

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SRI JUSTICE P. KESHAVA RAO

F.C.A.No.210 of 2017

Order : (per Hon'ble Sri Justice P. Keshava Rao)

Heard the submissions of the appellant as well as the respondent who appeared in person.

2. During the course of hearing, both parties have consented to hear the main appeal itself. Accordingly, the matter is heard on merits in the main appeal.

3. The facts of the case are that originally the respondent herein filed a petition in O.P.No.121 of 2008 against the appellant herein for dissolution of marriage under Section 13(1)(ia)(ib) of Hindu Marriage Act on the file of the Court of the Family Judge, at L.B.Nagar, Ranga Reddy District .

4. It is the case of the respondent that his marriage with appellant herein was performed and solemnized on 25.11.2001 at Vijayawada. At the marriage itself, the paternal uncle of the appellant herein abused the respondent in filthy language in front of the relatives and elderly persons, but due to intervention of the elders, the issue was pacified and the marriage was consummated. The appellant joined the respondent at Kanchanbagh, Hyderabad and led marital life initially for a period of six months and thereafter the problems

started when the mother-in-law of the appellant and the junior paternal uncle of the respondent herein visited his house and from there onwards the appellant started abusing the respondent in filthy language and behaved in a very strange manner. The same was informed to the family members of the appellant herein. The respondent joined as Assistant Driver in the Indian Railways on 05.02.2000 and the same was informed to the appellant prior to the marriage itself. But, the appellant along with her parents, brother-in-law treated the respondent herein very badly and abused him in most filthy language on 21.06.2002 which resulted in shifting of the respondent to Dornakal and when the in-laws of the respondent started visiting them, once again the quarrel started between them. The appellant used to complain that the respondent is undergraduate with diploma and her parents forcibly performed her marriage because he is a government employee and did not allow her to marry her class-mate who is a gold medalist. The appellant used to quarrel with the neighbours and because of the said attitude, and because of unruly behaviour of the appellant herein, they changed two houses within short span. She used to quarrel during night times and used to pack her luggage and threatened to walk out resulting in sleepless nights to the respondent and he could not concentrate on his duties. Consequently, the respondent was decategorised from the

designation of Assistant Engine Driver to Commercial Department as Clerk. The appellant used to attribute allegations of illegal relationship with neighbouring ladies and as a result, the respondent was constrained to shift his residence to Janapriya Mahanagar Apartment, Meerpet. During their stay at Vijayawada for three months, on 29.08.2003 the appellant filed a complaint against the respondent vide Crime No.216 of 2003 at Police Station, II Town for the offences punishable under Section 498-A IPC and Section 3 of Dowry Prohibition Act. In the said crime, the respondent was picked up by the police along with family members from Hyderabad and took them to Vijayawada. Later, the appellant has withdrawn the said complaint after embarrassing the respondent from all corners and thereafter the said case was closed as mistake of fact in the year 2007. The appellant never respected the respondent nor his parents and always made false complaints due to which the respondent became sick and was hospitalized with severe hypertension and cervical spondylitis and though the respondent was in hospital for three days, the appellant never came to see him and used to curse the marriage and prayed the God for the death of respondent and she used to curse that if not today, some day the respondent would become paralytic as per doctor's advise. The respondent also complained that the appellant used to profess Christianity by

keeping cross on her neck and her mother, paternal uncle, brother used to give sermons and harass the respondent to convert into Christianity as there were great monetary benefits and for the first time the respondent came to know from the mouth of the appellant that they were converted into Christianity even before the marriage. When the respondent refused, the appellant threatened to walk out of the marriage and commit suicide making the respondent responsible for the same. The appellant never changed her attitude and used to behave in a very rude manner and pressurized the respondent to get money for her lavish life and when he protested, she approached the legal aid centre for women and demanded Rs.5 lakhs to settle the matter, failing which she threatened with dire consequences and foist a dowry harassment case against the respondent and his family members. The respondent also stated in the petition that the appellant never allowed him to have normal marital life due to fear of pregnancy and of big baby syndrome due to diabetes and on 21.11.2005 she deserted the respondent once again. Though the respondent approached the appellant at Lallaguda and requested her to forget the things to join his company, but the appellant and her family members never came forward to join his company and refused to stay with him. On 29.11.2005 the appellant filed another criminal case for dowry harassment vide Crime No.1327 of 2005 of Police

