

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.M.A. NO.3041 OF 20004

JUDGMENT: (per Hon'ble Sri Justice M.Satyanarayana Murthy)

The respondent in O.P.No.35 of 2002 on the file of Principal Senior Civil Judge, Narsaraopet, Guntur District, preferred this appeal against the decree and order dated 05-07-2004 granting divorce in favour of the respondent Dasari Chennakeswara Rao, against the respondent/appellant.

For convenience of reference ranks given in O.P.No.35 of 2004 before the trial Court will be adopted throughout the judgment.

The petitioner filed the OP under Section 13 (1) (i-a) of Hindu Marriage Act (for short 'the Act') seeking divorce dissolving the marriage between the petitioner and respondent alleging that their marriage was solemnized on 16-08-2000 and after the marriage, they lived happily for about one month at Narsaraopet. Later, the respondent developed hatredness towards the petitioner, his family members and was picking up quarrel followed by abuses in filthy language at the instigation of her parents and brothers. She was frequently visiting her parents house without knowledge and consent of the petitioner. It is further contended that the respondent and her family members demanded the petitioner to shift the family to Guntur from Narsaraopet , for which he was not inclined. Consequent upon said refusal the respondent started denying matrimonial obligation and refused to attend the household duties as wife. After three months from the date of marriage the petitioner went to the house of his in-laws at Guntur and lived with the family of respondent for a period of six months with a view to have congenial atmosphere. During the said period of his stay for six months, the respondent and her family members tortured the petitioner and drove him to commit suicide. Even during treatment in the hospital by the petitioner, the respondent did not even visit the hospital.

It is also contended that the respondent and her family members obtained signatures of the petitioner by force on blank promissory notes and white papers. They also confined the petitioner in the police station and thereby insulted him. Due to unbearable harassment in the month of May, 2001 the petitioner and the respondent returned to Narsaraopet and lived for one month. The respondent left the house on 26-06-2001 along with her brother. In spite of his best efforts and mediation, she did not join the petitioner to lead marital life.

The respondent and her mother came to Bapla, where the petitioner was doing job and insulted him in the presence of his colleagues. Thus the respondent and his family members subjected the petitioner to cruelty and caused mental agony which affords a ground to grant decree of divorce under Section 13 (1) (ia) of the Act and sought divorce on the sole ground.

The respondent filed counter while denying the material allegations, *inter alia* contending that at the time of her marriage, her parents presented Rs.1,25,000/- as dowry, four sovereigns of gold, gold ring and chain along with cloths and entrusted the same to one Venkateswara Rao in two installments. Thereafter, the petitioner demanded for payment of additional dowry to purchase a scooter. The father of the respondent obtained loan of Rs.35,000/- by executing a promissory note, paid the same to the petitioner. After purchasing the scooter, the petitioner was addicted to vices like Alcohol and visiting the house during late hours in the night and used to beat her, in drunken state. Thus, the petitioner subjected the respondent to cruelty physically. In view of the mediation, the same was settled and the respondent agreed to reside with the petitioner. Despite acceptance, the petitioner filed the present application with baseless allegations and as such the petitioner is not entitled to claim divorce

under Section 13 (1) (ia) of the Act. It is further contended that the Senior Civil Judge's Court at Narsaraopet had no territorial jurisdiction to entertain the petition, since the marriage took place at Guntur and both the petitioner and the respondent last resided is beyond the territorial jurisdiction of Senior Civil Judge's Court, Narsaraopet and on this ground alone, the petition is liable to be dismissed.

During the course of enquiry, on behalf of the petitioner

PWs 1 to 3 were examined and on behalf of the respondent, RWS 1 and 2 were examined and marked no documents.

Upon hearing both the counsel, the trial Court believed that the petitioner was subjected to cruelty by the respondent and granted a decree of divorce, dissolving the marriage between the petitioner and the respondent.

The respondent being aggrieved by the decretal order passed by the trial Court preferred the present appeal on various grounds. The main contentions raised in the grounds of appeal are that the trial Court failed to consider oral and documentary evidence in proper perspective and that the acts or omissions attributed to the respondent would not amount to cruelty and that, such acts or omissions were not proved by adducing any cogent and satisfactory evidence. However, any acts or omissions attributed to the respondent, unless creates a reasonable apprehension in the mind of the petitioner that it is harmful or endangerous for him to live with the respondent, decree of divorce cannot be granted.

