

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT JUSTICE T. RAJANI

CIVIL MISCELLANEOUS APPEAL No.712 of 2005

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

Assailing the order in OP.No.55 of 2002 dated 25.08.2004 on the file of the Additional Senior Civil Judge, Eluru, wherein the application filed under Section 13(1)(ia) and (ib) of the Hindu Marriage Act (for short 'the Act') for divorce was dismissed, the present appeal is preferred under Section 28 of the Act by the appellant/petitioner.

2. For the sake of convenience, the parties will hereinafter be referred to as arrayed in the original petition. The facts, as put forth by the petitioner in the original petition filed in the Court below, are briefly as follows:

The marriage between the petitioner and respondent took place on 14.10.1999 as per the Hindu rites and customs and out of the wedlock they were blessed with one male child by name Lokesh Babu. After marriage, the respondent brought the petitioner to his parents' house at Tiruvuru and within two or three days, the petitioner informed the respondent about the atrocities committed by her cousin by name Sonti Satyanarayana alias Kannababu. Thereupon, the respondent replied that he learnt the same through the said Kannababu and informed the petitioner that this is due to his acceptance to marry the petitioner with meagre amount of dowry of Rs.10,000/-. Subsequently, the petitioner was brought by the respondent to the house of Dr. Ramesh of Sattupalli where she was be introduced to the doctor as the wife of the respondent and thereafter

respondent went away on a representation that he will return with some sweets and fruits. At that point of time, the petitioner understood the evil intention of the respondent to earn money through her as a prostitute and by indulging her in prostitution. After returning home, when she questioned, the respondent admitted that his main motive was to earn money through petitioner and further asked her to leave his house by giving divorce or to bring Rs.1,00,000/- dowry in case of her unwillingness to obey his evil objects. The same was informed by the petitioner to his sister, who in turn, supported the respondent and harassed her physically and mentally to fulfil their evil desires.

It is further stated that for nearly forty days, the harassment continued in the hands of the respondent and his family members and thereafter, she went to sisters' house. While things stood thus, on 25.08.2000 at about 10 PM, the respondent accompanied by his friends came to the house of her sister at Eluru and tried to kidnap her forcibly with a view to fulfil his evil desire. When the petitioner's sister tried to rescue the petitioner, the respondent hacked the head of her sister causing bleeding injury, which was reported to the police. Later, all of them were charge sheeted before the Court of II Additional Judicial Magistrate of First Class, Eluru in CC.No.694 of 2000. Apprehending danger to her life in the hands of the respondent, the petitioner got issued a legal notice on 13.10.2001 claiming maintenance and filed MC before the same Court. In view of the alleged acts, the present application came to be filed seeking divorce.

A counter came to be filed denying the averments made in the petition and further stated that he accepted to marry the petitioner without taking any dowry and apart from that, the respondent claims to have borne the marriage expenses from his own pocket. It is said that, after their marriage, on 14.10.1999, petitioner went to her parents' house on 16.10.1999 and at that time, the mother of the petitioner informed that she will send a word with regard to the function to be arranged. A month later when the respondent contacted the mother of the petitioner, it was informed to him that the petitioner is not interested for consummation of the marriage. It is said that the respondent waited with a fond hope of getting positive reply from the petitioner.

While things stood thus, the respondent came to know through a news item published in Vartha daily that the petitioner filed a complaint against Sonti Satyanarayana alias Kannababu for committing rape against her resulting in pregnancy and that the said Kannababu performed the marriage of the petitioner with the respondent to hide the pregnancy of the petitioner and in that regard, a case in Cr.No.47 of 2011 of Chintalapudi police station under Section 376 IPC. The averments in the reply also show that the petitioner and his family members demanded Rs.80,000/- from the respondent and on refusal to give the money, the petitioner initiated the proceedings for maintenance. Hence, the request of the petitioner cannot be accepted.

In support of the above, the petitioner examined herself as P.W.1 and got marked Exs.A1 to A8. The respondent examined R.Ws.1

to 3 and got marked Ex.B1. Considering the oral and documentary evidence, the trial Court rejected the request of the petitioner for dissolution of marriage. Challenging the same, the present appeal came to be preferred.

3. Heard Smt. N. Revathi, the counsel for the appellant. There is no representation on behalf of the respondent.

4. The evidence of R.W.1 shows that there was no consummation of marriage. When the respondent and his family members insisted for consummation of marriage, the same was postponed on one pretext or the other and ultimately the same was postponed on an allegation that the petitioner is pregnant. The evidence on record also discloses that the petitioner also filed a criminal case for the offence punishable under Section 498-A IPC and also a maintenance case claiming maintenance. The averments in the counter filed by the respondent shows that there was no consummation of marriage between the petitioner and the respondent and that there is no sanctity to the marriage and therefore, the only remedy requested by the petitioner is to declare the marriage as void.

