

**HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A. SHANKAR
NARAYANA**

F.C.A. No.145 OF 2006

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JUDGMENT: (Per Hon'ble Sri Justice A. Shankar Narayana)

The husband preferred the instant appeal, under Section 19 of the Family Courts Act, aggrieved by the order, dated 30-10-2006, passed by the learned Judge, Family Court - cum - IV Additional District and Sessions Court, Vijayawada, in H.M.O.P. No.41 of 2004, whereby and whereunder, his request for dissolution of marriage by grant of decree of divorce, under Section 13(1) (i-a) & (i-b) of the Hindu Marriage Act, 1955, against the respondent, has been refused.

2. The appellant herein is the petitioner in the above H.M.O.P. before the Family Court, while the respondent, who is wife of the appellant, is the respondent.

3. For the sake of convenience, the parties are hereinafter referred to as arrayed in the H.M.O.P. before the Family Court.

4. Besides the aforementioned H.M.O.P., the petitioner has filed G.W.O.P. No.186 of 2004, under Sections 7 to 10 of the Guardians and Wards Act,

requesting to declare him as guardian of his minor children viz., Lakshmi Prasanna alias Lakshmi Prasanna Durga and Balaji @ Balaji Babu, whereas the respondent filed

M.C. No.196 of 2003, under Section 125 of the Code of Criminal Procedure, requesting to direct the petitioner to pay monthly maintenance at Rs.500/- (Rupees five hundred) each to herself and their son and daughter.

5. The Family Court passed a common order, in all the matters i.e., H.M.O.P. No.41 of 2001, G.W.O.P. No.186 of 2004 and

M.C. No.196 of 2003, dismissing the petitions filed by the petitioner for decree of divorce and to declare him as guardian of his minor children and allowed the maintenance case filed by the respondent.

6. The instant appeal is preferred by the petitioner challenging the order of the Family Court in refusing to grant decree of divorce.

7. (a) The case of the petitioner in brief is that he married the respondent on 29-05-1996, according to Hindu Rites and Customs, and their marriage was consummated. They lead conjugal life for some period and out of their wedlock, a female child viz., Lakshmi Prasanna and a male child viz., Balaji were born and they were seven and five years old, respectively, by the date of

filing the O.P. before the Family Court.

(b) It is his specific case that the respondent never treated their children with love and affection and she used to beat them on some pretext or the other and abuse his mother whenever she interfered, and, thus, she used to derive pleasure. According to him, he complained to the parents of the respondent about her behaviour with a fond hope that they would advise her suitably to live with him properly, but they always went on supporting her.

(c) It is also according to him that she always used to demand him to set up a separate family from his parents which he did not oblige since his parents were old aged. It is stated that the respondent having developed aversion towards his family, lodged a false complaint against them with Krishna Lanka Police Station on 26-03-2002 and the same was registered as C.C. No.361 of 2002, wherein, his mother and two sisters were acquitted and he alone was convicted and sentenced to imprisonment for one year and to pay a fine of Rs.1,000/- and in default thereof to undergo simple imprisonment for one month for the offence punishable under Section 498 of the Indian Penal Code (IPC). He was also convicted and sentenced to undergo simple imprisonment for a period of six (6) months and to pay a fine of Rs.500/- for the offence punishable under Section 506 IPC. He challenged the conviction and sentence of imprisonment

and fine by preferring appeal in Criminal Appeal No.205 of 2003 before the Mahila Sessions Court, Vijayawada.

(d) It is also his case that the respondent made false allegations against him that he has got illicit intimacy with a woman with the help of photographs, which are manipulated and fabricated with high-tech methods of morphing. Stating that he was working as N.M.R. and he was put to lot of mental agony and great inconvenience in his personal life due to false criminal case and also contending that their relationship is irretrievably broken and there is no possibility for them to reunion, sought to dissolve their marriage by granting decree of divorce.

8. As seen from the counter filed by the respondent, she has denied every allegation levelled by the petitioner. On the other hand, she stated that the petitioner has developed extramarital relations with one Rattalu and leading adulterous life with her since five (5) years. It is according to her, that the petitioner used to beat her mercilessly everyday during night time and demand her to get Rs.50,000/- from her parents. She tolerated the same without informing to her parents and brothers for a period of three years. But, on the night of 25-03-2002, when the petitioner beat her severely demanding her to get a sum of Rs.50,000/- from her parents, she came out of her matrimonial home on the morning of 26-03-2002 and joined her parents house

along with children and that then only she informed about the harassment and demand of the petitioner to her parents and brothers and later she lodged a complaint with police. She admits conviction of the petitioner and acquittal of her in-laws and the petitioner preferring criminal appeal before the Court of Mahila Sessions Judge, Vijayawada and, thus, she sought dismissal of the petition.

