

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

C.M.A.No.4325 of 2004

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

This is an appeal maintained, under Section 28 of the Hindu Marriage Act, by the respondent-wife in O.P. No.2 of 2003 that was filed by the petitioner-husband for dissolving their marital tie of the year 1984 performed at Srirama temple, Atmakur under Hindu Law and caste custom on the grounds of cruelty and desertion besides adulterous life of the respondent. Since the learned Senior Civil Judge, Atmakur by order dated 08.10.2004 based on the evidence adduced by both parties viz., P.Ws 1 to 5 and R.Ws 1 and 2 granted decree of divorce with no costs.

2) The contentions in the grounds of appeal are that the decree of divorce granted by the trial Judge is contrary to law, weight of evidence, probabilities of the case and by ill-appreciation of evidence, that the trial Court should have seen that P.Ws 4 and 5 are not only interested witnesses for the petitioner-husband, but also inimical towards the respondent-wife besides what P.W-4 deposed is hearsay and unbelievable, that trial Court went wrong in saying respondent wife is guilty of desertion and committed acts of cruelty and also committed adultery which are based on conjectures and surmises with no proof and even the evidence of P.Ws 2 and 3 cannot be given credence being the child witnesses who are staying with P.W-1 husband, that the lower Court should have

seen that non-joinder of the alleged adulterer who is a necessary party is fatal to the claim to maintain and trial Court went wrong in not accepting the version of R.Ws 1 and 2, hence to set aside the decree of divorce granted by the trial Court by restoring of the marital tie of the couple. It is needful to mention that while admitting the appeal, there was interim suspension of the decree granting divorce by order dated 22.11.2004 and the same holds good even date. The learned counsel for the appellant in the course of hearing reiterated the same.

3) Whereas, it is the contention of the learned counsel for the respondent-husband in supporting the order of the lower Court that the trial Court's order is supported by reasons and well considered having fresh in minds of the facts by conducting the trial and the decree of divorce is granted on the ground of cruelty and adultery and for maintainability of the claim, there is no necessity implead the so called adulterer of the respondent-wife in the O.P claim for divorce and thereby for this Court while sitting in appeal, there is nothing to interfere, hence to dismiss the appeal.

4) Heard the learned counsel for both the parties and perused the material on record. The parties are being referred to as they arrayed before the trial Court as 'Petitioner-husband' and 'respondent-wife' for the sake of convenience.

5) Now, the points that arise for consideration are

- (i) Whether the impugned order of the lower Court dissolving the marital tie between the petitioner and the respondent is unsustainable and requires interference by this Court while sitting in appeal to set aside and if so, with what observations and conclusions.

(ii) To what result?

POINT No.(i)

6) The averments in the petition seeking divorce filed by the Petitioner-husband in the trial Court referring to Section 13(1)(ia) and (ib) of Hindu Marriage Act are that after the marriage performed at Srirama Temple at Atmakur in the year 1984, the respondent-wife joined the company of the petitioner-husband and they lived together for about 10 years in Vadlaramapuram and in their wedlock, they blessed with two children by name Mallikarjuna Reddy (P.W-2) and Mallika (P.W-3), that the respondent used to behave in her own accord at her whims and fancies from the beginning despite the petitioner-husband was with all patience tolerating and she did not even care to look after the children properly, that she developed illicit intimacy with one Kesava Reddy who is her relative and eloped with him publicly for some time and returned back which is known to one and all of the village. For the sake of children, the petitioner-husband wanted to take the respondent-wife back and even there from she has been continuing the adulterous life with Kesava Reddy about 5 years prior to the filing of divorce case, from some dispute arose between respondent-wife and her paramour Kesava Reddy, the respondent-wife approached Atmakur police to join the petitioner-husband and despite that illicit intimacy with Kesava Reddy of her, the petitioner-husband accepted the respondent-wife, even later the respondent-wife voluntarily deserted the petitioner-husband four years prior to the filing of the case and she is still leading the adulterous life and

because of the misbehaviour of the respondent-wife, the petitioner-husband left the village Vadlaramapuram to Kattalacheruvu and living by attending coolie works. The respondent-wife's counter is while disputing the petition averments by contending those are false, with further contention that she never eloped with anybody and the alleged illicit intimacy of her is false equally alleged admission before police counseling. She contends further that it is the petitioner-husband used criminal force against her and kicked her out of the house by retaining the two children with him and she did not return him and on the other hand, he deserted her even she is willing to join him, hence to dismiss the divorce claim.

7) It is in support of the respective contentions in the course of trial, the petitioner-husband deposed as P.W-1 and the two children of the petitioner and the respondent, deposed against the respondent-wife as P.Ws 2 and 3 and two other witnesses P.Ws 4 and 5, the respondent came to the witness box as R.W-1 and cause examined R.W-2. There was no any documentary evidence on either side. It is by appreciating the said evidence, the trial Court came to the conclusion to dissolve the marital tie between the couple as referred supra, which is now under attack.

