

HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

FAMILY COURT APPEAL No.47 OF 2007

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

Aggrieved by the divorce decree and order dated 10.01.2007, passed in O.P. No.567 of 2001 by the Judge, Family Court, Visakhapatnam (for short, 'the trial Court'), the 1st respondent therein preferred this appeal.

2. For convenience of reference, the ranks given to the parties in O.P. No.567 of 2001 will be adopted throughout this judgment.

3. The petitioner (husband) filed petition against the respondent (wife) under Sections 13(1)(i) and 13(1)(ia) of the Hindu Marriage Act, 1955 (for short, 'the Act') claiming decree of divorce dissolving the marriage between the petitioner and 1st respondent contending that their marriage was performed on 13.03.1993, at Madhavaswamy Kalayana Mandapam, Madhavadhara, Visakhapatnam, as per Hindu rites and customs and thereafter the marriage was consummated; later, they led happy marital life for about three months; thereafter, the 1st respondent started pressurizing the petitioner to live separately from the joint family, the petitioner, being elder son to his parents, tried to convince the 1st respondent his inability to comply her demand but the 1st respondent without heeding to his request started harassing the petitioner and his family members by giving adamant replies, coming out from the house shouting loudly on the streets for each and every silly reason with a *mala fide* intention to lower the name and reputation of the petitioner and his family members in the locality. Thus, the 1st respondent created an un-pleasant and un-happy

atmosphere in the matrimonial home and never acted as a dutiful wife. The 1st respondent has two brothers, who are unruly persons, and they used to pick up un-necessary quarrels with him, without any reasonable or probable cause. Subsequently, in pursuance of the evil design of mother of the 1st respondent, she geared up her illegal activities and lodged a false complaint before the V Town Police Station (L & O), Visakhapatnam for the offence punishable under Section 498-A of I.P.C. against the petitioner and his family members, to get the petitioner into their clutches. During course of investigation, the Police warned the 1st respondent and her family members for lodging false complaint against the petitioner, however, advised the petitioner to set-up separate family with the 1st respondent.

4. It is further alleged that father of the 1st respondent, as promised at the time of marriage, provided 167 Sq. yards of site to the petitioner situated at Ayyappanagar, Muralinagar East, Madhavadara, Visakhapatnam, wherein the petitioner with his hard earned earnings, including the financial assistance from his father to a tune of Rs.20,000/-, constructed the asbestos roofed house and shifted therein in the month of October 1996. During their wedlock, they were blessed with two male children named as Sairam Prasad and Naveen.

5. It is further alleged that on 20.09.2001, the 1st respondent left the matrimonial house, keeping the children at her parents' house, without informing the petitioner and the petitioner's efforts to know about her whereabouts proved futile. Though the 1st respondent is with her parents, after her disappearance from the matrimonial house, her brother, Ramesh, who is a Police constable at Sileru Police Station, lodged complaint against the petitioner and, during course of investigation, it is revealed that the petitioner is innocent and the 1st respondent developed extra marital affair with the 2nd respondent and the same came to light when the 1st respondent, returned to

Visakhapatnam after 20 days; she played a drama, 2nd respondent brought and admitted her in King George Hospital, the petitioner informed the same to V Town Police Station (L & O) Visakhapatnam and after her discharge from the hospital, a panchayat was held wherein the 1st respondent categorically admitted that she was taken to Rajahmundry by the 2nd respondent, detained her in a house belonging to an old lady but she escaped from his clutches and returned to Visakhapatnam, which version was not believed by the elders and, therefore, it is obvious that the 1st respondent developed illicit intimacy with the 2nd respondent and in order to cover up her fault, she implicated the petitioner and his family members in Criminal Case for the offence punishable under Section 498-A of I.P.C. which was registered as C.C. No.188 of 2002 on the file of the Court of III Metropolitan Magistrate, Visakhapatnam. Subsequently, the 1st respondent started to deliberately propagate that she has no interest to lead marital life with the petitioner and discarded him with an intention to lead extra marital life with the 2nd respondent and as such never bestowed any attention towards the children, with an intention to get rid of them.

