

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

CIVIL MISCELLANEOUS APPEAL No.973 OF 2006

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

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 13.09.2006, passed in O.P.No.42 of 2004 on the file of the Senior Civil Judge, Sangareddy, wherein a petition filed by the respondent herein, under Section 13 of the Act, seeking dissolution of marriage, was allowed.

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

3. The averments in the petition filed by the husband are that the marriage between the petitioner and the respondent said to have taken place on 12.03.2000 at Sangareddy as per Hindu rites and customs. Both of them lived happily for about one week. Thereafter, the respondent – wife started picking up quarrels for petty reasons. The averments would also show that the respondent was in love with another person and she was not interested to marry the petitioner. The respondent insisted the petitioner to set up a separate house and live away from the parents of the petitioner, as she does not like to live in the company of the parents of the petitioner. Since the petitioner has no financial capacity to set up separate family, he refused

for the same. Thereafter, the respondent left the house of the petitioner on 02.06.2002 and started living at her parents' house. It is stated that out of the wedlock, they were blessed with a female child. The averments in the petition further show that after the respondent left the company of the petitioner, he approached her several times requesting her to lead a matrimonial life, but she refused for the same. Panchayats were held, so as to bring the respondent to matrimonial home, but the efforts of the elders proved futile. The respondent lodged a report, which came to be registered as Crime No.92 of 2002 for the offence punishable under Section 498A I.P.C., which ended in acquittal. It is also averred that there is no likelihood of petitioner and respondent living together and the respondent is living away from the petitioner since two years. Hence, the petitioner filed the present O.P. for dissolution of marriage.

4. A counter came to be filed by the respondent denying the averments made by the petitioner. It is stated that she lodged the report on valid grounds and the police rightly registered a case in Crime No.92 of 2002 for the offence punishable under Section 498A I.P.C., which initially resulted in conviction of the petitioner and his parents, but on appeal, it lead to an acquittal. It is also stated that the State preferred another appeal before this Court and the same is pending. It is further stated that the petitioner is a cruel person and the parents of the respondent gave net cash of Rs.40,000/- towards

dowry along with 20 tulas of gold, one Hero Honda Motorcycle and other household articles. The petitioner and his parents being not satisfied with the same, started harassing the respondent to bring additional dowry of Rs.50,000/- from her parents. They harassed and ill-treated her both physically and mentally. It is alleged that they tried to kill her by pouring kerosene and the neighbours rescued her, when she raised hue and cry. As such, she went to her parents' house and presented a complaint to the police. The petitioner and his parents refused to allow her to live in the company of the petitioner. They performed second marriage of the petitioner with one Hemalatha and as such, a case was filed for the offence punishable under Section 494 I.P.C. against the petitioner and others. It is said that the petitioner suppressed all the real facts and filed the present O.P. to get rid of the respondent on false and fictitious grounds. Hence, she prayed to dismiss the O.P.

5. Basing on the above pleadings, the trial Court framed an issue as to whether the petitioner is entitled to dissolution of marriage?

6. In support of his case, the petitioner examined himself as PW.1 and got marked Exs.A1 to A3. On behalf of the respondent, she examined herself as RW.1 and also examined one Seeta Ram Tirtham as RW.2, but no documents were marked.

7. After considering the entire evidence on record and taking into consideration the legal position, the trial Court granted divorce. Assailing the same, the present appeal came to be filed by the respondent – wife.

8. Admitted facts are that the marriage between the petitioner and the respondent took place on 12.03.2000. Out of their wedlock, they were blessed with a female child. Both of them lived happily for some time and thereafter, the respondent started picking up quarrels for petty reasons. The respondent left the company of the petitioner in the year 2002. Though the petitioner stated that the respondent left his company on 02.06.2002, but the respondent did not admit the said date and submitted that she left the house of the petitioner when an attempt was made by the petitioner and his parents to kill her. The respondent lodged a report, which came to be registered as Crime No.92 of 2002, against the petitioner and his parents for the offence punishable under Section 498A I.P.C. On the basis of a complaint filed by the respondent, a case in C.C.No.554 of 2004 on the file of Judicial Magistrate of First Class, Chevella at Ranga Reddy, was registered against the petitioner and ten others for the offence punishable under Section 494 I.P.C.

