

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

C.M.A.No.502 OF 2006

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

Heard learned counsel for the appellant and perused the material on record.

2. The present appeal came to be filed under Section 28 of the Hindu Marriage Act, 1955 (for short, 'the Act'), aggrieved by the order dated 27.04.2006, passed in O.P.No.14 of 2004 on the file of the Senior Civil Judge, Kavali, wherein a petition filed by the appellant herein under Section 13(1)(ia) and (ib) of the Act, seeking dissolution of marriage, was dismissed.

3. For the sake of convenience, the parties will hereinafter be referred to as arrayed in the Original Petition.

4. The facts, in brief, as stated in the affidavit filed in support of the petition, are that the marriage between the petitioner and the respondent took place on 23.08.2001 at the house of the petitioner at Gowravaram Village, as per Hindu caste custom. This was the second marriage of the respondent with the petitioner. Soon after the marriage, the respondent joined the petitioner to lead a conjugal life. Both of them lived happily for one year. Thereafter, the respondent started insisting the petitioner to shift their residence to her parental house. It is said that the respondent used to pick up

petty quarrels with the petitioner, without any fault of the petitioner. The respondent used to throw the house hold articles on the petitioner and beat the petitioner as well. Some times, the respondent used to leave the company of the petitioner and go to her parents' house without any cause. At that time, the petitioner used to go to her parents' house to pacify the issue and bring her back to his house. In spite of the same, there was no change in the attitude of the respondent. Though the petitioner was not able to lead a conjugal life with the respondent, he borne all the mental pressure and continued to live with the respondent. About a year prior to the filing of the present O.P., the respondent left the house of the petitioner without the knowledge of the petitioner and thereafter, did not turn up, in spite of his requests. The mediators, Vintha Anji Reddy, Poondla Srinivasulu Reddy, Poondla Ayyapareddy, Brahmaiah, Malyadri and Mallareddy, went to the parents' house of the respondent to convince her, but she did not heed to the good words of the mediators. Hence, the petitioner filed the above O.P. seeking divorce.

5. A Counter came to be filed by the respondent denying the allegations made in the petition. It is stated that at the time of marriage, the father of the respondent gave Rs.1,00,000/- cash and Rs.60,000/- worth of gold ornaments. Subsequently, the marriage was consummated

and the respondent joined the petitioner at Gowravaram Village. Both of them lived happily for about two years, during which period she became pregnant in the month of June, 2003. While she was carrying third month of pregnancy, she was brought to Padmaja Nursing Home, Kavali, for scanning. After obtaining the report, the petitioner, at the instance of his father and brother, started demanding the respondent to get the property of her share or its value of Rs.90,000/- from her parents as additional dowry. But, she did not agree for the same, as enough dowry was given at the time of marriage. Thereupon, the petitioner started ill-treating the respondent. The respondent bore the harassment with a fond hope that the petitioner will change his attitude on one day or the other. In the month of November, 2003, the respondent was again brought to the Padmaja Nursing Home for scanning by the petitioner. After scanning, the Doctor issued a report, dated 20.11.2003. Later, the demand, as made by the petitioner earlier, was repeated. Suspecting danger to her life, the respondent informed the same to her father over telephone. Thereafter, the parents of the respondent came to the petitioner's house and questioned him about his illegal acts, which lead to threat of the life of the respondent. Though the father of the respondent stated that he would register the land in the name of the respondent, but the petitioner did not agree for the same and abused the respondent in filthy

language, beat her and necked her out of the house. Having no other go, the respondent came to her parents' house. On 29.02.2004, she was blessed with a male child. The same was informed to the petitioner, but in vain.

6. Basing on the said allegations, the trial Court framed the issue as to whether the petitioner is entitled to divorce as prayed for?

7. On behalf of the petitioner, PWs.1 to 3 were examined and Exs.A1 to A7 were marked. On behalf of the respondent, RWs.1 and 2 were examined, but no documents were marked.

8. After considering the entire evidence on record, the trial Court dismissed the petition. Challenging the same, the present appeal came to be filed by the husband.

9. Learned counsel for the appellant mainly submits that the evidence of PW.1, which gets corroborated with the evidence of PW.2, amply establish that the appellant meted out cruelty in the hands of the respondent and as such, the appellant is entitled to divorce.

10. In order to appreciate the submissions of the learned counsel for appellant, it would be appropriate to extract the evidence of PWs.1 to 3, as recorded by the trial Court at paragraph Nos.7 and 8.

