

THE HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR

And

THE HONOURABLE Ms. JUSTICE J.UMA DEVI

C.M.A.Nos.800 & 801 of 2006

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

1. These appeals came to be filed under Section 28 of the Hindu Marriage Act, aggrieved by the common order dated 16.03.2006, passed in O.P.Nos.14 and 15 of 2001 on the file of the Senior Civil Judge, Rayachoty, wherein the petition filed by the appellant under Sections 13 (1) (i) of Hindu Marriage Act, 1955 (for short, 'the Act'), seeking divorce, by dissolving the marriage was dismissed and the petition seeking restitution of conjugal rights under Section 9 of the Act, was allowed.

2. In spite of taking number of adjournments on the ground that efforts are being made to work out some solution, to settle the matter, it is represented today that there is no change in the circumstances. Hence the following order:

3. For the sake of convenience, the parties will hereinafter be referred to as arrayed in O.P.No.14 of 2001.

4. The facts in issue are as under:

The petitioner-wife was married to the respondent-husband on 07.08.1993 at Sri Vasavi Kalyana Mandapam, Kadapa. Out of wedlock,

they were blessed with a child. It is stated that the respondent developed sadistic attitude towards the petitioner, ill treated her mentally and physically, used to beat her and burn her body with dhoop sticks, causing cut injuries with knife. She used to demand her to get money from her parents. It is stated that in the month of October, 1998, the respondent along with the petitioner went and stayed in Kadapa with her parents for few days. Thereafter, the respondent alone returned from Kadapa leaving his wife and son at his parents house in Kadapa, promising them to take back, after getting transferred from Holigunda. As the respondent did not turn up, the father of the petitioner wrote several letters, but there was no reply from the respondent and hence the petitioner got issued legal notice dated 27.09.1999. In spite of it, there was no reply from the respondent. Hence, O.P.No.14 of 2001 came to be filed by the petitioner-wife.

The respondent filed counter and O.P.No.15 of 2001 with the following averments:

The petitioner in O.P.No.14 of 2001 and the respondent lived happily till 1997. During their tour for 14 days from 30.06.1997 to 13.07.1997, in a car driven by one Kullayappa, the petitioner-wife is said to have developed close acquaintance with the driver. It is stated that on 14.07.1997, the respondent found the driver in the bed room with the petitioner, but at that time he did not suspect the

conduct of the petitioner. Subsequently, when the respondent left from Ananapur on bank or other works, the petitioner had sexual relation with said Kullayappa on several occasions. It is averred that the respondent found the said Kullayappa with the petitioner having illicit relation and escaping from the hands of respondent on one pretext or the other. It is stated that the neighbours and some of his friends also tried to stop the extramarital relation. It is further averred that in the month of January, 1998, the respondent came to Ananapur and found the driver, near his house, during odd hours, but however did not give a serious thought over the matter. It is stated that several times the respondent pleaded the petitioner not to continue illicit relation with the driver, but in vain. It is further stated that the petitioner admitted her relationship with the driver in the presence of her parents for which her parents chastised her. Thereafter, on 14.07.1998, the respondent was transferred from Ananapur to Holigunda and got his son admitted in a school at Holigunda. Since then there was no attempt by the petitioner or her parents to join the respondent and the same lead to filing of the petition for divorce.

On behalf of the petitioner PWs.1 to 5 were examined and got marked Exs.A1 to A32. On behalf of respondent, RWs.1 to 4 were examined. Basing on the evidence available on record, the trial Court allowed O.P.No.14 of 2001 and dismissed the divorce petition in

O.P.No.15 of 2001 vide common judgment dated 16.03.2006. Assailing the same, the present applications came to be filed.

5. The only ground urged by the learned counsel for the respondent-appellant is that since the petitioner is leading an adulterous life, it is a fit case to grant divorce. It is his case that he noticed driver by name Kullayappa, near his house during odd hours; and also claims to have seen the driver in the bed room of the petitioner-wife. On the other hand, learned counsel for the petitioner-wife would submit that one Kulayappa is a driver and as such his presence near the house of the petitioner is not unusual. Even if the evidence of PW1 is to be accepted, the presence of the driver in the house itself may not lead to a conclusion that he came there due to illicit relation with the petitioner-wife.