8) In fact, though the adulterer is a necessary party to the petition for divorce, if maintained, on the ground of adultery and non-impleadment deserves dismissal of the claim, if maintained, solely on the ground of adultery. Here that is not only not made a main ground but also cruelty besides

desertion. Thus, the appeal lis now to consider is whether there are acts of cruelty and desertion on the part of the respondent-wife against the petitioner-husband including from her living with and continuing to live with her so called paramour that causes desertion and mental cruelty to the petitioner-husband, even after condoning her such adulterous life earlier once in allowing her and again through police counseling through her reporting by condoning from her subsequent conduct, even in continuing the same.

9) The petitioner-husband reiterated the petition averments in his evidence as P.W-1 and in his cross-examination, he deposed that respondent-wife filed the police report against said Kesava Reddy though he cannot say on what allegations she filed the police report against that Kesava Reddy, he denied the suggestion of she has no elopement with said Kesava Reddy. He deposed that he does not know whether said incident was settled before the Lok Adalat between the respondent-wife and said Kesava Reddy. He denied the suggestion only to get marriage again he is seeking to dissolve the marital tie by making false allegations. He deposed that he is not willing to live with respondent-wife, even she intends to join him. This is the only cross-examination of him in few lines and nothing more either in support of her counter contest or to the detailed petition averments and chief-examination affidavit of him. There is nothing even to despite the desertion for more than four years to the date of filing of the petition that is when categorically deposed in his chief-examination in saying she having eloped with Kesava Reddy and lived for some time and again came

from differences with Kesava Reddy having given police report Five years back and even he condoned and taken her, she again left four years prior to the filing of divorce case and still continuing elopement with Kesava Reddy. That factum is not even disputed in the cross-examination muchless in worth material extracted contra to that, but for suggesting respondent-wife has no elopement with said Kesava Reddy. In fact it is suggested in the very cross-examination referred supra to P.W-1 that the dispute between the respondent-wife and Kesava Reddy went to the police station and they settled the same through Lok Adalat. However, that award of the Lok Adalat not even filed muchless that police report.

10) P.W-2 is the son of the couple, by the time he was aged 13 years and the Court, after ascertained his competency to depose by understanding the questions and giving rationale answers, recorded his evidence and he deposed that for the past five years his parents were living separately and his mother is living in adultery by continuing illicit intimacy with one Kesava Reddy of Vadla Ramapuram and he and his sister saw his mother illicit relation with Kesava Reddy for the past several years while from his age seven years and of his sister five years and when they informed the same to their father, his mother was beating him and his sister and also once burnt the leg of his sister in her informing their father. He further deposed that his father driven out his mother from his house and she went away with Kesava Reddy five years back and thereafter she returned back to the house on 06.06.2003 and unable to withstand the humiliation in the

village, his father shifted along with them from that village and admitted him in B.C hostel at Atmakur. He deposed that even during the time his mother was living with his father, she was indifferent with him and never attended them and they used to get their food from hotels. In the cross-examination, he deposed that his mother filed a criminal case against Kesava Reddy and he does not know whether the matter was compromised, that on 07.06.2003 they shifted the house from Vadlaramapuram and he is staying at Atmakur B.C. Hostel since then and denied the suggestion that he is deposing falsehood. There is nothing in his cross-examination by the respondent-wife to dispute the said averments.

11) Even coming to P.W-3, the minor daughter of the couple, aged 11 years by then, whose competency to depose was verified by the Court after putting preliminary questions and recorded the evidence, wherein also she deposed in chief-examination in same lines of P.W-2 and in the cross-examination of P.W-3 by respondent-wife, she deposed that during the time they were living together there were disputes between the petitioner and the respondent (her parents) and she likes her father and not mother including for her entrusting heavy domestic work. She deposed that she does not know whether her mother filed criminal case against Kesava Reddy and police apprehended Kesava Reddy. She denied the suggestion that her mother and paternal grand mother were quarrelling frequently, while the respondent has been living at her paternal grand-mother's house. She denied the suggestion that she was tutored by her father-P.W-1 and also denied the suggestion that as respondent has been insisting

to study well, she is deposing falsely though there is no illegal intimacy with Kesava Reddy to her.

12) Apart from the said evidence of P.Ws 1 to 3 supra, P.W-4 is aged person about about 66 years, a retired employee of Velugodu village who worked as Junior Assistant in Z.P High School, deposed in chief-examination in corroboration to the evidence of P.W-1 saying that the petitioner and the respondent are related to him and even he requested the respondent-wife to change her attitude, she did not change from continuing adulterous life with Kesava Reddy, their distant relative. In the cross-examination, P.W-4 deposed that for the past six years, P.W-1 and respondent-wife are living separately and at present, the respondent has been living at the house of her in-laws at Vadraramapuram by forcibly gained entry by break open lock of house of her mother-in-law after petitioner vacated the house and shifted to other village with children. He deposed that the respondent-wife did not heed to the elderly advise of others to discontinue the adulterous life and deposed that he did not personally witness the adulterous life of her with Kesava Reddy. He deposed that he does not know whether the respondent filed a police case against Kesava Reddy alleging that outraged her modesty and as to Kesava Reddy was in jail after arrest and remand. He denied the suggestion that the respondent never has illicit intimacy with Kesava Reddy or he is deposing falsehood being junior paternal uncle to the petitioner-husband. It is surprisingly further suggested that he is deposing false against the respondent-wife by believing the

gossip of the village about her adulterous life with Kesava Reddy.

