

THE HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR

And

THE HONOURABLE Mrs. JUSTICE T. RAJANI

C.M.A.No.633 of 2005

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

1) The present appeal came to be filed under Section 28 of the Hindu Marriage Act, aggrieved by the order dated 07.01.2004, passed in H.M.O.P.No.65 of 2000 on the file of the Senior Civil Judge, Suryapet, wherein the petition filed by the appellant under Section 13 (ia) of Hindu Marriage Act, 1955 (for short, 'the Act'), seeking divorce, was dismissed.

2) For the sake of convenience, the parties will hereinafter be referred to as arrayed in the H.M.O.P.

3) The facts in issue are as under:

(i) The marriage between the petitioner-husband and respondent-wife was performed in the year 1978 at Yarraboinapally of Kaluru Mandal, Khammam District. Both of them lived happily till 1981 and out of the wedlock, they were blessed with two children. Thereafter, disputes arose between them leading to differences in their matrimonial life. The said differences led to separation from conjugal company and since 1983, respondent left the matrimonial house and settled at her parents' house. The mediation efforts held

by the elders proved futile. As chances of re-union were bleak, the petitioner filed the present application seeking divorce on the ground of cruelty. It is also stated that the petitioner has been paying Rs.450/- to the respondent towards maintenance.

(ii) A counter came to be filed by the respondent denying the allegations made in the petition, except admitting their marriage in the year 1978 and birth of the children. It is stated that the petitioner developed illegal contacts with one Kanakadurga and used to bring her to the house and whenever the respondent and the family members questioned the acts of the petitioner, he used to beat and abuse her in a filthy language. It is stated that because of illegal contacts of the petitioner, the respondent left the company of the petitioner and started living separately. It is the case of the respondent-wife that the petitioner married the said Kanakadurga and in support of the same, she placed on record Ex.B1, which is the certificate issued by the Gram Panchayat office, Kodad, to prove the marriage between the petitioner and said Kanakadurga. In view of the above, the plea of the petitioner that the respondent deserted petitioner on her own is false and hence seeks dismissal of the petition.

(iii) In support of his case, the petitioner himself examined PW.1 but no oral or documentary evidence is adduced on his behalf.

Whereas, the respondent examined herself as RW1 and her brother as RW2. She also got marked Exs.B1 to B3, in support of her plea.

(iv) Basing on the material available on record, the Court below dismissed the O.P. filed by the husband seeking divorce. Challenging the same, the present appeal came to be filed.

4) The point that arises for consideration is whether the petitioner is entitled to divorce on the ground of cruelty?

5) There is no dispute insofar as relationship between the petitioner and the respondent is concerned, as well as the birth of the two children. It is also not in dispute that the respondent is staying with her parents since 1983. It is the case of the petitioner that the respondent is living separately since last 20 years without any just and reasonable cause and hence he is entitled to seek divorce. The same is opposed by the respondent stating that there is justifiable cause for her to live separately.

6) In order to appreciate the above contentions, it would be useful to refer to the evidence of the witnesses. The evidence in chief of the petitioner-husband does not anywhere disclose any acts of cruelty by the respondent. His main grievance appears to be that since the respondent-wife left on her own, without any justifiable cause, he is entitled for divorce. But, however, the respondent in her evidence explains the reason for staying away from the petitioner. In her

evidence, she stated that the petitioner developed illegal contacts with one Kanakadurga. Both of them lived together as husband and wife and also begot a child by name Chakravarthy. According to her, whenever she questioned the illegal acts, the petitioner used to beat her and also abuse her in filthy language, in the presence of others apart from throwing her away from the house. This version of RW1 gets corroboration from the evidence of RW2, who is the brother of the respondent. The plea of the respondent that the petitioner developed illicit relationship with said Kanakadurga is proved by Ex.B1, the certificate issued by the Executive Officer, Grampanchayat, Kodad, wherein it is stated that said Kanakadurga is described as wife of the petitioner and both of them residing in a house bearing No.17-107/ 1. It is further stated that Ex.B3-voters list of the year 2002, also indicates that the petitioner has been residing with his concubine by name Kanakadurga, who was described as the wife of the petitioner.

7) Learned counsel for the appellant mainly contends that Exs.B1 to B3, which are placed on record, through the evidence of RW1, are created for the purpose of the case.

8) The said contention appears to be untenable for the reason that these two documents were issued by the Government authority i.e., the Executive Officer, Grampanchayat. If really the plea of the petitioner that these documents are false, he should have taken some

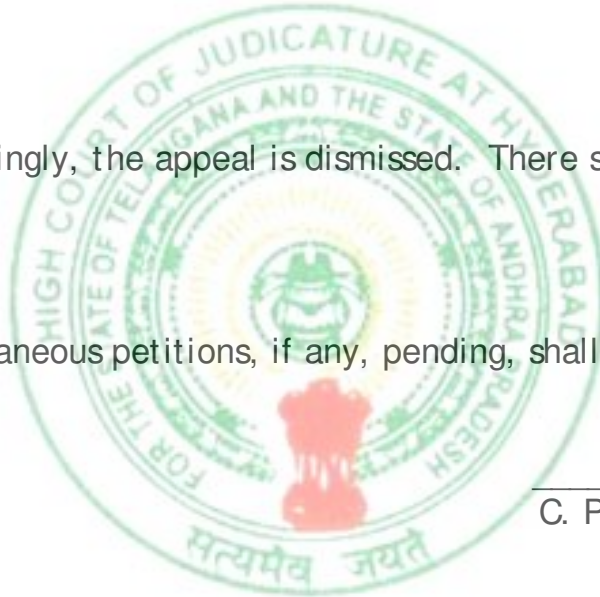
steps to prove the same. Merely saying that these documents are false, cannot solve the problem for him. Further, if really the version of RW1 is false, and that she has been staying on her own away from the petitioner, nothing prevented the petitioner from getting the respondent back to his house, for leading a matrimonial life. There is no evidence to show that he had made any such attempt or atleast filed a petition for restitution of conjugal rights. Therefore, we feel that the plea of the petitioner that the respondent on her own left her company without justifiable cause, appears to be invented for the purpose of this case. The evidence on record further shows that the petitioner was living with a concubine and he failed to take care of his two children and wife, who are all dependant on him. Infact, the trial Court rightly observed that no woman would tolerate the illegal contacts with some other woman by her husband at any cost and for the said reason only the respondent-wife started living separately from the petitioner having no other alternative. It is also stated that though the respondent expressed her willingness to join his company, during the course of reconciliation proceedings before the trial Court, the petitioner deliberately refused to join her. It appears that the wife is facing harassment in the hands of the husband and not the husband. Admittedly, the parties are living separately since 1983 and no efforts were made by the petitioner to settle the disputes and live together. Though the petitioner tried to contend that the respondent on her

own left the company of the husband, but Exs.B1 to B3, coupled with evidence of RW2, amply prove that the petitioner, who is a Government employee, developed illicit relationship with another lady and started living with her at a different place, as mentioned in Ex.B1.

9) For the aforesaid reasons, we feel that there is justifiable cause for the respondent-wife to live separately from the petitioner-husband and hence the plea of cruelty by the respondent-wife, which is urged as a ground for divorce, fails and the appeal is liable to be dismissed.

10) Accordingly, the appeal is dismissed. There shall be no order as to costs.

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



C. PRAVEEN KUMAR, J

T. RAJANI, J

12.07.2018
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