9. In order to appreciate the arguments, it would be appropriate to refer to the evidence of the witnesses.

10. PW.1, in his chief examination, reiterated the contents of the petition. He was cross-examined at length on behalf of the respondent. In the cross-examination, PW.1 stated that he and the respondent lived happily for about two years; that no dowry was given at the time of marriage by the parents of the respondent and that there was no suppression of facts. He admits that his father is a retired Teacher and his mother sustained loss in chit business and that the petitioner and his family members indebted to many persons. To a suggestion that he demanded the respondent to bring additional dowry was denied by him. He also denied the suggestion that he went to the house of the parents of the respondent and brought his daughter without informing anybody and that due to persuasion and advice of elders, he handed over the child subsequently. He also denied the suggestion that he married one Hemalatha. He also denied that intentionally false averments were made in the petition stating that the respondent expressed about her love with another person, so as to defame and to create stigma on the character of the respondent.

11. RW.1 filed her chief affidavit reiterating the contents of the counter. In the cross-examination, RW.1 admitted that she left the house of the petitioner in June, 2002 and she has been living away from PW.1 since then. She also admitted filing of O.S.No.701 of 2002 on the file of Principal Junior Civil Judge, Sangareddy, against her husband, with a request to restrain

him from marrying another woman. She also admitted that she lodged a report for the offence punishable under Section 498A I.P.C., which was taken on file as C.C.No.351 of 2003 by the Additional Judicial Magistrate of First Class, Sangareddy, leading to conviction of the petitioner and others in the first instance, but on appeal, resulting in acquittal, against which a revision was filed before this Court by the respondent. She also admitted that on her complaint against the petitioner and others for the offence punishable under Section 494 I.P.C., a case in C.C.No.554 of 2004 on the file of Judicial Magistrate of First Class, Chevella, Ranga Reddy District, was registered.

12. RW.2, who is the father of RW.1, corroborated the evidence of RW.1 on all respects.

13. Basing on this evidence on record, it is to be seen whether the trial Court was justified in granting divorce.

14. As seen from the record, the decree which was passed in O.S.No.701 of 2002 on the file of Principal Junior Civil Judge, Sangareddy, and marked as Ex.A1, remained unchallenged. Ex.A2 is the certified copy of the complaint made by the respondent under Section 200 Cr.P.C. before the Judicial Magistrate of First Class, Chevella, Ranga Reddy District, against the petitioner and some others stating that without obtaining divorce, the petitioner married another woman, by name Hema Latha of Sangareddy, as second wife. Ex.A3 is the

certified copy of the judgment, dated 10.08.2004, in CrI.A.No.140 of 2003 rendered by the II Additional District and Sessions Judge (Fast Track Court), Medak at Sangareddy.

15. It is to be noted here that the respondent lodged a criminal report against the petitioner and his parents, which resulted in registration of a crime for the offence punishable under Section 498A I.P.C. After a full-fledge trial, the trial Court convicted the accused and sentenced each of them to suffer rigorous imprisonment for one year. Aggrieved by the same, the petitioner and his parents preferred CrI.A.No.140 of 2003 on the file of II Additional District and Sessions Judge (Fast Track Court), Medak at Sangareddy, which was allowed setting aside the conviction and sentence recorded against the petitioner and his parents. Aggrieved by the same, CrI.R.C.No.1669 of 2004 was filed by the respondent – wife and the same was dismissed by this Court on 29.11.2013.

16. A reading of the judgment of this Court in the aforesaid revision case would show that the allegation of petitioner trying to set the respondent on fire by pouring kerosene was false. The relevant portion in the judgment of this Court is as under:

“9. Considering this part of evidence, the learned appellate Judge found that evidence of P.W.1 is not convincing and extended benefit of doubt to respondents 1 to 3 herein. The trial Court while discussing the evidence observed that A.4 to A.7 were implicated. When

such is the observation, the evidence of interested witnesses have to be examined with great care and caution. It is the specific case of P.W.1 that on 2-6-2002, an attempt was made on her life. According to her, A.1 poured kerosene on that day and one Chandramouli came to her rescue on hearing her cries. According to P.W.1, after that incident, she came back to her parents house. If really, any such incident had happened, nothing prevented her to give a complaint to police on that day itself. But admittedly, till 7-7-2002, no police report was given. This abnormal delay has not been explained either by P.W.1 or by the prosecuting agency. The learned appellate judge also considered this delay and extended benefit of it to the accused. I do not find any wrong appreciation of the facts and evidence by the appellate court and on the other hand, it rightly extended benefit of doubt to respondents 1 to 3 herein.”

