

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

C.M.A.No.4856 of 2004

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

This is an appeal maintained under Section 19 of the Family Court's Act by the unsuccessful Petitioner-husband in O.P. No.66 of 2002 on the file of Judge, Family Court, Kurnool, against dismissal order dated 25.11.2004 on his application to dissolve the marriage with respondent-wife dated 13.12.1975 under Section 13(1)(ia) of the Hindu Marriage Act. Impugning the same, the contentions in the grounds of appeal filed by him are that, the trial Court failed to see that the appellant-husband was subjected to cruelty and unable to lead marital life with respondent-wife from her abnormal behaviour from record from his entitlement to the relief filed and also on the ground of deprived the conjugal society by her constant refusal to live with him even by unheeding the advise of the elders at the panchayat conveyed for their living together, that were totally ignored by the learned Judge in arriving the conclusion and in dismissing the divorce claim instead of allowing the same. It is also the contention that the observations of the learned trial Judge that if divorce granted the bright future of the grown up children will be in stake is not correct for they are educated and well placed in employment and having own incomes and properties. It is also the contention that the trial Court failed to see that if there is an apprehension for living with other spouse and there is

breaking of matrimonial relationship, that are the grounds for divorce outcome of the marital cruelty and regarding mental cruelty, there could be no direct evidence more than what the appellant-petitioner as P.W-1 deposed of what he suffered and hence sought for allowing the appeal by granting divorce. The learned counsel for the appellant reiterated the same by placing reliance upon the expression of the Apex Court in ***Parveen Mehta V. Indrajit Mehta***^[1].

2) Whereas, it is the contention of the learned counsel for the Respondent-wife that the trial Court having fresh in mind the facts with opportunity of recording evidence and conducting trial right in its conclusion supported by reasons and the alleged breaking relationship muchless even irretrievably not a ground to dissolve the marriage muchless to consider the same as cruelty by placing reliance upon ***Shyam Sunder Kohli V. Sushma Kohli***^[2] and the allegation of refusal of conjugal life is also not correct and any ordinary wear and tear differences or bickerings not even ground muchless to record them as cruelty that is the only basis on which the claimant maintained and rightly held as not proved for no any evidence worth in favour of the petitioner-husband, hence to dismiss the appeal, for nothing to interfere with the reasoned judgment of the trial Court.

3) Perused the material on record. The parties are being referred as they arrayed before the trial Court as Petitioner-husband and respondent-wife for the sake of convenience.

4) Now, the points that arise for consideration are

(i) Whether the petitioner suffered cruelty in the

hands of the respondent and if so, he is entitled to the decree of divorce dissolving the marital tie with respondent dated 13.12.1975 and if so, the trial Court's order and decree dismissing the claim for divorce on the ground of cruelty, is unsustainable and requires interference by this Court while sitting in appeal.

(ii) To what result?

POINT No.(i)

5) There is no dispute on the fact that after marriage between the couple dated 13.12.1975, their wedlock they blessed with a son and daughter and both are post graduates in M.Sc., and the son is working as Software Programmer and daughter is a Junior Lecturer; coming to the couple, the petitioner-husband is a junior lecturer and the respondent-wife is a Secondary Grade Teacher by the time, the O.P for divorce maintained including from the cause title of their avocation. Coming to the petition averments in seeking divorce by the petitioner-husband against the respondent wife on the ground of cruelty, what he claimed was that respondent never allowed him to talk with neighbours and never looked after him as husband properly and not provided sexual happiness by made him spent nights in depression. Even regarding the disputed facts, even claimed taken place within the four walls, there is nothing on record including from any exchange of notices. Even the daughter and son examined as R.Ws 3 and 4 not chosen to support said averments of him though examined on behalf of the respondent-wife including in their cross-examination by him. Even coming to his further averments and evidence that in 1984 he cause conveyed a

panchayat at Kurnool through elders like Gunda Reddy and N.Appa Rao, but for his version even any of the two so called panchayatdars chosen to examine by him muchless to say they advised for their amicable living or her refusal, leave about anything regarding her cruel conduct that was divulged in the process of mediation alleged to have taken place before them. Even to say the respondent wife used to quarrel with her husband once in every week hours together, there is no basis muchless alleged abusing or scolding including using of unparliamentary words. So also for saying respondent-wife not interested to see petitioner-husband's sister to visit their house or she was threatening to poison his sister or any of the relatives or friends visiting him to receive with respect. Even regarding alleged throwing of household articles and increasing to high volume of television, not serving food or spitting on his clothes or stealing money from his pocket or so called almirah, their son and daughter are the best witnesses and none supported any of his said ipse dixit version of him. It is his say that he sent notice seeking divorce not even any notice for restitution of conjugal rights that copy of notice not even exhibited muchless proved served to say even thereafter she did not change her alleged attitude. Suffice to say there from the petitioner could not prove any of the averments. Thus, it appears made for the sake of the relief for no factual foundation, muchless proof in support of it including from his version or from P.W-2 by name R.M.Reddy. P.W-2's evidence is in fact no way useful in relation to any of the relevant factual matrix regarding any of the conduct of respondent-wife constitute cruelty towards the petitioner-husband, as the trial

Court rightly observed that P.W-2's evidence is totally hearsay and inadmissible with no little personal knowledge of the relationship of the couple.

