

HONOURABLE SRI JUSTICE R.SUBHASH REDDY

AND

HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

F.C.A.No.69 of 2006

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

The appellant-husband, who filed O.P.No.203 of 2002 under Section 10(ix)(x) of the Divorce Act against his wife on the file of the Judge, Family Court at Visakhapatnam seeking dissolution of marriage, dated 29.08.1985 performed as per the Christian religion, at K.P.Gudem of East Godavari district, on the ground of cruelty and desertion, aggrieved by the dismissal order, dated 03.02.2006, preferred the appeal with the contentions in the grounds of appeal as well as oral submissions of his learned counsel, that the family Court's order impugned herein is contrary to law, outcome of failure to appreciate the facts and circumstances of the case in true and correct perspective with erroneous conclusions from misunderstanding the principles, that the learned Family Court Judge should have seen that the O.P.No.195 of 1998 filed by the wife for restitution of conjugal rights on contest was ended in dismissal on merits *inter-se* covered by Ex.A.3 decree and order which clearly speaks that having compromised by the parties pursuant to which the husband withdraw the O.P.No.155 of 1997 filed by him for judicial separation and the wife who was supposed to withdraw the criminal case filed under Section 498-A I.P.C., in C.C.No.612 of 1997 failed to do so without *bona fides*, that the learned judge, Family Court failed to appreciate these facts though that itself is suffice to say it constitutes cruelty, apart from the C.C.No.612 of 1997 was ended in acquittal and prosecution of the same is nothing but to harass him, that the learned Judge went wrong in saying that attending to the death ceremony of the father-in-law of the wife is as if outcome of her affection despite all through she was disliking the parents of the husband, that the trial Court's dismissal order is on surmises and imaginary grounds by ignoring the true facts and hence, to set aside the order impugned herein by allowing the appeal dissolving the marital tie.

2. Whereas, it is the contention of the learned counsel for the respondent/wife that for this Court while sitting in appeal against the said reasoned judgment, the appellant has no legs to stand to impugn much less for the Court to sit against for any

interference 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 dismissal order dated 03.02.2006 impugned herein in O.P.No.203 of 2002 is unsustainable and requires interference by this Court while sitting in appeal, and if so, with what observations?

2. To what relief?

Point No.1:

5. The undisputed facts for the purpose of appeal are that the parties are governed by Christian law and also from the marriage of the parties performed on 29.08.1985 as per Christian religious rites and customs. It is also not in dispute that they belong to different religions, originally for the wife Christian and the husband claimed as Hindu before their marriage but for no controversy regarding validity of their marriage under Christian law in any of the proceedings, Viz: in O.P.No.155 of 1997(for Judicial Separation) or in O.P.No.195 of 1998(for restitution of conjugal rights) or in the present O.P.No.203 of 2002(for divorce). It is also not in dispute that the brother of the wife and the husband are prior to their marriage close friends, out of that acquaintance and love affair, their marriage was performed and consummated and in their wedlock they were blessed with a daughter-(since no more-due to bone cancer) and son now major and as on date completed his M.Tech degree and staying with his father. It is also not in dispute that the O.P.No.155 of 1997 (for judicial separation) originally filed by the husband and thereafter C.C.No.612 of 1997 under Section 4908 A I.P.C. was filed by the wife and they entered into a compromise to join together by drowning their differences and unconditionally to withdraw the judicial separation petition by the husband and Section 498-A I.P.C. case in C.C.No.612 of 1997 by the wife. It is also not in dispute that pursuant to the settlement arrived supra, the husband withdrew the judicial separation petition in O.P.No.155 of 1997 and therefrom it was ended in dismissal, however, the wife did not choose to withdraw the Section 498-A of I.P.C. case in C.C.No.612 of 1997. It is also not in dispute that subsequently wife filed O.P.No.195 of 1998(restitution of conjugal rights) that was ended in dismissal on merits and the same attained finality

