

*** THE HON'BLE SRI JUSTICE R.SUBHASH REDDY**

And

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

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+ C.M.A. No.4575 OF 2004

% 19.02.2015

Sri Anchuri Subbaraju, S/o.Gangaraju,
Hindu, male, aged 36 years, employee,
In Naval Dock Yard (V), Employee No.19231,
C.No.140, resident of Rly.Q.No.58/A,
Marripalem, Visakhapatnam.

...APPELLANT

VERSUS

\$ Smt.Anchuri Sunitha, W/o.Subbaraju,
Hindu, male, aged 29 years, House wife,
R/o.C/o.Kadiyala Lakshmi, D.No.3-1,
Akkireddypalem, Visakhapatnam.

...RESPONDENT

< GIST:

> HEAD NOTE:

!Counsel for Appellant: Smt.N.(P) Anjana Devi

^Counsel for Respondent : Sri V.Ajay Kumar

? Cases referred

1. (2006) 4 SCC 558

2. AIR 1975 SC 1534
3. 1988 SCC (Cri) 60
4. 1950 (2) All ER 398 at P.403 h
5. (1994) 1 SCC 337
6. (2002) 2 SCC 73
7. (2007) 4 SCC 511
8. AIR 2011 SC 114 (1)
9. AIR 2003 SC 2462
10. (2014) 7 SCC 640
11. 2005 (2) SCC 22
12. 2009 (1) SCC 422
13. 2013 (5) SCC 226
14. (1999) 3 SCC 620
15. 2014 (4) ALD 531 (DB)
16. 2013 (4) ALD 680
17. 2000 (1) ALD 697 (DB)
18. 2013 (5) ALD 230 (DB)
19. 2013 (4) ALD 416 (DB)
20. 2014 (1) ALD 719 (DB)
21. 2014 (2) ALD 437 (DB)
22. 2014 (2) ALD 360 DB
23. AIR 1999 AP 1 (DB)
24. 1995 (3) ALD 195(DB)
25. 1992 ALT 631
26. AIR 1982 P & H 60
27. AIR 1957 SC 176
28. AIR 1964 SC 40

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JUDGMENT: (per Hon'ble Dr. Justice B.Siva Sankara Rao)

Aggrieved by the dismissal order dated 11.09.2003 passed in O.P. No.396 of 2000 on the file of the Judge, Family Court, Visakhapatnam, (for short, 'the trial Court'), the unsuccessful petitioner preferred this appeal.

2. The brief facts of the case are as under:

The petitioner/husband filed the O.P. No.396 of 2000 on the file of the Judge, Family Court, Visakhapatnam, against the respondent/wife for dissolution of their marriage dated 26.06.1997, performed as per Hindu rites and customs at Godavari Kalayna Mandapam of Simhachalam in Visakhapatnam, under Section 13 (1) (ia) and (ib) of the Hindu Marriage Act (for short 'the Act') on the grounds of cruelty and desertion.

3. After contest, the trial Court dismissed the petition with costs on 11.09.2003. Impugning the same, he preferred the appeal with contentions in the grounds of appeal as well as the oral submissions made by the counsel for the appellant in support of it that the dismissal decree and order of the lower Court are contrary to law, weight of evidence and probabilities of the case; that the Court below should have seen that the respondent/wife knowingly and willfully refused to join the petitioner/ husband even after passing restitution of conjugal rights in O.P. No.450 of 1997 and she also filed false complaint under Section 498-A IPC against him and his parents on 24.10.1998 before V Town Police Station, Visakhapatnam which was registered as Crime No.192 of 1998 and later from the charge sheet filed, numbered as CC No.180 of 1999 on the file of III Metropolitan Magistrate, Hyderabad, that was not properly appreciated

by the lower Court; that the lower Court should have seen from the material that the respondent/wife has no mind to lead marital life with him and that is the reason of her avoiding him for one way or the other all through and her acts tantamount to cruelty and desertion and hence to allow the appeal.