9. Before the Court below, in order to substantiate his case, besides examining himself as PW.1, petitioner has examined three (3) more witnesses i.e., PW.2, an employee of the Vijayawada Municipal Corporation, and PWs.3 and 4, a friend and tailor, respectively, of the petitioner, and marked Exs.A-1 to A-3, which are birth certificates of their children and his salary certificate. On the other hand, the respondent, besides examining herself as RW.1, has examined her junior paternal uncle as RW.2 and one S. Yedukondalu, who also mediated matrimonial disputes between them, as RW.3 and marked Exs.B-1 to B-3, which are bunch of four (4) photographs, certified copy of the judgment in C.C. No.361 of 2002 and C-Book of two-wheeler of the petitioner, respectively.

10. The Family Court formulated relevant points for determination in each case.

11. The Family Court, on appraisal of the evidence let in by both sides, did not believe the allegations levelled against the respondent by the petitioner on the ground that he failed to substantiate the grounds of cruelty and desertion pleaded by him and, on the other hand, believed the evidence of respondent holding that Ex.B-1, bunch of photographs, filed by her would show that the petitioner was found in the company of another lady viz., Rattalu and the evidence let in by her through herself as RW.1 and RWs.2 and 3 has been consistent enough to prove the allegation that the petitioner was maintaining illicit intimacy with the said Rattalu and derived probabilities from the proved facts in aid of the evidence let in by the respondent, and, thereby, dismissed the petition for divorce.

12. It is the aforesaid order, which is under challenge in the instant appeal by the petitioner contending in the grounds of appeal that the Family Court has not properly appreciated the evidence on record. It is stated that the Family Court ought to have considered that the respondent has filed a false case against him and his parents and sisters and that it ended in conviction against him alone. It is also stated that the Court below has not properly evaluated the evidence though, the acts of the respondent constituted cruelty causing mental agony to his personal life. It is lastly stated that the Family Court, somehow, overlooked the fact that the relationship

between them was irretrievably broken and there is no possibility for their reunion. Thus, the petitioner sought to set aside the order under challenge and to grant decree of divorce by dissolving the marriage between them.

13. Heard Sri V. Raghu, learned counsel for the petitioner (appellant), and perused the material on record.

14. In spite of service of notice, none appeared for the respondent.

15. The ground on which dissolution of marriage sought by the petitioner is that acts of the respondent constitute cruelty causing mental agony to his personal life. The specific case of the petitioner is that the respondent used to beat the children without any cause and abuse his mother whenever she intervened and she started demanding him to set up a separate family or send out his parents and other members of the family from the house. It is his further case that the respondent lodged false complaint against him, his parents and sisters alleging the offences punishable under Sections 498-A and 506 IPC, and, in fact, the learned Judicial Magistrate of First Class has acquitted all the members of his family and convicted him alone, and, thus, it accounted for causing cruelty to him and on that ground also he sought dissolution of marriage and grant of decree of divorce.

16. It is his further case that the allegation of illicit intimacy set up by the respondent between himself and one Rattalu is absolutely false and even the mediations said to have been convened by RWs.2 and 3 are also untrue and that he has lot of love and affection towards their children, but he was even prevented from looking after their welfare.

17. It is the case of the respondent that the petitioner himself used to harass her having addicted to consumption of alcohol and used to beat her demanding her to get Rs.50,000/- towards additional dowry from her parents and even she was subjected to harassment by her in-laws, but she tolerated the same without informing to her parents and brothers hoping that there would be change in his attitude, but since the harassment went unabated, she was constrained to leave the house of the petitioner on 26-03-2002, in the morning hours, as she was severely beaten on the previous night. It is also her case that she was ill-treated by the petitioner having developed illicit intimacy with one Rattalu with whom he started living for the past about five years prior to she being compelled to leave his house along with the children and the complaint lodged by her for the offences punishable under Sections 498-A and 506 IPC against the petitioner and his family members ended in conviction against the petitioner alone and even the appeal preferred

by the petitioner in Criminal Appeal No.205 of 2003 before the Mahila Sessions Court, Vijayawada, was dismissed confirming the conviction and sentences imposed by the learned Magistrate, and, thus, it proves the cruelty caused to her belying the stand taken by the petitioner that he was subjected to cruelty by the alleged acts attributed to her.