6. Due to this rift between the petitioner and 1st respondent, the education and bright future of the minor children was spoiled and thereby the petitioner lost his reputation in the society. Hence, he also filed a Guardian Original Petition seeking custody of his minor children. It is further learnt that the 1st respondent was indebted to several persons, who approached him for discharge of her debts and, later, the petitioner came to know that the 1st respondent handed over the amount borrowed to her paramour, 2nd respondent, who invested in the real estate business, and, thus, the 1st respondent entered into the clutches of the 2nd respondent by continuing her illicit intimacy with

him, which caused mental agony to the petitioner. Subsequently, the petitioner got issued a legal notice dated 19.11.2001 to the 1st respondent, for which the 1st respondent did not give any reply though she received the same on 23.11.2001 and, hence, the petitioner is constrained to file the Petition for grant of decree of divorce.

7. The 1st respondent filed counter admitting the marriage between the petitioner and 1st respondent, living together, leading happy marital life and begetting children named as Sairam Prasad and Naveen but resisted the claim of the petitioner raising the following contentions:

a) Since the date of marital cohabitation, the petitioner used to beat her, at the instance of his parents, without any reason, and thereby subjected her to unbearable cruel treatment and, during her 7th month of pregnancy, he dropped her at her parents house and in spite of giving birth to a male child, he did not visit her to see his new born child; In addition to this, when she returned to the matrimonial house, the petitioner removed all the gold ornaments on the person of new born child and threatened her with dire consequences, if she did not go to her parents house on her own accord but she suffered all the insult and beating silently with a fond hope that he would mend his attitude and when there was no change in his attitude, she lodged a complaint before the V Town Police Station (L & O), Visakhapatnam, when the Police chastised the petitioner, he executed a bond before the Police and, later, took separate residence opposite to the house of his parents and looked after her well. Later, when she gave birth to 2nd child, the petitioner again started harassing her with heinous comments that she is

dressing like a prostitute and leading unchaste life and thus tortured her mentally and physically;

b) The petitioner used to hurl vulgar comments saying that she is sleeping with every person and acted as a sadist demanding her to die than to live with him. The 1st respondent unable to bear the physical and mental thrashing by the petitioner every day, when attempted to commit suicide, paternal aunt of the petitioner chastised her and took her to her native place by informing the same to the petitioner and her parents. Meanwhile, the petitioner colluded with his friend Narasinga Rao, 2nd respondent, spread rumors that she eloped with the 2nd respondent. Later, when the 1st respondent was returning to Visakhapatnam, paternal aunt of the petitioner telephoned to the petitioner about her arrival, the petitioner and the said Narsinga Rao received her at the Railway Station, offered a cool drink mixed with the sleeping pills powder, made her unconscious, shifted her to K.G.H. After regaining consciousness, she gave complaint to the IV Town Police Station, Visakhapatnam against the petitioner and his family members for the offence punishable under Section 498-A I.P.C. and it was transferred to V Town Police Station (L & O), Visakhapatnam;

c) Subsequently, the petitioner filed the Petition seeking divorce on the ground of adultery, though she is very much living with her parents;

d) Though the petitioner is a permanent employee in East Coast Railway working as a fitter, not allowing the children to meet him and failed to provide maintenance to the 1st respondent and children, who were studying in

a private convent at the mercy of their grand parents;

e) At one time, the petitioner removed the gold *mangalasutram* to meet his vices and received an amount of Rs.75,000/- towards dowry at the time of marriage and Rs.10,000/- towards *adapaduchu lanchanam* to her cousin sister and demanded customary articles (sare samanu) worth Rs.25,000/- and forcibly took 25 tulas of gold ornaments presented by her parents and retained all her belongings including sarees; and

f) The residential accommodation provided by the parents of 1st respondent was taken by her parents due to the behaviour of the petitioner expecting that he would dispose of the property to meet his vices. Even under those circumstances, the 1st respondent led the marital life with the petitioner and, finally, prayed to dismiss the Petition.

8. The 2nd respondent remained *ex parte*.

9. Maintenance Case No.70 of 2003, filed before the trial Court by the 1st respondent and minor children, seeking maintenance at the rate of Rs.500/- to each of them was clubbed with this Petition and common evidence is recorded in O.P. No.567 of 2001.

10. Basing on the above pleadings, the trial Court framed the following points for consideration:

1. Whether the petitioner in O.P. No.567 of 2001 is entitled to the relief of divorce against the 1st respondent?

2. Whether the petitioners in M.C. No.70 of 2003 are entitled to maintenance, and if so, to what amount?

11. During course of enquiry, on behalf of the petitioner, PWs.1 to 3 were examined and on behalf of the 1st respondent, RWs.1 and 2 were examined but no documents were marked on either side.

