

THE HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

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

F.C.A.No.255 OF 2011

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

Appellant is the wife of the respondent. Their marriage was performed on 04.05.2007 at Rammandir Sabha, A1, Gurunanak Nagar, Vijayawada, under Hindu Law and Caste Custom and the same was consummated. She filed the appeal impugning the legality and correctness of the order and decree, dated 22.07.2011, in F.C.O.P.No.57 of 2009 passed by the learned Additional District Judge – cum – Judge, Family Court, Khammam, dissolving the marriage between the couple on the grounds of cruelty and adultery, from out of the grounds sought for i.e., adultery, cruelty and desertion in the said petition filed against her by her husband, who is respondent here in the appeal, claiming the relief on the ground of adultery or the loose life attributed with three persons, the petitioner-husband did not implead any one of the three persons as co-respondents, though it is mandatory to implead them for the said relief. Thus, the appeal relief to answer from the trial Court's order impugning the grant of divorce can be mainly on the grounds of cruelty, for the relief on the ground of adultery would not survive from the above, though desertion is also pleaded in the trial Court and impugned the adverse finding by the respondent to the appeal.

2. The contentions in the grounds of appeal as well as the submissions of the learned counsel for appellant – wife in nutshell are that the order and decree, dissolving the marriage, passed by the learned trial Court Judge is contrary to law, against the principles and precedents in misreading of the facts, evidence and propositions and

in ignorance of the fact that a petition for restitution of conjugal rights in O.P.No.75 of 2010 was filed and clubbed with for deciding together, that the so called Compact Disk recordings alleging harassment or cruelty or talking with other male persons, much less in vulgar and erotic or so called loose life therefrom, are untrue, fabricated and false documents, that the same were not properly appreciated by the trial Court, that the trial Court's findings and conclusions are controversial with no foundation to the conclusions, and hence, sought to set aside the decree dissolving the marriage by restoring the marital tie. The learned counsel for the appellant reiterated the same.

3. Whereas, it is the contention of the learned counsel appearing for the respondent – husband, in support of the impugned order of the trial Court, that for this Court while sitting in appeal with the reasoned order of the trial Court having fresh in mind the facts, by recording the evidence, discussed the material on record with reference to the facts and circumstances and propositions of law, no way requires interference in dissolving the marriage mainly on the ground of cruelty apart from desertion is also available as an additional ground to attack the adverse finding of the trial Court to that extent without any cross objections and thereby, sought for dismissal of the appeal. The learned counsel also placed reliance on the expression of the Apex Court in **Samar Ghosh v. Jaya Ghosh**.

4. Perused the material on record.

5. The parties hereinafter are referred to as arrayed before the trial Court i.e., as petitioner – husband and respondent – wife, for the sake of convenience.

6. Now the points that arise for consideration are:

1. Whether the respondent – wife before the trial Court, who is the appellant herein, is not guilty of cruelty and desertion and if so, the impugned order of the trial Court dissolving the marriage on the ground of cruelty is unsustainable and requires interference by this Court while sitting in appeal including on the finding against desertion and if so, with what observations and conclusions?
2. To what relief?

Point No.1:-

7. There is no dispute on the factum of relationship between the couple as husband and wife. So far as the specific acts of cruelty is concerned, what the petitioner – husband pleaded before the trial Court was that the respondent – wife since inception of marriage became short tempered and aggressive and behaving at her whims and fancies so irresponsibly, and shouting in high pitch against him and other persons of his family and even insulting him before guests and neighbours, that for the Aashadam went to her parents place within a short time after marriage and refused to return back but for after long persuasions, returned that too for a short stay and left again, that she even insulted his mother and sister including by refusing to wear the wrist watch presented by his mother to her and by abusing them when they went to Annavam, that she also abused the sister-in-law whenever she was visiting her parents' house, that she never cooked food properly but for forcing him to bring food from hotels, and that besides the humiliation and embarrassment she was creating all through, she left his company to her parents place at Vijayawada on 21.01.2008. It is his averment regarding cruelty and desertion. Further, he pleaded that she used to talk to somebody over phone for hours together everyday to the shock and shame of the petitioner and his parents, that her conversation with other side male persons in totally vulgar and filthy

language is unfair for a married woman and is in an uncivilised manner, which do raise a suspicion to any prudent man, thereby to the petitioner – husband, which made him to engage the services of a detective agency and it came to light that she was talking over phone to Mr. Srinivasa Rao, L.I.C. Agent in Vijayawada, Mr. Anthony Reddy and Mr. Md. Raja for hours together in so vulgar language, that under the guise of running a Beauty Parlour, even her parents were encouraging her to loose life and that is found from the detection through an agency including from neighbourhood of petitioner's parents and the Beauty Parlour, and it came to light that even she was going for outing in night times without returning till morning with one or other visitors to her house, that the same was even revealed to her parents by his questioning her attitude, for no change to his words, they also threatened him and his parents to implicate them in criminal cases besides threat to their lives, and that the marital tie of the petitioner in the hands of the respondent – wife became therefrom shameful and miserable with no hope or option to continue and that constrained to seek for divorce.