18. It is also her specific stand that mediations were convened through RWs.2 and 3, who are her maternal uncle and one of the elders of their caste, respectively, but, they proved abortive in view of the adamant attitude of the petitioner. According to her, the petitioner, with a view to get rid of her and their children, as he was maintaining extramarital relations with one Rattalu, made her to leave his house and join her parents. Thus, the respondent resisted the request of the petitioner for grant of decree of divorce.

19. A careful evaluation of the evidence of the petitioner as PW.1 and the evidence of PWs.3 and 4 would reveal that there is absolutely nothing to prove that the respondent did really cause cruelty to the petitioner warranting dissolution of marriage between them by grant of decree of divorce. PW.2 was Sanitary Inspector examined by the petitioner to prove his salary certificate showing that he was drawing Rs.58-20 paise as daily wage by working as an N.M.R. PWs.3 and 4 are one of

the petitioner's friends and their family's tailor respectively.

20. The stand of the petitioner that the respondent was very adamant and she used to beat their children, abuse his mother and demand to set up a separate family appears to be incorrect since except his self-serving statement, there is no other evidence to prove the allegations levelled by him touching the alleged acts constituting cruelty against the respondent. As rightly observed by the Family Court, the petitioner has not chosen to examine his mother, who would have been the material witness, to prove as to what transpired within the four walls of their house and, more particularly, when he even alleged that the respondent used to abuse his mother whenever she attempted to intervene when the respondent used to beat their children. This one circumstance is sufficient enough to belie the stand taken by the petitioner in its entirety. The petitioner, no doubt, pleaded that he has got lot of love and affection towards their children and that has been the reason why he filed the petition in G.W.O.P. No.186 of 2004 under Sections 7 to 10 of the Guardians and Wards Act, for their custody, but, the positive admissions made by him that he does not know in which school they were studying and that he has no money to meet their educational expenses at all, are sufficient enough to condemn his stand.

21. It is, no doubt true, the petitioner has pleaded that the act of the respondent in lodging the complaint for the offences punishable under Sections 498-A and 506 IPC amounted to cruelty for the reason that his mother and sisters were acquitted and he alone was convicted, but that plea put-forth by him would not aid him in seeking dissolution of marriage for the reason that he was admittedly convicted for the said offences and sentenced to suffer imprisonment and pay fine, and, even the appeal preferred by him in Criminal Appeal No.205 of 2003 was dismissed by the Mahila Sessions Court, Vijayawada, confirming the conviction and sentence recorded by the learned Magistrate. On the other hand, it proves the harassment meted out to the respondent by the petitioner, and, thus, the ground of cruelty alleged by him stood unsubstantiated.

22. Adverting to the plea of illicit intimacy put-forth by the respondent, the petitioner in his petition seeking divorce itself has mentioned that he never maintained extramarital relations with any woman and that the said plea amounts to causing cruelty to him as it accounts for a wild allegation being against him by the respondent. It is also according to him that the photographs marked as Ex.B-1 by the respondent were manipulated and fabricated with high-tech measures of morphing. But, the circumstance that the petitioner has not made any efforts

to substantiate his stand of manipulation of Ex.B-1 photographs by getting an opinion of the expert, is sufficient enough to discard the same which appears to be a deliberate attempt made by him to overcome the extra-marital relations maintained by him with the said Rattalu. It is not only Ex.B-1 photographs that would prove illicit intimacy with Rattalu, but even the evidence of RWs.2 and 3, who are paternal uncle-cum-mediator of the respondent and another mediator to their matrimonial dispute, respectively, clinchingly establishes that when the mediation was conducted, these photographs were handedover to RW.2. Nothing was brought out in the cross-examination of RWs.2 and 3 to reject their evidence.

The evidence of RWs.2 and 3 proves the mediation convened by them to see that the petitioner mends his behaviour and takes back the respondent and their children to his company, which ultimately proved abortive on account of the illicit intimacy maintained by him with Rattalu.

23. Thus, we are of the considered view, that there is absolutely no legally acceptable evidence on behalf of the petitioner to accede to the relief of dissolution of marriage by grant of decree of divorce. The finding recorded by the Tribunal holding that the petitioner failed to prove the alleged cruelty said to have meted out to him

by the respondent, since well reasoned and well appreciated, does not suffer from legal infirmity warranting interference of this Court. The appeal is devoid of merit.

24. Therefore, the appeal is dismissed confirming the order and decree under challenge. Thus, we make no order as to costs.

25. Consequently, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

**R. SUBHASH
REDDY, J**

A. SHANKAR NARAYANA, J

June 22, 2015.
PV