanding the findings recorded by the trial Court. Therefore, we would like to reappraise the entire evidence on record to record a finding afresh.

17. When a Petition is filed on both the grounds of cruelty and desertion, it is the duty of the petitioner, who approached the Court for the relief of divorce, to establish that he was subjected to cruelty. To substantiate the contentions of the petitioner, the petitioner himself was examined as PW.1 and in his examination-in-chief, he reiterated what he pleaded in the Petition, more particularly, about writing of letters marked as Exs.A-6 and A-7 and Exs.B-1 to B-11 and Ex.B-13 and B-14, addressed by him to the respondent, when she was staying with her parents at Pasarlapudi Lanka. While the petitioner and respondent living together at Bhuj, Gujarat State, father of the respondent went there in the month of October, 1990, took her to Pasarlapudi Lanka to celebrate the festival of *Atlatadde* (local festival) but thereafter, she did not join the petitioner to lead marital life. He further testified that the respondent subjected him to cruelty for her acts mentioned in the earlier paragraphs.

18. The specific allegation made against the respondent by itself does not amount to cruelty. The respondent is a girl from rural background *i.e.*, from a lanka village known as Pasarlapudi Lanka and married the petitioner, who is working in a far off place as Airman, and, hence, the question of her going outside alone does not arise unless she is able to speak gujarathi or any other languages. The main allegation against the respondent is that she was not cooking food and not attending to his needs, but this is not substantiated by any material except the *ipse-dixit* of PW.1. Similarly, the other allegation that she was insisting the petitioner to apply leave and take her to the places of her interest but he did not do so, as contended by him, and mere making a request to go to a particular place by itself is not sufficient to conclude that such act amounts to cruelty. When the respondent used to stay at the house alone, almost a place which is un-known to her without acquaintance with any of the neighbors, it is difficult for a girl of rural background to adjust at such places but still she stayed with him

at Bhuj for a considerable period and led marital life. Therefore, mere making a request to take her to a particular place is not sufficient to accept that the respondent subjected him to cruelty.

19. The other allegation made against the respondent is that she left Pasarlapudi Lanka on the pretext of going to Bhuj, Gujarat State, to join the matrimonial company of the petitioner but she did not reach Bhuj and stayed at Hyderabad in the houses of friends of the petitioner nearly for two months, but this fact is not substantiated by any material. Even otherwise, it is not his case the respondent developed any illicit or illegal intimacy with any of his friends and stayed with them. If for any reason, she had developed illicit contact with any of his friends, certainly, such acts would cause mental pain to the petitioner but no such plea was raised in the Petition. The petitioner examined only the elders and father of the petitioner as witnesses; at best their evidence is helpful only to prove the alleged mediation by the elders and the information given by the petitioner to his father. The best witnesses to prove the alleged stay of respondent at the houses of the petitioner's friends are only the friends of the petitioner or any other nearest relatives of the petitioner. Obviously for different reasons, none of the friends or relatives, at whose house the respondent was alleged to have been stayed, were examined to prove the said fact. The alleged acts attributed to the respondent were not substantiated by any material; therefore, on the strength of evidence of PW.1, who is residing at a far of place, it is difficult for this Court to believe that the respondent stayed in the houses of the friends of the petitioner for two months and changed her residence from time to time, when his parents made attempts to know about the whereabouts of the respondent. Therefore, on the basis of the said allegation, the marriage between the petitioner and respondent cannot be dissolved by granting decree of divorce.

