

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.193 of 2005

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JUDGMENT: (Per Dr.Justice B.Siva Sankara Rao)

This is an appeal to set aside a decree nisi passed by the learned Principal District Judge, West Godavari at Eluru in O.P. No.315 of 2001 dated 14.10.2004. The petitioner in said O.P. is husband and the 1st respondent is the wife. The 2nd respondent is alleged to be her paramour.

2) The undisputed facts in the lis are that the marriage between the petitioner and the 1st respondent was performed under Christian Marriage Rites, that they loved each other and married at the intervention of the elders on 14.12.1995 at Mogaltur, West Godavari District and that they lived and cohabited and blessed with a female child by name Baby Sharimila. It was alleged by the petitioner that his wife is leading adulterous life with the co-respondent, that she used to exhibit aversion towards him and that he caught them red-handedly on 31.12.1999 at 11.00 P.M while they were committing adultery. It was further alleged that he found one love letter written by his wife to the co-respondent saying that even after quitting the matrimonial home, she has been continuing her adulterous life. It was further alleged that she committed acts of cruelty by lodging a false complaint for the offence punishable under Section 498-A of I.P.C against himself and his family members in Crime No.33 of 2001 of Mogaltur Police Station, apart from leading adulterous life. With the above allegations, the petitioner presented the petition claim to grant decree of divorce under Sections 10 and 11 of the Indian Divorce Act.

3) The 1st respondent, wife of the petitioner filed counter while denying the material allegations, of the divorce petition, with the contentions that after the marriage, the petitioner and his family members started ill-treating her to bring additional dowry and subjected her cruelty when she could not fulfil their demand. It was further alleged that on 06.02.2000 the petitioner necked her out and her kid from the matrimonial home and since then she is living her parents' house. She alleged that the letters were created by the petitioner for the purpose of the present petition. The 2nd respondent in his counter contended that he was unnecessarily dragged to gain wrongfully by the petitioner into their matrimonial dispute as he is no way concerned with the petitioner and the 1st respondent.

4) The petitioner to prove his case examined himself as P.W-1, examined one Nageswara Rao as P.W-2 and marked Exs.A-1 to A-6. The 2nd respondent was examined as R.W-1 and no documentary proof was filed on behalf of the respondents. The learned District Judge though not satisfied regarding the allegations of adultery, passed a decree of divorce basing on the ill-treatment made by the 1st respondent and held that the unchallenged cross-examination of the petitioner and her silence without giving any evidence is sufficient to establish that the petitioner is entitled to a decree of divorce on the ground of cruelty.

5) The 1st respondent, appellant herein, now contending in the grounds of appeal as well as the submissions during the course of hearing through counsel that when the petitioner filed the petition seeking decree of divorce on the ground of adultery and not pleaded about the cruelty and hence the trial Court erred in granting divorce simply on the other grounds though not pleaded. It is the further contention that the petitioner failed to prove the alleged adultery and more so there is no evidence to prove the ill-treatment and ought not to have granted decree of divorce and prayed to allow the appeal by setting aside the order and decree. The learned counsel for the 1st respondent contended that the trial Court rightly allowed the petition

by granting decree of divorce as the appellant herein could not prove her case except mere denial of the allegations and this Court while sitting in appeal there is nothing to interfere and prayed to dismiss the appeal.

6) Perused the material on record and heard the learned counsel on both sides.

7) Now, the points that arise for consideration are.-

- i. Whether the 1st respondent-wife is guilty of cruelty towards the petitioner husband as concluded by the trial Court and if not, whether the impugned order and decree of divorce unsustainable and requires interference by this Court while sitting in appeal and if so with what observations?
- ii. To what result?

POINT No.i:-

8) The petition for divorce sought under Section 10 and 11 of Indian Divorce Act on the ground of adultery and cruelty though the emphasis is mainly given attributing adulterous life of the 1st respondent with the 2nd respondent and in attributing cruelty by mainly saying a false complaint with intent to harass cause laid under Section 498-A I.P.C and subjected him and his family members with cruelty and harassment apart from other acts of cruelty including by her threats to commit suicide. To prove his case, the petitioner cause examined himself as P.W-1 and also one Ch.Nageswara Rao, P.W-2. He reiterated the contentions supra on the grounds of cruelty and adultery and claiming caught her and the 2nd respondent red-handed on 31.12.1999 by their compromised position inside the house by bolting the doors and when all of a sudden he came home by left a week before when knocked the doors, the 2nd respondent adorning his wearing apparel in a hurried manner in escaping by open door, petitioner caught hold of him, however, he wriggled out and fled away and that even the 1st respondent admitted her guilt by