4. Whereas it is the contention of the learned counsel for the respondent/wife in opposing the claim and in support of the lower Court's dismissal decree and order that the petitioner/husband did not come to court with clean hands and suppressed material facts to take advantage of his own wrongs, that she is always ready to join him and it is he, for her not obliging his demands to alienate the property given to her by her mother, on one pretext or the other, want to get rid of her and driven her out of his house and falsely filed O.P for restitution of conjugal rights, that when she was ready to join him the same was decreed and even thereafter when she went to his house along with her mother (RW.2), mediator (RW.3) she was beaten and not allowed to join reiterating the demand for the property for which she was constrained to give a complaint that was registered as crime No.192 of 1998 and covered by CC No.180 of 1999 on the file of III Metropolitan Magistrate, Visakhapatnam. She contends that while the criminal case was pending, when the respondent/ wife was attending the Court to give evidence in the matter, the petitioner/ husband made assault and threatened her not to give evidence against him and one Simhachalam, for which she lodged a complaint covered by C.C No.270 of 2000 on the file of the V Metropolitan Magistrate, Visakhapatnam. After due enquiry, the petitioner was found guilty for the offences under Sections 323, 341 and 506 IPC and was released on admonition under Section 3 of the Probation of Offenders Act, instead of sentencing him to jail; that what the Court held under Section 498-A IPC in giving benefit of doubt is even proved of the demands to alienate the property and when she along with her mother and another mediator went to their house to join back the husband, she was beaten, same does not constitute the offence under Section 498-A IPC. There was no observation that it was a false complaint or intended to harass her husband and thereby that cannot be taken advantage by him. She further contends that the suit for maintenance filed by her was for inability to maintain and for she was not allowed to join him and the trial Court, after considering all these facts,

rightly dismissed the divorce claim for no grounds on cruelty or desertion, and thus for this Court while sitting in appeal there is nothing to interfere, hence to dismiss the appeal.

5. Perused the material available on record including the expressions referred by both sides in support of their rival contentions. The parties hereinafter are referred to as they are arrayed before the trial Court for the sake of convenience in the appeal.

6. Now the points for consideration are:

1. Whether there are any grounds of desertion or cruelty that entitles the appellant/ petitioner husband to dissolve the marital tie with respondent dated 26.06.1997; and if so, the lower Court's dismissal decree and order is unsustainable and requires interference by this Court while sitting in appeal and if so, with what observations?
2. To what result?

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POINT NO.1:

7. The undisputed facts are that the marriage of the petitioner/husband was performed on 26.06.1997 with respondent/wife at Godavari Kalyana Mandapam, Simhachalam, Visakhapatnam as per Hindu Rites and customs and they lived happily after their marriage was consummated for few months. There is also no dispute on the fact that the husband filed O.P No.450 of 1997 for restitution of conjugal rights (covered by Ex.A1-order) that was allowed on 30.06.1999 in directing the respondent/wife to join the petitioner/husband. Admittedly, he had not been filed any execution petition much less addressed any notice or any letter directing his wife to come and join. It is also not in dispute that the wife lodged a report under Section 498-A IPC against the husband and his parents on 24.10.1998 that was registered as crime No.192 of 1998 and after investigation the police filed charge sheet and the same covered by CC No.180 of 1999, was ended in acquittal after trial on 08.05.2000 vide Ex.A4 judgment. To say that, Exs.A2 and A3 demand notices said to have sent

to his wife to come and join allegedly on 30.07.1999 and 30.12.1999, there is no proof of sending the same to the respondent/ wife much less any proof of service. The other fact also not in dispute is that in CC No.270 of 2000 on the file of the V Metropolitan Magistrate, Visakhapatnam, after trial, on the report of the wife against the husband, his father and his father's friend one Simhachalam for the offences punishable under Sections 323, 506 r/w 34 IPC, on trial the same was ended in conviction and the petitioner/husband was admonished and released for good conduct under the Probation of Offenders Act.

8. Now coming to decide whether there are any grounds of cruelty or desertion on the part of the respondent/wife against the petitioner/husband with no fault of him; the contention of the wife is that after marriage there were demands to meet the additional dowry and her mother executed a document in her favour and in favour of her sisters equally and the petitioner/husband demanded her to part with the property of her to alienate or to convey in his name which she did not oblige and it is therefrom the petitioner/ husband started harassing her one way or the other and wanted to get rid of her and necked her out. Ex.A7 is the Xerox copy of the agreement dated 11.06.1997 filed by the husband that substantiates the said version of the respondent/wife of some property was given to the respondent/ wife by her mother therein, which is before 15 days before their marriage dated 26.06.1997. It is his contention that the so called demand is untrue and he never demanded to convey the property in his name much less to alienate. According to him, it is the respondent that left his company on 27.08.1997 claiming that she was carrying and later did not turn up in spite of he made requests personally and through elders and thereby, she deserted him and later filed false criminal cases to harass that also constitutes cruelty and he is entitled to divorce.

