

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

C.M.A. No.446 of 2004

JUDGMENT: *(per Hon'ble Smt. Justice Kongara Vijaya Lakshmi)*

The appellant-wife filed the present civil miscellaneous appeal against the order dated 30.04.2003 in OP No.9 of 2002 on the file of the Senior Civil Judge, Srikalahasthi, wherein the said OP filed by the respondent-husband was allowed, granting decree of divorce in his favour.

2. For the sake of convenience, the parties hereinafter are referred to as the petitioner and respondent as arrayed in the OP.

3. The brief averments of the petition are as follows:

The petitioner filed petition under Section 13(1) (1-a) and (1-b) of Hindu Marriage Act, 1955 seeking a decree for divorce stating that the marriage between the petitioner and respondent was solemnized in the year 1984 at TTD Kalyana Mandapam, Nagalapuram, in accordance with Hindu rites and customs; after the marriage, the respondent joined the petitioner and they lived happily for three months at Kannavaram; after four months, the respondent left the petitioner and went to her aunt's house at Vembakam Kandriga; that after mediations, the respondent joined the petitioner at Tiruvathur in the year 1986 and again she left the petitioner in the year 1987; the petitioner after getting a job in APSRTC, Satyavedu, shifted his residence to Satyavedu in the year 1991 and the respondent joined him reluctantly at Satyavedu; meanwhile two daughters were born, the respondent again left the company of the petitioner with the daughters and went to Vembakam Kandriga village and when the petitioner approached, she demanded to put up a

separate family, for which the petitioner agreed and set up a separate family at Satyavedu leaving his old parents; but the respondent once again left the company of the petitioner without his fault in the year 1992; the respondent was a quarrelsome woman, always entertaining suspicion against the petitioner and attributing illicit intimacies with other women without any basis and causing mental agony to him; the respondent complained that the petitioner had illegal intimacy with his sister's daughter by name Lalitha @ Kokila and made her pregnant; she used to ill-treat and abuse him in filthy language; the respondent filed OP No.6 of 1995 claiming maintenance and the same was decreed on 29.02.2000 directing the petitioner to pay Rs.500/- to the respondent and Rs.250/- to each of the daughters; there was a mediation and therefore, the petitioner has not filed any appeal, as in the mediation the respondent agreed to give up her maintenance and join the petitioner, but did not join him; the first daughter joined the petitioner; the respondent filed EP No.127 of 2001 for civil arrest of the petitioner for non payment of maintenance; the respondent finally deserted the petitioner since 1992; there was no family relationship between the petitioner and respondent since 1992 and there was no scope of reunion; the petitioner suffered mental cruelty in the hands of the respondent throughout his life and hence, he filed a petition for grant of divorce for dissolving the marriage with the respondent.

4. The respondent-wife filed counter-affidavit, stating that she lived with the petitioner for five years; at that time, the petitioner was a driver of a lorry in Madras; he used to come to Kannavaram; the petitioner asked the respondent to stay in her parents house; that there were quarrels in between the respondent and sisters of the petitioner and was forced to leave her husband's house and stay with her aunt's

house at Vembakam Kandriga; that there was a mediation to keep the family at Madras where the petitioner was working, but the petitioner has not accepted the same; the sisters of the petitioner demanded the respondent to bring dowry of Rs.20,000/- from her parents; as the petitioner got job in APSRTC, he asked the respondent to stay at her parents house at Ponneri until he settles down; accordingly, she was living with her parents along with the daughters at Ponneri; that the petitioner did not turn up and she waited for two years; she became mentally upset; the respondent came to know that the petitioner developed illicit intimacy with one Kokila, the daughter of petitioner's sister and married her and a son was born to her through him on 27.10.1996; the respondent questioned about the same, the petitioner abused and assaulted her mercilessly and declared that he would marry his sister's daughter by leaving the respondent; she did not desert the petitioner since 1992 and prays for dismissal of the petition.

5. In support of his case, the petitioner examined himself as PW.1 and marked Exs.A.1 to A.3. On behalf of respondent, RWs.1 and 2 were examined and no documents were marked.

6. After hearing both the sides and after considering the material on record, the learned Senior Civil Judge, allowed the O.P. on 30.04.2003 granting decree of divorce in favour of the petitioner. Aggrieved thereby, the present appeal came to be filed by the wife.

