

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.4379 of 2004

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

The unsuccessful petitioner by name D.Sadanandam @ Sadaiah in O.P. No.27 of 2002 on the file of I Additional Senior Civil Judge, Warangal, no other than husband of the respondent Smt.D.Aruna, impugning the dismissal decree and order dated 30.09.2004 of the divorce petition filed by him on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act preferred the appeal against his wife with the contentions in the grounds of appeal that the dismissal order of the lower Court is contrary to law, weight of evidence, probabilities of the case and is an erroneous outcome, that the trial Judge failed to notice the evidence of P.Ws 1 and 2 viz., the petitioner-husband and the daughter respectively which clearly establishes the conduct of the respondent with continuous quarrels, abuses, harassment and ill-treatment meted by the petitioner and also her frequent leaving to her parents at her own without intimation and staying at her parents at her choice without care for petitioner-husband and welfare of the daughter, that the trial Court should have seen that the respondent-wife left the company of the petitioner husband finally on 21.10.1999 and failed to join despite efforts through mediators by giving out her no mind to join and that constitutes desertion from the material on record with more than two years period to the divorce petition filed on 11.06.2002 and the filing of Section 498-A I.P.C case by the respondent-wife against the petitioner-husband in C.C. No.83 of 2001 and its acquittal is also a clear act of cruelty on the part of the wife apart from M.C. No.5 of 2001 filed by her and getting maintenance, that even from the

evidence of respondents R.W-1 and her witnesses R.Ws-2 and 3, there is nothing to disprove her acts of cruelty and desertion hence to set aside the impugned order of the lower Court, allow the appeal decreeing the claim by dissolving the marriage and pass such other just orders. Learned counsel for the Appellant Sri P.Prabhakar Reddy reiterated the same during the course of arguments with reference to the evidence on record.

2) Whereas, it is the contention of the learned counsel for the respondent-wife that, there is no pleading regarding desertion leave about any specific acts of cruelty and when there is no pleading, no evidence can be looked into and that too when the ground raised before the lower Court in seeking divorce is only on the ground of cruelty and not desertion; in the appeal by raising a new plea, the unsuccessful petitioner cannot be permitted to improve his case, muchless to seek divorce on the ground of desertion without factual foundation by pleading and evidence apart from no cruelty made out muchless by any specific acts other than of ordinary wear and tear and filing of the criminal case and its acquittal per se no way constitutes act of cruelty in prosecuting the legal remedies sanctioned by law and it is false on the part of the husband to allege that the criminal case in C.C. No.83 of 2001 as if under Section 498-A I.P.C, though it is under Section 494 I.P.C and when the trial Court rightly considered the evidence on record and rightly came to the conclusion supported by reasons for no case made out on the ground of cruelty for the husband to seek divorce and against the said dismissal order, there is nothing to interfere by this Court even by re-appreciation of the evidence afresh. Hence to dismiss the appeal.

3) Perused the material on record. The parties in the present appeal are being referred to as they are arrayed in the lower Court for the said of convenience.

4) Now, the points that arise for consideration are.-

- i. Whether the respondent-wife is guilty of acts of cruelty

towards the petitioner-husband and if so, the petitioner-husband is entitled to decree of divorce on the ground of cruelty, if any also on the any ground of desertion and if so, whether the dismissal order of the lower Court on no case made out for divorce 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:-

5) It is not in dispute that the petitioner-husband and respondent-wife, out of their marital tie of May, 1986 as per Hindu Law and caste custom that was performed at Pragati Singaram, Shayampet Mandal, Warangal District blessed in their wedlock with a female child, P.W-2. It is also not in dispute that in the divorce application filed by the husband against the wife, there was no any specific allegation of desertion, but for the pleading on the ground of mental cruelty, he claimed suffered in the hands of his wife also by mentioning provision of law Section 13(1)(ia) of the Hindu Marriage Act. Same is also the observation by the lower Court in the impugned order at para No.4. It is also not in dispute that the wife filed M.C. No.5 of 2001, wherein Rs.400/- per month granted in her favour by the learned Judicial Magistrate of the First Class, Parkal. It is also not in dispute that C.C. No.83 of 2001 outcome of the crime registered on the report of the wife against the husband and others was ended in acquittal. It is also not in dispute that the husband filed O.S. No.366 of 2001 against the respondent-wife's father for the recovery of Rs.79,000/- said to have been obtained by him as a hand loan and there was an exparte decree and pursuant to the exparte decree, E.P. No.9 of 2002 was filed and thereafter the J.Dr, filed an application to set aside the exparte decree while contesting the E.P., by the time the divorce O.P proceedings, evidence was in progress as can be seen from the material on record. Though it is the evidence of the petitioner-appellant as P.W-1 that his wife deserted him on 21.10.1999 and left his company and later despite efforts through mediations, she failed to join and their daughter as P.W-2 also deposed the same, but for no

plea to look into. In fact, it is the fundamental principle of law that when there is no plea, no evidence can be looked into. No doubt an exception to it is that even there is no plea once parties aware of the issue involved and evidence was let in, despite no plea it can be looked into for the Court by framing a specific issue to answer. Undisputedly, there was no any issue or point for determination formulated by the trial Court.