9. Coming to the aspect of the alleged mental cruelty suffered by the petitioner/husband in the hands of respondent/wife including from her giving of report under Section 498-A IPC and the case ended in acquittal concerned, it is important to note what constitutes cruelty. The Apex Court in **Naveen Kohli vs**

Neelu Kohli at para No.35 categorically observed that:

“35. The petition for divorce was filed primarily on the ground of cruelty. It may be pertinent to note that, prior to the 1976 Amendment in the Hindu Marriage Act, 1955 cruelty was not a ground for claiming divorce under the Hindu Marriage Act. It was only a ground for claiming judicial separation under Section 10 of the Act. By the 1976 Amendment, cruelty was made a ground for divorce and the words which have been omitted from Section 10 are ”as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party”. Therefore, it is not necessary for a party claiming divorce to prove that the cruel treatment is of such a nature as to cause an apprehension — a reasonable apprehension — that it will be harmful or injurious for him or her to live with the other party.

10. From this referring to earlier expression in **N.G.Dastane vs. S.Dastane** at para No.30 observed as follows:

“The enquiry has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent.”

11. It is therefrom clear that though prior to 1976 Amendment of Hindu Marriage Act, 1955, cruelty is only made a ground for judicial separation and not for divorce, later it was made a ground for divorce and it also removed the rigour of the proof as to reasonable apprehension in the mind of the petitioner that it would be harmful or injurious to live with other party that is since removed. What is thus required to prove as held in **Navin Kohli** (1 supra) ultimately was, as laid down in **Shobha Rani vs. Madhukar Reddi** at para No.47 that:

“The Cruelty has been used in Section 13 (1) (i-a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the

impact of such treatment on the mind of the spouse. Whether it is caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.”

12. It is therefrom observed that if the conduct and allegations are such an extent showing by enough and per se unlawful or illegal if that conduct or allegations proved that constitutes mental cruelty. It is to say unlawful or illegal and bad conduct per se constitutes cruelty and that was the act of cruelty must be proved as every conduct and every allegation or accusation does not tantamount to cruelty. The expression also cautioned the consideration of the words mental cruelty to grant or refusal of relief on determination of facts of each case for no definition under the Hindu Marriage Act and for no uniform principle for all cases to lay down”

13 But to keep in mind that of ***Lord Denning L.J in Kaslefsky vs Kaslefsky***

“If the door of cruelty were opened too wide, we should soon find ourselves granting divorce for incompatibility of temperment. This is an easy path to tread, especially in undefended cases. The temptation must be resisted lest we slip into a state of affairs where the institution of marriage itself is imperilled.”

14. In ***V.Bhagat vs. D.Bhagat***, the Apex Court held at para No.16 is as follows:

“16. Mental cruelty in Section 13 (1) (ia) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be

had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

15. Thus, proved from **Bhagat** (5 supra) and **Shobha Rani** (3 supra) concluded with approval in **Naveen Kohli** (1 supra) but for the allegations per se unlawful or illegal and the conduct per se bad or unlawful to constitute cruelty once that is proved; in so far as other allegations and counter allegations of conduct concerned, whether it is accusation or allegation as the case may be per se not proved even that is proved and regard must also be had to the context in which they were made without simply acting on it.

16. Even in **Savithri Pandey vs. Prem Chandra Pandey**, it was observed that whether an act constitutes cruelty or not, the Court must keep in mind that to distinguish the same from ordinary way and deter family life, as it cannot be said on the basis of sensitivity or the veracity but for to adjudge on the basis of the course of conduct which would in general be dangerous to the spouse with the other spouse or not possible to live together.

