

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

CMA NO. 943 of 2006

JUDGMENT: (Per Hon'ble Mr. Justice C. Praveen Kumar)

1. The present appeal came to be filed questioning the order dated 30.8.2006 allowing O.P.No. 9 of 2005 on the file of the I-Addl. Senior Civil Judge, Kakinada, filed by the wife under Section 9 of the Hindu Marriage Act, 1955, granting restitution of conjugal rights. The parties will hereinafter be referred to as they are arrayed before the trial Court.

2. The facts in issue are as under,

The marriage between the petitioner and the respondent was celebrated on 28.1.1990. The respondent was presented with cash of Rs.25,000/- as dowry and other lanchanams, gold etc. Out of wedlock the couple was blessed with two daughters who were 13 years and 6 years at the time of filing of the OP. It is said that the respondent was doing cultivation and running a kirana shop at his house. Within one year of marriage the respondent wound up his business without any valid reason and got addicted to bad vices. It is said that the respondent used to pledge and sell petitioner's gold and subjected her to severe ill-treatment. In spite of negotiations held by the elders, the respondent did not mend his behaviour and ultimately on 5.6.2003 the respondent drove her out of his house. The petitioner filed MC No. 51 of 2003 and also OPSR No. 7646 of 2004 in the Court of III-Addl. District Judge, Kakinada seeking custody of her daughter.

3. A counter came to be filed by the respondent, disputing the allegations made in the petition. It is said that on 5.6.2003 the petitioner herself deserted the respondent and her two children and fled away with gold and cash of Rs.16,000/-. The petitioner subjected him to harassment and cruelty and insisted him to shift his residence to Kakinada. It is said that the petitioner and her father, who worked as camp clerk to Additional Superintendent of Police, East Godavari, harassed the respondent by influencing the local police.

4. In support of her case, the petitioner examined herself as P.W.1 and her father as P.W.2 and got marked Exs.A1 to A10. The respondent examined himself as R.W.1 and another as R.W.2, but no documentary evidence was adduced by him. After considering the entire evidence on record, the trial Court found that after the petitioner was necked out from the house of respondent, she lodged a complaint -Ex.A5 with police, Kirlampudi for taking action against the respondent. The respondent did not take steps to get back her except issuing notice in the original of Ex.A3-registered notice dated 30.7.2003 by the end of July, 2003 and it was only issued as a defence. The petitioner was able to show that she was subjected to cruelty by the respondent and that she was necked out by the respondent on 5.1.2003. Ultimately the trial Court held that since the respondent had voluntarily necked out the petitioner only to continue his bad vices, the petitioner is entitled to have his company and enjoy conjugal life. By the impugned order, the trial Court allowed the OP. Challenging the same, the present appeal came to be filed.

5. When the matter is taken up for hearing, the learned counsel for the respondent/appellant submits that in view of the subsequent developments and as the case under Section 498-A IPC ended in acquittal, the respondent/appellant is ready and willing to take back his wife. Sri S.A. Razak, learned counsel for the petitioner-wife would submit that if the respondent/appellant is ready to take back his wife, the petitioner-wife is willing to go and join him. In view of the statement made by the counsel for the respondent/appellant, we feel that no further adjudication in the appeal is required and accordingly the appeal is dismissed confirming the findings given by the trial Court. Miscellaneous applications, if any pending, shall stand closed. No order as to costs.

Dt. 8.3.2018
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C.PRAVEEN KUMAR, J

J. UMA DEVI, J