

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

F.C.A.Nos.200 & 216 of 2012

DATED:- 24-11-2016

Between:

Manne Shankar

..... APPELLANT

AND

M.Sulochana

.....RESPONDENT

COUNSEL FOR THE APPELLANT : Mr.G.ARUN KUMAR

COUNSEL FOR THE RESPONDENT : PARTY-IN-PERSON

THE COURT MADE THE FOLLOWING:



THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

F.C.A.Nos.200 & 216 of 2012

COMMON JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

These two appeals involve common question of law and facts and hence we dispose of these appeals by this common judgment.

2. The appellant is the husband who preferred these appeals against the common judgment dated 04.04.2012 in O.P.Nos.200 and 774 of 2008 on the file of the Judge, Family Court, Ranga Reddy District at L.B.Nagar, Hyderabad. O.P.No.774/2008 was filed by the appellant/husband under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 (for short "the Act") for dissolution of his marriage with the respondent, while O.P.No.200/2008 was filed by the respondent/wife for restitution of conjugal rights. The Court below dismissed the OP filed by the appellant/husband, while allowing the OP filed by the respondent/wife.

3. The facts of the case in brief are as under:

The marriage of the appellant with the respondent took place on 25.01.1989 at Lingumpally village, Domakonda Mandal, Nizamabad District, as per Hindu customs and rites. The appellant was working as a conductor in APSRTC. The appellant and the respondent lived together for a period of 7 years and they were blessed with one daughter and two sons, namely Srilekha, Nikhil Kumar and Sraven Kumar, who were born on 15.04.1990, 28.03.1992 and 13.08.1993, respectively. According to the version of the appellant, the respondent used to leave the matrimonial home without informing him, that she was neglecting him and children,

that she did not look after the children properly, that she was not interested in the appellant and neglecting him and did not allow him even into her bedroom, that one day in the absence of the appellant, the respondent came to the matrimonial home, took all her articles and money and left the matrimonial home, due to which, the children lodged a complaint against her in Keesara Police Station on 19.08.2006 for her behaviour. It is further alleged that their daughter Srilekha, who completed Intermediate, died in the Bomb Blast at Gokul Chat, Hyderabad, and that the respondent did not even attend the death ceremonies of their daughter. It is the further case of the appellant that he purchased a house by obtaining housing loan from his department, but later, to meet his financial problems and to clear off the debts incurred by the respondent, he sold away the house. It is the further case of the appellant that the respondent left the matrimonial home in the month of August, 2006 and did not return back and deserted him and the children and hence he filed the OP for dissolution of marriage on the grounds of cruelty, and desertion.

4. The case of the respondent/wife is that the appellant was drawing salary of Rs.15,000/- per month, that in the year 2004 he developed illicit relationship with one lady conductor, that he used to pick up quarrels with the respondent often and used to beat her and necked her out from the house, that as she had no other go, she went to her parents house. It is the further case of the respondent that the appellant bought the house with the financial assistance of her brother, but in her absence, it is alleged, that the appellant sold away the house to his close friend Srinivasa Raju, but as a matter of fact no such sale took place, and that the appellant created fake documents as if he sold out the house in

order to deprive of her rights in the house. That the appellant abandoned the house on 03.11.2006 with the children without any intimation, that she returned back to the house on 06.11.2006, that the appellant left the respondent to her fate, that she lodged a complaint against the appellant on 03.12.2006 before Keesara Police Station, which was registered as Cr.No.337/2006 under sections 143, 323, 341, 427, 506 and 509 r/w.34 IPC and that she also filed a Domestic Violence Case before the X Metropolitan Magistrate, Cyberabad at Malkajgiri, vide DVC No.1/2006. It is further alleged by the respondent that the appellant received a compensation of Rs.5,00,000/- from the Government for the death of their daughter in the Bomb Blast and that he did not give even single pie to her. The respondent intends to live with the appellant and children and hence she filed the OP for restitution of conjugal rights.

