

THE HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR

And

THE HONOURABLE MS. JUSTICE J. UMADEVI

C.M.A.No.464 OF 2004

JUDGMENT: (per Hon'ble Sri Justice C.Praveen Kumar)

1) The appellant, who is the wife of the respondent, filed the present appeal under Section 28 of the Hindu Marriage Act, aggrieved by the order and decree dated 03.01.2004, passed in O.P.No.30 of 2003 on the file of the Judge, Family Court, Secunderabad, wherein and whereunder a petition filed by the husband under Section 13 (1) (ia) and (ib) of Hindu Marriage Act, for dissolution of the marriage, was allowed.

2) For the sake of convenience, the parties hereinafter will be referred to as arrayed in O.P.

3) The averments in the O.P. are as under:

The marriage of the petitioner with the respondent took place on 30.05.1993, as per Hindu rites and customs. By the time of marriage, the petitioner was a bank employee working in State Bank of India. The petitioner and respondent stayed as wife and husband at Regimental Bazar, Secunderabad. Six months after the marriage, the father of the petitioner died. It is said that ever since the date of marriage, the respondent was instigating the

petitioner to set up a separate family, for which the petitioner requested her not to insist for such a demand. Thereafter, she started harassing the petitioner on one pretext or the other. It is said that the parents and brothers of the respondent used to come regularly to the house of the petitioner and on their instigation the respondent used to create hurdles to the petitioner. They used to demand for vacating the house and take separate house in their locality, for which the petitioner denied. It is said that the respondent never cared for the petitioner. Though there are several disturbances, the respondent became pregnant. During her pregnancy, the respondent used to visit her parents house frequently without intimating the petitioner and used to spend several days in her parents house. When the same was questioned by the petitioner, the father of the respondent used to say that the respondent is the only daughter to them and that there is nothing wrong if she comes to his house. It is further stated that the respondent and her family members hatched up a plan and with a malafide intention set up one O.R.Bharathi and through her filed a report before the police against the petitioner and his family members. It is said that due to love and affection towards the respondent and the child, the petitioner used to attend the house of the respondent, which resulted in second pregnancy. Thereafter the respondent showed her true colours again and started acts of cruelty by not allowing the petitioner to come to

her parents house. It is said that in the month of February, 1997, she lodged a report making false allegations against the petitioner and his family members and subjected them to mental cruelty, for which the petitioner had to take judicial recourse. While the investigation in the above case was pending, the respondent lodged another report before the Women Police Station, Begumpet, making identical allegations. It is said that the police made every effort to arrest all the family members. In fact, the petitioner was taken to the police station and kept for a day. The averments in the said petition also show that the respondent gave a legal notice through her advocate calling upon the petitioner to give consent for divorce, within three days. Even then the petitioner claims to have waited for a considerable period with a hope that there would be change in her attitude, but there is no improvement. Hence, he filed an application seeking dissolution of the marriage and for divorce.

4) A counter came to be filed by the respondent denying the averments in the petition except to the extent of marriage and blessing of children. It is also stated that the respondent lost her marital life due to the neglect and desertion by the petitioner without any reason or cause. Due to the acts and deeds of the petitioner, the respondent sustained much mental and physical distress. It is also stated that only to severe his relationship with

the respondent and to go for another marriage, the petitioner filed this present petition.

5) In support of his case, the petitioner examined himself as PW.1 and got marked Exs.P1 to P10, whereas the respondent examined herself as RW.1, but no documents were marked on her behalf.

6) Basing on the averments, the trial Court framed the issue as to “whether the petitioner established that the respondent treated him with cruelty and deserted him with an intention to bring co-habitation permanently to an end and if so, whether he is entitled for dissolution of the marriage”.

7) Basing on the evidence available on record, the trial Court granted divorce. Challenging the same, the present appeal came to be filed by the respondent-wife.

8) Learned counsel for the appellant mainly submits that the findings given by the trial Court in granting divorce are incorrect. According to him, lodging of a report does not by itself amount to cruelty. He placed reliance on the judgment of the Division Bench of the Apex Court in *Ramchander v. Ananta*<sup>1</sup> to show that mere lodging of a report by itself would not entitle the husband to claim divorce. He further submits that the allegation of respondent

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<sup>1</sup> (2015) 11 SCC 539

setting up a lady by name Bharathi and lodging of a report against the petitioner through her is false and invented by the petitioner. It is further urged by the learned counsel for the appellant that the finding of the trial Court that two complaints came to be filed is incorrect. He further submits that the trial Court totally misread the contents of Ex.P8 notice, issued by the respondent. According to him, vexed with the attitude of the petitioner, she got issued a notice.