12. Upon hearing argument of both the counsel, considering oral and documentary evidence, the trial Court allowed O.P. No.567 of 2001, granting decree of divorce dissolving the marriage between the petitioner and respondent, and also allowed the Maintenance Case No.70 of 2003, in part, granting an amount of Rs.600/- p.m. towards maintenance to the petitioners 2 and 3 *i.e.*, minor children, by a common order dated 10.01.2007.

13. Aggrieved by the divorce decree and order, passed by the trial Court in O.P. No.567 of 2001, the 1st respondent therein preferred the present appeal but did not prefer any appeal challenging the order passed in Maintenance Case No.70 of 2003.

14. The following are the main contentions raised by the 1st respondent in the grounds of appeal:

a) The petitioner miserably failed to establish the cruelty and adultery attributed against her, though the initial burden of proof heavily lies on him, and, on the other hand, the petitioner and his parents subjected her to cruelty, physically and mentally;

b) The trial Court failed to frame proper issues and without framing relevant issue about adultery and appreciating the evidence on record in proper perspective, jumped to the conclusion that the petitioner is entitled to the decree of divorce;

c) The trial Court failed to take into consideration her readiness and willingness to lead marital life with the

petitioner and as such failed to take into consideration the consistent evidence adduced on her behalf, erroneously, and findings of the trial Court are not based on any legal evidence, prayed to allow the appeal setting-aside the order and decretal order under challenge, by dismissing the petition.

15. During course of argument, Sri G. Rama Gopal, learned counsel for the 1st respondent-appellant would contend that the alleged acts of cruelty, which affords a ground to grant decree of divorce under Section 13(1)(ia) of the Act, were not proved by adducing cogent and satisfactory evidence and, apart from that, there is no pleading and evidence on record to establish that the alleged acts or omissions attributed to the 1st respondent creates reasonable apprehension in the mind of the petitioner that it is harmful or endangerous for him to live with her. Unless the petitioner able to establish that the alleged acts creates reasonable apprehension, no decree of divorce can be passed under Section 13(1)(ia) of the Act and, therefore, the finding of the trial Court that the 1st respondent subjected the petitioner to cruelty is erroneous.

16. It is further contended that basing on a bald allegation made in the petition, that the 1st respondent colluded with the 2nd respondent and having illicit intimacy with him, the trial Court believed the adultery without adverting to any evidence and pleadings, as required under Rule 6(h)(i) of Rules to regulate proceedings under the Hindu Marriage Act *i.e.*, disclosing the specific acts of adultery and the occasion when and place where such acts were committed, together with the name and address of the person with whom such adultery was committed. It was further contended that no relevant issue with regard to adultery was framed but the trial Court, on erroneous appreciation of evidence on record, granted a decree of divorce. Mere allegation is

not sufficient to conclude that there is illicit contact between the respondents 1 and 2 and several factors have to be taken into consideration while deciding the alleged adultery, and the burden of proof is always on the petitioner to prove the alleged acts of adultery, by placing satisfactory evidence, but the trial Court on erroneous appreciation granted decree of divorce which is liable to be *set-aside*.

17. *Per contra*, Smt. S.A.V. Ratnam, learned counsel for the petitioner-1st respondent herein supported the order passed by the trial Court in all respects and contended that mere failure to produce the complaint allegedly lodged by the 1st respondent against the petitioner under Section 498-A of I.P.C. is not sufficient to *set-aside* the decree on the ground of cruelty. When there is a specific admission in the pleadings that she gave complaint to the Police for the offence punishable under Section 498-A of I.P.C., on this ground alone the petitioner is entitled to a decree of divorce. It is further contended that the voluminous evidence available on record established both the grounds of cruelty and adultery and as such the trial Court, on proper appreciation of oral and documentary evidence, granted a decree of divorce on both the grounds, findings of trial Court do not call for interference of this Court and prayed to dismiss the appeal confirming the order and decreetal order passed by the trial Court.

18. Considering rival contentions, perusing the order under challenge including the oral and documentary evidence, the points that arise for consideration are:

1. Whether the 1st respondent subjected the petitioner to cruelty, either physical or mental, creating reasonable apprehension in his mind that it is harmful or endangerous for him to live with her? If so, is the petitioner entitled to a decree of divorce under Section 13(1)(ia) of the Act?

2. Whether the 1st respondent developed illicit contact with the 2nd respondent and had voluntary sexual intercourse with him? If so, is the petitioner entitled to a decree of divorce under Section 13(1)(i) of the Act?