5. From the tenor of the averments in the counter, it appears that even the respondent is not interested to join the petitioner. However, the respondent requests to declare the marriage as void.

6. Section 11 of the Hindu Marriage Act (for short 'the Act') postulates that any marriage solemnised after commencement of the Act shall be declared null and void on a petition presented by either party thereto against the other party, be so declared by a decree of

nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of the Section 5. Section 5 of the Act postulates that a marriage may be solemnized between any two Hindus, if the conditions, specified therein, are fulfilled. The relevant conditions are extracted hereunder:

(i) neither party has a spouse living at the time of the marriage;

...

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not *sapindas* of each other, unless the custom or usage governing each of them permits of a marriage between the two.

7. Therefore, the ground on which the respondent seeks to declare the marriage as null and void, does not fit in the clauses mentioned in Section 5 of the Act. Merely because the parties are living separately and there was no consummation of marriage, that by itself do not permit the Court to declare the marriage as null and void. As observed earlier, the criteria for declaring the marriage as null and void are totally different and unless clauses under Section 5 of the Act are fulfilled, the Court cannot declare the said marriage as null and void. But one fact, which has to be noted here is, there was no consummation of marriage since 1999 and both the parties were living separately.

8. In fact, the counsel for the appellant submits that her client does not even know where the respondent resides now. According to her, since last 18 years there was no contact between the appellant-wife and the respondent-husband.

9. Situation somewhat identical to the case on hand came up for consideration before a Division Bench of this Court in *KALAPATAPU LAKSHMI BHARATI v. KALAPATAPU SAI KUMAR*<sup>1</sup>. In the said case, the parties had been living separately for 14 years and there was no possibility of them living together again. It was also a case where the marriage was irretrievably broken down. In view of the judgments of the Supreme Court in *SAMAR GHOSH v. JAYA GHOSH* [2007 (4) ALD 11 (SC)] and *KOHLI V. NEELU KOHLI* [(2006) 4 SCC 558] the Division Bench held that long time separation itself would lead to mental cruelty. It would be relevant to extract the relevant para of the aforesaid decisions as under:

“11. 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 not possible 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.”

10. The Supreme Court in *K. SRINIVAS RAO v. A. DEEPA*<sup>2</sup> also held as under:

“9. The High Court has taken a view that since the appellant-husband and the respondent-wife did not stay together, there is no question of their causing cruelty to each other. The High

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<sup>1</sup> 2017 (1) ALD 272 (DB)

<sup>2</sup> (2013) 5 SCC 226

Court concluded that the conclusion drawn by the Family Court that the respondent-wife caused mental cruelty to the appellant-husband is erroneous. We are unable to agree with the High Court.

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

11. In *Samar Ghosh* [2007 (4) ALD 11 (SC)] this Court set out illustrative cases where inference of 'mental cruelty' can be drawn. This list is obviously not exhaustive because 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. We must quote the relevant paragraph of *Samar Ghosh*. We have reproduced only the instances which are relevant to the present case ..."

...

24. In our opinion, the High Court wrongly held that because the appellant-husband and the respondent-wife did not stay together there is no question of the parties causing cruelty to each other. Staying together under the same roof is not a precondition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable. This is what has happened in this case.

26. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the [Hindu Marriage Act](#), 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree.

11. We feel that the case on hand is identical to the cases referred to above. Admittedly both parties are living separately since last 18 years or more. In view of the judgments of the Supreme Court, which was also followed by another Division Bench of this court in KALAPATAPU LAKSHMI BHARATI's case (1 supra), long separation for more than 18 years would lead to mental cruelty, irrespective of the finding of the Court below. It was also held by the Hon'ble Supreme Court that any effort made to force the parties to live together would tantamount to causing mental cruelty and would only prolong the mental agony of the parties. Hence, we feel that the appellant is entitled to dissolution of marriage for the reason that there is no possibility for reunion of the parties in order to live together due to mental cruelty.

12. For the aforesaid reasons, we feel that the appellant is entitled to a decree for dissolution of marriage and accordingly, the marriage between the appellant-petitioner and the respondent shall stand dissolved.

In the result, the civil miscellaneous appeal is allowed.  
As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

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C. PRAVEEN KUMAR, J

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T. RAJANI, J

July 12, 2018  
DSK