20. The other allegation made against the respondent is that she

used to go outside the house, without intimating, when the petitioner was on duty, but this is not established by examining any neighbors at Bhuj, Gujarat State. Thus, the allegation made against the respondent is without any substance; even otherwise, such allegation would not amount to cruelty, creating reasonable apprehension in his mind that it is harmful or endangerous for him to live with the respondent. On over all consideration of the entire material available on record, we find, absolutely, no iota of evidence to believe that the respondent subjected the petitioner to cruelty. On the other hand, the other letters marked in 'B' series on behalf of the respondent discloses that the petitioner himself addicted to vices like drinking. Another contention of the petitioner is that, he was transferred to Chandigarh and produced the lorry receipts Ex.A-3 and A-4, gas supply card, Ex.A-5. These letters are of no use to prove his transfer from Bhuj. Even if he is transferred, it is for the petitioner to take the respondent along with him to Chandigarh but these three documents are of no avail to establish the cruelty. The letter marked as Ex.A-1 was allegedly addressed by one Jagadish to the petitioner but the said Jagadish was not examined to prove the contents of that letter; hence, Ex.A-1 would not form any basis. Similarly, Ex.A-2 is the letter addressed by the petitioner to his father dated 06.05.1991, though his father was examined to prove receipt of Ex.A-2, it appears that the letter is conveniently addressed to lay foundation for the claim of the petitioner to get the decree of divorce on the ground of cruelty, hence, Ex.A-2 is of no use to establish the ground of cruelty, since much credence cannot be attached to such document. Exs.A-8 is the certified copy of O.P. No.404 of 2001, filed by the respondent for restitution of conjugal rights under Section 9 of the Act; Ex.A-9 is the certified copy of the Petition in Maintenance Case No.1 of 2001 and Ex.A-10 is the counter filed in Transfer Criminal Miscellaneous Petition No.4244 of 2001 filed by the petitioner to transfer Maintenance Case No.1 of 2001 from Hyderabad to Razole. At best all these documents would establish that the respondent is

living separately but not useful to substantiate the ground of cruelty under Section 13(1)(ia) of the Act, hence, we find that the petitioner miserably failed to establish the ground of cruelty, attributed to the respondent, under Section 13(1)(ia) of the Act to grant decree of divorce but the trial Court, without looking into the contents of the documents and evidence on record, granted decree of divorce.

21. To grant decree of divorce, it is the duty of the petitioner to establish the alleged acts or omissions attributed to the respondent caused either physical or mental pain creating reasonable apprehension in his mind that it is harmful or dangerous for him to live with the respondent. Basing on a bare allegation that the respondent humiliated the petitioner, decree of divorce cannot be granted. The Courts must make every endeavour to protect the marital tie as far as possible but basing on bald allegations the Courts are not supposed to grant decree of divorce. The trial Court relying on various judgments of this Court reported in ***K. Lalitha Kumari Vs. K. Ramprasad Rao***^[1], ***Chiranjeevi Vs. Lavany @ Sujatha***^[2] and ***Kotti Veera Venkata Padmavathi Vs. Kotti Sriram***^[3] concluded that the respondent subjected the petitioner to cruelty. Even assuming for a moment what the petitioner pleaded in the petition is true, still such conduct would not create any apprehension in the mind of the petitioner that it is harmful or dangerous for him to live with the respondent, but the trial Court without recording the basic requirements to grant decree of divorce under Section 13(1)(ia) of the Act, erroneously, granted decree of divorce.

22. In Para 12 of the order, the trial Court adverted to the contents of Petition in M.C. No.1 of 2001 and O.P. No.404 of 2001 and Crime No.601 of 2001, registered on the file of Kukatpalli Police Station, for the offence punishable under Section 498-A of I.P.C. but copy of the FIR or charge sheet for the offence punishable under Section 498-A

I.P.C. filed against the petitioner and his family members is not brought on record but basing on the allegations made in various proceedings, the trial Court believed that the above cases are only a counterblast. If for any reason, the petitioner and his parents are acquitted for the offence punishable under Section 498-A I.P.C., certainly it would be a ground since the prosecution was groundless but here no piece of evidence is brought on record about the result of the Criminal Case for the offence punishable under Section 498-A I.P.C. In the absence of any material with regard to Crime No.601 of 2001, it is difficult for this Court to conclude that on account of filing a case for the offence punishable under Section 498-A, the petitioner suffered mental agony; so far as Maintenance Case No.1 of 2001 and O.P. No.404 of 2001 are concerned, when the petitioner is unable to provide any maintenance to the respondent, certainly the respondent is entitled to claim maintenance. Therefore, filing of those two Petitions and lodging criminal complaint are not at all grounds to grant decree of divorce on the ground of cruelty.

23. When the petitioner claimed decree of divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, the initial burden is upon him to prove the acts or omissions of the respondent amounting to cruelty, either physical or mental. Mental cruelty is nothing but mental pain of an individual depending upon his social life, surrounding circumstances and reaction of an individual.

