

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

CMA NO. 792 of 2006

JUDGMENT: (Per Hon'ble Ms. Justice J. Uma Devi)

1. The present Civil Miscellaneous Appeal arises out of the order dated 13.6.2006 passed by the Additional Senior Civil Judge, at Eluru dismissing O.P.No. 83 of 2004 filed by husband under Section 13 (1) (ia) (ib) of the Hindu Marriage Act, 1955 (for short "the Act") seeking divorce from wife by dissolving his marriage with her.

2. For convenient sake, the parties will herein be referred to as "the petitioner" and "the respondent" as they are arrayed in the aforementioned OP.

3. The case of the petitioner is briefly stated as under,

The petitioner states that his marriage with the respondent was performed on 24.6.1983 at Annavaram temple according to Hindu rites and customs. The marriage was consummated, and two sons and a daughter were born to them. They lived happily for a period of ten years and thereafter the respondent developed aversion towards the petitioner and neglected him and his children. The respondent developed illicit contacts with various persons including with a person by name Siribathina Srinivasrao. All the efforts made by him to bring change in her behaviour proved in vain. He was beaten by the brothers of the respondent many a time. When the petitioner questioned the respondent about her illicit contacts with Siribathina

Srinivasrao, she raised hue and cry, and came out of the house and shouted against him and this caused mental agony to him. Their children got issued a legal notice to the petitioner, respondent and Siribathina Srinivasrao questioning her illicit contact with Siribathina Srinivasrao. The petitioner was very much depressed by the legal notice as it depicted his inability to control his wife. Though the petitioner and the respondent are living under one roof, they are not leading peaceful life. Under these circumstances, the respondent was called upon to agree for a mutual divorce by issuing a notice, but she intentionally evaded to receive it. One of the brothers of respondent was an Advocate and he used to threaten the petitioner and prevented him from taking legal action against the respondent. Hence the petitioner filed the petition for granting of a decree of divorce by dissolving his marriage with the respondent.

4. The respondent filed her counter admitting her marriage with the petitioner, and giving birth to two sons and a daughter out of wedlock. The rest of the allegations made in the petition were denied by her. It was contended by the respondent that the petitioner was living with a woman by name Tejovathi of Aminapeta, Eluru and used to harass her and beat her black and blue, and was making demand on her to get money from her parents. According to her, she is no way concerned with Siribathina Srinivasrao and such allegation is invented by the petitioner only to defame her. She states that she had not received any notice as contended by the petitioner. She being a

helpless woman lodged a complaint with police on 10.6.2004 having vexed with his attitude, and when the petitioner was called to the police station, he undertook to change his ways of life and promised that he will look after the respondent well, but he did not change his attitude as promised. The petitioner has not been looking after the welfare of this respondent and her children, and that she suffered mental agony and trauma because of the cruel attitude of the petitioner. Mentioning the aforementioned assertions, she prayed for dismissal of the petition.

5. The petitioner, to prove his case, examined himself as P.W.1 and his son as P.W.2 and marked Exs.A1 to A3. The respondent was examined as R.W.1, but no documentary evidence was produced by her. On appreciation of the aforementioned oral and documentary evidence, the trial Court dismissed the petition filed by the husband vide order dated 13.6.2006.

6. The marriage of the petitioner with the respondent is not in dispute. It is also not in dispute that they begot three children out of their wedlock. After leading marital life with the respondent for more than 20 years, the petitioner came up with the present petition attributing that the respondent neglected the welfare of him and his children, and that she developed illicit contacts with several persons, particularly with one Siribathina Srinivasrao. Ex.A1 legal notice was issued by his children, when she went to Machilipatnam after quarreling with him. By the date of issuance of Ex.A1 legal notice,

and as on the date of examination of P.W.1, the respondent was residing with the petitioner along with her children. All these facts were elicited through P.W.1 (the petitioner herein).

7. It is apparent from the evidence on record that Siribathina Srinivasrao with whom the respondent is allegedly leading adulterous life is related to the petitioner, and the said Siribathina Srinivasrao is residing two houses away from the house of the petitioner, and he is a private taxi driver. Though the petitioner has got knowledge about the residential address and occupation of the said Siribathina Srinivasrao, the so-called adulterer, he has not made him as a party to the OP proceedings, though it is mandated by Rule 8 of the Rules framed by the Andhra Pradesh High Court. As per the Rules framed by the High Court in terms of Sections 14 and 21 of the Act, when a husband files a petition against his wife for divorce alleging adultery, he shall make the adulterer as a co-respondent in the petition.