expressing remorse and threatened to commit suicide unless he accepts her remorse without raising any dispute before elders which he has made out, that despite there was no change in her attitude in the adulterous life besides she also foisted a false case with intent to harass and ill-treated him including those threats to commit suicide. Importantly there is no cross-examination of P.W-1-petitioner in regard to the above evidence by the 1st respondent even she has chosen to file a detailed counter running 12 pages by engaged advocate and contested, for reasons better known. The contentions in the course of hearing the appeal and the learned counsel for the appellant that her advocate did not inform her the hearing to instruct for cross-examination is baseless and untenable for the advocate not even reported no instructions muchless by giving any notice and she undisputedly did not choose to question the advocate in writing if at all there is even any little truth. The un-challenged testimony leave about the adultery between the respondent Nos.1 and 2 that allegedly found and caught red handed by the petitioner even not given much weight by the trial Court from the cross-examination by P.W-1 by the 2nd respondent in this regard when regarding cruelty attributed by the petitioner with petition averments for Section 498-A I.P.C report she laid against him covered by Crime No.33 of 2001 which he categorically pleaded that it is a false and frivolous crime with baseless allegations with intent to harass and ill-treat himself and his family members were subjected to cruelty there from and the same was the conclusion when arrived by the trial Court to that extent of the finding on the ground of cruelty suffered by the petitioner in the hands of the 1st respondent practically there is nothing to interfere, for this Court while sitting in appeal from the above.

9) Apart from it, even what the petitioner pleaded of respondent expressed remorse for not to divulge her adulterous life with the 2nd respondent, what he caught red-handed to elders with a threat to commit suicide, otherwise and to behave properly that tantamounts to a condonation of her acts for their staying together the giving of report under Section 498-A I.P.C is a subsequent act apart from the so

called allegations of additional dowry or giving of dowry is difficult to believe for admittedly a love marriage though performed through elders' intervention to substantiate the petition contentions of the Section 498-A I.P.C case filed by her is not in bonafide prosecution to pursue her legal remedy but outcome of a mind to harass and ill-treat the husband by making him to suffer either with frustration or to take revenge. Apart from it, P.W-2 evidence also speaks regarding cruelty leave about the so called subsequent adulterous life between the respondent Nos.1 and 2 in his saying the petitioner raised a dispute through elders in September, 2000 of the 1st respondent committing the adulterous life with the 2nd respondent and in the panchayat held on 10.09.2000 at about 7.30 P.M at the house of one Krishnam Raju in their village Mogaltur. Ex.A-3 love letter written by the 1st respondent to the 2nd respondent though not named the 2nd respondent was produced and the 1st respondent expressed her apology by admitting her guilt covered by Ex.A-4 and in the dispute where the petitioner demanded the 1st respondent through elders for divorce she did not accept to dissolve the marital tie thereby the sitting was postponed and latter they did not come forward amicably to settle and thereafter she filed the case under Section 498-A I.P.C against the petitioner and that case was ended in acquittal after trial. He deposed that in Ex.A-3 letter written by the 1st respondent, it is not named the 2nd respondent as addressee. Even from the cross-examination by the 2nd respondent of P.W-2 or P.W-1 there is no dispute as to the hand writing of the 1st respondent. Apart from the 1st respondent did not choose to dispute muchless cross-examination P.Ws 1 and 2 in this regard. When the writing is not in dispute and P.W-2 evidence also speaks in the elders' panchayat she also admitted her adulterous life with 2nd respondent which is subsequent to expressing of remorse as per petitioner and even for Ex.A-5 legal notice, the petitioner cause issued to the 1st respondent which she acknowledged under Ex.A-6 failed to reply, all these facts

cumulatively show even condonation of the acts of the 1st respondent with the 2nd respondent by the petitioner, the subsequent conduct in continuing the same by the 1st respondent-wife of the petitioner is also another act of cruelty to substantiate the conclusion arrived by the trial Court. Thus, for this Court while sitting in appeal, there is nothing to interfere with the decree of divorce on the ground of cruelty granted by the trial Court dissolving the marital tie between the petitioner and the 1st respondent. Accordingly, point No.1 is answered.

POINT No.ii):-

10) In the result, the appeal is dismissed by confirming the decree nisi. There shall be no order as to costs. As a sequel, miscellaneous petitions if any pending shall stand closed.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA RAO

1st April, 2015

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