13) P.W-5 is also belongs to Vadlaramapuram village, aged about 45 years who is a cousin (brother) to P.W-1, deposed that the respondent developed illicit relationship with Kesava Reddy and continuing the adulterous life. He deposed that the respondent-wife filed a police case against Kesava Reddy and he was remanded to judicial custody and having unable to furnish sureties for his release and later said Kesava Reddy compromised the matter through Lok Adalat with the Respondent-wife. He denied the suggestion of she has no elopement with Kesava Reddy. He deposed that respondent-wife forcibly gained entry into the house of petitioner's mother, after petitioner shifted the village and the suggestion contra denied by him. He denied the suggestion that because of the Naxal threat, the petitioner migrated from Vadlaramapuram and he is deposing false, that is the only cross-examination of him.

14) Even coming to the evidence of R.W-1, the respondent-wife, she deposed that she lodged a complaint against Kesava Reddy in Atmakur police station when he tried to outrage her modesty and police registered a case and sent him jail and after pressure exercised by him through police, she compromised the matter with Kesava Reddy in Lok Adalat and said Kesava Reddy is brother by courtesy to P.W-1 and it is to get divorce, her husband filed the petition with setting up as if she has illicit relationship with Kesava Reddy in relation to the gossip. She deposed in the cross-examination that

petitioner-husband has been residing in Atmakur and earlier he was residing in Kotla Cheruvu and she does not know any person by name Kesava Reddy of Vadlaramapuram and that there are five or six persons with that name in that village, that she knows C.Kesava Reddy of the village and denied the suggestion of she developed illicit intimacy with him and having eloped, lived with him somewhere for about five years back and later returned to Vadlaramapuram and having gained forcible entry into the house of petitioner after he shifted somewhere, she is living there. She deposed that the petitioner's mother also residing with petitioner at Atmakur there from. She admitted that there was a family counseling held by S.D.P.O, Atmakur. Further, she denied the suggestion of there she admitted her illicit relationship with Kesava Reddy to continue and refused to join the petitioner-husband from which he constrained to file the divorce case. She deposed that she filed a criminal case for the offence punishable under Section 354 of I.P.C against said Kesava Reddy and ultimately compounded through Lok Adalat.

15) Even R.W-2, S.Rama Krishna Reddy, aged 36 years, an agriculturist of Musalimadugu village of Kothapalli Mandal, who is the junior paternal uncle of the respondent, in the chief examination deposed that for the last few years, the petitioner husband created a gossip that the respondent-wife got illicit relationship with Ch.Kesava Reddy who is his cousin and taking advantage of the same, Kesava Reddy tried to outrage her modesty for which she lodged a report and the matter later settled through Lok Adalat at pressure of police. In the cross-examination he deposed that the respondent got her

parents alive and also got two brothers one is elder and the other is younger who are all residents of Musalimadugu village. He deposed that for the last two years, the petitioner-husband and the respondent-wife are residing separately and the two children of them are residing with the petitioner-husband. He deposed that the petitioner demanded for more dowry one year back and he approached him and requested not to harass her and then he stated that she got illicit intimacy with Ch.Kesava Reddy. He denied the suggestion that the respondent-wife developed illicit intimacy with Kesava Reddy and deserted the petitioner and their children also.

16) When the own children of the petitioner, though young in minds, and there is a possibility of tutoring by the petitioner-husband to some extent, when categorically deposed that the respondent having continuing even to their nose and eyes the illicit relationship with Kesava Reddy. Though the petitioner is not entitled to the decree of divorce on the ground of adultery, for said Kesava Reddy was not the co-respondent for the divorce petition, even from the pleadings and evidence supra, the past conduct of the respondent of she eloped with Kesava Reddy allegedly condoned including by acceptance of her to join him in the police counseling that took place five years prior to the divorce application filed and even later within no time, she left about four years before the filing of the divorce case that is proved from the evidence. The evidence on record further speaks that having she left at the second time even joined with her husband, it is nothing but desertion with *animus dessendi* for not turned back for

matrimonial home and it is only after the petitioner shifted from that village to another village, the respondent-wife forcibly gained entry into the house of the petitioner, where his mother was residing and there from his mother also left the house and joined the petitioner to stay under his shade near Atmakur, that is nothing but desertion on the part of the respondent-wife apart from her acts and extra marital relationship referred supra tantamounts to cruelty, even from his contoning her acts for the earlier period again from her joining for the second time by her continuing.

17) Having regard to the above, when the trial Court granted decree of dissolution of the marriage there from, the same sustains at least on the ground of desertion besides that of cruelty and as such, for this Court even by re-appreciation of the evidence on record supra, there is nothing to interfere with the finding of dissolving the marriage to the extent of the conclusion on the ground of desertion and cruelty. Accordingly, point No.(i) is answered.

POINT No.(ii)

18) In the result, this appeal is dismissed. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA

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04.02.2015

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