17. When the aforesaid judgment is read along with other evidence, it would show that the reason for the respondent to leave the company of the petitioner was the incident which took place on 02.06.2002, wherein the petitioner tried to kill the respondent by setting her on fire, which was found to be false by the Honourable Court. Therefore, it is a case where in the month of June, 2002, the respondent deserted the petitioner on her own by creating a situation as if the petitioner tried to kill her. Keeping this circumstance in view, it would be appropriate to refer to the Division Bench judgment of Karnataka High Court in **Geetha (Dr.) v. Mahantesh Patil (Dr.)**¹. In paragraph

¹ 2017 (3) HLR 348 (Karn.)

No.36 of the said judgment, the Division Bench, after referring to various authorities on the subject, observed as under:

“36. Admittedly, in the present case, both oral and documentary evidence clearly indicates that from the beginning of the marriage, i.e., 25.12.2005, there is no co-operation between the appellant/wife and respondent/husband. From the date of marriage, the appellant used to cause much humiliation to the respondent. When they went for a short trip to Goa and Munnar, the appellant used to pick up quarrel with the respondent and used to threaten the respondent that she would commit suicide which caused mental shock to the respondent and it became a regular threatening to the respondent. Due to this attitude of the appellant, the respondent became to feel very insecure. One day, when both appellant and respondent were going in the car, the appellant got down from the car and started walking on the road which caused much humiliation to the respondent and social embarrassment. Another incident is that both the appellant and respondent decided to celebrate the first year birthday of their daughter Gauri at Belgaum. Respondent invited all the family members and friends to the occasion. But the appellant went to Gulbarga alongwith minor child Gauri which caused much humiliation to the respondent and his parents and social embarrassment. Definitely such an attitude of the appellant will cause a great mental harassment and agony which gives rise to a reasonable apprehension of harm or injury to health, reputation or professional working of husband and his friends. Such acts of the wife amounts to “cruelty” as to cause of reasonable apprehension in the mind of the husband. Admittedly, according to the husband, they last resided together on 17th February 2009 and the petition filed for divorce on 01.04.2011. It amounts to the factum of separation, the

intention to bring co-habitation permanently to an end-animus deserendi, continued not less than two years immediately preceding the presentation of the petition. It is also not in dispute that the appellant/wife has been living separately from the respondent/husband for the past more than seven years and her attitude is well established that at no point of time, she has taken steps to join her husband and it is not her case that she had filed any petition under Section 9 of the Hindu Marriage Act for restitution of Conjugal Rights against the respondent/husband from the date she has separated from her husband or went out from the matrimonial home. Therefore, said conduct of the appellant amounts to desertion.”

18. The Division Bench held that the attitude of the appellant - wife therein going to Gulbarga along with the minor child would definitely cause a great mental harassment and agony, which gives rise to a reasonable apprehension of harm or injury to health, reputation or professional working of husband and his friends. A reading of aforesaid paragraph would also show that the appellant and the respondent therein last resided together on 17.02.2009 and the petition for divorce was filed on 01.04.2011, which amounts to the factum of separation. The intention to bring co-habitation permanently to an end-animus deserendi, continued not less than two years immediately preceding the presentation of the petition. It was found that the appellant – wife therein was living separately from the respondent for the past more than seven years and her attitude is well established that at no point of time, she has taken steps

to join her husband and it is not her case that she has filed any petition for restitution of conjugal rights. Therefore, it was held that the said conduct of appellant therein amounts to desertion giving rise to a ground for divorce.

19. Even in the instant case, the fact that the respondent left the company of the petitioner in the month of June, 2002 stands established. The reason why she left the company of the petitioner was that the petitioner tried to kill her by setting her on fire, which was found to be false by the competent criminal Court. Therefore, it is obvious that she left the company of the petitioner on her own in the year 2002 and since then she has been living separately from the petitioner. Thereafter, in the month of September, 2004 i.e., after two years, the petitioner filed the present petition for divorce. If really the respondent was interested to live with the petitioner, she would have taken steps, as observed in the judgment referred to above, by filing an application for restitution of conjugal rights, which she did not. Hence, we feel that the respondent, on her own, stayed separately from the year 2002 and thereafter, as well, which amounts to desertion.

20. Apart from that, it is also to be seen whether the acts of the respondent amounts to cruelty.

21. 'Cruelty' is not defined anywhere in the Hindu Marriage Act. But the Honourable Supreme Court in **Raj**

Talreja v. Kavita Talreja², observed that the conduct of wife levelling false accusations against the husband amounts to cruelty and that the husband is entitled to a decree of divorce. In paragraph Nos.10 and 11 of the said judgment, the Honourable Supreme Court observed as under:

“10. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act 1955 (for short ‘the Act’). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty. In the present case, all the allegations were found to be false. Later, she filed another complaint alleging that her husband along with some other persons had trespassed into her house and assaulted her. The police found, on investigation, that not only was the complaint false but also the injuries were self inflicted by the wife. Thereafter, proceedings were launched against the wife under Section 182 of IPC.