19. **POINT No.1:** The first and foremost contention raised by learned counsel for the petitioner before the trial Court is that the 1st respondent subjected him to cruelty by her acts and omissions and attributed several acts including initiating groundless or false prosecution against the petitioner and his family members for the offence punishable under Section 498-A of I.P.C. besides levelling other allegations. In Para (g) of the petition, a specific allegation is made to the effect that a false complaint was lodged against the petitioner and his family members for the offence punishable under Section 498-A of I.P.C. to cover up her illicit intimacy with the said Narsinga Rao, 2nd respondent, at the instance of her brother, who is working as a Police constable but there was no plea about stage of the prosecution for the offence punishable under Section 498-A I.P.C. In any view of the matter, in Para 18 of the counter filed by the 1st respondent, she specifically admitted about lodging a complaint to the Police against the petitioner and his family members, which allegation is extracted is hereunder for better appreciation:

“18. Some time after drinking the drink, the respondent fell down unconscious. She was admitted to K.G. Hospital by the said Narasinga Rao. After regaining consciousness the respondent gave statement to the Police, who came to hospital after being informed by the Doctors of K.G. Hospital, Visakhapatnam. IV Town Police registered a case under Section 498-A I.P.C. against the petitioner and transferred the same to V Town Police Station; Police arrested the petitioner and also took into custody Narasinga Rao for spreading bad rumors about the 1st respondent eloping with him. When he was in fact moving with the respondent, the petitioner filed a divorce O.P. before the Honourable Court on the ground that

the respondent is having adulterous relationship with friend said Narasinga Rao.”

20. The factum of giving complaint to the Police against the petitioner and his family members for the offence punishable under Section 498-A I.P.C. is an undisputed fact, but in the examination-in-chief of PW.1, he specifically stated about lodging of criminal complaint by the 1st respondent against him and his family members for the offence punishable under Section 498-A of I.P.C. to cover up her illegal intimacy with the said Narasinga Rao and it is illegal and un-warranted. Strangely in the cross-examination, learned counsel for the 1st respondent before the trial Court, at Page No.4, elicited several facts which are fatal to the case of the 1st respondent and the facts elicited in cross-examination relevant for deciding the real controversy between the parties are extracted hereunder for better appreciation:

“It is true that V Town Police has registered a case against me, my parents and R-2 under Section 498-A of I.P.C. It is true that in the said case I was convicted for six months and also fined Rs.2,000/- by III M.M. Court, Visakhapatnam on 08.04.2004. Witness says that I preferred appeal against the said judgment which resulted in my favour.”

21. This un-controverted statement of PW.1 established that he was convicted by the III Metropolitan Magistrate, Visakhapatnam on 08.04.2004 but the same was *set-aside* in the appeal, finding him not guilty. Though, PW.1 admitted about his conviction by the trial Court and *setting-aside* his conviction in appeal, no suggestion was put to him denying his acquittal by the appellate Court.

22. Similarly, learned counsel for the 1st respondent, during the cross-examination of PW.2, at Page No.3 from the last 7 lines, elicited the relevant information, which is extracted hereunder for better appreciation:

“It is true that the respondent gave a complaint against PW.1

and his parents under Section 498-A of I.P.C. in which PW.1 was convicted for six months; subsequently, Appeal was allowed by Mahila Court Judge, Visakhapatnam and PW.1 was acquitted. It is not true to suggest that I am deposing falsely at the instance of PW.1 and I do not know anything about the affairs of PW.1 and the respondent.”

Even in the cross-examination of PWs.2 and 3, no suggestion was put to them denying acquittal of the petitioner (PW.1) by the Judge, Mahila Court, Visakhapatnam.

23. The 1st respondent was examined as RW.1; as usual in her examination-in-chief, she specifically asserted at the end of Para 5 that after regaining consciousness, she gave complaint to V Town Police Station (L & O), Visakhapatnam, which was registered against the petitioner and his parents for the offence punishable under Section 498-A of I.P.C. In the cross-examination, no suggestion was put to RW.1, that the petitioner was acquitted for the said offence. Even it is not the case of the 1st respondent that her husband was convicted for the offence punishable under Section 498-A I.P.C. Her evidence is totally silent with regard to result of the Criminal Case. In any view of the matter, it is an un-disputed fact that the 1st respondent gave complaint against the petitioner and his family members for the offence punishable under Section 498-A I.P.C., PW.1 was arrested by police during investigation and they were tried by III Metropolitan Magistrate, Visakhapatnam and convicted the petitioner, sentencing him to undergo imprisonment for a period of six months and also directed to pay a fine of Rs.2,000/-. By the date of filing the Petition, Criminal Case was not disposed of by the Court, therefore, there is no possibility for the petitioner to make any averments about the groundless or false prosecution against the petitioner and his family members for the offence punishable under Section 498-A of I.P.C. Acquittal of the petitioner by the Judge, Mahila Court, Visakhapatnam is only a subsequent incident. As the acquittal of the petitioner for the