17. It was in the said expression **Naveen Kohli** (1 supra) referring to **Bhagat** (5 supra) held that irretrievable break down of marriage even not a ground for divorce, it cannot be ignored from consideration in appreciation of the evidence as to there is a cruelty or not therefrom also for long separation between the parties and no possibility of reunion.

18. In **Naveen Kohli** (1 supra), the Apex Court therefrom laid down broad guidelines of what constitutes cruelty. By noticing with approval of the guidelines in **Naveen Kohli** (1 supra) and the three judges bench expression of the Apex Court in **Samar Ghosh vs Jaya Ghosh** held at para No.101 as under:

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

- i. *On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.*
- ii. *On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.*
- iii. *Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.*
- iv. *Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.*
- v. *A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.*
- vi. *Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.*
- vii. *Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.*
- viii. *The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.*
- ix. *Mere trivial irritations, quarrels, normal wear and tear of*

the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

- x. ***The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.***
- xi. ***If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.***
- xii. ***Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapability or valid reason may amount to mental cruelty.***
- xiii. ***Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.***
- xiv. ***Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”***

19. It is there from held in **Samar Ghosh** (7 supra) that taking into consideration of the afore mentioned factors along with important circumstances that the parties are admittedly living separately for more than sixteen-and a half years (since 27.08.1990) the irresistible conclusion would be that matrimonial bond has been ruptured beyond repair because of the mental cruelty caused by the respondent and entire substantum of marriage has already disappeared, hence granted decree of divorce on facts. Now the above principle say long living separately is also one of the factors regarding marriage

break down to be kept in mind.

20. Referring to the expressions of **Samar Ghosh** (7 supra) and **Naveen Kohli** (1 supra) in the later expression of the Apex Court in **Gurubux Singh Vs. Harminder Kaur**, it was held that

“No conduct can be dubbed as cruelty in all circumstances and it is for the petitioner complaining of cruelty against the respondent to make out specific case that a particular conduct may amount to cruelty in one case but the same conduct necessarily may not amount to cruelty due to change on various factors in a different set of circumstances. Therefore it is essential for the appellant who claims relief to prove that a particular part of conduct or behaviour resulted in cruelty. It cannot be assumed that particular conduct will under all circumstances amount to cruelty, vis-a-vis, the other party. No prior assumptions can be made in such matters. The aggrieved party has to make a specific case that the conduct of which exception is taken, amounts to cruelty.”

21. Needless to say even a single act of violence which is of grievous and inexcusable nature satisfies the test of cruelty. However, in deciding whether in a particular case, the cruelty complained constitutes a ground of divorce, the marital life should be assessed as a whole and a few isolated instances over certain period will not amount to cruelty. It is also observed that for the acts of cruelty complained by subsequent act of the complainant party tantamounts to condonation that cannot be made a ground to seek the relief.

22. So far as the allegations in the counter or reply whether tantamounts to cruelty or not concerned, it is categorically observed that mere allegations per se do not constitute cruelty in the absence of any evidence in this regard of such allegations constitute cruelty to decide by Court by framing any issue or point for consideration and without that such an allegation cannot be taken as a basis for granting divorce.

23. In this regard, the Apex Court in **Gurubux Singh** (8 supra) by

distinguishing the earlier expression in ***Vijaykumar Ramchandra Bhate vs. Neela Vijaykumar Bhate***, held that all the allegations made in the written statement or the allegations specified in the course of cross examination by itself does not tantamount to cruelty though it was held as cruelty in the earlier expression.

24. In the later expression of the Apex Court in ***Malathi Ravi, M.D vs. B.V.Ravi, M.D*** regarding cruelty, it was observed that the false and vexatious criminal proceedings, by the wife against her husband and his family members also, under Section 498-A, 506 r/w 34 IPC where the facts show it is after the husband filed divorce case, wife intentionally filed that criminal case, that has to be taken into consideration in deciding such false and vexatious criminal proceedings constitutes mental cruelty. On facts, it was held that constitutes mental cruelty for the reason that after returning the letters of the husband with no response, the wife all of a sudden joined the husband having coming with her relative who is working in Police Department and with no time the wife lodged criminal complaint regarding dowry against husband and his parents and cause them arrested by influencing the police for the offences under Sections 498-A, 506 r/w 34 IPC and Sections 3 & 4 of Dowry Prohibition Act and the husband was sent to jail, till grant of bail though his family members could avail but not himself the benefit of anticipatory bail which are resulted after dismissal of the divorce application of the husband from which he vexed with her conduct and filed the appeal with delay condonation and the delay condonation thereby allowed. Ultimately, it was held that those acts constitute cruelty or not to decide the Court can also take into consideration the subsequent conduct and subsequent events from the undisputed material and for that placed reliance on the earlier expressions in ***A.Jayachandra vs Aneel Kaur, Suman Kapur vs. Sudhir Kapur***.

