

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

CIVIL MISCELLANEOUS APPEAL No.705 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 12.07.2006, passed in H.M.O.P.No.41 of 2004 on the file of the Senior Civil Judge, Khammam, wherein a petition filed by the respondent herein under Section 13(1) (ia) of the Act, seeking dissolution of marriage on the ground of cruelty, 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 affidavit filed in support of the petition are that the marriage between the petitioner and the respondent took place on 23.02.2003 at Khammam as per Hindu rites and customs. At the time of marriage, the parents of the petitioner gave an amount of Rs.5,00,000/- towards dowry and Rs.1,00,000/- for other purposes, to the respondent. It is stated that after marriage, the petitioner joined the respondent at Vijayawada and within three days thereafter, the respondent started harassing the petitioner. The respondent used to demand the petitioner to bring additional dowry and also used to suspect her. The respondent used to beat the petitioner for silly reasons and lock the door from outside by keeping the

petitioner inside the house. It is also stated that when the sister of respondent intervened, he also beat her. It is stated that the respondent forced the petitioner to go to church and convert herself to Christianity. Though the petitioner is a Hindu, she was taken to Dr.Paul (a pastor) at Visakhapatnam. The respondent also addressed a letter to the petitioner with regard to his cruelty. It is also stated that prior to the marriage, the respondent informed the petitioner that he completed M.A. M.Phil., which was found to be false. It was also stated that the respondent necked her out from the house, which lead to filing of the present O.P.

4. A counter came to be filed by the respondent stating that no dowry was paid at the time of marriage and he never behaved violently. It is also stated that he never assaulted the petitioner and that the petitioner lived with him only for six months. He denied putting pressure on the petitioner to convert herself to Christianity. Having regard to the above, he would submit that the request of the petitioner to grant divorce cannot be acceded to.

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

6. In support of her case, the petitioner got examined herself as PW.1 and got marked Ex.A1-letter, dated 10.09.2003.

On behalf of the respondent, he examined himself as RW.1, examined his friend as RW.2 and got marked Exs.B1 to B5.

7. Basing on the evidence of RWs.1 and 2 and the contents of Ex.A1, the trial Court granted divorce. Assailing the same, the present appeal came to be filed by the husband.

8. Learned counsel for the appellant – husband would submit that in the absence of any evidence to prove acts of cruelty, the respondent – wife is not entitled to divorce. He further submits that a careful reading of Ex.A1, as a whole, does not indicate any act of cruelty. He finds fault with the finding given by the trial Court in reading Ex.A1 in isolation.

9. Learned counsel for the respondent–wife opposes the same. He submits that the admissions made by RW.1 in his evidence itself are sufficient to grant divorce.

10. In order to appreciate the rival contentions made, the averments in the chief affidavit filed by PW.1 requires advertence to.

11. It is said that the respondent - husband beat the petitioner – wife and demanded her to bring additional dowry. PW.1, in her evidence, further deposed that at the time of marriage, her parents gave Rs.5,00,000/- towards dowry and Rs.1,00,000/- for other purposes to the respondent. After marriage she joined the company of respondent. Within three

days thereafter, the respondent started abusing her on suspicion. She stayed with her husband for about 15 days and thereafter, came to her parents' house for celebrating the 16th day function. The respondent locked the door from outside by keeping her inside. Even at the house of her parents, the behaviour of the respondent was unusual. He used to beat her for silly reasons. She has given specific dates as to when the respondent beat her. It is also stated that when the sister of respondent, by name Durga, used to interfere, he also beat her. It is also stated that the respondent forced the petitioner to convert into Christianity, by taking her to Dr. Paul (a pastor) at Visakhapatnam. Though PW.1 was cross-examined, nothing useful was elicited to discredit her version in chief. However, it was elicited in the cross-examination that in the month of April, 2003, she was kept in a room and the door was locked from outside by the respondent. It was further elicited that she lodged a report with the police after filing of the O.P. To a suggestion that it was a love marriage, the same was denied by her.