The second contention raised by the respondent in the grounds of appeal is that the Court at Narsaraopet had no territorial jurisdiction. But the trial Court did not consider the same in proper perspective and committed an error.

During the pendency of the appeal, the respondent Dasari Chennakeswara Rao married one Rekha and he was blessed with one son named Sharan and died during pendency of this appeal. His parents are impleaded as respondents 2 and 3 in this appeal vide order in Crl.M.P.No.2119 of 2011 as there is a dispute with regard to the death benefits payable on account of death of the petitioner (first respondent herein) respondent-Chennakeswara Rao.

As the petitioner (first respondent herein) died during pendency of this appeal, the dispute is only with regard to entitlement to claim death benefits.

During the course of arguments, the learned counsel for the respondent (the appellant herein) would contend that unless the acts or omissions attributed to the respondent would not create reasonable apprehension in the mind of the petitioner that it is harmful or endangerous for him to live with the respondent grant of decree of divorce under Section 13 (1) (ia) of the Act is illegal and thereby the order of the trial Court is liable to be set aside. The rights of the parties with regard to entitlement to claim death benefits of Dasrai Chennakeswara Rao while working as Lab Assistant in Agricultural Department Bapatla cannot be looked into. Even otherwise, the marriage between the respondent and said Rekha is void and the appellant alone is the legally wedded wife. However the second respondent herein being the father, third respondent being mother are entitled to claim share in the death benefits of Chenna Keswara Rao, in any view, the divorce granted by the trial Court is not sustainable, since, the petitioner failed to establish the cruelty so as to enable him to claim divorce in view of the settled law and prayed to set aside the decree and decreetal order passed by the trial Court in O.P.No.35 of 2004.

Per contra, the learned counsel for respondents 2 and 3 herein would contend that the appellant herein is the legally wedded wife of Dasari Chennakeswara Rao (the first respondent herein) after granting divorce by the trial Court and consequently, she is entitled to claim death benefits of the deceased Chennakeswara Rao along with his father D.Anjaneyulu. Leave alone the entitlement, the acts or omissions attributed to the respondent (the appellant herein) would certainly create reasonable apprehension since her conduct drove him to commit suicide. Therefore, the decree of divorce granted by the trial Court dissolving the marriage between the petitioner and the first respondent is not liable to be set aside and prayed to dismiss the appeal confirming the decree and decreetal order passed by the trial Court in O.P.No.35 of 2002.

Considering rival contentions, oral and documentary evidence, the order under challenge, the sole point that arises for consideration,

- i. Whether the appellant herein subjected the petitioner (the first respondent herein) to cruelty creating reasonable apprehension that it is harmful or endangerous for him to live with the respondent (the appellant herein), If so, whether the petitioner (the first respondent) is entitled to decree of divorce under Section 13 (1) (ia) of the Act?

POINT:

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According to the pleadings on record, the petitioner and the respondent lived as wife and husband at Narasaraopet and lead marital life happily and thereafter, the respondent started torturing the petitioner (the first respondent herein) and ill-treated the petitioner and his family members in different ways. At the same time, it is alleged that the respondent insisted the petitioner (the first respondent herein) to shift his family to Guntur to live with the parents of the respondent. Though the petitioner was initially not inclined, but due to the acts of the respondent, the petitioner shifted his family to Guntur and lived with the parents of the respondent for some time. But he was tortured by the respondent and her family members during his stay with her family and drove him to commit suicide and he was hospitalized. If really the conduct the respondent and her family members lead the petitioner to commit suicide, certainly such conduct would amount to cruelty which enables the petitioner (the first respondent herein) to claim decree of divorce under Section 13 (1) (ia) of the Act. According to settled law, when the petitioner alleged that he was subjected to cruelty by the respondent and her family members, the burden of proof is on the petitioner. The principle of strict proof of neglect of cruel acts has no application and however, the Court has to appreciate the evidence basing on probabilities of the case.