25. In the other recent expression of the Apex Court dated 19.11.2014 in Civil Appeal No.1213 of 2006 between ***K.Srinivas vs K.Sunitha***, for entitlement of divorce by husband on the ground of cruelty from the Criminal proceedings, it was observed that the Criminal complaint filed by the wife against the

husband and several family members under Section 498-A IPC and Sections 3 & 4 of Dowry Prohibition Act, Section 307 (3), 384, 148 r/w 34 IPC on the facts show the filing of the false criminal case and the expression of the Apex Court in ***K.Srinivas Rao vs D.A.Deepa*** was considered and held as delivered a well reasoned judgment; therefrom observed that it is now beyond doubt that, if a false criminal complaint is lodged by either spouse, it would invariably and undoubtedly constitute mental cruelty such as would make entitle other spouse to get divorce.

26. Coming to ***K.Srinivasa Rao*** (13 supra) where it was also held that a false complaint or false criminal proceedings and indecent and defamatory statements made in the complaint or criminal proceedings and wife not satisfied with the acquittal judgment of the trial court of all other family members, pursued the matter by filing revision seeking for their conviction and also against the husband alleging insufficiency of sentence. Her pursuing the higher forms despite acquittal clearly speaks the same singly and cumulatively amount to mental cruelty warranting grant of divorce. It was also observed that making indecent and defamatory allegations against the spouse or his or her relations in the pleadings filed or presented a false complaint or issuing notice or news items which may have adverse impact on the job or business prospects of other spouse are the illustrative cases of mental cruelty which would warrant grant of divorce.

27. For that conclusion, the Apex Court referred the earlier expressions in ***Samar Ghosh*** (7 supra) ***Naveen Kohli*** (1 supra), ***Vijaykumar*** (9 supra), ***Bhagat*** (5 supra) and also considered the factum of husband and wife having living separately for more than 10 years with unbridgeable distance between them created from the outcome of false accusations and prosecuting the criminal proceedings and pursuing them vehemently to say the marriage is broken down irretrievably that can be considered as one of the circumstance in appreciation of the facts and other aspects whether constitutes cruelty or not.

28. In ***S.Hanumantha Rao vs. S.Ramani*** the Apex Court held that wife's parents seeking help of the police in bringing about reconciliation between

estranged spouses per se does not constitute mental cruelty or said complaint under Section 498-A IPC even registered for the reconciliation efforts made and there is no evidence of the wife's relatives and wife, against the husband and his relatives harassed through police, even the panic husband and his family members obtain anticipatory bail or regular bail, that cannot constitute mental cruelty.

29. This Court in ***Katada Baby @ Kollati Baby vs. Katada Sri Venkata Satya Raja Sekhar*** held that the factum of lodging complaint under Section 498-A IPC or filing of suit or claim for maintenance by wife against the husband cannot be considered as mental cruelty to make out as a ground for divorce and for that conclusion also referred the expressions in ***Akuladevi Padmaja vs Akula Veera Venkata Satyanarayana Anagalla Padmalath Vs A.Sudarshan Rao Ganti Srinivas vs. G.Vasantha, Lakshmi Chaitanya vs. B.Sharat Chandra***, and other expressions. It was also held that without proof of the allegations are false and untrue and made to harass, mere pursuing legal remedy or filing of complaint or criminal case under Section 498-A IPC not a ground for dissolving the marriage on the claim of cruelty.