12. Coming to the evidence of RW.1, he denies the averments made by the petitioner in her chief affidavit. But, however, the cross-examination assumes importance. In the cross-examination, he admits that he completed his B.A. from Siddartha College, Vijayawada, but, however, denies the suggestion that he informed PW.1 that he did M.Phil. and Ph.D.

He admits that he filed O.P.No.479 of 2003 before the Family Court, Vijayawada, for restitution of conjugal rights, but, for non-payment of process, the said O.P. was dismissed for default. He also admits filing of another application in O.P.No.54 of 2005 on the file of Family Court, Vijayawada, for restitution of conjugal rights. According to him, a panchayat was conducted in the house of the petitioner, in which petitioner and her parents demanded for mutual divorce. However, he admits that Ex.A1 – letter was sent by him. Though, he denied that he beat the petitioner nearly twenty times and house arrested her, but, however, adds that he beat the petitioner four times. He admits that he mentioned in Ex.A1 that he beat the petitioner twice by exceeding the limits. He also admits that he believes Jesus Christ. He also admits that he was in Hyderabad for Bible training and has taken Baptism. However, he denies the suggestion that he forced the petitioner to convert into Christianity. He further admits in his cross-examination that he also beat his sister, when she came to rescue the petitioner. He further admits that an amount of Rs.2,00,000/- was returned to him.

13. Coming to the evidence of RW.2, who is the friend of RW.1, he admits that the marriage between the petitioner and respondent was performed as per Hindu rights and customs and that he attended the marriage. Though he denies the suggestion that the respondent beat the petitioner severely for

15 times, but, however, admits that the respondent beat the petitioner once.

14. From the cross-examination of RWs.1 and 2, it is clear that the respondent used to beat the petitioner and on more than one occasion he exceeded his limits in beating the petitioner. Therefore, the admission of RW.1, in his cross-examination, with regard to beating the petitioner, which gets corroborated from the contents of Ex.A1 – letter, dated 10.09.2003, and from the evidence of R.W.2, amply proves existence of cruelty. Hence, the grant of divorce on the ground of cruelty cannot be found fault with.

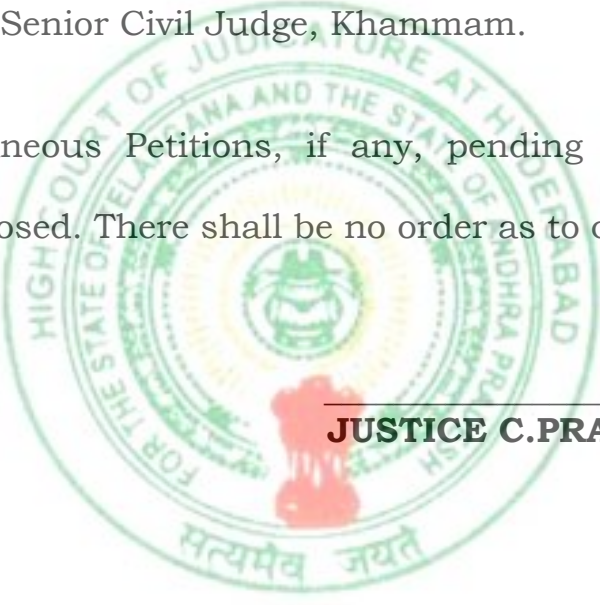
15. Apart from that, it is also to be noted that the respondent admits that he got himself converted to Baptism. By this, the petitioner pleaded that the conversion of the respondent to Christianity is a just ground for granting divorce, when the marriage was performed under the provisions of the Hindu Marriage Act.

16. A reading of Section 13 (1) (ii) of the Act would show that any marriage solemnized, whether before or after commencement of the Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has ceased to be a Hindu by conversion to another religion.

17. The admission of RW.1 in his cross-examination that he converted himself to Baptism, would be another ground for grant of divorce, as the marriage between the petitioner and the respondent was performed under the provisions of the Hindu Marriage Act. Hence, we feel that the order under challenge requires no interference.

18. Accordingly, the appeal is dismissed confirming the order, dated 12.07.2006, passed in H.M.O.P.No.41 of 2004 on the file of the Senior Civil Judge, Khammam.

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.
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