The petitioner to substantiate his contention that he was subjected to cruelty examined himself as PW.1 and in examination in chief, he reiterated what he pleaded in the petition and particularly about subjecting him to cruelty by the respondent and her family members and drove him to commit suicide. But in the cross-examination, the petitioner admitted that the petitioner and the respondent lived together for about six months at Narsaraopet without any problem. The respondent lived there for about six months and thereafter some problems cropped up. The stay of the petitioner with the parents of the respondent at Guntur is an undisputed fact. However, commission of attempt to commit suicide is in dispute. In the cross-examination dated 08-04-2003 the petitioner testified that he attempted to commit suicide by consuming sleeping pills and he was admitted in Hyma Super

Speciality Hospital and he gave report to the police about the incident of attempting to commit suicide. But the police did not receive any report due to management of his parents-inlaw. In fact the burden is upon the petitioner as stated above to prove that the respondent subjected him to cruelty and drove him to commit suicide. Treatment of the petitioner in Hyma Super Speciality Hospital is not disputed. But he was treated for a different ailment according to the respondent. If really, the petitioner made an attempt to commit suicide and treated for the same in Hyma Super Speciality hospital, what prevented him to produce case sheet maintained by the hospital authorities or atleast he would have taken steps to summon the case sheet and admission register maintained in the hospital to prove that he was treated for consuming sleeping pills, in Hyma Super Speciality hospital. Even assuming for a moment what PW.1 stated to be true, due to management of police by the parents-in-law, the police did not register any crime against the respondent and her parents. Nothing prevented the petitioner to complain the same to higher authorities as he is an educated and employed in the government service. But no explanation was offered by him for his failure to report the same to higher authorities. Yet another strange circumstance is that, after the treatment in Hyma Super Speciality Hospital, the petitioner stayed in the same house for about two months. If really the respondent and her parents subjected the petitioner to cruelty, no ordinary prudent person will continue to live with them for another two months after discharge from the hospital. This admission in the cross-examination creates any amount of suspicion about the cruelty attributed to the respondent and his parents and driving him to commit suicide.

If the respondent and her parents drove him to commit suicide by her acts or omissions, the petitioner being an educated and employed person would not continue to live with the same family after discharge from the hospital as an ordinary prudent man. Since such acts or omissions would create apprehension in his mind, which is harmful or dangerous for him to live with the respondent. Obviously for different reasons, the petitioner continued to live with the respondent at Guntur. This is crucial admission lead me to conclude that the respondent and his parents by acts or omissions did not create any reasonable apprehension in the mind of the petitioner that it is harmful or dangerous for him to live with the respondent at Guntur.

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Yet the petitioner did not produce any scrap of evidence except examining himself as witness, in support of his contention that he was driven to consume sleeping pills though he was treated in Hyma Super Speciality hospital, Guntur and he did not produce even a copy of police report submitted to the police by the petitioner against the respondent and her parents. Therefore, all these circumstances creates any amount of doubt about attributions made against the respondent and his family members pointing out that they subjected the petitioner to cruelty and drove him to commit suicide.

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The respondent while denying the alleged harassment contended that the petitioner himself subjected the respondent to cruelty. However, it is not required to be considered since the petitioner who is the husband claiming divorce. In the cross-examination, several suggestions were put to the petitioner that the respondent and her parents never drove him to commit suicide, but he denied.

The petitioner also examined PW.2, the mediator who did not speak anything about the alleged attempt to commit suicide on account of harassment by the respondent and his family members who made certain acts regarding comments made by the respondent that the petitioner is not a suitable husband for her. However, in the cross-examination PW.2 testified nothing about the cruelty.

In any view of the matter, the evidence of PW.2 is not relevant to decide the real controversy of subjecting the petitioner to cruelty by the respondent and his family members but it is relevant to prove that there was a mediation. The petitioner also examined PW.3 who is another mediator, testified about the treatment of the petitioner in Hyma Super Speciality Hospital, Guntur for consuming sleeping pills in the month of December, 2000 and May, 2001 but this cannot be accepted for the reason that according to the petitioner, he allegedly made an attempt to commit suicide only on one occasion. In such a case the treatment of the petitioner during December, 2000 and May, 2001 does not arise. However, the evidence of PW.3 is of no assistance to prove the alleged cruelty attributed to the respondent and her family members.

The respondent in support of her contentions examined herself as RW.1. As usual she testified in support of her contentions raised in the counter and in the cross-examination of respondent nothing has been elicited to prove that on account of her acts or omissions the petitioner attempted to committed suicide. Similarly, the respondent also examined her mother as RW.2 and in the entire evidence nothing was elicited to establish the alleged acts of cruelty attributed to the respondent and his family members.