and the findings therein regarding to the facts supra and from the conduct of the parties including mainly that of the wife in not withdrawing the criminal case and continuation of the proceedings without any *bona fides* and with intent to harass and thereafter not entitled to the relief of restitution of conjugal rights. It is also not in dispute that by continuation of the C.C.No.612 of 1997, the wife deposed as P.W.1 with 7 more witnesses examined and by referring to 6 documents including a report dated 28.05.1997, letters of March and April, 1997 and the First Information Report and on behalf of the husband, himself in defence deposed as D.W.1 apart from any others and by relying upon legal notice and order in O.P.No.195 of 1998 and ultimately it was ended in acquittal of the husband, his brother-in-law, father and sisters etc., total 5 accused covered by the Ex.A.5 judgment dated 20.11.1999 in C.C.No.612 of 1997, is also not in dispute. The trial Court in the C.C.No.612 of 1997, observed that the contention of the wife as P.W.1 was that her husband was harassing to bring more money without providing her and the children food and he used to beat her for her expressing inability to meet his demands of additional dowry and ultimately driven her out with a threat to do away with her, if she chooses to join, even her brother parted with Rs.5,000/- at the time of the marriage from which she has presented the report. Whereas, the evidence of P.Ws.4 and 6-so called independent witnesses no way helpful since turned hostile to her version but for interested witnesses P.Ws.2,3 and 5 related to her and she has even chosen to attribute that the 1st accused (her husband) developed illicit intimacy with a lady and for her asking about the same, he started ill-treatment by demanding more dowry. Whereas, the version of her brother and other relatives, P.Ws.2,3 and 5 is on different footing and they did not whisper these facts of the alleged illicit intimacy and they stated that the P.W.1 tried to commit suicide, but P.W.1 surprisingly PW1 did not depose the same if at all true being a material incident, much less any circumstance so as to drive; apart from the P.Ws.2 and 3 are no way direct witnesses to speak any of the facts but for hearsay and therefrom held the evidence of P.Ws. 1 to 3 and 5 creates any amount of doubt regarding the alleged incident and for the divorce notice issued by the husband-A.1 under Ex.D.1 which she admittedly received, if contents not true, she did not even choose to reply and the same also gives an inference against her. She further admitted that her husband earlier from the compromise withdrew the judicial separation petition but she did not choose to withdraw the criminal case (C.C.No.612 of 1997) even though they compromised the matter to withdraw and these facts clearly established that there

are some disputes between P.W.1 and A.1 and for that A.1 filed judicial separation petition and on insisting by P.W.1 he withdrew the case. Therefrom the learned Magistrate held that he is not inclined to believe the version of P.W.1 and the other witnesses of her who did not even support her and as a result acquitted the accused. It is also not in dispute that the wife also filed M.C.No.156 of 1999 on the file of the judge, Family Court, Visakhapatnam covered by Ex.A.4 -vide order dated 22.09.2001 awarding maintenance at Rs.750/- per month each to her and her son respectively or so.

6. From the above, now coming to the facts in disputes, a perusal of the Ex.A.3 certified copy of decree and order in O.P.No.195 of 1995 dated 13.07.1999 for restitution of conjugal rights filed by the wife against her husband that was ended in dismissal, particularly from para-7, it proves that in the wedlock of the couple, the daughter Aparna was born in 1986 and sometime later she died and they begot one son namely Goutham on 16.06.1989, during their stay at Bhimunipatnam, while he was working in INS Kalinga, Indian Navy, Visakhapatnam. Prior to the restitution of conjugal rights, husband admittedly filed O.P.155 of 1998(for judicial separation) on the grounds of cruelty and the same was admittedly ended in compromise and withdrawal and though the wife promised to withdraw the criminal case under Section 498 of I.P.C. (in C.C.No.67 of 1997) based by her report, she failed to compound for its withdrawal. The order further speaks from paras-6 and 7 that, complaint of the wife was that, the husband has been bringing frequently his parents to the matrimonial home and whenever she used to question his behavior, he was not allowing her to take food before his parents and his sister also used to come to the house and gives ill-advice to him and ultimately in the year 1994, she was driven out of the matrimonial home and ever since she has been staying away at her parents place and herself and her son are being paid towards interim maintenance at Rs.750/- per month each in the maintenance case filed by them against her husband. She deposed that it is only after her joining the husband and on observing for about one month, if satisfied only, she is prepared to withdraw the criminal case and not till then. Undisputedly, that was not the compromise term. It is unknown if no trust, what makes her to compromise to withdraw the cases and join together to live amicably. In the cross-examination as P.W.1 she admitted that at the time of their marriage no dowry or presentations were given to her husband. If it is true from her own say, is it believable of her version of additional dowry demands by her husband in giving report for the offence under Section 498A I.P.C. against the husband and