Station, L.B.Nagar in which the respondent and his family members obtained bail by incurring huge money. On 23.02.2006 the appellant along with her mother, brother and 10 to 15 hooligans came in an auto rickshaws and threatened the respondent that they will see his end and attacked him when he along with his friend K.Sva Kumar was having tea at Rajya Lakshmi Tea and Tiffin Centre situated at Balapur X Roads. Again on 24.04.2006 the appellant along with her hooligans again attacked the shop at Mithila Nagar Complex where his own sister running a shop under the name and style of M/s. Shakti Consultants, and damaged the property for which a petty case in Crime No.117 of 2006 for the offence under Section 3(12) of A.P. Towns Nuisances Act was booked and the appellant was convicted and sentenced to pay fine of Rs.50/-. In spite of the same, the appellant filed yet another case before the Women's Commissionerate vide Crime No.954 of 2006 against the respondent in which he received a notice. In those circumstances, the respondent filed a petition for dissolution of marriage between him and the appellant herein with a specific pleading that since 29.11.2005 they have been living separately and the marital relationship between them is irretrievably broken down and there is no chance or likelihood of living together as wife and husband.

5. Per contra, the appellant herein filed counter-affidavit denying the petition averments and contended inter alia that at the time of her marriage, her parents gave altogether Rs.3,50,000/- towards dowry and the respondent deposited the said amount in Punjab National Bank. Her parents also gave 20 kasula gold ornaments and also an additional amount of Rs.1 lakh to purchase the furniture. The respondent mortgaged her gold necklace, thin gold chain with Punjab National Bank and obtained the loan of Rs.7,000/- in the month of February, 2003. The respondent purchased Bajaj Kawasaki bike for Rs.50,000/- and with the remaining Rs.50,000/- he purchased washing machine, iron box etc. The appellant also stated that for the first time on 19.04.2003 the respondent and his family members necked out her from the house after taking her jewellery including mangalasuthram. The appellant also stated that the respondent and his parents removed maid servant and compelled her to do all the household work and started harassing her to get all the ration (food items) from her parents' house, otherwise they would not provide food to her apart from stating that the dowry was very less and they might have get more than Rs.10 lakhs as dowry from the other parties. The appellant stated in the counter that at the time of marriage, the respondent was working as Assistant Driver in Railways and was getting Rs.15,000/- per month and within two months of their marriage, the respondent and his family

members did not like the job and decided to resign and to start some business on his own and for that purpose they demanded additional dowry of Rs.1 lakh. When the respondent was working at Dornakal, the sisters of the respondent used to come to flat No.1217-B and abused her in heinous manner and they never allowed her family members to visit her. The appellant approached her mother on 19.04.2003 when she was driven out from the house of the respondent. When they tried to convince, it appears the respondent and his family members stated that unless Rs.1 lakh is paid, they will not allow the appellant into the house or otherwise they will perform the second marriage to the respondent. The appellant studied in schools, colleges which belong to Christians and the allegations of the respondent that they were converted into Christianity before the marriage is false and the said allegations are made only to avoid payment of maintenance and also to get divorce easily which is a cruel plan hatched by the respondent and his family members. She also stated that in the month of March, 2004 she got pregnancy for the first time and during the third month of pregnancy, the respondent forcibly made her to consume many tablets, papaya fruit and kicked in her stomach resulting in abortion and during the second pregnancy also she was administered some tablets and accordingly she lost second pregnancy and thereafter she was made to consume tablets

forcibly. The appellant tolerated of the said harassment with the fond hope that one day or the other, the respondent would realize or otherwise her married life will be spoiled. On 04.12.2005 L.B.Nagar Police Station registered a crime for the offence under Section 498-A IPC against the respondent and since then the appellant is living with her parents at Mettuguda. The respondent also got his concubine to the police station and stated that the appellant should not come to the flat No.1217-B and she should stay at Hyderabad and if she ventures to stay at Flat No.1217-B, the respondent and his family members will file murder and kidnap cases against the appellant.

6. During the pendency of the petition before the court below, the appellant herein filed an application in I.A.No.1684 of 2011 under Section 25 of Hindu Marriage Act to award a sum of Rs.20 lakhs towards permanent alimony and pass such other suitable orders.

7. The respondent in support of his claim examined himself as PW-1 and marked Exs.P-1 to P-22. During the course of his cross-examination, Exs:R-1 and R-2 were marked. On the other hand, the appellant examined herself as RW-1 and marked Exs:R-1 to R-25. The learned Family Judge after hearing both sides, framed the following two issues:

- i) *Whether the petitioner/husband is entitled to seek the divorce on the ground of cruelty and desertion?*
- ii) *To what relief?*

8. After appreciating the evidence on record, the Court below was pleased to hold that in view of several complaints made by the appellant itself goes to show that the appellant harassed the respondent on the allegation of additional dowry and some other allegations which are not at all supported by any piece of evidence. The court below also pleased to observe the deposition of respondent about the attitude and temperament of the appellant during the period of her marital life with the respondent, and the look has not shaken in any manner. On the other hand, the appellant in her cross-examination admitted that she had withdrawn the case registered against the respondent for the offence punishable under Section 498-A IPC and she also admitted that she demanded Rs.20 lakhs towards her permanent alimony and the said admission goes to strengthen the version of the respondent that she demanded Rs.5 lakhs to settle the matter between them. In those circumstances, the court below was pleased to hold that for the last more than 10 years the appellant as well as the respondent are living separately and the respondent is entitled to seek the relief of dissolution of

marriage on the ground of cruelty and accordingly answered the said point in favour of the respondent.

