

**HONOURABLE SRI JUSTICE R.SUBHASH REDDY
AND
HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO**

F.C.A.No.29 of 2006

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

The petitioner-husband, who maintained O.P.No.541 of 2002 on the file of the Judge, Family Court, Vijayawada, against the respondent-wife under Section 13(1)(i) of the Hindu Marriage Act on the ground of cruelty, having went unsuccessful before the trial Court on contest, impugning the dismissal order and decree dated 04.10.2005; preferred the appeal with contentions in the grounds of appeal that the trial Court failed to address on the factum of no possibility of reunion besides it is the respondent that deserted the petitioner on 14.02.1997 and failed to join having refused to join and the observation without appreciating the evidence on record, as if to get rid of her he has taken the recourse for divorce is contrary to law, weight of evidence and probabilities of the case besides in ignorance of the material on record showing the respondent/wife is leading adulterous life with one J.Venkateshwarlu, her maternal uncle by staying at her parent's house, that the trial Court also did not address on the aspect of the respondent-wife failed to give any reply even to the legal notice issued by the petitioner, and the non-giving reply leads adverse inference against her claim, that the trial Court should have seen that the filling of a criminal case under Section 498-A of the I.P.C. against the petitioner by the respondent-wife clearly shows that the marriage is irretrievably broken down, that the trial Court should have seen that the dismissal of the criminal case from the prosecution miserably failed to prove clearly showing that the respondent-wife filed a false criminal case which is nothing but to harass the petitioner-husband which is also a ground for divorce and thereby sought for setting aside the dismissal order impugned herein passed by the trial Court by allowing the appeal. The learned counsel for the appellant

reiterated the same.

2. Whereas, it is the contention of the learned counsel for the respondent-wife that the order of the trial Court supported by reasons is a well considered one with reference to oral and documentary evidence on record which clearly establishes that the petitioner-husband miserably failed to establish any entitlement to decree of divorce on the ground of cruelty and desertion and thereby sought for dismissal of the appeal.

3. Heard and perused the material on record. The parties herein are referred to as they were arrayed before the trial Court.

4. Now the points that arise for consideration are that:

1. Whether the respondent-wife is guilty of cruelty or desertion or both and if so the appellant-husband is entitled to a decree of divorce and the impugned order dated 04.10.2005 of the trial Court in O.P.No.541 of 2002 dismissing the same is unsustainable and requires interference by this Court while sitting in appeal?

2. To what relief?

Point No.1:

5. The facts not in dispute are the marriage between the petitioner and respondent was taken place on 26.05.1985 and the marriage was consummated and in their wedlock they were blessed with two children. Now coming to the other facts to decide, the petition averments in seeking divorce by the petitioner-husband are that the respondent/wife was adamant and picking up quarrels on flimsy grounds and she was leading adulterous and illicit life with her maternal uncle J.Venkateshwarlu, a vagabond, since 14.02.1997 when she left his company leaving his children. While denying and disputing all the said allegations, the respondent-wife's contest was that she filed a complaint for the offence under Section 498-A of I.P.C. against the petitioner on the file of the V Additional Munsif Magistrate

Court, Guntur and later the elders mediated in which the petitioner-husband agreed to take her back to his company along with two children to maintain properly and having believed his words, she assisted him for his getting acquitted in the criminal case. However, later there was no change in his attitude and having deserted and ill-treated her again came with the false claim of divorce in order to get rid of her and marry another woman and set up false grounds as if she is leading adulterous life and hence sought for dismissal of the appeal.

6. In support of respective contentions in the Court of trial on behalf of the petitioner-husband, he himself was examined as P.W.1 and placed reliance upon Exs.A.1 to A.6 viz; office copy of the notice dated 16.02.1997, postal acknowledgement, copies of telegram with receipt, and the respondent-wife herself was examined as R.W.1. It is from that evidence, now coming to the core issue as to the respondent-wife is guilty of adulterous life and the petitioner-husband is entitled to divorce of that ground apart from any cruelty and desertion concerned, the allegation is that she left his company on 14.02.1997 having eloped with her maternal uncle J.Venkateshwarlu and leading adulterous life with him having deserted him. Ex.A.1 is the office copy of the legal notice, dated 16.02.1997 cause issued by the petitioner-husband where there is no any whisper regarding the so called adulterous life if at all she eloped with her maternal uncle and left his company for joining him on 14.02.1997, which is two days prior to the legal notice. Regarding other averments the non-giving of reply *per se* does not amount to admission of the notice contents much less to take any advantage by him in the matrimonial matter, but for he has to independently prove what he alleged to the entitlement of relief. Even to say that the wife is living in adultery but for his *ipse dixit* version, there is no any facts or circumstances much less other independent evidence at least by examination of any neighbour in the residence of the respondent-wife to give any little credence to his grave allegation.

He did not file even copy of report or chargesheet in the alleged criminal case and there is nothing in his pleading to say that she has presented police report or prosecuted activity with spite and ill-will; much less anything in his evidence claimed in this regard to say the same constituted act of mental cruelty. There is nothing even to plead any desertion on her part. In fact, in the M.C.No.10 of 2001, which she filed prior to the divorce O.P.No.541 of 2002 (order of which impugned herein) she averred that she was neglected and refused to join by her husband without maintaining and thereby entitled to maintenance that was admittedly allowed and he is paying maintenance. Same is suffice to say the alleged act of adulterous life is untrue so also the alleged acts of cruelty or desertion on her part. It is in fact without basis he made such wild allegations by introducing the version in his telegrams covered by Exs.A.3 and A.5 after June, 2000 and there is nothing to prove said allegation as referred supra in the factual background. Further there is no other material worth credence for his entitlement to the dissolution of marital tie between himself and his wife that too, having blessed with two children in their wedlock. Therefrom, the trial Court in its detailed discussion of the facts with reference to law is right in its conclusion that the petitioner-husband miserably failed to establish any entitlement to the decree of divorce on any of the grounds of desertion or cruelty; much less on the alleged adulterous life attributed. Thus, for this court while sitting in appeal there is nothing to interfere even from re-appreciation of the material on record as discussed supra. Accordingly, point No.1 is answered.

Point No.2:

7. In the result, the appeal is dismissed with no costs. Consequently, miscellaneous petitions, if any, pending in this appeal, shall stand closed.

JUSTICE R.SUBHASH REDDY

Dr. JUSTICE B. SIVA SANKARA RAO

Date:12-03-2015

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