5. The Court below, while disbelieving the evidence adduced on behalf of the appellant, dismissed his petition filed for dissolution of marriage, and allowed the petition filed by the respondent for restitution of conjugal rights, and directed the appellant/husband to take back the respondent/wife within two months. Hence, the appeals, by the appellant/husband.

6. The point for consideration is whether the appellant/husband is entitled to the relief of decree of divorce on the grounds of cruelty and desertion, warranting interference with the refusal of the said relief by the trial court, or whether the respondent/wife is entitled to sustain the decree in her favour for restitution of conjugal rights, directing the appellant/husband to take the wife within two months.

7. The relationship between the parties is admitted, so also the fact that they were married on 25.01.1989 and were blessed with a

daughter Srilekha on 15.04.1990, a son Nikhil Kumar on 28.03.1992 and another son Sraven Kumar on 13.08.1993. The appellant/husband was working as a conductor in the Andhra Pradesh State Road Transport Corporation. The daughter of the couple Srilekha died in the bomb blast which took place at Gokhul Chat, Hyderabad some time in the past. The two sons are with the appellant and they are majors. The eldest son of the couple also gave evidence as PW 2 in support of the case of the appellant/husband. The grounds on which the appellant/husband seeks dissolution of marriage are that the respondent/wife had been treating him cruelly and that she also deserted him. The respondent/wife, on the other hand, submitted that it is the appellant/husband who had been treating her cruelly, manhandling and forcing her to go away from her matrimonial home, and that having developed illicit intimacy with one Lakshmikumari, a co-employee of the appellant, he used to neglect her and the family. The respondent/wife still has a hope that wisdom will prevail upon the appellant/husband and he will reform himself, and therefore, she intends to join the consortium, for which purpose, she initiated the legal proceedings.

8. The allegation of 'cruelty' in between the spouses is a complex question which needs to be determined, depending upon the facts of each individual case. It has to be considered with reference to the social values, status and environment in which the couple lives. If from the facts of the given case, it can be established or inferred that the respondent/wife has treated the appellant with cruelty, such as to create an apprehension in the mind of the appellant/husband about continuing the matrimonial tie any further, it can be considered as a ground for dissolving the marriage. However, endeavour should be made to sustain

a marriage, but not to dissolve it on flimsy grounds or on apprehensions, which are misconceived, ill-founded, baseless or imaginary. The tendency of looking at trivial issues and normal wear and tear in matrimonial home with a magnifying glass should be avoided, lest the sacrosanct nuptial tie will be weakened.

9. Similarly, the ground of desertion is to be tested with reference to the conduct of a person, who alleges that the opposite party has deserted him/her. If a person creates a situation or environment for the opposite party to have no option except to leave the matrimonial home, it cannot be said that it amounts to desertion. In order to claim matrimonial relief of divorce on the ground of desertion it is to be shown by the spouse complaining of desertion as to whether there has been actual desertion with an intention to desert on the part of the spouse complained against. Desertion is classified as (a) actual desertion; (b) constructive desertion and (c) wilful neglect. Wilful neglect, in fact is a facet of constructive desertion. The elements of desertion, normally are, the fact of intention to desert (*animus deserendi*) and the separation (*factum deserendi*). These are to be applied to the party who is alleged to have deserted the spouse complaining of desertion. It is to be shown and established that the spouse who has deserted must have left the spouse complaining of desertion with an intention to forsake and abandon the complaining spouse permanently. Besides, the deserted spouse must have not provided reasonable excuse or cause for the deserting spouse to leave or withdraw from cohabitation and he or she should not have given his or her consent for the act of desertion.

10. It has been recognized by the courts that it is difficult to lay down any definite parameters for adjudging the conduct of the opposite

party to fall within the contours of cruelty. A Three-Judge Bench of the Supreme Court, in *Samar Ghosh v. Jaya Ghosh*¹, in similar circumstances, observed as under:

“No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and

¹ 2007 (4) ALD 11 (SC)

dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-today life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.”

