

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER
CIVIL MISCELLANEOUS APPEAL NO.1121 OF 2005**

J U D G M E N T
(Per Sri Justice Sanjay Kumar)

Aggrieved by the dismissal of his petition for divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (for brevity, 'the Act of 1955'), the husband is in appeal.

He filed O.P.No.2 of 2002 before the learned Senior Civil Judge, Jagtial, alleging that his wife was cruel to him warranting dissolution of his marriage by a decree of divorce. By order dated 24.08.2005, the learned Senior Civil Judge, Jagtial, disallowed his plea and dismissed the petition. Hence, this appeal under Section 28 of the Act of 1955.

The docket reflects that this Court examined the parties with the hope of effecting conciliation between them but to no avail.

Heard Sri K.Jagadishwar Reddy, learned counsel for the appellant-husband, and Sri K.Venu Madhav, learned counsel for the respondent-wife.

The record reflects that the marriage between the parties was solemnized on 30.03.2000 and they lived together for hardly two months thereafter. A son was born out of their wedlock on 12.02.2001 and is presently with his mother.

The case of the husband was that the wife developed ill-will against him and began to ill-treat him, abusing him in filthy language even in the presence of relations and friends resulting in mental torture. She also filed a complaint with the police alleging dowry harassment but the same was closed when the police advised them to lead an amicable life. She then joined him at Khanapur Village on 14.10.2000 but left again on 18.10.2000. The husband claimed that

he was not even informed of the birth of his son and was not invited to his cradle ceremony. He claimed that despite the same, he went to the wife's house but she abused and insulted him in the presence of her relations. He returned and a panchayat was convened by the caste elders. However, the wife did not join him despite his request. Hence, he filed the petition for divorce on the ground of cruelty.

On the other hand, the wife claimed that her mother had presented gold worth Rs.70,000/- and household articles worth Rs.1,00,000/- to her husband as dowry, but just 15 days after their marriage, her husband and his parents started harassing her for additional dowry of Rs.50,000/-. When she expressed her inability to comply, she was tortured and when the husband was at Bheevandi, during the fifth month of her pregnancy, his parents necked her out from their house at Khanapur Village. That was the reason why she approached the Superintendent of Police, Karimnagar, and on his directions, the Inspector of Police, Koratla, summoned her husband and his parents and obtained an undertaking for good behaviour and sent her back to the marital home. However, within thirteen days, her husband and his parents again started harassing her and finally necked her out of the house. She stated that her husband came for the 21st day ceremony of their son upon invitation but without taking any food, he left. She stated that she was always ready to go and join the company of her husband and that the petition was without merit.

The husband examined himself as P.W.1 and two other witnesses. The wife deposed as a witness and also examined her mother. No documents were marked by either side.

Upon considering the evidence, the learned Senior Civil Judge, Jagtial, found that as per the petition filed, the husband alleged that

the wife used to harass him by abusing him in filthy language and left his house in his absence without any reason. But in his evidence, he deposed to the effect that his mother-in-law was responsible for his wife leaving his company. He made several other allegations against the mother-in-law which did not find mention in the petition. He alleged that she used to sit in the bedroom, thereby disturbing their marital life. He went to the extent of stating that his mother-in-law asked him to have sex with her! This shocking allegation also did not find mention in the petition. His deposition before the Court was thus directed against his mother-in-law and not his wife. This diatribe against the mother-in-law without any act of cruelty being attributed to the wife was the most significant factor which weighed with the Court below. The other witnesses examined by him, P.Ws.2 and 3, also spoke against the mother-in-law alleging that she disturbed the matrimonial life of the couple. In effect, there were no specific allegations of cruelty attributed to the wife during the oral evidence. Except for stating baldly that she used to ill-treat him and abuse him in filthy language in the presence of his friends and relations, the husband did not choose to adduce any evidence in support of this allegation. His contention that she did not even inform him or invite him after the birth of their child was shown to be without any basis as his own witnesses, P.Ws.2 and 3, stated that he visited the hospital when the baby was born and also attended the house of the wife for the cradle ceremony. The Court below therefore found no evidence of cruelty on the part of the wife warranting dissolution of the marriage at the behest of the husband under Section 13(1)(ia) of the Act of 1955.

Having perused the material on record in its entirety, we find that the couple hardly lived together for two months in all and no tangible evidence was let in by the husband in proof of his allegation that the wife subjected him to cruelty by ill-treatment and abuse. No witnesses were examined in support of this allegation. On the other hand, an entirely different case was built up during the oral testimony by bringing in the mother-in-law. The husband went to the extent of saying that his mother-in-law solicited sex with him! Had this been the case from the start, he would not have failed to mention it in the petition itself. The desperate attempt on the part of the husband to prejudice the Court one way or the other so as to part with his wife of two months, notwithstanding the fact that she had given birth to his son, was clearly demonstrable. Further, as already noted *supra*, not even a single act of cruelty was specifically attributed to the wife during the course of the evidence.

We therefore find no error in the order under appeal warranting interference.

The Civil Miscellaneous Appeal is devoid of merit and is accordingly dismissed. No order as to costs.

SANJAY KUMAR,J

Dr.SHAMEEM AKTHER,J

30th AUGUST, 2017
PGS