6) This Court therefore cannot go into from the fundamental principle referred supra and as such the contention in the appeal grounds that on the ground of desertion also he is entitled to decree of divorce is unsustainable, but for a fight in the air to ignore as was rightly done by the trial Court.

7) Now, coming to the contention regarding entitlement to the relief on the ground of mental cruelty, how far he could make out concerned, in the divorce application filed by him that is also re-produced in para No.2 of the order of the lower Court no any specific acts of cruelty, he could aver. His general averments that his wife was disputing or altercating or abusing in filthy are not suffice unless he comes out with a specific plea as to what acts of his wife that constitutes mental cruelty to him. Apart from the general plea, even coming to his evidence as P.W-1 in his chief-examination also there are no any specific instances of cruelty, he could make out. The filing of a maintenance case and getting maintenance is not an act of cruelty on the part of the wife, that too when the maintenance ordered against him for her no means when he is a Government teacher by holding that there is a neglect and refusal to maintain by him of his wife. His filing of a suit for recovery of money against his father-in-law no way constitutes the cruelty on the part of his wife towards him, even to give any credence to that pleading and evidence. There remains in his chief affidavit para No.8, the vague allegations in general of several attempts his wife abused or she beat him that no way makes out any ground for cruelty, for nothing to say any specific instance. Apart from it, in para No.8 of his chief-affidavit, what he mentioned in the last few lines was that his wife-respondent filed a

false criminal case against him and his other family members on 11.07.2000 and the case was ended in acquittal. Even to consider whether that constitutes cruelty, pursuing a legal proceeding for remedy available per se is not cruelty, unless he could establish by any evidence that it was a false case filed with spite and ill will to harass him. But for a stray sentence, there is nothing in his evidence to show the case filed was a false one. In fact from his chief-examination para No.8 of the affidavit supra, the complaint was dated 11.07.2000 and his divorce O.P was filed as O.P. No.27 of 2002 on 11.06.2002. In his petition what he stated is his wife lodged a complaint on 11.07.2000 against him and his family members by falsely implicated. He did not file F.I.R or charge sheet muchless any acquittal judgment of the criminal case. He did not issue any notice after filing of the criminal case if it is a false one and to harass him. He could not make out anything from what is referred supra of the criminal case filed is per se false, apart from the proof required of the same filed without truth and out of spite and ill will. In his cross-examination what he deposed was that, after his marriage with the respondent in May, 1986 in their wedlock they blessed with a female child on 26.12.1987 who is P.W-2. He stated that he was originally unemployed and latter he secured job. He denied the suggestion that he forced the respondent to undergo a family planning operation. There is also evidence of R.W-1 that the second pregnancy was terminated by forcibly aborted. He did not examine any mediator to say several alleged mediations taken place regarding family bickerings between himself and his wife and any acts of cruelty on the part of his wife and any efforts for reconciliation. He also admitted in his cross-examination that there is no evidence muchless documentary regarding the dispute placed before elders and despite specific suggestion of there was no any elderly dispute he raised. It is the specific case of the respondent including in the counter that the petitioner developed extra marital relation with another woman and he kept her as his mistress and her out and in that regard a criminal case filed by her. It is also the chief examination of P.Ws 1 to 3 in categorical terms that C.C. No.83 of 2001 outcome of a report dated

11.07.2000 was for the offences punishable under Section 494 I.P.C for the bigamous life of the petitioner with another woman named by her and there from she was necked out and despite her efforts he failed to allow her to join and she was constrained to file maintenance case, unable to maintain that was also suggested to him. He deposed that he does not know whether against the acquittal judgment of C.C. No.83 of 2001 any appeal filed or not. He denied the suggestion that having necked out the respondent-wife from his matrimonial company by retaining the daughter P.W-2, he did not even allow her to see the child. In the cross-examination, he deposed that he did not issue any notice and even she is prepared to come and join, he is not interested to take her to his fold. Though he denied the suggestion that he is living separately away with a kept mistress, P.W-2's evidence in the cross-examination establishes the same. Coming to cruelty, the stray sentence what P.W-2 deposed is her mother was quarrelling with her father on one pretext or other and there are no any specific instances even she deposed. In the cross-examination P.W-2 categorically deposed that she is residing only with her paternal grand mother at Rangasaipet, Warangal and not even with her father as she categorically deposed that her father is residing at Kakiralapalli village, whereas herself and her paternal grand mother are residing at Rangasaipet. She deposed that only during holidays to the school, her father was coming and residing with them. She deposed that her mother filed police complaint stating she was harassed for dowry and her father and mother residing separately only for the last five years. She again reiterated in saying her father was staying at Kakiralapalli and she never went to Kakiralapalli to see him or as to whether he alone resides or with any other. She never tried to meet her mother but for saying her mother was visiting her for past two months. She deposed that the police complaint given by her mother against her father was to Hanamkonda Police. She deposed that one Swarajyam is her aunt and when her mother came to see her at Rangasaipet, there was a quarrel between her mother and Swarajyam. She denied the suggestion that her father is staying with a kept mistress and it is that