The trial Court drawn certain inferences and concluded that the respondent subjected the petitioner to cruelty but there is no scope for drawing such inferences in the present case for the reason that according to the petitioner he was treated in Hyma Super Speciality hospital in Guntur for consuming sleeping pills with an intention to commit suicide. If really the respondent subjected him to cruelty and drove him to commit suicide, he can produce the case sheet and the other record available in the hospital or atleast the prescriptions issued by the Doctor who treated him to prove that he was under medication for consuming sleeping pills in the attempt to commit suicide made by him on account of alleged harassment by the respondent. Obviously for no reasons, the petitioner did not bring on record any iota of evidence to substantiate his contention. The petitioner being an employee has undergone treatment for such time, he would have applied for leave during the period of treatment. But no such record from the college is produced. That apart an attempt to commit suicide is an offence punishable under Section 309 IPC and it is a misconduct of an employee. But no action was taken by the department for his misconduct under A.P. Civil Services (Conduct) Rules.

If really the petitioner stayed for two months subsequent to discharge from the hospital with the respondent and her parents, it is another strong circumstance to disbelieve the case of the petitioner.

To grant a decree of divorce under Section 13 (1) (ia) of the Act, the petitioner has to establish the acts of cruelty. But the word 'cruelty' is not defined any where in the Hindu Marriage Act. However what constitutes the 'cruelty' depends upon the

circumstances of each case creating reasonable apprehension to one spouse by the other spouse by acts or omissions, that it would be harmful or injurious for one spouse to live with the other, would constitute cruelty and this circumstance has to be viewed depending the physical or mental conditions of the parties and their character and their social status. Even the conduct of one party affecting health or likely to affect the health of other party who was allegedly be treated with cruelty. Such conduct amounts to cruelty. If such conduct is proved on the preponderances or probabilities. Time and again, the Apex Court defined the word 'cruelty' laid down certain guidelines what conduct amounts to cruelty.

In **SAVITRI PANDEY VS. PREM CHANDRA PANDEY** the Apex Court while deciding the matter for grant of divorce on the ground of cruelty and desertion held as follows:

“Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts, which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, or suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. “Cruelty”, therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of sensitivity of the petitioner and has to be adjudged on the basis of course of conduct which would, in general, be dangerous for a spouse to live with the other. The averments made in the petition and the evidence led in support thereof clearly show that the allegations, even if held to have been proved, would only show the sensitivity of the appellant with respect to the conduct of the respondent which cannot be termed more than ordinary wear and tear of the family life.”

In **Samar Ghosh v. Jaya Ghosh**, the Apex Court, while defining the word cruelty, laid down some instances of human behavior relevant for dealing with cases of mental cruelty and gave illustrative instances though not exhaustive, which are 14 in number. However, 9th illustration therein, which is relevant to the present case, is extracted hereunder:

“lix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.”

In **NAVEEN KOHLI v. NEELU KOHLI** the Supreme Court held as follows:

“To constitute cruelty, the conduct complained of should be ‘grave and weighty’ so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than “ordinary wear and tear of married life”. The conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions.”

In **Dr.(Mrs) Malathi Ravi, M.D. v. Dr.B.V.Ravi,M.D.**, the Apex Court, after reviewing entire law on cruelty, held in para No.37 as follows:

“..... Mental cruelty and its effect cannot be stated with arithmetical exactitude. It varies from individual to individual, from society to society and also depends on the status of the persons. What would be a mental cruelty in the life of two individuals belonging to particular strata of the society may not amount to mental cruelty in respect of another couple belonging to a different stratum of society. The agonized feeling or for that matter a sense of disappointment can take place by certain acts causing a grievous dent at the mental level. The inference has to be drawn from the attending circumstances.”

In view of the settled legal principles laid down by the Apex Court in various judgments, it is obligatory on the part of the petitioner to prove that acts or omissions attributed to the respondent caused mental cruelty or physical cruelty creating reasonable apprehension that it would be harmful or dangerous for him to live with the respondent. In the absence of any evidence on record that those acts caused such apprehension, it is difficult to grant a decree of divorce under Section 13 (1) (ia) of the Act.

In **Naveen Kohli’s case (supra 3)**, the Supreme Court considered the circumstances as to how the act of cruelty can be proved and observed as follows:

“The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity, it has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be by words, gestures or by mere silence, violent or non-violent”.

