

HONOURABLE SRI JUSTICE R.SUBHASH REDDY

AND

HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

C.M.A.No.1235 of 2005

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

The 1st respondent-wife, in O.P.No.26 of 2001 on the file of the learned Senior Civil Judge, Kovvur, filed under Section 13(1)(i) and i(a) of Hindu Marriage Act(for short, 'the HM Act')against her and another by name Prattipati Subbarao-2nd respondent by Sri Prathipati Pentayya-her husband, employee, resident of plot No.151,MMJC Colony, Bellary, Karnataka State, for the relief of divorce on the grounds of adultery, having been unsuccessful in her contest vide orders dated 27.06.2005 in opposing the petition; preferred the appeal impugning the decree of dissolution of marriage between herself and her husband, with the contentions in the grounds of appeal (it is endorsed in the cause title of appeal that the 2nd respondent to the O.P.is not a necessary party), that the decree and judgment of the trial Court are contrary to law, weight of evidence and probabilities of the case, that the trial Court went wrong in placing reliance upon the alleged letters said to have been addressed to the 2nd respondent whereas none of the letters name 2nd respondent so also the alleged photographs among the Exs.A.1 to 64, that the petitioner-husband could not properly explain the custody regarding the letters and photos, for placing reliance upon as to how he secured, that the trial Court went wrong in drawing inference for the allegation of adultery and the photos, that the trial Court went wrong in dissolving the marital tie on the ground of adultery having found that there are no grounds for cruelty and also wrong in placing reliance upon the expression of the Division Bench in **Patta Dhanalakshmi Vs. Patta Ramachandra Rao**. Hence to set aside the decree granting divorce on the grounds of adultery by allowing the appeal.

2. The learned counsel for the appellant-wife reiterated the same in the course of hearing with reference to the evidence on record.

3. Whereas, it is the contention of the appeal 1st respondent-husband that the order of the trial Court is supported by reasons having scanned the evidence of Petitioner/P.W.1 with reference to Exs.A.1 to A.64 besides that the evidence of the

independent witnesses P.Ws. 3 and 4 and on behalf of the respondent, there is nothing to rebut the evidence adduced by the petitioner and for this Court while sitting in appeal, merely because some other view also possible, there is nothing to interfere . Hence to dismiss the appeal.

4. In the course of hearing, the learned counsel for the appellant-wife further contended that the trial Court also went wrong in not awarding permanent alimony under Section 25 of the Hindu Marriage Act if at all coming to the conclusion, apart from no merits, to dissolve the marriage.

5. Whereas, it is the reply contention of the learned counsel for the appeal 1st respondent-husband that the trial Court having assigned reasons in para-19 of the judgment stating that when the wife was living in adultery and for guilt of adultery, the husband is entitled for relief of dissolution of marriage and therefrom she is not entitled to maintenance, thereby for this Court while sitting in appeal, there is nothing to interfere even with the conclusion and finding of the trial Court.

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

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

1. Whether the wife is not guilty of adultery or otherwise guilty of cruelty and the impugned order of the lower Court in O.P.No.26 of 2001 dated 27.06.2005 is unsustainable and requires interference by this Court while sitting in appeal, if so, with what observations and conclusions, if at all to confirm it?

2. To what relief?

Point No.1:

8. The relationship between the petitioner and the respondent to the divorce petition as husband and wife outcome of the valid marriage under Hindu Law and custom dated 01.06.1991 is not in dispute. It is also not in dispute that in their wedlock they were blessed with a female child on 12.02.1993 and also another female child on 22.05.1998 by names Reshma srivani and Durga Bhavani. The relief sought in the petition for dissolution of marriage is under Section 13(1)(i) of the HM Act on the

grounds of adultery and cruelty.