offence punishable under Section 498-A I.P.C. by the Judge, Mahila Court is not disputed by putting any suggestion to the witnesses in the cross-examination, this Court can accept the testimony of PWs.1 and 2 with regard to acquittal of the petitioner and it amounts to an admission by the 1st respondent.

24. Learned counsel for the petitioner-1st respondent herein would further contend that when a particular fact was not put to the witness during cross-examination, it amounts to admission and placed reliance on decision of the Calcutta High Court in **A.E.G. Carapiet Vs. A.Y. Derderian**^[1] and decisions of the Apex Court in **M.B. Ramesh (D) by L.Rs Vs. K.M. Veeraje Urs (D) by L.Rs. and others**^[2] and **Thiruvengada Pillai Vs. Navaneethammal and another**^[3].

25. If the principles laid down in the decisions referred *supra* are applied to the present facts of the case, failure to put any suggestion to the witnesses *i.e.*, PWs.1 to 3 as to whether the conviction of the petitioner was confirmed by the Judge, Mahila Court or not and though copy of its judgment is not produced for perusal, their evidence can be accepted. Hence, failure to cross-examine the witnesses on the aspect of acquittal of the petitioner by Judge, Mahila Court, amounts to admission of a fact and the same is to be accepted by this Court. Hence, acquittal of the petitioner for the offence punishable under Section 498-A I.P.C. by the Judge, Mahila Court, is accepted.

26. The major contention of learned counsel for the petitioner-1st respondent herein is that on account of false implication by the petitioner and his family members his arrest in connection with false Criminal case by police he suffered mentally but there was no specific allegation in the Petition about the mental suffering. However, when the petitioner is working as a Fitter in the East Coast Railway, facing trial and roaming around the Courts on the dates of adjournments

certainly causes mental pain. Therefore, such groundless or false prosecution against the petitioner and his family members directly amounts to mental cruelty, in view of the law laid down by the Apex Court in ***K. Srinivas Rao Vs. D.A. Deepa***^[4], wherein the Apex Court while dealing with similar circumstances, held as follows:

“23. Pursuant to this complaint, the police registered a case under Section 498-A of the IPC. The appellant-husband and his parents had to apply for anticipatory bail, which was granted to them. Later, the respondent-wife withdrew the complaint. Pursuant to the withdrawal, the police filed a closure report. Thereafter, the respondent-wife filed a protest petition. The trial Court took cognizance of the case against the appellant-husband and his parents (CC No.62/2002). What is pertinent to note is that the respondent-wife filed criminal appeal in the High Court challenging the acquittal of the appellant-husband and his parents of the offences under the Dowry Prohibition Act and also the acquittal of his parents of the offence punishable under Section 498-A of the IPC. She filed criminal revision seeking enhancement of the punishment awarded to the appellant-husband for the offence under Section 498-A of the IPC in the High Court which is still pending. When the criminal appeal filed by the appellant-husband challenging his conviction for the offence under Section 498-A of the IPC was allowed and he was acquitted, the respondent-wife filed criminal appeal in the High Court challenging the said acquittal. During this period respondent-wife and members of her family have also filed complaints in the High Court complaining about the appellant-husband so that he would be removed from the job. The conduct of the respondent-wife in filing a complaint making unfounded, indecent and defamatory allegation against her mother-in-law, in filing revision seeking enhancement of the sentence awarded to the appellant-husband, in filing appeal questioning the acquittal of the appellant-husband and acquittal of his parents indicates that she made all attempts to ensure that he and his parents are put in jail and he is removed from his job. We have no manner of doubt that this conduct has caused mental cruelty to the appellant-husband.”

