

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

F.C.A No.27 of 2006

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

The petitioner – husband in O.P.No.108 of 2001 sought divorce against the respondent – wife to dissolve their marriage

dated 06.05.1990 performed as per the Hindu Rites and Customs, with the allegations that after the marriage was performed and consummated, they lived together for a short span and in that short stay, it came to light that she is suffering from unsoundness of mind, that she used to leave his company by going to her parents for months together even he could secure her through elders intervention to join back, that in their wedlock, they were even blessed with two children, there was no change in her behavior, including the treatment of the children, that many a time by consuming poisonous pesticides she made attempts to commit suicide to his risk which made him to sent her to her parents by apprehending danger and that while carrying 3<sup>rd</sup> pregnancy she has undergone abortion without information or permission of him. It is further averred that she was subjecting him to unbearable torture and going on aggravating after exchange of notices between them, even he was putting up with a

hope for her change and in the interest of children there was no change in her behavior that made him to join the eldest child Master V.Rajashekar Reddy in a hostel at Hyderabad by leaving the daughter V.Shamili with mother for no other go and thus, he is entitled for dissolution of the marriage on the ground of cruelty.

2. The impugned claim was opposed by the respondent-wife by refuting the allegations supra specifically and with a contention that he sought for divorce with all false allegations and with ulterior motive by suppressing his vices like drinking and debenchering, that he got a kept mistress and enjoying life with her by deserting the respondent – wife for her no fault and it is he that got aborted her third pregnancy and now come forward with a false version as if without his consent, she had undergone abortion. It is contended that she always treated him with respect and reverence and at no point of time with any nuisance or torture or agony to him from her behavior and the alleged attempts of suicide are nothing but false. She further averred that after 1990, at no point of time he spent any amount for her treatment to make such allegations of mental illness, that he is in possession of the prescriptions from various doctors, which he withheld with some evil design and for no truth in his allegations engineered in the petition for divorce and for he did mention nothing in the notice he got issued on

22.02.1994 covered by her reply dated 15.03.1994 with true facts which show all his allegations in the divorce petition are fertile imagination and her reply notice indicates the true averments facts and as to how she was putting up with a fond hope for his change. She contends that his whole idea in seeking divorce is nothing but to have another wife and to enrich financially having not satisfied with what he was deriving from her parents financially and thereby sought for dismissal of the divorce petition.

3. It is after hearing both sides and from the evidence on record adduced by both sides vide PWs.1 to 4 and RWs.1 to 6 with reference to Exs.A.1 to A.4, office copy of notices and reply notices respectively of the years 1994 and 2001; the trial Court held that the petitioner–husband miserably failed to prove any entitlement to the relief of divorce on the ground of cruelty.

4. It is impugning said order of the trial Court on 06.09.2005 dismissing his claim for divorce, he maintained the present appeal with the contentions that the trial Court's dismissal order of his claim for divorce is based on surmises and conjunctures, which is contrary to law, probabilities of evidence and in ignorance of all relevant facts and circumstances and also by non-consideration of the factum of his wife has been suffering from unsoundness of mind and creating nuisance from

her aggressive and arrogant behavior and also for making wild and false allegations against him for defence sake which are nothing but cruelty and hence to dissolve their marital tie by allowing the appeal and by setting aside the dismissal order of the trial Court. Learned counsel for the appellant-husband while reiterating the above grounds with reference to the evidence submitted that making of allegations against the petitioner-husband by the respondent-wife including in her counter and in her evidence that he got illicit relationship with one Haritha having married her on 13.12.2003 is nothing but a false and wild allegation without basis and that itself is a ground for divorce besides the trauma he put up in her hands unable to live with her within the four walls of matrimonial relationship.

5. Whereas, it is the submission of the counsel for the respondent – wife in the appeal that the lower Court's order dismissing the claim for divorce is just, being fresh in mind of the facts having recorded evidence and by screening the facts on material aspects to the conclusions supported by reasons and it no way requires interference by this Court while sitting in appeal and that even pending the appeal there was an order for providing maintenance and legal expenses vide FCA MP. Nos.293 and 204 of 2006, the same is not even complied with by him, apart from regular maintenance claimed by screening his

whereabouts to enforce and therefrom sought for dismissal of the appeal.

6. Heard and perused the material on record. For the sake of convenience, the parties hereinafter are referred to as arrayed before the trial Court.

7. Now, the points for consideration are:

i) Whether the appellant - husband was subjected to cruelty in the hands of the respondent – wife and if so, he is entitled to dissolve the matrimonial life with the respondent and whether the order of the lower Court dismissing his claim 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.1:**

8. The ground urged by the appellant is mental cruelty. In his pleadings, he did not specify the instances date wise as to when she made any attempt to commit suicide, much less by consumption of pesticide poison and what is the proof to say he cause her admitted in hospital and provided treatment for the same. He did not file even a scrap of paper in this regard. Had there been any truth that he saved her by providing treatment by admitting in hospital besides no date or month or year is specified he could atleast file any medical record in this regard. Thus, there is nothing even to give any little credence to that averment. Even coming to the so called

mental disorder or unsoundness of mind attributed by him against his wife, there is no basis or material. In their marital life un-disputably they were blessed with the two children and third pregnancy admittedly went in abortion; though according to him, she cause aborted at her own without his consent and according to her it is he who got aborted against her will. Further there is not even a scrap of paper filed by him if at all she was really suffering from any mental disorder or unsoundness of mind and provided treatment by him; much less any of her mental disorder is to be proved of such an extent which made him unbearable to live with her with any apprehension of danger to his life or health to constitute the same as cruelty to make it a ground for dissolution.