8. The respondent – wife while denying and disputing all the petition averments and any entitlement to divorce, including as to her alleged loose life or talking hours together with male persons or frequently going to her parents at Vijayawada or moving with male persons, contended that after completion of the Aashada Masam within the few months of marriage, when she wanted to join at her in-laws house, her mother-in-law asked her not to come to their house saying that the petitioner got ship duties and he will go by ship and only after his returning back she can join, that for simple and silly pretext expressing contempt towards the respondent her mother-in-law was ill-treating and even in the short spells of stay by creating scenes and attributing the acts of theft against her of gold wrist watch etc., and so even beating to admit as if she committed the offence for nothing, that her sister-in-law was also ill-treating her and threatening to remove clothes saying Rayalaseema rowdys, that they were threatening to give divorce to perform another marriage to him, that she was taken

to a psychiatrist for nothing though she is hail and healthy; that in June, 2008, when the petitioner returned to Hyderabad from his Job, he asked the respondent to come and join to stay at Hyderabad till second week of July and even in that period her mother-in-law ill-treated her and has not allowed the couple to have conjugal life, that they compelled her to undergo abortion to terminate her pregnancy, that it is her mother-in-law who polluted the marriage life, by imputing falsely on her character, that on 07.12.2008, the petitioner and his parents came to Vijayawada and forcibly obtained signatures from her on blank papers by threatening with dire consequences and to obtain divorce by refusing her to join, that she gave birth to a male child, Master Dhanush, on 16.04.2009, but the petitioner and his parents did not even turn up to see the child, that it is under these circumstances, she was constrained to file a private complaint under Section 498A I.P.C. before the II Additional Chief Metropolitan Magistrate, Vijayawada, and the same was referred to police, Machavaram, for investigation, and thereby, sought for dismissal of the petition for no grounds to dissolve the marital life and that she is innocent.

9. With reference to the above pleadings, during the course of trial, on behalf of the petitioner, he himself was examined as PW.1 and has placed reliance upon Exs.P1 to P8, which includes Tata Indicom bill, dated 21.11.2008, memorandum of understanding between the petitioner and the respondent, mutual consent divorce petition, dated 30.12.2008, Audio and Video CD's and translation of telephonic conversations. On behalf of the respondent, besides examining herself as RW.1, one Jhansi Rani was examined as RW.2.

10. From the above evidence and after hearing, the trial Court by the impugned order, particularly from Paragraph Nos.18, 21, 24 and 29, observed that the respondent is guilty of matrimonial cruelty, though desertion not independently made out, and that she is guilty of loose

life.

11. Now coming to the legality and correctness of the impugned order, the material on record, the evidence of the petitioner, PW.1, and the respondent, RW.1, including therefrom respective cross-examinations, establish that the respondent was running Sneha Beauty Parlour prior to her marriage at Vijayawada, where she studied M.Com. and discontinued M.B.A., that her father was a small trader in Cashew Nut business to whom her mother was a second wife as her father abandoned his first wife by name Parvathi alive, that she was having one Mobile No.9397076493 and the other Mobile No.9704503451 does not belong to her and she was not holding such mobile after one month of marriage till the end of 2009, that she denied the suggestion that she worked in Toyota car showroom and Sony Electronics, that her mother was running small Kirana Shop in Chinna Tirupathi of West Godavari District, and that she denied her voice in the Compact Disks, Ex.P7. She deposed that on 06.12.2008 the petitioner (her husband) along with his parents came to Vijayawada and stayed in Swarna Palace Hotel and on that day evening, even her father and grand mother went to the Hotel and met them and that is also covered in Ex.P7 - Video CD and on the next day i.e., 07.12.2008, the parents of the petitioner came to her house and had lunch and thereafter, herself and petitioner went in ride in his car and the video coverage shows the same, however, she claimed that the voice in the video does not belong to her but for the audio other than video, in saying audio, is fabricated and that can be sent for forensic lab to examine. She denied the suggestion that in the meeting held subsequently on 29.12.2008 at the office of the Advocate