24. The word '*cruelty*' is not defined in the Hindu Marriage Act but the Apex Court, in ***Savitri Pandey Vs. Prem Chandra Pandey***^[4] ruled 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."

25. In ***Sujata Uday Patil Vs. Uday Madhukar Patil***^[5], the Apex Court held as follows:

"Where there is proof of a deliberate course of conduct on the part of one spouse, intended to hurt and humiliate the other spouse, and such a conduct is persisted, cruelty can easily be inferred. Neither actual nor presumed intention to hurt the other spouse is a necessary element in cruelty."

26. In ***Vinita Saxena Vs. Pankaj Pandit***^[6], the Apex Court while dealing with similar circumstances, held as follows:

"The legal concept of cruelty, which is not defined by statute, is generally described as conduct of such character as to have caused danger to life, limb or health (bodily and mental) or to give rise to reasonable apprehension of such danger. The general rule in all questions of cruelty is that the whole matrimonial relations must be considered, that rule is of a special value when the cruelty consists not of violent act but of injurious reproaches, complains accusations or taunts. It may be mental such as indifference and frigidity towards wife, denial of a company to her, hatred and abhorrence for wife or physical, like acts of violence and abstinence from sexual

intercourse without reasonable cause. It must be proved that one partner in the marriage, however mindless of the consequences, has behaved in a way which the other spouse could not, in the circumstances, be called upon to endure, and that misconduct has caused injury to health or a reasonable apprehension of such injury. There are two sides to be considered in case of cruelty. From the appellant's side, ought this appellant to be called on to endure the conduct? From the respondent's side, was this conduct excusable? The Court has then to decide whether the sum total of the reprehensible conduct was cruel."

27. In another decision of the Apex Court, in ***Naveen Kohli Vs. Neelu Kohli***^[7], the Apex Court defined the word 'cruelty' and 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 cannot 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."

28. In view of the principles laid down by the Apex Court in ***Naveen Kohli***⁷ the relevant factors for deciding the cruelty are only social and educational background of the parties; their financial status, surrounding circumstances where they are living, the traditions to which they are giving importance and temperament of both the parties.

29. In the present case, the petitioner is working as Airman at a far off place and the respondent, who is a girl from village background, went to Bhuj, Gujarat state, itself indicates that she came from rural background without higher educational qualification. Even if the relevant factors referred above are taken into consideration, the acts complained against the respondent would not amount to cruelty; we,

therefore find that the trial Court without looking into the principles of law laid down by the Apex Court and without recording any finding that the acts or omissions of the respondent create any reasonable apprehension in his mind that it is harmful or endangerous for him to live with the respondent, granted a decree of divorce. Therefore, the finding of the trial Court is hereby *set-aside* holding this point in favour of the respondent and against the petitioner.

30. **POINT No.2:** The 2nd ground urged by the petitioner for grant of decree of divorce is desertion. According to Section 13(1)(ib) of the Hindu Marriage Act, when a spouse is living separately without any reasonable cause for a period of not less than two years prior to filing of the Petition, it is a ground to grant decree of divorce. The word '*desertion*' is not defined under the Hindu Marriage Act, separately, but under the explanation to Section 13(1)(ib) of the Hindu Marriage Act, the word '*desertion*' is explained as follows:

"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 of the marriage, and its grammatical variations and cognate expression shall be construed accordingly."

31. In ***Savitri Pandey*⁴**, the Apex Court defined the word '*desertion*' as contained under Section 13(1)(ib) of the Hindu Marriage Act, which is as follows:

"Desertion', for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words, it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations, i.e., not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of

marriage which in law legalizes the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. If a spouse abandons the other in a state of temporary passions for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion.”

32. In another decision of the Apex Court, in **Adhyatma Bhattar Alwar Vs. Adhyatma Bhattar Sri Devi**^[8], the Apex Court defined the word ‘*desertion*’ and held as follows:

“Desertion’ in the context of matrimonial law represents a legal conception. It is difficult to give a comprehensive definition of the term. The essential ingredients of this offence in order that it may furnish a ground for relief are:

1. the factum of separation;
2. the intention to bring cohabitation permanently to an end – *animus decidendi*;
3. the element of permanence which is a prime condition requires that both these essential ingredients should continue during the entire statutory period.”