parents and also other relatives five in number. That itself shows her endeavor was not to pursue any legal remedy for any sufferance, but used the said provision as a lever to harass not only the husband and his parents and sister but other relatives of the husband. Even she denied the suggestion of it is for her ill-treatment he was constrained to file the petition for judicial separation and without his consent she went to the teacher training course at Rajahmundry and even he withdrew the judicial separation petition, she failed to withdraw the criminal case against them even as per the understanding to withdraw for their living together and therefrom she also desert him. It is thus clear from said fact finding covered by Ex.A.3 order in the restitution of conjugal rights petition filed by her ended in dismissal that at the time of their love marriage inter-religious or inter-caste, as the case may be, there was neither dowry nor presentations given to her husband much less received by him. Whereas, in the divorce proceedings before the trial Court covered by impugned order, she deposed as R.W.1 in her chief-examination that she was finally necked out from the marital home, even after the completion of the teacher training in 1996 she joined back her husband, in April, 1997. She deposed in her chief-affidavit itself further that, the judicial separation petition filed by the husband against her and before the Court they agreed to live together and filed a memo from which the same was ended in dismissal and before reaching home from the Court he directed her to withdraw the criminal case and thereafter to come and join him that is dated 23.04.1998 and having no other go she left to her parents and brother at Visakhapatnam. She deposed that she lodged the criminal complaint in the V town police Station against him and his family members on the ground of cruelty and harassment for additional dowry under Section 498-A of I.P.C. which is the C.C.No.612 of 1997. There is justification of the husband to ask her to withdraw the criminal case for her joining instead to allow the case to hang on the head of him, his parents and sister etc., that too even she earlier disliked his parents and sister to stay with them. In the cross-examination she categorically deposed that, her brother and her husband prior to her marriage were close friends. She categorically admitted that it is after her husband filing O.P.No.155 of 1997 for judicial separation and after service of summons on her therein as respondent, she presented the police report against her husband and family members under Section 498-A of I.P.C. and the same crime later registered as C.C.No.612 of 1997 and it is during pendency of the criminal case and the judicial separation petition they entered into compromise in which both agreed to withdraw the respective cases filed against

each other and agreed to live together and even accordingly her husband withdrew O.P.No.155 of 1997, she did not choose to withdraw the C.C.No.612 of 1997 and it was later on trial and contest ended in acquittal. A perusal of the C.C.No.612 of 1997 which speaks that it is not for mere alleged harassment but so called additional demand for dowry she lodged the complaint and the charge is also with regard to the so called dowry demand. In fact, as referred supra, she categorically admitted as referred in Ex.A.3 decree and order in restitution of conjugal rights petition vide O.P.No.195 of 98 that there was no dowry much less any presentations to her husband at the time of marriage and when it is not even her version in the criminal case that, though not received any dowry or presentations at the time of marriage, later he started demanding and received for any further or additional dowry demands to believe her version as if in addition to what was paid, there were demands; besides the filing of the case only after receiving of summons in judicial separation petition and that too not only against him, but also against his parents and other relatives total five in number. It is suffice to say therefrom that it is mutually contradictory versions of her in judging her conduct and for falsity of the averment regarding the alleged additional dowry demand in lodging complaint for the offence under Section 498 I.P.C., that too, admittedly after she received summons in judicial separation petition filed by her husband on the grounds of cruelty, she conceived idea and filed the complaint under Section 498-A of I.P.C. not only against her husband but also his family members which categorically show that, the criminal proceedings laid were by abuse and misuse of the provisions and out of spite and ill-will or with vengeance by roping him and his parents and other relatives. Had she got any mind that marriage cannot be built by bricks and cement, but from love and affection, having filed the criminal case to serve as counter blast to the judicial separation case of her husband and with no bonafides even, having entered into compromise admittedly to withdraw unconditionally for living together and having made her husband to withdraw his judicial separation petition, she did not choose to withdraw the criminal case is nothing but with some oblique motive and without regard or respect for marital life, leave no reverence and respect to the husband and thus no more material is required to judge her conduct in not withdrawal of the criminal case and in pursuing the same including by giving evidence of her and by her brother and her relatives to face trial by the husband and four of his family members, which is nothing but cruelty to deserve consideration of the claim of the husband to put an end to their marital tie, which is emotionally and practically dead,

