

THE HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR

And

THE HONOURABLE Ms. JUSTICE J. UMA DEVI

C.M.A.No.416 of 2005

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

- 1) Heard.
- 2) The present appeal came to be filed under Section 28 of the Hindu Marriage Act, aggrieved by the order dated 29.10.2004, passed in O.P.No. 5 of 2003, on the file of the Senior Civil Judge, Rajam, wherein an application filed by the respondent-husband under Section 13-1(i-a) of Hindu Marriage Act, 1955 (for short, 'the Act'), seeking dissolution of marriage on the ground of cruelty, was allowed.
- 3) At the time when the matter is taken up for hearing, it is brought to the notice of this Court by the counsel for the respondent that the respondent-husband is no more and the case can be closed. But, however, learned counsel for the appellant would submit that the findings arrived at by the trial Court warrants reconsideration, since there is no material on record to show that there was harassment by the petitioner-wife against the respondent. According to the counsel, the main ground on which the trial Court granted divorce was only due to existence of wide gap between both the parties and the trial Court erred in not believing or considering the evidence of RWs.2 to 5.

4) In order to appreciate the contention of the counsel for the petitioner-wife, we have perused the evidence of PWs.1,2, RWs.2 to 5. A reading of judgment would show that the evidence of RWs.2 to 5 was not considered to prove that there is no cruelty. Basing on the evidence of PWs.1 and 2, the Court below held that there was cruelty. Infact, no document was produced to show existence of any cruelty or harassment and the entire case was based on the ground that number of cases are pending between both the parties, which led to wide gap between their relationship. The record discloses existence of number of cases filed against each other which are as under:

“The respondent-wife filed C.C.No.84 of 2001 for an offence punishable under Section 498A IPC, C.C.No.162 of 2001 for the offences punishable under Sections 448, 323 IPC. O.S.No.3 of 2002 for maintenance, O.S.No.140 of 2002, C.C.No.290 of 2002, M.C.No.3 of 2002 on behalf of children against the petitioner. O.P.No.4. of 2001 under Section 5 of H.M.Act”.

In view of the aforementioned number of cases pending, the Court below categorically held that by filing cases against each other, the gap between them has widened and the relationship as wife and husband got strained.

5) Having regard to the above circumstances and as the Court below could not prove acts of cruelty by the petitioner-wife against the husband and in order to protect the reputation of the petitioner, lawyer, the order under challenge can be said to be incorrect and the harassment by the petitioner against the respondent appears to be

doubtful. But, however, since the respondent died pending the appeal, the matter stands closed.

6) Accordingly, the appeal is closed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

C. PRAVEEN KUMAR, J

J.UMA DEVI, J

08.03.2018
vnb