9. As far as the maintenance is concerned, basing on the evidence adduced, and looking into the provisions of Section 25 of the Hindu Marriage Act, the Court below by orders dated 09.07.2016 directed the respondent to pay a sum of Rs.2 lakhs towards permanent alimony to the appellant and allowed the original petition dissolving the marriage between the appellant and the respondent by granting a decree of divorce.

10. Aggrieved by the said orders, dated 09.07.2016, the appellant herein who is the respondent before the court below filed the present appeal.

11. During the course of hearing on 16.10.2017 and 23.10.2017 on interaction with both the parties, they have indicated that they are not interested to live together. However, the appellant insisted for a sum of Rs.20 lakhs towards permanent alimony for which the respondent refused to pay the same on the ground that his financial position will not permit him for the same. In those circumstances, the appellant on her own volition reduced the permanent alimony to Rs.10 lakhs and also left it to the discretion of this Court to fix a reasonable amount towards permanent alimony. It is also

admitted by the appellant that the respondent has paid the entire amount as directed by the Court below.

12. During the course of hearing, it is brought to the notice of the Court that the respondent is working in Railways and is having a Flat bearing No. 1217-B and the permanent alimony fixed by the Court below is too low when compared to the status of living of the respondent. However, the respondent has submitted that he is not having any moveable and immovable properties, that he has to maintain his old aged parents and unmarried sister. On the other hand, he also contended that the appellant is working in Chaithanya College/School since she is highly qualified.

13. Since the parties agreed and indicated before the Court that they are not interested to live together, the only point left open is:

Whether the permanent alimony as fixed by the Court below is just and proper in the present standard of life?

14. From a perusal of the material placed on record in this Court, the respondent is aged about 50 years and whereas, the appellant is aged about 48 years. The record produced in the form of Apex Hospital prescription (Ex.R-19) indicates that the appellant herein is suffering with diabetes and also asthma. Though, the appellant has stated that she has no

source of income, the respondent has stoutly denied and submitted that the appellant because of her high qualification is working in Chaithanya College/School and she is having her source of income to eke out her livelihood. But, no such material is placed before the Court. The respondent also submitted that he has already resigned because of the health problems and the harassment and torture meted out to him in the hands of the appellant and at present he is an un-employee. Upon such submission, when this Court put a query as to when his resignation is accepted, the respondent stated that it is not yet accepted and it is likely to be accepted. However, the medical record produced in the court along with the counter in this appeal reveal the respondent is also suffering with diabetes and he has to maintain his old aged parents and unmarried sister apart from medical expenditure.

15. As per Section 25 of the Hindu Marriage Act, the court exercising jurisdiction, at any time of passing any decree or order, award maintenance or a permanent alimony depending on the income and other property of the spouse and as it may seem to the Court to be just and proper.

16. In view of the above provision, and in the facts and circumstances of the present case, since the appellant is suffering with diabetes and asthma and also keeping in view the cost of living in the present days, the permanent alimony

as awarded by the Court below at Rs.2 lakhs is low compared to the status of the respondent. Therefore, we deem it just and reasonable to enhance the said permanent alimony from Rs.2 lakhs to Rs.4 lakhs. However, we hereby direct the respondent to continue the payment of monthly maintenance of Rs.2,500/- as already awarded by the learned Magistrate in M.C.No. 43 of 2006 in conformity with the orders of this Court in C.R.P.No.1358 of 2007.

17. Accordingly, the appeal is allowed in part enhancing the permanent alimony from Rs.2,00,000/- to Rs.4,00,000/- (Rupees four lakhs only). The respondent is directed to continue to pay the monthly maintenance of Rs.2500/- (Rupees two thousand five hundred only) as directed by the learned Judge, Family Court, Secunderabad in M.C.No.43 of 2006. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE P. KESHAVA RAO

Date:17.11.2017.
CCM

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SRI JUSTICE P. KESHAVA RAO



F.C.A.No.210 of 2017

(Judgment of the Bench delivered by
The Hon'ble Sri Justice P. Keshava Rao)

Date:17.11.2017

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