In view of the principle laid down in the above judgment, the Court has to take attending circumstances of the case into consideration, the social status of the parties, educational background etc., to decide whether those acts would amount to cruelty or not. Here, the petitioner was an employee and working as Lab Assistant in Agricultural College, Bapatla and educational background of respondent was not brought on record but she is a literate. Even if social background of the petitioner and respondent is taken into consideration the acts or omissions attributed to the respondent, if proved, would amount to cruelty. But the petitioner miserably failed to prove the acts or omissions attributed to the respondent which would amount to cruelty by adducing satisfactory evidence. But the trial Court drawn certain inferences from the conduct of the parties but the inference drawn by the trial Court is not permissible when the petitioner failed to prove the very basis of cruelty. Therefore, based on the evidence available on record, it is difficult to grant decree of divorce under Section 13 (1) (ia) of the Act.

Learned counsel for the petitioner while contending that the conduct of respondent and her mother in insulting the petitioner in the presence of his colleagues amount to cruelty. No doubt, if the petitioner was insulted by the respondent and her mother at his college where he was working in the presence of his colleagues it amounts to cruelty. But the insult was not proved by adducing any evidence more particularly by examining any one of the colleagues in whose presence the respondent and her mother insulted the petitioner. Thus the petitioner

failed to prove the alleged cruelty which created reasonable apprehension in his mind that it is harmful or endangerous for him to live with the respondent.

The trial Court based on inference drawn from the circumstances granted decree of divorce and the same is liable to be set aside for the reason that when the petitioner approached the Court by specifically pleading that he was subjected to the cruelty by the respondent and her family members and failed to prove the same by producing any evidence. In those circumstances, the petitioner is not entitled to claim a decree of divorce. Hence the decree and decreetal order passed by the trial Court dissolving the marriage between the petitioner and the respondent is liable to be set aside.

One of the contentions of the respondent is that she is entitled to death benefits of the deceased, as the petitioner (the first respondent herein) married one Rekha during the pendency of appeal and said marriage is void since the marriage was performed during the pendency of this appeal. CMA M.P.No.2117 of 2011 and the other MPS are filed to condone the delay in filing petition to set aside the abatement order under Section 5 of the Limitation Act and filed petition under Order 23 Rule 9 and 4 of C.P.C. to bring the L.Rs of the deceased Chennakeswara Rao and set aside the abatement order on the ground that there is a dispute with regard to the death benefits. The respondent alleged that the petitioner married one Rekha though the decree and decreetal order was suspended. As seen from the contents of affidavit, aggrieved by the decree and decreetal order passed in O.P.No.35 of 2004 dated 05-07-2004, the respondent filed appeal in the District Court and thereafter on its return presented the present appeal before this Court and the order was suspended by this Court vide orders in CMP No.13405 of 2004 dated 25-08-2004. But the petitioner married one Rekha on 23-08-2004 and blessed with a male child by name Sharan. Since the dispute is with regard to entitlement to claim death benefits between the appellant and the respondents 2 and 3 who are the parents of first respondent/petitioner, the same cannot be decided in the present appeal since the claim in this appeal is limited and at best the Court is required to examine whether the petitioner (first respondent) is entitled to decree of divorce on the ground of cruelty under Section 13 (1) (ia) of the Act or not and if any order is passed with regard to the death benefits of the

deceased Chennakeswara Rao, the first respondent herein, while exercising the powers by this Court under the Act it amounts to transgressing the limits of power conferred on this Court under Hindu Marriage Act. Therefore, their entitlement to claim death benefits of Chennakeswara Rao (the first respondent) between the respondent (the appellant herein) and the respondents 2 and 3 who are the parents of the deceased, the parties are at liberty to approach the appropriate forum or Court for redressal of their grievance.

In view of our foregoing discussion in the earlier paras, we find that the decree and decreetal order passed by the trial Court in O.P.No.35 of 2002 are erroneous and they are liable to be set aside. Accordingly, they are set aside. Hence, the point is held in favour of the appellant and against the first respondent herein.

In the result, the appeal is allowed setting aside the decree and decreetal order, dated 05-07-2004, passed by the Principal Senior Civil Judge, Narsaraopet in O.P.No.35 of 2002. No costs.

RAMESH RANGANATHAN, J.

M.SATYANARAYANA MURTHY, J.

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