27. Learned counsel for the petitioner-1st respondent herein also relied on another judgment of the Apex Court in ***Dr. (Mrs.) Malathi***

Ravi, M.D. Vs. Dr. B.V. Ravi, M.D.^[5], wherein the Apex Court, after reviewing entire law on cruelty, held as follows in Para No.37:

"For the present, we shall restrict our delineation to the issue whether the aforesaid acts would constitute mental cruelty. We have already referred to few authorities to indicate what the concept of mental cruelty means. 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."

28. In **K. Srinivas Vs. K. Sunita**^[6], when a similar question came up for consideration, the Apex Court reiterated the same principle while holding that no pleading is necessary and ruled as follows:

"6. Another argument which has been articulated on behalf of the learned counsel for the Respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events could have been looked into by the Court. In any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was led, as also when arguments were addressed, objection had not been raised on behalf of the Respondent-Wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf."

29. In view of the principles laid down in the decisions cited *supra*, though no pleading is on record, when the particular fact of acquittal of the petitioner, by the appellate Court for the offence punishable under Section 498-A I.P.C., is admitted and is within the knowledge of both the parties, that itself is sufficient to grant a decree of divorce for

dissolving the marriage between the petitioner and 1st respondent. Hence, by applying the principles laid down by the Apex Court in ***K. Srinivas Rao***⁴, ***Malathi Rav***⁵ and ***K. Sunita***⁶, we hold that lodging of complaint by the 1st respondent against the petitioner and his family members for the offence punishable under Section 498-A I.P.C., registering the same and filing charge sheet by the Police, convicted by the III Metropolitan Magistrate and acquitted in appeal by the Judge, Mahila Court, Visakhapatnam, certainly amounts to mental cruelty and such acts would create reasonable apprehension in the mind of the petitioner that it is harmful or endangerous for him to live with the 1st respondent. Hence, this point is answered in favour of the petitioner and against the 1st respondent.

30. **POINT No.2:** One of the grounds urged by the petitioner before the trial Court is that the 1st respondent developed illicit contact with the 2nd respondent, Narasinga Rao, who remained *ex-parte* before the trial Court. However, the 1st respondent denied the alleged illicit contact with Narasinga Rao, while contending that the said Narsinga Rao is none other than the friend of petitioner and planted him as an adulterer so as to obtain decree for divorce. However, the trial Court, without appreciating the facts and evidence on record, held that the 1st respondent is guilty of adultery and granted a decree of divorce on this ground also. Now, this finding of the trial Court is challenged on various grounds and one of the grounds is that the petitioner did not disclose the details of place and time of such adulterous acts, as required under Rule 6(h)(i) of the Rules, to regulate the proceedings under the Act, 1955 and, apart from that, the onus of proof is on the petitioner to prove the adultery by producing cogent and satisfactory evidence. However, the same is not proved before the trial Court by the petitioner. Whereas, learned counsel for the petitioner would contend that the petitioner disclosed all the details of adultery in the

petition and disclosing certain facts itself is sufficient compliance of Rule 6(h)(i) of the Rules referred *supra* and on this ground alone the petition cannot be dismissed.

31. In view of the specific contention, in a petition filed for divorce on the ground of adultery shall contain the details of specific acts of adultery and the occasion when and place where such acts were committed, together with the name and address of the person with whom such adultery was committed. A bald allegation is made in the petition that the 1st respondent left the house and went to Rajahmundry with the said Narasinga Rao, 2nd respondent, and later the 2nd respondent brought back her to Visakhapatnam *etc.*, but no specific details of place and time of commission of the act of adultery by the 1st and 2nd respondents were disclosed.

32. The main contention of learned counsel for the petitioner is that the 1st respondent developed illicit contact with the 2nd respondent and living together with him, thus, she is leading adulterous life with the 2nd respondent. When the petitioner made such a serious allegation touching the character of the 1st respondent the initial onus of proof is on him to prove such adulterous life by producing cogent and satisfactory evidence. Proof of voluntary sexual intercourse of the 1st respondent with the 2nd respondent is difficult in normal course of events, since it is a secret act but the Court must take into consideration of all the surrounding or attending circumstances including the behaviour of spouse, adulterer and their moving together to various places *etc.*, basing on probabilities of the case. The Court cannot insist for direct proof beyond reasonable doubt unlike proof of adultery in criminal cases. Therefore, the Court has to consider facts and circumstances of each case while appreciating evidence on record and come to an independent conclusion. To prove charge of adultery or voluntary sexual intercourse, standard of proof required in a

criminal case cannot be applied for proceedings under the Divorce Act. Person alleging adultery is only required to prove the allegations by preponderance of probabilities and the degree of probability depends on the gravity of the offence. It is well established that application for divorce is a civil proceeding and analogies of criminal law cannot be applied to it. It is equally true that petition for divorce on the charge of adultery cannot be allowed merely on suspicion and doubts expressed by the party approaching the Court. The view of proving matrimonial offence beyond reasonable doubt has undergone a sea change and, in the modified form, the petitioner is only required to prove his case by preponderance of probabilities and the degree of probability depends upon the gravity of the offence.