36. In ***Vytla Alivelu Manga Devi vs. Vytla Venkata Lakshmi Narasimha Palla Rao*** it was also held that giving of report or filing of complaint under Section 498-A IPC would not per se constitute cruelty. It was held that the defence before the Court seeking divorce on the ground of cruelty must be consistent to the satisfaction of the Court and any benefit of doubt in acquittal of the accused husband and his family members in a criminal case must not result in suspending of marriage; as the legal provision availed by wife against husband after she was driven out from the matrimonial home with harassment or dowry demand would not per se constitute a ground for cruelty. It is only where a complaint is given with false allegations and with a mind to harass the husband and the same when proved, constitutes cruelty.

31. Further in ***V.Venkateshwarlu vs. Mamatha*** in this regard held that, even filing of complaint under Section 498-A IPC by wife itself cannot be

treated as act of cruelty, notwithstanding acquittal of accused therein and the intention of the Parliament in enacting Section 498-A IPC and other related provisions, was to protect woman spouse, than to create avenue or opportunity for male spouse to seek divorce solely on basis of institution of such proceedings. Unless such a ground of cruelty not proved as outcome to harass and with false allegations mere filing of a report or complaint does not tantamount to cruelty and the allegations cannot be considered per se false and malafide. Further in another expression of this Court in ***P.Jayaram vs P.Sudha Laxmi*** also, in this regard it was held that the wife insisted for separate residence which made the husband to take the residence near to his parents house by itself, is not a ground to constitute cruelty on the party of husband so also giving of report and filing of complaint under Section 498-A IPC and sections 4 & 6 of Dowry Prohibition Act in the absence of proof by husband that the very filing of complaint or giving of report was motivated and aimed to harass him and his family members, in holding the husband is not entitled on that ground for divorce by claiming as cruelty.

32. Further a Division bench of this Court in ***N.K.Somani vs.P.Somani*** observed referring to several expressions that it is essential for the petitioner who claims relief to prove that a particular part of conduct or behaviour resulted in cruelty. It is observed that without such proof, no prior assumptions to be made, nor it can be assumed that a particular conduct in a set of circumstances amount to cruelty; as particular conduct may amount to cruelty for one case may not necessarily amount to cruelty in another case, due to change of various factors and in different set of circumstances. Thus, judgments of Courts are not to be construed as statues. A decision ordinarily is a decision on the case before the Court, while the principle underlying the decision could only be binding as the precedent in a case which comes up subsequently by ascertaining the true principle laid down in that previous decision.

33. It was also observed in ***N.K.Somani*** (23 supra) differing to the earlier

expression of this Court in **Jayakrishna Panigrahi vs. Surekha Panigrahi** of the allegations made in the written statement not proved, will amount to cruelty is not correct. It is to say such allegations are to be proved as wild, baseless, false or the like as per Section 3 of the Indian Evidence Act, which defines 'proved', 'not proved' and 'disproved'. As per which, a fact is said to be not proved, when it is neither proved nor disproved and as such unless the allegations are disproved which is akin to say false, wild or baseless to make a ground of that tantamount to cruelty, mere allegations not proved which may be true or may not be true cannot be taken as wild or baseless or false to say those constitute mental cruelty. For that conclusion this Court in **N.K.Somani** (23 supra) placed reliance on the proposition, laid down in the earlier expression of this Court in **Lalitha Kumari vs. K.Ram Prasada Rao** that followed a division bench expression of the Punjab & Haryana High Court in **Paras Ram vs. Kamlesh** and in concluding that in order to succeed that the allegations made in the pleadings by the opposite party to constitute cruelty, those allegations must be disproved by showing false or wild or baseless and there from constitute the mental cruelty; as unless truth or falsity of such allegations establish one way or other, no legal consequences can flow therefrom for the purpose of deciding cruelty or not under Section 13 (1) (ia) of Hindu Marriage Act.

34. Having regard to the above propositions referred supra; unless the allegations are per se illegal and unlawful from the conduct is per se wild, bad and unlawful to make that itself constitutes act of cruelty; in other respects every conduct alleged that tantamounts to cruelty must be proved by preponderance of probabilities and even the giving of police report or filing of complaint or pursuing of the case under Section 498-A IPC and Sections 4 & 6 of D.P Act by wife against the husband or his family members per se do not constitute cruelty including from the result of acquittal therein; in the absence of showing and proving by the husband that the complaint filed or report given or pursuing of the case is aimed to harass and ill treat the husband that constitute mental cruelty. Equally mere allegations appearing wild or grave in the pleadings of the parties, if not proved does not constitute cruelty; in the absence of evidence showing the same are false or made with intend to ill-treat

or harass; by disproving said allegations.

