

In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh

Family Court Appeal No.186 of 2016

Between:

V.Pavanamanjari

... Appellant

and

V.Manoj Kumar

...Respondent

Date of Judgment Pronounced: 14-03-2017

Submitted for Approval:

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Smt. Justice T.Rajani

1. Whether Reporters of Local newspapers may be allowed to see the judgments ? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment ? Yes/No

(C.V.Nagarjuna Reddy, J)

(T.Rajani, J)

* The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Smt. Justice T.Rajani

+ Family Court Appeal No.186 of 2016

% Dated 14.03.2017

Between:

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... Appellant

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...Respondent

! Counsel for the Appellant: Mr.SS.Prakash

^ Counsel for the respondent: Mr.Prithvi Sreeramaneni

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? Cases cited:

(2015) 3 Supreme Court Cases (Criminal) 400

(2011) (3) ALD 154 (DB)

(2007) 4 SCC 511



The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Smt. Justice T.Rajani

Family Court Appeal No.186 of 2016

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... Appellant

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...Respondent

Counsel for the Appellant: Mr.SS.Prakash

Counsel for the respondent: Mr.Prithvi Sreeramaneni

The Court made the following:



Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Family Court Appeal (FCA) is filed by the respondent in FCOP No.37 of 2014 on the file of the Judge, Family Court –cum- V Additional District Judge, Tirupathi, Chittoor District (for short 'the Family Court'), against Order and Decree, dated 31-08-2016, passed therein.

During the hearing of this case, we have tried to reconcile the dispute between the parties. Though the appellant has expressed her strong desire to live with the respondent, the latter was unwilling to take her back by stating that he has suffered untold miseries at her hands and that therefore, he is in no position to accept her offer. Therefore, left with no option, this Court has heard the case in order to adjudicate the case on merits.

The respondent filed the aforementioned OP seeking a decree of divorce under Section 13 (1) (ia) and (ib) of the Hindu Marriage Act, 1955 (for short 'the Act'). His averments in brief are that his marriage with the respondent was solemnized on 24-08-2008 at Thondavada Village as per the Hindu rites. Though the marriage was duly consummated, no children were born out of their wedlock. After the marriage,

the appellant joined the respondent at her matrimonial house. Since the date of marriage, the appellant did not cooperate with the respondent to lead marital life. She used to compare herself with the respondent and belittle him by stating that she has completed teacher training course whereas the respondent has passed only intermediate and that, had she married any other person, her life style would have been different. The appellant used to quarrel with the respondent and his family members without any reasonable cause. She never used to prepare food in the house and attend to the household work. She used to defame the respondent in the presence of others. As the appellant was unwilling to stay along with the parents of the respondent, the latter was forced to set up a separate family to avoid the obligations. Even thereafter, the appellant did not change her attitude and she used to sit idle by watching television without attending to the household work. The respondent was working as a daily labourer at that time and the appellant used to lavishly spend his earnings. The appellant used to leave the matrimonial home and join her mother's house at Tirupathi without the respondent's knowledge. The mediation held by the elders *viz.*, Purnachandra Reddy and Vijayagopal Chetty at the instance of the respondent went

futile. Even after mediation, the appellant did not change her attitude and used to frequently quarrel with the respondent without any justifiable cause and openly proclaim that she is going to give divorce to the respondent. Finally, on 27.12.2008, the appellant has left the matrimonial home and started living separately without cohabitation.

The respondent further pleaded that after leaving the matrimonial home, the appellant has lodged a report before the Chandragiri Police, who heard both the parties and admonished the appellant. Thereafter, the appellant again lodged a report in Crime No.7 of 2009 against the respondent and his family members at Mahila Police Station, Tirupathi, with false allegations in connection with which the respondent and his family members were arrested and later released on bail. Again the appellant has lodged another report in the Chandragiri Police Station, which was registered as Crime No.157 of 2009.

While Crime No.7 of 2009 filed in the Mahila Police Station ended in acquittal, Crime No.157 of 2009 was compromised before the Lok Adalat. The appellant has also filed DVC.No.3 of 2009 against the respondent and his parents. The respondent and his parents suffered a lot of mental agony

due to the unreasonable and cruel attitude of the appellant and on the advice of elders, the respondent paid a sum of Rs.3 lakhs to the appellant by way of three demand drafts, dated 21-03-2013, 03-04-2013 and 03-04-2013 for Rs.1 lakh each drawn on ICICI Bank, Tirupathi, towards full and final settlement of the claim of the appellant. During the pendency of the criminal cases, the appellant has filed HMOP.No.66 of 2012 on the file of the Principal Senior Civil Judge, Tirupathi, and based on the same, she has misrepresented to the District Educational Officer that she is living separately from her husband and got herself transferred to Mangalam Area School in Tirupathi Town. Thereafter, she has encashed the Demand Drafts handed over by the respondent.

