

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

Family Court Appeal No.274 of 2011

Date: 19.01.2018

Between:

Syeda Maimona Tasneem

... Appellant

and

Syed Shah Ul Hameed

...Respondent

Counsel for the Appellant: Mr.MAK.Mukheed

**Counsel for the respondents: Mr. Mirza Nissar Ahmed
Baig**

The Court made the following:



Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Family Court Appeal arises out of Judgment, dated 01.08.2011, in FCOP.No.1389 of 2009 on the file of the Additional Metropolitan Sessions Judge for the trial of JHCBBC –cum- Additional Family Court –cum- XXIII Additional Chief Judge at Hyderabad (for short ‘the lower Court’).

We have heard Mr.M.A.K.Mukheed, learned Counsel for the appellant, and Mr.Mirza Nissar Ahmed, learned Counsel for the respondent.

The appellant and the respondent were married on 17.06.2000 and their marital life has gone into rough weather. They have legally separated from each other on 22.04.2007. However, a dispute concerning the custody of their minor child persisted between them. The appellant has filed FCOP.No.1389 of 2009 before the lower Court. After full-fledged trial, the lower Court has dismissed the FCOP. Feeling aggrieved by the said dismissal, this Appeal is filed by the unsuccessful petitioner therein.

In pursuance of the directions issued by this Court, both the parties along with their minor daughter are personally present.

During the hearing, Mr.Mirza Nissar Ahmed Baig, learned Counsel for the respondent, has placed before the Court certain documents after furnishing a set of the same to the learned Counsel for the appellant. Based on these documents, the learned Counsel submitted that after dismissal of FCOP.No.1389 of 2009, both the parties have entered into a Memorandum of Understanding –cum- Matrimonial Settlement Agreement on 09.04.2012, as per which, the appellant has agreed to receive and has actually received a sum of Rs.2,50,000/- towards full and final settlement of all her claims against the respondent. The appellant has also agreed that the custody of the minor child- Syed Noorunnisa Muskaan shall continue to remain with the respondent and that she would withdraw as many as five cases including the present FCA in pursuance of the said compromise. The learned Counsel has also submitted that in pursuance of the said settlement, the Metropolitan Legal

Services Authority Lok Adalat, Hyderabad, has passed an award *vide* CC.No.335 of 2007, dated 04-10-2012.

We have perused the copies of the Memorandum of Understanding –cum- Matrimonial Settlement Agreement and the consequential award of the Lok Adalat.

The appellant, who is present in the Court, has not disputed the factum of her entering into an understanding with the respondent and executing the aforesaid Memorandum of Understanding –cum- Matrimonial Settlement Agreement and also the further fact that in terms of the same, the Lok Adalat has passed its award. Clauses 1 to 3 of the said Memorandum of Understanding –cum- Matrimonial Settlement Agreement read as under:

“1. That as per the settlement the second party has agreed to pay an amount of Rs.3,50,000/- to the first party herein for which the second party today has paying an amount of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand only) through Demand Draft bearing No.13329 of ICICI Bank, S.R.Nagar, Hyderabad Branch, dated 05-04-2012, to the first party herein for which the first party also agreed the same and also the second party agreed and undertakes to pay the remaining balance amount of Rs.1,00,000/- though cheque No.760816 of Punjab National Bank, Hyderabad dated 10th July, 2012 and if the said cheques got bounced the first party

has every right to take legal action against the second party according to law.

2. That the second party has given Divorce to the first party on 22nd April 2007 and the First party has accepted. The minor Child (Sayyada Noorunnisa Muskaan) is in the custody of the second party and the said minor child will continue staying with second party. The first party accepts the orders in FCOP.1389 of 2009 U/s 25 of Guardian and Wards Act in the Court of Addl. Family Court Chief Judge, Hyderabad.

3. That the First party shall withdraw her complaints and allegations against the second party and his family members i.e., (1) C.C.No.335 of 2007, before the Hon'ble XIII Addl. C.M.M. Nampally, Hyderabad (2) C.C.No.184 of 2008, before the Hon'ble XIII Addl. C.M.M. Nampally, Hyderabad (3) D.V.C.No.3 of 2008 before the Hon'ble VII Addl. C.M.M. Nampally, Hyderabad (4) M.C.No.292 of 2006, before the Hon'ble Family Court Judge, Nampally, Hyderabad (5) F.C.A.274 of 2011 in the Hon'ble High Court of A.P. and deposed her evidence for closure of above five cases and the second party also undertakes that he will also withdraw the case which is pending before the Hon'ble VIII M.M. Rajender Nagar, vide C.C.No.FIR.No.233/9 and deposed his evidence for the closure of the above case in favour of the first party."

In terms of the aforesaid settlement, the Lok Adalat has compounded the offence under Section 498-A IPC in respect of which C.C.No.335 of 2007 was registered on the file of the XXIII Additional Chief Metropolitan Magistrate, Hyderabad against the respondent.

The appellant, having settled the dispute and agreed to withdraw this Appeal, for the reasons best known to her, did not withdraw the same and on the contrary, she is seeking to pursue it. In our opinion, the appellant is not entitled to pursue this Appeal in view of the admitted fact that she has entered into a settlement with the respondent, which was recorded by the Lok Adalat, while compounding the offence under Section 498-A IPC registered against the respondent. In fact, the appellant is guilty of suppression of subsequent events, which are material for adjudication of this Appeal.

In these circumstances, the Appeal is dismissed.

As a sequel to dismissal of the Appeal, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 19th January, 2018
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