33. It is not necessary to prove adultery by direct evidence. Such evidence cannot be given credit even if produced. Adultery has to be inferred from circumstances which exclude any presumption of innocence in favour of the person against whom it is alleged. In matrimonial proceedings, the Court has to be vigilant that burden of proof is satisfactorily established and properly discharged. The Court must have due regard to social conditions and the manner in which parties are accustomed to live. Adultery can generally be proved by presumptive proof passed upon circumstantial evidence such as non-access and birth of children.

34. In ***Augustine Johnson Vs. Elizabeth***^[7], Kerala High Court, relying on Apex Court's judgment, ruled as follows:

"The view that was prevalent at one time was that in regard to the scanning of proof in cases under the Divorce Act, the Judge should be satisfied beyond reasonable doubt as to the commission of matrimonial offence. Then only it could be said that the Judge was satisfied within the meaning of Section 14 of the Indian Divorce Act. The rule laid down by the House of Lords, would provide the principle and rule which Indian Courts should apply to cases governed by the Act and the standard of proof in divorce cases would therefore be such

that if the Judge is satisfied beyond reasonable doubt as to the commission of the matrimonial offence he would be satisfied within the meaning of Section 14 of the Act. The two jurisdictions i.e., matrimonial and criminal are distinct jurisdictions but terms of Section 14 make it plain that when the Court is to be satisfied on the evidence in respect of matrimonial offences the guilt must be proved beyond reasonable doubt and it is on that principle that the Courts in India would Act and the reason for adopting this standard of proof is the grave consequence which follows a finding of guilt in matrimonial causes."

35. In ***E.J. White Vs. Mrs. K.O. White***^[8], the Apex Court, while dealing with the *lis* under Indian Divorce Act, ruled as follows:

"In all suits and proceedings under the Act shall act and give relief on principles and rules which in the opinion of the Court are as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief. In our opinion the rule laid down by the House of Lords, would provide the principle and rule which Indian Courts should apply to cases governed by the Act and the standard of proof in divorce cases would therefore be such that if the Judge is satisfied beyond reasonable doubt as the commission of the matrimonial offence he would be satisfied within the meaning of Section 23 of the Act. The two jurisdictions i.e., matrimonial and criminal are distinct jurisdictions but terms of Section 14 make it plain that when the Court is to be satisfied on the evidence in respect of matrimonial offences the guilt must be proved beyond reasonable doubt and it is on that principle that the Courts in India would act and the reason for adopting this standard of proof is the grave consequence which follows a finding of guilt in matrimonial causes."

36. In ***Wright Vs. Wright***^[9], Lord Justice Dixon observed as follows:

"In short it comes to this: So far as the grounds for divorce are concerned, the case, like any civil case, may be proved by a preponderance of probability, but the degree of probability depends on the subject-matter. In proportion as the offence is grave, so ought the proof to be clear. So far as the bars to divorce are concerned, like connivance or condonation, the Petitioner need only show that on balance of probability he did

not connive or condone or as the case may be."

37. Earlier, in ***Dastane Vs. Dastane***^[10], the Apex Court accepted the above view of the House of Lords in a case under the Hindu Marriage Act.

38. The learned counsel for the 1st respondent-appellant while contending that the when the allegation of adultery is false and baseless, when the plea of adultery is rejected in the Maintenance Case filed by the wife, decree of divorce cannot be granted.

39. In a Division Bench judgment of this Court in ***Mirapala Venkataramana Vs. Mirapala Peddiraju***^[11], this Court had an occasion to deal with a similar issue and held as follows:

"Casting aspersion against a woman, that she is unchaste woman, that too a married woman with children, is a very serious thing and unless there is cogent evidence beyond any pale of doubt, such a finding should not be recorded."