7. Heard Sri A. Chandraiah Naidu, learned counsel for the appellant-wife and Sri K.Mohanrami Reddy, learned counsel for the respondent-husband. Perused the record.

8. Now, the issue that arises for consideration is, whether the petitioner-husband is entitled to get decree of divorce against the respondent-wife on the ground of desertion and cruelty?

9. Learned counsel for the appellant-wife would contend that she did not desert her husband at any point of time and that it is the husband, who is not allowing her into the matrimonial home. He further contends that no specific acts constituting cruelty have been mentioned in the petition, that the allegations of wife deserting the husband and subjecting him to cruelty are very vague and not supported by any evidence. He further contended that the petitioner has not proved either cruelty or desertion and it is the petitioner, who always ill-treated her. He also submitted that the petitioner was having illicit intimacy with his sister's daughter by name Kokila and that she gave birth to a male child through the petitioner and that due to the acts of the petitioner, the respondent was forced to live separately and hence, desertion cannot be attributed against the respondent. He further contended that no single act has been proved by the petitioner to prove the alleged cruelty on the part of the respondent and hence, the order of the trial Court is liable to be set aside.

10. Learned counsel for the respondent-husband would contend that the appellant-wife voluntarily deserted the petitioner in the year 1992, without any fault of his. It is also submitted that the appellant - wife used to ill-treat and accuse him of illicit intimacies with other women without any basis whatsoever and thereby caused mental cruelty to the husband. He further contended that there is no husband and wife relationship between the petitioner and respondent since 1992 and hence, there is no scope for reunion. It is also his case that the

respondent-wife as RW.1 in her cross-examination admitted that she is not willing to join her husband.

11. The evidence of PW.1-husband discloses that after the marriage, they lived happily only for three months and in the 4th month, the appellant-wife left his company, left to her aunt's house and after several mediations, she joined the company of the petitioner at Satyavedu. Again in the year 1992, appellant-wife left his company and at the instance of the wife, Petitioner put up a separate family, even then she did not turn up. His evidence further discloses that subsequent to 1992, wife did not join the petitioner. He denied his intimacy with Kokila and giving birth to a son. According to the petitioner, there was mediation and the respondent agreed to give up maintenance and join the petitioner, but she did not join the petitioner. Later on, the first daughter of the petitioner joined him and was under his care and protection. The respondent-wife filed EP No.127 of 2001 for civil arrest of the petitioner, as he failed to pay maintenance amount. The petitioner also filed OS No.77 of 2002 to set aside the decree of maintenance. His evidence further discloses that there is no husband and wife relationship between him and respondent since 1992 and there is no scope of reunion.

12. The evidence of wife-RW.1 discloses that she led the marital life with the petitioner for four years in the house of her in law's; that after four years, the petitioner took her to her parents house and left there and as her in laws did not look after her properly, she left for her parents house at Ponneri; that the petitioner came to her parents house and assaulted her, and that she lodged a complaint to the police against the petitioner and on the advise of the police, she was taken to Madras

by the petitioner, where they lived for about five years and during that period they were blessed with two female children. According to her, her husband got job in APSRTC, Satyavedu and he set up family at Satyavedu along with her and children. She further deposed that her husband was having illegal intimacies with other women and he married his sister's daughter by name Kokila and thereafter he failed to look after her. Then she filed petition for maintenance before the Court. She denied the suggestion that she deserted her husband since 1992 and has not come back. She admitted that since eight years, they are living separately. She also admitted that she has not filed any proof of the second marriage of the petitioner with one Kokila. She also admitted that she is not willing to join and live with him because of his harassment. RW.1-wife examined RW.2 to prove that the petitioner married one Kokila. RW.2 in his evidence did not categorically state that petitioner married the said Kokila. He only stated that he came to know that the petitioner married his sister's daughter by name Kokila.

13. On careful consideration of the evidence adduced by both parties, it is clear that since more than eight years prior to filing of the petition, they are living separately. In the cross-examination, Respondent-wife admitted that she is not willing to join the petitioner-husband and she could not prove that the petitioner married again.

14. In this appeal, the appellant-wife filed C.M.P.No.1992 of 2017 under Order 41 Rule 27 read with Section 151 CPC, to receive the documents i.e., the photo of the petitioner with Kokila, birth certificate of the male child and provident fund enquiry report, to mark them as Exs.B.1 to B.3.