Sri Kakrati Rama Mohan Rao, whose junior is Advocate Padma, she agreed to obtain mutual consent divorce and on the memo of understanding prepared by the said Advocate Padma, she signed, and on the next day, they filed a mutual consent divorce petition in the Family Court, Vijayawada. She denied her signature on the

vakalat, while admitting it on the petition and denied the suggestion that she has given vakalat and is a party to the petition filed through the Advocate Padma for mutual consent divorce, but for she is deposing falsehood, at the cost of repetition she admitted her signatures on Exs.P5 and P6, memorandum of understanding between the petitioner and the respondent and the mutual consent divorce petition, respectively. She denied the suggestion that having voluntarily signed by arriving the memorandum of understanding to take consent divorce and also signed the consent divorce petition with vakalat to file in the Court, she did not co-operate even while admitting by her that her father taken the items belonging to her and signed by admitting the signature on that of her father on the document shown. She deposed that she lodged a private complaint under Section 498A I.P.C. against the petitioner and his parents and the said case was referred as false and she claimed filing of a protest petition in the year 2010 or so. She also deposed that she filed a Domestic Violence Case and also Maintenance Case. In her chief examination, she claimed that the petitioner – husband demanded Rs.50,00,000/- towards dowry, but they paid Rs.10,00,000/- as dowry and Rs.1,00,000/- towards lanchanams to the sister of the petitioner and she did not even mention about any jewellery worth Rs.2,00,000/- with the petitioner. In fact, as referred supra, from what she deposed, her father was running small Cashew Nut business and her mother too was running a Kirana Shop away to her father at Chinna Tirupati, and that is the family background, it is quite a vain attempt to make believe that Rs.50,00,000/- was demanded and Rs.10,00,000/- was paid, much less as dowry to maintain a case under Section 498A I.P.C., even from the very evidence of her, no way consistent. In the cross examination of the petitioner by respondent – wife, he deposed that at the time of marriage he was working as Second Officer in Navy Shell Company at U.K. and in February, 2007 he came to India to settle his marriage and the marriage with the respondent was fixed within one and half month and he denied the suggestion of demanding any dowry or receiving of any dowry or any gold ornaments worth Rs.2,00,000/- or cash of

Rs.10,00,000/- or lanchanams of Rs.1,00,000/-. He deposed that he applied for long leave from June, 2008 to May, 2010 and joined duty in May, 2010 in the same Company and that the respondent conceived in August, 2008. He deposed that on 07.12.2008 he and his parents went to Vijayawada and asked for divorce and she accepted for the same. He deposed that he filed divorce petition at Ranga Reddy Court on 11.12.2008, however, it was prepared by the Advocate which he could not go through fully and that petition was transferred from Ranga Reddy Court to this Court at Khammam, which is the present divorce petition.

12. Even from the said evidence, it is crystal clear that there is no basis for the respondent to file Section 498A I.P.C. case not only against the husband but also his parents and sister. She has also admitted in her cross-examination that the same is out come of private complaint and not even from any police report and further, even after the case was referred as false, she filed a protest petition not satisfied with therefrom. It is very difficult therefrom to say that she bonafidely prosecuted Section 498A case against the husband and his parents etc., when that itself is sufficient to say, besides the pleadings showing there were threats even very earlier to implicate him and his family members in Section 498A case, and that substantiates that she bent upon, without regard to marital tie, to file a case against the husband, his parents and also his sister. Apart from it, the material on record clearly shows her conversation with male persons hours together, and though the voice is in dispute, there is some substance to the *bona fide* suspicion of the petitioner in this regard and a perusal and close reading of the material on record covered by Exs.P7 and P8 gives a strong suspicion to any prudent person about her conduct. Leave it as it is, for no more basis to say she is a woman of loose life, much less no basis for the petitioner for not impleading so called persons with whom she leads the adulterous life, these acts are nothing but substantiating the acts of

cruelty coupled with Section 498A I.P.C. filed by her by way of private complaint and not satisfied with even after referring as false, with protest petition unsuccessfully, preceded by threats to implicate not only him but also his other family members. Apart from it, her conduct in signing the memorandum of understanding to put an end by dissolving their marital tie under Ex.P5 and the subsequent filing of mutual consent petition under Ex.P6, being a party to it, admittedly, also substantiates the acts of desertion on her part if not taking from the period earlier to January or June/July, 2008 subsequently, atleast from 07.12.2008 to say even the subsequent conduct of her, apart from the previous acts coupled with the acts of cruelty substantiated the desertion from the material on record in his entitling to divorce so also the marital tie broken down irretrievably to take it as a corroborative piece to add strength to the act of cruelty as laid down by the three Judge Bench expression of the Apex Court in **Samar Ghosh** (supra), referring to earlier three Judge Bench expression of **Naveen Kohli v. Neelu Kohli**. Thus, so far as the finding of the trial Court that the respondent – wife is guilty of cruelty is concerned, from the above material on record, by re-appreciation, to sit against for this Court, there is nothing to interfere.

13. Accordingly, Point No.1 is answered.

Point No.2:-

14. In the result, the appeal is dismissed. Miscellaneous Petitions, if any, pending in this appeal shall stand closed. No costs.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

30th April, 2015

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