40. If the law declared by the Apex Court in various judgments including the Division Bench judgment of this Court is taken into consideration, the Court has to scrutinize the entire evidence on record basing on the probabilities of the case and decide attribution of adultery with reference to facts of case. In the present case, according to the petitioner, the 1st respondent eloped with the 2nd respondent and was not seen for a sufficient long period and she was kept in a house of an old lady at Rajahmundry and that they allegedly lived together, the trial Court concluded that the 1st respondent developed illicit contact with the 2nd respondent and granted decree of divorce under Section 13(1)(i) of the Act but the said fact of adultery is not proved by adducing cogent and satisfactory evidence and unless there is satisfactory evidence which probablises the contention of the

petitioner that the 1st respondent is leading adulterous life with the 2nd respondent, decree of divorce cannot be granted as held by the Full Bench of this Court in ***S. Mallaiah Vs. Eisther and another***^[12], wherein it was held thus:

"Adultery is a very serious allegation. Appreciation of evidence in such cases must be careful and proper. It is only when the evidence is cogent, consistent and irrefragable that the finding of adultery could be recorded. But where the evidence of the petitioner is lacking in corroboration and is inconsistent and un-natural, no finding of adultery could be recorded even when the second respondent, the alleged adulterer, remained ex-parte."

41. In a recent Division Bench judgment of this Court in ***Byri Narayanamma Vs. Byri Sitharama Murthy and Another***^[13], this Court while discussing about standard of proof required in matrimonial offences like adultery, in Para No.11, ruled as follows:

"We have already observed that whenever ground of adultery is pleaded by one spouse against another, the standard of proof is required to be substantially different from the one that is needed in respect of other grounds, such as cruelty and desertion. The reason is that unlike in the case of the divorce granted on the grounds of cruelty and desertion, a divorce granted on the ground of adultery would haunt the concerned spouse with that accusation for the rest of the life. Therefore, the Courts are required to be careful and cautious before recording a finding on those grounds. In a way, ignominy and disrepute, which the concerned party may suffer on account of such accusation, would be more severe in nature than the one in a criminal case, which may no doubt entail in punishment, but would virtually vanish with the serving of the sentence."

42. By applying the principle laid down in the above decisions, it is the duty of the petitioner to prove the specific acts of adultery by adducing cogent and satisfactory evidence. In fact, the best evidence available to prove adultery is neighbours and inmates of the house, who witnessed the incident of visiting 2nd respondent to lead

adulterous life with the 1st respondent, but here, the petitioner got examined PWs.2 and 3, who are neither neighbours nor inmates of the house of 1st respondent by the date of alleged acts of adultery. Therefore, their evidence is artificial and not convincing; no credibility can be attached to their testimony for the reason that they did not disclose the specific acts of adultery, as required under law. Hence, basing on the evidence of PWs.2 and 3, it is difficult to hold that the 1st respondent developed illicit intimacy with the 2nd respondent and living in adultery with him but the trial Court without appreciating the evidence recorded a finding that the 1st respondent is leading adulterous life with the 2nd respondent and committed serious error in arriving at such conclusion. Hence, the finding of the trial Court that the 1st respondent is leading adulterous life with the 2nd respondent is hereby *set-aside*. Accordingly, the point is answered in favour of the 1st respondent and against the petitioner.

In view of our foregoing discussion and finding on Point Nos.1 and 2, the Family Court Appeal is allowed, in part, *setting-aside* the divorce decree and order granted under Section 13(1)(i) of the Act, however, confirmed the divorce decree and order granted under Section 13(1)(ia) of the Act.

In consequence, miscellaneous petitions, if any, pending in this appeal, shall stand closed. No order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY,

J

Date: 02-02-2015.

Dsh

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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FAMILY COURT APPEAL No.47 OF 2007

(Judgment of the Division Bench delivered by
Hon'ble Sri Justice M. Satyanarayana Murthy)

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Date.02-02-2015

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[\[1\]](#) AIR 1961 Cal 359
[\[2\]](#) AIR 2013 SC 2088
[\[3\]](#) AIR 2008 SC 1541
[\[4\]](#) 2013 (3) ALD 11 (SC)
[\[5\]](#) AIR 2014 SC 2881
[\[6\]](#) Civil Appeal No.1213/2006 (SC)
[\[7\]](#) MANU/KE/0191/1983
[\[8\]](#) AIR 1958 SC 441
[\[9\]](#) (1948) 77 C.L.R. 191
[\[10\]](#) AIR 1975 SC 1534
[\[11\]](#) 2000 (1) ALT 540 (DB)
[\[12\]](#) 1994 (2) ALT 356
[\[13\]](#) 2014 (4) ALD 547 (DB)