9. Now coming to the finding given by the trial Court on the ground of adultery impugned in the appeal concerned, the witnesses examined are the petitioner as P.W.1, P.W.4 is his father and P.W.2 is the person in whose house the couple were residing in Bellary and P.W.3 is his neighbour. It is the evidence of petitioner/P.W.1 in categorical terms that the 2nd respondent, so called paramour of his wife, frequently visiting in his absence and staying with suspected movements. In the cross-examination, he deposed very categorically that though initially he did not suspect anything, his suspicion given strength from perusal of the letters addressed by the 1st respondent and from the photos of 1st respondent and 2nd respondent together, so also was deposed by P.W.3-the neighbor of the petitioner. Apart from it, among Exs.A.16 to A.64 photos, in particular Ex.A.2 to A.24 categorically showing unless some extra-marital relation such position and giving pose to the photos is not believable and there is no worth explanation from her side in this regard to say that is also adding strength; with reference to the other photos among Exs.A.16 to A.64 apart from the letters written by the 1st respondent which she admitted of her writings covered by A.69 to A.71 that are correlating to the writing by same person on comparison by the Court within its power under Section 73 of the Indian Evidence Act, the letters that are disputed covered by Exs.A.1 to A.13. Thus, when it is proved by preponderance of all probabilities for difficult to except direct evidence and no strict proof required by law, the contention of the learned counsel for the appellant/wife that barring the disputed letters and photos, there is no proof, apart from the address of the disputed letters is not even to 2nd respondent to the petition by name Suri Rama Rao is untenable for it makes no difference with what name she addressed once if she having kept in mind the name of Suri Rama Rao and not to reveal their identity. Apart from the above, the evidence of P.Ws.2 to 4 are also lending strong corroboration to the evidence of P.W.1 in its to establishing that, the 1st respondent is living in adultery with 2nd respondent. Having regard to the above, the trial Court is fully justified in its conclusions with sound reasons from the material supra in holding that the 1st respondent is guilty of adultery with the 2nd respondent and in dissolving the matrimonial tie.

10. However, coming to the appellant-wife's entitlement to permanent alimony is concerned though it is disputed by the respondent/husband to the appeal saying that

the lower Court when came to the conclusion that the wife was living in adultery, she is not entitled to maintenance and as such even to any permanent alimony; same is not sustainable. In fact, one must keep in mind the difference between maintenance under Section 18 of the Hindu Adoptions and Maintenance Act, and permanent alimony under Section 25 of the Hindu Marriage Act, for the latter is an enabling provision while passing any decree or at any time thereafter, to say even in case of passing decree holding a marriage in dispute as null and void under Section 5 r/w 11 of the Act. For more clarity, Section 25 of the Act is reproduced below:-

"25 PERMANENT ALIMONY AND MAINTENANCE (1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, [the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is, a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just. (3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, [it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just]."

From this very wording while passing any decree or subsequent thereto by any Court, permanent alimony can be awarded. Though it is the contention that, here, there is no written application of the wife much less before the trial Court, for this Court while sitting in appeal in awarding to consider; the expressions of this Court in **Jayalakshmi Vs. Surekha** is an answer to it from it is categorically laid down that even without any written application of a wife for permanent alimony, the Court has to grant as part of duty of the Court in severing a matrimonial tie. In fact, the Court cannot forget the fact that, even the wife living in adultery, refusal to provide basic maintenance to the wife from the husband when she is unable to live, tantamounts to further driving her to such life for survival. Thus, the wife is entitled to permanent alimony even the matrimonial tie is dissolved on the ground of adultery. Having regard to the above, from the very fact deposed by P.W.1-the appeal 1st respondent-husband that he is an employee by considering his means and the need for survival

of his wife for rest of life, the minimum required is Rs.2,50,000/- to consider the same as just to award towards permanent alimony, even considering the subsequent events that the petitioner/husband got through the appellant-wife two children referred supra and also married again and got children having through the second wife. Accordingly, the Point No.1 is answered.

Point No.2:

11. In the result, the appeal is partly allowed while confirming the decree of divorce on the ground of adultery by awarding permanent alimony of Rs.2,50,000/- payable by the husband to the wife(appellant), which is to be paid within 5 months from this date in lumpsum or in installments; failing which, after expiry of 5 months period, the appellant-wife is entitled to execute and recover the same including with interest at 12% p.a. 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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