6) Further a division bench of this Court in ***N.K.Somani*** ***V. P.Somani***^[3] observed referring to several expressions that it is essential for the petitioner who claims relief to prove that a particular part of conduct or behaviour resulted in cruelty. It is observed that that without such proof, no prior assumptions to be made, nor it can be assumed that a particular conduct in a set of circumstances amount to cruelty; as particular conduct may amount to cruelty for one case may not necessarily amount to cruelty in another case, due to change of various factors and in different set of circumstances. Thus, judgments of Courts are not to be construed as statutes, a decision ordinarily is a decision on the case before the Court, while the principle underlying the decision could only be binding as the precedent in a case which comes up subsequently by ascertaining the true principle laid down in that previous decision. It was also observed referring to the earlier expression of this Court in ***Jayakrishna Panigrahi v. Surekha Panigrahi***^[4] of mere fact that allegations made in the written statement are not proved, will not amount to say such allegations are wild, baseless, false or the like. As per Section 3 of the Indian Evidence Act which defines 'proved', 'not proved' and 'disproved', a fact is said to be not proved when it is neither proved nor disproved and as such unless the allegations are disproved which is akin to say false, wild or baseless to make a ground of that tantamount to cruelty, mere

allegations not proved which may be true or may not be true cannot be taken as wild or baseless or false to say those constitute mental cruelty. For that, placed reliance on the proposition, laid down in the earlier expression of this Court in ***Lalitha Kumari V. K.Ram Prasada Rao***^[5] that followed a division bench expression of Punjab & Haryana High Court in ***Paras Ram V. Kamlesh***^[6] and in concluding that in order to succeed that the allegations made in the pleadings by the opposite party to constitute cruelty, those allegations must be disproved by showing false or wild or baseless and there from constitute the mental cruelty; as unless truth or falsity of such allegations establish one way or other, no legal consequences can flow therefrom for the purpose of deciding cruelty or not under Section 13(1)(ia) of the Hindu Marriage Act.

7) The fact that they blessed with two issues in their marital life, itself is an indication that the attribution of the wife never cooperated for conjugal life is not tenable. Leave about the evidence of R.W-1 of craving for her husband with all love and affection and respect in opposing the claim of husband for divorce; among the R.Ws 2 to 4 at the cost of the repetition R.Ws 3 and 4 are daughter and son of the couple who deposed in one voice in corroborating the evidence of Respondent-R.W-1 that she was also cooperative to the petitioner-husband and it was the petitioner-husband that was quarrelling with her on petty reasons and still she was adjusting and meeting out the harassment he was giving out to her with no little voice even against and the R.W-2's evidence is also in corroboration to the same. It is the settled

law that no one can take advantage of his own fault. It is also the settled law that the burden is on the petitioner who seeks the relief for divorce against the respondent on the ground of cruelty to establish. Ordinary wear and tear or bickerings are not the grounds to dissolve the pious marital tie. The expression in ***Parveen Mehta*** supra placed reliance by the appellant including in the trial Court categorically speaks that it must be established for cruelty to make out, that the behaviour of the other spouse shows causing reasonable apprehension in the mind of the spouse that it is not safe for him or her to continue the marital relationship. Here that is totally lacking from what the factual matrix referred and discussed supra; leave about the other observations of the trial Court that by then, the couple were aged more than 50 years and the son and daughter were also by then aged about 27 years and their marriages to be performed and it impairs the progress of the two children. Further as laid down in ***Syam Sundar Kohli*** supra even irretrievable break down of the marriage is not a ground for not made it a ground under Section 13 of the Hindu Marriage Act to seek divorce.

8) Having regard to the above, when the trial Court came to the right conclusion, supported by reasons, having scanned the relevant material evidence in all respects by referring to the propositions supra with reference to the scope of law on cruelty, for this Court, while sitting in appeal, there is nothing to interfere. Accordingly, the point No.1 is answered.

9) Accordingly, 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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29.01.2015
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HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.207 of 2005

22.01.2015
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- [\[1\]](#) 2002(5) ALD 6(SC)
 - [\[2\]](#) (2004)7 SCC 747
 - [\[3\]](#) AIR 1999 AP 1 (DB)
 - [\[4\]](#) 1995 (3) ALD 195 (D.B.)
 - [\[5\]](#) 1992 ALT 631
 - [\[6\]](#) AIR 1982 P&H 60