

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL MISCELLANEOUS APPEAL No.307 of 2018

JUDGMENT: *(per the Hon' ble Sri Justice Gudiseva Shyam Prasad)*

This appeal arises out of the order dated 21.02.2018 in M.O.P.No.47 of 2015 on the file of the Additional Senior Civil Judge, Srikakulam. The appellant-Kuppili Swapna Priya, aggrieved by the impugned judgment allowing the petition filed by the respondent herein granting decree of divorce by dissolving their marriage held on 12.03.2011, has preferred this appeal.

Brief facts of the case as per the averments in the petition M.O.P.No.47 of 2015 are that the appellant is the wife of the respondent and their marriage was solemnized on 12.03.2011 at Padmavathi Kalyana Mandapam, Srikakulam, as per Hindu Law. At the time of marriage, the parents of the respondent-husband presented two tolas of gold pustelatadu to the appellant and ½ tola gold ring to the brother of appellant. The parents of the appellant presented a Hero Honda motorcycle to the respondent as gift, apart from the marriage articles. The allegation of the respondent is that the marriage was not consummated on 19.03.2011, and on the request of the appellant, he dropped her at her parents house. The respondent averred in the petition that they have not led marital life from 19.03.2011, till the date of filing of the petition for divorce. The allegation of the respondent is that the appellant deserted him without any reasonable

cause and has also taken the ground of cruelty. The trial Court has examined the witnesses PWs.1 to 3 on behalf of the respondent-husband, and DWs.1 to 4 on behalf of the appellant-wife, and marked the documents Exs.P1 to P4 on behalf of the respondent-husband.

The trial Court, on consideration of the evidence on record, has allowed the petition granting decree of divorce by dissolving the marriage between the appellant and respondent. Aggrieved by the decree of divorce passed by the trial Court, the appellant-wife is before this Court.

Heard the arguments of the learned counsel for the appellant, and learned counsel for the respondent.

Learned counsel for the appellant submits that the respondent has failed to prove the ground of desertion and cruelty. It is also argued that the trial Court has not properly appreciated the evidence on record and, therefore, the order passed by the trial Court granting decree of divorce is liable to be set aside.

Learned counsel for the respondent submits that the trial Court has properly appreciated the evidence on record and came to the conclusion that the appellant deserted the respondent. It has been proved through the witnesses that the appellant has not joined the company of the respondent at any point of time, and she did not even make any effort to join him, and therefore the respondent is entitled for grant of divorce. In fact, the trial Court has properly appreciated the evidence on record and granted divorce on the ground of desertion.

Before advertig further, it is appropriate to refer to the evidence of witnesses, whether the respondent-husband was able to prove the grounds urged by him under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, which are desertion and cruelty. The trial Court, relying on the evidence of RW.1-wife that she lived with the respondent-husband for only seven days after marriage and subsequently they never led marital life till the date of filing of the petition and also her admission to the effect that after one week of marriage, the respondent has dropped her at her parents house on the request of her parents and she did not return thereafter, has come to the conclusion that the appellant-wife deserted the respondent-husband without any reasonable cause.

It is the case of the respondent-husband that the marriage was not consummated. The trial Court has clearly observed in the order basing on the testimony of RW1 in her cross examination that nuptial function did not take place between her and the respondent from the date of marriage till the filing of petition before trial Court. Therefore, as the marriage was not consummated between the parties, and only on the request of the parents of the wife, she was dropped in her parents' house, the trial Court has rightly come to the conclusion that she deserted the husband without reasonable cause.

The trial Court has also observed that RW1-wife gave a complaint to the police, which is Ex.P3 stating that she and her parents have given dowry to the respondent-husband. She has also given a second complaint to the police on 07.03.2013 that they gave dowry of Rs.5,00,000/- to the respondent and that the respondent demanded additional dowry of

Rs.5,00,000/- from them. The respondent has got issued legal notice- Ex.P4 dated 01.02.2013 to the appellant calling her to join matrimonial life with him. RW.1 has admitted receipt of the said notice but she did not join the respondent to lead matrimonial life. On receipt of the said notice, the appellant gave a complaint to the police against the respondent and his family members on 07.03.2013.

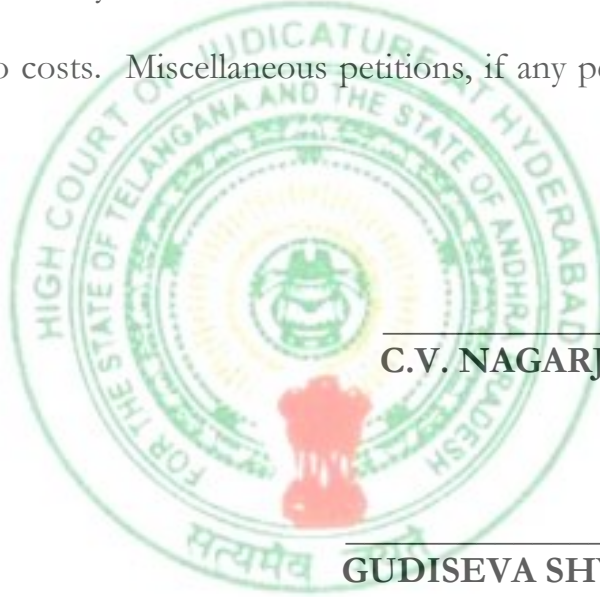
The trial Court has rightly come to the conclusion that the respondent has made several efforts to bring back the appellant to lead matrimonial life with him by giving them Ex.P4 legal notice asking her to join his association, but she did not join matrimonial life with him even after receipt of the said notice and, on the other hand, she gave a complaint to the police against the respondent and his parents alleging that they have harassed for additional dowry.

On behalf of the appellant, RW.3 was examined and his evidence reveals that she does not know about the dispute that took place at the house of the appellant, about the respondent coming to the house of the appellant and threatening them. Therefore, the evidence of RW.3 is not of much help to the case of the appellant to prove any harassment made by her husband by threatening them.

The trial Court, however, did not believe the testimony of the witnesses RWs.1 to 4 with regard to the allegation of demand of additional dowry by the respondent-husband, and the husband going to the house of appellant and threatening them.

The trial Court, on considering the conduct of the appellant-wife in making several allegations against the respondent-husband, and filing several complaints against him in the police station and not joining his association and deserting him without any reasonable cause, has granted divorce by allowing the petition filed by the respondent-husband on the ground of desertion and cruelty. Therefore, there are absolutely no grounds to interfere with the findings of the trial Court.

IN THE RESULT, the appeal is dismissed, confirming the order and decree passed by the trial Court in M.O.P.No.47 of 2015, dated 21.02.2018. No costs. Miscellaneous petitions, if any pending, shall stand closed.



C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

10th October, 2018

KSM

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(Order of the Division Bench delivered by
Hon' ble Sri Justice Gudiseva Shyam Prasad)

10th October, 2018

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