35. From the above propositions coming to the facts on hand, it is the evidence of the respondent/wife that for not conveying the property as demanded by the petitioner/husband i.e., covered by Ex.A7 agreement dated 11.06.1997, he started ill treatment and sent her out of the house. It is her further evidence that even later her mother and another mediator made efforts for her joining the petitioner, he did not allow. Undisputedly, before the O.P No.450 of 1998 filed by him for restitution of conjugal rights, he did not issue any notice demanding his wife to join him. The said O.P for restitution of conjugal rights was admittedly decreed on 30.06.1999 vide Ex.A1. It is important to note that the report given by the wife under Section 498-A IPC against the husband and his parents was dated 24.10.1998 in Crime No.192 of 1998 covered by CC No.180 of 1999. It is during pendency of the said crime, the restitution of conjugal rights' case was decreed. The petitioner/husband undisputedly not filed any execution petition for restitution of conjugal rights demanding his wife to join. He did not even issued any notice asking her to join him. The so called registered post letters on 30.07.1999 and 30.12.1999 allegedly sent by him covered by Exs.A2 and A3, there is no proof. The respondent/ wife also disputed about sending letters and receiving by her. Even then, he did not file any proof, for the reasons best known to him. The so called mediator PW.2 evidence shows that he was set up by him to depose to his tunes as if he is a mediator went to the house of respondent to demand her to join the petitioner/husband and as if she refused. In there is any truth, that important fact must find place in Ex.A2 which was within one month from the date of Ex.A1 restitution of conjugal rights decree, leave about Ex.A3 dated 30.12.1999. The trial Court there from observed that these two letters are created and manipulated and thereby could not file any proof of service. Now when he filed O.P for restitution of conjugal rights, obtained the decree, did not even choose to execute, but for filed O.P for divorce on the ground of desertion and cruelty. It was not even sought a ground of despite restitution of conjugal rights decree, for no any reasonable or just cause, she refused to join him under Section 13 ((1) (ia) clause (ii) of the Act.

36. Ex.A4—judgment in CC No.180 of 1999 also speaks the factum supported by Ex.A7—agreement, property conveyed by mother of respondent/wife and the evidence of RWs.1 to 3 is that the petitioner/husband demanded to part with the property and convey in his name or to alienate. Further, Ex.A4 certified copy of judgment in CC No.180 of 1999 under Section 498-A IPC speaks that the allegation is when the respondent/wife, her mother and another said to have gone to his house to join the petitioner/husband by respondent/wife, she was beaten, they were not allowed, she was necked out and with the demand to part with the property.

37. What the lower Court observed rightly from reading of Ex.A4 judgment was that, the observation in the acquittal judgment was not because of the allegation was not proved, but such averment does not constitute the offence under Section 498-A IPC. The wife did not pursue the case further to say the filing of said case constitutes cruelty to make it a ground for divorce even as a subsequent event from the result of the acquittal judgment dated 08.05.2000, after filing of the divorce O.P. No.396 of 2000. Further pursuing a legal remedy does not per se constitute cruelty, unless it is shown out come of spite and ill will and the object behind is with some oblique motive. Coming to the other facts covered by Ex.A5 in CC No.270 of 2000 that was undisputedly ended in conviction on 31.03.2001 and the accused was released under Section 3(1) of the Probation of Offenders Act by admonishing him and he did not even choose to prefer appeal or revision impugning the same. It is observed therein that while the respondent/ wife was going to Court to give evidence in Section 498-A IPC case, the petitioner/ husband, his father, another by name Simhachalam assaulted her and she was beaten, for which she lodged complaint, that was covered by C.C No.270 of 2000 on the file of the V Metropolitan Magistrate, Visakhapatnam, as such that no way constitutes an act of cruelty on the part of the wife against the husband but vice-versa.