9) Learned counsel for the respondent opposed the same. He relied upon the judgment of the Apex Court in *K.Srinivas v. K.Sunita*<sup>2</sup> to show as to when and how divorce can be granted on the ground of cruelty and that mental cruelty if established is a ground for grant of divorce.

10) In order to appreciate the rival submissions, it would be useful to refer to the evidence of PW.1 and RW.1. No independent witnesses has been adduced be examined from either side and the case is based on oath against oath, coupled with the documents filed by the petitioner. Reiterating the averments in the petition, the petitioner filed his chief affidavit. PW.1 was subjected to lengthy cross-examination. Insofar as the payment of dowry, cash, gold and presentation of other valuable articles are denied by

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<sup>2</sup> (2014) 16 SCC 34

PW.1. Insofar as the relationship with the said Bharathi, the relevant portion in the cross-examination is as under:

“It is not true to suggest that one Smt. Bharathi was lodged a criminal complaint against me, my brother, mother and sisters. Witness adds the complaint was made against me, my mother and against my elder sister Kumari in the month of July, 1996. It is true that the said Bharathi is related to me. The witness adds that the said Bharathi also related to respondent also. It is not true to suggest that the said Bharathi has no relation with the respondent. The said Bharathi is a widow and her husband was died while he working in Allwyn. It is not true to say that she got two children with her husband. I came to know that she was blessed with one female child. It is not true that the said Bharathi lodged a complaint alleging that I got married her and the amount which she acquired from her first husband, were misappropriated and further demanding dowry.”

11) Apart from that, the cross-examination also indicate that the respondent lodged a report which lead to registration of a case in Crime No.76 of 1997 for the offences punishable under Sections 498-A and 420 IPC and Sections 4 and 6 of the Dowry Prohibition Act. After investigation, the police filed a charge sheet which was taken on file as C.C.No.125 of 1997, wherein, after a full fledged trial the accused were acquitted on 03.09.2001. PW.1 also admits that the Women Cell, Hyderabad, registered a case in Crime No.185 of 1996 against him, but however the same was closed by filing a final report. It is his version that basing on the same allegations another report came to be lodged, which was also

closed after due verification. To a suggestion that he requested the respondent to stay at her parents' house stating that the said Bharathi filed a criminal case was denied. He admits that he was blessed with a daughter for the first time and second time his wife conceived while she was at her parents house. He admits that he did not mention regarding filing of O.P.No.900 of 1996 seeking restitution of conjugal rights. His evidence further discloses that there was an application for interim maintenance, which was allowed and that O.P.No.900 of 1996 was dismissed, which became final. He also admits that the respondent and her children filed O.S.No.97 of 1999, wherein a sum of Rs.3,500/- per month towards maintenance was awarded to all the plaintiffs in the said suit. He further admits that Exs.P4, P5 and P6 are the telegram receipts intimating pending of Crime No.125 of 1997 before XXII Metropolitan Magistrate, Hyderabad. Ex.P7 is the copy of report given to Bank Manager, State Bank of India, Koti, where the petitioner was working. To a suggestion that he managed the police and got the case closed was denied by him.

12) Reiterating the averments in the counter, RW.1 filed her chief affidavit. In the cross-examination, she admits that she has mentioned in Ex.P3, regarding demand of Rs.1.00 lakh as dowry and other gift articles, gold etc. worth Rs.2.00 lakhs, including marriage expenses which were incurred at the time of marriage of

the petitioner. She also admits that one Bharathi filed a complaint against the petitioner before the CCS, Hyderabad. She further admits that she got issued Ex.P8, wherein she demanded the petitioner to give consent for divorce within three days from the date of receipt of the said notice. She also admits that since 1997 she has been staying with her parents. She also admits that she got examined as PW.1 in C.C.No.125 of 1997 and that she has lodged a report with Chief Minister's Office against the petitioner and his family members, when C.C.No.125 of 1997 was pending before the Court.

13) As stated earlier, the short issue that arises for consideration is whether lodging of the police report and acquittal thereon amounts to cruelty, seeking dissolution of marriage under Section 13 (1) (ia) and (ib) of Hindu Marriage Act.