33. In the earliest decision of the Apex Court in **Bipinchandra Jaisinghbai Shah Vs. Prabhavati**^[9], the Apex Court held that if a spouse abandons the other in a state of temporary passion, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion

34. In **Lachman Utamchand Kirpalani Vs. Meena @ Mota**^[10], the Larger Bench of the Apex Court held that the desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by the other without the other’s consent, and without reasonable cause. For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there: (1) the factum of separation, and (2) the intention to bring cohabitation

permanently to an end (*animus deserendi*). Similarly, two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation.

35. Keeping in mind the meaning of the word 'desertion', the Court has to decide whether separate living by the respondent amounts to desertion. In the present case, the main grievance of the petitioner is that the respondent's father visited Bhuj during October, 1990 and took her to their native place at Pasarlapudi Lanka to celebrate the customary festival of *Atlatadde* (local festival); since then she is living separately. The petitioner made several attempts to restore the family ties by placing the matter before the elders who are examined as PWs.2, 3 and 5 but the respondent did not join the petitioner without any reasonable cause; on the other hand, the respondent filed O.P. No.404 of 2001 under Section 9 of the Act, for restitution of conjugal rights and also filed Maintenance Case No.1 of 2001 without any basis. Subsequently, the petitioner also filed a Transfer Criminal Miscellaneous Petition No.4244 of 2001 for transfer of M.C. No.1 of 2001 from Hyderabad to Razole and the respondent filed counter in the said Petition making a serious allegation against the petitioner but the O.P. No.404 of 2001 was dismissed vide Ex.A-11. Taking advantage of dismissal of O.P. No.404 of 2001, learned counsel for the petitioner would contend that non prosecution of Petition filed under Section 9 of the Act itself indicates that she is no more interested to lead marital life with the petitioner. Therefore, taking into consideration

of Ex.A-11 requested this Court to grant a decree of divorce; whereas the respondent contended that she was dropped at the residence of Rayudu Nageswara Rao of Pasarlapudi Lanka in the year 1994 and she lived with the petitioner till 1994 while directing the respondent to live at the residence of said Nageswara Rao, Pasarlapudi Lanka since then she is living separately and her separate living is only on the direction given by the petitioner but not otherwise.

36. The petitioner himself examined as PW.1; as usual he testified that the respondent lived with him till October, 1990 and, later, she did not join him despite mediations. In the entire cross-examination, no material is elicited, worthy of consideration, to establish the defence set-up by the respondent. On the other hand, her consistent case is that she was dropped at the house of one Rayudu Nageswararao of Pasarlapudi Lanka but the said Nageswara Rao, was not examined as witness to prove the said fact. Thus, the respondent miserably failed to establish her defence; on the other hand, the consistent evidence of PWs.1 to 5 established that the respondent left the company of petitioner in the month of October, 1990 as she was taken to Pasarlapudi Lanka on the occasion of *Atlatadde* (local festival) but later did not join him. Undoubtedly, mere separate living is not enough to grant a decree of divorce unless she had an intention to put an end to the matrimonial cohabitation, permanently, without the consent of the petitioner. Keeping in mind the principle laid down by the Apex Court, this Court has to reappraise entire evidence on record to come to an independent conclusion. O.P. No.404 of 2001 is the Petition filed by the respondent to grant decree for restitution of conjugal rights, certified copy of which is marked as Ex.A-8. In the said Petition, she made several allegations about acknowledging the *pasupu kunkuma* amount and enjoying produce of the land given to her by the respondent and demand of Rs.3,00,000/- as additional dowry *etc.*, but invented a different story that when the respondent expressed her