9. Among Exs.A.1 to A4 he has placed reliance, those are nothing but exchange of notice and reply and her reply averments clearly show that his notice averments are unfounded and baseless which he engineered wisely with fertile imaginations. It is also contended in her counter and deposed in her evidence that he set up the allegations to make it if possible as a ground to dissolve the marital tie in one way or other to undergo another marriage. He claims that her so called averment of he got illicit relationship with one Haritha and also has undergone marriage with her at Needigonda Village on 13.12.2003 secretly, is nothing but a false accusation and the same is

a ground for divorce by saying that constitutes mental cruelty. It is important to mention that under Section 3 of the Indian Evidence Act a contention even alleged in the counter or petition as part of the pleading, if it is proved either a positive fact, or negative fact, by preponderance of probabilities that can be so considered as proof for establishing and if it could not be proved, it remains as not proved to say it is difficult to decide even at that stage from mere non proof as to any fact is false or untrue, much less wild. Once it is a true fact, even appears as wild, that is not a defence to the other side, unless he disproves the fact by showing that it is a false allegation made with spite or illwill and his sufferance therefrom of any mental agony to say that constitute cruelty. The Division Bench expression of this Court in **N.K.Somani v. Punam Somani**<sup>[1]</sup> laid down the same principle.

10. In fact, regarding his relationship with said Haritha, PW.2, who is no other than his mother stated simply that she does not know whether her son PW.1 blessed with a child through the said Haritha. What PW.2 deposed is the respondent (wife of the petitioner) is not behaving properly resulting mental disturbance from excess consumption of the medicines than prescribed and nothing more. Even to substantiate the said averments, there are no any medical prescriptions, much less to say excess consumption than what is prescribed, that resulted in her mental disturbance

or any other abnormal behavior, much less any of such behavior tantamounts to cruelty. Even regarding her averments that on 06.08.2001 respondent consumed alcohol and created nuisance and she was made to vomit, that is not their averment in the petition to give any credence, much less on noticing it, her family members came and created nuisance. In the cross examination PW.2 deposed that she used to go to the house of her son-PW.1 while residing separately with her husband and she did not attend to any of the panchayats through elders much less to say five panchayats taken place to sort out the bickerings. For her saying, after the first child attained 5<sup>th</sup> month, she left the house and is not turning up, which cannot be given credence for the couple, having second child also and third pregnancy also admittedly went in abortion. PW.2 no doubt denied the suggestion that PW.1 married one Haritha secretly and got a child through her. She deposed that whether respondent has got any mental disorder she does not know. She deposed again that she does not know whether PW.1 married said Haritha or is maintaining her as his concubine. She deposed that after first issue there was a panchayat for the disputes between the couple and later the respondent joined company of the petitioner and gave birth to the second issue. She deposed that one Madhukar Reddy accompanied her daughter-in-law to drop her at their house along with the first and second

issues on 07.08.2001. She deposed that at the time of marriage Rs.30,000/- was given to her son by his in-laws and subsequently another Rs.60,000/- was also given for his taking the respondent back to marital life. She further deposed that she knows that her son PW.1, after quarreling with respondent, necked her out of the house. She denied the suggestion of he was frequently beating her and necking her out; she deposed that she knows and was present when kerosene was poured on the respondent and that it is herself that poured kerosene on her and not by her son. She denied the suggestion of once he leaked the gas cylinder in the kitchen to see that she will be killed on lighting gas stove. She deposed that her husband used to consume alcohol and she does not know her son (petitioner) also consumes alcohol. She deposed that she does not have any objection for her son to take back her daughter-in-law. She further deposed that she does not know how many FDRs in the name of the respondent and the children are lying with the petitioner.

11. From the above and in particular a reading of evidence of PW.2, who is no other than the mother of petitioner (PW.1) shows that it is the respondent–wife that is subjected to cruelty in the hands of the petitioner – husband and not vice versa. Apart from that PW2 could not even deny the petitioner’s extra marital relationship

with said Haritha and blessed with child in that relationship from her evidence simply stating that she does not know. PW.2's evidence also establishes that there was an attempt on the life of the respondent by pouring kerosene; though she later could wriggle out from that admission by her again saying, as if respondent attempted to commit suicide by pouring kerosene. Even that is not the case of the petitioner, but for his saying she tried to commit suicide once only by consuming pesticide poison, that version of his not even proved by him, besides the same is falsified from said inconsistency in the versions of PWs.1 and 2.

12. Having regard to the above, once there is evidence of the respondent and her witnesses in one voice that the petitioner got extra marital relationship with Haritha and blessed with a child in that relation which he still continues and to have a marriage with her or otherwise he want to get rid of the respondent after they were blessed with two children in the wedlock and after the third pregnancy was cause aborted, there is nothing to disbelieve the evidence of RWs.1 to 6 in this regard, much less nothing to give credence to the evidence of PWs.1 to 4. Thereby the trial Court is right in its conclusions and in dismissing the divorce claim as for this Court even by re-appreciation of the entire material from what is discussed supra, there is nothing to interfere. Accordingly, the Point No.1 for

consideration is answered.

**POINT No.2:**

13. In the result, the appeal is dismissed confirming the lower Court's order dismissing the claim for divorce. Consequently, miscellaneous petitions, if any, pending in the appeal also stand dismissed. No order as to costs.

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R. SUBHASH REDDY, J

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Dr.B.SIVA SANKARA RAO,J

**February 19, 2015**

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DATE: 19.02.2015

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[\[1\]](#) **(1998(5) ALD 349**