14) In the instant case, the respondent admittedly lodged a report to the police which came to be numbered as C.C.No.125 of 1997 on the file of XXII Metropolitan Magistrate, Hyderabad. In the said C.C., the respondent examined herself as PW.1 and she also got examined her father as PW.2 and her sister as PW.3. Though no oral evidence was adduced on behalf of the accused therein, but he got marked Exs.D1 to D6. After considering the material on record, vide its judgment dated 09.09.2001, the learned XXII Metropolitan Magistrate, Hyderabad, acquitted accused Nos.1 to 6

for the offences alleged against them. The Court categorically held that the prosecution failed to prove the charges leveled against the accused therein for the offence punishable under Sections 4 and 6 of the Dowry Prohibition Act, namely as to the demand of dowry and harassment of PW.1 in pursuance of demand for dowry. The suggestions given to PW.1 and the evidence of PW.1 show that another report came to be lodged before the Begumpet Police Station and after due enquiry the same was closed.

15) In *K. Srinivas v. K. Sunita* (2 *supra*) the Apex Court dealt with an identical situation. Infact in the said case a criminal complaint came to be lodged after filing of divorce petition by the husband as such the same was not reflected in the petition filed. Both parties were aware of the facet of cruelty which was alleged against the husband. Dealing with the same, the Apex Court held that “once a false complaint is filed by the wife and even one such complaint is sufficient to constitute mental cruelty”.

16) In *K. Srinivas Rao v. D.A. Deepa*<sup>3</sup> the Apex Court dealing with the cruelty as mentioned in Section 13 (1) (ia) of the Hindu Marriage Act, observed as under:

“Under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, a marriage can be dissolved by a decree of divorce on a

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<sup>3</sup> (2013) 5 SCC 226

petition presented either by the husband or the wife on the ground that the other party has, after solemnization of the marriage, treated the petitioner with cruelty. In a series of judgments this Court has repeatedly stated the meaning and outlined the scope of the term 'cruelty'. Cruelty is evident where one spouse has so treated the other and manifested such feelings towards her or him as to cause in her or his mind reasonable apprehension that it will be harmful or injurious to live with the other spouse. Cruelty may be physical or mental."

17) In *Samar Ghosh v. Jaya Ghosh*<sup>4</sup> the Apex Court set out illustrative cases where inference of 'mental cruelty' can be drawn. The Court also held that the list is not exhaustive as each case presents its own peculiar factual matrix and existence or otherwise of mental cruelty will have to be judged after applying mind to it. The relevant paragraph in the judgment referred to above are as under:

"101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

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<sup>4</sup> (2007) 4 SCC 511

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) xxx xxx xxx

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) xxx xxx xxx

(viii) xxx xxx xxx

(ix) xxx xxx xxx

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) xxx xxx xxx

- (xii)                   xxx   xxx   xxx  
 (xiii)                  xxx   xxx   xxx

(xiv) Where there has been a long period of 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.” It is pertinent to note that in this case the husband and wife had lived separately for more than sixteen and a half years. This fact was taken into consideration along with other facts as leading to the conclusion that matrimonial bond had been ruptured beyond repair because of the mental cruelty caused by the wife.”

18) In *Naveen Kohli v. Neelu Kohli*<sup>5</sup> the wife filed several complaint and cases against the husband. The Apex Court viewed her conduct as a conduct causing mental cruelty and observed that the findings of the High Court that these proceedings could not be taken to be such, which may warrant annulment of marriage is wholly unsustainable.

19) In *K. Srinivasa Rao v. D.A. Deepa* (3 *supra*) the Apex Court added few more instances to the judgment of the Apex Court in *Samar Ghosh* (4 *supra*) as to what cruelty could mean. The Apex Court held that “making unfounded indecent defamatory allegations against the spouse or his or her relatives in the

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<sup>5</sup> AIR 2006 SC 1675

pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect of the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.”

20) In the instant case, a perusal of the material on record more particularly the judgment in C.C.No.125 of 1997 show that all the family members of the petitioner were roped in as an accused in the crime. They were summoned to the police station and detained there. The first accused being a bank employee, sending letters to the bank for initiation of action against him was put to harassment. All the allegations made in the first report and also in the evidence which are reiterated in the evidence given in this case, were found to be false by the Criminal Court, which findings have become final. Therefore, it can be said that husband must have undergone acute mental agony and suffering which would not make the parties to live together. The allegation of having an affair with one Bharathi, which was found to be a blatantly false, would have caused undue mental suffering to the petitioner.

21) In view of the judgments referred to above and having regard to the facts and circumstances, we feel that the divorce granted by the trial Court requires no interference.

22) Accordingly, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMADEVI

09.03.2018  
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