The above judgment was followed by another Three-Judge Bench of the Supreme Court in *Vidhya Viswanathan v Kartik Balakrishnan*².

11. Adverting to the facts of the present case, the appellant/husband is seeking dissolution of marriage on the grounds that the respondent/wife used to go away from the house frequently even without informing him, that she totally neglected the household work, that she was not even preparing food, compelling him to take care of the children, that she used to borrow money and was having certain bad vices, that she was not showing any respect either towards him or his relatives, that she used to abuse and belittle him in front of others, that

² 2014 (6) ALD 187 (SC)

the mother of the respondent has predominant influence on her, that she used to beat and illtreat the children, due to which, even the children were compelled to file a police complaint against her, that she was refusing to cohabit with him and was denying him the matrimonial bliss, and that she has deserted him and the children in the year 2006 by taking away all the valuables and household articles. It is further alleged that when the only daughter of the couple Srilekha died in a heart rending incident, the respondent/wife has come once and left and she did not even attend the subsequent ceremonies, that further, she filed false cases against the appellant/husband and others, both under the provisions of the Indian Penal Code and the Domestic Violence Act so as to harass the appellant/husband. In view of the above conduct of the respondent/wife, the appellant/husband felt that his life is insecure in the hands of the respondent/wife.

12. On the other hand, the contention of the respondent/wife is that the appellant/husband was addicted to bad vices, such as, consumption of liquor etc., that in the year 2004 he developed illicit intimacy with his co-worker, by name, Lakshmikumari and used to harass the respondent/wife and on several occasions he beat her black and blue and therefore, she even had to file a complaint with the jurisdictional police. It is her further case that the appellant/husband beat her on several occasions and dropped her at her parents house and neglected the family, and that therefore, she had no option except to stay with her parents, but she never intended to desert the appellant/husband. The allegations of cruelty, according to the respondent/wife, are all imaginary and created, but as a matter of fact, it is the appellant/husband, who was subjecting the respondent/wife to cruel treatment and that she had to

resort to legal remedies to protect herself, but not with any intention to subjecting the appellant/husband to any harassment.

13. Both the parties have adduced oral and documentary evidence. In support of the appellant/husband's case, the son of the couple was examined as PW 2. Even though he supported the father, the appellant, in the chief-examination, he supported the mother, the respondent, in his cross-examination. It is submitted by the grown up son that whenever his father used to beat his mother, she used to go her parents house. Even though the appellant/husband claimed that on one occasion the respondent/wife had bitten his nose, no satisfactory evidence was produced by him.

14. The allegations against the respondent/wife with regard to leaving the matrimonial home without intimation, neglecting the household chores, and not even preparing food etc., are all unsubstantiated. On the other hand, the evidence on record shows that it is the appellant/husband, who was treating the respondent/wife cruelly and was subjecting her to harassment, due to which, she had no option except to ventilate her grievances, firstly, by leaving the matrimonial home and thereafter, by initiating the legal proceedings, in accordance with law. None of the grounds that are sought to be highlighted by the appellant/husband are sufficient to constitute the grounds for granting a decree of divorce either on the ground of cruelty or desertion. Even if what the appellant/husband says is true, though not substantiated, they are all minor skirmishes, normal wear and tear in a matrimonial life and for development of such a situation, either the appellant/husband himself or both the spouses may have been responsible to some extent, but it

cannot be said that it is only the respondent/wife who is solely responsible for the said circumstances or situations in the life of the couple.

15. The court below has appreciated the evidence on record in proper perspective and refused to grant the relief of divorce on the grounds of cruelty and desertion, and instead, found the circumstances of the case to be such that the respondent/wife can be granted the relief of restitution of conjugal rights. On re-appreciation of the evidence on record, we do not find any infirmity to interfere with the findings of the court below.

16. There are no merits in the appeals and the same are accordingly, dismissed.



C.V.NAGARJUNA REDDY,J

M.S.K.JAI SWAL,J

Date: 24th November, .2016
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