6. Before dealing with the same, it is to be noted that originally respondent-husband filed O.P.No.138 of 1999 on the file of the Additional Senior Civil Judge, Anantapuramu for grant of divorce. After filing of the said application, legal notice came to be issued for restitution of conjugal rights and the petition filed by the husband was transferred to the Family Court as per the orders of the Apex Court in Civil Appeal No.2800 of 2001. On transfer, the said petition was numbered as O.P.No.15 of 2001. Similarly, O.P.No.89 of 1999 came to be filed before the Court of Senior Civil Judge, Kadapa on 15.10.1999, seeking restitution of conjugal rights and on transfer vide

Tr.C.M.P.No.38 of 2000, the same came to be numbered as O.P.No.118 of 2000 on the file of Additional Senior Civil Judge, Anantapuramu. The petitioner-wife, who was examined as PW1 in O.P.No.14 of 2001 deposed about the sadistic attitude of the respondent towards her and that he wrote several letters to her father demanding additional dowry. She deposed that the respondent failed to take her back along with her son. During her cross examination, PW1 admitted about the disputes between her and her husband, in the year 1999. She also admitted that she did not write any letters personally to her father and at the instance of her husband, she got aborted her pregnancy. She states that disputes arose between her and her husband, at the instance of his sister. She denied her relation with the driver Kulayappa and the presence of the driver in her bedroom. She further deposed that she does not know the reason for which her husband filed a divorce petition.

7. PW2, who is the resident of Muddanur, deposed in his evidence that on coming to know about the ill treatment of the respondent-husband towards the petitioner-wife, he questioned the respondent about his behaviour, but there was no reply and that he promised to take back the petitioner-wife to Holagunda.

8. PW3, who is the father of the petitioner, supported the version of PW1 on all aspects. He deposed that he received a letter from the respondent-husband demanding dowry and also to send a T.V. He

further deposed that her daughter informed him that with the consent of the respondent-husband, she got aborted. He denied the suggestion that the petitioner got aborted on the ground that she got conceived through Kullayappa. He denied a suggestion that after October, 1998, he did not take any steps personally or through letters or by phone, requesting the respondent-husband to take back the petitioner. He admitted that since October, 1998, the petitioner and respondent were living separately. He denied a suggestion that the respondent never telephoned to him or his daughter, informing that he would come and take back the petitioner.

9. PW4, who is the elder brother of the petitioner, supported the versions of PWs.2 and 3 and denied a suggestion that they did not go to Holigunda and never requested the respondent to take back the petitioner.

10. The respondent who got examined as RW1 deposed about the illicit intimacy with one Kullayappa, who is the driver of the car which fact is known to all the neighbours. When the same was informed to the parents of the petitioner, they took her to their house in the year 1998 and thereafter the petitioner did not return back. He further deposed that the petitioner on her own got aborted. His evidence is to the effect that the petitioner developed intimacy with one Kulayappa, found him along with his wife in the bedroom and because of the illicit relation, the petitioner became pregnant. He further

admits that he did not suspect the petitioner from 30.06.1997 to 13.07.1997 and that he suspected the petitioner on 14.07.1997 when he saw the petitioner and the driver in bed room. In O.P.No.15 of 2001, the respondent-husband did not mention as to how the said Kullayappa and his wife were found in bed room and that when he knocked the door, his wife opened the door from inside. Though he found the petitioner and the driver in one room, he did not inform the same to the parents of the petitioner. In the month of September, 1997, i.e, two months later, he claims to have informed the parents of the petitioner about her intimacy with the driver Kulayappa. Though he claims to have had first hand information about the illicit relation of the petitioner with said driver, but for the reasons best known, he did not inform about the same immediately nor did he mention about it in the chief examination affidavit. The evidence given in Court appears to be somewhat different from the averments made in his affidavit. RW2, who is the milk vendor in Anantapuramu town, deposed about the relationship between the petitioner and said Kulayappa. According to him, in his chief examination he did not mention stating that when he questioned Kullayappa as to why he was present in the house of the petitioner-wife, that said Kullayappa replied that he has nothing to do with the said facts and asked him to give the milk and leave the place. No document is placed on record to show that RW2 is the milk vendor who supply milk in Kamalanagar and Venugopalnagar of Anantapuramu town. He also deposed that he

does not remember the door number of the rented house of the petitioner-wife. He further admits that he cannot say whether the said Kullayappa came to the house of the respondent during night times.