15. According to the appellant, in the provident fund enquiry report, the name of Kokila is shown as a nominee by the petitioner. As per the birth certificate, a male child was born to the petitioner through Kokila on 27.10.1996. The date of birth of the male child is shown as 27.10.1996 i.e., much prior to the filing of the OP in the year 2002. However, these documents are not filed before the trial Court. There is no explanation from the appellant as to why she did not chose to file those documents at the time of filing of the OP, though they were very much available prior to the filing of the OP and hence, these documents cannot be received now in the appeal and accordingly, C.M.P.No.1992 of 2017 is dismissed.

16. Learned counsel for the petitioner-husband submitted that the appellant-wife filed a case against him and others in CC No.221 of 2003 for the offence under Section 494 read with 109 of IPC, and that the said case ended in acquittal. Challenging the said order, the appellant filed CrI.A.No.753 of 2006 and the said criminal appeal was also dismissed on 08.12.2014. He submits that thus the appellant failed to prove the alleged bigamy against the petitioner.

17. Learned counsel for the appellant-wife relied upon a decision in '*Katada Baby vs. Katada Sri Venkata Satya Raja Sekhar*¹', wherein this Court held that granting of divorce by the Court below on the mere ground that the appellant filed criminal case against the respondent and others under Section 498-A IPC, is unjustified.' The said judgment is not applicable to the facts of the present case. Here, the issue is not only the filing of criminal case under Section 498-A IPC, but there are other allegations also. He also relied upon a decision of the Apex Court in

¹ 2014(4) ADL 531

‘*Chetan Dass vs. Kamla Devi*²’ wherein it was held that ‘irretrievable breakdown of marriage cannot be used as a formula to gain relief of divorce automatically’. The facts in the cited case are totally different with the facts in hand.

18. This Court in ‘*Kalapatapu Lakshmi Bharati Sai Kumar vs. Kalapatapu Sai Kumar*³’, relied upon the decision of the Supreme Court in ‘*Samar Ghosh Vs. Jaya Ghosh* [2007 (3) ALT 62 (SC)], wherein it was held as follows:

“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 irreparable, 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.

The Apex Court referred to and relied upon its earlier judgment in *Kohli Vs. Neelu Kohli* [(2006)4 SCC 558], wherein it is held as under:

“We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of the fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised 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.

² (2001)4 SCC 250

³ 2017(1) ALD 272

Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist.

Some jurists have also expressed their apprehension for introduction of irretrievable breakdown of marriage as a ground for grant of the decree of divorce. In their opinion, such an amendment in the Act would put human ingenuity at a premium and throw wide open the doors to litigation, and will create more problems than are sought to be solved.

The other majority view, which is shared by most jurists, according to the Law Commission Report, is that human life has a short span and situations causing misery cannot be allowed to continue indefinitely. A halt has to be called at some stage. Law cannot turn a blind eye to such situations, nor can it decline to give adequate response to the necessities arising therefrom.

When we carefully evaluate the judgment of the High Court and scrutinize its findings in the background of the facts and circumstances of this case, it becomes obvious that the approach adopted by the High court in deciding this matter is far from satisfactory.”

19. While relying on the above decisions of the Supreme Court, this Court in *Kalapatapu Lakshmi Bharati Sai Kumar*, held as follows:

“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.”

20. From the evidence of both the parties, it appears that they developed hatred against each other and there is no possibility of reunion between the parties. The parties have been living separately for the last eight years prior to the filing of OP. The appellant-wife admitted in her cross-examination that they are not having conjugal relationship and that she is not willing to join and live with the husband, due to his harassment. As held in the judgment referred to above, long time separation itself would lead to mental cruelty. Having regard to the facts and circumstances of the case and in view of the principles laid down by the Supreme Court referred supra and this Court in *Kalapatapu Lakshmi Bharati Sai Kumar*, we are of the opinion that the trial Court has rightly decreed the petition by dissolving the marriage and granting divorce. We see no reason to interfere with the order of the trial Court.

21. The Civil Miscellaneous Appeal is, accordingly, dismissed. No order as to costs. Pending miscellaneous petitions, if any, in this appeal shall stand dismissed.

C. PRAVEEN KUMAR, J

KONGARA VIJAYALAKSHMI, J

Date: 29.06.2018
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Date: 29.06.2018

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