

**HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE DR. JUSTICE B.SIVA SANKARA RAO**

CMA No.4587 of 2004

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

This is an appeal filed under Section 19 of the Family Court's Act by the husband against the wife, aggrieved by the order dated 30.09.2004 dismissing his petition filed under Section 13(1)(ia) & (1b) of the Hindu Marriage Act on the grounds of cruelty and desertion in O.P. No.570 of 2000 on the file of Judge, Family Court, Visakhapatnam, to dissolve their marital tie dated 21.04.1994.

2) The contentions in the grounds of appeal as well as the oral submissions by the learned counsel for the appellant-husband Smt.S.A.V.Ratnam in nutshell are that the order dismissing the divorce petition by the lower Court is contrary to law, weight of evidence, probabilities of the case and in ignorance of the material on record which clinchingly establishes that the petitioner-husband is entitled to divorce from the respondent-wife is guilty of cruelty and desertion including from filing of a false criminal case under Section 498-A I.P.C against him and his family members and the trial Court gravely erred in ignoring the same. It is also the contention that the evidence on record of petitioner-P.W-1 besides two more witnesses and in particular that of P.W-3 establishes cruelty and desertion meted by the petitioner in the hands of the respondent besides from the Ex.A-5 acquittal judgment in

C.C. No.258 of 2001. It is the further contention that the respondent-wife treated the petitioner cruelly and harassed intentionally including by filing the false case and went to the extent of making deliberately false accusations as if he got extra marital relationship with one Dhana Lakshmi, that itself is a ground to put an end to the marital tie as that constitutes cruelty for nothing more to establish for nothing to show that there are any bonafides or basis in making such allegations, hence to allow the appeal by setting aside the impugned dismissal order of the lower Court and grant decree of divorce.

3) Whereas, the learned counsel for the respondent-wife in the appeal in support of the dismissal order of the lower Court contended that the lower Court's order having fresh in mind of the facts by scanned the evidence on record and by appreciation of facts and law by coming to a right conclusion with reasons, no way requires interference by this Court while sitting against but for to confirm and hence to dismiss the appeal.

4) Heard. 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 sake of convenience.

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

- i) Whether the respondent-wife is guilty of cruelty and desertion towards the petitioner-husband and if so, the lower Court's order dismissing the application for divorce of the petitioner-husband is unsustainable and requires interference by this Court while sitting in appeal and if so with what reasons?

ii) To what result?

POINT No.i):-

6) There is no dispute on the factum of marriage between the petitioner and respondent was performed on 21.04.1994 as per Hindu Law and caste custom. There is also no dispute on the fact that the respondent-wife given a report to the police from which the police registered a crime and after investigation filed charge sheet against the petitioner-husband and others for the offence punishable under Section 498-A I.P.C in C.C. No.258 of 2001 on the file of III Metropolitan Magistrate Court, Visakhapatnam that was case after trial was ended in acquittal. It is also not in dispute that as per Ex.A-1 and A-2 there was exchange letters between the Petitioner and his father-in-law during September, 1999 which is about 3 ½ years after their marriage. It is also not in dispute that in their wedlock they blessed with a female child on 07.03.1997 and a male child on 09.09.1998. It is to say after marriage dated 21.04.1996 the spouse lived together and in their wedlock the last issue blessed on 09.09.1998 was at the parents' place of respondent-wife and five months after birth of the child she joined back the company of the petitioner-husband and latter differences arose in particular, that resulted in exchange of notices from the above, the divorce O.P filed was in the year 2000 beginning. When the second child born in the wedlock from the very petition averments was dated 09.09.1998 and five months after the birth of the child at the parents place of the respondent-wife, the respondent-wife joined the company of the petitioner and they lived together for

about two months; before filing the divorce petition, there is no any desertion on the part of the respondent-wife with minimum required period of two years separation muchless as required to establish the conduct of the wife living away to the husband is with permanent animus deserendii to put an end to the marital tie and with that intention she was shown staying away for more than two years. There remained the only ground of cruelty which is the core issue in the appeal for consideration.

7) In this regard it is the pleading in the divorce petition that ever since consummation of marriage from the respondent joined company of the petitioner at his place, she was behaving at her choice without respecting elders and was adamant by raising unnecessary quarrels for silly reasons even unheeding the words of the mother of the petitioner and she created a lot of humiliation to him including by giving false information and messages to her parents against him and even he waited with a fond hope of a change in her attitude she did not choose for change. It is also averred that she was unnecessarily quarrelling with neighbourhood that ruined the prestige of his family besides caused mental sufferance to him and further that at the first anniversary of the birth of the eldest girl child, there was a quarrel and a nuisance she created that tarnished his reputation. It is averred that she has no love or affection to him, she was exhibiting supremacy and adamance and ultimately on 17.05.1999 she left to her parents and failed to join and even he addressed a letter to his father-in-law with a request to send her to his company he gave a reply with threats and false averments and on 18.10.2000 the petitioner was forcibly taken to the Il Town Police Station on a false

complaint alleged against him where he was illegally detained and was made to execute an agreement dated 18.10.2000 to the dictation of the police and as police threatened to implicate him in a case under Section 498-A I.P.C, he kept quite without questioning it. That is his pleading and evidence.