that though not a ground, as it is the outcome of her cruel conduct, therefrom he is entitled to divorce.

7 .Thus, the trial Court instead of appreciating these material facts and circumstances in the right perspective, observed as if from her suspicion of his *bona fides* that he may not going to allow her if once she withdrew criminal case, he did not choose to do so; which conclusion is without basis and that is not the spirit of the provision Section 498 A I.P.C. in its introducing in the statute book, but for to serve the real purpose of no woman can suffer within the four walls of matrimonial house with harassment by husband and/or other family members of him including to meet any demand for dowry, to eradicate the evil of dowry and harassment for it in the society and to protect the family life. In addition to that a perusal of the criminal case judgment and the findings covered by Ex.A.5 referred supra clearly show her versions are untrue and inconsistent so also the versions of her brother and other relatives P.Ws.2,3 and 5 therein and that she did not choose to depose truth. That finding is also supports the above conclusion of the criminal prosecution continued by her including by giving evidence with untrue versions is with oblique motive to harass her husband and also his family members. Apart from it she is engineering the version that her husband got extra marital life with one lady and continues the same. This is nothing but baseless accusation. The impugned order of the trial Court at para-13 it is also categorically observed that, for such an accusation there is no basis for her to make. Same is also the observation in Ex.A.5 judgment of C.C.No.612 of 1997. It is not the ordinary accusation against the husband in attributing the illicit relationship with another lady all of a sudden developed. When that accusation is a very serious and wild towards the husband, it is for her to substantiate and there is nothing to substantiate. When for that serious accusation made all of a sudden is with no basis as observed by the two courts supra, that appears *per se* false, else she could state somewhere before even and with better details. It is also for the reason that had there been any little truth therein, the question of her compromising in making her husband to withdraw the judicial separation petition with promise to withdraw the criminal case for their living together and that too, when there was no whisper about the alleged illicit conduct of her husband, for not a case of later developed, if at all really in existence, could not have arisen, that also substantiates to the conclusion that, it is a false version she

conceived to set up for sake of defence and without regard to the marital tie and without regard for truth. Said conduct of her also clear from these facts and circumstances apart from subsequent filing of the restitution of conjugal rights petition, the cumulative effect of all these facts are nothing but grave cruelty on the part of the wife towards the husband, to say that she is guilty of a cruelty, leave about desertion at least constructive desertion as mere allegation or assertion to join and subsequent filing of restitution of conjugal rights petition for the record sake are not suffice in the absence of any mind to join and live with the husband, to say, had it been she could have withdrawn the criminal case and joined-vide decisions of the Apex Court in Viswanath Agarwal Vs. Sarla Agarwal and in Malathi Ravi Vs. B.V.Ravi. Thus the trial Court went wrong in ignorance of the same and in dismissing the application for divorce of the husband and thereby the same is liable to be set aside. Accordingly Point No.1 is answered.

Point No.2:

8. In the result, the appeal is allowed by setting aside the order of the Judge, Family Court, Visakhapatnam in O.P.No.203 of 2002 dated 03.02.2006 and by granting the decree of divorce by dissolving the marriage between the petitioner-(husband) and respondent-(wife). There is no order as to costs. Consequently, miscellaneous petitions, if any, pending in this appeal, shall stand closed.

JUSTICE R.SUBHASH REDDY

Dr. JUSTICE B. SIVA SANKARA RAO

Date:09-04-2015

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