

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

HON' BLE SRI JUSTICE P. KESHAVA RAO

CMA Nos. 399 & 430 of 2005

COMMON ORDER: (per Jus.C.Praveen Kumar)

These two appeals arise out of the orders dated 24.01.2005, passed in HMO.P.Nos.19 & 50 of 2002 by the Senior Civil Judge, Mahabubnagar.

2. The appellant-husband in both these appeals filed HMOP No.50 of 2002 under Section 9 of the Hindu Marriage Act (for short, 'the Act') for restitution of conjugal rights, which was rejected, while HMOP No.19 of 2002 filed by the respondent herein under 13 (i)(a) of the Act, seeking dissolution of marriage was allowed.

3. The facts of the case are that the marriage between the petitioner-wife and respondent-husband took place on 11.09.1999 at Thirumala Devuni Gutta, Mahabubnagar, as per Hindu rites and customs. Both of them lived happily for four months and thereafter disputes arose between them. Hence, since 15.02.2000, the respondent-wife has been staying with her parents at Mahabubnagar. It is stated that the petitioner-husband originally married the elder sister of the respondent in the year 1988 and out of wedlock, two sons and two daughters were born. On 23.05.1999, the first wife of the petitioner committed suicide and at the instance of both the parents, the

respondent accepted to marry the petitioner-husband for the welfare of children. It was further stated that after one month of their marriage, the appellant started beating the respondent in a drunken condition. The respondent was working as a teacher initially at Maddigatla village and subsequently she moved to Jadcherla. While she was working there, the petitioner-husband used to observe her movements and started questioning her as to why she was talking to her male colleagues, thereby suspected her conduct. Due to the cruel conduct of the appellant, a panchayat was held wherein the elders advised the husband to be amicable with the respondent-wife. It is the case of the respondent-wife in HMOP No.19 of 2002 that inspite of rendering services to the children of the petitioner since the date of their marriage, the petitioner used to pick up a quarrel. As all the efforts made by the respondent and her parents become futile, she filed HMOP No.19 of 2002, which was allowed granting decree of divorce on the ground of cruelty. Challenging the same, the respondent therein-husband filed CMA No.399 of 2005 before this Court. Earlier, the husband filed HMOP No.50 of 2002 under Section 9 of the Act for restitution of conjugal rights, which was rejected. Challenging the same, CMA No.430 of 2005 came to be filed by the petitioner-husband.

4. In HMOP No.50 of 2002, on behalf of petitioner (husband) therein, PWs.1 to 4 were examined and on behalf of respondent (wife) therein, RWs.1 to 3. In HMOP No.19 of 2002, petitioner

herself examined as PW1 and also examined two others as PWs.2 and 3. On behalf of respondent (husband) therein, he himself got examined as RW1. No oral or documentary evidence was adduced on either side.

5. On appreciation of evidence on record, the learned Senior Civil Judge allowed HMOP No.19 of 2002, filed by the wife and dismissed HMOP No.50 of 2002 filed by the husband.

6. Learned counsel for the appellant - husband would submit that there is absolutely no evidence to show that the husband beat the wife under intoxication and subjected her to cruelty. The main ground urged by the learned counsel for the appellant is that there is absolutely no matrimonial disputes between the parties and the allegation of he beating the respondent in a drunken condition is without any basis. The same is opposed by the learned counsel for the respondent – wife stating that the evidence of RWs.1 to 3 in HMOP No.50 of 2002 itself is sufficient to prove the allegations of cruelty by the husband.

7. It is to be noted here that the marriage between the parties took place after the death of the first wife of the appellant herein. It is stated by the husband that his wife was not showing any responsibility towards the children born through her first wife and started living separately from 2002. The same is opposed by the respondent stating that the appellant-husband never lead a happy marital life after her marriage with the

appellant. It is the case of the respondent that her husband used to suspect her when she talks to her male colleagues and also used to observe her movements by going to her work place. The said allegations were denied by the learned counsel for the appellant.

8. The issue whether the acts of appellant amounts to cruelty need not be gone into at this stage, in view of the statements made by the learned counsel for the appellant that even if the O.P. filed for restitution of conjugal rights is allowed, it is difficult to believe that both of them would live together, as they are living separately since last 12 years.

9. In *Samar Ghosh Vs. Jaya Ghosh*¹, the apex Court held that once the parties are separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage is broken down and that the Court, no doubt, would seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irretrievable, then divorce should not be withheld. It has further held that the consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

Further, it also referred to what mental cruelty means. The Apex Court held that “when there has been a long period of

¹ {(2007) 4 SCC 511}

continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

While referring the above judgment, this Court in *Kalapatapu Lakshmi Bharati Vs. Kalapatapu Sai Kumar*² (CMA Nos.470 of 2016 and batch), held as under:

“In the light of the undisputed fact that the parties have been living separately for nearly 14 years, there may be no escape from the conclusion that the marriage has irretrievably broken down. As held by the Supreme Court, a long time separation itself would lead to mental cruelty. Therefore, irrespective of the findings of the lower Court on the failure of the appellant to prove mental cruelty, she is entitled to a decree for dissolution of marriage on the sole reason that there is no possibility for reunion of the parties in order to live together. Since the marriage between the parties has irretrievably broken down, any attempt to force the parties to live together would tantamount to causing mental cruelty and would only prolong the mental agony of the parties for the rest of their lives”.

10. In view of the judgment referred to above and in the light of the undisputed fact that both the parties were living separately since last 12 to 13 years, even if the application filed by the husband seeking restitution of conjugal rights is allowed,

² =2007 (3) ALT 62 (SC)

possibility of both of them living together is remote. Hence, we see no grounds to interfere with the orders passed by the Court below in HMOP No.19 of 2002 and HMOP No.50 of 2002.

11. Accordingly, the appeals filed by the appellant-husband are dismissed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions pending if any in these appeals, shall stand closed.

C. PRAVEEN KUMAR, J

P.KESHA RAO, J

23.10.2017
vnb