inability to meet the illegal demand of additional dowry of Rs.3,00,000/-, the petitioner herein dragged her catching hold of her tuft, necked out the respondent from the matrimonial home in the month of January, 1994 with a threat to kill her if she approached him or informed about the same to any Police. All the attempts made by her to convince her husband proved futile. The alleged fact that the petitioner alone dropped her at the house Rayudu Nageswara Rao is not pleaded in the original of Ex.A-8. Ex.A-9 is the Petition filed under Section 125 of Cr.P.C. before the Additional Judicial Magistrate of Class, Ranga Reddy District. In Para 6 of the Petition, she made a specific allegation that in the month of January, 1994 all of a sudden the respondent took the petitioner to Pasarlapudi Lanka and left her at the house of nearest relative Rayudu Nageswara Rao and went away. In the counter filed by the respondent in Transfer Criminal Miscellaneous Petition No.4244 of 2001, marked as Ex.A-10, she made serious allegations against the petitioner and disclosed filing of complaint for the offence punishable under Sections 498, 494, 403 and 406 of I.P.C. and Sections 4 and 6 of the Dowry Prohibition Act, 1961. Taking advantage of the allegations made in Para 2 of Ex.A-10, it is contended that filing of Criminal case without any grounds clearly shows her intention to live separately but the same cannot be accepted for the reason that the result of Crime No.601 of 2001 is not known and it is still pending, according to the material available on record. However, O.P. No.404 of 2001 was dismissed on the ground that the Judge, Family Court at Hyderabad has no jurisdiction vide Ex.A-11, but no further proceedings were taken up by the respondent to prosecute further proceedings in O.P. No.404 of 2001 to restore the family ties. Undoubtedly, filing of O.P. No.404 of 2001 and failure to prosecute the same after its dismissal by the Judge, Family Court, Hyderabad shows lack of *bona-fides* in filing the Petition under Section 9 of the Act by the respondent and it appears that as a defence the respondent appears to have filed O.P. No.404 of 2001, it was

returned for presentation into proper Court but did not present the Petition in proper Court having territorial jurisdiction. Failure to prosecute the proceedings in O.P. No.404 of 2001 itself directly indicates that she had no intention to live with the petitioner.

37. On over all consideration of the facts of the case that the respondent is living separately for the last more than two years prior to filing of the Petition, without any reasonable cause, and apart from that filing of O.P. No.404 of 2001 under Section 9 of the Act and failure to prosecute the same, filing of case for the offence punishable under Section 498-A I.P.C. in Crime No.601 of 2001 directly indicates that the respondent is not interested to live with the petitioner and she filed those proceedings in various Courts only with an intention to put an end to the matrimonial cohabitation permanently. Therefore, the cumulative effect of the facts proved that the respondent is living separately with an intention to put an end to the matrimonial cohabitation, permanently, without the consent of the petitioner and it is a ground to grant decree of divorce under Section 13(1)(ib) of the Act. Taking into consideration of the surrounding circumstances, drawing inferences from the conduct of the respondent and the proved facts, we hold that the respondent deserted the petitioner wantonly. The trial Court after appreciation of entire evidence, granted decree of divorce on the ground of desertion and we find no legal infirmity warranting interference of this Court. Hence, the finding of the trial Court is hereby confirmed holding this point in favour of the petitioner and against the respondent.

38. In view of our foregoing discussion, the petitioner is entitled to a decree of divorce under Section 13(1)(ib) of the Act but not under Section 13(1)(ia) of the Act. Accordingly, the finding of the trial Court is hereby confirmed to the extent indicated above.

In the result, the Civil Miscellaneous Appeal is allowed, in part,

setting-aside the divorce decree and order granted under Section 13(1)(ia) of the Act, however, confirmed the divorce decree and order granted under Section 13(1)(ib) of the Act.

In consequence, miscellaneous petitions, if any, pending in this appeal, shall stand closed. No order as to costs.

RAMESH RANGANATHAN, J

**M. SATYANARAYANA MURTHY,
J**

Date: 02-02-2015.
Dsh

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

CIVIL MISCELLANEOUS APPEAL No.3372 OF 2004

(Judgment of the Division Bench delivered by
Hon'ble Sri Justice M. Satyanarayana Murthy)

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Date. 02-02-2015

DSH

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- [\[1\]](#) 1991 (3) ALT NRC (5)
 - [\[2\]](#) 1999 (2) ALT 493 (DB)
 - [\[3\]](#) 2002 (6) ALT 318 (DB)
 - [\[4\]](#) AIR 2002 SC 591
 - [\[5\]](#) (2006) 13 SCC 272
 - [\[6\]](#) (2006) 3 SCC 778
 - [\[7\]](#) AIR 2006 SC 1675
 - [\[8\]](#) AIR 2002 SC 88
 - [\[9\]](#) AIR 1957 SC 176
 - [\[10\]](#) AIR 1964 SC 40