11. We have perused the judgment of the High Court. The High Court while dealing with the plea of

² 2017 (3) HLR 449 (S.C.)

false complaints held that there was no reason to hold that the criminal complaint filed by the respondent – wife was false and mala fide. We are unable to agree with this finding of the High Court and the court below. Both the courts below relied upon the statement of the wife that her husband had often visited her house and she fulfilled her marital obligations. These observations are not based on any reliable or cogent evidence on record. It is not disputed before us that the wife continues to live in the house which belongs to the mother of the husband whereas the husband lives along with his parents in a separate house and the son and daughter-in-law of the parties live with the wife. The son is working with the husband. We may note that Ms. Makhija has very fairly stated before us that the husband had always fulfilled his paternal obligations to his son and is continuing to pay maintenance to his wife as fixed by the court.”

22. In the instant case, the respondent in her report made an allegation that the petitioner tried to set her on fire, which made her to leave the company of the petitioner. She made this a basis to lodge a report for the offence punishable under Section 498A I.P.C. Initially, the trial Court convicted the petitioner and his parents, but on appeal, the same was set aside. Assailing the appellate Court order, the respondent filed Crl.R.C.No.1669 of 2004 and by order, dated 29.11.2003, the learned single Judge of this Court, after considering the evidence on record, found that the incident of petitioner pouring kerosene on the respondent and that one Chandramouli coming to her rescue, is incorrect. It is also to be seen that the

respondent also lodged a complaint for an offence under Section 494 I.P.C. stating that the petitioner has illicit relationship with another woman, which was also found to be false in view of the acquittal. Therefore, intentionally levelling false accusations can be made the basis to grant divorce, in view of the judgment of the Apex Court referred to above.

23. Though irretrievable break down is not a ground for divorce, but having regard to the fact that the trial Court has granted divorce in the year 2006 and the petitioner and respondent are living separately since 2002, we felt that no purpose would be served in compelling both the parties to live together. In fact, the Honourable Apex Court in **Sukhendu Das v. Rita Mukherjee**³, observed as under:

“7. The Respondent, who did not appear before the trial Court after filing of written statement, did not respond to the request made by the High Court for personal appearance. In spite of service of Notice, the Respondent did not show any interest to appear in this Court also. This conduct of the Respondent by itself would indicate that she is not interested in living with the Appellant. Refusal to participate in proceeding for divorce and forcing the appellant to stay in a dead marriage would itself constitute mental cruelty (Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511 [2007 (1) HLR (S.C.) 497 : 2007 (2) ICC (S.C.) 768] [para 101 (xiv)]. The High Court observed that no attempt was made by either of the parties to be posted at the same place. Without entering into the disputed facts of the case, we are of the opinion that there is no likelihood of the Appellant and

³ 2017 (3) HLR 512 (S.C.)

the Respondent living together and for all practical purposes there is an irretrievable breakdown of the marriage.

8. This court in a series of judgments has exercised its inherent powers under Article 142 of the Constitution for dissolution of a marriage where the Court finds that the marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted [Manish Goel v. Rohini GOel, (2010) 4 SCC 393 (Para 11 : [2010 (2) HLR (S.C.) 532 393]). Admittedly, the Appellant and the Respondent have been living separately for more than 17 years and it will not be possible for the parties to live together and there is no purpose in compelling the parties to live together in matrimony (Rishikesh Sharma v. Saroj Sharma, (2007) 2 SCC 263 : [2007 (1) HLR (S.C.) 617] [Para 4 and 5]. The daughter of the Appellant and the Respondent is aged about 24 years and her custody is not in issue before us. In the peculiar facts of this case and in order to do complete justice between the parties, we allow the Appeal in exercise of our power under Article 142 of the Constitution of India, 1950.”

24. In view of the above and since the cases filed by the respondent ended in acquittal, as the nature of allegations levelled against the petitioner are not only false, but are defamatory in nature, we feel that the finding of the trial Court in granting divorce cannot be found fault with.

25. Accordingly, the Civil Miscellaneous Appeal is dismissed confirming the order, dated 13.09.2006, passed in

O.P.No.42 of 2004 on the file of the Senior Civil Judge,
Sangareddy.

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

March 15, 2018.
MD



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



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