

**HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
Civil Miscellaneous Appeal No.522 of 2005**

JUDGMENT: (Per Justice R. Subhash Reddy)

This Civil Miscellaneous Appeal, under Section 28 of the Hindu Marriage Act, 1955 is filed by the respondent in O.P.No.218 of 2003 on the file of the I Additional Senior Civil Judge, Rajahmundry, aggrieved by the order and decree dated 01.04.2005 passed therein. By the aforesaid order, the learned I Additional Senior Civil Judge, Rajahmundry allowed the O.P., filed by the respondent herein under Section 13(ib) of the Hindu Marriage Act, 1955 and dissolved the marriage of the petitioner with the respondent, by granting decree of divorce.

2. For the purpose of disposal of this appeal, we refer to the parties as arrayed in the O.P.

3. Petitioner, who is an agriculturist, is a resident of Kunavaram of Seethanagaram mandal. He married the respondent in August, 1999 at Korukonda temple as per Hindu rites and customs. Petitioner was earlier married to one Smt. Gedela Bharathi in the year 1991, with whom he begot two children. It is stated that the petitioner was in grief in view of her sudden demise and also became sick, for which he was under treatment for psychological

disorder. It is stated that marriage between the petitioner and the respondent was not consummated and they were living separately from the date of marriage; only at the request of the brothers of the petitioner, the petitioner married the respondent and when the petitioner was under treatment for psychological disorder, respondent as well as the brothers of the petitioner were forcing him to live with the respondent under threat of filing a criminal case against him. It is stated that petitioner got issued legal notice to the respondent on 30.05.2002 in which the petitioner requested the respondent not to precipitate the matter by threatening him with criminal case and he advised the respondent to wait till completion of his treatment for psychological disorder, or to cooperate with him for obtaining mutual divorce on mutually agreed terms. It is alleged that though the respondent received notice on 04.06.2002, she did not give any reply. It is further alleged that though the petitioner wanted to reconcile the dispute before elders, the respondent and her relatives declared that they do not want to wait till completion of the treatment of the petitioner and filed false criminal case. In that view of the matter, having decided to live separately, petitioner sought decree of divorce. Though there is no clear allegation of cruelty against the respondent, however, in substance, it is the allegation of the petitioner that he sought the relief only on the ground of cruelty.

4. Counter-affidavit is filed by the respondent. In the counter-affidavit, while denying the allegations of the petitioner, it is stated by the respondent that her marriage with the petitioner was consummated and thereafter the petitioner got issued legal notice to her with false allegations and she was not taken to lead conjugal life with the petitioner. It is further alleged in the counter that petitioner, having been addicted to bad vices, neglected her and, further, he also maintained a mistress; when she questioned about the same, he filed the O.P., seeking grant of divorce, by making false allegations. It is further alleged that she was necked out of the house, as such, she was compelled to live separately.

5. Before the court below, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were filed. On behalf of the respondent, R.Ws.1 and 2 were examined and no documentary evidence was filed.

6. The court below, while appreciating the oral and documentary evidence on record, mainly on the ground that, the criminal action taken by the respondent, viz., lodging complaint with the police and also filing of maintenance case, and further, the allegation of the respondent that the petitioner is living with mistress, constitutes cruelty, allowed the O.P., and granted decree of divorce by dissolving the marriage between the petitioner and the respondent. As against the same, this

appeal is filed by the respondent-wife.

7. At the stage of admission, this court, by order dated 30.06.2005, suspended the decree of divorce granted by the court below, vide C.M.P.No.1144 of 2005 and the order of suspension continued all-along. In spite of service of notice on the petitioner-husband, there is no appearance on his behalf to oppose this appeal.

8. We have heard the learned counsel for the appellant/respondent-wife and perused the material on record.

9. Mainly, it is the case of the petitioner that after the death of his first wife, when he was in grief and was taking treatment for psychological disorder, there was severe insistence by the respondent and her relatives as well his brothers to join the company of the respondent. Referring to the instances, viz., filing of complaint with the Police, filing maintenance case and further the allegation made by the respondent that petitioner was living with mistress, it is pleaded that all the aforesaid acts would constitute cruelty and are grounds for grant decree of divorce.

10. Though it is the allegation of the petitioner that he was suffering from psychological disorder and in support thereof he relied on Exs.A.2 and A.3 – prescriptions and also oral evidence, however, the same are not adequate

so as to accept his case that he is not fit to lead conjugal life. Further, filing a complaint with the Police, by itself does not constitute cruelty. It is the specific allegation of the respondent that the petitioner was addicted to bad vices and was also living with a mistress and when she questioned the same, she was threatened by him; hence she was compelled to file a complaint before the Police and when the petitioner was summoned by the Police, the petitioner assured that he will look after the respondent well. It is to be noted that merely filing of a complaint to the Police, by itself, does not amount to cruelty, unless the ingredients attracting cruelty are alleged in such complaint. Further, the allegation of the respondent that the petitioner is living with another lady is not established, so as to accept the ground of cruelty, as raised by the petitioner, for grant of divorce. Having perused the evidence on record, we are of the view that petitioner-husband has failed to establish any instances which constitute cruelty within the meaning and scope of Section 13(1)(1a) of the Hindu Marriage Act, 1955.

11. For the aforesaid reasons, the order under challenge is fit to be set aside.

12. Accordingly, this Civil Miscellaneous Appeal is allowed, by setting aside the order and decree dated 01.04.2005 passed in O.P.No.218 of 2003 by the I Additional Senior Civil Judge, Rajahmundry. No order as to costs. As a sequel, miscellaneous applications if any

pending in the C.M.A., stand disposed of.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

February 4, 2015
MRR