woman that quarrelled with her mother when she came at Rangasaipet and there from her mother filed the criminal case against her father, aunt and junior paternal uncle. She denied the suggestion that her father was frequently beating her mother even while they were staying together. What she deposed is there were strained relationship between her father and mother with regard to the monetary transaction with her maternal grand father. However, surprisingly she deposed that she do not like the idea suggested of her mother and father to stay together. Though she denied the suggestion that she is tutored and forced to depose in favour of her father with no regard to truth and even she knows the fact that her father married one Sujatha and living with said Sujatha and she deposed that she is not even prepared to go to her mother, the is the tenor of evidence of P.W-2 supra shows she is a tutored witness. It clearly indicates that P.W-2 does not know even factual background of the criminal complaint given against her father by her mother. Her cross-examination deposition clearly shows her answers are exhibiting hostility towards her mother for nothing even for her to develop any ill feeling to the mother, muchless there is any worth evidence to say any cruel conduct of her mother towards her father. With what is the evidence the petitioner brought on record he could not make out any ground for cruelty. At the cost of the repetition the criminal case is not under Section 498-A I.P.C but under Section 494 I.P.C. for petitioner shown married one B.Sujatha and staying away at Kakiralapalli separately even by leaving her daughter(P.W-2) at his mother's house at another village Rangasaipet having deserted the respondent-wife from which she was constrained to stay at her parents at Pragati Singaram that what even respondent R.W-1 deposed in her chief-examination running in three pages which explains under what circumstances she constrained to give the police report for her husband married another lady and leading illicit life with that another lady which is covered by C.C. No.83 of 2001 while admitted it is ended in acquittal. Even coming to her cross-examination as R.W-1 as to what is beneficial to the claim of the husband, she deposed that in the M.C filed, there was enhancement

claimed and awarded at Rs.1,600/- per month and High Court modified by reducing to Rs.1,000/- per month and even the petitioner-husband was not regular in its payment. She deposed that she did not furnish the appeal number to say against acquittal judgment of C.C. No.83 of 2001 appeal filed in High Court and its pendency. She denied the suggestion of it is she that deserted her husband without any just cause. She also denied the suggestion of her father even owed the amount to her husband and for its demand she filed the criminal case. She also denied the suggestion that even he made efforts through mediators she refused to join. She denied the further suggestion of to harass him she filed the criminal complaint against him and his family members as if he married for second time. She denied the suggestion that he did not force her to go for abortion of second pregnancy. From said cross-examination of R.W-1 even, there is nothing to show the conduct of the respondent is cruel towards him muchless she is guilty of cruelty to seek divorce. R.W-2 is no other than brother of R.W-1 and even from his cross-examination by petitioner he could elicit nothing as to conduct of respondent was cruel towards the petitioner. What R.W-2 deposed also is that, the criminal case filed by respondent R.W-1 against the petitioner and others is for he undergone a second marriage illegally. Even R.W-3, M.P.T.C member and agriculturist of Shampet which is the place of the petitioner and not even native place of respondent deposed categorically that the criminal case in C.C. No.83 of 2001 filed by the respondent against the petitioner was for he married another woman and living with her and he deposed that he is also one of the elders in the attempts made on behalf of the respondent-wife for her joining the petitioner, which he refused to accept. In the cross-examination of R.W-3 by petitioner, it is brought on record that the petitioner and respondent are not relatives and his residence is far away to the residence of the respondent. It speaks that he is an independent witness. He denied the suggestion that the petitioner did not undergo any second marriage and he is deposing falsehood. Even from said evidence, it is clear that what respondent-wife reiterated in support of the criminal complaint she has given against

the petitioner-husband and others is for his undergone a second marriage and living with that woman and R.W-3 an independent witness also deposed the same. Thus, from said averment, there is nothing to say the filing of criminal case or its acquittal for non-proving of said second marriage of petitioner with another woman, a ground for seeking divorce there from, for nothing to show that criminal complaint is filed falsely and with spite and ill-will to harass him. Suffice to say there from that, the trial Court was right in dismissing the application for divorce of the husband for no grounds and thereby for this Court even while sitting against there is nothing to interfere from the re-appreciation of the material afresh as discussed supra muchless to set aside the trial Court's dismissal order and to grant decree of divorce. Accordingly point No.1 is answered.

POINT No.ii):-

9) In the result, the appeal is dismissed hoping that good sense will prevail on the couple to drown their differences and join together. 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

31st March, 2015

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