8. The petitioner, having made an allegation against the respondent that she is having illicit contacts with several persons, and that she is leading adulterous life with Siribathina Srinivasrao, has failed to establish the allegations so made. No endeavour is made by him to establish that the respondent is having illicit contacts with the aforementioned person viz., Siribathina Srinivasrao. A feeble attempt is made to establish the allegation of leading adulterous life by the respondent with one Siribathina Srinivasrao by examining P.W.2 from whom he came to know that the respondent went to a cinema along

with Siribathina Srinivasrao. Through the said piece of evidence it is difficult to hold that the respondent is leading adulterous life with Siribathina Srinivasrao. The evidence adduced by the petitioner in proof of the alleged adulterous life of the respondent with Siribathina Srinivasrao appears to be hearsay as it is only deposed by him that he came to know through his children that the respondent went to a cinema along with Siribathina Srinivasrao. Though a greater effort was made by the petitioner to impress upon the Court that his wife was having illicit contacts with Siribathina Srinivasrao, the only evidence brought on record was that the respondent went to a movie along with Siribathina Srinivasrao which was too hearsay and that his son P.W.2 through whom he came to know that the respondent went to a movie along with Siribathina Srinivasrao, did not state about the said fact in his evidence. The trial Court, having noticed that no valid evidence is adduced by the petitioner in proof of his contention that the respondent has got illicit contact with Siribathina Srinivasrao, and due to his failure to implead the said Siribathina Srinivasrao as a co-respondent to the OP proceedings as mandated by Rule 8 of the Andhra Pradesh High Court Rules on Hindu Marriage Act, has rightly held that the petitioner has failed to make out the grounds urged by him to seek dissolution of his marriage with the respondent.

9. Filing of the complaint by the respondent against the petitioner when he caused sufferance to her was admitted by P.W.2, the son of the petitioner. Issuance of Ex.A1, legal notice by P.W.2 through the

counsel of the petitioner would show that the petitioner was behind the issuance of such notice. The petitioner, having led marital life with the respondent for more than 20 years, made the allegation of adultery against his wife which he failed to establish and he also did not even take steps to implead the alleged adulterer as party respondent to the OP proceedings.

10. The trial Court, having not been convinced with the evidence adduced by the petitioner, has rightly dismissed his petition for divorce. This Court has not noticed any substantial material to set aside the order passed by the trial Court rejecting the petition filed by the petitioner for divorce.

11. The learned counsel for the appellant/petitioner has vehemently argued that there is no possibility of reunion of the parties and for the last 11 to 12 years they are living separately and it amounts to desertion of the petitioner by the respondent. He seeks to rely on the decision of Rajasthan High Court in *Rakesh Sharma Vs. Surbhi Sharma*¹ and another decision of this Court reported in *Kalapatapu Lakshmi Bharati Sai Kumar Vs. Kalapatapu Sai Kumar Suryaprakash Rao*² where marriage between the parties is dissolved by ordering for decree of divorce on the ground that the respondent is living away from the petitioner since a long time.

12. In the given case the respondent was residing with the petitioner as on the date of filing of the OP, and was in his house by the date

¹ AIR 2002 RAJASTHAN 138

² 2017 (1) ALT 131 (DB)

trial and it appeared that the marriages of their children were performed and there was no desertion. 'Desertion' means intentional abandonment of one spouse by the other without other's consent and reasonable cause. It is a total repudiation of the obligation of the marriage. In the case on hand the respondent was residing with the petitioner as on the date of filing of the OP.

13. In this case the petitioner asserts that the respondent after leading happy marital life with him for 10 years developed aversion towards him and neglected him and his children and that she developed illicit contacts with several other persons including with a person by name Siribathina Srinivasrao. But, no legally dependable evidence as such is adduced for establishing the alleged illicit intimacy of the respondent with the said Siribathina Srinivasrao and no steps whatsoever are taken by him to implead the so-called Siribathina Srinivasrao as party to the proceedings. The divorce petition was filed in the year 2004 by which time his eldest son Palagani Vijay Durga Prasad (P.W.2) was aged about 21 years (as per the particulars mentioned in deposition dated 13.3.2006) and that the respondent was living with him, and all these facts were born by record.

14. Attributing chastity to his wife after leading marital life with her for more than 20 years, and getting a notice issued through his grown up children with the allegation of adultery themselves would indicate his indifferent attitude towards her. By the date of issuance

of Ex.A1 legal notice the respondent was residing with the petitioner, and this notice was got issued through his grown up children when she went to her parents' house at Machilipatnam.

15. The petitioner could not able to show that the respondent left her matrimonial house, and that she is living away from him since a long time. It is only in exceptional circumstances where the parties are able to show that they are living separately since a long time, the husband is living else where with another woman and that the relationship cannot be retrieved, a decree of divorce can be granted.

16. It is evident from the material on record that marriages of children of the petitioner were performed and what message he intends to give to them about the sanctity of marriage by getting his marriage dissolved? Evidence on record shows his mean mentality and indifferent attitude towards the respondent which ultimately compelled her to lodge a complaint with the police. The police report given by her was later withdrawn by her with the hope of change in his attitude.

17. Marital tie between the wife and the husband has to be construed as holy relationship, and the Court in all the cases shall not grant divorce for mere asking, as it is contrary to the age old faith in the system of marriage.

18. On close scrutiny of evidence on record, we are of the view that the grounds urged by the petitioner to seek divorce are not established.

The order of the Court below, in our view, is not suffering from patent illegality. Hence the same is hereby affirmed without any deviation.

19. In the result, the Civil Miscellaneous Appeal filed by the petitioner against the order in OP No. 83 of 2004 on the file of Additional Senior Civil Judge, at Eluru is dismissed.

20. Miscellaneous applications, if any pending, shall stand closed.

No order as to costs.

C.PRAVEEN KUMAR, J

Dt.13.4.2018
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J. UMA DEVI, J