“7. ... PW.1 deposed that the marriage between him and the respondent took place on 28.03.2001 at Gowravaram at his residence as per customs and rites. Immediately after the marriage the respondent joined with him and lead a marital life for a period of one year. Thereafter, the respondent insisted him to shift the family to her parents house and used to pick up quarrels without any reasonable grounds. In some occasions, she used to throw away the house hold articles whatever present in her hands and also used to beat her in some occasions. The respondent used to left the house without his knowledge and went to her parents house. He used to bring back her to his house on several requests. But there is no change in her attitude. The respondent is behaving always under the influence of her mother. The respondent always rejected her at least in sharing of bed in her matrimonial life. He bear all the types of torture with great difficulty but there is no change in her attitude. Two years back the respondent left the house without his consent and went to her parents house. Subsequently she did not turn up inspite of repeated requests made by him. The respondent did not turn up. Thereafter he send the mediators. The respondent did not heed the words of elders and refused to join with her. He do not know whether the respondent was carrying 3rd month pregnancy and she was brought to Padmaja Nursing Home, Kavali, for scanning purpose. It is false to say that he demanded the respondent to sell away the property towards her share or to bring the cash towards the value of the land from her parents house as additional dowry and she did not agree for the same and the father of the respondent came to his house and questioned him about his high handed acts and after receiving telephone from the respondent in the month of November, 2003 that the

respondent blessed with female child at hospital on 29.02.2004 and the same was informed to him by the respondent's father. Hence the petition for divorce.

8. The evidence of PWs.2 and 3 who deposed that they held mediation in between the respondent and the petitioner on several times. The respondent refused to join with the petitioner. ... ”

11. The respondent, as RW.1, in her chief affidavit, while denying the allegations made in the petition, stated that the marriage between her and the petitioner took place on 23.08.2001, in the house of the petitioner at Gowravaram Village, as per caste custom. It was a second marriage to her. At the time of marriage her parents gave Rs.1,00,000/- cash and Rs.60,000/- gold ornaments. Thereafter, the marriage was consummated at Gowravaram and they lived happily for about two years. Later, she became pregnant in the month of June, 2003. Subsequently, the petitioner started ill-treating her at the instance of his father and brother demanding additional dowry of Rs.90,000/- or Ac.3-00 of land from her parents. She did not agree for the same. Subsequently, in the month of November, 2003, without any fault of her, the petitioner again beat her indiscriminately and demanded to bring additional dowry. Due to the acts of the petitioner, suspecting danger to her life in the hands of the petitioner, she went to the house of one Medaramitla Krishna Reddy, S/o. Audisesha Reddy of Gowravaram and telephoned to her parents about the illegal and ill-treatment acts of the

petitioner. Then, her parents came to her in-laws house. When her father questioned the petitioner about the illegal acts, he demanded sale of land admeasuring Ac.3-00 to get Rs.90,000/- as additional dowry. Her father stated that he will register the said land in the name of his daughter, but the petitioner did not agree for the same. Thereafter, the petitioner, his father and brother beat her and abused her in filthy language and threw her out from the house. As there was no other go, she went along with her parents to their house at Parlapalli. While she was carrying 9th month pregnancy, she was admitted in Padmaja Nursing Home at Kavali on 12.02.2004 and gave birth to a male child on 29.02.2004. Subsequently, the same was informed by her father to the petitioner, but he did not come to see her as well as the child.

12. From the above allegations, it stands established that the marriage between the petitioner and the respondent was performed on 23.08.2001 at Gowravaram Village as per caste custom. Immediately after the marriage, the respondent joined the petitioner, where they lived happily together for some time. Out of their wedlock, they were blessed with a male child. The dispute is with regard to the payment of additional dowry of Rs.90,000/- and also the harassment meted out by the petitioner in the hands of the respondent. It is the case of the petitioner that respondent used to insist

him to shift the family to her parental house, pick up quarrels without any reason and also used to throw house hold articles on him. It is also his case that in spite of several requests made by him, there was no change in the attitude of the respondent. If really the petitioner meted out such harassment in the hands of the respondent, nothing prevented him in reporting the same to the caste elders or to the police. He has not taken any such step. There is no documentary evidence to show that the respondent used to leave the matrimonial house without the consent of the petitioner. The evidence and the contents of the petition are silent as to when the respondent left the matrimonial house without informing the petitioner. None of the neighbours were examined to prove the disputes, if any, between the petitioner and the respondent. Though the mediators, who claim to have mediated the issue, are examined as PWs.2 and 3, both of them, in their evidence, never disclosed the dates or period during which they mediated or went to the house of the respondent's parents to convince the respondent. Their evidence appears to be very vague.

13. On the other hand, the evidence on record shows that the petitioner harassed the respondent for additional dowry, even when she was pregnant. The said information was passed on to the parents of the respondent. They came to the house of the petitioner and questioned him about his

behaviour towards the respondent, when she was pregnant. The material on record further discloses that the respondent is willing to join the company of the petitioner, but it was the petitioner who was refusing to take her back.

14. Having regard to the circumstances referred to above and as the petitioner failed to prove any act of cruelty by adducing legal evidence, we feel that the findings of the trial Court warrant no interference.

15. Hence, the Civil Miscellaneous Appeal is dismissed. Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.



JUSTICE C.PRAVEEN KUMAR

JUSTICE J. UMA DEVI

February 22, 2018
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