8) The contention of the respondent-wife is that despite putting up the harassment and ill-treatment including to bring additional amounts from her parents even after they blessed with two children in their wedlock, that even he was beating her black and blue, that even he is addicted to vices and abusing in filthy and not even providing minimum required home needs; by her hoping for the good by bearing with the cruel and negative attitude of him, taking advantage of it she developed illicit contacts with Uppada Dhana Lakshmi, a Nurse in Government Hospital, Palakonda and said Dhana Lakshmi also demanded the respondent-wife herein to give up her relationship with petitioner-husband so that they can marry and from which the respondent was constrained to report to the Superintendent, Government Hospital, Palakonda against Dhana Lakshmi for her interfering with the marital life of the respondent and the hospital Superintendent inquired with the matter, warned said Dhanalakshmi not to interfere with their marital relation, it was there from to get rid of the respondent and to marry said Dhana Lakshmi, the petitioner ultimately sent her out to her parents' house in May, 1999 and later despite efforts not allowed her to join. It is also the evidence of the respondent-wife.

9) Before going to the Ex.A-5 criminal case acquittal

judgment for the offence punishable under Section 498-A I.P.C whether constitutes cruelty or not, coming to what the petitioner relied upon is Exs.A-1 and A-2; Ex.A-1 is the letter written by the petitioner not to the respondent, but to his father-in-law and Ex.A-2 is the reply given by his father-in-law which is a lengthy letter that shows the petitioner and the respondent are close relatives and the letter indicates that even the petitioner got the illicit relationship that continues and harassing the respondent wife she was putting up hoping for a change and there from he was advised to refrain from continuation of such extra-marital life and treat the respondent wife properly. From perusal of said Ex.A-2 reply, there is nothing to say the respondent-wife is guilty of cruelty towards the petitioner-husband muchless from the Ex.A-1 letter to make it a ground for divorce. The alleged acts of cruelty from the so called conduct of the respondent towards the petitioner averred in the petition and mentioned in the P.W-1 petitioner's evidence in chief is general. Even regarding the alleged incident dated 18.10.2000 which he averred that Police, II Town Police Station, Visakhapatnam taken him on a complaint of the respondent against him or he was tortured or any letter obtained by police from him on that date, there is no material on record, besides nothing prevented if true to issue notice to respondent, for any fear to give notice to police, for no prudent man keep quiet without even notice that too when the divorce petition was determined to file; Even according to him on the alleged incident dated 18.10.2000 the obtaining of letter from him was for the couple to live together and that they joined together.

10) Now, coming to the acquittal judgment in C.C. No.258 of 2001. A perusal of the judgment shows that there are five accused including mother, two brothers and one of the brother's wife of the petitioner-husband arrayed as accused that was in fact a case under Section 498-A I.P.C. It was based on report dated 24.04.2001. The averments therein show in nutshell for framing of the charges under Section 498-A I.P.C is additional demands for dowry and harassment in particular to give Rs.50,000/- to develop cassette shop. There even she mentioned about A-1 got extra marital life with one Dhana Lakshmi and was demanding to give consent to marry said Dhana Lakshmi. From the evidence produced by the prosecution that is of the victim (respondent herein) and her family members and the investigation officer what the trial Court pointed out is that there are some contradictions or uncorroborated versions regarding extra marital relation of him with said Dhana Lakshmi. However, therein also P.W-5 deposed that Dhana Lakshmi was his niece and he found Dhana Lakshmi moving with him (A-1) petitioner-husband herein. There from, the petitioner-husband got some connection with Dhana lakshmi and that is not a *per se* false allegation as that is there even from the evidence in C.C. No.258 of 2001. Now, coming to the dowry harassment and demands for additional dowry under Section 498-A I.P.C, even there is consistent evidence regarding demands for additional dowry of Rs.50,000/- and harassment also for giving consent to marry Dhana Lakshmi and that is deposed by P.Ws 1 to 5. What the trial Court observed is there are little variations in the evidence in regard to the offence and thereby held

prosecution could not prove the case against any of the accused. There is nothing to say even from that judgment that it is a false report or a false case foisted by bringing false material to make believe police to file charge sheet or for the Court to frame charge. In the absence of which, pursuing a legal remedy available under law bonafide cannot be considered as an act of cruelty. Thus, there from there is nothing even on record to show that the respondent-wife played any dominant role or active role to create any false evidence or to cause arrest them in particular, the petitioner-husband to harass or to trouble to say such conduct constitutes act of cruelty to brand her as guilty of cruelty. Then for what is even reiterating by the respondent-wife of petitioner developed extra marital relationship with Dhana Lakshmi and demanding to give consent or divorce in order to marry her and for that he was beating that no way be said, such averment tantamounts to cruelty as that averment is there including from A-2 reply notice of the father of the respondent to the petitioner for his Ex.A-1 notice with no rejoinder of him, apart from same is even in the criminal case from the evidence on record discussed supra.

11) Having regard to the above from the evidence on record with reference to P.Ws 1 to 3 and Ex.A-1 to A-5 there is nothing to say respondent-wife is guilty of cruelty towards the petitioner-husband. The trial Court thereby was right in dismissal of the application for divorce for failure on the part of the petitioner-husband in making out a case either on the ground of desertion or on the ground of cruelty. Thus, for this

Court while sitting in appeal, even by re-appreciation of the entire evidence supra, there is nothing to interfere. Accordingly point No.1 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

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March 19, 2015
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