11. RW3, who is the brother-in-law of the respondent-husband, deposed that in the year 1997, he went to the house of the respondent at Ananatapuramu and found Kullayappa in the house and when questioned, the said Kullayappa gave vague answer. It is to be noted that these facts were not mentioned in the chief examination by RW3. So is the version of RW4, who is the paternal uncle of the respondent-husband.

12. From the above, it is clear that the plea of the respondent-husband is that he is seeking divorce on the ground of adultery.

13. It would be appropriate to test their evidence with earlier versions given by them in reply notice. A perusal of the reply notice shows that there is no whisper about the adultery. He did not make any allegation of adultery against the petitioner-wife. Coming to the evidence of RW1, he stated that on 14.07.1997, he found the said Kulayappa in the bed room of the petitioner. It is further averred in the petition that the respondent-husband found the driver and his wife together and was taking the petitioner to a temple on outskirts, etc and was having sexual relation with the petitioner. Though the respondent claims to have seen the driver in the bed room of the

petitioner, the same cannot be said to be made a basis to prove the allegation of adultery. At the same time, it is also to be noted that RW1 further admitted that he did not mention in his petition as to how the petitioner and Kullayappa were available in the bed room. Further, he did not immediately inform the parents of the petitioner about her illicit relationship.

14. Except seeing the said Kullayappa in the bed room of the petitioner, no other ground is urged by the respondent for grant of divorce.

15. With regard to the petition seeking restitution of conjugal rights, it is to be noted that there was constant harassment by the respondent-husband to bring additional dowry. Even the evidence of PWs. 1 to 5 show that the respondent used to ill treat the petitioner to bring dowry. The petitioner-wife relied upon number of documents to show that respondent harassed the petitioner, more particularly Ex.A28, the letter written by respondent-husband, wherein he stated that he was in need of money and requested the father of the petitioner-wife to send dowry of Rs.11,000/- plus interest and also money of Rs.18,000/- for television set, through DD. The said aspect was also admitted by the respondent-husband. The petitioner also relied upon Ex.A25, the letter as to the payment of money, which cannot be denied. Ex.A24 is the application-specimen signature form for opening account in Vysya Bank Limited, Kadapa in the name of the

respondent-husband. Exs.A27 and 26 are relevant to prove the demand of dowry by the respondent-husband. Even as per Ex.A4, it is clear that the respondent mentioned the details of the expenses during marriage and demanded payment of excess amount.

16. A perusal of the documents furnished by the petitioner-wife clearly disclose that there are specific allegation of demanding additional dowry by the respondent-husband from her and her parents and the record also shows that the respondent dropped his wife and son with the parents of the petitioner-wife and did not turn up to take them back to his house inspite of various letters written by the father of the petitioner.

17. From the above circumstances, it is clear that there is no clear evidence to establish the allegation of Adultery or any specific allegation against the petitioner-wife to form a basis to grant divorce to the respondent-husband. Hence the request of the respondent-husband for grant of divorce cannot be accepted. Consequently, we see no reason to interfere with the orders passed by the Trial Court in the petition filed seeking restitution of conjugal rights.

18. Accordingly, both the appeals are dismissed confirming the common order passed on 16.03.2006 in O.P.Nos.14 and 15 of 2001. There shall be no order as to costs.

19. Miscellaneous petitions, if any, pending, shall stand closed.

C. PRAVEEN KUMAR, J

J. UMA DEVI, J

15.03.2018
vnb

