

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

CIVIL MISCELLANEOUS APPEAL No.231 of 2006

JUDGMENT : *(Per Hon'ble Sri Justice Suresh Kumar Kait)*

Vide the present appeal, the appellant has assailed the order and decree dated 10th February 2006, passed in M.O.P.No.1242 of 2003, whereby, the Principal Senior Civil Judge, Nandyal has dissolved the marriage dated 3rd July 1999 between the appellant and respondent.

2. The case of the respondent in aforesaid O.P. before the trial Court was that the marriage between the appellant and respondent had taken place on 03.07.1999 as per Hindu rites and customs. Out of wedlock, a male child was born to them. Subsequently, the appellant came to the house of the respondent but she completely changed her attitude towards the respondent. The appellant did not cooperate with the respondent in matrimonial life and left the house without intimation to the respondent. When respondent went to the parental house of the appellant, the appellant and her parents assaulted and humiliated the respondent. The respondent found some love letters sent by one Prasad, in the suitcase of the appellant. The appellant confessed the same and she voluntarily wrote a paper admitting her relationship with said Prasad. Having bore grudge due to the said incident, the appellant started ill-treating the respondent and his parents. On one occasion, the appellant and her parents insulted the respondent by abusing in filthy language. The appellant also filed maintenance case in M.C.No.16 of 2003 on the file of J.M.F.C., Nandyal. The appellant deserted the respondent since more

than one year 8 months prior to filing of O.P. Due to the acts of the appellant, the reputation of respondent was affected badly in the society, due to which, the respondent suffered mental agony. The appellant is acting according to the directions of her parents. The Deputy Superintendent of Police, Nandyal held Panchayat, before whom, the appellant took away all the jewelry from the respondent. As there was no chance of re-union, O.P. was filed before the trial Court for dissolution of marriage.

3. The appellant herein filed counter in the O.P., admitting her marriage with respondent and birth of male child to them. However, she denied the remaining allegations made in the petition. She alleged that the respondent and his parents harassed her for additional dowry and they did not provide food and clothing to her. She admitted the panchayat held at Kurnool. Another panchayat was held by M.L.A., Nandyal and one more panchayat was held at Banaganapalli. But, the respondent did not agree to change his wayward life style. The respondent forcibly took the signature of the appellant on a white paper. The respondent beat the appellant and snatched away the gold chain (*Thalibottu*) from her neck. In the presence of Deputy Superintendent of Police, Nandyal, the respondent handed over *Thalibottu* to the appellant. In view of above, there were no justifiable and reasonable grounds before the trial Court, to dissolve the marriage.

4. Learned counsel appearing on behalf of the appellant submitted that the respondent filed petition under Section 13(1)(i)(ia) of Hindu

Marriage Act, 1955, seeking dissolution of marriage between appellant and respondent by a decree of divorce on the grounds of desertion, cruelty and adultery. Since the respondent could not establish his case, the Court below dismissed his petition on the grounds of desertion and adultery, however, allowed the petition solely on the ground of cruelty. He submits that there is no evidence led by the respondent to prove cruelty. However, the Court below held that if there is no love last between the parties, the home collapses and life becomes hell. Ex.A-1, though is not a proof for adultery, such letter written by appellant admitting her love affair with another person would undoubtedly constitute mental cruelty. More over, the appellant used to abuse the respondent in vulgar language and the appellant and her parents even beat the respondent.

5. Learned counsel appearing on behalf of appellant further submitted that if Ex.A-1 is taken into consideration without any supposition, that itself cannot be a ground for cruelty, for the reason that the aforesaid document is nothing but admission of the appellant that she had friendship with one Prasad, she used to go to his house and he used to come to her house. She specifically stated that there was no further relationship whatsoever with the said Prasad, except friendship. First of all, whatever the friendship, that was only before the marriage and the appellant never had any acquaintance with said Prasad after marriage. Therefore, the contents of Ex.A-1 cannot be considered to establish the ground of cruelty. Thus, the order dated 10th February 2006 passed in

M.O.P.No.1242 of 2003 deserves to be set aside and the appeal is to be allowed.

6. We have heard the counsel for the parties and perused the record.

7. It is not in dispute that the respondent filed petition before the trial Court for dissolution of marriage on the grounds of desertion, cruelty and adultery. It is also not in dispute that the respondent failed to establish his case on the grounds of desertion and adultery. PW-1/respondent deposed before the trial Court that when he questioned her virginity and behaviour, appellant confessed her relationship with one Prasad. Boring grudge as the said relationship came to the knowledge of respondent, appellant started behaving violently and started abusing him in filthy language in the presence of his parents. The said vulgar acts were committed on the face of the respondent even at the house of the parents of appellant. The said cruel behaviour subsequently had reached to a high pitch. The appellant, though a graduate, used vulgar language before his relations.