38. No doubt, the wife filed maintenance case covered by O.S No.82 of 2000 on the file of the Judge, Family Court, Visakhapatnam with averments that while she was going to join her husband, she was not allowed and she was beaten and necked her out, despite the decree for restitution of conjugal rights

and she was unable to maintain herself and hence to grant maintenance. The maintenance case no way constitute either cruelty or desertion on the part of the wife from such a claim. Besides PW.1's evidence, one P.Appa Rao, PW.2, deposed that in August, 1999 himself and Varahalu went to the parents house of the respondent and requested to send the respondent to the house of PW.1 but they refused to send her. Any credence can be given to said version of PW.2 that in August, 1999, the respondent was demanded to join, but she did not oblige; there is no whisper in this regard, if true to find place in the alleged notice (A-3) dated 30.12.1999. He is an introduced and interested witness and moreover no such pleading was there even in the petition for divorce in this regard. Thus, there is only self serving testimony of him and the introduced and uncredible witness PW.2 with reference to Exs.A1 to A7 discussed supra of which the Ex.A4, Ex.A5 and Ex.A7 substantiate the defence of the respondent/wife, besides respondent/wife, her mother, and mediator i.e., K.Seetharatnam (RW.3) also deposed in support of the same. It is there from the trial Court concluded that the petitioner/husband cannot take advantage of his own fault to get rid of the marriage tie with the respondent and for her no fault and even though she is ready and willing to join him which he did not allow. He did not come to court with clean hands. The said conclusion of trial Court is as referred supra on factual aspects is correct and supported by reasons to hold that there is no cruelty.

39. Now coming to the contention of otherwise, there is a desertion on the part of the wife for his entitlement to the decree of divorce, in this regard it is important to note, as observed in para No.53 of the three judges Bench expression of the Supreme Court in **Naveen Kohli** (1 supra) referring to the earlier expression in **Savitri Pandey** (6 supra) at page 82 which referred the earlier expressions of the Apex Court in **Bipin Chander Jaisinghbhai Shah vs. Prabhawati** that was followed and reiterated in **Lachman Utamchand Kirpalani vs. Meena**, that:

Following the decision in Bipin Chander case this Court again reiterated the legal position in Lachman Utamchand Kirpalani v. Meena by holding that in its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that 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.”

40. The later expression of the Apex Court in ***Malathi Ravi, M.D*** (10 supra) reiterated the above principle by referring the above expressions holding that there must be a continuous period of two years desertion on the part of the other spouse to put an end to marital tie with an intention to live away and without any mind to join. Here that is totally lacking in the case as rightly concluded by the trial Court and suffice to hold that there is no factual foundation to establish desertion or construction desertion.

41. Having regard to the above as rightly concluded by the trial Court, the husband cannot take advantage of his own faults, for no fault of the wife in driving out her from the marital home and for the sake of record having filed restitution of conjugal rights with no mind and even wife expressed her willingness to join and even after the restitution of conjugal rights petition allowed, he did not execute much less served any notice to her to come and join and further even not allowed her to join and even case registered for the offence under Section 498-A IPC from his demands to part with the property having driven out when she tried to join by proceeding with her mother (RW.2) and PW.3 (that is proved from their evidence) he beat her and demanded to part with her property in his name to alienate and further when she was attending Court to give evidence she was way laid and beaten for which another case registered where he was convicted. Thus, there is neither desertion nor cruelty on the part of the wife, but for cruelty and desertion on the part of the

husband.

42. In view of the above, there is no illegality or irregularity or impropriety in appreciation of the evidence and to the conclusions and findings arrived by the lower Court, for this Court while sitting in appeal to interfere.

43. It is needless to say that it is one of the contentions of the appellant/husband that after December, 1997, the parties are living separately and that is a ground for divorce. As held in the expressions supra, irretrievably broken down of marriage is not a ground for divorce. It is needless to say even the amendment proposed after **Naveen Kohli** (1 supra) and **Samar Ghosh** (7 supra) to make it a ground for divorce and that was even recommended by the law commission, it could not fructify in the Parliament. Accordingly, the point No.1 is answered.

Point No.2:

44. In the result, the appeal is dismissed. No costs.

45. Consequently, miscellaneous petitions pending if any in this appeal shall stand closed.

R.SUBHASH REDDY, J

B.SIVA SANKARA RAO,J

Date:19.02.2015

Note: LR Copy to be marked: Yes

(B/o)

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THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

And

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

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C.M.A. No. 4575 OF 2004

Date:19.02.2015

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