The appellant has filed a counter-affidavit denying the allegations levelled by the respondent. She has pleaded that the respondent and his family members ill-treated, harassed and humiliated her for additional dowry of Rs.50,000/-; that they have also demanded a share from the property of her parents; that as she failed to fulfill their demands, they have driven her out from the matrimonial house; and that the mediation held in the presence of Ramachandraiah, Krishnaiah Chetty, Poornachandra and Venugopal Chetty for reunion did not

fructify. On 27-12-2008, the appellant was beaten by the respondent and his family members and driven out from the house for which she lodged a report, but the police failed to take any action. The appellant has, however, admitted that there is no cohabitation between herself and the respondent since 27.12.2008; that she has filed Crime No.7 of 2009 on the file of Mahila Police Station complaining of Dowry harassment, which was taken on file as CC.No.65 of 2012 by the said Court, and that the said case ended in acquittal based on the compromise. She has further admitted her lodging police report against the respondent and his family members in Crime No.157 of 2009, which was taken on file as CC.No.459 of 2009 by the jurisdictional Court, and the same ended in acquittal before the Lok Adalat. She further admitted that she filed DVC.No.3 of 2009 wherein the Court granted protection orders under Sections 18 to 20 of the Domestic Violence Act, 2005, by granting Rs.2,500/- per month towards house rent and Rs.5,000/- towards monthly maintenance. Later, the respondent preferred Crl.A.No.82 of 2010 on the file of the III Additional District Judge, Tirupathi, which was partly allowed by reducing the monthly maintenance to Rs.3,000/-. The revision filed by the appellant against the said order is pending

before this Court. The appellant, however, submitted that due to the advice of the elders, she has compromised with the respondent and his family members and received Rs.3 lakhs by way of Demand Drafts, which were encashed by her and later, she has filed HMOP.No.66 of 2012 before the Principal Senior Civil Judge, Tirupathi, for divorce on the ground of desertion and cruelty, but, she has not pressed the said petition as she intended to live with the respondent.

In order to prove his case, the respondent has examined himself as PW.1 and also examined one of the mediators as PW.2. The appellant has examined herself as RW.1, her sister as RW.2 and another person as RW.3. Exs.B.1 to 7 were marked on the appellant's side and Exs.A.1 to 11 were marked on the respondent's side.

On appreciation of both oral and documentary evidence, the Family Court has decreed the OP by holding that the respondent was able to prove that the appellant has subjected him to cruelty apart from deserting the matrimonial home.

The undisputed facts borne out by record clearly show that the appellant has subjected the respondent to repeated Police reports some of which were registered as Criminal Cases

before the jurisdictional Courts besides a case being registered under the Domestic Violence Act, 2005. Though the appellant has pleaded that the respondent and his parents have demanded additional dowry, no proof in this regard has been adduced by her. The exceptional conduct of the appellant is reflected from the fact that she has received a sum of Rs.3 lakhs from the respondent and compromised with him in Crime No.7 of 2009 of Mahila Police Station and Crime No.157 of 2009 of Chandragiri Police Station. It has also come out in evidence that based on HMOP.No.66 of 2012, she has represented to the District Educational Officer, Chittoor, and ensured a posting in Tirupathi Town by claiming that she is living separately from her husband due to matrimonial disputes.

The Family Court has placed reliance on the judgments of the Apex Court in **K.Srinivas vs K.Sunitha**¹, and **Methuku Suresh @ Suresh Sagar vs. Methuku Anuradha**² while holding that the conduct of the appellant in filing repeated criminal complaints and withdrawing the same after receiving money constitutes cruelty. Though, as held by the Apex Court in **Methuku Suresh** (2 supra), mere filing of Criminal Cases

¹ (2015) 3 Supreme Court Cases (Criminal) 400

² (2011) (3) ALD 154 (DB)

does not *per se* constitute cruelty, whether such filing of criminal cases amounts to cruelty or not depends upon the conduct of the parties in each case.

On the admitted facts narrated above, we are convinced that the appellant has exhibited her wickedness by subjecting the respondent, who is only a daily wage labourer, to repeated criminal cases and her vileness by compromising after receiving substantial sum of Rs.3 lakhs from him. The act of the appellant in filing HMOP.No.66 of 2012 and withdrawing the same after receiving money also reflects her devious conduct. The appellant sought to explain this conduct on her part by stating that she received the said sum of Rs.3 lakhs towards medical expenses for the injuries she has allegedly received at the hands of the respondent and his parents. This plea of the appellant is not supported by any evidence whatsoever. Her further plea that she has withdrawn HMOP.No.66 of 2012 filed for divorce in order live with the respondent also appears to be specious, for, if she had the genuine intention of living with him and continuing her conjugal life with him, she is not expected to receive the sum of Rs.3 lakhs from him. In our opinion, the appellant has acted in a manner unbecoming of a person, who has the intention to live with her husband sinking

all the differences. On proper appreciation of the evidence on record, the Court below has arrived at the right conclusion that the appellant has not only subjected the respondent to cruelty but also left the matrimonial home on 27-12-2008 without any reasonable cause and thereby, she is guilty of desertion. The Family Court has also placed reliance on the judgment of the Supreme Court in **Samar Ghosh vs. Jaya Ghosh**³, and in our opinion rightly, in coming to the conclusion that the marriage between the parties has irretrievably broken down and that no purpose would be served by continuing the marital ties between them. On a careful consideration of the facts and circumstances of the case and the evidence on record, we are of the opinion that the Order and Decree, dated 31-08-2016, in FCOP.No.37 of 2014 on the file of the Family Court does not suffer from any infirmities either in law or on facts warranting our interference in this FCA.

For the aforementioned reasons, the FCA fails and the same is, accordingly, dismissed.

³ (2007) 4 SCC 511

As a sequel to dismissal of the FCA, FCAMP.No.463 of 2016, filed by the appellant for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(T.Rajani, J)

Dt: 14th March, 2017

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