8. PW-2, in his evidence, has also narrated the aforesaid behaviour of the appellant. He deposed that in his presence also, the appellant and her parents used vulgar language on the face of the respondent and hurt his feelings. The 2nd panchayat was held at Nandyal in Chanikya lodge and another panchayat was held at Banaganapalli. In those panchayats, the appellant and her parents humiliated the respondent and used filthy language against him.

9. It is not in dispute that the appellant admitted Ex.A-1, but submitted that her signatures were taken forcibly on the said paper.

10. It is to be noted that cruelty may be either physical or mental. There are no specific parametres to measure it. There is no dispute that the appellant had written Ex.A-1 admitting her affair with one Prasad, of course, she alleged that it was obtained by force. On the above issue, the learned trial Court observed *inter alia* that it was for the appellant to prove that Ex.A-1 was not voluntarily written. If really the respondent obtained Ex.A-1 by force, appellant could have complained of the same to the Police or to the village elders. Even according to the appellant, number of panchayats were held by elders as well as by the Deputy Superintendent of Police, Nandyal, but it is not known as to why the said issue was not raised by the appellant in those panchayats. No Indian wife would write such a letter admitting love affairs with others, that too, to her husband.

11. Even assuming that appellant failed to prove that Ex.A-1 was obtained by force, still, Ex.A-1 in our view, will not disclose any sexual relationship between her and Prasad, except friendship. It is admitted by the appellant that she had friendship with one Prasad. She used to go to his house and said Prasad used to come to her house. She specifically stated that she had no other relation with him except friendship. In our view, a friendship cannot be termed as to having sexual relations. The friendship may be because of liking to each other, may be near and dear, may be in the same institution or may be in the same colony. If two

individuals of opposite sex are meeting and chatting, that does not mean there is sexual relation between them. If a woman discloses that she had a male friend prior to the marriage, the husband cannot take advantage of it, to say that prior to marriage, she lived adulterous life. The meaning of adultery as mentioned in Section 13(1)(i) of Hindu Marriage Act is that any of the party to the marriage should live in adultery after the marriage. Therefore, any such act prior to the marriage does not come under the said definition. In the present case, it is nowhere admitted by the appellant that she had sexual relation with Prasad after or before the marriage. We are in 21st Century. If husband and wife are open to each other, it should be with heart and mind. Even if any one of them fairly concedes the wrong done prior to the marriage, the other side should not take it as a prestige issue, rather appreciate the honest and fair disclosure. The discussion between the husband and wife is not a discussion or admission before the public and such discussion cannot be taken as damage of reputation of either of the parties. A reality of the life is, there is no virginity test of a couple before marriage through out the world. Therefore, marriage is based on 'as is where is basis'. One should not think beyond it. That is the principle of marriage and life.

12. It is not in dispute that learned trial Court opined that Ex.A-1 is not a proof for adultery. Therefore, the respondent failed to establish the ground of adultery before the trial Court against the appellant.

13. The evidence of PWs.1 and 2 established that the parents of the appellant, in the presence of Deputy Superintendent of Police, Nandyal,

took away all the gold ornaments including *Thalibottu* presented at the time of marriage. The appellant did not file any petition for restoration of conjugal rites. There is a well-found saying that, 'a house is built with bricks and stones, but a home is built with love and affection'. Therefore, a matrimonial home cannot be built by bricks. If there is no love last between the parties, the home collapses and life becomes hell. The respondent has established that there is irretrievable breakdown of marriage. It is also established by the respondent that love and affection have vanished between them and in that place, the seeds of hatred have sprouted.

14. Though it is submitted by the learned counsel appeared on behalf of appellant during the course of arguments that the appellant is ready to join the respondent, the fact remains that the appellant filed M.C.No.16 of 2003 on the file of J.M.F.C., Nandyal for grant of maintenance and the respondent filed M.O.P.No.1242 of 2003 for dissolution of marriage. It is admitted fact that since filing of those cases in 2003, the appellant and respondent have never met at any point of time.

15. In view of the facts recorded above, we are of the considered opinion that no useful purpose would be served if the appellant and respondent are ordered to stay together. Mutual respect and understanding are essential for happy married life. But, in this case, the same are lacking. The marital relationship, emotions and love and affection between the appellant and respondent are practically dead due to civil and criminal proceedings initiated against each other. In addition,

evidence of PWs.1 and 2 established that the appellant used filthy language against respondent in the panchayats held and also in the presence of her parents.

16. In view of above discussion, we find no illegality or perversity in the order passed by the trial Court, whereby, the marriage between the appellant and respondent is dissolved by decree of divorce on the ground of cruelty.

17. Finding no merit in the instant appeal, the same is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.



SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

8th December, 2017

ajr